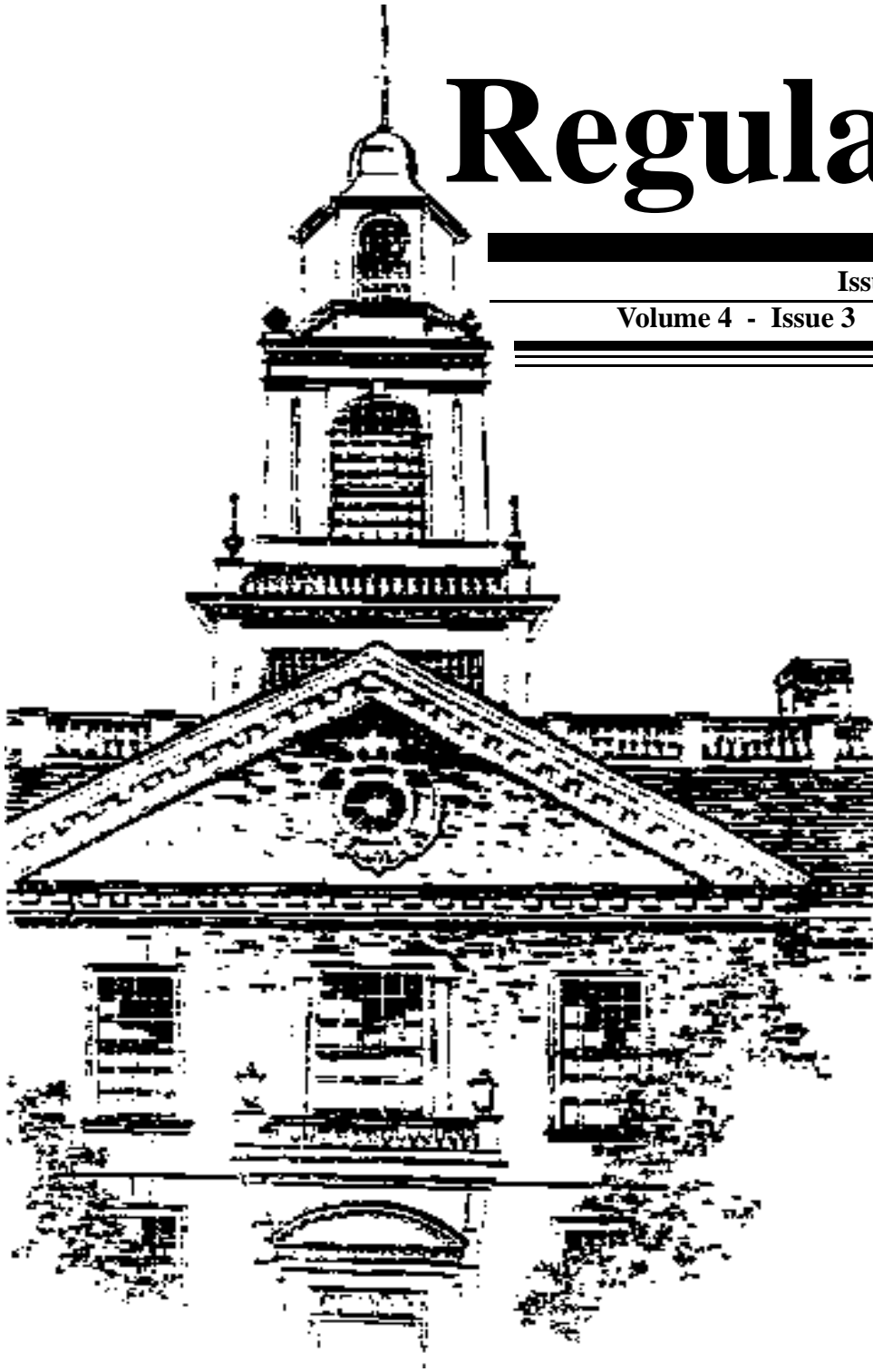


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# Delaware Register of Regulations



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Issue Date: September 1, 2000

Volume 4 - Issue 3

Pages 373 - 590

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## IN THIS ISSUE:

### Regulations:

- Errata
- Emergency
- Proposed
- Final

### Governor

- Appointments
- General Notices
- Calendar of Events &  
Hearing Notices



Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before August 15, 2000.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

The Delaware Register of Regulations is an official State publication established by authority of 69 Del. Laws, c. 107 and is published on the first of each month throughout the year.

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The Register will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Attorney General's Opinions in full text
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

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### CITATION TO THE DELAWARE REGISTER

The Delaware Register of Regulations is cited by volume, issue, page number and date. An example would be:

**3 DE Reg. 737 - 742 (12/1/99)**

Refers to Volume 3, pages 737 - 742 of the Delaware Register issued on December 1, 1999.

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### SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$120.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-739-4114 or 1-800-282-8545 in Delaware.

## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section,

no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the Register of Regulations.

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## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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ISSUE DATE	CLOSING DATE	CLOSING TIME
SEPTEMBER 1	AUGUST 15	4:30 P.M.
OCTOBER 1	SEPTEMBER 15	4:30 P.M.
NOVEMBER 1	OCTOBER 15	4:30 P.M.
DECEMBER 1	NOVEMBER 15	4:30 P.M.
JANUARY 1	DECEMBER 15	4:30 P.M.

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**DEPARTMENT OF EDUCATION**

Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 Del.C. 122(d))

\* **PLEASE NOTE: IN THE AUGUST 2000 ISSUE OF THE REGISTER AT PAGE 344 THE INCORRECT VERSION OF THE FINAL REGULATION WAS PROVIDED. THE CORRECTED VERSION FOLLOWS. THE WORDS "EACH WEEK" IN SECTION 3.1.1 SHOULD NOT HAVE APPEARED.**

**REGULATORY IMPLEMENTING ORDER  
SUPPORTIVE INSTRUCTION (HOMEBOUND)****Supportive Instruction (Homebound)**

1.0 Definition: Supportive instruction is an alternative educational program provided at home, in a hospital or at a related site for students temporarily at home or hospitalized for a sudden illness, injury, episodic flare up of a chronic condition or accident considered to be of a temporary nature.

1.1 Procedures for eligibility shall be limited to appropriate certification that the student cannot attend school.

1.2 Services for children with disabilities as defined in the Individuals with Disabilities Act (IDEA) and the State Department of Education's regulations on Children with Disabilities shall be provided according to the *Administrative Manual: Special Education Services*, and shall be processed under the district's special education authority. Nothing in this regulation shall prevent a district from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and the Administrative Manual.

1.3 Nothing in this regulation shall alter a district's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a district from providing supportive instruction to such students.

2.0 Eligibility: A student enrolled in a school district is eligible for supportive instruction when the school receives the required certification that an accident, injury, sudden illness or episodic flareup of a chronic condition will prevent the student from attending school for at least ten (10) school days.

2.1 A physician must certify absences due to a medical condition.

2.2 Absences due to severe adjustment problems must be certified by a psychologist or psychiatrist and confirmed through a staff conference.

2.3 A physician must certify absences due to pregnancy

complicated by illness or other abnormal conditions.

2.3.1 Students do not qualify for supportive instruction for normal pregnancies unless there are complications.

2.3.2 Students who remain enrolled in school are eligible for supportive instruction during a postpartum period not to exceed six weeks. Postpartum absences must be certified by a physician.

2.4 When the request for supportive instruction is for transitional in-school programs immediately following supportive instruction provided outside school, the request must be certified through a staff conference.

3.0 Implementation: Supportive instruction for students shall begin as soon as the certification required by 2.0 is received and may continue upon return to school only in those exceptional cases where it is determined that the student needs a transitional program to guarantee a successful return to the school program as in 2.4.

3.1 Supportive instruction shall adhere to the extent possible to the student's school curriculum and shall make full use of the available technology in order to facilitate the instruction.

3.1.1 The school shall provide a minimum of 3 hours of supportive instruction of eligibility for students K-5th grade, and a minimum of five hours of eligibility for students 6-12th grade. There is no minimum for in-school transition.

3.1.2 Nothing in this regulation shall prevent a school district from providing additional hours of supportive instruction to eligible students from either its Academic Excellence allotment or other available funding sources.

3.2 Summer instruction is permitted for a student who is otherwise eligible for supportive instruction and as determined by the student's teachers and principal, needs the instruction to complete course work or to maintain a level of instruction in order to continue in a school program the following school year.

**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. 505)

\* PLEASE NOTE: THE FOLLOWING REGULATION WAS ORIGINALLY PUBLISHED IN THE JULY 2000 ISSUE OF THE REGISTER. THERE WERE SEVERAL ERRORS IN THAT VERSION. IN SECTION 14380, THE FOURTH PARAGRAPH DID NOT HAVE CERTAIN LANGUAGE STRICKEN. SECTION 18100.3 SHOULD HAVE BEEN STRICKEN IN ITS ENTIRETY. THE CORRECT VERSION FOLLOWS.

**PUBLIC NOTICE**

**Medicaid / Medical Assistance Program**

**14380 Documentation of Citizenship or Alien Status**

Applicants must provide documentation of ~~citizenship~~ qualified alien status or lawful alien status. All noncitizens who declare they are qualified aliens or in lawful alien status, must provide INS documents to establish immigration status. Examples of acceptable documentation for ~~U.S. citizens~~, qualified aliens and lawful alien status are given in this section.

If the applicant will not provide evidence of ~~citizenship~~ or alien status and does not allege qualified or lawful alien status, the application is not denied, but an eligibility determination is completed for coverage of labor and delivery and emergency services only.

As required by §1137(d)(4) of the Social Security Act, Medicaid will be provided to individuals who meet all other nonimmigration Medicaid eligibility requirements, pending verification of immigration status. We will provide Medicaid to an otherwise eligible individual who has presented INS documents showing qualified or lawful alien status, pending verification of the document.

For noncitizen applicants who declare they are qualified or lawful aliens ~~or for individuals who declare citizenship~~ but have no documentation, we must allow the individual a reasonable opportunity to produce evidence of immigration ~~or citizenship~~ status. We will give the individual 30 days from the date of the receipt of application to produce an INS document ~~or documentation of citizenship~~. If the individual meets all other eligibility requirements except for this documentation, we will provide Medicaid during this 30 day period.

If the applicant provides an expired INS document or has no documentation regarding his or her immigration status, refer the individual to the local INS district office to obtain evidence of status. As noted previously, Medicaid coverage is provided for a 30 day period pending verification of alien status. If the applicant can provide an alien

registration number, follow the secondary verification procedures outlined below under Section 14390 - "Verification of Immigration Alien Status".

**~~18100.3 Fair Hearings~~**

~~Applicants and recipients do not maintain a right to a fair hearing. The rules at DSSM 5000 Fair Hearing Practice and Procedures do not apply to DHCP.~~

**Symbol Key**

Roman type indicates the text existing prior to the emergency regulation being promulgated. Italic type indicates new text. Language which is stricken through indicates text being deleted.

**Emergency Regulations**

Under 29 **Del.C.** §10119, if an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by 29 **Del.C.** §10115, then the following rules shall apply: (1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable; (2) The order adopting, amending or repealing a regulation shall state in writing the reasons for the agency's determination that such emergency action is necessary; (3) the order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days; (4) When such an order is issued without any of the public procedures otherwise required or authorized by Chapter 101 of Title 29, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and (5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the Register of Regulations.

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**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 505 (31 **Del.C.** 505)

REVISION OF THE REGULATIONS  
OF THE MEDICAID/MEDICAL  
ASSISTANCE PROGRAM CONTAINED  
IN DSSM 16100.1.2 AND 16250

**NATURE OF THE PROCEEDINGS:**

The Delaware Department of Health and Social Services ("Department") has determined that a threat to the public welfare exists if revision of regulations contained in DSSM Sections 16100.1.2 and 16250 are not implemented without prior notice or hearing. Failure to do so would jeopardize Delaware's intent to increase the income limit from 185% to 200% of the Federal Poverty Limit for pregnant women and infants.

**NATURE OF PROPOSED REVISIONS:**

(revisions underlined):

**FINDINGS OF FACT:**

The Department finds that these changes should be made in the best interest of the general public of the State of Delaware. The Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision thereof.

THEREFORE, IT IS ORDERED, that the proposed revision to the regulation be adopted on an emergency basis without prior notice or hearing, and shall become effective immediately.

August 14, 2000

Gregg C. Sylvester, M.D., Secretary

**REVISION:****16100.1.2 Initial Eligibility Determination**

The two criteria for finding an applicant presumptively eligible are: a medically verified pregnancy and effective no later than November 1, 2000 self-reported family income at or below ~~185%~~ 200% of the Federal Poverty Level. Countable family income is determined using the rules in this section including the \$90 earned income deduction and any self-reported child care expenses. State residency is established for presumptive eligibility by the applicant writing a home address on the application that is a Delaware residence.

Note: Women who are nonqualified aliens or illegally residing in the U.S. are not eligible for presumptive Medicaid.

Verifications of all other factors of eligibility are postponed. Postponed verifications must be provided within 30 days from the date of receipt of the application. Under unusual circumstances, the deadline date for postponed verifications may be extended. The reason for the extension must be documented in the case record. The verifications that were postponed are required to determine final eligibility for Medicaid benefits. Presumptive eligibility

continues until a final eligibility determination is completed. If the required verifications are not provided, eligibility under the presumptive period ends.

Pregnant women who are determined presumptively eligible are required to enroll in the Diamond State Health Plan unless otherwise exempt.

### 16250 Eligibility Determination

After applying appropriate disregards to income, compare the countable family income to the income eligibility standard for the budget unit size.

- Pregnant women and children up to age 1 must have family income effective no later than November 1, 2000 at or below ~~185%~~ 200% of poverty. Pregnant women count as 2 family members.
- Children age 1 and up to age 6 must have family income at or below 133% of poverty.
- Children age 6 and up to age 19 must have family income at or below 100% of poverty.
- Uninsured adults must have family income at or below 100% of poverty.
- Women eligible for family planning must have family income at or below 300% of poverty during the second year of the extension.

Family Size	Annual Income	Monthly Income	Monthly Income	Monthly Income	Monthly Income
	100% FPL	100% FPL Ages 6 – 18, Adults	133% FPL Ages 1 – 5	<del>185% FPL</del> Pregnant Women and Infants	<u>200% FPL</u> Pregnant Women and Infants*
1	\$8,240	\$687	\$914	<del>\$1,271</del>	<u>\$1,374</u>
2	11,060	922	1,206	<del>1,706</del>	<u>\$1,844</u>
3	13,880	1,157	1,539	<del>2,140</del>	<u>2,314</u>
4	16,700	1,392	1,851	<del>2,575</del>	<u>2,784</u>
5	19,520	1,627	2,164	<del>3,010</del>	<u>3,254</u>
6	22,340	1,862	2,477	<del>3,445</del>	<u>3,724</u>
7	25,160	2,097	2,789	<del>3,879</del>	<u>4,194</u>
8	27,980	2,332	3,102	<del>4,314</del>	<u>4,604</u>
9	30,800	2,567	3,414	<del>4,747</del>	<u>5,134</u>
10	33,620	2,802	3,727	<del>5,184</del>	<u>5,604</u>

\* Effective no later than November 1, 2000.

**Symbol Key**

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

**Proposed Regulations**

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation; The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF LANDSCAPE ARCHITECTURE**

Statutory Authority: 24 Delaware Code,  
Section 205(1) (24 **Del.C.** §205(1))

PLEASE TAKE NOTICE, pursuant to 29 Del. C. Chapter 101 and 24 Del. C. Section 205(1), the Delaware Board of Landscape Architecture proposes to revise its rules and regulations. Substantive changes to the regulations include clarification of the passing examination score; addition of rules regarding use of the seal on drawings and other documents; clarification of license renewal and inactive status procedural requirements; deletion of provisions regarding death or retirement; provisions for pre-approval of certain self-directed continuing education activities; and addition of procedural rules pertaining to disciplinary matters and hearings before the Board. In addition, material which unnecessarily duplicates the statutes or other rules and regulations has been stricken. The existing rules and regulations have been re-ordered and re-numbered.

A public hearing will be held on the proposed Rules and Regulations on Thursday, November 9, 2000 at 9:30 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Gayle Melvin at the above address. The final date to

submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Gayle Melvin at the above address or by calling (302) 739-4522, extension 218.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

**Proposed Revisions to Rules and Regulations**

- 1.0 Filing of Applications for Written Examination
- 2.0 Filing of Applications for Reciprocity
- 3.0 Filing of Applications for Certificate of Authorization
- 4.0 Licenses
- 5.0 Seal
- 6.0 Renewal of Licenses
- 7.0 Continuing Education as a Condition of Biennial Renewal
- 8.0 Inactive Status
- 9.0 Disciplinary Proceedings and Hearings
- 10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

**1.0 Filing of Applications for Written Examination**

1.1 Persons seeking licensure pursuant to 24 *Del. C.* § 206 shall submit an application for written examination on a form prescribed by the Board to the Board's office at the Division of Professional Regulation (the "Division") along with the application fee established by the Division. Applicants for written examination shall be filed in such office of the Board no later than twelve (12) weeks prior to the opening date of the examination.

1.2 Each applicant must submit documentary evidence, as more fully described on the application form, to show the Board that the applicant is clearly eligible to sit for the examination under 24 *Del. C.* § 206.

1.3 The Board shall not consider an application for written examination until all items described in paragraphs 1.1 and 1.2 of this Rule have been submitted to the Board's office.

1.4 The Board reserves the right to retain as a permanent part of the application any or all documents submitted. ~~which shall be properly marked for identification and ownership. Original documents may be replaced by photostated copies of such documents at the request and expense of the applicant.~~

1.5 The examination shall be the Council of Landscape Architectural Registration Board's ("CLARB") current uniform national examination. CLARB establishes a passing score for each uniform national examination.

Statutory Authority: 24 *Del. C.* §§206, 207

## 2.0 Filing of Applications for Reciprocity

2.1 Persons seeking licensure pursuant to 24 *Del. C.* § 208, shall submit payment of the ~~reciprocity~~ fee established by the Division and an application on a form prescribed by the Board which shall include proof of licensure and good standing in each state or territory of current licensure, and on what basis the license was obtained therein, including the date licensure was granted. Letters of good standing must also be provided for each state or jurisdiction in which the applicant was ever previously licensed.

2.2 The Board shall not consider an application for licensure by reciprocity until all items described in 24 *Del. C.* § 208 and paragraph 2.1 of this Rule have been submitted to the Board's office.

2.3 A passing exam score for purposes of reciprocity shall be the passing score set by CLARB, or the passing score accepted by the Delaware Board, for the year in which the exam was taken.

Statutory Authority: 24 *Del. C.* §208.

## 3.0 Filing of Applications for Certificate of Authorization

Corporations or partnerships seeking a certificate of authorization pursuant to 24 *Del. C.* § 212 shall submit an application on a form prescribed by the Board. Such application shall include the (a) names and addresses of all officers and members of the corporation, or officers and partners of the partnership, and (b) the name of ~~an corporate officer or member~~ in the case of a corporation, or the name of ~~an officer or partner~~ in the case of a partnership, who is licensed to practice landscape architecture in this State and who shall be ~~in responsible charge of~~ responsible for services in the practice of landscape architecture through on behalf of the corporation or partnership.

Statutory Authority: 24 *Del. C.* §212.

## 4.0 Licenses

Only one license shall be issued to a licensed landscape architect, except for a duplicate issued to replace a lost or destroyed license.

## ~~5. Administration (Seal)~~

### 5.0 Seal

#### 5.1 Technical Requirements

5.1.1 For the purpose of signing and sealing the drawings, specifications, ~~and~~ contract documents, plans, reports and other documents (hereinafter collectively referred to as "drawings"), each landscape architect shall provide him or herself with an individual seal of design and size as approved by the Board to be used as hereinafter directed on documents prepared by him or her or under his/her direct supervision for use in the State of Delaware.

5.1.2 The application of the seal impression or rubber stamp to the first sheet of the bound sheets of the drawings (with index of drawings included), title page of specifications, and other drawings and contract documents shall constitute the licensed landscape architect's stamp.

5.1.3 The seal to be used by a licensee of the Board shall be of the embossing type or a rubber stamp, and have two (2) concentric circles. The outside circle measures across the center 1 13/16 inches. The inner circle shall contain only the words "NO." and "State of Delaware." At the bottom the words "Registered Landscape Architect" reading counterclockwise, and at the top the name of the licensee.

5.1.4 An impression of the seal is to be submitted to the Board to be included in the licensee's records.

#### 5.2 Use of the Seal

5.2.1 A landscape architect shall not sign or seal drawings unless they were prepared by him/her or under his/her direct supervision.

5.2.2 "Supervision" for purposes of signing and/or sealing drawings shall mean direct supervision, involving responsible control over and detailed professional knowledge of the contents of the drawings throughout their preparation. Reviewing, or reviewing and correcting, drawings after they have been prepared by others does not constitute the exercise of responsible control because the reviewer has neither control over, nor detailed professional knowledge of, the content of such drawings throughout their preparation.

5.2.3 The seal appearing on any drawings shall be prima facie evidence that said drawings were prepared by or under the direct supervision of the individual who signed and/or sealed the drawings. Signing or sealing of drawings prepared by another shall be a representation by the registered landscape architect that he/she has detailed

professional knowledge of and vouches for the contents of the drawings.

*Statutory Authority: 24 Del. C. §205(a)(1); 212(a).*

### **6.0 ~~Late Renewal of Licenses~~**

6.1 Each application for license renewal or request for inactive status shall be submitted on or before the expiration date of the current licensing period. However, a practitioner may still renew his or her license within 60 days following the license renewal date upon payment of a late fee set by the Division. Upon the expiration of 60 days following the license renewal date an unrenewed license shall be deemed lapsed and the practitioner must reapply pursuant to the terms of 24 Del.C. §210(b). Except on a showing of exceptional hardship, there shall be no extension of time for license renewals for practitioners who fail to renew their licenses on or before the renewal date. "Exceptional hardship" includes, but is not limited to, disability and illness. The Board reserves the right to require a letter from a physician attesting to the licensee's physical condition when the hardship request is based on disability or illness.

6.2 It shall be the responsibility of all licensees to keep the Board and the Division informed of any change in name, home or business address.

*Statutory Authority: 24 Del. C. §210.*

### **~~7.0 Death or Retirement~~**

~~Where the names of deceased, retired, or inactive partners or firm members are used in firm names or otherwise listed on the letterhead, their dates of death or retirement shall be indicated.~~

### **7.0 Continuing Education as a Condition of Biennial Renewal**

7.1 General Statement: Each licensee shall be required to meet the continuing education requirements of these guidelines for professional development as a condition for license renewal. Continuing education obtained by a licensee should maintain, improve or expand skills and knowledge obtained prior to initial licensure, or develop new and relevant skills and knowledge.

7.1.1 In order for a licensee to qualify for license renewal as a landscape architect in Delaware, the licensee must have completed 20 hours of continuing education acceptable to the Board within the previous two years, or be granted an extension by the Board for reasons of hardship. Such continuing education shall be obtained by active participation in courses, seminars, sessions, programs or self-directed activities approved by the Board.

7.1.1.1 For purposes of seminar or classroom continuing education, one hour of acceptable continuing education shall mean 60 minutes of instruction.

7.1.2 To be acceptable for credit toward this requirement, all courses, seminars, sessions, programs or

self-directed activities shall be submitted to the Board. The Board shall recommend any course, seminar, session or program for continuing education credit that meets the criteria in sub-paragraph 7.1.2.1 below.

7.1.2.1 Each course, seminar, session, program, or self-directed activity to be recommended for approval by the Board shall have a direct relationship to the practice of landscape architecture as defined in the Delaware Code and contain elements which will ~~enhance~~ assist licensees to provide for the health, safety and welfare of the citizens of Delaware served by Delaware licensed landscape architects.

7.1.2.2 The Board shall meet at least once during each calendar quarter of the year and act on each course, seminar, session or program properly submitted for its review. Each program, or portion thereof, shall be either recommended for approval, recommended for disapproval or deferred for lack of information. If deferred or disapproved, the licensee will be notified and may be granted a period of time in which to correct deficiencies. The Board may also seek verification of information submitted by the licensee.

7.1.3 Continuing Education courses offered or sponsored by the following organizations will be automatically deemed to qualify for continuing education credit:

7.1.3.1 American Society of Landscape Architects (National and local/chapter levels)

7.1.3.2 Council of Landscape Architectural Registration

7.1.4 Erroneous or false information attested to by the licensee shall constitute grounds for denial of license renewal.

7.2 Effective Date: The Board shall commence requiring continuing education as a condition of renewal of a license for the license year commencing on February 1, 1995. The licensee shall be required to successfully complete twenty (20) hours of continuing education within the previous two calendar years (example: February 1, 1993 through January 31, 1995).

7.3 For licensing periods beginning February 1, 1999 and thereafter, requests for approval of continuing education activity, along with the required supporting documentation, shall be submitted to the Board on or before November 1 of the year preceding the biennial renewal date of the licenses. A license shall not be renewed until the Board has approved twenty (20) hours of continuing education classes as provided in Rule 7.1 or has granted an extension of time for reasons of hardship.

7.4 Reporting: The licensee shall submit the following documentation to the Board for each continuing education activity completed:

- A completed Continuing Education Reporting Form
- A syllabus, agenda, itinerary or brochure



published by the sponsor of the activity

- A document showing proof of attendance (i.e. certificate, a signed letter from the sponsor attesting to attendance, report of passing test score). ~~from the college/university).~~

7.4.1 Each licensee must retain copies of Board approved continuing education reporting forms and all supporting materials documenting proof of continuing education compliance. Licensees will be required to complete a continuing education log form prior to license renewal and to submit supporting materials upon request.

7.5 Special Request Hardship: The Board will consider any reasonable special request from individual licensees for continuing education credits and procedures. The Board may, in individual cases involving physical disability, illness, or extenuating circumstances, grant an extension, not to exceed two (2) years, of time within which continuing education requirements must be completed. In cases of physical disability or illness, the Board reserves the right to require a letter from a physician attesting to the licensee's physical condition. No extension of time shall be granted unless the licensee submits a written request to the Board prior to the expiration of the license.

7.6 Self-directed Activities: For renewal periods beginning February 1, 2001, the following rules regarding self-directed activity shall apply. The Board will have the authority to allow self-directed activities to fulfill the continuing education requirements of the licensees. However, these activities must result in a book draft, published article, delivered paper, workshop, symposium, or public address within the two (2) year reporting period. Self-directed activities must advance the practitioner's knowledge of the field and be beyond the practitioner's normal work duties. Instructors may not include will not be granted CE credit for studies customarily associated with their usual university or college instruction teaching loads.

7.6.1 The Board may, upon request, review and approve credit for self-directed activities in a given biennial licensing period. A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity. Any self-directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee. Determination of credit will be made by the Board upon review of the completed final project.

7.7 Exemptions: New licensees by way of uniform national examination or by way of reciprocity shall be exempt from the continuing education requirements set forth

herein for their first renewal period.

Statutory Authority: 24 Del. C. §205(12).

## 8.0 Inactive Status

8.1 A licensee may, upon written request to the Board, place his/her license on inactive status.

8.2 A licensee who has been granted inactive status and who wishes to re-enter the practice of landscape architecture, shall submit a written request to the Board along with a prorated renewal fee and proof of completion of twenty (20) hours of continuing education during the period of inactive status.

8.3 Licensees on inactive status shall renew their inactive status by notification to the Division of Professional Regulation at the time of biennial license renewal.

Statutory Authority: 24 Del. C. §210(c).

## 9.0 Disciplinary Proceedings and Hearings

9.1 Disciplinary proceedings against any licensee may be initiated by an aggrieved person by submitting a complaint in writing to the Director of the Division of Professional Regulation as specified in 29 Del. C. §8807(h)(1)-(3).

9.1.1 A copy of the written complaint shall be forwarded to the administrative assistant for the Board. At the next regularly scheduled Board meeting, a contact person for the Board shall be appointed and a copy of the written complaint given to that person.

9.1.2 The contact person appointed by the Board shall maintain strict confidentiality with respect to the contents of the complaint and shall not discuss the matter with other Board members or with the public. The contact person shall maintain contact with the investigator or deputy attorney general assigned to the case regarding the progress of the investigation.

9.1.3 In the instance when the case is being closed by the Division, the contact person shall report the facts and conclusions to the Board without revealing the identities of the parties involved. No vote of the Board is necessary to close the case.

9.1.4 If a hearing before the Board has been requested by the Deputy Attorney General, a copy of these Rules and Regulations shall be provided to the respondent upon request. The notice of hearing shall fully comply with 29 Del. C. Sec. 10122 and 10131 pertaining to the requirements of the notice of proceedings. All notices shall be sent to the respondent's address as reflected in the Board's records.

9.1.5 At any disciplinary hearing, the respondent shall have the right to appear in person or be represented by counsel, or both. The Respondent shall have the right to produce evidence and witnesses on his or her behalf and to cross examine witnesses. The Respondent shall be entitled to the issuance of subpoenas to compel the attendance of



witnesses and the production of documents on his or her behalf.

9.1.6 No less than 10 days prior to the date set for a disciplinary hearing, the Department of Justice and the respondent shall submit to the Board and to each other, a list of the witnesses they intend to call at the hearing. Witnesses not listed shall be permitted to testify only upon a showing of reasonable cause for such omission.

9.1.7 If the respondent fails to appear at a disciplinary hearing after receiving the notice required by 29 Del.C. §10122 and 10131, the Board may proceed to hear and determine the validity of the charges against the respondent.

Statutory authority: 24 Del.C. §§213 and 215; 29 Del.C. §§10111, 10122 and 10131

#### 9.2 Hearing procedures

9.2.1 The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. All testimony at any hearing shall be under oath.

9.2.2 Strict rules of evidence shall not apply. All evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs shall be admitted.

9.2.3 An attorney representing a party in a hearing or matter before the Board shall notify the Board of the representation in writing as soon as practicable.

9.2.4 Requests for postponements of any matter scheduled before the Board shall be submitted to the Board's office in writing no less than three (3) days before the date scheduled for the hearing. Absent a showing of exceptional hardship, there shall be a maximum of one postponement allowed to each party to any hearing.

9.2.5 A complaint shall be deemed to "have merit" and the Board may impose disciplinary sanctions against the licensee if a majority of the members of the Board find, by a preponderance of the evidence, that the respondent has committed the act(s) of which he or she is accused and that those act(s) constitute grounds for discipline pursuant to 24 Del.C. §213.

Statutory authority: 24 Del.C. §§205(7)(8); 213, 214, 215.

### **10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals**

10.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

10.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of

receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

10.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

10.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

10.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

10.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

10.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

10.6.2 Consent to the treating professional of the

approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

10.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

10.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

10.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

10.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

10.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

10.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action

is deemed necessary to protect the public health, welfare or safety.

10.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

10.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

10.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

10.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

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## DIVISION OF PROFESSIONAL REGULATION REAL ESTATE COMMISSION

Statutory Authority: 24 Delaware Code,  
Section 2905 (24 Del.C. §2905)

The Delaware Real Estate Commission, in accordance with 24 Delaware Code §2905(a)(1) and 29 Delaware Code §10115 of the Administrative Procedures Act, hereby gives notice that it shall hold a public hearing on October 12, 2000 at 9:00 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware.

The Commission shall receive input in writing or by oral testimony from interested persons regarding the following revision of the Rules and Regulations: Rule 3.2.1. (Experience). After the first sentence add: If the licensee fails to renew his or her license by the expiration date but then makes an application for reinstatement within sixty (60) days of the expiration of the license and the Commission otherwise approves the application for reinstatement, the five-years' continuity will not be broken.

The final date for interested persons to submit views in writing or orally shall be at the above scheduled public hearing. Anyone wishing to make oral or written comments or who would like a copy of the proposed change may contact the Commission office at 302-739-4522, extension 219, or write to the Delaware Real Estate Commission, 861

Silver Lake Boulevard Suite 203, Dover, DE 19904-2467.

- 1.0 Introduction
- 2.0 Requirements for Obtaining a Salesperson's License
- 3.0 Requirements for Obtaining a Real Estate Broker's License
- 4.0 Reciprocal Licenses
- 5.0 Escrow Accounts
- 6.0 Transfer of Broker or Salesperson
- 7.0 Business Transactions and Practices
- 8.0 Renewal of Licenses
- 9.0 Availability of Rules and Regulations
- 10.0 Disclosure
- 11.0 Hearings
- 12.0 Inducements
- 13.0 Necessity of License
- 14.0 Out of State Land Sales Applications
- 15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

## **1.0 Introduction**

### **1.1 Authority**

1.1.1 Pursuant to 24 **Del.C.** §2905, the Delaware Real Estate Commission is authorized and empowered and hereby adopts the rules and regulations contained herein.

1.1.2 The Commission reserves the right to make any amendments, modifications or additions hereto, that, in its discretion are necessary or desirable.

1.1.3 The Commission reserves the right to grant exceptions to the requirements of the rules and regulations contained herein upon a showing of good cause by the party requesting such exception, provided such exception is not inconsistent with the requirements of 24 **Del.C.** Ch. 29.

### **1.2 Applicability**

1.2.1 The rules and regulations contained herein, and any amendments, modifications or additions hereto are applicable to all persons presently licensed as real estate brokers or real estate salespersons, and to all persons who apply for such licenses.

### **1.3 Responsibility**

1.3.1 It is the responsibility of the employing broker to insure that the rules and regulations of the Commission are complied with by licensees. Every broker is responsible for making certain that all of his or her sales agents are currently licensed, and that their agents make timely application for license renewal. A broker's failure to meet that responsibility may result in a civil fine against the broker of up to \$ 1,000.00 per agent.

1.3.2 Each office location shall be under the direction of a broker of record, who shall provide complete and adequate supervision of that office. A broker serving as broker of record for more than one office location within the State shall apply for and obtain an additional license in his name at each branch office. The application for such

additional license shall state the location of the branch office and the name of a real estate broker or salesperson licensed in this State who shall be in charge of managing the branch office on a full time basis.

A broker shall not serve as broker of record unless said broker has been actively engaged in the practice of real estate, either as a licensed salesperson or a licensed broker, for the preceding three (3) years.

Where an unforeseen event, such as a resignation or termination from employment, death, emergency, illness, call to military service or training, or a sanction imposed by the Commission causes or necessitates the removal of the sole licensed broker in an office, arrangements may be made with the Commission for another broker to serve as broker of record for said office on a temporary basis.

The employment of a sales manager, administrative manager, trainer, or other similar administrator shall not relieve the broker of record of the responsibilities contained and defined herein.

1.3.3 The failure of any licensee to comply with the Real Estate Licensing Act and the rules and regulations of the Commission may result in disciplinary action in the form of a reprimand, civil penalty, suspension or revocation of the broker's and/or salesperson's license.

## **2.0 Requirements for Obtaining a Salesperson's License**

The Commission shall consider any applicant who has successfully completed the following:

### **2.1 Course**

2.1.1 The Commission shall consider any applicant who has successfully completed an accredited course in Real Estate Practice.

2.1.2 Effective May 1, 1978, all real estate courses shall be limited to thirty-five (35) students in each class. This applies to both day and night courses. All other regulations regarding real estate courses are issued under the "Guidelines for Fulfilling the Delaware Real Estate Education Requirements". The Commission reserves the right to grant exception to this limitation.

### **2.2 Examination**

2.2.1 Within twelve (12) months of completing an accredited course, the applicant must make application to the Commission by submitting a score report showing successful completion of the examination required by the Commission. The applicant must forward all necessary documentation to the Commission to be considered for licensure.

2.2.2 An applicant may sit for the examination a maximum of three (3) times after successful completion of an approved course in real estate practice. If an applicant fails to pass the examination after three (3) attempts at such, the applicant shall be required to retake and successfully complete an approved course in real estate practice before being permitted to sit for the examination again.

### 2.3 Ability to conduct business

2.3.1 The Commission reserves the right to reject an applicant based on his or her inability to transact real estate business in a competent manner or if it determines that the applicant lacks a reputation for honesty, truthfulness and fair dealings.

2.3.2 The minimum age at which a salesperson's license can be issued is eighteen (18).

### 2.4 Fees

The Commission shall not consider an application for a salesperson's license unless such application is submitted with evidence of payment of the following fees:

2.4.1 Salesperson's application fee established by the Division of Professional Regulation pursuant to 29 **Del.C.** §8807(d).

## 3.0 Requirements for Obtaining a Real Estate Broker's License

The Commission shall consider the application of any person for a broker's license upon completion of the following:

### 3.1 Course

3.1.1 The Commission shall consider the application of any person for a license after said applicant has successfully completed an accredited course.

3.1.2 Effective May 1, 1978, all courses shall be limited to thirty-five (35) students in each class.

### 3.2 Experience

3.2.1 A salesperson must hold an active license in the real estate profession for five (5) continuous years immediately preceding application for a broker's license. If the licensee fails to renew his or her license by the expiration date but then makes an application for reinstatement within sixty (60) days of the expiration of the license and the Commission otherwise approves the application for reinstatement, the five-years' continuity will not be broken.

3.2.2 The applicant shall submit to the Commission a list of at least thirty (30) sales or other qualified transactions, showing dates, location, purchaser's name and seller's name. These sales must have been made by the applicant within the previous five (5) years through the general brokerage business and not as a representative of a builder, developer, and/or subdivider. Transactions involving time-shares, leases, or property management are not qualified transactions for purposes of obtaining a real estate broker's license. The Commission reserves the right to waive any of the above requirements, upon evidence that the applicant possesses sufficient experience in the real estate business or demonstrates collateral experience to the Commission.

3.2.3 The list of thirty (30) sales or other qualified transactions and/or the variety of the licensee's experience must be approved by the Commission.

### 3.3 Examination

3.3.1 Within twelve (12) months of completing an accredited course, the applicant must submit a score report showing successful completion of the examination required by the Commission and submit all necessary documentation including the credit report required by Paragraph E of this rule to the Commission to be considered for licensure.

### 3.4 Ability to conduct business

3.4.1 The Commission reserves the right to reject an applicant based on his or her ability to transact real estate business in a competent manner or if it determines that the applicant lacks experience, a reputation for honesty, truthfulness and fair dealings.

3.4.2 The minimum age at which a person can be issued a broker's license is twenty-three (23).

### 3.5 Credit Report

3.5.1 Each applicant shall submit a credit report from an approved credit reporting agency, which report shall be made directly to the Commission.

### 3.6 Fees

The Commission shall not consider an application for a broker's license unless such application is submitted with evidence of payment of the following fees:

3.6.1 Broker's application fee established by the Division of Professional Regulation pursuant to 29 **Del.C.** §8807(d).

## 4.0 Reciprocal Licenses

### 4.1 Requirements

4.1.1 A non-resident of this State who is duly licensed as a broker in another state and who is actually engaged in the business of real estate in the other state may be issued a non-resident broker's license under 24 **Del.C.** §2909(a).

4.1.2 A non-resident salesperson who is duly licensed as a salesperson in another state and who is actually engaged in the business of real estate in the other state may be issued a non-resident salesperson's license provided such non-resident salesperson is employed by a broker holding a broker's license issued by the Commission.

4.1.3 The Commission, at its discretion, may issue a non-resident broker's or salesperson's license without the course and examination required by Rules 2.2 or 3.3 provided the non-resident broker or salesperson passed an equivalent course and examination in his/her resident state and provided that such other state extends the same privilege to Delaware real estate licensees.

## 5.0 Escrow Accounts

5.1 All moneys received by a broker as agent for his principal in a real estate transaction shall be deposited within three (3) banking days after a contract of sale or lease has been signed by both parties, in a separate escrow account so designated, and remain there until settlement or termination of the transaction at which time the broker shall make a full

accounting thereof to his or her principal.

5.2 All moneys received by a salesperson in connection with a real estate transaction shall be immediately delivered to the appropriate broker. A licensee shall not accept, as a good faith or earnest money deposit in connection with a real estate transaction, a photocopy, facsimile, or other copy of a personal check or draft, nor shall a licensee accept as a good faith or earnest money deposit a check or draft that is postdated.

5.3 A broker shall not co-mingle money or any other property entrusted to him with his money or property, except that a broker may maintain up to \$100.00 of his/her own funds in the escrow account to cover bank service charges and to maintain the minimum balance necessary to avoid the account being closed.

5.4 A broker shall maintain in his office a complete record of all moneys received or escrowed on real estate transactions, including the sources of the money, the date of receipt, depository, and date of deposit; and when a transaction has been completed, the final disposition of the moneys. The records shall clearly show the amount of the broker's personal funds in escrow at all times.

5.5 An escrow account must be opened by the broker in a bank with an office located in Delaware in order to receive, maintain or renew a valid license.

5.6 The Commission may summarily suspend the license of any broker who fails to comply with 5.4, who fails to promptly account for any funds held in escrow, or who fails to produce all records, books, and accounts of such funds upon demand. The suspension shall continue until such time as the licensee appears for a hearing and furnishes evidence of compliance with the Rules and Regulations of the Commission.

5.7 Interest accruing on money held in escrow belongs to the owner of the funds unless otherwise stated in the contract of sale or lease.

## **6.0 Transfer of Broker or Salesperson**

6.1 All licensees who transfer to another office, or brokers who open their own offices, but who were associated previously with another broker or company, must present a completed transfer form to the Commission signed by the individual broker or company with whom they were formerly associated, before the broker's or salesperson's license will be transferred. In addition all brokers who are non-resident licensees must also provide a current certificate of licensure.

6.2 The Commission reserves the right to waive this requirement upon a determination of good cause.

6.3 All brokers of record who move the physical location of their office shall notify the Commission in writing at least 30 days, or as soon as practical, prior to such move by filing a new office application.

## **7.0 Business Transactions and Practices**

### **7.1 Written Listing Agreements**

7.1.1 Listing Agreements for the rental, sale, lease or exchange of real property, whether exclusive, co-exclusive or open shall be in writing and shall be signed by the seller or owner.

### **7.2 Copy of agreements**

7.2.1 Every party to a listing agreement, agreement of purchase and sale, or lease shall be furnished with an executed copy of such contract or contracts. It shall be the responsibility of the licensee to deliver an executed copy of the agreements to the principals within a reasonable length of time after execution.

### **7.3 Advertising**

7.3.1 Any licensee who advertises, on signs, newspapers or any other media, property personally owned and/or property in which a licensee has any ownership interest, and said property is not listed with a broker, must include in the advertisement that he/she is the owner of said property and that he/she is a real estate licensee.

7.3.2 Any licensee who advertises in newspapers or any other media, property personally owned and/or property in which the licensee has any ownership interest, and said property is listed with a broker, must include in the advertisement the name of the broker under whom he/she is licensed, that he/she is the owner of said property, and that he/she is a real estate licensee. This subsection does not apply to signs.

7.3.3 Any licensee who advertises, by signs, newspaper, or any other media, any property for sale, lease, exchange, or transfer that is listed with a broker must include in the advertisement the name of the broker under whom the licensee is licensed.

7.3.4 All advertisements for personal promotion of licensees must include the name of the company under whom the licensee is licensed.

### **7.4 Separate Office**

7.4.1 Applicants for broker's licenses and those presently licensed must maintain separate offices in which to conduct the real estate business. Nothing contained herein, however, shall preclude said persons from sharing facilities with such other businesses as insurance, banking, or others that the Commission shall deem compatible.

7.4.2 Where the office is located in a private home, said office must have a separate entrance and must be approved by the Commission. The broker must place a permanent sign indicating the name under which the office is licensed, in a conspicuous location.

### **7.5 Compensation**

7.5.1 Licensees shall not accept compensation from more than one party to a transaction, even if permitted by law, without timely disclosure to all parties to the transaction.

7.5.2 When acting as agent, a licensee shall not

accept any commission, rebate, or profit on expenditures made for his principal-owner without the principal's knowledge and informed consent.

#### 7.6 Duty to Cooperate

7.6.1 Brokers and salespersons shall cooperate with all other brokers and salespersons involved in a transaction except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions or to otherwise compensate another broker or salesperson.

### 8.0 Renewal of Licenses

#### 8.1 Renewal Required by Expiration Date on License

8.1.1 In order to qualify for license renewal as a real estate salesperson or broker in Delaware, a licensee shall have completed 15 hours of continuing education within the two year period immediately preceding the renewal. The broker of record for the licensee seeking renewal shall certify to the Commission, on a form supplied by the Commission, that the licensee has complied with the necessary continuing education requirements. This certification form shall be submitted by the licensee together with his/her renewal application and renewal fee. The broker of record shall retain for a period of one (1) year, the documents supporting his/her certification that the licensee has complied with the continuing education requirement. A licensee who has not paid the fees and/or met the requirements for the renewal of his or her license by the expiration date shown thereon, shall not list, sell, lease or negotiate for others after such date.

#### 8.2 Delinquency Fee

8.2.1 If a licensee fails to renew his or her license prior to the expiration date shown thereon, he or she shall be required to pay the full license fee and an additional delinquency fee equal to one half of the license fee. If a licensee fails to renew his or her license within 60 days of the expiration date shown thereon, the license shall be cancelled.

8.2.2 Failure to receive notice of renewal by a licensee shall not constitute a reason for reinstatement.

#### 8.3 Reinstatement of License

8.3.1 A cancelled license shall be reinstated only after the licensee pays the necessary fees, including the delinquency fee, and passes any examinations required by the Commission. If the licensee fails to apply for renewal within 6 months of the cancellation date, the licensee shall be required to take the state portion of the examination. If the licensee fails to apply for renewal before the next renewal period commences (two years), the licensee shall be required to pass both the state and the national portions of the examination.

8.3.2 No person whose license has been revoked will be considered for the issuance of a new license for a period of at least two (2) years from the date of the

revocation of the license. Such person shall then fulfill the following requirements: he or she shall attend and pass the real estate course for salespersons; take and pass the Commission's examination for salespersons; and any other criteria established by the Commission. Nothing above shall be construed to allow anyone to take the course for the purpose of licensing until after the waiting period of two (2) years. Nothing contained herein shall require the Commission to issue a new license upon completion of the above mentioned requirements, as the Commission retains the right to deny any such application.

### 9.0 Availability of Rules and Regulations

#### 9.1 Fee Charge for Primers

9.1.1 Since licensees are required to conform to the Commission's Rules and Regulations and the Laws of the State of Delaware, these Rules and Regulations shall be made available to licensees without charge. However, in order to help defray the cost of printing, students in the real estate courses and other interested parties may be required to pay such fee as stipulated by the Division of Professional Regulation for the booklet or printed material.

### 10.0 Disclosure

10.1 A licensee who is the owner, the prospective purchaser, lessor or lessee or who has any personal interest in a transaction, must disclose his or her status as a licensee to all persons with whom he or she is transacting such business, prior to the execution of any agreements and shall include on the agreement such status.

10.2 Any licensee advertising real estate for sale stating in such advertisement, "If we cannot sell your home, we will buy your home", or words to that effect, shall disclose in the original listing contract at the time he or she obtains the signature on the listing contract, the price he will pay for the property if no sales contract is executed during the term of the listing. Said licensee shall have no more than sixty (60) days to purchase and settle for the subject property upon expiration of the original listing or any extension thereof.

10.3 A licensee who has direct contact with a potential purchaser or seller shall disclose in writing whom he/she represents in any real estate negotiation or transaction. The disclosure as to whom the licensee represents should be made at the 1st substantive contact to each party to the negotiation or transaction. In all cases such disclosure must be made prior to the presentation of an offer to purchase. A written confirmation of disclosure shall also be included in the contract for the real estate transaction.

10.3.1 The written confirmation of disclosure in the contract shall be worded as follows:

10.3.1.1 With respect to agent for seller: "This broker, any cooperating broker, and any salesperson working with either, are representing the seller's interest and have fiduciary responsibilities to the seller, but are obligated to

treat all parties with honesty. The broker, any cooperating broker, and any salesperson working with either, without breaching the fiduciary responsibilities to the seller, may, among other services, provide a potential purchaser with information about the attributes of properties and available financing, show properties, and assist in preparing an offer to purchase. The broker, any cooperating broker, and any salesperson working with either, also have the duty to respond accurately and honestly to a potential purchaser's questions and disclose material facts about properties, submit promptly all offers to purchase and offer properties without unlawful discrimination."

10.3.1.2 With respect to agent for buyer: "This broker, and any salesperson working for this broker, is representing the buyer's interests and has fiduciary responsibilities to the buyer, but is obligated to treat all parties with honesty. The broker, and any salesperson working for the broker, without breaching the fiduciary responsibilities to the buyer, may, among other services, provide a seller with information about the transaction. The broker, and any salesperson working for the broker, also has the duty to respond accurately and honestly to a seller's questions and disclose material facts about the transaction, submit promptly all offers to purchase through proper procedures, and serve without unlawful discrimination."

10.3.1.3 In the case of a transaction involving a lease in excess of 120 days, substitute the term "lessor" for the term "seller", substitute the term "lessee" for the terms "buyer" and "purchaser", and substitute the term "lease" for "purchase" as they appear above.

10.4 If a property is the subject of an agreement of sale but being left on the market for backup offers, or is the subject of an agreement of sale which contains a right of first refusal clause, the existence of such agreement must be disclosed by the listing broker to any individual who makes an appointment to see such property at the time such appointment is made.

### **11.0 Hearings**

11.1 When a complaint is filed with the Commission against a licensee, the status of the broker of record in that office shall not change.

11.2 There shall be a maximum of one (1) postponement for each side allowed on any hearing which has been scheduled by the Commission. If any of the parties are absent from a scheduled hearing, the Commission reserves the right to act based upon the evidence presented.

### **12.0 Inducements**

12.1 Real Estate licensees cannot use commissions or income received from commissions as rebates or compensation paid to or given to Non-licensed Persons, partnerships or corporations as inducements to do or secure business, or as a finder's fee.

12.2 This Rule does not prohibit a real estate broker or salesperson from giving a rebate or discount or any other thing of value directly to the purchaser or seller of real estate. The real estate broker or salesperson, however, must be licensed as a resident or non-resident licensee by the Commission under the laws of the State of Delaware.

12.3 A real estate broker or salesperson has an affirmative obligation to make timely disclosure, in writing, to his or her principal of any rebate or discount that may be made to the buyer.

### **13.0 Necessity of License**

13.1 For any property listed with a broker for sale, lease or exchange, only a licensee shall be permitted to host or staff an open house or otherwise show a listed property. That licensee may be assisted by non-licensed persons provided a licensee is on site. This subsection shall not prohibit a seller from showing their own house.

13.2 For new construction, subdivision, or development listed with a broker for sale, lease or exchange, a licensee shall always be on site when the site is open to the general public, except where a builder and/or developer has hired a non-licensed person who is under the direct supervision of said builder and/or developer for the purpose of staffing said project.

### **14.0 Out of State Land Sales Applications**

14.1 All applications for registration of an out of state land sale must include the following:

14.1.1 A completed license application on the form provided by the Commission.

14.1.2 A \$100 filing fee made payable to the State of Delaware.

14.1.3 A valid Business License issued by the State of Delaware, Division of Revenue.

14.1.4 A signed Appointment and Agreement designating the Delaware Secretary of State as the applicant's registered agent for service of process. The form of Appointment and Agreement shall be provided by the Commission. In the case of an applicant which is a Delaware corporation, the Commission may, in lieu of the foregoing Appointment and Agreement, accept a current certificate of good standing from the Delaware Secretary of State and a letter identifying the applicant's registered agent in the State of Delaware.

14.1.5 The name and address of the applicant's resident broker in Delaware and a completed Consent of Broker form provided by the Commission. Designation of a resident broker is required for all registrations regardless of whether sales will occur in Delaware.

14.1.6 A bond on the form provided by the Commission in an amount equal to ten (10) times the amount of the required deposit.

14.1.7 Copies of any agreements or contracts to be

utilized in transactions completed pursuant to the registration.

14.2 Each registration of an out of state land sale must be renewed on an annual basis. Each application for renewal must include the items identified in sub-sections 14.1.2 through 14.1.4 of Rule 14.0 above and a statement indicating whether there are any material changes to information provided in the initial registration. Material changes may include, but are not limited to, the change of the applicant's resident broker in Delaware; any changes to the partners, officers and directors' disclosure form included with the initial application; and any changes in the condition of title.

14.3 If, subsequent to the approval of an out of state land sales registration, the applicant adds any new lots or units or the like to the development, then the applicant must, within thirty days, amend its registration to include this material change. A new registration statement is not required, and the amount of the bond will remain the same.

### **15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals**

15.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

15.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

15.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

15.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or

his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

15.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

15.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

15.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

15.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

15.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

15.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the



participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

15.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

15.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

15.6.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

15.6.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

15.6.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

15.6.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

15.6.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

15.6.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for

disclosure and specify those to whom such information may be disclosed.

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## **DEPARTMENT OF AGRICULTURE**

### **THOROUGHBRED RACING COMMISSION**

Statutory Authority: 3 Delaware Code,  
Section 10103 (3 Del.C. 10103)

The Commission will receive written public comment from September 1, 2000 through September 30, 2000. Written comments should be sent to John Wayne, Administrator of Racing, 2320 S. DuPont Highway, Dover, DE 19901. The Commission will conduct a public hearing on the proposed rules on September 27, 2000 at 9:30 a.m. at Delaware Park, 777 Delaware Park Blvd., Stanton DE. Copies of the proposed rules can be obtained from the Commission office at the above address.

#### **Part 8 -- Jockeys and Apprentice Jockeys**

##### **8.01 Probationary Mounts:**

Any person desiring to participate at Licensee's premises as a rider and who never previously has ridden in a race may be permitted to ride in two races before applying for a permit as a Jockey or Apprentice Jockey, provided, however:

(a) Such person has had at least one year of service with a racing stable and currently holds a permit issued by the Commission for a recognized activity in racing;

**4 DE Reg. 181 (7/1/00)**

(b) A registered Trainer certifies in writing to the Stewards that such person has demonstrated sufficient horsemanship to be permitted such probationary mounts;

(c) The Starter has schooled such person in breaking from the starting gate with other horses and approves such person as being capable of starting a horse properly from the starting gate in a race;

(d) The Stewards, in their sole discretion, are satisfied that such person intends to become a licensed Jockey, possesses the physical ability and has demonstrated sufficient horsemanship to ride in a race without jeopardizing the safety of horses or other riders in such race. No such person shall be permitted to ride in any such probationary race without the prior approval of the Stewards.

##### **8.02 Qualification for Permit:**

In addition to satisfying the requirements applicable to Permittees, et al., imposed by Part 2 of these Rules, in order to be eligible to have an authorization or permit issued to him as a Jockey or Apprentice Jockey, a person also:

(a) Must be an individual 16 years of age or older;

(b) Must utilize in his or her application his or her legal

name only so that such may be listed in the daily race program;

(c) Must have served at least one year with a racing stable;

(d) Must have ridden in at least two races; and

(e) Must, when required by the Stewards, provide a medical affidavit certifying he or she is physically and mentally capable of performing the activities and duties of a Jockey.

#### 8.03 Amateur or Provisional Jockey:

An amateur wishing to ride in races on even terms with professional riders, but without accepting fees or gratuities therefor, must be approved by the Stewards as to competency of horsemanship, may be granted a Jockey's authorization or permit, and such amateur status must be duly noted on the daily race program. A registered Owner or registered Trainer, upon approval by the Stewards, may be issued a provisional Jockey's authorization or permit to ride his or her own horse or horse registered in his or her care as Trainer.

#### 8.04 Apprentice Allowance:

An apprentice jockey may claim the following weight allowances in all overnight races except stakes and handicaps:

(a) A ten pound allowance beginning with the first mount and continuing until the apprentice has ridden five winners.

(b) A seven pound allowance until the apprentice has ridden an additional 35 winners.

(c) If an apprentice has ridden a total of 40 winners prior to the end of a period of one year from the date of riding his or her fifth winner, he or she shall have an allowance of five pounds until the end of that year.

(d) If after one year from the date of the fifth winning mount, the apprentice jockey has not ridden 40 winners, the applicable weight allowance shall continue for more than one year or until the 40th winner, whichever comes first. An apprentice may in no event claim a weight allowance for more than two years from the date of the fifth winning mount, unless an extension has been granted pursuant to this Rule.

(e) After the completion of the weight allowances as defined in this Rule, a contracted apprentice may for one year claim three pounds when riding horses owned or trained by his or her original contract employer, provided his or her contract has not been transferred or sold since his or her first winner. Such original contract employer shall be deemed the party to the contract who was the employer at the time of the apprentice jockey's first winner.

(f) An apprentice jockey may enter into a contract with a registered owner or registered trainer qualified under Rule 8.05 for a period not to exceed five years. Such contracts

must be approved by the stewards and filed with the licensee or its registrar. Such contracts shall be binding in all respects on the signers thereof. An apprentice who is not contracted may be given an apprentice jockey certificate on a form furnished by the licensee or its registrar.

(g) After the completion of the weight allowances defined in this Rule, such rider must obtain a jockey license before accepting subsequent mounts.

(h) The Commission may extend the weight allowance of an apprentice jockey when, in the discretion of the Commission, an apprentice jockey is unable to continue riding due to:

(1) Physical disablement or illness;

(2) Military service;

(3) Attendance in an institution of secondary or higher education;

(4) Restriction on racing;

(5) Other valid reasons.

(i) To qualify for an extension, an apprentice jockey shall have been rendered unable to ride for a period of not less than seven (7) consecutive days during the period in which the apprentice was entitled to an apprentice weight allowance. Under exceptional circumstances, total days lost collectively will be given consideration.

(j) The Commission currently licensing apprentice jockeys shall have the authority to grant an extension to an eligible applicant, but only after the apprentice has produced documentation verifying time lost as defined by this Rule.

(k) An apprentice may petition one of the jurisdictions in which he or she is licensed and riding for an extension of the time for claiming apprentice weight allowances, and the apprentice shall be bound by the decision of the jurisdiction so petitioned.

Revised 10/31/96.

#### 8.05 Rider Contracts:

All contracts between an employer or Trainer and employee rider are subject to the rules of racing. All riding contracts for terms longer than 30 days, as well as any amendments thereto, or cancellations or transfer thereof, must be in writing with the signatures of the parties thereto notarized, be approved by the Stewards and filed with Licensee or his Registrar. The Stewards may approve a riding contract and permit parties thereto to participate in racing at Licensee's premises if they find that:

(a) The contract employer is a registered Owner or registered Trainer who owns or trains at least three horses eligible to race at the time of execution of such contract;

(b) The contract employer possesses such character, ability, facilities and financial responsibility as may be conducive to the development of a competent race rider;

(c) Such contracts for Apprentice Jockeys provide for fair remuneration, adequate medical care and an option equally available to both employer and Apprentice Jockey to

cancel such contract after two years from the date of execution.

**8.06 Restrictions as to Contract Riders:**

No rider may:

- (a) Ride any horse not owned or trained by his or her contract employer in a race against a horse owned or trained by his or her contract employer;
- (b) Ride or agree to ride any horse in a race without the consent of his or her contract employer;
- (c) Share any money earned from riding with his or her contract employer;
- (d) Repealed: 10/31/96.

**8.07 Calls and Engagements:**

Any rider not so prohibited by prior contract may agree to give first or second call on his or her race-riding services to any registered Owner or Trainer. Such agreements, if for terms of more than 30 days, must be in writing, approved by the Stewards and filed with the Licensee or its Registrar. Any rider employed by a racing stable on a regular salaried basis may not ride against the stable which so employs him or her. No Owner or Trainer shall employ or engage a rider to prevent him or her from riding another horse.

**8.08 Jockey Fee:**

The fee to a Jockey in all races shall be, in the absence of special agreement, as follows:

Purse	Winning Mount	Second Mount	Third Mount	Losing Mount
\$5,000 to 9,900	10% of Win Purse	\$65	\$50	<del>\$40</del> <u>\$45</u>
\$10,000 to 14,900	10% of Win Purse	5%	5%	<del>\$45</del> <u>\$50</u>
\$15,000 to 24,900	10% of Win Purse	5%	5%	<del>\$50</del> <u>\$55</u>
\$25,000 to 49,900	10% of Win Purse	5%	5%	<del>\$60</del> <u>\$65</u>
\$50,000 to 99,900	10% of Win Purse	5%	5%	<del>\$75</del> <u>\$80</u>
100,000 and up	10% of Win Purse	5%	5%	<del>\$100</del> <u>\$105</u>

A jockey fee shall be considered earned by a rider when he or she is weighed out by the Clerk of Scales, except when:

- (a) A rider does not weigh out and ride in a race for which he or she has been engaged because an Owner or Trainer engaged more than one rider for the same race; in

such case, the Owner or Trainer shall pay an appropriate fee to each rider engaged for such race.

(b) Such rider capable of riding elects to take himself or herself off the mount, without, in the opinion of the Stewards, proper cause therefor.

(c) Such rider is replaced by the Stewards with a substitute rider for a reason other than a physical injury suffered by such rider during the time between weighing out and start of the race.

**8.09 Duty to Fulfill Engagements:**

Every rider shall fulfill his or her duly scheduled riding engagements unless excused by the Stewards. No rider shall be forced to ride a horse he or she believes to be unsound nor over a racing strip he or she believes to be unsafe, but if the Stewards find a rider's refusal to fulfill a riding engagement is based on a personal belief unwarranted by the facts and circumstances, such rider may be subject to disciplinary action.

**8.10 Presence in Jockey Room:**

Each rider who has been engaged to ride in a race shall be physically present in the Jockey room no later than one hour prior to post time for the first race on the day he or she is scheduled to ride, unless excused by the Stewards or the Clerk of Scales and, upon arrival, shall report to the Clerk of Scales his or her engagements. In the event a rider fails for any reason to arrive in the Jockey room prior to one hour before post time of a race in which he or she is scheduled to ride, the Clerk of Scales shall so advise the Stewards who thereupon may name a substitute rider, in which case they shall cause an announcement to be made of any such rider substitution prior to the opening of wagering on such race.

(a) Each rider reporting to the Jockey room shall remain in the Jockey room until he or she has fulfilled all his riding engagements for the day, except to ride in a race or to view the running of a race from a location approved by the Stewards. Such rider shall have no contact or communication with any person outside the Jockey room other than an Owner or Trainer for whom he or she is riding, or a racing official, or a representative of Licensee, until such rider has fulfilled all his or her riding engagements for the day.

(b) Licensee shall take measures designed to exclude from the Jockey room all persons, except riders scheduled to ride on the day's program, Valets, authorized attendants, Racing Officials, representatives of Licensee and persons having special permission from the Stewards to enter the Jockey room.

(c) Any rider intending to discontinue riding at a race meeting prior to its conclusion shall so notify the stewards not later than after fulfilling his or her final riding engagement of the day he or she intends to depart.

**8.11 Weighing Out:**

Each rider engaged to ride in a race shall report to the Clerk of Scales for weighing out not more than one hour and not less than 15 minutes before post time for each race in which he or she is engaged to ride and to report their weight and overweight, if any, at a time designated by the Stewards.

(a) No rider shall pass the scale with more than one pound overweight, without the consent of the Owner or Trainer of the horse he or she is engaged to ride. In no event shall a rider pass the scale with more than five pounds overweight.

(b) No horse shall be disqualified because of overweight carried.

(c) Whip, blinkers, number cloth, bridle and rider's safety helmet and rider's safety vest (with a minimum British rating of #5) shall not be included in a rider's weight.

Revised: 10/20/93

#### 8.12 Wagering:

No rider shall place a wager, or cause a wager to be placed on his behalf, or accept any ticket or winnings from a wager on any race, except on his or her own mount to win, or a combination wager on his or her own mount to win, place and show, and except through the Owner or Trainer of the horse he or she is riding. Such Owner or Trainer placing wagers for his rider shall maintain a precise and complete record of all such wagers and such record shall be available for examination by the Stewards at all times.

#### 8.13 Attire:

Upon leaving the Jockey room to ride in any race, each rider shall be neat and clean in appearance and wear the traditional Jockey costume with all jacket buttons and catches fastened. Except with the approval of the Stewards, each Jockey shall wear the cap and jacket racing colors registered in the name of the Owner of the horse he or she is to ride, white or light breeches, top boots, safety helmet approved by the Commission, safety vest approved by the Commission and a number on his or her right shoulder corresponding to his or her mount's number as shown on the saddle cloth and daily race program. The Clerk of Scales and attending Valet shall be held jointly responsible with a rider for his or her neat and clean appearance and proper attire.

Revised: 10/20/93

#### 8.14 Viewing Films or Tapes of Race

Every rider shall be responsible for checking the film list posted by the Stewards in the Jockey room the day after riding in a race, the posting of same to be considered as notice to all riders whose names are listed thereon to present themselves at the time designated by the Stewards to view the patrol films or video tape of races. Any rider may be accompanied by a representative of the Jockey organization of which he or she is a member in viewing such films or

with the Stewards' permission, be represented at such viewing by his or her designated representatives.

### **Part 10 -- Horses**

#### 10.01 Registration required:

No horse may be entered or raced in the State unless duly registered and named in the registry office of the Jockey Club in New York and unless the registration certificate or racing permit issued by the Jockey Club for such horse is on file with the Racing Secretary except that, for good cause, the Stewards, in their discretion, may waive this requirement if the horse is otherwise correctly identified to their satisfaction.

For steeplechase racing only, a Certificate for Racing Purposes Only issued by the National Steeplechase and Hunt Association in New York can be acceptable within the meaning of this paragraph.

#### 10.02 Ringers Prohibited:

No horse may be entered or raced in this state designated by a name other than the name under which such horse is currently registered with the Jockey Club in New York or with any other authority recognized by the Commission. In the event a horse's name is changed by the Jockey Club, or any other authority recognized by the Commission, such horse's former name shall be shown parenthetically in the daily race program the first three times such horse races after such name change.

(a) No person shall at any time cause or permit the correct identity of a horse to be concealed or altered nor shall any person refuse to reveal the correct identity of a horse he owns, or which is in his care, to a Racing Official.

(b) No horse shall race in this State without a legible lip tattoo number applied by agents of the Thoroughbred Racing and Protective Bureau, except that for good cause the Stewards, in their discretion, may waive this requirement if the horse is otherwise correctly identified to the Stewards' satisfaction. The Stewards shall require that a horse without a lip tattoo number be lip tattooed within a reasonably practical time.

(c) No horse may be entered or raced in this State if previously involved in a "ringer" case if: (1) a person having control of such horse knowingly entered or raced such horse while designated by a name other than the name under which such horse was registered with the Jockey Club or any other authority recognized by the Commission; or (2) such person having control of such horse participated in or assisted in the entry or racing of some other horse under the name registered as belonging to such horse in question.

#### 10.03 Denerving:

Any horse on which a neurectomy has been performed shall have such fact designated on its registration certificate

or racing permit. It shall be the joint responsibility of the practicing veterinarian who performed the operation and the Trainer of such denerved horse to insure that such fact is designated on the registration certificate or racing permit.

(a) Any horse whose ulnar, radial or median nerve has been either blocked or removed (known as high nerved), or whose volar or plantar nerve has been blocked or removed, unilaterally or bilaterally, shall not be entered or raced in this State.

(b) Any horse which has had a posterior digital neurectomy (known as low nerved) may be permitted to race provided such denerving has been reported by the Trainer to the Stewards and such horse has been approved for racing by the Commission's Veterinarian prior to being entered for a race.

**4 DE Reg. 182 (7/1/00)**

(c) In the event a horse races in violation of this Rule and participates in the purse distribution, then no protest thereon will be considered unless submitted in writing to the Stewards within 48 hours after such race.

(d) In the event a horse races in violation of this Rule and is claimed, then no protest thereon will be considered unless the successful claimant submits such protest in writing within 48 hours requesting that his claim be voided. Should the claim be voided, the horse shall be returned to the Owner who started such horse in such race and the claim price shall be returned to the claimant.

(e) A list of all denerved horses shall be posted in the Racing Secretary's Office. No person shall report a horse as having a neurectomy when in fact such horse has not.

**10.04 Bleeders:**

Any horse known to have bled from its nostrils during a race or workout may not be entered or raced without the prior approval for racing by the Commission's Veterinarian. A horse which bled for the first time shall not be permitted to run for a period of ten (10) calendar days. A horse which bleeds a second time shall not be permitted to run for thirty (30) calendar days. A horse which bleeds a third time shall not be permitted to run for ninety (90) days. A horse which bleeds a fourth time shall be barred from further racing in the State of Delaware, except that if a horse's fourth bleeding incident occurs within one year of the first bleeding incident, then the horse shall not be barred but shall not be permitted to run for one year. If a horse has bled three times but at least twelve months have passed since the last bleeding incident, then if the horse bleeds for a fourth time, the horse shall not be permitted to run for twelve (12) months, and any further bleeding incidents will prevent the horse from racing for another twelve (12) month period. (A positive endoscopic examination shall be classed as a first time bleeder). See Rule 15.02 Bleeder Medication.

**4 DE Reg. 182 (7/1/00)**

**10.05 Health Certificate Required:**

Licensee, within its discretion, may require a health certificate from an accredited, practicing veterinarian of any horse stabled or to be stabled on its grounds.

**10.06 Workouts:**

No horse may be schooled in the paddock or taken onto a track on Licensee's grounds for training or workout, other than during normal training hours as posted by Licensee, without the special permission of the Stewards.

**10.07 Removal from Licensee's Grounds/Postmortem Examination**

(a) No dead or sick horse may be removed from Licensee's grounds without the prior approval of the Commission's Veterinarian.

**4 DE Reg. 182 (7/1/00)**

(b) The Commission may conduct a postmortem examination of any horse that is injured in this jurisdiction while in training or in competition and that subsequently expires or is destroyed. In proceeding with a postmortem examination, the Commission or its designee shall coordinate with the trainer and/or owner to determine and address any insurance requirements.

(c) The Commission may conduct a postmortem examination of any horse that expires while housed on a licensee's grounds within this jurisdiction. Trainers and owners shall be required to comply with such action as a condition of licensure.

(d) The Commission may take possession of the horse upon death for postmortem examination. The Commission may submit blood, urine, other bodily fluid specimens or other tissue specimens collected during a postmortem examination for testing by the Commission-selected laboratory or its designee. Upon completion of the postmortem examination, the carcass may be returned to the owner or disposed of at the owner's option.

(e) The presence of a prohibited substance in a horse, found by the official laboratory or its designee in a bodily fluid specimen collected during the postmortem examination of a horse, which breaks down during a race constitutes a violation of these rules.

(f) The cost of Commission-ordered postmortem examinations, testing and disposal will be borne by the Commission.

**10.08 Serviceable for Racing:**

No horse may be entered or raced that:

(a) is not in serviceable, sound racing condition. The Stewards may, at any time, cause a horse on Licensee's grounds to be examined by a qualified person.

(b) is posted on a Veterinarian's list or Steward's list or is suspended in any racing jurisdiction;

(c) has been administered any drug, medication or

substance foreign to the natural horse in violation of these Rules;

(d) is blind or has seriously impaired vision in both eyes;

(e) is not correctly identified to the satisfaction of the Stewards;

(f) is owned wholly or in part by, or is trained by, an ineligible person.

#### 10.09 Equipment:

Whips or blinkers must be used consistently on a horse or not at all. Permission to change any equipment used on a horse in its last previous start must be obtained from the Stewards. A horse's tongue may be tied down for a race with a clean bandage or gauze. A horse's bridle may weigh no more than two pounds. War bridles are prohibited. No horse may race in ordinary training shoes. Bar shoes may be used for racing only with the permission of the Stewards.

Use on a horse either in a race or workout of any goading device, chain, electrical or mechanical device or appliance, other than the ordinary whip, which could be used to alter the speed of such horse is prohibited, except that spurs may be used in jumping races and, with the permission of the Stewards, during workouts.

No whip shall be used that weighs more than one pound or is longer than 30 inches with one popper; no stingers or projections extending through the hole of a popper or any metal part on a whip shall be permitted.

Indiscriminate or brutal use of an ordinary whip on a horse, as determined by the Stewards in their sole discretion, is prohibited.

#### 10.10 Sex Alteration:

Any alteration in the sex of a horse must be reported by such horse's Trainer to the Racing Secretary promptly, and the Racing Secretary shall note same on such horse's registration certificate.

Rule 10.01 and 10.02 Rev. March 1976.

### Part 15 -- Medication, Testing Procedures

#### 15.01 Prohibition and Control of Medication:

It shall be the intent of these Rules to protect the integrity of horse racing, to guard the health of the horse and to safeguard the interests of the public and the racing participants through the prohibition or control of all drugs and medications or substances foreign to the natural horse. In this context:

(a) No horse participating in a race shall carry in its body any substance foreign to the natural horse, except as hereinafter provided.

(b) No foreign substance shall be administered to a horse (entered to race) by injection, oral administration, rectal infusion or suppository, or by inhalation within

twenty-four (24) hours prior to the scheduled post time for the first race, except as hereinafter provided.

(c) No person other than a veterinarian shall have in his possession any equipment for hypodermic injection, any substance for hypodermic administration or any foreign substance which can be administered internally to a horse by any route, except for an existing condition as prescribed by a veterinarian.

(d) Notwithstanding the provisions of Rule 15.01(c) above, any person may have in his possession within a race track enclosure, any chemical or biological substance for use on his own person, provided that, if such chemical substance is prohibited from being dispensed by any Federal law or law of this State without a prescription, he is in possession of documentary evidence that a valid prescription for such chemical or biological substance has been issued to him.

(e) Notwithstanding the provisions of Rule 15.01(c) above, any person may have in his possession within any race track enclosure, any hypodermic syringe or needle for the purpose of administering a chemical or biological substance to himself, provided that he has notified the Stewards: (1) of his possession of such device; (2) of the size of such device; and (3) of the chemical substance to be administered by such device and has obtained written permission for possession and use from the Stewards.

#### 15.01.1 Definitions:

The following terms and words used in these Rules are defined as:

(a) Hypodermic Injection shall mean any injection into or under the skin or mucous, including intradermal injection, subcutaneous injection, submucosal injection, intramuscular injection, intravenous injection and intraocular (intraconjunctival) injection.

(b) Foreign Substances shall mean all substances except those which exist naturally in the untreated horse at normal physiological concentration, and shall also include substances foreign to a horse at levels that cause interference with testing procedures.

(c) Veterinarian shall mean a veterinary practitioner authorized to practice at the race track.

(d) Horse includes all horses registered for racing under the jurisdiction of the Commission and for the purposes of these Rules shall mean stallion, colt, gelding, ridgling, filly or mare.

(e) Chemist shall mean the Commission's chemist.

(f) Test Sample shall mean any body substance including, but not limited to, blood or urine taken from a horse under the supervision of the Licensee's Veterinarian and in such manner as prescribed by the Commission for the purpose of analysis.

(g) Race Day shall mean the 24-hour period prior to the scheduled post time for the first race.

#### 15.01.2 Foreign Substances:

No horse participating in a race shall carry in its

body any foreign substance except as provided in Rule 15.01.2(c):

(a) A finding by the chemist that a foreign substance is present in the test sample shall be prima facie evidence that such foreign substance was administered and carried in the body of the horse while participating in a race. Such a finding shall also be taken as prima facie evidence that the Trainer and agents responsible for the care or custody of the horse has/have been negligent in the handling or care of the horse.

(b) A finding by the chemist of a foreign substance or an approved substance used in violation of Rule 15.01 in any test sample of a horse participating in a race shall result in the horse being disqualified from purse money or other awards, except for purposes of pari-mutuel wagering which shall in no way be affected.

(c) A foreign substance of accepted therapeutic value may be administered as prescribed by a Veterinarian when test levels and guidelines for its use have been established by the Veterinary-Chemist Advisory Committee of the National Association of State Racing Commissioners and approved by the Commission.

(d) The only approved non-steroidal anti-inflammatory drug (NSAID) that may be present in a horse's body while it is participating in a race is phenylbutazone/oxphenbutazone in the level stated in subsection (e) or (f). The presence of any other NSAID at any test level is forbidden. ~~Notwithstanding the foregoing, the presence of any NSAID at any test level is forbidden for a two-year old horse.~~

Revised: 1/6/92.

(e) The test level of phenylbutazone under this Rule shall not be in excess of two point five (2.5) micrograms (mcg) per milliliter (ml) of plasma without penalties in the following format:

Micrograms per milliliter	Penalties
0 to 2.5	No action
2.6 to 4.9	First Offense \$250.00 fine
2.6 to 4.9	Second Offense within 365 days - \$500.00 fine
2.6 to 4.9	Third Offense within 365 days - \$500.00 fine and/ or Suspension and or Loss of Purse
5.0 and Over	Fine, Suspension, Loss of Purse

(f) The test level for oxphenbutazone under this Rule shall not be in excess of two (2) micrograms (mcg) per milliliter (ml) of plasma.

Micrograms per milliliter

0 to 2.5

2.6 to 4.9

2.6 to 4.9

2.6 to 4.9

5.0 and Over

Penalties

No action

First Offense

\$250.00 fine

Second Offense

within 365 days -

\$500.00 fine

Third Offense

within 365 days -

\$500.00 fine and/  
or Suspension and/  
or Loss of Purse

Fine, Suspension,  
Loss of Purse

#### 15.02 Bleeder Medication:

Notwithstanding anything in the Rules of Racing to the contrary, the Stewards may permit the administration of Furosemide (Lasix) to control epistaxis (bleeding) to horses under the following conditions:

(a) A horse which, during a race or workout at a duly licensed race track in this State or within the first hour immediately following such a race or workout, is observed by the Commission's Veterinarian or the Stewards to be shedding blood from one or both nostrils or is found to have bled internally. (An endoscopic examination of the horse, in order to confirm bleeding, may be performed by the practicing veterinarian in the presence of the Commission's Veterinarian at the detention barn within one (1) hour of workout or race.)

(b) A horse which has been certified as a bleeder in another jurisdiction may be placed on the bleeder list provided that the other jurisdiction qualified it as a bleeder using criteria satisfactory to the Commission's Veterinarian and the Stewards. It shall be the absolute responsibility of the Trainer to report bleeders from other jurisdictions to the Licensee's Veterinarian or Stewards on official forms from that State prior to entry.

(c) The Commission's Veterinarian shall be responsible to maintain an up-to-date "bleeder" list and the list shall be available in the Racing Secretary's office.

(d) A horse in the Bleeder Program shall be required to be brought to ~~a detention barn~~ an area designated by the Licensee and approved by the Commission not later than three and one-half (3 1/2) hours before post time for the race in which it is entered ~~and shall remain in said detention barn (in its assigned stall) until called to the paddock prior to post time.~~ During the 3 1/2 hour period, the horse shall be under the care and custody of a groom or caretaker appointed by the Trainer. The approved furosemide medication may be administered by a licensed practicing veterinarian ~~in the detention barn~~ within three (3) hours before post time. The practicing veterinarian shall make a report to the Stewards of the treatment on forms provided by the Stewards on the same

day of treatment.

(e) (Deleted.)

(f) A horse which bled for the first time shall not be permitted to run for a period of ten (10) calendar days. A horse which bleeds a second time shall not be permitted to run for thirty (30) calendar days. A horse which bleeds a third time shall not be permitted to run for ninety (90) days. A horse which bleeds a fourth time shall be barred from further racing in the State of Delaware, except that if a horse's fourth bleeding incident occurs within one year of the first bleeding incident, then the horse shall not be barred but shall not be permitted to run for one year. If a horse has bled three times but at least twelve months have passed since the last bleeding incident, then if the horse bleeds for a fourth time, the horse shall not be permitted to run for twelve (12) months, and any further bleeding incidents will prevent the horse from racing for another twelve (12) month period. A positive endoscopic examination shall be classed as a first time bleeder.

Revised: 6/19/92.

(g) Dosage. Furosemide (Lasix) shall be administered intravenously to horses in the Bleeder Program by a licensed practicing veterinarian, who will administer not more than 500 milligrams nor less than 100 milligrams, subject to the following conditions:

i. A horse may receive an intramuscular administration of furosemide if the Commission Veterinarian determines that the horse cannot receive an intravenous administration of furosemide and gives permission for an intramuscular administration;

ii. A horse may receive up to 750 milligrams of furosemide if the Commission Veterinarian grants permission for a dosage greater than 500 milligrams;

iii. The dosage administered may not vary by more than 250 milligrams from race to race without the permission of the Commission Veterinarian.

(h) Restrictions. No one except a licensed practicing veterinarian shall possess equipment or any substance for injectable administration on the race track complex, and no horse is to receive furosemide (lasix) in oral form.

(i) Post-Race Quantification. As indicated by post-race quantification, a horse may not carry in its body at the time of the running of the race more than 100 nanograms of furosemide (lasix) per milliliter of plasma in conjunction with a urine that has a specific gravity of 1.010 or lower, unless the dosage of furosemide (lasix):

i. Was administered intramuscularly as provided in Rule 15.02(g)(i); or

ii. Exceeded 500 milligrams as provided in Rule 15.02(g)(ii).

If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 100 nanograms of furosemide per milliliter of plasma in conjunction with a urine that has a specific gravity of 1.010

or lower, and provided that the dosage of furosemide was not administered intramuscularly as provided in Rule 15.02(g)(i) or exceeded 500 milligrams as provided in Rule 15.02(g)(ii), then a penalty shall be imposed as follows:

a. If such overage is the first violation of this rule within a twelve month period-up to a \$250 fine and loss of purse.

b. If such overage is the second violation of this rule within a twelve month period-up to a \$1,000 fine and loss of purse.

c. If such overage is the third violation of this rule within a twelve month period-up to a \$1,000 fine, up to a fifteen day suspension, and loss of purse.

d. If the overage caused interference with the testing procedures, then the penalty for such overage will be up to a \$1,000 fine, a suspension of from 15 to 50 days, and loss of purse.

4 DE Reg. 183 (7/1/00)

#### 15.03 Responsibility for Prohibited Administration:

Any person found to have administered or authorized a medication, drug or substance which caused or could have caused a violation of Rules 15.01 or 15.02, or caused, participated or attempted to participate in any way in such administration, shall be subject to disciplinary action.

(a) The registered Trainer of a horse found to have been administered a medication, drug or substance in violation of Rules 15.01 or 15.02 shall bear the burden of proof to show freedom from negligence in the exercise of a high degree of care in safeguarding such horse from being tampered with and, failing to prove such freedom from negligence (or reliance on the professional ability of a licensed Veterinarian), shall be subject to disciplinary action.

(b) The Assistant Trainer, groom, stable watchman or any other person having the immediate care and custody of a horse found to have been administered a medication, drug or substance in violation of Rules 15.01 or 15.02, if found negligent in guarding or protecting such horse from being tampered with, shall be subject to disciplinary action.

(c) A licensed Veterinarian shall be responsible for any medication, drug or substance that he administers, prescribes or causes to be administered by his direction on a horse. If found to have made an error in type or quantity of same administered and if in reliance upon the correctness thereof a Trainer races such treated horse in violation of Rules 15.01 and 15.02, such licensed Veterinarian shall be subject to disciplinary action.

#### 15.04 Reports of Administration:

Before a licensed Veterinarian administers or prescribes any drug or restricted substance for a horse, he shall ascertain by reasonable inquiry whether the horse has been entered to race at any track and, if the horse has been entered, he shall not administer or prescribe any drug or



restricted substance within the time or manner restricted by these Rules.

If, however, an emergency exists involving the life or health of the horse, he may proceed to treat or prescribe for the horse but shall report the matter as promptly as practicable to the State Veterinarian and Stewards.

(a) Any Veterinarian practicing at any Delaware race track shall file a daily report with the Stewards and the Track Veterinarian as to any medication prescribed or administered or professional service performed. This report shall be filed in person or postmarked within a period of forty-eight (48) hours from the time of treatment. Detection of any unreported medication, drug or substance by the Commission's Chemist in a pre-race or post-race test may be grounds for disciplinary action against such Veterinarian.

(b) Such daily reports shall accurately reflect the identity of the horse treated, diagnosis, time of treatment, type and dosage of medication, drug or substance and method of administration.

(c) Such daily reports shall remain confidential except that the Commission's Veterinarian may compile general data therefrom to assist the Commission in formulating policies or rules and the Stewards may review the same in investigating a possible violation of these rules. See Rule 11.02(d) respecting a public list of horses declared to race on medication.

**4 DE Reg. 184 (7/1/00)**

(d) When making an entry, it shall be the duty of the Trainer or his representative, as required by Rule 11.02(d), to disclose and declare to the Racing Secretary or his representative whether said horse will race on any medication permitted by these rules.

**15.05 Report Prior to Race of Cessation or Reduction of Medication:**

For any horse entered to run in a race, a timely report of the elimination or reduction since its last race in the level of Phenylbutazone and/or similar medications administered to it at the time of such last race shall be made to the Commission's Veterinarian by the horse's Owner, Trainer, attending Veterinarian and/or any other person having supervision over, or custody of, such horse.

**4 DE Reg. 184 (7/1/00)**

Violation of this Rule will constitute grounds for disciplinary action.

**15.06 Bettors' Safeguard:**

To help protect against inconsistent performances, a horse which last raced after having been administered Phenylbutazone and/or similar medication shall not be permitted to race without having been administered the same or similar medication at a comparable level, unless the Commission's Veterinarian grants his prior, express approval that such horse may race notwithstanding that the medication

program to which it was subjected at the time of its last race has subsequently been eliminated or reduced.

**4 DE Reg. 184 (7/1/00)**

Violation of any aspect of this Rule by an Owner, Trainer, attending Veterinarian or any other person having supervision or custody of the horse will constitute grounds for disciplinary action as provided by these Rules.

**15.07 Commission List:**

As a guide to Owners, Trainers and Veterinarians, the Commission may from time to time publish a list of medications, shown by brand and generic names, specifically prohibited for racing. Such list shall not be considered exclusive and medications shown thereon shall be considered only as among those, along with others not so listed, prohibited by general classification under Rule 15.01.

**15.08 Detention Area:**

Each Licensee may provide and maintain on its grounds a fenced enclosure sufficient in size and facilities to accommodate stabling of horses temporarily detained for the taking of sample specimens for chemical testing; such detention area shall be under the supervision and control of the Commission's Veterinarian.

**4 DE Reg. 184 (7/1/00)**

**15.09 Horses to be Tested:**

The Stewards may at any time order the taking of a blood, urine, or saliva specimen for testing from any horse entered. Any Owner or Trainer may at any time request that a specimen be taken from a horse he owns or trains by Licensee's Veterinarian and be tested by Commission's Chemist, provided the costs of such testing are borne by the Owner or Trainer requesting such test.

**15.10 Procedure for Taking Specimens:**

(1) Horses from which specimens are to be drawn shall be taken to the detention area at the prescribed time and remain there until released by the Commission veterinarian. Only the owner, trainer, groom, or hotwalker of horses to be tested shall be admitted to the detention area without permission of the Commission veterinarian.

(2) Stable equipment other than equipment necessary for washing and cooling out a horse shall be prohibited in the detention area.

(a) Buckets and water shall be furnished by the Commission veterinarian.

(b) If a body brace is to be used, it shall be supplied by the responsible trainer and administered only with the permission and in the presence of the Commission veterinarian.

(c) A licensed veterinarian shall attend a horse in the detention area only in the presence of the Commission veterinarian.

(3) One of the following persons shall be present and witness the taking of the specimen from a horse and so signify in writing:

(a) The owner;

(b) The responsible trainer who, in the case of a claimed horse, shall be the person in whose name the horse raced; or

(c) A stable representative designated by such owner or trainer.

(4) (a) All urine containers shall be supplied by the Commission laboratory and shall be sealed with the laboratory security seal which shall not be broken, except in the presence of the witness as provided by subsection (3) of this section.

(b) Blood vacutainers will also be supplied by the Commission laboratory in sealed packages as received from the manufacturer.

(5) Samples taken from a horse, by the Commission veterinarian or his assistant at the detention barn, shall be collected and in double containers and designated as the "primary" and "secondary" samples.

(a) These samples shall be sealed with tamper-proof tape and bear a portion of the multiple part "identification tag" that has identical printed numbers only. The other portion of the tag bearing the same printed identification number shall be detached in the presence of the witness.

(b) The Commission veterinarian shall:

1. Identify the horse from which the specimen was taken.

2. Document the race and day, verified by the witness; and

3. Place the detached portions of the identification tags in sealed envelope for delivery only to the stewards.

(c) After both portions of samples have been identified in accordance with this section, the "primary" sample shall be delivered to the official chemist designated by the Commission.

(d) The "secondary" sample shall remain in the custody of the Commission veterinarian at the detention area and urine samples shall be frozen and blood samples refrigerated in a locked refrigerator/freezer.

(e) The Commission veterinarian shall take every precaution to ensure that neither the Commission chemist nor any member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all testing.

(f) When the Commission chemist has reported that the "primary" sample delivered contains no prohibited drug, the "secondary" sample shall be properly disposed.

(g) If after a horse remains a reasonable time in the detention area and a specimen can not be taken from the horse, the Commission veterinarian may permit the horse to

be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the Commission veterinarian.

(h) If one hundred (100) milliliters (ml.) or less of urine is obtained, it will not be split, but will be considered the "primary" sample and will be tested as other "primary" samples.

(i) Two (2) blood samples shall be collected in twenty (20) milliliters vacutainers, one for the "primary" and one for the "secondary" sample.

(j) In the event of an initial finding of a prohibited drug or in violation of these Rules & Regulations, the Commission chemist shall notify the Commission, both orally and in writing, and an oral notice shall be issued by the Commission to the owner and trainer or other responsible person no more than twenty-four (24) hours after the receipt of the initial finding, unless extenuating circumstances require a longer period, in which case the Commission shall provide notice as soon as possible in order to allow for testing of the "secondary" sample.

1. If testing of the "secondary" sample is desired, the owner, trainer, or other responsible person shall so notify the Commission in writing within 48 hours after notification of the initial positive test or within a reasonable period of time established by the Commission after consultation with the Commission chemist. The reasonable period is to be calculated to insure the integrity of the sample and the preservation of the alleged illegal substance.

2. Testing of the "secondary" samples shall be performed at a referee laboratory selected by representatives of the owner, trainer, or other responsible person from a list of not less than two (2) laboratories approved by the Commission.

(k) The Commission shall bear the responsibility of preparing and shipping the sample, and the cost of preparation, shipping, and testing at the referee laboratory shall be assumed by the person requesting the testing, whether it be the owner, trainer, or other person charged.

1. A Commission representative and the owner, trainer, or other responsible person or a representative of the persons notified under these Rules and Regulations may be present at the time of the opening, repackaging, and testing of the "secondary" sample to ensure its identity and that the testing is satisfactorily performed.

2. The referee laboratory shall be informed of the initial findings of the Commission chemist prior to the making the test.

3. If the finding of the referee laboratory is proven to be of sufficient reliability and does not confirm the finding of the initial test performed by the Commission chemist and in the absence of other independent proof of the administration of a prohibited drug to the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

(l) The Commission veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause the specimens to be delivered only to the Commission chemist as soon as the possible after sealing, in a manner so as not to reveal the identity of a horse from which the sample was taken.

(m) If an Act of God, power failure, accident, strike or other action beyond the control of the Commission occurs, the results of the primary official test shall be accepted as prima facie evidence.

#### 15.11 Commission Chemist:

The Commission's Chemist, who shall be a member of the Association of Official Racing Chemists, shall conduct tests on specimens provided him in order to detect and identify prohibited substances therein and report on such in such a manner, and according to such procedures, as the Commission from time to time may approve and/or prescribe.

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## DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 Del.C. 122(d))

### Educational Impact Analysis Pursuant to 14 Del. C., Section 122(d) State Content Standards

#### A. Type of Regulatory Action Requested

Amendment to Existing Regulation

#### B. Synopsis of Subject Matter of Regulation

The Secretary of Education seeks the approval of the State Board of Education to amend the regulation, State Content Standards found in the *Regulations of the Department of Education* by adding the content standards for health and wellness education entitled *Delaware Health Education Curriculum Framework and Assessment* as recommended for approval by the Secretary and approved at the State Board of Education's meeting on August 17, 2000. In addition to adding the tenth set of content standards to this regulation, the words "each charter school" were added to 1.1 and 1.5. The change in 1.1 requires charter schools to align their instructional programs in English Language Arts, mathematics, science and social studies with the state content standards in these areas. In 1.5 the change requires charter schools to provide instructional programs for students for whom a functional life skills curriculum is appropriate and align the instructional program with the document *Standards for Functional Life Skills Curriculum*.

#### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards?

The amended regulation addresses achievement in the health and wellness area and achievement issues in charter schools.

2. Will the amended regulation help ensure that all students receive an equitable education?

The amended regulation addresses the state content standards, not equity issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected?

The amended regulation addresses the state content standards, not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected?

The amended regulation addresses the state content standards, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision makers at the local board and school level?

The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision-making authority and accountability for addressing the subject to be regulated be placed in the same entity?

The decision-making authority and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The amended regulation will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social

studies.

9. Is there a less burdensome method for addressing the purpose of the regulation?

The amendment was required in order to add a new area to the State Content Standards regulation and to clarify the responsibilities of charter schools.

10. What is the cost to the state and to the local school boards of compliance with the amended regulation?

There is no additional cost to the state and to the local boards of education.

## 501 State Content Standards

### 1.0 State Content Standards

1.1 Each local school district and each charter school shall provide instructional programs in mathematics, English language arts, science and social studies for all students in grades K-12, except for those students for whom a functional lifestyle curriculum is appropriate. The instructional programs shall be in alignment with the documents *Mathematics Curriculum Framework*, *English Language Arts Curriculum Framework*, *Science Curriculum Framework* and *Social Studies Curriculum Framework* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.2 Each local school district shall provide instructional programs in the visual and performing arts for all students in grades K-8 except for those students for whom a functional life skills curriculum is appropriate. The instructional program shall be in alignment with the document *Visual and Performing Arts Content Standards* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.3 Each local school district shall provide instructional programs in technology education for all students in grades 5-8 except for those students for whom a functional life skills curriculum is appropriate. The instructional program shall be in alignment with the document *Technology Education Curriculum Framework Content Standards* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.4 Each local school district shall provide instructional programs in health and wellness education for all students in grades K-12. The instructional programs shall be in alignment with the document *Delaware Health Education Curriculum Framework and Assessment* as the same may from time to time be amended with the approval of the Secretary and the State Board of Education.

~~1.4~~ 1.5 Each local school district and each charter school shall provide instructional programs for students for whom a functional life skills curriculum is appropriate. The

instructional program shall be in alignment with the document *Standards for Functional Life Skills Curriculum* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

~~1.5~~ 1.6 Each local school district that provides additional instructional programs for students in any area of agriscience, business finance and marketing education, foreign language, visual and performing arts and technology education shall align these areas with the applicable state content standards. These program areas shall be in alignment with the documents *Agriscience Curriculum Framework Content Standards*, *Business Finance and Marketing Education Curriculum Framework Content Standards*, *Foreign Language Curriculum Framework Content Standards*, *Visual and Performing Arts Content Standards*, and the *Technology Education Curriculum Framework Content Standards* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

~~1.6~~ 1.7 Each local school district shall provide for the integration of content areas within and across the curricula.

~~1.7~~ 1.8 Each local school district shall keep instructional materials and curricula content current and consistent with the *Guidelines for the Selection of Instructional Materials*.

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### Educational Impact Analysis Pursuant to 14 Del. C., Section 122(d)

#### Bilingual Teacher (Spanish) Primary/Middle Level and Bilingual Teacher (Spanish) Secondary

\* PLEASE NOTE THIS IS A REPROPOSAL.

#### A. Type of Regulatory Action Requested

Amendment to Existing Regulations

#### B. Synopsis of Subject Matter of Regulation

The Secretary of Education seeks the approval of the State Board of Education to amend the regulations for certification as a Bilingual Teacher (Spanish) Primary/Middle Level and as a Bilingual Teacher (Spanish) Secondary. The purpose of the amendment is to allow persons who are native Spanish speakers to become candidates for certification without taking Spanish courses. It will also guarantee ability to communicate in English. Sections 2.1.1.2 and 2.1.2 reflect these changes. The regulation was also changed to fit the revised format of Department of Education regulations.

#### C. Impact Criteria

1. Will the amended regulations help improve student

achievement as measured against state achievement standards?

The amended regulations do address certification requirements that can have an impact on student achievement.

2. Will the amended regulations help ensure that all students receive an equitable education?

The amended regulations address certification requirements, not equitable education except that bilingual education teachers do assist in the delivery of equitable education for all students.

3. Will the amended regulations help to ensure that all students' health and safety are adequately protected?

The amended regulations address certification requirements, not health and safety issues.

4. Will the amended regulations help to ensure that all students' legal rights are respected?

The amended regulations address certification requirements, not students' legal rights.

5. Will the amended regulations preserve the necessary authority and flexibility of decision makers at the local board and school level?

The amended regulations will preserve the necessary authority and flexibility of decision makers at the local board and school level?

6. Will the amended regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The amended regulations will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subjects to be regulated be placed in the same entity?

The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the amended regulations be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The amended regulations will be consistent with and not impediments to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the regulations?

Certification requirements must be addressed through regulation.

10. What is the cost to the state and to the local school

boards of compliance with the regulations?

There is no additional cost to the state and to the local school boards for compliance with these regulations.

#### **SECONDARY TEACHER BILINGUAL**

~~Required in grades 9-12, valid in grades 5-8 in a middle level school.~~

~~I. Requirements for the Standard License~~

~~A. Bachelor's degree from an accredited college; and~~

~~B. Professional Education~~

~~1. Completion of a teacher preparation program in secondary education bilingual in the language area of assignment and the subject area of assignment;~~

~~-OR-~~

~~2. Completion of a major in the subject area of assignment; and~~

~~a. Minimum of 21 semester hours in the language area of assignment at or above the intermediate level;~~

~~-OR-~~

~~Demonstrated fluency in the language area of assignment as determined by a DOE approved proficiency test;~~

~~-AND-~~

~~b. Three semester hours in Teaching English as a Second Language;~~

~~-AND-~~

~~e. Knowledge of the target group's culture as demonstrated by:~~

~~Three semester hours credit in the culture of the target group;~~

~~-OR-~~

~~Significant personal connection with the target community such as formative or work experience;~~

~~-OR-~~

~~An appropriate workshop approved by the Department of Education in the target group's culture;~~

~~-AND-~~

~~d. Bilingual student teaching in a secondary school program in the language area of assignment.~~

~~II. Requirements for the Limited Standard License (not renewable)~~

~~Issued for a period of three years at the request of a Delaware public school district to a person who meets the requirements listed below and who is employed as a bilingual secondary teacher to allow for the completion of the requirements of the standard License as listed under Section I. above.~~

~~A. Requirements of I. A. above; and~~

~~B. Specialized Professional Preparation~~

~~Coursework as required in I. B. 2a, b, and c.~~

~~(Student teaching may be satisfied by one year of~~

satisfactory teaching experience in a secondary bilingual school program in the language area of assignment.)

\*\*\*

## LICENSES ISSUED FOR THIS POSITION

Standard See above.

Limited Standard See above.

Effective May 20, 1994

Delaware

State Department of Education

Certification of Professional Public School Personnel

Primary/middle Level Teacher – Bilingual

Required in grades K-4, and middle level grades 5-8.

### I. Requirements for the Standard License

A. Bachelor's degree from an accredited college; and

B. General Education

Satisfactory completion of the Bachelor's degree;

and

C. Professional Education

1. Completion of a teacher education program in primary/middle level bilingual education in the language area of assignment

-OR-

2. Completion of the required course work in a teacher education program in primary or middle level education; and

a. Minimum of 15 semester hours in the language area of assignment at or above the intermediate level (300);

-OR-

Demonstrated fluency in the language area of assignment as determined by the NTE (score at or above fiftieth percentile)

-AND-

b. 3 semester hours in Teaching English as a Second Language

3 semester hours Second Language

Testing

-AND-

e. Knowledge of the target group's culture as demonstrated by:

Three semester hours credit in the culture of the target group

-OR-

Documented personal interaction with the target community, e.g., study abroad, work experience, formative experience.

d. Bilingual student teaching in the area of assignment

-OR-

Student teaching at K-8 level; and

One year of approved full-time successful experience teaching in a primary/middle level bilingual program

H. Requirements for the Limited Standard License (not renewable)

Issued for a period of three years at the request of a Delaware public school district to a person who meets the requirements listed below and who is employed as a bilingual elementary teacher to allow for the completion of the requirements of the standard License as listed under Section I. above.

A. Requirements of I. A. and I. B. above; and

B. Specialized Professional Preparation

Requirements as specified in I. C. 2a, b, and c.

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## LICENSES FOR THIS POSITION

Standard See above

Limited Standard See above

### 311 Bilingual Teacher (Spanish) Primary/Middle Level

1.0 To qualify for a Standard License to teach in K-8 Bilingual Education Programs a candidate shall have a Bachelor's degree from a regionally accredited college and have completed a teacher education program in elementary, primary or middle level (grade configurations K-8) bilingual education in the language area of Spanish.

2.0 If the candidate does not meet the requirements in 1.0 the following shall apply:

2.1 Complete the required coursework in a teacher education program in elementary, primary or middle level (grade configurations K-8) regular education plus provide the following:

2.1.1 Verification of language proficiency in Spanish as demonstrated by one of the two options below:

2.1.1.1 Completion of a minimum of 15 semester hours from a regionally accredited college in the language area of Spanish. This coursework shall be at or above the intermediate level; and Demonstration of oral proficiency in the language area of Spanish by scoring 165 on the PRAXIS II Test Module: Productive Language (0192); or

2.1.1.2 Demonstration of content knowledge and oral proficiency in the language area of Spanish by meeting the appropriate qualifying scores on the PRAXIS II Test Modules as follows:

159 on Spanish: Content and Knowledge (0191) and

165 on Spanish: Productive Language (0192); and

2.1.2 Demonstration of English speaking ability, when English is not the first language, by scoring 50 on the TOEFL: Test of Spoken English (TSE) and

2.1.3 In addition to 2.1.1 and 2.1.2 all candidates must meet the following requirements:

2.1.3.1 Completion of coursework as indicated:

2.1.3.1.1 3 semester hours Methods of Teaching English as a Second Language;

2.1.3.1.2 3 semester hours Second Language Testing;

2.1.3.1.3 3 semester hours Remedial Reading (English); or

3 semester hours Remedial Reading (Spanish); and

2.1.3.2 Verification of knowledge of the Spanish culture as demonstrated by:

2.1.3.2.1 A three (3) semester hour course in Spanish culture; or

Documentation of personal interaction with the target community via study abroad, work experience, formative experience, etc.; and

2.1.3.3 Completion of a clinical experience in a bilingual setting in grades K-8; or

Upon the completion of all requirements in 2.0, verification of one year of prior approved, full-time, successful, experience teaching in a primary, intermediate, or middle level bilingual Spanish program, "in lieu of student teaching."

3.0 To qualify for a Limited Standard (2 year certificate) the candidate shall have a bachelor's degree from a regionally accredited college and be eligible to hold an elementary, primary or middle level certificate (K-8 configuration) in regular education.

3.1 A person needing 6 semester hours of intermediate Spanish shall complete all appropriate Spanish coursework (15 semester hours) and the test of oral Language proficiency PRAXIS I (0192) Test Module(s) within the two years of the Limited Standard. If English Speaking ability must be demonstrated, the TOEFL Test of Spoken English (TSE) would need to be completed within this same two-year period.

3.2 A person needing to demonstrate only language proficiency shall demonstrate such within the two years of the Limited Standard. Language proficiency shall be demonstrated via the PRAXIS II Test Module(s) #0191 and #0192 and the TOEFL Test of Spoken English (TSE) if English is the second language.

3.3 Once the requirements in 2.1.1 and 2.1.2 have been met, a Limited Standard may be issued for one additional year in order to complete the requirements in 2.1.3.

### **312 Bilingual Teacher (Spanish) Secondary**

1.0 To qualify for a Standard License to teach in Secondary Bilingual Education Programs a candidate shall have a Bachelor's degree from a regionally accredited college and have completed a teacher education program in bilingual education at the secondary level (grades 7-12) in the language area of Spanish.

2.0 If the candidate does not meet the requirements in 1.0 the following shall apply:

2.1 Complete the required coursework in a teacher education program at the secondary level (grades 7-12) in a content area such as biology, English or special education plus the following:

2.1.1 Verification of language proficiency in Spanish as demonstrated by one of the two options below:

2.1.1.1 Completion of a minimum of 15 semester hours from a regionally accredited college in the language area of Spanish. This coursework shall be at or above the intermediate level; and

Demonstration of oral proficiency in the language area of Spanish by scoring 165 on the PRAXIS II Test Module: Productive Language (0192); or

2.1.1.2 Demonstration of content knowledge and oral proficiency in the language area of Spanish by meeting the appropriate qualifying scores on the PRAXIS II Test Modules as follows:

159 on Spanish: Content and Knowledge (0191) and

165 on Spanish: Productive Language (0192); and

2.1.2 Demonstration of English speaking ability, when English is not the first language, by scoring 50 on the TOEFL: Test of Spoken English (TSE) and

2.1.3 In addition to 2.1.1 and 2.1.2 all candidates must meet the following requirements:

2.1.3.1 Completion of coursework as indicated:

2.1.3.1.1 3 semester hours Methods of Teaching English as a Second Language;

2.1.3.1.2 3 semester hours Second Language Testing;

2.1.3.1.3 3 semester hours Remedial Reading (English); or

3 semester hours Remedial Reading (Spanish); and

2.1.3.2 Verification of knowledge of the Spanish culture as demonstrated by:

2.1.3.2.1 A three (3) semester hour course in Spanish culture; or

Documentation of personal interaction with the target community via study abroad, work experience, formative experience, etc.; and



2.1.3.3 Completion of a clinical experience in a bilingual setting in grades 7-12; or

Upon the completion of all requirements in 2.0, verification of one year of prior approved, full-time, successful, experience teaching in a secondary level bilingual Spanish program, "in lieu of student teaching."

3.0 To qualify for a Limited Standard (2 year certificate) the candidate shall have a bachelor's degree from a regionally accredited college and be eligible to hold a secondary certificate in the content area to which they are assigned to teach bilingual students (math, science, special education, social studies, etc.)

3.1 A person needing 6 semester hours of intermediate Spanish shall complete all appropriate Spanish coursework (15 semester hours) and the test of oral Language proficiency PRAXIS I Test Module #0192 within the two years of the Limited Standard. If English Speaking ability must be demonstrated, the TOEFL Test of Spoken English (TSE) would need to be completed within this same two-year period.

3.2 A person needing to demonstrate only language proficiency shall demonstrate such within the two years of the Limited Standard. Language proficiency shall be demonstrated via the PRAXIS II Test Module(s) #0191 and #0192 and the TOEFL Test of Spoken English (TSE) if English is the second language.

3.3 Once the requirements in 2.1.1 and 2.1.2 have been met, a Limited Standard may be issued for one additional year in order to complete the requirements in 2.1.3.

## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

### **DIVISION OF PUBLIC HEALTH**

#### **OFFICE OF EMERGENCY MEDICAL SERVICES**

Statutory Authority: 16 Delaware Code,  
Section 9705 (16 Del.C. §9705)

The Office of Emergency Medical Services, Division of Public Health of Delaware of Health and Social Services, will hold a public hearing to discuss proposed Delaware Early Defibrillation Program Regulations. These proposed regulations describe the certification of providers and provider agencies to obtain and operate an automatic external defibrillator (AED). The Early Defibrillation Program Regulations apply to any individual, public or private agency that seeks to acquire an AED.

This public hearing will be held September 25, 2000 at 9:00 AM in Room 309, Jesse S. Cooper Building, Federal and Water Streets, Dover, Delaware.

Copies of the proposed regulation are available for

review by calling :

Office of Emergency Medical Services  
Blue Hen Corporate Center, Suite 4-H  
655 Bay Road, Dover, Delaware 19901  
Telephone: (302) 739-4710

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Sonya Voshell at (302) 739-4710 by September 22, 2000. Anyone wishing to submit written comments as a supplement to, on in lieu of oral testimony should submit such comments by September 30, 2000 to:

David Walton, Hearing Officer  
Division of Public Health  
P.O. Box 637  
Dover, DE 19901

### **Delaware Early Defibrillation Program**

#### **1.0 Purpose**

1.1 This regulation establishes:

1.1.1 The criteria for training and right to practice of emergency responders to administer automatic external cardiac defibrillation in an out-of-hospital environment;

1.1.2 Standards identified by the State Emergency Medical Services Medical Director for certification of Early Defibrillation Services through the Office of Emergency Medical Services; and,

1.1.3 Procedures to assure equipment and training standardization, quality assurance and improvement and uniform data collection.

#### **2.0 Authority**

2.1 This regulation is written and promulgated by the Delaware Department of Health and Social Services, pursuant to 16 DelCode, Chapter 97.05.

#### **3.0 Definitions**

ABEM: American Board of Emergency Medicine

ACLS: Advanced Cardiac Life Support

Board: The Delaware State Board of Medical Practice

CPR: Cardiopulmonary Resuscitation

Certification: Recognition by the Office of Emergency Medical Services that an agency, organization or business has met the requirements to provide Early Defibrillation services.

Defibrillation: The administration of electrical impulses to the heart to stop and/or convert ventricular fibrillation or pulseless ventricular tachycardia into a viable rhythm.

Department: The Department of Health and Social Services.

Division: The Division of Public Health

EMS: Emergency Medical Services

Early Defibrillation Provider: A member or employee of



an Early Defibrillation Service who has completed training in SAED operation and use under the requirements set forth in this regulation.

Early Defibrillation Service: Any agency, organization or company, certified as such by the State Office Of Emergency Medical Services, that employs or retains providers who have completed an SAED training program to use semi-automatic defibrillation equipment.

FDA: Federal Food and Drug Administration.

First Responder Team: An organized group of individuals within a corporation, business or agency designated by that agency to respond to emergency situations.

Medical Control: Physician direction, through protocols, supervision and quality control of Early Defibrillation Services and/or Providers by the State Office Of Emergency Medical Services Medical Director.

Office or OEMS: The State Office of Emergency Medical Services.

Protocol: Currently approved and accepted procedures describing specific steps a provider must follow in assessing and treating a patient.

Renewal: Periodic training and demonstration of competence in the application and use of semi-automatic defibrillation equipment.

Right to Practice: An Early Defibrillation Provider is granted the right to practice as such by the State EMS Medical Director upon the completion of an approved initial or renewal SAED training course and when functioning as a member of an approved Early Defibrillation Service. The right to practice can be suspended or revoked by the State EMS Medical Director.

SAED: Semi-Automatic External Defibrillator. A device capable of, (1) analyzing a cardiac rhythm, (2) determining the need for defibrillation, (3) automatically charging, and, (4) advising a provider to deliver a defibrillation electrical impulse.

Service Coordinator: A designated appointee from an Early Defibrillation Service responsible for administration of the Early Defibrillation Program for their respective Service.

Service Director: President, Chief Executive Officer or any other individual who is administratively responsible for a corporation, business or agency.

State Coordinator: An individual appointed by the Director, State Office of Emergency Medical Services to administer the Early Defibrillation Program at the State level.

State Medical Director: The State Office of Emergency Medical Services Medical Director, who provides medical control, supervision, and quality control for the Early Defibrillation Program.

Training /Certifying Agency/Center: Any training facility, approved by the State Medical Director, that engages in the training of Early Defibrillation Providers in

accordance with the requirements set forth in this regulation.

Ventricular Fibrillation: A lethal disturbance in the normal rhythm of the heart characterized by rapid, irregular and ineffective twitching of the lower chambers, or ventricles, of the heart.

Ventricular Tachycardia: A potentially lethal dysrhythmia originating in the ventricles of the heart. A pulse may or may not be present.

#### **4.0 General Provisions**

4.1 This regulation applies to any organization or individuals participating in the Delaware Early Defibrillation Program.

4.2 Early Defibrillation Services shall not allow any individual who does not meet the requirements established in this regulation to operate SAED equipment.

4.3 The OEMS, or it's designee, shall retain the right to inspect any Early Defibrillation Service's defibrillation equipment and any records or documentation associated with the Early Defibrillation Program.

4.4 Automatic External Defibrillators are classified as medical devices by the Board.

4.5 SAED manufacturers, their representatives or agents are required to notify the OEMS of the sale and placement of an AED within the State of Delaware.

4.6 The OEMS will be responsible for notifying the jurisdictional public safety answering point of the placement of an SAED within the boundaries of their jurisdiction.

#### **5.0 Eligibility**

5.1 Any agency, organization or business, within the State of Delaware, routinely providing Basic Life Support services, First Responder services or maintains an organized First Responder Team on the premises, is eligible to become an Early Defibrillation Service.

5.2 Any agency, organization or business from another state providing Basic Life Support services, First Responder Services or maintains an organized First Responder Team on the premises routinely operating within the State of Delaware, is eligible to become an Early Defibrillation Service as approved by the State Emergency Medical Services Medical Director.

#### **6.0 Medical Direction**

##### **6.1 Program Medical Director**

6.1.1 The Early Defibrillation Program shall be under medical supervision of the State EMS Medical Director or his/her designee.

6.1.2 The State EMS Medical Director shall be responsible for:

6.1.2.1 Overseeing medical and training operations for the program;

6.1.2.2 Approve the appointment of personnel responsible for medical supervision and training of early

defibrillation providers;

6.1.2.3 Approve SAED training courses for instructors and instructor-trainers.

6.1.2.4 Approve initial training and renewal courses for program providers;

6.1.2.5 Establish and assure compliance with Quality Assurance/Quality Improvement (QA/QI) policies, practices and procedures

6.1.2.6 Establish Early Defibrillation Program medical protocols.

6.1.3 The Medical Director is granted the authority to suspend or revoke an Early Defibrillation Provider's right to practice with cause.

### **7.0 Early Defibrillation Service Requirements**

7.1 Agencies, corporations or businesses desiring to provide Early Defibrillation Services must make application to the OEMS prior to implementation of the program.

7.2 Information to be provided with the application package shall include:

7.2.1 OEMS approved application;

7.2.2 Other information as required by the OEMS.

7.3 Upon approval, Early Defibrillation Services will be issued a certificate with a unique service identification number by the OEMS.

7.3.1 The copy of the certificate must be displayed in the immediate proximity of each SAED held by the Early Defibrillation Provider agency.

#### 7.4 Triennial Re-certification

7.4.1 Application for re-certification as an Early Defibrillation Service must be filed every three (3) years with the OEMS on forms prescribed and issued by the Office.

7.4.1.1 The OEMS shall be responsible for issuing applications for re-certification to the Early Defibrillation Services within 90 days of certification expiration date.

#### 7.5 Responsibility of the Service.

7.5.1 The Service shall:

7.5.1.1 Appoint a Service Coordinator to act as a liaison between the Service and the State Coordinator;

7.5.1.2 Services must notify the OEMS of changes of any information contained in the original application within 14 days of the changes. This includes changes in the Service Coordinator or changes in equipment or operational procedure.

7.5.1.3 Ensure defibrillators used by the service are of the type specified by this regulation.

7.5.1.4 The Service shall supply appropriate resources to providers to assure the capability to comply with the reporting procedures required under this regulation.

#### 7.6 Service De-certification

7.6.1 The State EMS Medical Director may decertify an Early Defibrillation Service if the Service:

7.6.1.1 Fails to comply with this regulation,

or;

7.6.1.2 Ceases to provide emergency response service.

#### 7.7 Service Re-certification

7.7.1 The State EMS Medical Director may grant re-certification as an Early Defibrillation Service to an agency provided such agency re-applies for certification under the procedure for initial certification as outlined in this section.

### **8.0 State Coordinator Responsibilities**

8.1 The OEMS Director will appoint the State Coordinator.

8.2 The State Coordinator shall:

8.2.1 Be responsible for administration and oversight of the Early Defibrillation Program.

8.2.2 Establish Early Defibrillation Program regulations and administrative policies and ensure their enforcement.

8.2.3 Review and evaluate written reports from Service Coordinators pertinent to data collection, statistical analysis and make recommendations for program improvement.

8.2.4 On a quarterly basis, submit summary reports to the OEMS Director which shall include:

8.2.4.1 Summary of data collected pertinent to patient age, sex, percentage of patients the SAED determined defibrillation was indicated and patient outcome;

8.2.4.2 Variances received pertinent to regulations/policies and/or protocols utilized by providers, services or administration;

8.2.4.3 Documented equipment malfunctions,

and;

8.2.4.4 Recommendations for modifications to the program and/or administrative regulations and policies.

8.2.5 On an annual basis, submit a program report to the OEMS Director, which shall include:

8.2.5.1 Information required in Section 8.2.4,

and;

8.2.5.2 Report of the programs medical director.

8.2.6 In cooperation with the State EMS Medical Director and Service Coordinators, the State Coordinator shall:

8.2.6.1 Ensure the Early Defibrillation Program is in compliance with this regulation;

8.2.6.2 Establish QA/QI evaluation policies for the program and ensure said policies are enforced;

8.2.6.3 Ensure compliance with the findings and recommendations of the QA/QI program;

8.2.6.4 Immediately notify the State EMS Medical Director and the Service Coordinator if the competency of a provider puts the safety and welfare of the

public at risk.

8.2.7 Act as a liaison between the OEMS and the recognized training agencies, Training Centers, services, providers and medical facilities.

### **9.0 Service Coordinator**

9.1 The Service Coordinator will be appointed by the Service Director and shall:

9.1.1 Successfully completed an SAED training course;

9.1.2 Ensure all patient data reports are forwarded to the State Coordinator within 72 hours;

9.1.3 Assure that patient data reports are left at the receiving medical facility emergency department in a timely manner but no longer than 10 hours after the delivery of the patient to the facility;

9.1.4 Act as a liaison with the State Coordinator;

9.1.5 Assure that Early Defibrillation Providers receive appropriate training in:

9.1.5.1 The use and maintenance of the agency's SAED;

9.1.5.2 SAED program data collection, report writing and quality improvement.

9.1.6 Oversee training operations for the agency and maintain organizational training reports;

9.1.7 Annually submit training records with a list of all providers in the organization to the State Coordinator no later than January 30;

9.1.8 Ensure SAED equipment is maintained according to manufacturer and protocol specifications.

9.1.9 Ensure service compliance with this regulation;

9.1.10 Provide continuing education opportunities annually for Early Defibrillation Providers;

9.1.11 Verify credentials of personnel functioning as an early defibrillation provider within the agency represented;

9.1.12 Review each use of the AED;

9.1.13 Provide recommendations to the State Coordinator for improvements to the program.

### **10.0 Early Defibrillation Provider Requirements**

10.1 Guidelines for the validation of credentials of Early Defibrillation Providers are established by the Board of Medical Practice.

10.2 Permission to participate as an Early Defibrillation Provider is approved by the Service Coordinator.

10.3 Individuals requesting validation as an Early Defibrillation Provider shall:

10.3.1 Be at least 16 years of age at time of application;

10.3.2 Apply for SAED training through an SAED training agency recognized by the OEMS;

10.3.3 Present evidence to the Service Coordinator

of satisfactory completion of an approved SAED training program.

10.4 Each Early Defibrillation Provider is responsible for:

10.4.1 Maintaining employment or membership with an approved Early Defibrillation Service;

10.4.2 Complete an approved SAED renewal training program a minimum of every twenty-four (24) months;

10.4.3 Participate in continuing education programs as outlined in this regulation.

10.5 Each Early Defibrillation Provider shall meet the following performance responsibilities.

10.5.1 Ensure duties are performed in accordance with the protocols established by the State Emergency Medical Services Medical Director;

10.5.2 Collect all data pertinent to patient care;

10.5.3 Complete required documentation of provider intervention in all cases of SAED use.

10.5.4 Leave a completed data report of SAED use with the patient care report at the time of delivery to the receiving medical facility or within 10 hours thereof.

### **11.0 Early Defibrillation Provider Training Requirements**

#### **11.1 Program Supervision**

11.1.1 Direction and supervision of an SAED training program will be managed by a training agency recognized by the OEMS and shall:

11.1.1.1 Ensure training programs comply with the requirements of this regulation;

11.1.1.2 Approve/disapprove program instructor qualification criteria;

11.1.1.3 Review criteria used to determine successful completion of the SAED training program;

11.1.1.4 Issue course completion cards to individuals who have successfully completed the training program.

#### **11.2 Instructor Requirements.**

11.2.1 Initial training and renewal courses shall be conducted by instructors who meet the following minimum standards for approval as SAED instructors and to maintain instructor status:

11.2.1.1 Are approved by a training agency recognized by the OEMS;

11.2.1.2 Are CPR Instructors as authorized by the training agency;

11.2.1.3 Have prior teaching experience in out-of-hospital emergency care;

11.2.1.4 Have successfully completed an SAED instructor training program approved by the State EMS Medical Director;

11.2.1.5 Have instructor participation in a minimum of two (2) SAED training courses per calendar

year.

### 11.3 SAED Training Curriculum.

11.3.1 The SAED training curriculum shall include at a minimum, basic theory and practice in the following subject areas:

- 11.3.1.1 Introduction to early defibrillation;
- 11.3.1.2 Patient assessment and evaluation;
- 11.3.1.3 Cardiac anatomy and physiology;
- 11.3.1.4 Cardiac defibrillation and program

protocols;

- 11.3.1.5 CPR and its relationship to

defibrillation;

- 11.3.1.6 Skills practice;
- 11.3.1.7 Practical skills demonstration.

11.3.2 SAED training curricula must be submitted to the OEMS for approval by the State EMS Medical Director.

### 11.4 Instructor administrative requirements.

11.4.1 At the completion of each course the instructor shall:

11.4.1.1 Sign the class roster verifying student demonstration of skills;

11.4.1.2 Submit to the appropriate Service Coordinator for retention:

- 11.4.1.2.1 A record of the class roster;
- 11.4.1.2.2 A list of students successfully

completing the course;

- 11.4.1.2.3 A record of student

performance.

### 11.5 Training Sites

11.5.1 Early Defibrillation initial, renewal and continuing education courses will be scheduled by the Service at a site appropriate for training and coordinated with an approved training center.

### 11.6 Continuing Education

11.6.1 Each Early Defibrillation Service shall provide continuing education on an annual basis.

11.6.2 Continuing education may consist of, but is not limited to:

- 11.6.2.1 Case reviews;
- 11.6.2.2 CPR renewal as necessary;
- 11.6.2.3 Provider demonstration of competent

performance in the protocols and equipment in a simulated cardiac arrest situation;

11.6.2.4 Review of documentation and SAED equipment features;

11.6.2.5 Additional training as required by the Service or State EMS Medical Director.

11.6.3 Continuing education shall be no less than 2 hours annually.

## **12.0 Provider Right to Practice**

12.1 Early defibrillation providers trained under the provisions outlined in Section 11 and affiliated with a

recognized Early Defibrillation Service per Section 7 receive the right to practice as an Early Defibrillation provider under the Medical Direction provisions of Section 6.

12.2 The State EMS Medical Director may propose to suspend or revoke the right to practice of an Early Defibrillation Provider with cause.

12.3 The State EMS Medical Director must provide the provider with prior written notice of the proposed action and the opportunity for a hearing if the Medical Director deems:

12.3.1 The provider did not meet the eligibility requirements as outlined in this regulation;

12.3.2 The right to practice was obtained through error or fraud;

12.3.3 Provisions of this regulation were violated;

12.3.4 The Early Defibrillation Provider has engaged in conduct detrimental to the health or safety of a patient or to members of the general public during a period of emergency care or transport.

### 12.4 Emergency Suspension of the Right to Practice

12.4.1 The State EMS Medical Director may summarily suspend a provider's right to practice when there is a risk of serious harm or death if a provider retains his right to practice.

12.4.2 The State Coordinator may recommend to the State EMS Medical Director to suspend a provider's right to practice for a period not to exceed sixty (60) days.

12.4.3 The OEMS shall:

12.4.3.1 Provide written notice to the provider of the suspension which will:

12.4.3.1.1 Outline proposed additional action or actions and;

12.4.3.1.2 Contain a written notice of the right to request a hearing.

12.4.3.2 Conduct an investigation coordinated with the Service Coordinator.

12.4.3.3 Provide the opportunity for a prompt hearing on the summary suspension.

### 12.5 Provider Right to a Hearing

12.5.1 In the event the State EMS Medical Director proposes to suspend or revoke a provider's right to practice, the applicant or provider may request a hearing, in writing, to the OEMS within ten (10) days after date of notice.

12.5.2 The OEMS shall:

12.5.2.1 Schedule a hearing no later than twenty (20) working days after receiving a request for hearing.

12.5.2.1.1 The hearing committee shall be comprised of the State Paramedic Administrator, a county EMS Medical Director from a county other than one in which the provider works, the State Coordinator and a Service Coordinator;

12.5.2.1.2 The State Paramedic Administrator will preside over the hearing;

12.5.2.1.3 The Service Coordinator will

be from a service other than the provider's.

12.5.2.2 Issue a final decision, in writing to the provider, within ten (10) working days after the hearing.

### **13.0 Defibrillation Equipment**

#### 13.1 Defibrillator Model

13.1.1 Defibrillators acceptable for use in the State of Delaware will:

13.1.1.1 Be FDA approved;

13.1.1.2 Be of the semi-automatic type requiring provider intervention to initiate a defibrillation shock;

13.1.1.3 Be capable of automatically collecting data;

13.1.1.4 Be capable of producing a printed summary report as approved by the State EMS Medical Director.

13.1.2 Defibrillators must be approved by the State EMS Medical Director prior to purchase.

13.1.3 SAED's utilizing alternate waveform technologies are approved for use provided that the treatment algorithm has been approved by the FDA.

#### 13.2 Defibrillator Modifications

13.2.1 No modifications are to be made to defibrillation equipment, by a provider or the service, which results in:

13.2.1.1 Deviation from the original manufacturer's specifications;

13.2.1.2 Deviation from Early Defibrillation Program protocols.

13.2.2 Protocol changes may only be authorized by the State EMS Medical Director.

13.2.3 Necessary defibrillator modifications shall be coordinated by the Service Coordinator.

#### 13.3 Defibrillator Preventative Maintenance/Repairs

13.3.1 All components of the defibrillator and integrated data recording system shall be inspected by a qualified service technician at least one (1) time per calendar year or as recommended by the manufacturer to ensure:

13.3.1.1 The equipment meets original manufacturer's specifications, and;

13.3.1.2 The equipment maintains the currently approved program protocols.

13.3.2 The battery and data recording systems of the SAED shall be maintained and replaced in accordance with manufacturer's specifications.

13.3.3 All maintenance and repairs shall be performed by a qualified service technician recognized by the manufacturer.

13.3.4 Early Defibrillation Services shall maintain written records of all maintenance, repairs and inspections performed on defibrillation equipment.

#### 13.4 Defibrillator Pre-hospital Use

13.4.1 In the event any non-EMS/Fire or police

service provider agency employs a SAED, the local 911/emergency response system must be immediately activated.

13.4.2 During pre-hospital use of SAED equipment, the following guidelines will be used:

13.4.2.1 Providers may use only self-adhering electrodes or pads with the SAED;

13.4.2.2 Monitoring electrodes or pads shall be attached to the patient, and;

13.4.2.3 The integrated data recording system shall be in operation;

13.4.2.4 Data recording will begin upon initial application of the SAED and may not be terminated until:

13.4.2.4.1 The patient is disconnected from the SAED either by service providers upon spontaneous return of patient cardiac function, or;

13.4.2.4.2 The patient is disconnected by paramedics or hospital personnel during transfer to a cardiac monitor.

#### 13.5 Financial Responsibility

13.5.1 Purchase of SAED units, electrodes or pads, data collection hardware/software, and any required inspections, repairs or replacement parts shall be the sole responsibility of the service.

### **Appendix**

#### **The Delaware Early Defibrillation Program Regulations Early Defibrillation Program Protocols**

1.0 The protocols are designed under which the early defibrillation provider may administer defibrillation as a component of their emergency care to the cardiac arrest victim. Voice contact with an on-line medical control physician is not required for certified personnel to implement this protocol.

2.0 This protocol is specific to the type of defibrillator used in the program.

3.0 The provider standing orders are as follows:

3.1 The indication for the application and/or use of the SAED is cardiac arrest.

3.2 Assess the scene for safety. Also assess the surroundings for a possible cause of the arrest.

3.3 Establish that cardiac arrest has occurred. Before the SAED can be attached, the patient must be:

3.3.1 Unresponsive;

3.3.2 Pulseless; and

3.3.3 Apneic

3.4 Begin resuscitation efforts, including Cardiopulmonary Resuscitation (CPR). Make certain that 911 has been called.

3.5 Connect the patient to the SAED. Do not delay for the purpose of placing adjunct airway devices or mechanical CPR devices.

3.6 Stop CPR, clear away from the patient, and initiate analysis of the patient's cardiac rhythm. If the SAED determines that defibrillation is indicated, the unit shall automatically charge to 200 joules and prompt the provider to deliver the shock. It is the provider's responsibility to assure that all individuals are clear from the patient prior to delivery of the counter-shock.

NOTE: Different energy levels are acceptable in AED's using alternate waveform technology providing the AED and treatment algorithm have been approved by the FDA.

3.7 Immediately re-analyze the RHYTHM, and if indicated, deliver a second counter-shock at 300 joules.

3.8 Again, re-analyze the RHYTHM, and if indicated, deliver a third counter-shock at 360 joules.

3.9 If no pulse is present, perform CPR for one (1) minute. At the end of one minute check for a pulse, and if no pulse, re-analyze the RHYTHM and, if indicated, defibrillate at 360 joules.

3.10 Immediately re-analyze the RHYTHM, and if indicated, deliver a second counter-shock at 360 joules.

3.11 Immediately re-analyze the RHYTHM, and if indicated, deliver a third counter-shock at 360 joules.

3.12 If no pulse is present, continue CPR.

3.13 If a paramedic unit has not yet arrived on the scene, transport to the closest appropriate medical receiving facility should commence without delay. Contact medical control while en route for additional orders, such as additional countershocks.

3.14 For non-EMS SAED providers, continue CPR and repeat rhythm analysis and shock sequence until EMS arrives. Re-contact the 911 center to assure that help is on the way.

3.15 Complete the data management form.

### **DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. §505)

#### **Medicaid / Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its Medicaid Manual to increase the income limit from 185% to 200% of the Federal Poverty Limit for pregnant women and infants.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written

materials concerning the proposed new regulations must submit same to the Director, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, DE 19720 September 30, 2000.

#### **Revision:**

##### **16100.1.2 Initial Eligibility Determination**

The two criteria for finding an applicant presumptively eligible are: a medically verified pregnancy and effective no later than November 1, 2000 self-reported family income at or below ~~185%~~ 200% of the Federal Poverty Level. Countable family income is determined using the rules in this section including the \$90 earned income deduction and any self-reported child care expenses. State residency is established for presumptive eligibility by the applicant writing a home address on the application that is a Delaware residence.

Note: Women who are nonqualified aliens or illegally residing in the U.S. are not eligible for presumptive Medicaid.

Verifications of all other factors of eligibility are postponed. Postponed verifications must be provided within 30 days from the date of receipt of the application. Under unusual circumstances, the deadline date for postponed verifications may be extended. The reason for the extension must be documented in the case record. The verifications that were postponed are required to determine final eligibility for Medicaid benefits. Presumptive eligibility continues until a final eligibility determination is completed. If the required verifications are not provided, eligibility under the presumptive period ends.

Pregnant women who are determined presumptively eligible are required to enroll in the Diamond State Health Plan unless otherwise exempt.

##### **16250 Eligibility Determination**

After applying appropriate disregards to income, compare the countable family income to the income eligibility standard for the budget unit size.

Pregnant women and children up to age 1 must have family income effective no later than November 1, 2000 at or below ~~185%~~ 200% of poverty. Pregnant women count as 2 family members.

Children age 1 and up to age 6 must have family income at or below 133% of poverty.

Children age 6 and up to age 19 must have family income at or below 100% of poverty.

Uninsured adults must have family income at or below 100% of poverty.

Women eligible for family planning must have family income at or below 300% of poverty during the second year of the extension.

Family Size	Annual Income	Monthly Income	Monthly Income	Monthly Income	Monthly Income
	100% FPL	100% FPL Ages 6 – 18, Adults	133% FPL Ages 1 – 5	185% FPL Pregnant Women and Infants	200% FPL Pregnant Women and Infants*
1	\$8,240	\$687	\$914	<del>\$1,271</del>	<del>\$1,374</del>
2	11,060	922	1,206	<del>1,706</del>	<del>1,844</del>
3	13,880	1,157	1,539	<del>2,140</del>	<del>2,314</del>
4	16,700	1,392	1,851	<del>2,575</del>	<del>2,784</del>
5	19,520	1,627	2,164	<del>3,010</del>	<del>3,254</del>
6	22,340	1,862	2,477	<del>3,445</del>	<del>3,724</del>
7	25,160	2,097	2,789	<del>3,879</del>	<del>4,194</del>
8	27,980	2,332	3,102	<del>4,314</del>	<del>4,604</del>
9	30,800	2,567	3,414	<del>4,747</del>	<del>5,134</del>
10	33,620	2,802	3,727	<del>5,184</del>	<del>5,604</del>

\*Effective no later than November 1, 2000.

**DEPARTMENT OF LABOR**  
**OFFICE OF LABOR LAW ENFORCEMENT**  
 Statutory Authority: 29 Delaware Code,  
 Section 8503(7) (29 Del.C. §8503(7))

Interested parties are invited to present their views at the public hearings which are scheduled as follows:  
 9:00 a.m., Thursday, September 21, 2000  
 Delaware Department of Labor  
 4425 North Market Street  
 Wilmington, Delaware 19802  
 First Floor, Room 049  
 1:30 p.m., Thursday, September 21, 2000  
 Delaware Department of Labor, Milford Office  
 13 S.W. Front Street, Suite 101  
 Milford, Delaware 19963  
 Hearing Room

Interested parties can obtain copies of the proposed amendment at no charge by contacting the Office of Labor Law Enforcement at the above address, or by telephone at (302) 761-8209.

**Proposed Amendment to Delaware’s Prevailing Wage Regulations**

Amend Delaware Prevailing Wage Regulation III.C., by striking the third paragraph in its entirety and substituting

with the following:

Definitions for each classification are contained in a separate document entitled, “Classifications of Workers Under Delaware’s Prevailing Wage Law.” Workers performing tasks not listed in the Department’s definitions (but performed by mechanics and laborers on public projects) shall be classified by the Department of Labor with the advice of the Prevailing Wage Advisory Council members. Classification determinations shall be recorded by the Department as they are made and shall be published annually.

**DEPARTMENT OF NATURAL  
 RESOURCES AND  
 ENVIRONMENTAL CONTROL  
 DIVISION OF AIR AND WASTE MANAGEMENT  
 AIR QUALITY MANAGEMENT SECTION**  
 Statutory Authority: 7 Delaware Code,  
 Chapter 60 (7 Del.C. Ch. 60)

\* PLEASE NOTE: THIS IS A REPROPOSAL. THE REGULATION WAS ORIGINALLY PROPOSED IN 3 DE REG. 129 (7/1/99)

**1. Title of the Regulations:**  
 Regulation No. 39, NO<sub>x</sub> Budget Trading Program.

**2. Brief Synopsis of the Subject, Substance and Issues:**  
 The Department is proposing to establish Delaware’s participation in the NO<sub>x</sub> Budget Trading Program. The NO<sub>x</sub> Budget Trading Program is a multi-state NO<sub>x</sub> emission cap and trade program, established pursuant to Title 40, Part 96 of the Code of Federal Regulations. The goals of this regulation are to 1) improve air quality, 2) encourage NO<sub>x</sub> reductions in Delaware, 3) help to satisfy rate of progress requirements under Section 182(c) of the federal Clean Air Act, and 4) help to satisfy Delaware’s obligations under Section 110(a)(2)(D) of the CAA to not contribute to other state’s non-attainment. This regulation establishes a follow-on program to the program that was established by Regulation No. 37, NO<sub>x</sub> Budget Program, which ends with the end of the 2002 NO<sub>x</sub> control period.

**3. Possible Terms of the Agency Action:**  
 None.

**4. Statutory Basis or Legal Authority to Act:**  
 7 Del. C., Chapter 60.

## 5. Other Regulations That May Be Affected by the Proposal:

Regulation No. 37, NO<sub>x</sub> Budget Program, of the State of Delaware "Regulations Governing the Control of Air Pollution."

## 6. Notice of Public Comment:

A public hearing will be held on proposed Regulation No. 39 on September 26, 2000 beginning at 6:00 p.m. in the DNREC Auditorium, 89 Kings Highway, Dover, DE. Comments on this proposal may either be made at the hearing, or submitted to the Department in writing not later than the close of business, September 30, 2000.

## 7. Prepared by:

Ronald A. Amirikian/(302)323-4542/August 7, 2000

### **Regulation No. 39 - Nitrogen Oxides (NOX) Budget Trading Program Proposed Regulation August 7, 2000**

#### Section 1 - Purpose

a. This regulation establishes Delaware's participation in the NOX Budget Trading Program. The NOX Budget Trading Program is a multi-state NOX emissions cap and trade program, established pursuant to Title 40, Part 96 of the Code of Federal Regulations (40 CFR Part 96) and 40 CFR Part 51.121. Its purpose is to reduce emissions of the ozone precursor NOX.

b. The goals of this regulation are to 1) improve air quality, 2) encourage NOX reductions in Delaware, 3) help to satisfy rate of progress requirements under Section 182(c) of the CAA, and 4) help to satisfy Delaware's obligations under Section 110(a)(2)(D) of the CAA to not contribute to other states' non-attainment. The Department believes that, considering the regional nature of ozone nonattainment and the phenomena of ozone and ozone precursor transport, participation in the NOX Budget Trading Program provides for an effective means to meet these goals, and an economical alternative to traditional command and control type regulations.

c. This regulation establishes general, administrative, permitting, monitoring, compliance, penalty and opt-in provisions, that are consistent with 40 CFR Part 96, and allow the transfer of NOX allowances for compliance with any NOX Budget unit that is covered by this regulation or by the regulation of any other state participating in the NOX Budget Trading Program.

d. This regulation establishes a follow-on program to the program established by Regulation No. 37, NOX Budget Program, of the State of Delaware "Regulations Governing the Control of Air Pollution." The program established by Regulation No. 37 ends with the end of the 2002 NOX

control period.

#### Section 2 - Emission Limitation

a. Each NOX Budget unit shall hold in its compliance account and/or its overdraft account, as of the NOX allowance transfer deadline of each control period, a quantity of NOX allowances available for deduction that is equal to or greater than the total NOX emissions from that NOX Budget unit for that control period.

b. Each NOX Budget unit shall be subject to the requirements of Section 2(a) of this regulation starting on the later of May 1, 2003 or the date the unit commences operation.

#### Section 3 - Applicability

a. This regulation applies to:

1. Any unit located within the State of Delaware that:

i. Serves a generator with a nameplate capacity of 15 megawatts electrical (MWe), or greater; or

ii. Is not a unit under Section 3(a)(1)(i) of this regulation and that has a maximum design heat input capacity of 250 million British Thermal Units per hour (MMBTU/hr), or greater; or

2. Any unit located in the State of Delaware that is issued a final NOX Budget permit under Section 14 of this regulation; or

3. Any person that establishes a general account pursuant to Section 15 of this regulation.

b. Once any unit becomes a NOX Budget unit, it shall remain subject to all of the requirements of this regulation, except as follows:

1. For any NOX Budget unit that is retired, the NOX authorized account representative may submit to the Department, with a copy to the Administrator, a statement indicating that unit is retired and that it shall comply with all of the provisions of Section 3(b) of this regulation.

2. Upon receipt of the submission under Section 3(b)(1) of this regulation, the Department shall amend or cancel, as applicable, the unit's NOX Budget permit.

3. Except as provided for in Section 3(b)(7) of this regulation, an exemption from the requirements of this regulation shall be in effect on and after the date any submission is made pursuant to Section 3(b)(1) of this regulation.

4. The unit shall not emit any NOX while the exemption is in effect.

5. The NOX authorized account representative of the unit:

i. Shall comply with all of the requirements of this regulation concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

ii. Shall, except as provided for in Section



3(b)(5)(iii) of this regulation, comply with all of the requirements of this regulation except for the requirements of Sections 2, 7, 8 and 11 through 15 of this regulation.

iii. May, at his option and provided the unit does not receive an annual allocation under Appendix "A" of this regulation, request that the Administrator close the NOX Budget units compliance account and establish and transfer any remaining allowances to a new general account for the owner and operator of the NOX Budget source. The NOX authorized account representative for the NOX Budget source shall become the NOX authorized account representative for that general account, and shall comply with all of the requirements of this regulation except for the requirements of Sections 2, 6, 7, 8, and 11 through 14 of this regulation.

6. For any unit identified in Section 3(a)(1) that receives an annual allocation under Appendix "A" of this regulation, that unit shall continue to receive that allocation as provided for in Section (c) of Appendix "A" of this regulation. Any unit identified in Section 3(a)(2) shall not receive an allocation under Section 14(f) of this regulation while the exemption is in effect.

7. If any unit exempted under Section 3(b) of this regulation is ever reactivated, upon reactivation, for the purposes of applying the requirements of Section 8 of this regulation, the unit shall be treated as a new unit that commences operation or commences commercial operation on the first date on which the unit resumes operation. Prior to commencing operations, the NOX authorized account representative shall secure or amend, as applicable, a NOX Budget permit.

#### **Section 4 - Definitions**

The terms used in this regulation shall have the meanings set forth in this section.

a. Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

b. Allocate or allocation means the determination by the Department or the Administrator of the number of NOX allowances to be initially credited to a NOX Budget unit.

c. Allowance means a NOX allowance described in Section 5(a)(2) through 5(a)(4) of this regulation.

d. Automated data acquisition and handling system means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use pursuant to Section 8 of this regulation, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by Section 8 of this regulation.

e. CAA means the Clean Air Act, 42 U.S.C. 7401, et seq., as amended by Pub. L. No. 101-549 (November 15, 1990).

f. Commence commercial operation means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation.

1. Except as provided in Section 3(b)(7) of this regulation, for a unit that is a NOX Budget unit under Section 3(a)(1)(i) of this regulation on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered.

2. Except as provided in Section 3(b)(7) or Section 14 of this regulation, for a unit that is not a NOX Budget unit on the date the unit commences commercial operation, the date the unit becomes a NOX Budget unit shall be the unit's date of commencement of commercial operation.

g. Commence operation means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber.

1. Except as provided in Section 3(b)(7) of this regulation, for a unit that is a NOX Budget unit under Sections 3(a)(1) of this regulation on the date the unit commences operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered.

2. Except as provided in Section 3(b)(7) or Section 14 of this regulation, for a unit that is not a NOX Budget unit on the date the unit commences operation, the date the unit becomes a NOX Budget unit shall be the unit's date of commencement of operation.

h. Common stack means a single flue through which emissions from two or more pieces of equipment are exhausted.

i. Compliance account means a NATS account, established by the Administrator for a NOX Budget unit pursuant to Section 9 of this regulation, in which any allocation for the NOX Budget unit is initially recorded and in which are held NOX allowances available for deduction by the NOX Budget unit for a control period for the purpose of meeting the NOX Budget unit's NOX Budget emissions limitation.

j. Continuous emission monitoring system (CEMS) means the equipment required pursuant to Section 8 of this regulation used to sample, analyze, measure, and provide, by readings taken at least once every 15 minutes of the measured parameters, a permanent record of NOX emissions, expressed in pounds of NOX per hour. The following systems are component parts included, to the extent required by Section 8 of this regulation, in a continuous emission monitoring system:

1. Flow monitor;

2. NOX pollutant concentration monitors;
3. Diluent gas monitor (O<sub>2</sub> or CO<sub>2</sub>);
4. A continuous moisture monitor; and
5. An automated data acquisition and handling

system.

k. Control period means the period beginning May 1 of a year and ending on September 30 of that same year, inclusive.

l. Deducted, Deduction, or Deduct NOX Allowance means the permanent withdrawal of NOX allowances by the Administrator from a NATS compliance account or overdraft account, under Section 12 of this regulation, to account for the number of tons of NOX emissions from a NOX Budget unit for a control period, quantified in accordance with Section 8 of this regulation, or for any other allowance surrender obligation of this regulation.

m. Department means the State of Delaware Department of Natural Resources and Environmental Control.

n. Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the NOX authorized account representative and as determined by the Administrator in accordance with Section 8 of this regulation.

o. Excess emissions means any tonnage of NOX emitted by a NOX Budget unit during a control period that exceeds that unit's NOX Budget emissions limitation.

p. General account means a NATS account, established in accordance with Section 15 of this regulation, that is neither a compliance account nor an overdraft account.

q. Generator means a device that produces electricity.

r. Heat input means the product (in MMBTU/time) of the gross calorific value of the fuel (in MMBTU/lb) and the fuel feed rate into a combustion device (in lb of fuel/time), or as calculated by any other method approved by the Department and the Administrator, as measured, recorded, and reported to the Administrator by the NOX authorized account representative and as determined by the Administrator in accordance with Section 8 of this regulation, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

s. Hold NOX allowances or NOX allowances held means the NOX allowances recorded by the Administrator, or submitted to the Administrator for recordation in a NATS account in accordance with Sections 9 or 10.

t. Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

1. For the life of the unit; or

2. For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

3. For a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

u. Maximum design heat input means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

v. Monitoring system means any monitoring system that meets the requirements of Section 8 of this regulation, including a continuous emission monitoring system, an excepted monitoring system, or an alternative monitoring system.

w. Nameplate capacity means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards.

x. NATS means NOX Allowance Tracking System; the system by which the Administrator records any allocation, deduction, or transfer of any NOX allowances under the NOX Budget Trading Program.

y. NATS account means a compliance, overdraft, or general account in the NATS, established by the Administrator, for purposes of recording any allocation and holding, transferring, or deducting any NOX allowances.

z. NOX allowance transfer deadline means midnight of November 30 or, if November 30 is a weekend or federal holiday, midnight of the first business day thereafter and is the deadline by which NOX allowances must be submitted for recordation in a NOX Budget units compliance account or overdraft account, in order to meet the unit's NOX Budget emissions limitation for the control period immediately preceding such deadline.

aa. NOX authorized account representative means:

1. For a NOX Budget source, the natural person who is authorized by the owners and operators of that source and all NOX Budget units at that source, in accordance with Section 6 of this regulation, to represent and legally bind each owner and operator in matters pertaining to the NOX Budget Trading Program.

2. For a general account, the natural person who is authorized, in accordance with Section 15 of this regulation, to transfer or otherwise dispose of NOX allowances held in the general account.

3. Except where used in Sections 6 and 15 of this regulation, the term NOX authorized account representative shall be construed to include any alternate NOX authorized account representative.

bb. NOX Budget emissions limitation means the limitation described in Section 2(a) of this regulation.

cc. NOX Budget permit means the permit described in Section 7 and Section 14 of this regulation.

dd. NOX Budget source means a source that includes one or more NOX Budget unit(s).

ee. NOX Budget Trading Program means the program described in Section 1(a) of this regulation.

ff. NOX Budget unit means any unit described in Sections 3(a)(1) or 3(a)(2) of this regulation.

gg. Operator means any person who operates, controls, or supervises a NOX Budget unit, a NOX Budget source, or a unit for which an application for a NOX Budget permit under Section 14 of this regulation is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

hh. Opt-in unit means a unit described in Section 3(a)(2) of this regulation.

ii. Overdraft account means the NATS account, established by the Administrator under Section 9(a)(1) of this regulation, for each NOX Budget source where there are two or more NOX Budget units.

jj. Owner means any of the following persons:

1. Any holder of any portion of the legal or equitable title in a NOX Budget unit or in a unit for which an application for a NOX Budget permit under Section 14 of this regulation is submitted and not denied or withdrawn; or

2. Any holder of a leasehold interest in a NOX Budget unit or in a unit for which an application for a NOX Budget permit under Section 14 of this regulation is submitted and not denied or withdrawn; or

3. Any purchaser of power from a NOX Budget unit or from a unit for which an application for a NOX Budget permit under Section 14 of this regulation is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NOX Budget unit or the unit for which an application for a NOX Budget permit under Section 14 of this regulation is submitted and not denied or withdrawn; or

4. With respect to any general account, any person who has an ownership interest with respect to the NOX allowances held in the general account and who is subject to the binding agreement for the NOX authorized account representative to represent that person's ownership interest with respect to NOX allowances.

kk. Receive or receipt of means, when referring to the Department or the Administrator, to come into possession of a document, information, or correspondence (whether sent in

writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the Department or the Administrator in the regular course of business.

ll. Recordation, record, or recorded means, with regard to any NOX allowance, the movement of that NOX allowance by the Administrator from one NATS account to another, for purposes of allocation, transfer, or deduction.

mm. Source means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the CAA.

nn. State trading program budget means the total number of NOX tons apportioned to all NOX Budget units in a given State, in accordance with the NOX Budget Trading Program, for use in a given control period.

oo. Submit means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

1. In person;

2. By United States Postal Service; or

3. By other means of dispatch or transmission or delivery.

Compliance with any "submission," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

pp. Ton or tonnage means any "short ton" (i.e., 2,000 pounds). For the purpose of determining compliance with the NOX Budget emissions limitation, total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with Section 8 of this regulation, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

qq. Unit means any of the following fossil fuel-fired combustion operations: boiler, indirect heat exchanger, combustion turbine, or combined cycle system. For the purposes of this definition:

1. Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

2. Fossil fuel-fired means,

A. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a BTU basis during any year starting in 1990 or, if a unit had no heat input starting in 1990, during the last year of operation of the unit prior to 1990; or

B. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a BTU basis during any year; provided that the

unit shall be "fossil fuel-fired" as of the date, during such year, on which the unit begins combusting fossil fuel.

3. Boiler means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

4. Indirect heat exchanger means combustion equipment in which the flame and/or products of combustion are separated from any contact with the principal material in the process by metallic or refractory walls, which includes, but is not limited to, steam boilers, vaporizers, melting pots, heat exchangers, column reboilers, fractioning column feed preheaters, and fuel-fired reactors such as steam hydrocarbon reformer heaters and pyrolysis heaters.

5. Combustion turbine means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

6. Combined cycle system means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

#### **Section 5 - General Provisions**

##### **a. Allocations and NOX Allowances.**

1. An allocation may be made only by the Department in accordance with Appendix "A", Appendix "B", and Section 14(f) of this regulation, or by the Administrator as provided for in Appendix "A" of this regulation.

2. A NOX allowance is a limited authorization, by the Department and the Administrator, to emit up to one ton of NOX during the control period of a specified year or of any year thereafter, in accordance with the NOX Budget Trading Program. No provision of the NOX Budget Trading Program, the NOX Budget permit application, the NOX Budget permit, or an exemption under Section 3(b) of this regulation, and no provision of law shall be construed to limit the authority of the United States or the State of Delaware to terminate or limit such authorization.

3. NOX allowances shall be held in, deducted from, or transferred among NATS accounts in accordance with Sections 9, 10, 12 and 13 of this regulation. Any NOX allowance that is held in a NATS account shall remain in such NATS account unless and until that NOX allowance is deducted, transferred, or terminated.

4. A NOX allowance does not constitute a property right.

b. Record Keeping. Except as provided for below, the NOX authorized account representative of each NOX Budget source shall keep on site at that source each of the following documents for, at a minimum, a period of 5 years from the date that document is created. This period of time

may be extended for cause at any time prior to the end of that 5-year period upon written notification from either the Department or the Administrator.

1. The account certificate of representation submitted pursuant to Section 6 of this regulation, and all documents that demonstrate the truth of the statements in that account certificate of representation. The certificate and documents shall be retained on site at the source beyond that 5-year period until they are superseded by the submission of a new account certificate of representation.

2. The NOX Budget permit application submitted pursuant to Section 7 of this regulation, and all documents used to complete that application. The application and documents shall be retained on site at the source beyond that 5-year period until they are superseded by the submission of a new application.

3. All emissions monitoring information pursuant to Section 8 of this regulation, except that to the extent Section 8 of this regulation provides for a 3-year period, that 3-year period shall apply.

4. Copies of any report, compliance certification, and any other submission or record made or required under the NOX Budget Trading Program.

5. Records demonstrating that any unit exempted under Section 3(b) of this regulation is retired. The owner(s) and operator(s) of that unit bears the burden of proof that the unit is retired.

##### **c. Computation of Time. Unless otherwise stated:**

1. Any time period scheduled to begin on the occurrence of an act or event shall begin on the day that act or event occurs.

2. Any time period scheduled to begin before the occurrence of an act or event shall begin not later than the day before that act or event occurs.

3. If the final day of any time period falls on a weekend or a State of Delaware or Federal holiday, that time period shall be extended to the next business day.

##### **d. Liability.**

1. Each NOX Budget source and each NOX Budget unit shall comply with all of the requirements of the NOX Budget Trading Program and any applicable NOX Budget permit.

2. No permit revision shall excuse any violation of the requirements of the NOX Budget Trading Program that occurs prior to the date that revision takes effect.

3. i. Any provision of the NOX Budget Trading Program that applies to a NOX Budget source (including a provision applicable to the NOX authorized account representative of that NOX Budget source) shall also apply to the owners and operators of that source and of the NOX Budget units at that source.

ii. Any provision of the NOX Budget Trading Program that applies to a NOX Budget unit (including a provision applicable to the NOX authorized account

representative of that NOX Budget unit) shall also apply to the owners and operators of that unit.

iii. Except with regard to the requirements applicable to units with a common stack under Section 8 of this regulation, the owners and operators and the NOX authorized account representative of one NOX Budget unit shall not be liable for any violation by any other NOX Budget unit of which they are not owners or operators or the NOX authorized account representative and that is located at a source of which they are not owners or operators or the NOX authorized account representative.

4. No provision of the NOX Budget Trading Program, a NOX Budget permit application, a NOX Budget permit, or an exemption under Section 3(b) of this regulation shall be construed to exempt or exclude the owners and operators and, to the extent applicable, the NOX authorized account representative of a NOX Budget source or NOX Budget unit from compliance with any other applicable State or Federal requirement.

5. Any person who knowingly violates any requirement or prohibition of the NOX Budget Trading Program, a NOX Budget permit, or an exemption under Section 3(b) of this regulation shall be subject to enforcement pursuant to applicable State or Federal law.

6. Any person who knowingly makes a false material statement in any record, submission, or report under the NOX Budget Trading Program shall be subject to criminal enforcement pursuant to the applicable State or Federal law.

#### **Section 6 - NOX Authorized Account Representative for NOX Budget Sources**

a. On or before the later of November 1, 2001 or the date 18 months before the date on which any NOX Budget unit commences operation, the NOX authorized account representative and any alternate NOX authorized account representative of any NOX Budget source shall submit to the Administrator, with a copy to the Department, a complete account certificate of representation. Such account certificate of representation:

1. Shall designate one and only one NOX authorized account representative, and may designate one and only one alternate NOX authorized account representative. Such NOX authorized account representative and any alternate NOX authorized account representative shall be selected by an agreement between the owners and operators of the source and all NOX Budget units at that source, binding on such owners and operators. Such agreement shall include a procedure for authorizing any alternate NOX authorized account representative to act in lieu of the NOX authorized account representative.

2. Shall include all of the following information in a format specified by the Administrator:

i. Identification of the NOX Budget source and

each NOX Budget unit at that source for which the account certificate of representation is submitted.

ii. The name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NOX authorized account representative and any alternate NOX authorized account representative.

iii. A list of the owners and operators of the NOX Budget source and of each NOX Budget unit at the source.

iv. The following certification statement by the NOX authorized account representative and any alternate NOX authorized account representative: "I certify that I was selected as the NOX authorized account representative or alternate NOX authorized account representative, as applicable, by an agreement binding on the owners and operators of the NOX Budget source and each NOX Budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NOX Budget Trading Program on behalf of the owners and operators of the NOX Budget source and of each NOX Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Department, the Administrator, or a court regarding the source or unit."

v. The signature of the NOX authorized account representative and any alternate NOX authorized account representative, and the date(s) the account certificate of representation was signed.

3. Shall not include, unless otherwise required by the Department or the Administrator, documents of agreement referred to in the account certificate of representation. If submitted, neither the Department nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents.

b. Upon receipt by the Administrator of a complete account certificate of representation under Section 6(a) of this regulation:

1. The NOX authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the NOX Budget source represented and each NOX Budget unit at that source in all matters pertaining to the NOX Budget Trading Program, notwithstanding any agreement between the NOX authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the NOX authorized account representative by the Department, the Administrator, or a court regarding the source or unit.

2. Any representation, action, inaction, or submission by the alternate NOX authorized account representative shall be deemed to be a representation, action,

inaction, or submission by the NOX authorized account representative.

3. The Department and the Administrator shall rely on the account certificate of representation submitted pursuant to Section 6(a) of this regulation unless and until the Administrator receives a superseding complete account certificate of representation changing the NOX authorized account representative or alternate NOX authorized account representative. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NOX authorized account representative or alternate NOX authorized account representative prior to the time and date when the Administrator receives the superseding account certificate of representation shall be binding on the new NOX authorized account representative and alternate NOX authorized account representative and the owners and operators of the NOX Budget source and the NOX Budget units at the source.

4. Except as provided in Section 6(b)(3) of this regulation, no objection or other communication submitted to the Department or the Administrator concerning the authorization, or any representation, action, inaction, or submission of the NOX authorized account representative or the alternate NOX authorized account representative shall affect any representation, action, inaction, or submission of the NOX authorized account representative or the alternate NOX authorized account representative, or the finality of any decision or order by the Department or the Administrator under the NOX Budget Trading Program.

5. Neither the Department nor the Administrator shall adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NOX authorized account representative or the alternate NOX authorized account representative.

c. Changes in the owners and operators.

1. Within 30 days following any change in the owner(s) and operator(s) of a NOX Budget source or a NOX Budget unit at that source, including the addition of a new owner or operator, the NOX authorized account representative or the alternate NOX authorized account representative shall submit to the Administrator, with a copy to the Department, a revised account certificate of representation amending the list of owners and operators to include that change.

2. In the event a new owner or operator of a NOX Budget source or a NOX Budget unit is not included in the list of owners and operators submitted in the account certificate of representation, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the NOX authorized account representative and any alternate NOX authorized account representative of the source or unit, and the decisions, orders, actions, and inaction's of the Department or the

Administrator, as if the new owner or operator were included in such list.

d. Submissions/Certifications.

1. The NOX authorized account representative or the alternate NOX authorized account representative shall sign and certify all submissions under the NOX Budget trading program with the following certification statement: "I am authorized to make this submission on behalf of the owners and operators of the NOX Budget sources or NOX Budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

2. The Department and the Administrator shall accept or act on any submission made under the NOX Budget Trading program only if that submission has been made, signed, and certified in accordance with Section 6(d)(1) of this regulation.

### **Section 7 - Permits**

a. Except as provided for in Section 3(b) of this regulation, on and after May 1, 2002 each NOX Budget unit shall be covered by a NOX Budget permit. Such NOX Budget permit shall be a complete and segregable portion of, and made federally enforceable by, the permit issued pursuant to:

1. For any NOX Budget unit required to be covered by a Regulation No. 30 permit, Regulation No. 30 of the State of Delaware "Regulations Governing the Control of Air Pollution."

2. For any NOX Budget unit not required to be covered by a Regulation No. 30 permit, Regulation No. 2 of the State of Delaware "Regulations Governing the Control of Air Pollution."

b. On or before the later of November 1, 2001, or the date 18 months before the date on which any NOX Budget unit commences operation, the NOX authorized account representative of each NOX Budget source shall submit to the Department:

1. A complete NOX Budget permit application that includes, at a minimum, all of the following information:

i. Identification of the NOX Budget source, including the plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration of the United States Department of Energy, if applicable;

ii. Identification of each NOX Budget unit at

that NOX Budget source; and

iii. Identification of each applicable requirement of this regulation, to include the requirements of Sections 2(a), 5(a)(2), 5(a)(3), 5(b), 5(d), 6(d), 8(b), 8(c) and 10 of this regulation.

2. In a timely manner, any supplemental information that the Department determines is necessary in order to review a NOX Budget permit application and/or issue or deny any NOX Budget permit(s).

c. Each NOX Budget permit issued by the Department:

1. Shall specify the information submitted under Section 7(b)(1) of this regulation, as approved by the Department.

2. Shall be deemed to incorporate automatically the definitions of terms under Section 4 of this regulation. Upon recordation by the Administrator, every allocation, transfer, or deduction of a NOX allowance to or from a NOX Budget unit's compliance account or the overdraft account of the source where the unit is located shall be deemed to amend automatically, and become a part of the associated NOX Budget permit by operation of law without any further review.

d. Any initial, revised, or renewed NOX Budget permit shall become effective upon issuance by the Department of the corresponding Regulation No. 2 or Regulation No. 30 permit, as applicable, that administers that NOX Budget permit.

### **Section 8 - Monitoring and Reporting**

a. The emissions measurements recorded and reported in accordance with Section 8 of this regulation shall be used to determine compliance by any NOX Budget unit with its NOX Budget emissions limitation.

b. Each NOX Budget unit shall:

1. Comply with all of the requirements of Subpart H of 40 CFR Part 75 (7/1/99 edition), and all of the requirements of this regulation.

2. Monitor and record heat input at the unit level utilizing the procedures set forth in 40 CFR Part 75 (7/1/99 edition).

c. For the purpose of complying with the requirements of this regulation and Subpart H of 40 CFR Part 75, the definitions in Section 4 of this regulation and in 40 CFR 72.2 (7/1/99 edition) shall apply, except the terms "affected unit," "designated representative," and "continuous emission monitoring system" in 40 CFR Part 75 shall be replaced with "NOX Budget unit," "NOX authorized account representative," and "continuous emission monitoring system," respectively, as defined in Section 4 of this regulation.

d. The compliance deadlines referred to in 40 CFR Part 75.70(b) shall be as follows:

1. Monitoring systems shall be installed and certification tests shall be completed, pursuant to the

requirements of Subpart H of 40 CFR Part 75, not later than:

i. For any NOX Budget unit identified in Sections 3(a)(1) of this regulation that commences operation before January 1, 2002, May 1, 2002.

ii. For any NOX Budget unit not covered by Section 8(d)(1)(i) of this regulation, the later of the following dates:

A. May 1, 2002; or

B. The earlier of:

1. 180 days after the date on which that unit commences operation or

2. For any unit identified in Section 3(a)(1)(i) of this regulation, 90 days after the date on which that unit commences commercial operation.

C. For any NOX Budget unit that reports on a control season basis under 40 CFR 75.74(b)(2), where the applicable deadline under Section 8(d)(1)(ii)(B) of this regulation does not occur during a control period, May 1 immediately following the date determined in accordance with Section 8(d)(1)(ii)(B) of this regulation.

2. For any NOX Budget unit with a new stack or flue for which construction is completed after the applicable deadline under Section 8(d)(1) or 14(c) of this regulation:

i. 90 days after the date on which emissions first exit to the atmosphere through the new stack or flue, or

ii. If that unit reports on a control season basis under 40 CFR 75.74(b)(2) and the applicable deadline under Section 8(d)(2)(i) of this regulation does not occur during the control period, May 1 immediately following the applicable deadline in Section 8(d)(2)(i) of this regulation.

3. Data shall be recorded and reported on and after the date specified in Section 8(d)(1) of this regulation. The provisions of 40 CFR 75.70(g), concerning the reporting of data prior to initial certification, shall apply from the date and hour that any unit starts operating until all required certification tests are successfully completed.

e. The requirements of 40 CFR Part 75.70(d)(1), concerning initial certification and recertification procedures, shall be expanded to include the following additional requirements:

1. If, prior to January 1, 1998, the Administrator approved a petition under 40 CFR 75.17(a) or (b) for apportioning the NOX emission rate measured in a common stack or a petition under 40 CFR 75.66 for an alternative to a requirement in 40 CFR 75.17 of this chapter, the NOX authorized account representative shall resubmit the petition to the Administrator under 40 CFR 75.70(h)(1) and (2) to determine if the approval applies under the NOX Budget Trading Program.

2. The NOX authorized account representative of each unit applying to monitor using an alternative monitoring system under Subpart E of 40 CFR Part 75 shall apply for certification to the Department prior to use of the system under the NOX Budget Trading Program. The NOX

authorized account representative shall comply with the notification and application requirements for certification, or for recertification following a replacement, modification or change, according to the procedures in Section 8(f) of this regulation.

f. Except as otherwise specified in Section 8(g) of this regulation (pertaining to the low mass emissions excepted methodology under 40 CFR 75.19), the initial certification and recertification procedures referred to in 40 CFR Part 75.70(d)(2) shall be as follows.

1. Each monitoring system required by Subpart H of 40 CFR Part 75 (which includes the automated data acquisition and handling system) shall complete all of the initial certification testing required under 40 CFR 75.20 not later than the deadlines specified in Section 8(d) of this regulation. In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this regulation in a location where no such monitoring system was previously installed, initial certification according to 40 CFR 75.20 is required.

2. Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that the Administrator or the Department determines significantly affects the ability of the system to accurately measure or record NOX mass emissions or heat input or to meet the requirements of 40 CFR 75.21 or Appendix B to 40 CFR Part 75, the owner or operator shall recertify the monitoring system according to 40 CFR 75.20(b). Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that the Administrator or the Department determines to significantly change the flow or concentration profile, the owner or operator shall recertify the continuous emission monitoring system according to 40 CFR 75.20(b). Examples of changes that require recertification include: replacement of the analyzer, change in location or orientation of the sampling probe or site, or the changing of flow-rate-monitor polynomial coefficients.

3. Certification approval process for initial certifications and recertification.

i. The NOX authorized account representative shall submit to the Department, with a copy to the EPA Region III Office, a written notice of the dates of certification testing in accordance with the requirements of 40 CFR Part 75.61. If the unit is not subject to an Acid Rain emissions limitation, the notification is required to be sent only to the Department.

ii. The NOX authorized account representative shall submit to the Department not later than 45 days after completing all initial certification or recertification tests a complete certification application for each monitoring system required under Subpart H of 40 CFR Part 75. Such certification application shall be considered complete if it

includes all of the information specified in 40 CFR 75.63. Any alternative monitoring system under Subpart E of 40 CFR Part 75 shall also be subject to the procedures of 40 CFR 75.20(f).

iii. Except for units using the low mass emission excepted methodology under 40 CFR 75.19, a monitor shall be provisionally certified upon successful completion of the certification procedures of Section 8(f)(3)(i) and (ii) of this regulation. A provisionally certified monitor may be used under the NOX Budget Trading Program for a period not to exceed 120 days after receipt by the Department of the complete certification application for the monitoring system or component thereof under Section 8(f)(3)(ii) of this regulation. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of 40 CFR Part 75, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Department does not invalidate the provisional certification by issuing a notice of disapproval of certification status under Section 8(f)(iv)(C) of this regulation.

iv. The Department shall issue a written notice of approval or disapproval of the certification application to the NOX authorized account representative within 120 days of receipt of the complete certification application under Section 8(f)(3)(ii) of this regulation. In the event the Department does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of 40 CFR Part 75 and that is included in the certification application shall be deemed certified for use under the NOX Budget Trading Program.

A. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR Part 75, then the Department shall issue a written notice of approval of the certification application within 120 days of receipt.

B. If the certification application is not complete, then the Department shall issue a written notice of incompleteness that sets a reasonable date by which the NOX authorized account representative must submit the additional information required to complete the certification application. If the NOX authorized account representative does not comply with the notice of incompleteness by the specified date, then the Department may issue a notice of disapproval under Section 8(f)(3)(iv)(C) of this regulation.

C. If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of this regulation, or if the certification application is incomplete and the requirement for disapproval under Section 8(f)(3)(iv)(B) of this regulation has been met, the Department may issue a written notice of disapproval of the certification application.

v. If the Department issues a notice of



disapproval of a certification application under either Section 8(f)(3)(iv)(C) of this regulation or a notice of disapproval of certification status under Section 8(j) of this regulation, then the following shall apply to each monitoring system or component thereof which is disapproved for initial certification:

A. Upon issuance of such notice of disapproval, the provisional certification is invalidated and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification.

B. The owner or operator shall substitute the following values for any hour (or fraction of an hour) during which the unit combusts any fuel during the period of invalid data, beginning with the date and hour of provisional certification and continuing until the time, date, and hour specified under 40 CFR 75.20(a)(5)(i).

1. For units using or intending to monitor for NOX emission rate and heat input or for units using the low mass emission excepted methodology under 40 CFR 75.19, the maximum potential NOX emission rate and the maximum potential hourly heat input of the unit.

Maximum potential NOX emission rate means the emission rate of NOX (in lb/MMBTU) calculated in accordance with section 3 of appendix F of 40 CFR Part 75, using the maximum potential NOX concentration as defined in section 2 of appendix A of 40 CFR Part 75, and either the maximum O2 concentration (in percent O2) or the minimum CO2 concentration (in percent CO2), under all operating conditions of the unit except for unit start up, shutdown, and upsets.

Maximum potential hourly heat input means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use Appendix D of 40 CFR Part 75 to report heat input, this value should be calculated, in accordance with 40 CFR Part 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with 40 CFR Part 75, using the maximum potential flowrate and either the maximum CO2 concentration (in percent CO2) or the minimum O2 concentration (in percent O2).

2. For units intending to monitor for NOX mass emissions using a NOX pollutant concentration monitor and a flow monitor, the maximum potential concentration of NOX and the maximum potential flow rate of the unit under Section 2.1 of Appendix A of 40 CFR Part 75.

C. The NOX authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with Sections 8(f)(3)(i) and 8(f)(3)(ii) of this regulation; and

D. The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Department's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval. A Unit operating day means a calendar day in which a unit combusts any fuel.

g. The initial certification and recertification procedures referred to in 40 CFR Part 75.70(d)(2) for any gas-fired or oil-fired unit using the low mass emissions excepted methodology under 40 CFR 75.19, and not subject to an acid rain limitation, shall be those applicable certification and recertification requirements of 40 CFR 75.19 and Section 8(f) of this regulation, except that the excepted methodology shall be deemed provisionally certified for use under the NOX Budget Trading Program, as of the following dates:

1. For a unit that does not have monitoring equipment initially certified or recertified for the NOX Budget Trading Program as of the date on which the NOX authorized account representative submits the certification application under 40 CFR 75.19 for that unit, starting on the date of such submission until the completion of the period for the Department's review.

2. For a unit that has monitoring equipment initially certified or recertified for the NOX Budget Trading Program as of the date on which the NOX authorized account representative submits the certification application under 40 CFR 75.19 for that unit and that reports data on an annual basis under 40 CFR 75.74(b)(2), starting January 1 of the year after the year of such submission until the completion of the period for the Department's review.

3. For a unit that has monitoring equipment initially certified or recertified for the NOX Budget Trading Program as of the date on which the NOX Authorized Account Representative submits the certification application under 40 CFR 75.19 for that unit and that reports on a control season basis under 40 CFR 75.74(b)(2), starting May 1 of the control period after the year of such submission until the completion of the period for the Administrator's review.

h. Approval by the Department is required for approval of any alternative requirement under 40 CFR part 75.70(h)(3)(ii).

i. The NOX authorized account representative shall submit quarterly reports required by 40 CFR Part 75.73(f) beginning with:

1. For any unit that commences operation prior to May 1, 2002, the earlier of the calendar quarter that includes the date of initial provisional certification under Section 8(f)(3)(iii) of this regulation or, if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 through June 30, 2002. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2002.

2. Except as provided for in Section 8(i)(3) of this regulation, for any unit that commenced operation on or after May 1, 2002, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation.

3. For any unit that is subject to ozone season monitoring requirements under 40 CFR 75.74(b)(2), and that commenced operation after September 30, 2002, and that did not commence operations during a control period, the earlier of the calendar quarter that includes the date of initial provisional certification under Section 8(f)(3)(iii) of this regulation or, if the certification tests are not completed by May 1 immediately following the date that the unit commenced operation, May 1 immediately following the date the unit commenced operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 immediately following the date that the unit commenced operation.

j. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement under 40 CFR 75.70(d) or any other applicable provision of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the Department may issue a notice of disapproval of the certification status of such system or component. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the Department or the Administrator. By issuing the notice of disapproval, the Department revokes prospectively the certification status of the system or component. The data measured and recorded by the system or component shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests. The owner or operator shall follow the initial certification or recertification procedures in 40 CFR Part 75.70(d) for each disapproved system.

### **Section 9 - NATS**

#### **a. Establishment of NATS Accounts.**

1. Upon receipt of a complete account certificate of representation pursuant to Section 6(a) of this regulation, the Administrator shall establish a compliance account for each NOX Budget unit identified in that account certificate of representation, and an overdraft account for each such NOX Budget source that includes two or more NOX Budget units.

2. Upon receipt of a complete application to establish a general account pursuant to Section 15 of this

regulation, the Administrator shall establish a general account for the person(s) for whom the application is submitted.

3. The Administrator shall assign a unique identifying account number to each account established under Sections 9(a)(1) or 9(a)(2) of this regulation, and a unique identifying number to each associated NOX authorized account representative.

#### **b. Recordation of Allocations and Deductions.**

1. The Administrator shall record allocations for the 2003, 2004, and 2005 control periods, pursuant to Section (d)(1) of Appendix "A" and Section (c) of Appendix "B" of this regulation. The Administrator shall record any allocations for the 2003 control period pursuant to Section 14(f)(2) of this regulation.

2. Each year, starting in 2003, the Administrator shall:

i. Record in the appropriate compliance account or overdraft account all deductions made pursuant to Section 12 and 13 of this regulation.

ii. After recording any deductions pursuant to Section 9(b)(2)(i) of this regulation:

A. Record allocations pursuant to Section (d)(2) of Appendix "A" of this regulation.

B. Record allocations pursuant to Sections 14(f)(2) of this regulation.

3. When recording any allocation, the Administrator shall assign to the corresponding NOX allowance a unique identification serial number that includes digits identifying the year for which that NOX allowance is allocated.

#### **c. Banking.**

1. After recording any deductions pursuant to Section 9(b)(2)(i) of this regulation, the Administrator shall designate, as a "banked" NOX allowance, any NOX allowance that was eligible for deduction and that remains in any compliance account, overdraft account, or general account

2. Each year, starting in 2004, after completing the designation of banked NOX allowances under Section 9(c)(1) of this regulation and before May 1 of that year, the Administrator shall determine the extent to which any banked NOX allowance may be used for compliance in the impending control period, as follows:

i. The Administrator shall determine the total number of banked NOX allowances held in all of the NOX Budget Trading program's compliance accounts, overdraft accounts, and general accounts.

ii. The Administrator shall determine the sum of the State trading program budgets for the impending control period of all of the States participating in the NOX Budget trading program.

iii. The Administrator shall determine the result of dividing the number determined under Section

9(c)(2)(i) of this regulation by the number determined under Section 9(c)(2)(ii) of this regulation.

3. If the number determined under Section 9(c)(2)(iii) of this regulation is equal to or less than 0.10, then any banked NOX allowance may be deducted for compliance in accordance with Sections 12 and 13 of this regulation

4. If the number determined under Section 9(c)(2)(iii) of this regulation is greater than 0.10, then:

i. The Administrator shall determine the following ratio: 0.10 multiplied by the number determined under Section 9(c)(2)(ii) of this regulation and divided by the number determined under Section 9(c)(2)(i) of this regulation.

ii. The Administrator shall, in implementing the provisions of Sections 12(b) and 13(a) of this regulation for the impending control period, multiply the number of banked NOX allowances in each compliance account or overdraft account by the ratio calculated under Section 9(c)(4)(i) of this regulation. The resulting product is the number of banked NOX allowances in the account that may be deducted for compliance in accordance with Sections 12 and 13 of this regulation. Any banked NOX allowances in excess of the resulting product may be deducted for compliance in accordance with Sections 12 and 13 of this regulation, except that, if any such NOX allowance is deducted, two such NOX allowances shall be deducted for each one NOX allowance required under Sections 12 and 13 of this regulation.

d. The Administrator may, at his/her sole discretion and on his/her own motion, correct any error in any NATS account. Within 10 business days of making any such correction, the Administrator shall notify the NOX authorized account representative of the affected account of any correction made.

### **Section 10 - NOX Allowance Transfers**

a. The NOX authorized account representative seeking recordation of a NOX allowance transfer shall submit to the Administrator a transfer request that includes all of the following information in a format specified by the Administrator:

1. The account number of both the transferor and transferee accounts;

2. The serial number of each NOX allowance to be transferred; and

3. The printed name and signature of the NOX authorized account representative of the transferor account, and the date the transfer request was signed.

b. Provided that the transfer request meets the requirements of Section 10(a) of this regulation, and the transferor account holds each NOX allowance identified by serial number in the transfer request, the Administrator shall

record the NOX allowance transfer by moving each NOX allowance from the transferor account to the transferee account as specified by the request.

1. Any NOX allowance transfer request that is submitted for recordation after a NOX allowance transfer deadline, and that includes any NOX allowance that was allocated for a control period prior to or the same as the control period associated with that NOX allowance transfer deadline, shall be recorded after the recordation of allocations under Section 9(b)(2) of this regulation for that control period.

2. Any transfer request not identified in Section 10(b)(1) of this regulation shall be recorded within 5 business days of receiving such request.

3. Within 5 business days of recordation of any NOX allowance transfer, the Administrator shall notify the NOX authorized account representatives of both accounts subject to the transfer that the transfer was recorded.

c. Where a NOX allowance transfer request fails to meet the requirements of Section 10(b) of this regulation, the Administrator shall not record that transfer.

1. Within 10 business days of receipt of such a request, the Administrator shall notify the NOX authorized account representatives of both the transferor and transferee accounts of the reason(s) why the transfer was not recorded.

2. Nothing in this regulation shall preclude the correction and resubmission of a NOX allowance transfer request following notification under Section 10(c)(1) of this regulation.

### **Section 11 - Compliance Certification**

a. Not later than November 30 of each year, starting in 2003, the NOX authorized account representative of each NOX Budget source shall submit to the Department and the Administrator a compliance certification report that covers the control period for that year. Such report shall include all of the following information in a format specified by the Administrator:

1. Identification of the NOX Budget source and each NOX Budget unit at that source.

2. At the NOX authorized account representative's option, for units sharing a common stack and having NOX emissions that are not monitored separately or apportioned in accordance with Section 8 of this regulation, the percentage of the number of tons of NOX emissions from the common stack to be attributed to each unit, for application under Section 12(b)(2)(i) of this regulation.

3. At the NOX authorized account representative's option, the serial numbers of the NOX allowances that are to be deducted from each NOX Budget unit's compliance account, for application under Sections 12(b)(2)(i) and/or 13(a)(1) of this regulation.

4. Certification by the NOX authorized account representative of, based on reasonable inquiry of those

persons with primary responsibility for operating the source and the NOX Budget units at the source in compliance with the NOX Budget Trading Program, whether each NOX Budget unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the requirements of the NOX Budget Trading Program applicable to that unit, including:

i. Whether the unit was operated in compliance with its NOX Budget emissions limitation;

ii. Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute NOX emissions to the unit, in accordance with Section 8 of this regulation;

iii. Whether all the NOX emissions from the unit, or a group of units (including the unit) using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with Section 8 of this regulation. If conditional data were reported, the NOX authorized account representative shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmission's have been made;

iv. Whether the facts that form the basis for certification under Section 8 of this regulation of each monitor at the unit or a group of units (including the unit) using a common stack, or for using an excepted monitoring method or alternative monitoring method approved under Section 8 of this regulation, if any, has changed; and

v. If a change is required to be reported under Section 11(a)(4)(iv) of this regulation, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

b. The Department or the Administrator may review and conduct independent audits concerning any compliance certification or any other submission under the NOX Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.

c. The Administrator may deduct NOX allowances from or transfer NOX allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under Section 11(b) of this regulation.

## **Section 12 - End-of-Season Reconciliation**

a. A NOX allowance is available to be deducted for compliance with a unit's NOX Budget emissions limitation for a particular control period only if that NOX allowance:

1. Was allocated for that control period or for a control period in a prior year; and

2. Is held in that unit's compliance account or its associated overdraft account, as of the NOX allowance transfer deadline for that control period; or

3. Is transferred into that unit's compliance account or its associated overdraft account by a NOX allowance transfer request that was correctly submitted for recordation under Section 10 of this regulation on or before the NOX allowance transfer deadline associated with that control period.

b. For each control period, following the recordation of NOX Allowance transfer requests that were submitted for recordation under Section 10 of this regulation on or before the associated NOX allowance transfer deadline, the Administrator shall deduct NOX allowances that meet the requirements of Section 12(a) of this regulation from each NOX Budget unit's account(s):

1. Until the number of NOX allowances deducted equals the number of tons of NOX emissions from that unit for that control period.

2. In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned under Section 8 of this regulation, the Administrator shall deduct NOX allowances for each such unit until the number of NOX allowances deducted equals:

i. Where the NOX authorized account representative identified a percentage pursuant to Section 11(a)(2) of this regulation, that percentage of the number of tons of NOX emissions from the common stack, or,

ii. If no percentage is identified, an equal percentage for each such unit.

3. Where there are not sufficient NOX allowances available under section 12(b)(1) and 12(b)(2) of this regulation, until no more NOX allowances that meet the requirements of Section 12(a) of this regulation remain available for deduction.

c. The particular allowances that the Administrator shall delete shall be:

1. Where the NOX authorized account representative identified by serial number the NOX allowances to be deducted pursuant to Section 11(a)(3) of this regulation, the Administrator shall deduct those particular allowances.

2. In the absence of an identification or in the case of a partial identification of NOX allowances by serial number, the Administrator shall deduct NOX allowances:

i. From the compliance account on a first-in, first-out (FIFO) accounting basis in the following order:

A. Those NOX allowances that were allocated for that control period to that unit;

B. Those NOX allowances that were allocated for that control period to any unit and transferred and recorded in that unit's account, in order of their date of

recording;

C. Those NOX allowances that were allocated for a prior control period to that unit; and

D. Those NOX allowances that were allocated for a prior control period to any unit and transferred and recorded in that unit's account, in order of their date of recording.

ii. Only after all NOX allowances that meet the requirements of Section 12(a) of this regulation have been deducted from the compliance account, from the overdraft account. In deducting allowances for units at the source from the overdraft account, the Administrator shall begin with the NOX Budget unit having the compliance account with the lowest NATS account number and end with the NOX Budget unit having the compliance account with the highest NATS account number (with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters).

### **Section 13 - Failure to Meet Compliance Requirements**

a. For each unit under Section 12(b)(3) of this regulation, the Administrator shall deduct from that unit's compliance account or the associated overdraft account a number of NOX allowances equal to three (3) times the number of that unit's excess emissions.

1. Where the NOX authorized account representative identified by serial number the NOX allowances to be deducted pursuant to Section 11(a)(3) of this regulation, the Administrator shall deduct those particular allowances.

2. In the absence of an identification by serial number, or in the case of a partial identification, the Administrator shall deduct NOX allowances that were allocated for any control period after the control period in which the unit has excess emissions, until the requirement of Section 13(a) of this regulation is satisfied.

3. If the compliance account or overdraft account does not contain sufficient NOX allowances, the Administrator shall deduct NOX allowances, regardless of the control period for which they were allocated, whenever NOX allowances are recorded in either account, until the requirement of Section 13(a) of this regulation is satisfied.

b. Any deduction required under Section 13(a) of this regulation shall not affect the liability of the owners and operators of the NOX Budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the CAA or applicable State law or regulation. The following guidelines shall be followed in assessing fines, penalties or other obligations:

1. For purposes of determining the number of days of violation, if a NOX Budget unit has excess emissions for a

control period, each day in the control period (153 days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

2. Each ton of excess emissions is a separate violation.

### **Section 14 - Individual Unit Opt-Ins**

a. Any unit located in Delaware that meets all of the following provisions may voluntarily opt into the NOX Budget Trading program by submitting to the Department an opt-in application.

1. The unit is not a NOX Budget unit identified in Sections 3(a)(1) of this regulation; and

2. The unit is not exempted under Section 3(b) of this regulation; and

3. The unit can meet the emissions monitoring and reporting requirements of Section 8 of this regulation; and

4. The unit has documented heat input for more than 876 hours in the 6 months immediately preceding the submission of an application for an initial NOX Budget permit under Section 14(b) of this regulation.

b. Each unit identified in Sections 14(a) of this regulation shall submit:

1. To the Department and the Administrator a complete account certificate of representation that meets all of the requirements of Section 6 of this regulation.

2. To the Department a complete NOX Budget permit application that meets all of the requirements of Section 7(b) of this regulation, with the following additional certification statement(s) made by the NOX authorized account representative:

i. "I certify that each unit for which this permit application is submitted under Section 14 of Regulation No. 39 is not a NOX Budget unit under Sections 3(a)(1) of Regulation No. 39, is not covered by a retired unit exemption under Section 3(b) of Regulation No. 39 that is in effect"

ii. For any application for an initial NOX Budget permit, "I certify that the unit meets the requirements of Section 14(a)(4) of Regulation No. 39."

3. To the Department a monitoring plan in accordance with Section 8 of this regulation.

c. The Department shall determine, on an interim basis, the sufficiency of the monitoring plan submitted pursuant to Section 14(b)(3) of this regulation. A monitoring plan is sufficient, for purposes of this interim review, if the plan appears to contain information demonstrating that the NOX emissions rate and heat input of the unit are monitored and reported in accordance with Section 8 of this regulation. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.

1. If the Department determines that the unit's monitoring plan is sufficient the NOX authorized account representative shall:

i. Install and certify all monitoring systems required under Section 8 of this regulation, pursuant to Section 8 of this regulation.

ii. Monitor and report the NOX emissions rate and the heat input of the unit in accordance with Section 8 of this regulation for one full control period during which the percent monitoring data availability is not less than 90 percent and during which the unit is in full compliance with all applicable State or Federal emissions or emissions-related requirements. Solely for purposes of applying the requirements of the prior sentence, the unit shall be treated as a "NOX Budget unit" prior to issuance of a NOX Budget permit covering the unit.

iii. Based on the information monitored and reported under Section 14(c)(1)(ii) of this regulation, submit to the Department the unit's baseline heat input calculated as the unit's total heat input (in MMBTU) for the control period, and the unit's baseline NOX emissions rate calculated as the unit's total NOX mass emissions (in lb) for the control period divided by the unit's baseline heat input.

2. If the Department determines that the unit's monitoring plan is not sufficient the Department shall disapprove the opt-in application.

d. After receipt of the baseline heat input and the baseline NOX emissions rate for the unit under Section 14(c)(1)(iii) of this regulation:

1. The Department shall issue a draft NOX Budget permit on the NOX authorized account representative of the unit. Such permit shall meet all of the requirements of Section 7(c) of this regulation.

2. Within 20 days after the issuance of the draft NOX Budget permit, the NOX authorized account representative of the unit shall either withdrawal its application or submit to the Department a confirmation of the intention to opt in the unit. The Department shall treat any failure to make a timely submission as a withdrawal of the NOX Budget permit application.

3. For units where the NOX authorized account representative confirms the intention to opt in the unit, and after considering any comments received on the draft permit, the Department shall issue a final NOX Budget permit pursuant to Regulation No. 2 or Regulation No. 30, as applicable. The unit shall be a NOX Budget unit upon issuance of the NOX Budget permit, and shall be subject to all of the requirements of this regulation.

e. Notwithstanding Sections 14(a) through 14(d) of this regulation, at any time before the issuance of a final NOX Budget permit:

1. The NOX Budget Opt-in application may be withdrawn.

2. If the Department determines that the unit does not qualify as an Opt-in unit, the Department shall deny the request to opt-in to the NOX Budget Trading Program.

f. Allocations to opt-in units.

1. Under no circumstances shall any allocation to any unit under Section 14(f) of this regulation necessitate adjustments to the allocation to any other NOX Budget Unit.

2. By April 1 immediately before the first control period for which any NOX Budget permit becomes effective, and April 1 of each year thereafter, the Department shall submit to the Administrator an allocation for the next control period in accordance with Section 14(f)(3) of this regulation.

3. Except as provided for in Section 3(b)(6) of this regulation (pertaining to retired units), each Opt-in unit shall receive an annual allocation calculated as follows:

i. The Department shall determine the heat input (in MMBTU) as the lesser of:

A. The Opt-in unit's baseline heat input determined pursuant to Section 14(c)(1)(ii) of this regulation; or

B. The Opt-in unit's heat input for the control period in the year prior to the year of the control period for which the NOX allocations are being calculated, as determined in accordance with Section 8 of this regulation.

ii. The Department shall allocate NOX allowances to the Opt-in unit in an amount equaling the heat input (in MMBTU) determined under Section 14(f)(3)(i) of this regulation multiplied by the lesser of:

A. The Opt-in unit's baseline NOX emissions rate (in lb/MMBTU) calculated pursuant to Section 14(c)(1)(ii) of this regulation; or

B. The lowest NOX emissions limitation (in terms of lb/MMBTU) that is applicable during the control period to the Opt-in unit under State or Federal law or regulation, regardless of the averaging period to which the emissions limitation applies.

g. In the event that a Opt-in unit becomes a NOX Budget unit under Sections 3(a)(1) of this regulation due to modification, reconstruction, or any other reason:

1. The NOX authorized account representative shall, not later than 30 days after such change in the Opt-in unit's regulatory status, notify in writing the Department and the Administrator of such change in the Opt-in unit's regulatory status. This provision is in addition to, and does not exempt or exclude any other State or Federal requirement, including any requirement to secure or amend any construction or operation permit under Regulation No. 2, 25, or 30 of the State of Delaware "Regulations Governing the Control of Air Pollution."

2. The Administrator shall deduct from the NOX Budget unit's compliance account, or the associated overdraft account, NOX allowances equal in number to and allocated for the same or a prior control period as:

i. Any NOX allowances allocated to the NOX Budget unit under Section 14(g) of this regulation for any control period after the last control period during which the

unit's NOX Budget permit was effective; and

ii. If the effective date the NOX Budget unit becomes subject to Section 14(g) of this regulation is during a control period, the NOX allowances allocated to the NOX Budget unit under Section 14(f) of this regulation for that control period multiplied by the ratio of the number of days remaining in the control period, starting with the date the NOX Budget unit becomes subject to Section 14(g) of this regulation, divided by 153.

iii. If the compliance account or overdraft account does not contain sufficient NOX allowances, the Administrator shall deduct the required number of NOX allowances, regardless of the control period for which they were allocated, whenever NOX allowances are recorded in either account.

### **Section 15 - General Accounts**

a. Any person may apply to open a general account for the purpose of holding and transferring NOX allowances by submitting to the Administrator an application to establish a general account. Such application:

1. Shall designate one and only one NOX authorized account representative, and may designate one and only one alternate NOX authorized account representative. Such NOX authorized account representative and any alternate NOX authorized account representative shall be selected by an agreement between all of the persons who have an ownership interest with respect to allowances held in the general account, that is binding on such persons. Such agreement shall include a procedure for authorizing any alternate NOX authorized account representative to act in lieu of the NOX authorized account representative.

2. Shall include all of the following information in a format specified by the Administrator:

i. At the option of the NOX authorized account representative, the organization name and the type of organization;

ii. The name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NOX authorized account representative and any alternate NOX authorized account representative.

iii. A list of all persons subject to a binding agreement for the NOX authorized account representative or any alternate NOX authorized account representative to represent their ownership interest with respect to the allowances held in the general account.

iv. The following certification statement by the NOX authorized account representative and any alternate NOX authorized account representative: "I certify that I was selected as the NOX authorized account representative or the alternate NOX authorized account representative, as applicable, by an agreement that is binding on all persons

who have an ownership interest with respect to allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NOX Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account."

v. The signature of the NOX authorized account representative and any alternate NOX authorized account representative, and the date(s) the account certificate of representation was signed.

3. Shall not include, unless otherwise required by the Administrator, documents of agreement referred to in the application to establish a general account. If submitted, the Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents.

b. Upon receipt by the Administrator of a complete application for a general account under Section 15(a) of this regulation:

1. The NOX authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to NOX allowances held in the general account in all matters pertaining to the NOX Budget Trading Program, notwithstanding any agreement between the NOX authorized account representative and such person. Any such person shall be bound by any order or decision issued to the NOX authorized account representative by the Administrator or a court regarding the general account

2. Any representation, action, inaction, or submission by the alternate NOX authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NOX authorized account representative.

3. The Administrator shall rely on the application submitted pursuant to Section 15(a) of this regulation unless and until the Administrator receives a superseding complete application for a general account changing the NOX authorized account representative or alternate NOX authorized account representative. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NOX authorized account representative or alternate NOX authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new NOX authorized account representative and alternate NOX authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

4. Except as provided in Section 15(b)(3) of this regulation, no objection or other communication submitted

to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the NOX authorized account representative or the alternate NOX authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NOX authorized account representative or the alternate NOX authorized account representative, or the finality of any decision or order by the Administrator under the NOX Budget Trading Program.

5. The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NOX authorized account representative or the alternate NOX authorized account representative for a general account.

c. Changes in Persons having Ownership Interest in any General Account.

1. Within 30 days following any change in the persons having an ownership interest with respect to NOX allowances in the general account, including the addition of persons, the NOX authorized account representative or any alternate NOX authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the NOX allowances in the general account to include the change.

2. In the event a new person having an ownership interest with respect to NOX allowances in the general account is not included in the list of such persons in the account certificate of representation, such new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, actions, inactions, and submissions of the NOX authorized account representative and any alternate NOX authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the Administrator, as if the new person were included in such list.

d. Submissions/Certifications.

1. The NOX authorized account representative or the alternate NOX authorized account representative shall sign and certify all submissions under the NOX Budget trading program with the following certification statement: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NOX allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

2. The Administrator shall accept or act on any submission made under the NOX Budget Trading program only if that submission has been made, signed, and certified in accordance with Section 15(d)(1) of this regulation.

e. Closing of general accounts.

1. The NOX authorized account representative of a general account may instruct the Administrator to close the account by submitting a statement requesting deletion of the account from the NATS and by correctly submitting for recordation under Section 10 of this regulation a request to transfer all NOX allowances held in the account to one or more other NATS accounts.

2. If a general account shows no activity for a period of a year or more and does not contain any NOX allowances, the Administrator may notify the NOX authorized account representative for the account that the account will be closed and deleted from the NATS following 20 business days after the notice is sent. The account will be closed after the 20-day period unless before the end of the 20-day period the Administrator receives a correctly submitted transfer of NOX allowances into the account under Section 10 of this regulation or a statement submitted by the NOX authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

## Appendix "A"

### Allowance Allocations to NOX Budget Units under Section 3(a)(1)(i) and 3(a)(1)(ii) of Regulation No. 39

a. The State trading program budget allocated by the Department to NOX Budget units identified in Section 3(a)(1) of Regulation No. 39 shall equal 5,227 tons of NOX emissions for each NOX control period, beginning with the year 2003 control period. Table 1 of this Appendix "A" identifies the NOX Budget units that receive an allocation, and the size of that allocation. NOX Budget units identified in Section 3(a)(1) of Regulation No. 39 that are not identified in Table 1 do not receive an allocation.

b. Individual unit allocations identified in Table 1 of this Appendix "A" were determined as follows:

1. The unit's base heat input was determined as the average of the units two highest heat inputs for May through September of any of the four years 1995, 1996, 1997, and 1998. Where a unit had heat input during May through September in only one of the years 1995 through 1998, and had zero heat input during May through September of the other three years, that unit's base heat input was determined as the heat input during the non zero year.

2. The unit's base heat input determined in Section (b)(1) of this Appendix "A" was multiplied by a NOX emissions rate factor, and divided by 2000 lb/ton.. NOX emissions rate factor's used were:



i. For any unit that serves a generator with a nameplate capacity of 15 MWe or greater, but less than 25 MWe, the unit's actual average 1996 ozone season NOX emission rate, in lb/MMBTU.

ii. For any unit that serves a generator with a nameplate capacity of 25 MWe or greater, 0.15 lb/MMBTU.

iii. For any unit that does not serve a generator, 0.17 lb/MMBTU.

3. The tonnage determined in Section (b)(2) of this Appendix "A" for all subject units were added together.

4. For each subject unit, the tonnage determined in Section (b)(2) of this Appendix "A" was divided by the tonnage determined in Section (b)(3) of this Appendix "A".

5. The allocation to each subject unit was determined as the product of the factor determined in Section (b)(4) of this Appendix "A" and the state trading program budget identified in Section (a) of this Appendix "A", rounded to the nearest whole ton.

c. Any NOX Budget unit that receives an allocation under this Appendix "A" shall continue to receive that allocation for each control period unless and until such time as the Department revises this Appendix "A" pursuant to 7 Del. C., Chapter 60, and submits that revision to the Administrator as a revision to Delaware's State Implementation Plan.

d. Timing requirements for allocations.

1. No later than sixty (60) days after the effective date of Regulation No. 39, the Department shall submit to the Administrator allocations in accordance with this Appendix "A" for the 2003, 2004, and 2005 control periods.

2. By April 1, 2003 and April 1 of each year

thereafter, the Department shall submit to the Administrator allocations in accordance with this Appendix "A" for the control period in the year that is three years after the year of the applicable deadline for submission under Section (d)(2) of Appendix "A". If the Department fails to submit to the Administrator the allocations in accordance with this Section (d)(2), the Administrator shall allocate, for the applicable control period, the same number of allocations as were allocated for the preceding control period.

**Table 1 - Individual Unit Allocations**

OPERATOR	PLANT	UNIT	1995	1996	1997	1998	NOx	
			Heat Input (MMBTU)	Heat Input (MMBTU)	Heat Input (MMBTU)	Heat Input (MMBTU)	Emission Rate (lb/MMBTU)	Allocation
D-FD	MCKEE RUN	1	0	50446	87701	100459	0.368	19
D-FD	MCKEE RUN	2	386706	59928	94926	128866	0.368	53
D-FD	MCKEE RUN	3	1336784	957093	975350	1479802	0.15	119
D-FD	VAN SANT	1	61900	45590	51702	93782	0.15	7
FIRST STATE	FIRST STATE	127	642482	331239	802817	703689	0.614	259
CONNECTIV	CHRISTIANA SUB	11	54550	15889	36385	56658	0.15	5
CONNECTIV	CHRISTIANA SUB	14	54067	18804	30481	78256	0.15	6
CONNECTIV	DELAWARE CITY	10	10962	3389	14401	1721	0.698	5
CONNECTIV	EDGE MOOR	3	2620203	2545577	2930860	2409740	0.15	234
CONNECTIV	EDGE MOOR	4	3716664	4772838	4069197	4731992	0.15	400
CONNECTIV	EDGE MOOR	5	6395496	6634821	5502246	7638136	0.15	601
CONNECTIV	EDGE MOOR	10	12039	7550	8953	4330	0.698	4
CONNECTIV	MADISON STREET	10	8239	9830	5787	5328	0.698	4
CONNECTIV	WEST SUBSTATION	10	21026	5094	11599	16191	0.698	7
CONNECTIV	HAY ROAD	1	2841727	2563987	1491606	1665519	0.15	227
CONNECTIV	HAY ROAD	2	2229278	2877121	831204	1829101	0.15	215
CONNECTIV	HAY ROAD	3	596599	2684517	1343486	1684822	0.15	184
MOTIVA	DELAWARE CITY	2	1022582	1248427	1298731	1286865	0.17	123
MOTIVA	DELAWARE CITY	105	0	661482	939273	1100754	0.17	97
MOTIVA	DELAWARE CITY	12	1563456	1364509	1401081	1501642	0.17	146
MOTIVA	DELAWARE CITY	19	158563	215049	0	0	0.17	18
MOTIVA	DELAWARE CITY	34	1008710	1177668	1263378	1151553	0.17	116
MOTIVA	DELAWARE CITY	67	492647	1120816	1465546	1960436	0.15	144
MOTIVA	DELAWARE CITY	68	1827653	1834264	1963920	1577947	0.15	160
MOTIVA	DELAWARE CITY	69	1878837	1865021	1891042	1660522	0.15	159
MOTIVA	DELAWARE CITY	70	1825849	1933117	1905578	1806235	0.15	162
MOTIVA	DELAWARE CITY	72	1249817	0	0	0	0.17	119
MOTIVA	DELAWARE CITY	74	1340710	1340142	1507433	1524650	0.17	145
MOTIVA	DELAWARE CITY	CT	0	0	0	0	0.15	0
MOTIVA	DELAWARE CITY	CT	0	0	0	0	0.15	0
CONNECTIV	INDIAN RIVER	1	2346108	1891753	1862828	2095177	0.15	187
CONNECTIV	INDIAN RIVER	2	1738093	2176161	2226615	2371839	0.15	193
CONNECTIV	INDIAN RIVER	3	3789624	3827660	4216963	4520919	0.15	368
CONNECTIV	INDIAN RIVER	4	8304494	8250941	6635691	8975537	0.15	727
CONNECTIV	INDIAN RIVER	10	29472	11931	28745	43603	0.698	14
							<b>Total</b>	<b>5227</b>

## Appendix "B"

### Regulation No. 37 - Regulation No. 39 Program Transition

a. Individual Unit Opt-ins. The Department may require any unit that is an opt-in unit under Regulation No. 37 of Delaware's "Regulations Governing the Control of Air Pollution" to be an opt-in unit under Section 14 of Regulation No. 39 of Delaware's "Regulations Governing the Control of Air Pollution."

b. Penalties. For any NOX Budget unit under Regulation No. 37 of Delaware's "Regulations Governing the Control of Air Pollution" that has excess emissions following the year 2002 control period, the Administrator shall deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NOX allowances, allocated for the 2003 or subsequent control periods, equal to three times the number of the unit's excess emissions in the 2002 control period.

c. Regulation No. 37 transition allocation. Any Delaware source that holds, in its Regulation No. 37 compliance account, NOX allowances that were allocated for the year 2000, 2001, or 2002 control periods under the OTC NOX Budget program (i.e., Regulation No. 37 of Delaware's "Regulations Governing the Control of Air Pollution") and that were not used or required to be used for compliance with the requirements of Regulation No. 37 for the 2002 or prior control period, may be eligible for a special, one-time "transition allocation."

1. An application for a transition allocation under Section (c) of this Appendix "B" shall be submitted to the Department no later than March 1, 2003, and shall include all of the following information:

- i. Identification of the affected NOX Budget source and NOX Budget unit;
- ii. Identification of the quantity of NOX allowances remaining in the unit's Regulation No. 37 compliance account as of February 1, 2003;
- iii. Identification by serial number of all NOX allowances remaining in the unit's Regulation No. 37 compliance account as of February 1, 2003; and
- iv. Certification by the NOX authorized account representative consistent with Section 6(d) of Regulation No. 39.

2. Not later than April 1, 2003, the Department shall approve or deny any request received under Section (c)(1) of this Appendix "B".

i. For any request that is approved, the Department shall notify the NOX authorized account representative, and shall submit to the Administrator an allocation to the NOX Budget unit's compliance account in accordance with the provisions of Section (c)(3) of this Appendix "B".

ii. For any request that is not accurate or

submitted in accordance with Section (c)(1) of this Appendix "B", the Department shall notify the NOX authorized account representative that the request is denied, including the reason(s) for any denial.

3. Any NOX authorized account representative whose request is approved under Section (c)(2)(i) of this Appendix "B" shall receive a transition allocation as follows:

i. If the total number of allocations requested, and as approved by the Department, totaled among all Delaware NOX Budget units is 168 or less the Department shall allocate to each subject unit their requested allocation.

ii. If the total number of allocations requested, and as approved by the Department, totaled among all Delaware NOX Budget units is greater than 168, the Department shall allocate to each subject unit according to the following formula:

$$\text{Unit's allocation} = \frac{[(\text{Unit's requested and approved allocation}) / (\text{Total number of requested and approved allocations among all Delaware sources})] \times 168}{X}$$

where: "Unit's requested and approved allocation" is the number allocations requested by the unit's NOX authorized account representative and approved by the Department in accordance Section (c)(2)(i) of this Appendix "B".

"Total number of requested and approved allocations among all Delaware sources" is the sum total of all allocations requested in accordance with Section (c)(1) of this Appendix "B", and approved by the Department in accordance with Section (c)(2)(i) of this Appendix "B", among all Delaware sources..

"Unit's allocation" shall be whole number, with all fractional allocations rounded down to the next whole number.

4. No later than May 1, 2003, the Department shall submit to the Administrator for recordation the allocations determined under Section (c) of this Appendix "B".

5. Allocations recorded under Section (c)(4) of this Appendix "B" may be deducted for compliance under Section 12 of this regulation for the control periods in 2003 or 2004. The Administrator shall deduct as retired any NOX allowance that is recorded under Section (c)(4) of this Appendix "B" and is not deducted for compliance in accordance with Section 12 Regulation No. 39 for the 2003 or 2004 control period.

6. NOX allowances recorded under Section (c)(4) of this Appendix "B" shall be treated as banked allowances in 2004.

d. To provide for the transition from the program established under Regulation No. 37 to the program established under this Regulation No. 39; for any NOX Budget unit that is subject to both Regulation No. 37 and Regulation No. 39, the Department may allow that unit to comply with any requirement of Regulation No. 39 in lieu of any substantially equivalent requirement of Regulation No. 37. Such requirements may include, but are not limited to permitting, record keeping, monitoring, and reporting requirements.

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Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
STATE EXAMINING BOARD OF PHYSICAL  
THERAPISTS**

Statutory Authority: 24 Delaware Code,  
Section 2604 (24 Del.C. §2604)

**Summary of the Evidence and Information Submitted  
Written Comments**

The Delaware Physical Therapy Association submitted written comments addressing the proposed rules and regulations. The written comments were contained in a letter dated August 3, 2000, signed by Erik Van Doorne, P.T., President of the Delaware Physical Therapy Association. The letter was received by the Division of Professional Regulation on August 7, 2000, and is attached herein as "Exhibit A." The following is a summary of the proposed changes mentioned in the letter:

1. A recommendation was made to clarify the provision in Section 1.1.3 of the Rules and Regulations that says, "A prescription accompanying a patient must not be substantially modified without documented consultation with the referring practitioner." The letter suggested that this provision be clarified in regards to prescriptions which may be satisfied by generic means. The letter also suggested that prescriptions which simply state "evaluate and treat" be

clarified in regards to this provision.

2. A recommendation was made to reclassify the references to direct supervision in Sections 1.2.2, 1.2.3, 1.2.5, and 1.2.7 into several other classes of supervision. The letter suggested that a physical therapist not be allowed to supervise more than 2 people at a time. A suggestion was also made to include aides and students into any supervision ratio.

3. A recommendation was made that certain skilled treatment interventions not be allowed to be performed by certain physical therapy aides as permitted under Sections 5.1.1., 5.1.3, 5.1.8, and 5.1.10. The letter also suggested that support personnel not be allowed to perform ambulation and transfers.

4. A recommendation was made not to remove the requirement that CEU be completed from various categories. Mr. Everett Fitzgerald, P.T., submitted written comments addressing the proposed rules and regulations. The written comments were contained in a letter dated August 3, 2000, signed by Everett Fitzgerald, P.T., Clinical Manager at Christiana Care Health Services. The letter was received by the Division of Professional Regulation on August 9, 2000, and is attached herein as "Exhibit B." The following is a summary of the proposed changes mentioned in the letter:

1. A recommendation was made to consider whether Advanced Practice Nurses are included with those practitioners who have the authority to prescribe physical therapy in Section 1.1.3.

2. A recommendation was made to include the

following in the Board's rules and regulations: professions which are represented in the Board, the frequency of Board elections, the nomination procedure for Board candidates, the experience required of Board candidates, and the time and place Board meeting notices are posted for public review.

Mr. Joseph A. Lucca, P.T., Ph. D., submitted written comments addressing the proposed rules and regulations. The written comments were contained in a letter dated August 14, 2000, signed by Joseph A. Lucca, P.T., Ph. D., Associate Professor at the University of Delaware. The letter was received by the Division of Professional Regulation on August 14, 2000, and is attached herein as "Exhibit C." Dr. Lucca suggested that "sharp wound debridement and manipulation techniques" be added to the list of prohibited activities for Physical Therapy Assistants in Section 3.0 of the Rules and Regulations. Dr. Lucca explained that these treatments are among the most sophisticated tools used by physical therapists and that they require a great deal of training.

#### **Sworn Testimony**

Mr. Erik Van Doorne, P.T., offered testimony consistent with his written comments.

Ms. Kathy Ciolek, P.T., offered testimony that a supervision ratio including aides and students be established. Ms. Ciolek asked that the Board prescribe a definite number of persons that Physical Therapists were allowed to supervise in order to provide guidance to practitioners. Ms. Ciolek also suggested that the phrase "direct supervision" in Sections in 1.2 not apply to all Physical Therapist Assistants, Athletic Trainers, and support personnel. Ms. Ciolek suggested that different levels of supervision be correlated to the different persons to which they apply.

Mr. Joseph Lucca, P.T., Ph. D., offered testimony consistent with his written comments. Mr. Lucca later withdrew his suggestion that sharp wound debridement be included in Section 3.0.

#### **Findings of Fact**

1. Pursuant to 24 *Del. C.* § 2604(1), the Delaware State Examining Board of Physical Therapists (the "Board") proposed to revise to its rules and regulations as more specifically set forth in the Hearing Notice which is attached hereto as Exhibit "D" and incorporated herein.

2. Pursuant to 29 *Del. C.* § 10115, notice was given to the public that a hearing would be held on August 15, 2000, at 6:00 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware to consider the proposed revision. Notice was posted in two Delaware newspapers of general circulation as more specifically set forth in the affidavits which are

attached hereto as Exhibits "E" and "F" and incorporated herein.

3. The notice invited the public to submit written comments regarding the proposed revision.

4. A hearing was held on August 15, 2000, at which a quorum of the State Examining Board of Physical Therapists was present.

5. The Board finds that the suggested changes to Section 1.1.3 are unnecessary as the Board is not charged with determining those persons who have prescriptive authority under Delaware Law. The Board finds the suggested amendments concerning Board composition and procedures are already described in 24 *Del. C.* Chapter 26.

6. The Board finds that the suggested change to Section 3.0 concerning Physical Therapy Assistants is unnecessary. The Board finds that the performance of manipulations would be in conflict with current provisions of 24 *Del. C.* § 2602 and Section 3.0 of the Rules and Regulations.

7. The Board finds it unnecessary to further clarify prescriptions which state "generic may be substituted" and "evaluate and treat". The Board finds that those prescriptions should be interpreted as stated.

8. The Board finds that the current ratio of supervision and the definitions of "direct supervision" in the Rules and Regulations to be adequate for the protection of the public.

9. The Board finds that infrared and ultrasound are treatments that can be performed by support personnel.

10. The Board finds it unnecessary to adopt the suggested limitations on each category of continuing education. 11. The State Examining Board of Physical Therapists finds the proposed revisions serve to implement or clarify specific sections of 24 *Del. C.* Chapter 26 .

#### **Text and Citation**

The text of the Rules and Regulations hereby promulgated are as it appeared in the Delaware Register of Regulations, Vol. 4, Issue 1 (July 1, 2000). The text is attached hereto in "Exhibit D" with the changes noted.

#### **Decision**

After consideration of the verbal and written comments received, the Board has decided to change Sections 1.5.21, 5.1.1, and 5.1.3 of the Proposed Rules and Regulations. The proposed changes to these Sections will be published in the Register of Regulations and the Board will proceed to a public hearing in accordance with the Delaware Administrative Procedures Act. The remainder of the Proposed Rules and Regulations have been passed by the Board.

**NOW, THEREFORE**, based on the State Examining Board of Physical Therapists' authority to formulate rules

and regulations pursuant to 24 *Del. C.* § 2604(1), it is the decision of the State Examining Board of Physical Therapists to adopt the proposed revision of its rules and with the exception of Sections 1.5.21, 5.1.1, and 5.1.3. A copy of the rules and regulations is attached hereto as Exhibit "D" and incorporated herein. Such regulations shall be effective ten days after the date this Order is published in its final form in the Register of Regulations.

**IT IS SO ORDERED** this \_\_\_\_\_ day of August, 2000.

### Delaware State Examining Board Of Physical Therapists

Phillip N. Barkins, President  
 Carolyn Cotter, Vice-President  
 Tara J. Manal, Secretary  
 Phyllis Collins  
 Lynn M. Doherty  
 Faith K. Hannagan  
 Roger Hunt  
 Danna Levy  
 Kathy Watson

ATTEST:

Susan Miccio, Administrative Assistant to the Board

This is to certify that the above and foregoing is a true and correct copy of the Order of the Delaware State Examining Board of Physical Therapists in the Matter of Adoption of Regulations.

- 1.0 Scope and Objectives
- 2.0 Definitions
- 3.0 Board
- 4.0 Physical Therapists
- 5.0 Physical Therapist Assistants
- 6.0 Athletic Trainers
- 7.0 Physical Therapy Aides
- 8.0 Admission to Practice: License by Examination
- 9.0 Continuing Education Units
- 10.0 Admission to Practice: License by Reciprocity
- 11.0 Temporary Licensure
- 12.0 Foreign Trained Applicant for Licensure
- 13.0 Reactivation of Licensure
- 14.0 Disciplinary Action
- 15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

#### 1.0 Scope and Objectives

Under 24 *Del.C.* Ch. 26 (The Practice Act), a State Examining Board of Physical Therapists is created to meet the following objectives:

- 1.1 to protect the general public,
- 1.2 to maintain minimum standards of practitioner

competency, and

1.3 to maintain certain standards in the delivery of service to the public.

The Board regulates the practice of Physical Therapists (PTs), Physical Therapist Assistants (PTAs) and Athletic Trainers (ATs) in the State of Delaware.

#### 2.0 Definitions

2.1 The definition of "Physical Therapy" by Delaware Law is provided by the Practice Act, 24 *Del.C.* §2602(1). Physical Therapy includes the performance and interpretation of tests and measurements of bodily function as an aid in the examination, evaluation or treatment of any human conditions. Physical therapy does not include the practice of Athletic Training as defined in 24 *Del.C.* §2602.

2.2 Physical Therapist or PT means a person who is licensed under 24 *Del.C.* Ch. 26 to practice Physical Therapy.

#### 2.3 Consultation

2.3.1 Consultation in direct access. A physician must be consulted if a patient is still receiving physical therapy after 30 calendar days have lapsed from the date of the initial assessment. This consultation must be documented and could take place at any time during the initial thirty day period. The consultation can be made by telephone, fax, in writing, or in person. There is nothing in these rules and regulations or in the Physical Therapy Law that limits the number of consultations the physical therapist can make on the patient's behalf. The consult should be with the patient's personal physician. If the patient does not have a personal physician, the physical therapist is to offer the patient at least three physicians from which to choose. The referral to a physician after the initial thirty day period must not be in conflict with 24 *Del.C.* §2616(a)(8) of this chapter which deals with referral for profit. If no physician consult has been made in this initial thirty day period then treatment must be terminated. A patient is not to receive physical therapy from the same practitioner, for the original complaint, during the 6 months following discharge unless he or she has a physician referral.

2.3.2 Consultation with written prescription from a physician, dentist, podiatrist, or chiropractor. A prescription accompanying a patient must not be substantially modified without documented consultation with the referring practitioner. The consultation can be made by telephone, fax, in writing, or in person.

2.4 Direct supervision in connection with a PT practicing under a temporary license means:

2.4.1 a licensed PT supervisor shall be on the premises when the individual with a temporary license is practicing and

2.4.2 evaluations and progress notes written by the individual with a temporary license shall be co-signed by the licensed PT supervisor.

2.5 Physical Therapist Assistant or PTA means a person who is licensed under 24 ~~Del.C.~~ Ch. 26 to assist licensed Physical Therapists.

2.6 Supervision

2.6.1 Direct supervision in relation to a PTA with less than one (1) year experience means a PT shall be on the premises at all times and see each patient.

2.6.2 Direct supervision in relation to a PTA with one (1) year or more experience means that a PTA must receive on-site, face to face supervision at least once every fifth treatment day or once every three weeks, whichever occurs first. The supervising PT must have at least one (1) year clinical experience. The PT must be available and accessible by telecommunications to the PTA during all working hours of the PTA.

2.6.3 The PT is responsible for the actions of the PTA when under his/her supervision. All supervision must be documented.

See 1 DE Reg. 714 (12/1/97)

2.7 The definition of "Athletic Training" by Delaware Law is provided by the Practice Act, 24 ~~Del.C.~~ §2602(4). Athletic Training means and includes:

2.7.1 prevention of athletic injuries,

2.7.2 recognition and evaluation of athletic injuries,

2.7.3 management, treatment, and disposition of athletic injuries,

2.7.4 rehabilitation of athletic injuries,

2.7.5 organization and administration of athletic training programs, and

2.7.6 education and counseling of athletes regarding a program(s) of athletic training.

2.7.7 Athletic Training shall also include prevention, conditioning, and reconditioning of non-athletic injuries as defined by law and in regulation by the Board.

2.8 Athletic Trainer or AT means a person who is licensed under Ch. 26 and is defined by the Practice Act 24 ~~Del.C.~~ §2602(5).

2.9 Direct supervision in connection with an AT means a PT shall be on the premises at all times in a clinical setting and see every patient.

2.10 On site or on premises, in connection with supervision of a PTA or AT, means that the PTA or AT must be in the same physical building as the supervising PT. On site or on premises does not refer to attached buildings.

See 1 DE Reg. 714 (12/1/97)

2.11 Physical Therapy Aide or aide or technician means a person who performs certain routine, designated physical therapy tasks under the direct supervision of a licensed physical therapist or physical therapist assistant. There shall be documented evidence of sufficient inservice training to assure safe performance of the duties assigned to the aide.

2.12 Direct supervision in connection with an aide

means a licensed physical therapist or physical therapist assistant shall be personally present and immediately available within the treatment area to give aid, direction, and instruction when procedures are performed.

2.13 Unprofessional Conduct. A Physical Therapist, PTA, or AT whose behavior fails to conform to legal standards and accepted standards of their profession, and who thus may adversely affect the health and welfare of the public, may be found guilty of unprofessional conduct. Such unprofessional conduct shall include, but not be limited to, the following:

2.13.1 Assuming duties within the practice of physical therapy or athletic training without adequate preparation or supervision or when competency has not been maintained.

2.13.2 The PT who knowingly allows a PTA to perform prohibited activities may be guilty of unprofessional conduct.

2.13.3 The PTA who knowingly performs prohibited activities may be guilty of unprofessional conduct.

See 1 DE Reg. 714 (12/1/97)

2.13.4 Performing new physical therapy or athletic training techniques or procedures without proper education and practice or without proper supervision.

2.13.5 Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.

2.13.6 Inaccurate recording, falsifying, or altering a patient or facility record.

2.13.7 Committing any act of verbal, physical, mental or sexual abuse of patients.

2.13.8 Assigning untrained persons to perform functions which are detrimental to patient safety, for which they are not adequately trained or supervised, or which are not authorized under these rules and regulations.

2.13.9 Failing to supervise individuals to whom physical therapy tasks have been delegated.

2.13.10 Failing to safeguard the patient's dignity and right to privacy in providing services regardless of race, color, creed and status.

2.13.11 Violating the confidentiality of information concerning the patient.

2.13.12 Failing to take appropriate action in safeguarding the patient from incompetent health care practice.

2.13.13 Practicing physical therapy as a PT or PTA or athletic training as a trainer when unfit to perform procedures or unable to make decisions because of physical, psychological, or mental impairment.

2.13.14 Practicing as a PT, PTA or AT when physical or mental ability to practice is impaired by alcohol or drugs.

2.13.15 Diverting drugs, supplies or property of a

patient or a facility.

2.13.16 Practicing physical therapy or athletic training as a PT or AT and/or practicing under the supervision of a PT as a PTA or AT when a license has expired.

2.13.17 Allowing another person to use his license.

2.13.18 Resorting to fraud, misrepresentation, or deceit in taking the licensing examination or obtaining a license as a PT, PTA or AT.

2.13.19 Impersonating any applicant or acting as proxy for the applicant in a PT, PTA, or AT licensing examination.

2.13.20 Continues to treat a patient, who initiated treatment without a formal referral, for longer than thirty days without a physician consult.

2.13.21 Modifies a treatment prescription without consulting referring physician.

2.13.22 Failing to comply with the mandatory continuing education requirements of 24 ~~Del.C.~~ §2606(a)(4) and section 9.0 of these rules and regulations.

2.14 Examination means the approved examination (see section 8.3):

### 3.0 The State Examining Board of Physical Therapists

3.1 The Board shall consist of nine members who shall be residents of Delaware and who shall be appointed by the Governor. A list of professional nominees shall be submitted to the Governor by the President of the Delaware Chapter of the American Physical Therapy Association (APTA). Each of the four PT Board members shall be a licensed PT, have a least three years experience immediately preceding his appointment, and be actively engaged in Physical Therapy during his/her incumbency. Three members shall be consumers, one shall be a registered PTA and one shall be a registered AT.

3.2 The Board shall be composed of a Chairperson, Vice-Chairperson, Secretary, and six members. Elections shall be held annually.

3.3 Each member of the Board shall receive compensation for each day actually engaged in the discharge of his duties. The compensation shall be a reasonable amount based on the time spent on work pertaining to the affairs of the Board in accordance with the limitations imposed by the State.

3.4 The Board shall have the authority to review, revise, adopt and administer the rules and regulations in accordance with the Administrative Procedures Act, and shall have the authority to perform the following:

3.4.1 Approval of qualified applicants for examination and for reciprocity.

3.4.2 Issuance of licenses and registrations through the Division of Professional Regulation to Applicants who are qualified under these rules and regulations.

3.4.3 Refer to the Division of Professional

Regulation and assist in the investigation of individuals who are charged with violation of legal, moral, or ethical propriety. The Board may refuse to grant or may revoke a PT, PTA or AT license if the PT, PTA or AT:

3.4.3.1 has been found to misuse drugs or alcohol;

3.4.3.2 has been convicted of a state or federal law related to the use, sale or possession of drugs;

3.4.3.3 has obtained or attempted to obtain a license by fraud or material misrepresentation;

3.4.3.4 is guilty of any act derogatory to the standing and ethics of the profession of Physical Therapy or athletic training;

3.4.3.5 is unable to practice as a competent PTA, AT or Physical Therapist because of a physical or mental condition;

3.4.3.6 is guilty of unprofessional conduct;

3.4.3.7 otherwise violates 24 ~~Del.C.~~ Ch. 26.

3.5 The Administrative Assistant provided to the Board by the Division of Professional Regulation shall maintain the meeting records and a register of current valid licenses which shall be available for public examination. The Administrative Assistant shall also keep other records pertinent to the operation of the Board.

3.6 Communication with the Delaware Chapter of the APTA. The Chairperson shall represent the Board at the Chapter's official meeting. The AT member shall represent the Board at NATA's official meeting.

3.7 Performance of all other necessary acts consistent with the Law to administer these rules and regulations and enforce 24 ~~Del.C.~~ Ch. 26.

3.8 Specific duties of the officers:

3.8.1 The Chairperson:

3.8.1.1 Shall call meetings of the Board at least twice a year. A majority of the Board shall have the authority to call a meeting.

3.8.1.2 Shall arrange for the location of the examination and appoint a proctor with the approval of the Division of Professional Regulation.

3.8.1.3 Shall represent the Board in all official functions and act as Board spokesperson.

3.8.2 The Vice-Chairperson:

3.8.2.1 Shall substitute for the Chairperson during the officer's absence.

3.8.2.2 Shall maintain a file on amendments to the regulations.

3.8.2.3 Shall receive information (in conjunction with the Administrative Assistant).

3.8.3 The Secretary:

3.8.3.1 Shall perform clerical duties of processing applications, requesting required information for reciprocity and administering the examinations.

3.8.3.2 Shall maintain a liaison with the Division of Professional Regulation, which provides



services of printing, mailing and record keeping.

3.8.3.3— Shall receive information from the applicant for granting a license for the applicant.

3.8.3.4— Shall compile the Board's decisions and take action on the decisions as the Board requests.

3.8.3.5— Shall be responsible together with the Division of Professional Regulation for the preparation, communication, and distribution of official forms used in the operations of the Board.

3.8.3.6— Shall arrange reviews of foreign-trained applicants.

## 4.0 Physical Therapists

The Physical Therapy license issued to qualified professionals does permit them to treat any person.

## 5.0 Physical Therapist Assistants

The PTA may treat patients only under the direction of a PT as defined in Section 2.2. The PTA may perform physical therapy procedures and related tasks that have been selected and delegated by the supervising PT. The PTA may administer treatment with therapeutic exercise, massage, mechanical devices, and therapeutic agents that use the properties of air, water, electricity, sound or light. The PTA may make minor modifications to treatment plans within the predetermined plan of care, assist the PT with evaluations, and document treatment progress. The ability of the PTA to perform the selected and delegated tasks shall be assessed by the supervising PT. The PTA shall not perform interpretation of referrals, physical therapy evaluation and reevaluation, major modification of the treatment plan, final discharge of the patient, or therapeutic techniques beyond the skill and knowledge of the PTA or without proper supervision.

See 1 DE Reg. 714 (12/1/97)

## 6.0 Athletic Trainers

6.1— The athletic trainer functioning in the non-clinical setting may evaluate, treat, and provide appropriate first aid to injuries incurred by the athlete during participation in or training for scholastic, professional, or sanctioned amateur athletic activities. All treatments for injuries to athletes require a physician's referral, except for minor sprains, strains, and contusions, first aid excluded. Evaluation and/or treatment by the athletic trainer to supportive staff, spectators, and other persons other than the athlete shall be limited to first aid. An athletic trainer functioning in a clinical setting may use therapeutic exercises and modalities such as heat, cold, light, air, massage, water, sound, and electricity, for the treatment of musculoskeletal injuries. The athletic trainer may also provide first aid in the clinical setting. All treatment by the athletic trainer in a clinical setting must be performed while under the direct, on-site supervision of a physical therapist. The AT may make

minor modifications to treatment plans within the predetermined plan of care, assist the PT with evaluations, and document treatment progress. The ability of the AT to perform the selected and delegated tasks shall be assessed by the supervising AT. The athletic trainer in a clinical setting may not independently initiate, modify, or discharge a patient's program.

6.2— The PT who knowingly allows an AT to perform prohibited activities may be guilty of unprofessional conduct.

6.3— At no time may a PT supervise more than 2 PTAs, 2 ATs or 1 PTA and 1 AT. A PT may only supervise 1 PTA off site. ATs must be supervised on site.

## 7.0 PT Aides

7.1— Treatments which may be performed by aides under direct supervision are:

- 7.1.1— gait practice and ambulation
- 7.1.2— functional activities
- 7.1.3— transfers
- 7.1.4— routine follow-up of specific exercises
- 7.1.5— hot or cold packs
- 7.1.6— whirlpool/Hubbard tank
- 7.1.7— contrast bath
- 7.1.8— infrared
- 7.1.9— paraffin bath
- 7.1.10— developmental stimulation
- 7.1.11— ultra sound

7.2— Exceptions— An aide may perform:

7.2.1— non-treatment related activities, such as secretarial, clerical, and housekeeping duties without direct supervision;

7.2.2— patient related activities that do not involve treatment, including transporting patients, undressing and dressing patients, and applying assistive and supportive devices without direct supervision, and

7.2.3— set up and preparation of patients requiring treatment using PT modalities.

7.3— Prohibited Activities— An aide may not perform:

- 7.3.1— evaluation, or
- 7.3.2— treatments other than those listed in Section

7.1.

7.4— The PT or PTA who knowingly allows a PT aide to perform prohibited activities may be guilty of unprofessional conduct.

7.5— An aide who violates these regulations shall be considered by the Board to be practicing in violation of the Practice Act.

## 8.0 Admission to Practice: License by Examination

8.1— Applications, copies of the rules and regulations, and copies of the Practice Act are available from the Division of Professional Regulation.

8.2— Applicants for PT or PTA licensure shall not be

admitted to the examination without the submission of the following documents four weeks prior to the examination date:

8.2.1 Professional Qualifications — proof of graduation (official transcript) from an educational program for the PT or PTA which is accredited by the appropriate accrediting agency as set forth in the Practice Act. If the applicant graduated from a school prior to 1936, the school shall have been approved by the APTA at the time of graduation.

8.2.2 A fee in check or money order payable to the State of Delaware.

8.2.3 A completed application form.

8.3 Any United States citizen taking the PT or PTA exam must show legal proof of identity, such as a driver's license or passport. The proof of identity must have a picture and signature. The Board may use the PT and PTA examination endorsed by the APTA, the Federation of State Boards of Physical Therapy or National Athletic Trainers Association. AT candidates must pass the Certification Examination endorsed by National Athletic Trainers' Association (NATA). Uniform national test dates will be used if available.

See 1 DE Reg. 714 (12/1/97)

8.4 All applicants for licensure as a PT or PTA must successfully pass the examination described in Section 8.3 in order to become eligible for licensure. The Board will adopt the criterion-referenced passing point recommended by the Federation of State Boards of Physical Therapy. The passing point shall be set to equal a scaled score of 600 based on a scale ranging from 200 to 800. All sections of the examination shall be passed. In case of failure, the applicant may take a second examination after submitting the applicable fee. Only sections failed must be repeated. The second examination shall be taken after six months and within two years from the date of the first examination. If the applicant fails any subsequent examination, the applicant must show satisfactory proof to the Board that he/she has taken Board approved corrective action (e.g. refresher course) before being allowed to take the examination again.

See 1 DE Reg. 714 (12/1/97)

8.5 Applicants for licensure as an AT must submit to the Board the following:

8.5.1 Professional Qualifications — proof of graduation (official transcript) from an educational program accredited by the appropriate accrediting agency.

8.5.2 A passing grade on the Professional Certification Examination as determined by the National Athletic Trainers Association (NATA).

8.5.3 All sections of the examination shall be passed.

8.5.4 A check or money order made payable to the State of Delaware, as noted on the application form.

8.5.5 The completed application form.

8.6 Licenses shall expire biennially on every odd numbered year. The following items shall be submitted upon application for renewal:

8.6.1 completed renewal application form

8.6.2 applicable fee, and

8.6.3 for individuals seeking relicensure, evidence of continuing education courses as provided by Section 9.

#### 9.0 Mandatory Continuing Education Units (CEU's)

9.1 Three CEU's are required for every biennial license renewal for Physical Therapists, Physical Therapist Assistants, and Athletic Trainers. The Continuing Education Unit Activity Record (CEUAR) credits shall be received at the Division of Professional Regulation, Dover, Delaware, no later than November 1st every even numbered year and shall be received every 2 years after such date.

See 1 DE Reg. 714 (12/1/97)

9.2 Individuals shall maintain the following items in order to receive credit for CEU's:

9.2.1 name of applicant seeking renewal

9.2.2 license classification (PT, PTA, AT)

9.2.3 license number of applicant

9.2.4 proof of attendance at CEU course

9.2.5 date of CEU course

9.2.6 instructor(s) of CEU course

9.2.7 sponsor of CEU course

9.2.8 title of CEU course

9.2.9 number of hours of CEU course

See 1 DE Reg. 714 (12/1/97)

9.3 Continuing Education Regulations, 24 ~~Del.C.~~ §2607. Licenses shall expire biennially on January 1st and may be renewed upon submission of a renewal application provided by the Board and payment of a renewal fee along with evidence of continuing education courses as may be required by the rules and regulations set forth by the Board. Each licensed Physical Therapist, Physical Therapist Assistant and Athletic Trainer is responsible for continuing his/her education so that professional skills are maintained in accordance with the advancement of the profession. The purpose of this is to help Physical Therapists, Physical Therapist Assistants and Athletic Trainers become more efficient in achieving their objectives.

See 1 DE Reg. 714 (12/1/97)

9.3.1 For a licensee to renew a license, documentation of three continuing education units over the two year period immediately preceding application are required for renewal. CEU requirements shall be prorated for new licensees if application is made by examination only. If the license is granted during the six month period shown below, the following will be required for renewal:

Odd Numbered Year Even Numbered Year

1/1 - 6/30 2.5 CEUs 1/1 - 6/30 1.5 CEUs

7/1 - 12/31 2.0 CEUs 7/1 - 12/31 .5 CEUs

Applicants who are issued licenses via endorsements will be required to complete the full requirements for continuing education units prior to the next renewal time.

9.3.2 One CEU will be given for every 10 hours of an approved continuing education course. (1 contact hour = .1 CEU). Each course must include topics relevant to the field of health care as it pertains to Physical Therapy or Athletic Training. Approval of CEU's shall be within the discretion of the State Examining Board of Physical Therapists. Continuing education units that have been previously approved during the current licensing period by another agency such as a national governing body or a fellow state licensing board shall be acceptable to the Examining Board for the State of Delaware as appropriate CEU's. Any sponsors or licensees wishing to receive prior written approval of CEU courses from the Examining Board must complete a CEU Application Form. CEU requirements may not be carried over from one biennial period to the next one.

9.3.3 At the time of license renewal, the appropriate forms will be supplied by the Board. Proof of attendance shall be enclosed by the licensee when requested by the Board. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance. The CEUAR must be received by the Board no later than 60 days prior to license expiration. All licensees must complete and submit to the Board the CEUAR. If randomly selected, the licensee must submit documentation of the CEU's. All questionable CEUAR's will be re-evaluated.

9.3.4 In the event a licensee shall fail to complete the required credits at the end of the applicable period, the Board may withhold issuance of a permanent license unless the CEUAR required by Section 9.3.3 is accompanied by a specific plan for making up the deficiency of necessary credits within 120 days after the date the CEUAR is signed by the licensee. The plan shall be deemed accepted by the Board unless within 60 days after the receipt of the CEUAR the Board notifies the licensee to the contrary. Full completion of the licensee's plan shall be reported by CEUAR not later than 15 days following the end of the 120 day period. Failure to complete the specific plan within the 120 day period may result in the Board suspending the license issued, following a hearing pursuant to the Administrative Procedures Act, for unprofessional conduct as defined by Section 2.13.22.

9.3.5 The Board has the power to waive any part of the entire CEU requirement. Exemptions to the CEU requirement may be granted due to prolonged illness or other incapacity. Application for exemption shall be made in writing to the Board by the applicant for renewal and must be received by the Board no later than November 1st of the end of the respective CEU term.

9.3.6 CEU's may be earned through Board

approved courses in colleges and universities, extension courses, independent study courses, workshops, seminars, conferences, lectures, videotapes, professional presentations and publications, and inservices oriented toward the enhancement of their respective professional's practice. CEU programs shall be conducted under responsible sponsorship, capable direction and qualified instruction. The program may include staff development activities of agencies and cross-disciplinary offerings.

9.3.7 Examples of acceptable continuing education which may be approved by the Board fall under the following categories:

- 9.3.7.1 professional meetings\*. To include: national, state, chapter (not to exceed 2.0 CEU's)
- 9.3.7.2 seminars/workshops\* (not to exceed 2.5 CEU's)
- 9.3.7.3 university/college courses
  - 1.0 CEU for semester
  - 0.8 CEU for trimester
  - 0.7 CEU for quarter
- 9.3.7.4 staff/faculty inservices\* (not to exceed .5 CEU's)
- 9.3.7.5 passing of licensing examination (1.5 CEU's)
- 9.3.7.6 first time presentation of professionally oriented course/lecture\* (0.3 CEU/hour, not to exceed .6 CEU's per presentation, not to exceed 1.2 total)
- 9.3.7.7 original publication in peer reviewed publication (.3 CEU's)
- 9.3.7.8 original publication in non-peer reviewed publication (.1 CEU's)
- 9.3.7.9 approved self studies\* (not to exceed 1.0 CEU) including:
  - videotapes, if:
  - there is a sponsoring agency
  - there is a facilitator or program official present
  - the program official is not the only attendee
  - correspondence course, if a sponsoring agency provides a certificate of completion
- 9.3.7.10 holding of an office, to include:
  - executive officer's position for the national or state professional associations (President Vice President, Secretary, Treasurer)
  - member, Examining Board of Physical Therapy (.3 CEU's)
- 9.3.7.11 acting as the direct clinical instructor providing supervision to a PT, PTA or AT student officially enrolled in an accredited institution during an internship (40 contact hours = .1 CEU, not to exceed .5 CEU's)

\*—The Board will determine the appropriate number of contact hours.

See 1 DE Reg. 714 (12/1/97)

#### 10.0 Admission to Practice, Licensure/Registration by Reciprocity:

Definition— The granting of a license or registration to an applicant who meets all the requirements set forth in this section and who holds a valid current license/registration in another state, territory, or the District of Columbia.

10.1— The reciprocity applicant shall submit the documentation listed in sections 8.2 or 8.5.

10.2— The reciprocity applicant shall submit proof that he/she is currently licensed or registered as a PT, PTA or AT by a regulatory body of another state, territory or the District of Columbia, including a copy of his valid current license/registration issued by such regulatory body; and that the standards for licensure or registration by such regulatory body were substantially equivalent to the standards for licensure in Delaware at the time of the applicant's licensure. An applicant shall be deemed to have satisfied this Section upon evidence satisfactory to the Board that he has complied with the standards set forth below:

10.2.1 The PT or PTA applicant has passed the examination in the state, territory, or the District of Columbia in which he/she was initially licensed/registered. The passing score shall be 1.5 standard deviation below the national norm for those PTs and PTAs having taken the examination prior to 1990. For the AT candidate, the passing score shall be that which was established at time of examination. All sections of the examination shall be passed. The reciprocity applicant shall supply his/her examination scores to the Board. The applicant may obtain his/her scores from the regulatory body of the state, territory, or the District of Columbia in which he/she was currently licensed/registered or from the Interstate Reporting Service (IRS). From PT applicants who were licensed/registered by a state, territory, or the District of Columbia only prior to 1963, the Board shall accept the following:

10.2.1.1 Professional Examination Service— American Physical Therapy Association (PES-APTA) examination scores with a passing grade of 1.5 standard deviation below the national norm on all sections, or

10.2.1.2 other examining mechanisms which in the judgment of the Board were substantially equal to the mechanisms of the State of Delaware at the time of examination.

10.3— The AT seeking reciprocity shall meet all criteria in section 8.5.

#### 11.0 Temporary Licensure (four situations)

11.1— PT and PTA applicants waiting to take the examination. The Board may issue a temporary license to applicants who have submitted to the Board the documents listed in section 8.2 and section 8.5 respectively who have been determined by the Board to be eligible to take the examination. The Board shall accept a letter signed by the applicant's school official stating that the applicant has

completed all requirements for graduation; provided, however, that the applicant shall submit to the Board an official transcript as soon as it becomes available. Such applicants may practice only under the direct supervision of a licensed Physical Therapist. The license shall remain effective for two months after the examination date. It shall automatically expire upon notice to the applicant of his/her failure to pass the license examination. After the applicable fee and written application have been submitted, the Board may renew the temporary license if the applicant is eligible to retake the examination. The temporary license of an applicant who has passed the examination may be extended at the discretion of the Board chair or other officer, upon a showing of extenuating circumstances pending the next scheduled Board meeting.

11.2— Applicants requesting reciprocity as a PT, PTA, and AT. The Board may issue a temporary license to an applicant upon the applicant's compliance with all requirements listed in sections 8.2 and 8.5, provided that submission of the applicant's examination scores shall not be required. The temporary license shall not be renewable. The temporary licensee may practice only under the direct supervision of an applicable licensed professional.

11.3— Applicants engaged in a Special Project. The Board may issue a temporary license to applicants practicing in the State on a temporary basis in order to:

11.3.1 assist in a medical emergency, or

11.3.2 engage in a special project or teaching assignment, provided that the applicant complies with the requirements of sections 8.2 or 8.5. The temporary license may remain in effect for a maximum of one year from the date of issuance. It may be renewed once.

11.3.3 An AT certified by NATA, or licensed by the State where the professional is employed may practice athletic training in Delaware, if he/she is in Delaware with a visiting team, or an athlete, and only in a non-clinical setting.

11.4— Applicants who have failed to complete the CEU requirements. The Board may issue a provisional license to a PT, PTA or AT who has failed to complete his CEU requirement in a timely fashion for good cause but is otherwise eligible for relicensure. The provisional license is not renewable.

#### 12.0 Foreign Trained Applicant for Licensure

12.1— Applicants for licensure who are graduates of a PT, PTA school or AT program located in a foreign country shall complete all of the following requirements before being admitted to the examination.

12.1.1 The applicant shall submit proof satisfactory to the Board of graduation from an education program appropriate to their profession in a foreign country. Each foreign applicant must demonstrate that they have met the minimum education requirements as presented by the Federation of State Boards. See addendum. The applicant

shall arrange and pay for a credential evaluation of such foreign school's program to be completed by one of three independent agencies:

International Educational Research Foundation, Inc.  
P.O. Box 66940  
Los Angeles, CA 90066

International Consultants of Delaware, Inc.  
109 Barksdale Professional Center  
Newark, DE 19711

Educational Credential Evaluators, Inc.  
P.O. Box 92970  
Milwaukee, WI 53202-0970  
See 1 DE Reg. 714 (12/1/97)

12.1.2 The applicant shall complete the requirements of sections 8.2 or 8.5.

12.1.3 The applicant shall pass the examination described in sections 8.3 and 8.4.

#### 13.0 The Board Shall Keep an Inactive Register.

13.1 Any person who has been registered in the State and is neither residing within the State nor actively engaged in the practice of physical therapy in the State may at their request be placed on the inactive register. The Board may reactivate an inactive license upon receipt of the following:

13.1.1 a written request for reactivation;

13.1.2 the applicant for licensure as a PT, PTA or AT that has been actively engaged in the practice for the past five years. The applicant for registration as a PTA has been actively engaged in the assistance of a licensed PT for the past five years. If the applicant for licensure/registration has not met this condition, the following requirements shall be completed:

13.1.2.1 he/she shall work under the direct supervision of a PT/AT in Delaware for a minimum of six months. The supervising PT/AT shall certify to the completion of the six month applicant's clinical competence on forms supplied by the Board;

13.1.3 applicable renewal fee;

13.1.4 notice of intent to resume practice of Physical Therapy in Delaware, and

13.1.5 proof of completion of 1.5 CEUs during the previous 12 months.

#### 14.0 Disciplinary Action Shall Be Taken According to 29 Del.C. Ch. 88

#### 15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

15.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify

the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates. 15.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

15.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

15.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

15.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

15.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

15.6.1 Entry of the regulated professional into a

treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.—

15.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.—

15.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.—

15.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.—

15.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.—

15.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.—

15.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an

issue.—

15.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.—

15.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.—

15.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.—

15.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.—

15.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.—

## 1.0 Definitions

### 2.0 Board

### 3.0 Physical Therapist Assistants

### 4.0 Athletic Trainers

### 5.0 Support Personnel

### 6.0 Qualifications of Applicant

### 7.0 Mandatory Continuing Education Units

### 8.0 Admission to Practice: License by Reciprocity

### 9.0 Temporary Licensure

### 10.0 Foreign Trained Applicant for Licensure

### 11.0 Reactivation and Reinstatement

### 12.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

## **1.0 DEFINITIONS**

### 1.1 Consultation (24 Del. C. § 2612)

1.1.1 Consultation in direct access. A physician must be consulted if a patient is still receiving physical therapy after 30 calendar days have lapsed from the date of the initial assessment. This consultation must be documented and could take place at any time during the initial thirty day period. The consultation can be made by

telephone, fax, in writing, or in person. There is nothing in these rules and regulations or in the Physical Therapy Law that limits the number of consultations the Physical Therapist can make on the patient's behalf. The consult should be with the patient's personal physician. If the patient does not have a personal physician, the Physical Therapist is to offer the patient at least three physicians from which to choose. The referral to a physician after the initial thirty day period must not be in conflict with 24 Del. C. § 2616 (a)(8) which deals with referral for profit. If no physician consult has been made in this initial thirty day period, treatment must be terminated and no treatment may be resumed without a physician consult.

1.1.2 Consultation with written prescription from a physician, dentist, podiatrist, or chiropractor. A prescription accompanying a patient must not be substantially modified without documented consultation with the referring practitioner. The consultation can be made by telephone, fax, in writing, or in person.

1.2 Direct Supervision (24 Del. C. § 2611 (a))

1.2.1 Direct supervision in connection with a Physical Therapist practicing under a temporary license means:

1.2.1.1 a licensed Physical Therapist supervisor shall be on the premises when the individual with a temporary license is practicing and

1.2.1.2 evaluations and progress notes written by the individual with a temporary license shall be co-signed by the licensed Physical Therapist supervisor.

1.2.2 Direct supervision in relation to a Physical Therapist Assistant with less than one (1) year experience means a Physical Therapist shall be on the premises at all times and see each patient.

1.2.3 Direct supervision in relation to a Physical Therapist Assistant with one (1) year or more experience means that a Physical Therapist Assistant must receive on-site, face to face supervision at least once every fifth treatment day or once every three weeks, whichever occurs first. The supervising Physical Therapist must have at least one (1) year clinical experience. The Physical Therapist must be available and accessible by telecommunications to the Physical Therapist Assistant during all working hours of the Physical Therapist Assistant.

1.2.4 The Physical Therapist is responsible for the actions of the Physical Therapist Assistant when under his/her supervision. All supervision must be documented.

1.2.5 Direct supervision in connection with an Athletic Trainer means a Physical Therapist shall be on the premises at all times in a clinical setting and see every patient.

1.2.6 At no time may a Physical Therapist supervise more than 2 Physical Therapist Assistants, 2 Athletic Trainers or 1 Physical Therapist Assistant and 1 Athletic Trainer. A Physical Therapist may only supervise 1

Physical Therapist Assistant off site. Athletic Trainers must be supervised on site.

1.2.7 Direct supervision in connection with support personnel means a licensed Physical Therapist or Physical Therapist Assistant shall be personally present and immediately available within the treatment area to give aid, direction, and instruction when procedures are performed.

1.3 On site or on premises (24 Del. C. § 2602 (5)), in connection with supervision of a Physical Therapist Assistant or Athletic Trainer, means that the Physical Therapist Assistant or Athletic Trainer must be in the same physical building as the supervising Physical Therapist. On site or on premises does not refer to attached buildings.

1.4 Support personnel (24 Del.C. § 2615) means a person(s) who performs certain routine, designated physical therapy tasks under the direct supervision of a licensed Physical Therapist or Physical Therapist Assistant. There shall be documented evidence of sufficient in-service training to assure safe performance of the duties assigned to the support personnel.

1.5 Unprofessional Conduct (24 Del.C. § 2616 (7)). Unprofessional conduct shall include departure from or the failure to conform to the minimal standards of acceptable and prevailing physical therapy practice or athletic training practice, in which proceeding actual injury to a patient need not be established. 24 Del.C. § 2616 (7). Such unprofessional conduct shall include, but not be limited to, the following:

1.5.1 - Assuming duties within the practice of physical therapy or athletic training without adequate preparation or supervision or when competency has not been maintained.

1.5.2 - The Physical Therapist who knowingly allows a Physical Therapist Assistant or Athletic Trainer to perform prohibited activities is guilty of unprofessional conduct.

1.5.3 - The Physical Therapist, Physical Therapist Assistant, or Athletic Trainer who knowingly performs prohibited activities is guilty of unprofessional conduct.

1.5.4 - The Physical Therapist or Physical Therapist Assistant who knowingly allows support personnel to perform prohibited activities is guilty of unprofessional conduct.

1.5.5 - Performing new physical therapy or athletic training techniques or procedures without proper education and practice or without proper supervision.

1.5.6 - Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.

1.5.7 - Inaccurately recording, falsifying, or altering a patient or facility record.

1.5.8 - Committing any act of verbal, physical, mental or sexual abuse of patients.

1.5.9 - Assigning untrained persons to perform

functions which are detrimental to patient safety, for which they are not adequately trained or supervised, or which are not authorized under these rules and regulations.

1.5.10 - Failing to supervise individuals to whom physical therapy tasks have been delegated.

1.5.11 - Failing to safeguard the patient's dignity and right to privacy in providing services regardless of race, color, creed and status.

1.5.12 - Violating the confidentiality of information concerning the patient.

1.5.13 - Failing to take appropriate action in safeguarding the patient from incompetent health care practice.

1.5.14 - Practicing physical therapy as a Physical Therapist or Physical Therapist Assistant or athletic training as an Athletic Trainer when unfit to perform procedures or unable to make decisions because of physical, psychological, or mental impairment.

1.5.15 - Practicing as a Physical Therapist, Physical Therapist Assistant or Athletic Trainer when physical or mental ability to practice is impaired by alcohol or drugs.

1.5.16 - Diverting drugs, supplies or property of a patient or a facility.

1.5.17 - Allowing another person to use his/her license.

1.5.18 - Resorting to fraud, misrepresentation, or deceit in taking the licensing examination or obtaining a license as a Physical Therapist, Physical Therapist Assistant or Athletic Trainer.

1.5.19 - Impersonating any applicant or acting as proxy for the applicant in a Physical Therapist, Physical Therapist Assistant, or Athletic Trainer licensing examination.

1.5.20 - Continuing to treat a patient, who initiated treatment without a formal referral, for longer than thirty days without a physician consult.

~~1.5.21 - Modifying a treatment prescription without consulting the referring physician.~~

1.5.22 - Failing to comply with the mandatory continuing education requirements of 24 Del. C. § 2607 (a) and Section 7 of these rules and regulations.

## **2.0 BOARD**

2.1 Specific duties of the officers:

2.1.1 The Chairperson:

2.1.1.1 Shall call meetings of the Board at least twice a year.

2.1.1.2 Shall represent the Board in all official functions and act as Board spokesperson.

2.1.2 The Vice-Chairperson:

2.1.2.1 Shall substitute for the Chairperson during the officer's absence.

2.1.3 The Secretary:

2.1.3.1 Shall preside when the Chairperson

and Vice-Chairperson are absent.

## **3.0 PHYSICAL THERAPIST ASSISTANTS (24 Del.C. § 2602 (3))**

The Physical Therapist Assistant may treat patients only under the direction of a Physical Therapist as defined in Sections 1.2.2 and 1.2.3. The Physical Therapist Assistant may perform physical therapy procedures and related tasks that have been selected and delegated by the supervising Physical Therapist. The Physical Therapist Assistant may administer treatment with therapeutic exercise, massage, mechanical devices, and therapeutic agents that use the properties of air, water, electricity, sound or light. The Physical Therapist Assistant may make minor modifications to treatment plans within the predetermined plan of care, assist the Physical Therapist with evaluations, and document treatment progress. The ability of the Physical Therapist Assistant to perform the selected and delegated tasks shall be assessed by the supervising Physical Therapist. The Physical Therapist Assistant shall not perform interpretation of referrals, physical therapy evaluation and reevaluation, major modification of the treatment plan, final discharge of the patient, or therapeutic techniques beyond the skill and knowledge of the Physical Therapist Assistant or without proper supervision.

## **4.0 ATHLETIC TRAINERS (24 Del. C. § 2602)**

The Athletic Trainer in a *clinical* setting - 24 Del. C. § 2602 (5)).

The Athletic Trainer in a *nonclinical* setting - 24 Del. C. § 2602(5)).

## **5.0 SUPPORT PERSONNEL (24 Del. C. § 2615)**

5.1 Treatments which may be performed by support personnel under direct supervision are:

~~5.1.1 gait training and ambulation~~

5.1.2 functional activities

~~5.1.3 transfer training~~

5.1.4 routine follow-up of specific exercises

5.1.5 hot or cold packs

5.1.6 whirlpool/Hubbard tank

5.1.7 contrast bath

5.1.8 infrared

5.1.9 paraffin bath

5.1.10 ultra sound

5.2 Exceptions - A support person may perform:

5.2.1 patient related activities that do not involve treatment, including transporting patients, undressing and dressing patients, and applying assistive and supportive devices without direct supervision, and

5.2.2 set up and preparation of patients requiring treatment using Physical Therapist modalities.

5.3 Prohibited Activities - support personnel may not perform:



5.3.1 evaluation, or

5.3.2 treatments other than those listed in Section

5.1.

## **6.0 QUALIFICATIONS OF APPLICANT (24 Del.C. § 2606)**

6.1 Applications, copies of the rules and regulations, and copies of the Practice Act are available from the Division of Professional Regulation.

6.2 Applicants for Physical Therapist or Physical Therapist Assistant licensure shall not be admitted to the examination without the submission of the following documents:

6.2.1 Professional Qualifications - proof of graduation (official transcript) from an educational program for the Physical Therapist or Physical Therapist Assistant which is accredited by the appropriate accrediting agency as set forth in the Practice Act.

6.2.2 A fee in check or money order payable to the State of Delaware.

6.2.3 A completed application form.

6.3 The Board may use the Physical Therapist and Physical Therapist Assistant examination endorsed by the Federation of State Boards of Physical Therapy and the APTA, respectively.

6.4 All applicants for licensure as a Physical Therapist or Physical Therapist Assistant must successfully pass the examination described in Section 6.3 in order to become eligible for licensure. The Board will adopt the criterion-referenced passing point recommended by the Federation of State Boards of Physical Therapy.

6.5 Applicants for licensure as an Athletic Trainer must submit to the Board the following:

6.5.1 Professional Qualifications - proof of graduation (official transcript) from an educational program described in 24 Del. C. § 2606(a)(1), whether an accredited program or National Athletic Trainers Association Board of Certification (NATA BOC) internship.

6.5.2 Official letter of Athletic Trainer certification from NATABOC.

6.5.3 A check or money order made payable to the State of Delaware.

6.5.4 The completed application form.

6.6 Licenses shall expire biennially on every odd numbered year. The following items shall be submitted upon application for renewal:

6.6.1 completed renewal application form,

6.6.2 applicable fee, and

6.6.3 for individuals seeking renewal, evidence of continuing education courses as provided by Section 7.

## **7.0 MANDATORY CONTINUING EDUCATION UNITS (CEU's) (24 Del. C. §2607 (a))**

7.1 Three CEU's are required for every biennial license

renewal for Physical Therapists, Physical Therapist Assistants, and Athletic Trainers. The Continuing Education Unit Activity Record (CEUAR) credits shall be received at the Division of Professional Regulation, Dover, Delaware, no later than November 30<sup>th</sup> of every even numbered year and shall be received every 2 years after such date.

7.2 Individuals shall maintain the following items in order to receive credit for CEU's:

7.2.1 name of applicant seeking renewal

7.2.2 license classification (Physical Therapist, Physical Therapist Assistant, Athletic Trainer)

7.2.3 license number of applicant

7.2.4 proof of attendance at CEU course

7.2.5 date of CEU course

7.2.6 instructor(s) of CEU course

7.2.7 sponsor of CEU course

7.2.8 title of CEU course

7.2.9 number of hours of CEU course

7.3 Continuing Education Regulations, (24 Del. C. § 2607 (a)). Each licensed Physical Therapist, Physical Therapist Assistant and Athletic Trainer is responsible for continuing his/her education so that professional skills are maintained in accordance with the advancement of the profession. The purpose of this is to help Physical Therapists, Physical Therapist Assistants, and Athletic Trainers become more efficient in achieving their objectives.

7.3.1 For a licensee to renew a license, the licensee must complete three continuing education units over the two year period immediately preceding November 30<sup>th</sup> of each even year. CEU's completed before November 30<sup>th</sup> of the even year shall not be carried over to the next renewal period. Any continuing education completed in the December or January preceding renewal will apply to the next renewal period. CEU requirements shall be prorated for new licensees. If the license is granted during the six month period shown below, the following will be required for renewal:

<u>Odd Numbered Year</u>	<u>Even Numbered Year</u>
<u>1/1- 6/30 2.5 CEUs</u>	<u>1/1- 6/30 1.5 CEUs</u>
<u>7/1-12/31 2.0 CEUs</u>	<u>7/1-12/31 .5 CEUs</u>

7.3.2 One CEU will be given for every 10 hours of an approved continuing education course. (1 contact hour = .1 CEU). Each course must include topics relevant to the field of health care as it pertains to Physical Therapy or Athletic Training. Approval of CEU's shall be within the discretion of the State Examining Board of Physical Therapists. Continuing education units that have been previously approved during the current licensing period by another agency such as a national governing body or a fellow state licensing board shall be acceptable to the Examining Board for the State of Delaware as appropriate CEU's. Any sponsors or licensees wishing to receive prior written

approval of CEU courses from the Examining Board must complete a CEU Application Form. CEU's may not be carried over from one biennial period to the next one.

7.3.3 At the time of license renewal, the appropriate forms will be supplied by the Board. Proof of attendance shall be enclosed by the licensee when requested by the Board. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance. All licensees must complete and submit to the Board the CEUAR. If randomly selected, the licensee must submit documentation of the CEU's. The CEUAR is due November 30<sup>th</sup> of the even year. All questionable CEUAR's will be re-evaluated.

7.3.4 In the event a licensee shall fail to complete the required credits by November 30, 2000, the Board may withhold issuance of a permanent license unless the CEUAR required by Section 7.3.3 is accompanied by a specific plan for making up the deficiency of necessary credits by March 31, 2001. The plan shall be deemed accepted by the Board unless within 60 days after the receipt of the CEUAR the Board notifies the licensee to the contrary. Full completion of the licensee's plan shall be reported by CEUAR not later April 15, 2001. Failure to complete the specific plan may result in the Board suspending the license issued, following a hearing pursuant to the Administrative Procedures Act, for unprofessional conduct as defined by Section 1.5.22. This provision no longer applies effective with the 2003 renewal.

7.3.5 The Board has the power to waive any part of the entire CEU requirement. Exemptions to the CEU requirement may be granted due to prolonged illness or other incapacity. Application for exemption shall be made in writing to the Board by the applicant for renewal and must be received by the Board no later than November 30<sup>th</sup> of the end of the respective CEU term.

7.3.6 CEU's may be earned through Board approved courses in colleges and universities, extension courses, independent study courses, workshops, seminars, conferences, lectures, videotapes, professional presentations and publications, and in-services oriented toward the enhancement of their respective professional's practice. CEU programs shall be conducted under responsible sponsorship, capable direction and qualified instruction. The program may include staff development activities of agencies and cross-disciplinary offerings.

7.3.7 The following are examples of acceptable continuing education which the Board may approve. The Board will determine the appropriate number of contact hours for these categories of continuing education, subject to any limitation shown below.

7.3.7.1 professional meetings including national, state, chapter, and state board meetings

7.3.7.2 seminars/workshops

7.3.7.3 staff/faculty in-services

7.3.7.4 first time presentation of professionally oriented course/lecture (0.3 CEU/hour per presentation)

7.3.7.5 approved self studies including:

- videotapes, if:

-there is a sponsoring agency

-there is a facilitator or program official

present

-the program official is not the only

attendee

- correspondence course, if a sponsoring agency provides a certificate of completion

7.3.8 The following are also examples of acceptable continuing education in the amount of CEU's shown.

7.3.8.1 university/college courses:

1.0 CEU for semester

0.8 CEU for trimester

0.7 CEU for quarter

7.3.8.2 passing of licensing examination (1.5 CEU's)

7.3.8.3 original publication in peer reviewed publication (0.3 CEU)

7.3.8.4 original publication in non-peer reviewed publication (0.1 CEU)

7.3.8.5 holding of an office (0.3 CEU), to include:

- executive officer's position for the national or state professional associations (President, Vice-President, Secretary, Treasurer)

- member, Examining Board of Physical Therapists

7.3.8.6 acting as the direct clinical instructor providing supervision to a Physical Therapist, Physical Therapist Assistant or Athletic Trainer student officially enrolled in an accredited institution during an internship (40 contact hours = 0.1 CEU)

## **8.0 ADMISSION TO PRACTICE, LICENSURE BY RECIPROCITY (24 Del. C. § 2610)**

Definition - The granting of a license to an applicant who meets all the requirements set forth in this section and 24 Del. C. § 2610.

8.1 The reciprocity applicant shall submit the documentation listed in rules 6.2 or 6.5.

8.2 An applicant shall be deemed to have satisfied this section upon evidence satisfactory to the Board that he/she has complied with the standards set forth below:

8.2.1 The Physical Therapist or Physical Therapist Assistant applicant has passed the examination in the state, territory, or the District of Columbia in which he/she was originally licensed/registered. The passing score shall be 1.5 standard deviation below the national norm for those Physical Therapists and Physical Therapist Assistants having taken the examination prior to 1990.

8.2.2 All Physical Therapist/Physical Therapy Assistant reciprocity applicants shall supply his/her examination scores to the Board. The applicant may obtain his/her scores from the regulatory body of the state, territory, or the District of Columbia in which he/she was originally licensed/registered or from the FSBPT Score Transfer Service. From Physical Therapist applicants who were licensed/registered by a state, territory, or the District of Columbia only prior to 1963, the Board shall accept the following:

8.2.2.1 - Professional Examination Service-American Physical Therapy Association (PES-APTA) examination scores with a passing grade of 1.5 standard deviation below the national norm on all sections, or

8.2.2.2 - other examining mechanisms which in the judgment of the Board were substantially equal to the mechanisms of the State of Delaware at the time of examination.

8.2.3 For the Athletic Trainer candidate, the passing score shall be that which was established at time of examination. All sections of the examination shall be passed. The reciprocity applicant shall supply his/her examination scores to the Board.

#### **9.0 TEMPORARY LICENSURE (24 Del. C. § 2611)**

9.1 The Board may issue a temporary license to all applicants who have submitted to the Board the documents listed in Rule 6.2 and Rule 6.5, respectively, and who have been determined to be eligible to take the examination. The Board shall accept a letter signed by the Physical Therapist or Physical Therapist Assistant applicant's school official stating that the applicant has completed all requirements for graduation; provided, however, that the applicant shall submit to the Board an official transcript as soon as it becomes available. The Board will determine the Physical Therapist or Physical Therapist Assistant applicant's eligibility to take the examination. In the case of Athletic Trainer applicants for temporary license, a letter from NATA stating the applicant's eligibility to take the NATA examination will be required. All applicants may practice only under the direct supervision of a licensed Physical Therapist. The license shall remain effective for 90 days from the date of approval. It shall automatically expire upon notice to the applicant of his/her failure to pass the license examination. After the applicable fee and written application have been submitted, the Board may renew the temporary license if the applicant is eligible to retake the examination. The temporary license of an applicant may be extended at the discretion of the Board chair or other officer, upon a showing of extenuating circumstances pending the next scheduled Board meeting.

9.2 Applicants requesting reciprocity as a Physical Therapist, Physical Therapist Assistant, and Athletic Trainer. The Board may issue a temporary license to an

applicant upon the applicant's submission of letters of good standing from all jurisdictions in which the applicant is or has ever been licensed. The temporary licensee may practice only under the direct supervision of an applicable licensed professional.

9.3 Applicants engaged in a special project, teaching assignment, or medical emergency as described in 24 Del. C. § 2611 (b) must submit letters of good standing from all jurisdictions in which the applicant is or has ever been licensed.

#### **10.0 FOREIGN TRAINED APPLICANT FOR LICENSURE (24 Del. C. § 2606 (b))**

10.1 Applicants for licensure who are graduates of a Physical Therapist, Physical Therapist Assistant school or Athletic Trainer program located in a foreign country shall complete all of the following requirements before being admitted to the examination.

10.1.1 - The applicant shall submit proof satisfactory to the Board of graduation from an education program appropriate to their profession in a foreign country. Each foreign applicant must demonstrate that they have met the minimum education requirements as presented by the Federation of State Boards in the Course Work Evaluation Tool for Persons Who Received Their Physical Therapy Education Outside the United States. The applicant shall arrange and pay for a credential evaluation of such foreign school's program to be completed by one of four independent agencies:

International Educational Research Foundation, Inc.  
P.O. Box 66940  
Los Angeles, CA 90066

International Consultants of Delaware, Inc.  
109 Barksdale Professional Center  
Newark, DE 19711

Educational Credential Evaluators, Inc.  
P.O. Box 92970  
Milwaukee, WI 53202-0970

Foreign Credentialing Commission for Physical Therapists  
P.O. Box 25827  
Alexandria VA 22313-9998

10.1.2 The applicant shall complete the requirements of rules 6.2 or 6.5.

10.1.3 The applicant shall pass the examination described in rules 6.3 and 6.4.

#### **11.0 REACTIVATION AND REINSTATEMENT (24 Del. C. § 2607)**

11.1 Any person who has been registered in the State and is neither residing within the State nor actively engaged

in the practice of physical therapy in the State may at their request be placed on the inactive register for the remainder of the biennial licensure period. Subsequent requests for extensions of inactive status should be submitted biennially. The Board may reactivate an inactive license if the Physical Therapist, Physical Therapist Assistant or Athletic Trainer:

11.1.1 files a written request for reactivation;

11.1.2 has been actively engaged in the practice for the past five years. If the licensee has not met this condition, the following requirements shall be completed:

11.1.2.1 - The Physical Therapist, Physical Therapist Assistant, or Athletic Trainer working in a clinical setting shall work under the direct supervision of a Physical Therapist/Athletic Trainer in Delaware for a minimum of six months.

11.1.2.2 - The Athletic Trainer working in a nonclinical setting shall work under the direct supervision of an Athletic Trainer in Delaware for a minimum of six months.

11.1.2.3 - At the end of the period, the supervising Physical Therapist/Athletic Trainer shall certify to the applicant's clinical competence on forms supplied by the Board;

11.1.3 submits proof of completion of 1.5 CEU's during the previous 12 months.

11.2 Provided reinstatement is requested within 5 years of the expiration date, the Board may reinstate the license of a Physical Therapist, Physical Therapist Assistant, or Athletic Trainer who allowed their license to lapse without requesting placement on the inactive register if the Physical Therapist, Physical Therapist Assistant, or Athletic Trainer:

11.2.1 completes a form supplied by the Board

11.2.2 provides proof of completion of 3.0 CEU's during the previous 24 months

11.3 If the license has been expired over five years, the Physical Therapist/Physical Therapist Assistant/Athletic Trainer must file a new application.

## **12.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals**

12.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

12.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

12.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

12.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

12.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

12.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

12.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

12.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the

chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

12.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

12.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

12.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

12.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

12.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

12.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

12.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

12.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

12.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

12.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

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**DIVISION OF PROFESSIONAL REGULATION  
REAL ESTATE COMMISSION**

Statutory Authority: 24 Delaware Code,  
Section 2905 (24 Del.C. §2905)

**Order**

**WHEREAS**, pursuant to 24 *Del. C.* §2905, the Delaware Real Estate Commission (the "Commission") proposed to adopt amendments to its rules and regulations as more specifically set forth in the Hearing Notice which is attached hereto as Exhibit "A" and incorporated herein; and

**WHEREAS**, pursuant to 19 *Del. C.* §10115, notice was given to the public that a hearing would be held on August 10, 2000 at 9:00 a.m. in Dover, Delaware to consider the proposed amendments; and

**WHEREAS**, the notice invited the public to submit comments orally or in writing regarding the proposed amendments; and

**WHEREAS**, a hearing was held on August 10, 2000 at which a quorum of the Commission was present; and

**WHEREAS**, there were no written or oral comments from the public; and

**WHEREAS**, the Commission finds the proposed amendments serve to clarify its rules and regulations and to ensure that its rules and regulations are in compliance with the Commission's enabling statute;

**NOW, THEREFORE**, based on the Commission's authority to adopt and revise rules and regulations pursuant to 24 *Del. C.* §2905, it is the decision of the Commission to adopt the proposed amendments to its rules and regulations, a copy of which are attached hereto as Exhibit "B" and

incorporated herein. Such regulations shall be effective ten days after the date this Order is published in its final form in the Register of Regulations

**IT IS SO ORDERED** this 10<sup>th</sup> day of August, 2000.

**Delaware Real Estate Commission**

Anne K. Baker, Chair  
 Marvin R. Sachs, Member  
 John R. Giles, Member  
 Mary B. Parker, Member  
 Herbert W. Dayton, Member  
 James D. McGinnis, Member  
 Marcia Shihadeh, Member  
 Judy L. Bennett, Member

**Exhibit "A"**  
**Notice of Public Hearing**

The Delaware Real Estate Commission, in accordance with 24 Delaware Code §2905(a)(1) and 29 Delaware Code §10115 of the Administrative Procedures Act, hereby gives notice that it shall hold a public hearing on August 10, 2000 at 9:00 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware.

The Commission shall receive input in writing or by oral testimony from interested persons regarding the following revision of the Rules and Regulations: Rule 5.2 (Escrow Accounts). Add sentence specifying that a licensee shall not accept, as a good faith or earnest money deposit in connection with a real estate transaction, a photocopy, facsimile, or other copy of a personal check or draft, nor shall a licensee accept as a good faith or earnest money deposit a check or draft that is postdated.

The final date for interested persons to submit views in writing or orally shall be at the above scheduled public hearing. Anyone wishing to make oral or written comments or who would like a copy of the proposed change may contact the Commission office at 302-739-4522, extension 219, or write to the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Suite 203, Dover, DE 19904-2467.

- 1.0 Introduction
- 2.0 Requirements for Obtaining a Salesperson's License
- 3.0 Requirements for Obtaining a Real Estate Broker's License
- 4.0 Reciprocal Licenses
- 5.0 Escrow Accounts
- 6.0 Transfer of Broker or Salesperson
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- 13.0 Necessity of License
- 14.0 Out of State Land Sales Applications
- 15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

**1.0 Introduction**

1.1 Authority

1.1.1 Pursuant to 24 **Del.C.** §2905, the Delaware Real Estate Commission is authorized and empowered and hereby adopts the rules and regulations contained herein.

1.1.2 The Commission reserves the right to make any amendments, modifications or additions hereto, that, in its discretion are necessary or desirable.

1.1.3 The Commission reserves the right to grant exceptions to the requirements of the rules and regulations contained herein upon a showing of good cause by the party requesting such exception, provided such exception is not inconsistent with the requirements of 24 **Del.C.** Ch. 29.

1.2 Applicability

1.2.1 The rules and regulations contained herein, and any amendments, modifications or additions hereto are applicable to all persons presently licensed as real estate brokers or real estate salespersons, and to all persons who apply for such licenses.

1.3 Responsibility

1.3.1 It is the responsibility of the employing broker to insure that the rules and regulations of the Commission are complied with by licensees. Every broker is responsible for making certain that all of his or her sales agents are currently licensed, and that their agents make timely application for license renewal. A broker's failure to meet that responsibility may result in a civil fine against the broker of up to \$ 1,000.00 per agent.

1.3.2 Each office location shall be under the direction of a broker of record, who shall provide complete and adequate supervision of that office. A broker serving as broker of record for more than one office location within the State shall apply for and obtain an additional license in his name at each branch office. The application for such additional license shall state the location of the branch office and the name of a real estate broker or salesperson licensed in this State who shall be in charge of managing the branch office on a full time basis.

A broker shall not serve as broker of record unless said broker has been actively engaged in the practice of real estate, either as a licensed salesperson or a licensed broker, for the preceding three (3) years.

Where an unforeseen event, such as a resignation or termination from employment, death, emergency, illness, call to military service or training, or a sanction imposed by

the Commission causes or necessitates the removal of the sole licensed broker in an office, arrangements may be made with the Commission for another broker to serve as broker of record for said office on a temporary basis.

The employment of a sales manager, administrative manager, trainer, or other similar administrator shall not relieve the broker of record of the responsibilities contained and defined herein.

1.1.3 The failure of any licensee to comply with the Real Estate Licensing Act and the rules and regulations of the Commission may result in disciplinary action in the form of a reprimand, civil penalty, suspension or revocation of the broker's and/or salesperson's license.

## **2.0 Requirements for Obtaining a Salesperson's License**

The Commission shall consider any applicant who has successfully completed the following:

### **2.1 Course**

2.1.1 The Commission shall consider any applicant who has successfully completed an accredited course in Real Estate Practice.

2.1.2 Effective May 1, 1978, all real estate courses shall be limited to thirty-five (35) students in each class. This applies to both day and night courses. All other regulations regarding real estate courses are issued under the "Guidelines for Fulfilling the Delaware Real Estate Education Requirements". The Commission reserves the right to grant exception to this limitation.

### **2.2 Examination**

2.2.1 Within twelve (12) months of completing an accredited course, the applicant must make application to the Commission by submitting a score report showing successful completion of the examination required by the Commission. The applicant must forward all necessary documentation to the Commission to be considered for licensure.

2.2.2 An applicant may sit for the examination a maximum of three (3) times after successful completion of an approved course in real estate practice. If an applicant fails to pass the examination after three (3) attempts at such, the applicant shall be required to retake and successfully complete an approved course in real estate practice before being permitted to sit for the examination again.

### **2.3 Ability to conduct business**

2.3.1 The Commission reserves the right to reject an applicant based on his or her inability to transact real estate business in a competent manner or if it determines that the applicant lacks a reputation for honesty, truthfulness and fair dealings.

2.3.2 The minimum age at which a salesperson's license can be issued is eighteen (18).

### **2.4 Fees**

The Commission shall not consider an application for a salesperson's license unless such application is

submitted with evidence of payment of the following fees:

2.4.1 Salesperson's application fee established by the Division of Professional Regulation pursuant to 29 Del.C. §8807(d).

## **3.0 Requirements for Obtaining a Real Estate Broker's License**

The Commission shall consider the application of any person for a broker's license upon completion of the following:

### **3.1 Course**

3.1.1 The Commission shall consider the application of any person for a license after said applicant has successfully completed an accredited course.

3.1.2 Effective May 1, 1978, all courses shall be limited to thirty-five (35) students in each class.

### **3.2 Experience**

3.2.1 A salesperson must hold an active license in the real estate profession for five (5) continuous years immediately preceding application for a broker's license.

3.2.2 The applicant shall submit to the Commission a list of at least thirty (30) sales or other qualified transactions, showing dates, location, purchaser's name and seller's name. These sales must have been made by the applicant within the previous five (5) years through the general brokerage business and not as a representative of a builder, developer, and/or subdivider. Transactions involving time-shares, leases, or property management are not qualified transactions for purposes of obtaining a real estate broker's license. The Commission reserves the right to waive any of the above requirements, upon evidence that the applicant possesses sufficient experience in the real estate business or demonstrates collateral experience to the Commission.

3.2.3 The list of thirty (30) sales or other qualified transactions and/or the variety of the licensee's experience must be approved by the Commission.

### **3.3 Examination**

3.3.1 Within twelve (12) months of completing an accredited course, the applicant must submit a score report showing successful completion of the examination required by the Commission and submit all necessary documentation including the credit report required by Paragraph E of this rule to the Commission to be considered for licensure.

### **3.4 Ability to conduct business**

3.4.1 The Commission reserves the right to reject an applicant based on his or her ability to transact real estate business in a competent manner or if it determines that the applicant lacks experience, a reputation for honesty, truthfulness and fair dealings.

3.4.2 The minimum age at which a person can be issued a broker's license is twenty-three (23).

### **3.5 Credit Report**

3.5.1 Each applicant shall submit a credit report

from an approved credit reporting agency, which report shall be made directly to the Commission.

#### 3.6 Fees

The Commission shall not consider an application for a broker's license unless such application is submitted with evidence of payment of the following fees:

3.6.1 Broker's application fee established by the Division of Professional Regulation pursuant to 29 **Del.C.** §8807(d).

### 4.0 Reciprocal Licenses

#### 4.1 Requirements

4.1.1 A non-resident of this State who is duly licensed as a broker in another state and who is actually engaged in the business of real estate in the other state may be issued a nonresident broker's license under 24 **Del.C.** §2909(a).

4.1.2 A non-resident salesperson who is duly licensed as a salesperson in another state and who is actually engaged in the business of real estate in the other state may be issued a non-resident salesperson's license provided such non-resident salesperson is employed by a broker holding a broker's license issued by the Commission.

4.1.3 The Commission, at its discretion, may issue a non-resident broker's or salesperson's license without the course and examination required by Rules 2.2 or 3.3 provided the non-resident broker or salesperson passed an equivalent course and examination in his/her resident state and provided that such other state extends the same privilege to Delaware real estate licensees.

### 5.0 Escrow Accounts

5.1 All moneys received by a broker as agent for his principal in a real estate transaction shall be deposited within three (3) banking days after a contract of sale or lease has been signed by both parties, in a separate escrow account so designated, and remain there until settlement or termination of the transaction at which time the broker shall make a full accounting thereof to his or her principal.

5.2 All moneys received by a salesperson in connection with a real estate transaction shall be immediately delivered to the appropriate broker. A licensee shall not accept, as a good faith or earnest money deposit in connection with a real estate transaction, a photocopy, facsimile, or other copy of a personal check or draft, nor shall a licensee accept as a good faith or earnest money deposit a check or draft that is postdated.

5.3 A broker shall not co-mingle money or any other property entrusted to him with his money or property, except that a broker may maintain up to \$100.00 of his/her own funds in the escrow account to cover bank service charges and to maintain the minimum balance necessary to avoid the account being closed.

5.4 A broker shall maintain in his office a complete

record of all moneys received or escrowed on real estate transactions, including the sources of the money, the date of receipt, depository, and date of deposit; and when a transaction has been completed, the final disposition of the moneys. The records shall clearly show the amount of the broker's personal funds in escrow at all times.

5.5 An escrow account must be opened by the broker in a bank with an office located in Delaware in order to receive, maintain or renew a valid license.

5.6 The Commission may summarily suspend the license of any broker who fails to comply with 5.4, who fails to promptly account for any funds held in escrow, or who fails to produce all records, books, and accounts of such funds upon demand. The suspension shall continue until such time as the licensee appears for a hearing and furnishes evidence of compliance with the Rules and Regulations of the Commission.

5.7 Interest accruing on money held in escrow belongs to the owner of the funds unless otherwise stated in the contract of sale or lease.

### 6.0 Transfer of Broker or Salesperson

6.1 All licensees who transfer to another office, or brokers who open their own offices, but who were associated previously with another broker or company, must present a completed transfer form to the Commission signed by the individual broker or company with whom they were formerly associated, before the broker's or salesperson's license will be transferred. In addition all brokers who are non-resident licensees must also provide a current certificate of licensure.

6.2 The Commission reserves the right to waive this requirement upon a determination of good cause.

6.3 All brokers of record who move the physical location of their office shall notify the Commission in writing at least 30 days, or as soon as practical, prior to such move by filing a new office application.

### 7.0 Business Transactions and Practices

#### 7.1 Written Listing Agreements

7.1.1 Listing Agreements for the rental, sale, lease or exchange of real property, whether exclusive, co-exclusive or open shall be in writing and shall be signed by the seller or owner.

#### 7.2 Copy of agreements

7.2.1 Every party to a listing agreement, agreement of purchase and sale, or lease shall be furnished with an executed copy of such contract or contracts. It shall be the responsibility of the licensee to deliver an executed copy of the agreements to the principals within a reasonable length of time after execution.

#### 7.3 Advertising

7.3.1 Any licensee who advertises, on signs, newspapers or any other media, property personally owned



and/or property in which a licensee has any ownership interest, and said property is not listed with a broker, must include in the advertisement that he/she is the owner of said property and that he/she is a real estate licensee.

7.3.2 Any licensee who advertises in newspapers or any other media, property personally owned and/or property in which the licensee has any ownership interest, and said property is listed with a broker, must include in the advertisement the name of the -broker under whom he/she is licensed, that he/she is the owner of said property, and that he/she is a real estate licensee. This subsection does not apply to signs.

7.3.3 Any licensee who advertises, by signs, newspaper, or any other media, any property for sale, lease, exchange, or transfer that is listed with a broker must include in the advertisement the name of the broker under whom the licensee is licensed.

7.3.4 All advertisements for personal promotion of licensees must include the name of the company under whom the licensee is licensed.

#### 7.4 Separate Office

7.4.1 Applicants for broker's licenses and those presently licensed must maintain separate offices in which to conduct the real estate business. Nothing contained herein, however, shall preclude said persons from sharing facilities with such other businesses as insurance, banking, or others that the Commission shall deem compatible.

7.4.2 Where the office is located in a private home, said office must have a separate entrance and must be approved by the Commission. The broker must place a permanent sign indicating the name under which the office is licensed, in a conspicuous location.

#### 7.5 Compensation

7.5.1 Licensees shall not accept compensation from more than one party to a transaction, even if permitted by law, without timely disclosure to all parties to the transaction.

7.5.2 When acting as agent, a licensee shall not accept any commission, rebate, or profit on expenditures made for his principal-owner without the principal's knowledge and informed consent.

#### 7.6 Duty to Cooperate

7.6.1 Brokers and salespersons shall cooperate with all other brokers and salespersons involved in a transaction except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions or to otherwise compensate another broker or salesperson.

### 8.0 Renewal of Licenses

#### 8.1 Renewal Required by Expiration Date on License

8.1.1 In order to qualify for license renewal as a real estate salesperson or broker in Delaware, a licensee shall have completed 15 hours of continuing education within the

two year period immediately preceding the renewal. The broker of record for the licensee seeking renewal shall certify to the Commission, on a form supplied by the Commission, that the licensee has complied with the necessary continuing education requirements. This certification form shall be submitted by the licensee together with his/her renewal application and renewal fee. The broker of record shall retain for a period of one (1) year, the documents supporting his/her certification that the licensee has complied with the continuing education requirement. A licensee who has not paid the fees and/or met the requirements for the renewal of his or her license by the expiration date shown thereon, shall not list, sell, lease or negotiate for others after such date.

#### 8.2 Delinquency Fee

8.2.1 If a licensee fails to renew his or her license prior to the expiration date shown thereon, he or she shall be required to pay the full license fee and an additional delinquency fee equal to one half of the license fee. If a licensee fails to renew his or her license within 60 days of the expiration date shown thereon, the license shall be cancelled.

8.2.2 Failure to receive notice of renewal by a licensee shall not constitute a reason for reinstatement.

#### 8.3 Reinstatement of License

8.3.1 A cancelled license shall be reinstated only after the licensee pays the necessary fees, including the delinquency fee, and passes any examinations required by the Commission. If the licensee fails to apply for renewal within 6 months of the cancellation date, the licensee shall be required to take the state portion of the examination. If the licensee fails to apply for renewal before the next renewal period commences (two years), the licensee shall be required to pass both the state and the national portions of the examination.

8.3.2 No person whose license has been revoked will be considered for the issuance of a new license for a period of at least two (2) years from the date of the revocation of the license. Such person shall then fulfill the following requirements: he or she shall attend and pass the real estate course for salespersons; take and pass the Commission's examination for salespersons; and any other criteria established by the Commission. Nothing above shall be construed to allow anyone to take the course for the purpose of licensing until after the waiting period of two (2) years. Nothing contained herein shall require the Commission to issue a new license upon completion of the above mentioned requirements, as the Commission retains the right to deny any such application.

### 9.0 Availability of Rules and Regulations

#### 9.1 Fee Charge for Primers

9.1.1 Since licensees are required to conform to the Commission's Rules and Regulations and the Laws of the

State of Delaware, these Rules and Regulations shall be made available to licensees without charge. However, in order to help defray the cost of printing, students in the real estate courses and other interested parties may be required to pay such fee as stipulated by the Division of Professional Regulation for the booklet or printed material.

### 10.0 Disclosure

10.1 A licensee who is the owner, the prospective purchaser, lessor or lessee or who has any personal interest in a transaction, must disclose his or her status as a licensee to all persons with whom he or she is transacting such business, prior to the execution of any agreements and shall include on the agreement such status.

10.2 Any licensee advertising real estate for sale stating in such advertisement, "If we cannot sell your home, we will buy your home", or words to that effect, shall disclose in the original listing contract at the time he or she obtains the signature on the listing contract, the price he will pay for the property if no sales contract is executed during the term of the listing. Said licensee shall have no more than sixty (60) days to purchase and settle for the subject property upon expiration of the original listing or any extension thereof.

10.3 A licensee who has direct contact with a potential purchaser or seller shall disclose in writing whom he/she represents in any real estate negotiation or transaction. The disclosure as to whom the licensee represents should be made at the 1st substantive contact to each party to the negotiation or transaction. In all cases such disclosure must be made prior to the presentation of an offer to purchase. A written confirmation of disclosure shall also be included in the contract for the real estate transaction.

10.3.1 The written confirmation of disclosure in the contract shall be worded as follows:

10.3.1.1 With respect to agent for seller: "This broker, any cooperating broker, and any salesperson working with either, are representing the seller's interest and have fiduciary responsibilities to the seller, but are obligated to treat all parties with honesty. The broker, any cooperating broker, and any salesperson working with either, without breaching the fiduciary responsibilities to the seller, may, among other services, provide a potential purchaser with information about the attributes of properties and available financing, show properties, and assist in preparing an offer to purchase. The broker, any cooperating broker, and any salesperson working with either, also have the duty to respond accurately and honestly to a potential purchaser's questions and disclose material facts about properties, submit promptly all offers to purchase and offer properties without unlawful discrimination."

10.3.1.2 With respect to agent for buyer: "This broker, and any salesperson working for this broker, is representing the buyer's interests and has fiduciary responsibilities to the buyer, but is obligated to treat all

parties with honesty. The broker, and any salesperson working for the broker, without breaching the fiduciary responsibilities to the buyer, may, among other services, provide a seller with information about the transaction. The broker, and any salesperson working for the broker, also has the duty to respond accurately and honestly to a seller's questions and disclose material facts about the transaction, submit promptly all offers to purchase through proper procedures, and serve without unlawful discrimination."

10.3.1.3 In the case of a transaction involving a lease in excess of 120 days, substitute the term "lessor" for the term "seller", substitute the term "lessee" for the terms "buyer" and "purchaser", and substitute the term "lease" for "purchase" as they appear above.

10.4 If a property is the subject of an agreement of sale but being left on the market for backup offers, or is the subject of an agreement of sale which contains a right of first refusal clause, the existence of such agreement must be disclosed by the listing broker to any individual who makes an appointment to see such property at the time such appointment is made.

### 11.0 Hearings

11.1 When a complaint is filed with the Commission against a licensee, the status of the broker of record in that office shall not change.

11.2 There shall be a maximum of one (1) postponement for each side allowed on any hearing which has been scheduled by the Commission. If any of the parties are absent from a scheduled hearing, the Commission reserves the right to act based upon the evidence presented.

### 12.0 Inducements

12.1 Real Estate licensees cannot use commissions or income received from commissions as rebates or compensation paid to or given to Non-licensed Persons, partnerships or corporations as inducements to do or secure business, or as a finder's fee.

12.2 This Rule does not prohibit a real estate broker or salesperson from giving a rebate or discount or any other thing of value directly to the purchaser or seller of real estate. The real estate broker or salesperson, however, must be licensed as a resident or non-resident licensee by the Commission under the laws of the State of Delaware.

12.3 A real estate broker or salesperson has an affirmative obligation to make timely disclosure, in writing, to his or her principal of any rebate or discount that may be made to the buyer.

### 13.0 Necessity of License

13.1 For any property listed with a broker for sale, lease or exchange, only a licensee shall be permitted to host or staff an open house or otherwise show a listed property. That licensee may be assisted by non-licensed persons provided a

licensee is on site. This subsection shall not prohibit a seller from showing their own house.

13.2 For new construction, subdivision, or development listed with a broker for sale, lease or exchange, a licensee shall always be on site when the site is open to the general public, except where a builder and/or developer has hired a non-licensed person who is under the direct supervision of said builder and/or developer for the purpose of staffing said project.

#### **14.0 Out of State Land Sales Applications**

14.1 All applications for registration of an out of state land sale must include the following:

14.1.1 A completed license application on the form provided by the Commission.

14.1.2 A \$100 filing fee made payable to the State of Delaware.

14.1.3 A valid Business License issued by the State of Delaware, Division of Revenue.

14.1.4 A signed Appointment and Agreement designating the Delaware Secretary of State as the applicant's registered agent for service of process. The form of Appointment and Agreement shall be provided by the Commission. In the case of an applicant which is a Delaware corporation, the Commission may, in lieu of the foregoing Appointment and Agreement, accept a current certificate of good standing from the Delaware Secretary of State and a letter identifying the applicant's registered agent in the State of Delaware.

14.1.5 The name and address of the applicant's resident broker in Delaware and a completed Consent of Broker form provided by the Commission. Designation of a resident broker is required for all registrations regardless of whether sales will occur in Delaware.

14.1.6 A bond on the form provided by the Commission in an amount equal to ten (10) times the amount of the required deposit.

14.1.7 Copies of any agreements or contracts to be utilized in transactions completed pursuant to the registration.

14.2 Each registration of an out of state land sale must be renewed on an annual basis. Each application for renewal must include the items identified in sub-sections 14.1.2 through 14.1.4 of Rule 14.0 above and a statement indicating whether there are any material changes to information provided in the initial registration. Material changes may include, but are not limited to, the change of the applicant's resident broker in Delaware; any changes to the partners, officers and directors' disclosure form included with the initial application; and any changes in the condition of title.

14.3 If, subsequent to the approval of an out of state land sales registration, the applicant adds any new lots or units or the like to the development, then the applicant must,

within thirty days, amend its registration to include this material change. A new registration statement is not required, and the amount of the bond will remain the same.

#### **15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals**

15.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

15.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

15.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

15.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

15.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that

chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

15.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

15.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

15.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

15.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

15.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

15.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

15.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment

Option.

15.6.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

15.6.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

15.6.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

15.6.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

15.6.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

15.6.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

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## DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 Del.C. 122(d))

### Regulatory Implementing Order Delaware Student Testing Program

#### I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the approval of the State Board of Education to amend the Regulations

Delaware Student Testing Program by adding a new Section 4.0 Individual Improvement Plan (IIP). The amendment defines when the use of the IIP is appropriate, what it shall include and how the IIP is prepared and approved. The IIP shall be on a form adopted by each school district.

Notice of the proposed amendment was published in the News Journal and the Delaware State News on June 21, 2000, in the form hereto attached as Exhibit A. A letter from DSEA suggested that the regulation distinguish between disputes over a student's IIP generated by a parent or by district staff. A second addition to 4.2 concerning disputes over IEPs was recommended in a letter from the State Council for Persons with Disabilities. Both suggestions were adopted.

**II. Findings of Facts**

The Secretary finds that it is necessary to amend these regulations because the IIP found in 14 *Del. C.*, Section 153 requires clarifying regulations.

**III. Decision to Amend the Regulations**

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulations. Therefore, pursuant to 14 *Del. C.* Section 122, the regulations attached hereto as Exhibit B are hereby amended. Pursuant to the provisions of 14 *Del. C.* Section 122(e), the regulations hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text and Citation**

The text of the regulations amended hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in the *Regulations of the Department of Education*.

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del. C.* Section 122, in open session at the said Board's regularly scheduled meeting on August 17, 2000. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** this 17th day of August, 2000.

DEPARTMENT OF EDUCATION  
Valerie A. Woodruff, Secretary of Education

Approved this 17th day of August, 2000.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President  
Jean W. Allen, Vice President  
Mary B. Graham, Esquire  
John W. Jardine, Jr.  
Dr. Joseph A. Pika  
Dennis J. Savage  
Dr. Claibourne D. Smith

**101 Delaware Student Testing Program**

1.0 General: Assessments created pursuant to the Delaware Student Testing Program shall be administered annually, on dates specified by the Secretary of Education, to students in grades 3, 5, 8, and 10, in the content areas of reading, mathematics and writing and to students in grades 4, 6, 8 and 11 in the content areas of social studies and science. All students in said grades shall be tested except that students with disabilities and students with limited English proficiency shall be tested according to the Department of Education's Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency, as the same, may from time to time be amended hereafter.

2.0 Security and Confidentiality: In order to assure uniform and secure procedures, the Delaware Student Testing Program shall be administered pursuant to the Delaware Student Testing Program Coordinators Handbook, as the same, may from time to time be amended hereafter.

2.1 Every district superintendent, district test coordinator, school principal, school test coordinator and test administrator shall sign the affidavit provided by the Department of Education regarding test security before, during and after test administration.

2.2 Violation of the security or confidentiality of any test required by the *Delaware Code* and the regulations of the Department of Education shall be prohibited.

2.3 Procedures for maintaining the security and confidentiality of a test shall be specified in the appropriate test administration materials. Conduct that violates the security or confidentiality of a test is defined as any departure from the test administration procedures established by the Department of Education. Conduct of this nature shall include, without limitation, the following acts and omissions:

- 2.3.1 duplicating secure examination materials;
- 2.3.2 disclosing the contents of any portion of a secure test;
- 2.3.3 providing, suggesting, or indicating to an examinee a response or answer to a secure test item or prompt;
- 2.3.4 changing or altering a response or answer of an examinee to a secure test item or prompt;

2.3.5 aiding or assisting an examinee with a response or answer to a secure test item or prompt;

2.3.6 encouraging or assisting an individual to engage in the conduct described above;

2.3.7 failing to report to an appropriate authority that an individual has engaged in conduct outlined above;

3.0 Levels of Performance: There shall be five levels of student performance relative to the State Content Standards on the assessments administered pursuant to the Delaware Student Testing Program. Said levels are defined and shall be determined as follows:

3.1 Distinguished Performance (Level 5): A student's performance in the tested domain is deemed exceptional. Students in this category show mastery of the Delaware Content Standards beyond what is expected of students performing at the top of the grade level. Student performance in this range is often exemplified by responses that indicate a willingness to go beyond the task, and could be classified as "exemplary." The cut points for Distinguished Performance shall be determined by the Department of Education, with the consent of the State Board of Education, using test data and the results from the Standard Setting process.

3.2 Exceeds the Performance Standard (Level 4): A student's performance in the tested domain goes well beyond the fundamental skills and knowledge required for students to Meet the Performance Standard. Students in this category show mastery of the Delaware Content Standards beyond what is expected at the grade level. Student performance in this range is often exemplified by work that is of the quality to which all students should aspire, and could be classified as "very good." The cut points for Exceeds the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work in making the recommendation.

3.3 Meets the Performance Standard (Level 3): A student's performance in the tested domain indicates an understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students in this category show mastery of the Delaware Content Standards at grade level. Student performance in this range can be classified as "good." The cut points for Meets the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work in making the recommendation.

3.4 Below the Performance Standard (Level 2): A student's performance in the tested domain shows a partial or

incomplete understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Below the Performance Standard may require additional instruction in order to succeed in further academic pursuits, and can be classified as academically "deficient." The cut points for Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using test data and the results from the Standard Setting process. Students at the upper end of this level are to be further sub-classified as Near the Performance Standard. Students who are Near the Performance Standard are those whose performance on the fundamental skills and knowledge articulated in the Delaware Content Standards is not yet sufficient to Meet the Performance Standard, but the student is near the threshold in relation to the Meets the Performance Standard category. The threshold for Near the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using an error of measurement determined by the test data and the results from the standard setting process.

3.5 Well Below the Performance Standard (Level 1): A student's performance in the tested domain shows an incomplete and a clearly unsatisfactory understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Well Below the Performance Standard have demonstrated broad deficiencies in terms of the standards indicating that they are poorly prepared to succeed in further academic pursuits and can be classified as "very deficient." The cut points for Well Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using test data and the results from the Standard Setting process.

#### **4.0 Individual Improvement Plan (IIP)**

4.1 Beginning with the Spring 2000 DSTP results, students who score below Level 3 Meets the Standard, on the reading portion of the 3<sup>rd</sup>, 5<sup>th</sup> or 8<sup>th</sup> grade Delaware Student Testing Program or the mathematics portion of the 8<sup>th</sup> grade Delaware Student Testing Program shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and a parent or legal guardian of the student.

4.1.1 The Individual Improvement Plan shall be on a form adopted by the student's school district. The IIP shall be placed in a student's cumulative file and shall be updated based on the results of further assessments. Such assessments may include further DSTP results as well as local assessments, classroom observations or inventories. For students with an Individualized Education Program (IEP), the IEP shall serve as the Individual Improvement

Plan (IIP).

4.1.2 The Individual Improvement Plan shall at a minimum identify a specific course of study for the student that the school will provide and the academic improvement activities that the student shall undertake to help the student progress towards meeting the standards. Academic improvement activities may include mandatory participation in summer school, extra instruction and/or mentoring programs.

4.1.3 The Individual Improvement Plan shall be prepared by school personnel and signed by the teacher(s), principal or designee and the parent or legal guardian of the student. A parent or the student's legal guardian must sign and return a copy of the student's Individual Improvement Plan to the student's school by the end of the first marking period.

**4.2 [Disputes initiated by a student's parent or legal guardian concerning the student's IIP shall be decided by the school district's superintendent. Disputes among school and/or district staff concerning a student's IIP shall be settled through the school district's normal procedures for resolving similar internal disagreements.] Any dispute concerning the content of a student's ~~IIP~~ IIP shall be decided by the school district's superintendent or designee] [is subject to resolution in conformity with the Regulations, Children with Disabilities.]**

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## Regulatory Implementing Order

### Educational Programs for Children with Limited English Proficiency

#### I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend the regulations Educational Programs for Students with Limited English Proficiency, Pages A-16 – A-18 in the *Handbook for K-12 Education*. The amended regulations are substantially changed and provide specific directions to local school districts as to the services that they must provide to students with limited English proficiency. The regulations define a student with limited English proficiency, provide an identification procedure, define a program for these students and set forth a reclassification procedure. The regulations also give directions for monitoring student progress, program evaluation, and reports for DOE and communication with language minority parents or guardians. The regulations also state that language minority students are to be a part of the Delaware State Testing Program (DSTP).

Notice of the proposed regulations was published in the News Journal and the Delaware State News on June 21, 2000 in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the

newspaper advertisements.

#### II. Findings of Facts

The Secretary finds that it is necessary to amend these regulations because they needed to be amended in order to more accurately reflect the requirements of the Federal Office of Civil Rights and to better reflect the nature of the programs in Delaware.

#### III. Decision to Amend the Regulations

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulations. Therefore, pursuant to 14 *Del. C.* Section 122, the regulations attached hereto as Exhibit B are hereby amended. Pursuant to the provisions of 14 *Del. C.* Section 122(e), the regulations hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. Text and Citation

The text of the regulations amended hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in the *Regulations of the Department of Education*.

#### V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del. C.* Section 122, in open session at the said Board's regularly scheduled meeting on August 17, 2000. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** this 17th day of August, 2000.

DEPARTMENT OF EDUCATION  
Valerie A. Woodruff, Secretary of Education

Approved this 17th day of August, 2000.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President  
Jean W. Allen, Vice President  
Mary B. Graham, Esquire  
John W. Jardine, Jr.  
Dr. Joseph A. Pika  
Dennis J. Savage  
Dr. Claibourne D. Smith

## 920 Educational Programs for Students with Limited English Proficiency

1.0 General. Each district shall identify upon enrollment every student with limited English proficiency, and each district shall make available to every student who has been determined to be eligible for limited English proficiency services a program of instruction until such time as the student becomes fully proficient in English in accordance with 5.0 below.

2.0 Student with Limited English Proficiency Defined. For the purpose of this section, a student with limited English proficiency is one who, by reason of foreign birth or ancestry, speaks a language other than English, and either comprehends, speaks, reads or writes little or no English, or who has been identified as a pupil of limited English proficiency by a valid English language proficiency assessment approved by the Department of Education for use statewide.

3.0 Determination of Eligibility for Limited English Proficiency Programs. Each school district shall implement a system for the timely and reliable identification of students with limited English proficiency and determination of such students' eligibility for limited English proficiency programs. This system shall include a home language survey and an assessment of English language proficiency.

3.1 A home language survey or the questions contained in the survey shall be administered as part of the registration process for all registering students and shall elicit from the student's parent or guardian the student's first acquired language and the language(s) spoken in the student's home.

3.2 Any student for whom a language other than English is reported on the home language survey as the student's first acquired language or as a language used in the student's home shall be administered an English language proficiency assessment. Such assessment shall be conducted in conformance with the following standards:

3.2.1 the assessment shall be based on a standardized instrument, validated for this purpose and approved by the Department of Education for use statewide;

3.2.2 the assessment shall measure English proficiency in reading, writing, speaking and oral comprehension, except that reading and writing proficiency will generally not be assessed for students below grade 2;

3.2.3 the assessment shall be conducted by qualified personnel trained in the administration of the assessment instrument;

3.2.4 the assessment shall be conducted as soon as practicable, but not later than 25 school days after enrollment.

3.3 Any student who achieves a score on the English language proficiency assessment that is lower than the

eligibility cut-off score in reading, writing, or oral English established by the Department of Education shall be entitled to a program of instruction for students with limited English proficiency. Reading and writing proficiency will not be considered for students below grade 2.

3.4 For each student enrolled in the 2000-2001 school year, each district shall conduct a home language survey, to the extent practicable, of every enrolled student as in 3.1 and, as applicable pursuant to 3.2, an English language proficiency assessment in accordance with 3.2.1 through 3.2.3. Beginning with the 2000-2001 school year, each district shall conduct such a home language survey, and as appropriate, an English language proficiency assessment of every new student at the time of enrollment in a school.

4.0 Specially Designed Program. Each enrolled student who is eligible for services pursuant to 3.3 above, shall be provided with a program of instruction for students with limited English proficiency.

4.1 A program of instruction for students with limited English proficiency shall include: formal instruction in English language development; and instruction in academic subjects which is designed to provide students with limited English proficiency with access to the District's curriculum.

4.2 In selecting program(s), each district may choose from a variety of programs that are research-based and best practice in the education of limited English proficient students. Beginning with the 2001-2002 school year, programs of instruction for students with limited English proficiency are to be reviewed by the Department of Education. Such programs include bilingual programs as well as programs that are delivered exclusively in English.

4.2.1 Bilingual programs shall include:

4.2.1.1 standards-based instruction for students with limited English proficiency, using the student's native language and English;

4.2.1.2 instruction in reading and writing in the student's native language; and

4.2.1.3 English as a second language instruction.

4.2.2 Programs delivered exclusively in English shall include:

4.2.2.1 standards-based instruction for students with limited English proficiency, using English in a manner that takes into account the student's level of English proficiency;

4.2.2.2 instruction which builds on the language skills and academic subject knowledge the student has acquired in his or her native language; and

4.2.2.3 English as a second language instruction.

4.2.3 Programs shall be implemented consistent with the goal[s] of prompt acquisition of full English proficiency. ~~4.2.4~~ Programs shall include instruction in



academic subjects which is equivalent in scope to the instruction that is provided to students who are not limited in English proficiency.

4.2.[4 5] Instruction shall be delivered by teachers who meet Department of Education certification requirements and who are trained in the delivery of instruction to students with limited English proficiency.

4.2.[5 6] Where a bilingual program is offered, the parent or guardian of an eligible student may opt for the eligible student to be served in a program for students with limited English proficiency carried out exclusively in English.

5.0 Reclassification Procedures. At least once each school year, each eligible student shall be considered for reclassification as a fully English proficient student who no longer needs a program for students with limited English proficiency.

5.1 Reclassification shall include an assessment of English proficiency in accordance with the standards in 3.2.1 - 3.2.4 above.

5.2 Any student who achieves a score on the English language proficiency assessment which is lower than the eligibility cut-off score in reading, writing, or oral English established by the Department of Education shall be regarded as a student with limited English proficiency and shall continue to be eligible for a program of instruction for students with limited English proficiency. Reading and writing proficiency will not be considered for students below grade 2.

5.3 Any student who achieves a score on the English language proficiency assessment at or above the eligibility cut-off score in reading, writing, and oral English established by the Department of Education shall be reclassified as fully English proficient and considered ineligible for a program of instruction for students with limited English proficiency. Reading and writing proficiency will not be considered for students below grade 2.

5.4 Before removing any student from a program for students with limited English proficiency, the district shall assess the student's level of performance in academic subject areas. Any reclassified student found to have incurred academic deficits while in the program for students with limited English proficiency shall be provided with supplemental instructional services in the relevant subject areas.

6.0 Monitoring Performance of Ineligible and Reclassified Students. For at least two school years following the determination of ineligibility or reclassification, a district shall monitor the academic performance of each student who has been: assessed pursuant to 3.2 above and found ineligible for a program; or reclassified as fully English proficient pursuant to 5.3 above. Students who experience

academic performance problems during this period shall, based on further assessment, be considered for entry/reentry into a program of instruction for students with limited English proficiency and shall be provided with supplemental instructional services as necessary and appropriate.

7.0 Program Evaluation. Each district shall prepare an annual evaluation of its program(s) for students with limited English proficiency. Such evaluation shall be available for review upon request and shall be submitted to the Department of Education beginning with the 2001-2002 school year. This evaluation may be part of the district's annual evaluation required for other district programs. At a minimum, this program evaluation shall:

7.1 consider the validity of the assessment processes carried out pursuant to 3.2 and 3.3, and 5.1, 5.2, 5.3, and 5.4 above, in terms of predicting student success in the regular instructional program;

7.2 consider the effectiveness of each program of instruction for students with limited English proficiency in achieving the goal[s] and standards in 4.2. above; and

7.3 describe any modifications that have been proposed or implemented, based on the evaluation data.

8.0 Student Information Reports. Each district shall provide the Department of Education annually with the language background, the current English proficiency level of each LEP student enrolled in the district, and the type of program in which the LEP student receives services, and related information. Such reporting shall take place in a manner prescribed by the Department of Education. A district shall provide such other information as the Department of Education may request, in order to assure adherence to this regulation.

9.0 Communications with Language Minority Parents/Guardians. Each district shall ensure that communications with parents/guardians, including notices of eligibility for a program for students with limited English proficiency, notices about the student's educational performance and progress in such programs, and school information that is made available to other parents/guardians, are provided to each language minority parent/guardian in a language the parent/guardian can understand to the extent practicable.

10.0 Accountability. Students with limited English proficiency and students reclassified as fully English proficient shall be included in the Delaware Student Testing Program (DSTP). Alternative assessment measures may be used as provided in Department of Education guidelines, including the *Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency*, as the same may, from time to time, be amended hereafter.

10.1 Differential analysis of the results of the DSTP and

any alternative assessment measures shall be conducted on the performance of students with limited English proficiency and students reclassified as fully English proficient. Such data shall be made available with other accountability data for each district and the state as a whole.

10.2 The Department of Education and each district shall ensure that consequences and benefits under Delaware's system of statewide accountability are dispensed in a manner that is equitable to students with limited English proficiency and students reclassified as fully English proficient. This shall be based on assessments which accurately measure the student's performance in the area being assessed and are reflective of the curriculum which was delivered to the student.

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### **Regulatory Implementing Order** **Children with Disabilities**

#### **I. Summary of the Evidence and Information Submitted**

At its April 20, 2000 and May 18, 2000 meetings, the State Board of Education consented to the adoption of regulations on Children with Disabilities. The Secretary of Education now seeks the Board's consent to further amend these regulations. As with the changes approved in April and May, the primary purpose of the proposed amendments is to assure compliance with the 1997 amendments to the *Individuals with Disabilities Education Act* ("IDEA") and its federal implementing regulations. If adopted, the proposed regulations will be incorporated in the Department's technical assistance document, the *Administrative Manual for Special Education Services* ("AMSES"), along with the regulations previously approved by the Board.

The currently proposed revisions address: (1) referrals by a school's instructional support team to have a student evaluated for eligibility for special education and related services; (2) time frames for completing the initial eligibility evaluation; and (3) the eligibility criteria for learning disabilities. Versions of these regulations have previously been proposed and received considerable public comment. The Department revised the regulations on the basis of the comments received. The current proposals have also received public comment, as detailed below.

The Secretary also proposes to eliminate the State Committee for the Deaf and Hard of Hearing. The Department initially published regulations that would have continued the State Committee. As a result of public comments, the Secretary concluded that the State Committee no longer serves a useful purpose under the amended *IDEA*. (See May 18, 2000 *Regulatory Implementing Order for Children with Disabilities*.) The Department published notice of its intention to eliminate the State Committee and received no comments in response to this proposal.

Notice of the currently proposed amendments, including information on submitting formal comments, was published in the *News Journal* and the *Delaware State News* on June 21, 2000 in the form attached hereto as Exhibit A. The proposed regulations also appeared in the *Delaware Register of Regulations* on July 1, 2000, at 4 *DE Reg.* 43-69 (July 1, 2000) and were distributed to the Chief School Officers and the Governor's Advisory Council for Exceptional Citizens in June 2000.

A public hearing on the proposed regulations was held on August 9, 2000. Comments received at the public hearing were consistent with the written comments discussed below.

#### **II. Findings of Facts**

The Department received comments from the State Council for Persons with Disabilities ("SCPD") (two Memorandums dated July 28, 2000), from the Director of Special Education for Appoquinimink School District (letter received August 9, 2000) and from the Governor's Advisory Council for Exceptional Citizens ("GACEC") (letter dated August 11, 2000).

The SCPD and the GACEC comments express similar concerns. First, both suggest that the proposed regulations allow the districts too much time to complete an initial evaluation and determine whether a child is eligible for special education and related services.

The federal regulations do not provide a specific time line in which such an evaluation must be conducted. The federal Office of Special Education Programs has noted that the determination should be done within a "reasonable time." With limited exceptions, the federal regulations require that parental consent be obtained before conducting an initial evaluation.<sup>1</sup>

As initially proposed, regulation Section 3.0 would have required districts to complete the evaluation and determine eligibility within 90 calendar days of referral. The current proposal requires eligibility to be determined within the shorter of 45 school days or 90 calendar days; the time frame begins when the district receives the parent's consent to evaluate. These changes reduce the amount of time originally proposed for eligibility determinations, while accounting for the difficulties in conducting evaluations during the summer recess. The Department believes that these proposed time frames are reasonable in light of the information that must be collected during the evaluation process and the importance of the evaluation in crafting an appropriate educational program. Also, it is consistent with the federal regulations to begin measuring time when parental consent is received, given that consent is required for evaluation.

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1. 34 *CFR* §300.507.

Secondly, the GACEC and the SCPD are concerned that the instructional support team (“IST”) process proposed in regulation Section 2.3.2 will further delay the evaluation process. The Department proposed the creation of the IST largely to assure that children experiencing learning or behavior problems receive the benefit of team intervention and that multiple instructional strategies are considered for these children. The proposed regulations also help standardize the referral processes being used by the districts.

The Department notes that the federal regulations prevent a child from being eligible for special education and related services if the determinant factor for eligibility is lack of instruction in reading or math.<sup>1</sup> In most cases, the information collected by the IST will be required as part of an evaluation for special education eligibility. To help assure that the IST process is not used to delay evaluations, the currently proposed regulations require that parents be notified, and their consent to evaluation be solicited, within 10 days of when the IST determines that an evaluation for special education services is necessary. Because regulation Section 2.3.3 allows a parent to initiate a referral for a special education evaluation at any time, the requirement of parental notification protects the integrity of the referral process and allows parents to control the start of the time line for determining eligibility.

The SCPD and GACEC’s comments did, however, highlight the need to clarify that parental notification must be *concurrent* with the IST’s referral to the appropriate district staff person. Thus, the Department has added the word “concurrently” to the second sentence of proposed regulation Section 2.3.2. The comments also have caused the Department to add language at the end of Section 2.3.2 to clarify that while a district may return a referral to the IST for missing but required information, this return does *not* delay or toll the time for parental notification. The Department believes these clarifications also answer the questions posed in Appoquinimink School District’s comments.

The SCPD and GACEC also are concerned that the proposed eligibility criteria for children with learning disabilities mandate the use of correlation tables to assess discrepancies between achievement and ability. The federal regulations require that a child have a “severe discrepancy between achievement and intellectual ability” in one of seven areas to qualify as learning disabled.<sup>2</sup> The correlation tables establish the standard against which the team determines whether there is a “severe discrepancy.”

The Department believes that the correlation tables contemplate and allow for the exercise of professional judgment in the selection and use of the assessment

instruments. Consequently, they allow the team to exercise its discretion and judgment while maintaining a meaningful standard of eligibility. The Department also notes that while the current regulations contain a discretionary exception to the use of the tables, the exception is seldom used, i.e., nearly all children eligible for special education as learning disabled have been qualified on the basis of the tables, suggesting that the tables are both reliable and comprehensive.

Finally, the comments received from Appoquinimink School District have caused the Department to insert a reference to the instructional support team in proposed regulation Section 4.8. This addition clarifies that the IST fulfills the “formative intervention process” required in the learning disability criteria.

In summary, the Secretary of Education finds that it is necessary to further amend these regulations because of the 1997 revisions to the *IDEA* and the 1999 federal adoption of the *IDEA* implementing regulations. As discussed above, the Secretary also finds that the proposed regulations, with the minor clarifications identified, are consistent with the federal requirements and with Chapter 31 of Title 14 of the *Delaware Code*.

### III. Decision to Amend the Regulations

For the foregoing reasons, the Secretary of Education concludes that it is necessary to amend the Department’s regulations on Children with Disabilities. Therefore, pursuant to Chapter 31 of Title 14 of the *Delaware Code*, the regulations attached hereto as Exhibit B are adopted. Pursuant to the provisions of 14 *Del.C.* §122(e), the amended regulations shall be in effect for a period of not more than five years from the effective date of this order as set forth in Section V., below.

### IV. Text and Citation

The text of the adopted regulations shall be in the form attached hereto as Exhibit B and shall become part of the *Regulations of the Department of Education*.

### V. Effective Date of Order

These actions were taken by the Secretary pursuant to 14 *Del.C.* Chapter 31 in open session at the State Board’s regularly scheduled meeting on August 17, 2000. The effective date of this Order shall be ten (10) days from the date the Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** this 17th day of August, 2000.

1. 34 *CFR* §300.534(b).

2. 34 *CFR* §300.541(a)(2).

## DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education  
Approved this 17th day of August, 2000.

## STATE BOARD OF EDUCATION

Dr. James L. Spartz, President  
Jean W. Allen, Vice President  
Mary B. Graham, Esquire  
John W. Jardine, Jr.  
Dr. Joseph A. Pika  
Dennis J. Savage  
Dr. Claibourne D. Smith

**925 Children with Disabilities**

## 1.0 Adoption and Incorporation of Federal Regulations

1.1 The federal regulations adopted pursuant to the Individuals with Disabilities Act Amendments of 1997, effective May 11, 1999 and located at 34 *CFR* Parts 300 and 303, are adopted and incorporated as part of these Regulations.

1.2 These Regulations implement, complement and supplement the federal regulations and Chapter 31 of Title 14 of the *Delaware Code* (with the exception of Subchapter IV) and are designed and intended to insure compliance with applicable state and federal law. To the extent these Regulations conflict with the federal regulations, the federal regulations shall prevail.

1.3 These Regulations are arranged to correspond to the order of the federal regulations and shall be read in conjunction with the parallel provisions of the federal regulations, as illustrated by the *Administrative Manual for Special Education Services* (adopted February 2000), available at the Department of Education.

See 3 **DE Reg.** 1551 (5/1/00)

## 2.0 Identification of Children with Disabilities

2.1 Child Find: Each school district and any other public agency responsible for the education of children with disabilities shall identify, locate and evaluate or reevaluate all children with disabilities residing within the confines of that district or other public agency, including children in private schools.

2.2 Health Screening: Health, hearing, vision, and orthopedic screening shall be conducted as specified in *The Regulations of the Department of Education, 800.2, 800.3, 800.4, and 800.5 for Health Examinations and Hearing, Vision and Orthopedic Screening*.

2.3 Referral to Instructional Support Team: Referral to the school's instructional support team is a process whereby teachers enlist the help of the team to assist in the identification of potential instructional strategies or solutions for learning and behavior problems. The instructional support team process may or may not lead to referral for

initial evaluation to determine eligibility and possible need for special education services. Documentation of the process should be comprehensive (including baseline and outcome data) and include strategies such as: curriculum based assessment, systematic observation, functional assessment, current health information and analyses of instructional variables.

2.3.1 Each district or other public agency shall adopt and implement procedures which provide for the referral of children to an instructional support team. All such referrals shall be specified in writing.

2.3.2 ~~When the instructional support team determines the child should be evaluated to determine eligibility and possible need for special education services, the recommendation will be forwarded to the appropriate staff member within 10 school days. The parent shall be notified within 10 days of the determination by the instructional support team that a child should be evaluated to determine eligibility and need for special education services. The notification shall include a request for parental consent for initial evaluation, which complies with section 300.505 of the federal regulations (see Procedural Safeguards, section 14.0). Referrals for an individual child that do not contain all required documentation, including the evidence as described in 2.3, may be returned to the instructional support team with a request for the required information. When the instructional support team determines the child should be evaluated to determine eligibility and possible need for special education services, the recommendation will be forwarded to the appropriate staff member within 10 school days. [Concurrently, the] parent shall be notified within 10 days of the determination by the instructional support team that a child should be evaluated to determine eligibility and need for special education services. The notification shall include a request for parental consent for initial evaluation, which complies with section 300.505 of the federal regulations (see Procedural Safeguards, section 14.0). Referrals for an individual child that do not contain all required documentation, including the evidence as described in 2.3, may be returned to the instructional support team with a request for the required information [~~ **but a return to the instructional support team shall not delay parental notification and request for consent for initial evaluation.]**

2.3.3 A parent may initiate a referral at any time for an initial evaluation to determine whether or not there is a need for special education services.

See 3 **DE Reg.** 1551 (5/1/00)

## 3.0 Procedures for Evaluation and Determination of Eligibility

3.1 ~~Reserved — Initial Evaluation~~ Initial evaluation: Informed written parental consent shall be obtained before conducting an initial evaluation and the meeting to

determine eligibility shall occur within 45 school days, or 90 calendar days whichever is shorter, of the receipt of consent for the initial evaluation, unless additional time is agreed upon.

### 3.2 Evaluation Procedures

#### 3.2.1 Qualified Evaluation Specialists

3.2.1.1 A qualified evaluation specialist is a person who has met State approval or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing student evaluation services.

3.2.2 Eligibility decisions may including (1) historical information and (2) evaluation data which are no more than two years old.

3.2.3 Each initial evaluation shall be completed in a manner which precludes undue delay in the evaluation of students.

3.2.4 The Evaluation Report shall document the IEP team's discussion of the eligibility determination including, where appropriate, the additional requirements for students with a learning disability.

### 3.3 Procedures for Determining Eligibility and Placement

3.3.1 Children who have an articulation impairment as their only presenting disability may not need a complete battery of assessments. However, a qualified speech-language pathologist shall evaluate each child who has a speech or language impairment using procedures that are appropriate for the diagnosis and appraisal of speech and language impairments.

3.3.2 Written Report: The Evaluation Report shall document the IEP team's discussion of the child's continued eligibility, including, where appropriate, the additional requirements for students with a learning disability.

3.3.3 Cognitive Ability: For cases in which continued eligibility for special education services is dependent upon level of cognitive ability or discrepancies between ability and achievement such as learning disability and mental disability, the IEP team shall ensure that the eligibility decision is based on reliable and valid individual assessment data. For children identified prior to age 7, a second individual evaluation shall occur after the child's 7th birthday, and be at least one year apart from the earlier evaluation. The results of these two evaluations shall lead to substantially similar conclusions about the child's level of cognitive ability or discrepancy between ability and achievement, if applicable.

3.3.4 Delaware Student Testing Program Participation: The IEP team shall determine the participation of a child with a disability in the Delaware Student Testing Program in conformity with the guidelines set forth in the Delaware Student Testing Program, Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency.

See 3 DE Reg. 1551 (5/1/00)

### 4.0 Eligibility for Services

4.1 Age of Eligibility: Programs shall be provided for children with disabilities in age ranges as set out in accordance with Chapters 31 and 17 of Title 14 of the *Delaware Code* and other age ranges as provided for by State and/or federal legislation.

4.1.1 The age of eligibility for special education and related services for children identified as having a hearing impairment, visual impairment, deaf-blindness, or autism, shall be from birth through 20 years, inclusive.

4.1.2 The age of eligibility for children identified as having preschool speech delay shall be from the third birthday up to, but not including, the fifth birthday.

4.1.3 The age of eligibility for children identified as having speech and/or language impairment shall be from the fifth birthday through twenty years, inclusive; provided, however, that children attaining the minimum age by August 31 of the school year shall also be eligible. These children receive a free appropriate public education as preschool speech delayed upon reaching their third birthday.

4.1.4 The age of eligibility for children identified as having a developmental delay shall be from the third birthday up to, but not including, the fourth birthday.

4.1.5 The age of eligibility for children identified as having a physical impairment, trainable mental disability, traumatic brain injury, or severe mental disability shall be from the third birthday through 20 years inclusive; provided, however, that students in these categories attaining the minimum age by August 31 of the school year shall also be eligible.

4.1.6 The age of eligibility for children identified as having emotional disturbance, educable mental disability, or learning disability shall be from the fourth birthday through 20 years inclusive; provided, however, that children in these categories attaining the minimum age by August 31 of the school year shall also be eligible. These children receive a free appropriate public education as developmentally delayed upon reaching their third birthday.

4.1.7 Children in special education who attain age 21 after August 31 may continue their placement until the end of the school year including appropriate summer services through August 31.

### 4.2 Definitions and General Eligibility/Exit Criteria

4.2.1 Eligibility Criteria - General: A child shall be considered eligible to receive special education and related services, and to be counted in the appropriate section of the unit funding system noted in 14 *Delaware Code*, Ch. 17, Section 1703, when such eligibility and the nature of the disabling condition are determined by an IEP team. Eligibility and the nature of the condition shall be based upon consideration of the results of individual child evaluation data obtained from reports and observations and

the definitions and criteria delineated in these regulations. Eligibility for classification under any one or more categories shall include documentation of the educational impact of the disability. Documentation of eligibility shall include an evaluation report from a qualified evaluation specialist. Eligibility for classification under any one or more categories shall include, but shall not be limited to, an evaluation report from the evaluation specialist designated under the eligibility criteria for each disability.

4.2.2 Exit Criteria - General: A child ceases to be eligible for special education and related services when the IEP team determines that special education is no longer needed for the child to benefit from his or her educational program or the child graduates with a high school diploma. In making the determination, the team shall consider:

4.2.2.1 Eligibility criteria;

4.2.2.2 Data-based and/or documented measures of educational progress; and

4.2.2.3 Other relevant information

4.3 Eligibility Criteria for Autism: An IEP team shall review evidence for the following behavioral manifestations:

4.3.1 The presence of an impairment of verbal and nonverbal communication skills including the absence of speech or the presence of unusual speech features, and a combination of the following:

4.3.1.1 Impairment in reciprocal social orientation/interaction;

4.3.1.2 Extreme resistance to change and/or control;

4.3.1.3 Preoccupation with objects and/ or inappropriate use of objects; and/or

4.3.1.4 Unusual motor patterns, including, but not limited to, self-stimulation and self-injurious behavior.

4.3.2 Identification of autism shall be documented through an evaluation by either a licensed psychologist, a certified school psychologist, a qualified physician, or a qualified psychiatrist. Determination of the condition of autism and eligibility for special education shall be made by an IEP team.

4.3.3 Age of Eligibility: The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

4.4 Eligibility Criteria for Developmental Delay: A developmental delay is a term applied to a young child, who exhibits a significant delay in one or more of the following developmental domains: cognitive, communication (expressive and/or receptive), physical (gross motor and/or fine motor), social/emotional functioning, and adaptive behavior. A developmental delay shall not be primarily the result of a significant visual or hearing impairment.

4.4.1 In order for an IEP team to determine eligibility for special education services, under the Developmental Delay category, the following is required:

4.4.1.1 Standardized test scores of 1.5 or more

standard deviations below the mean in two or more of the following developmental domains: cognitive, communication (expressive and/or receptive), physical (gross and/or fine), social/emotional functioning or adaptive behavior; or

4.4.1.2 Standardized test scores of 2.0 or more standard deviations below the mean in any one of the developmental domains listed above; or

4.4.1.3 Professional judgment of the IEP team that is based on the multiple sources of information used in the assessment process and with justification documented in writing in the evaluation report.

4.4.2 Age of Eligibility: The age of eligibility for classification under the developmental delay classification is from the third birth date until the fourth birth date.

4.5 Eligibility Criteria for Deaf Blind: An IEP team shall consider the following in making a determination that a child has a deaf-blind condition:

4.5.1 A qualified physician or licensed audiologist shall document that a child has a hearing loss so severe that he or she cannot effectively process linguistic information through hearing, with or without the use of a hearing aid. Such documentation shall be based upon a formal observation or procedure; and a licensed ophthalmologist or optometrist shall document that a child has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest lateral field of vision subtends less than 20 degrees; and

4.5.2 An IEP team shall consider the documentation of auditory and visual impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

4.5.3 Classification as a child who is deaf-blind shall be made by the IEP team after consideration of the above eligibility criteria.

4.5.4 Age of Eligibility: The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

4.6 Eligibility Criteria for Emotional Disturbance: The IEP team shall consider documentation of the manifestation of the clusters or patterns of behavior associated with emotional disturbance and documentation from multiple assessment procedures. Such procedures shall include, but not be limited to, an evaluation by either a licensed or certified school psychologist, or a licensed psychiatrist, classroom observations by teacher(s) and at least one other member of the IEP team, a review of records, standardized rating scales, and child interviews.

4.6.1 The documentation shall show that the identified behaviors have existed over a long period of time and to a marked degree, and:

4.6.2 Adversely affect educational performance. This means that the child's emotions and behaviors directly

interfere with educational performance. It also means that such interference cannot primarily be explained by intellectual, sensory, cultural, or health factors, or by substance abuse; and

4.6.2.1 Are situationally inappropriate for the child's age. This refers to recurrent behaviors that clearly deviate from behaviors normally expected of other students of similar age under similar circumstances. That is, the student's characteristic behaviors are sufficiently distinct from those of his or her peer groups; or

4.6.2.2 Preclude personal adjustment or the establishment and maintenance of interpersonal relationships. This means that the child exhibits a general pervasive mood of unhappiness or depression and/or is unable to enter into age-appropriate relationships with peers, teachers and others; and

4.6.3 The age of eligibility for children identified under this definition shall be from the fourth birthday through 20 years, inclusive.

#### 4.7 Eligibility Criteria for Hearing Impairment

4.7.1 A qualified physician or licensed audiologist shall document that a child has a hearing loss such that it makes difficult or impossible the processing of linguistic information through hearing, with or without amplification. Such documentation shall be based upon a formal observation or procedure; and

4.7.2 The IEP team shall consider the documentation of hearing impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

4.7.3 The age of eligibility of children identified under this definition shall be from birth through 20 years, inclusive.

4.8 ~~Reserved — Eligibility Criteria for Learning Disability~~ Eligibility Criteria for Learning Disability: In order for an IEP team to determine eligibility for special education services under the learning disability category, the following is required:

4.8.1 Written documentation for the formative intervention process used with the student [(see section 2.3, "Referral to Instructional Support Team," above)]. The documentation shall include a clear statement of the student's presenting problem(s); summary of diagnostic data collected and the sources of that data; and summary of interventions implemented to resolve the presenting problem(s) and the effects of the interventions; and

4.8.2 A comprehensive psychological assessment to evaluate the student's reasoning and cognitive processes in order to rule out mental retardation and emotional disturbance, and

4.8.3 A severe discrepancy between achievement and intellectual ability in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension,

mathematics calculation or mathematics reasoning, based on correlation tables approved by the Department of Education.

4.8.4 The age of eligibility for students identified under this definition shall be from the fourth birthday through 20 years inclusive.

4.9 Mental Disability: The degree of mental disability is defined as follows: Educable Mental Disability (EMD) - I.Q. 50-70, +5 points; Trainable Mental Disability (TMD) - I.Q. 35-50, +5 points; Severe Mental Disability (SMD) - I.Q. below 35.

4.9.1 Eligibility Criteria for Mental Disability: The IEP team shall consider both the level of intellectual functioning and effectiveness of adaptive behavior, as measured by a licensed or certified school psychologist, in determining that a child has a mental disability and the degree of mental disability.

4.9.2 The age of eligibility for children identified under the TMD, and SMD definition shall be from the third birthday through 20 years, inclusive. Children identified under the EMD definition shall be from the fourth birthday through 20 years inclusive. These children may be served at age 3 as having a developmental delay.

4.10 Eligibility Criteria for Physical Impairments: Eligibility criteria for physical impairments include examples of orthopedic disabilities, but are not limited to: traumatic brain injury, cerebral palsy, muscular dystrophy, spina bifida, juvenile rheumatoid arthritis, amputation, arthrogyrosis, or contractures caused by fractures or burns. Examples of health impairments include, but are not limited to: cancer, burns, asthma, heart conditions, sickle cell anemia, hemophilia, epilepsy, HIV/AIDS or medical fragility.

4.10.1 A qualified physician shall document that a child has a physical impairment in order to be considered for special education and related services under the above definition.

4.10.2 The IEP team shall consider the child's need for special education and related services if the physical impairment substantially limits one or more major activities of daily living and the student has:

4.10.2.1 Muscular or neuromuscular disability(ies) which significantly limit(s) the ability to communicate, move about, sit or manipulate the materials required for learning; or

4.10.2.2 Skeletal deformities or other abnormalities which affect ambulation, posture and/or body use necessary for performing school work; or

4.10.2.3 Similar disabilities which result in reduced efficiency in school work because of temporary or chronic lack of strength, vitality, or alertness.

4.10.3 Determination by the IEP team of eligibility for services shall be based upon data obtained from:

4.10.3.1 Medical records documenting the physical impairment are required, and current medical

prescriptions such as O.T./P.T., medication, catheterization, tube feeding shall be included if available;

4.10.3.2 Results from specialist team screening using appropriate measures which identify educational and related service needs, as well as environmental adjustments necessary. The team shall include, but not necessarily be limited to, an educator and physical or occupational therapist; and

4.10.3.3 Prior program or school records if available; and when determined necessary, a speech/language evaluation, adaptive behavior scale, vision or hearing screening, social history, and/or psychological evaluation.

4.10.4 Age of Eligibility: The age of eligibility for children under this definition shall be from the third birthday through 20 years, inclusive.

4.11 Speech and/or Language Impairment Eligibility Criteria: In determining eligibility under the Speech and/or Language classification, the IEP team shall consider the results of an evaluation conducted by a licensed Speech-Language Pathologist which identifies one or more of the following conditions: an articulation disorder, a language disorder, dysfluent speech; and/or a voice disorder.

4.11.1 The age of eligibility for children identified under this definition shall be from the fifth birthday through 20 years, inclusive, except where speech and/or language therapy is provided as a related service. In the latter instance, the age of eligibility shall correspond with that of the identified primary disability condition.

4.12 Eligibility Criteria for Traumatic Brain Injury: A qualified physician must document that a child has a traumatic brain injury in order to be considered for special education and related services under the above definition.

4.12.1 The IEP team shall consider the child's need for special education and related services if the traumatic brain injury substantially limits one or more major activities of daily living.

4.12.2 The age of eligibility for children under this definition shall be from the third birthday through 20 years, inclusive.

4.13 Visual Impairment Eligibility Criteria

4.13.1 Legally Blind shall be defined as a visual acuity of 20/200 or less in the better eye with best correction, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees.

4.13.2 Partially Sighted shall be defined as a visual acuity between 20/70 and 20/200 in the better eye after best correction, or a disease of the eye or visual system that seriously affects visual function directly, not perceptually. A visual impairment may be accompanied by one or more additional disabilities, but does not include visual-perceptual or visual-motor dysfunction resulting solely from a learning disability.

4.13.3 A licensed ophthalmologist or optometrist

shall document that a child has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees, legally blind, or a visual acuity of 20/70 or less in the better eye after all correction, partially sighted.

4.13.4 The IEP team shall consider the documentation of visual impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

4.13.5 The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

4.14 Eligibility Criteria for Preschool Speech Delay (3 and 4 year olds only)

4.14.1 A speech disability is defined as a communication disorder/delay involving articulation, voice quality, and/or speech fluency to such a degree that it interferes with a child's overall communicative performance.

4.14.2 In order to determine a significant delay or disorder in this area, the child shall receive a speech and language evaluation conducted by a licensed Speech and Language Pathologist.

4.14.2.1 A speech and language evaluation shall include assessment of articulation, receptive language and expressive language as measured by a standardized/norm-based instrument. It is strongly recommended that the evaluation include clinical observations and/or an assessment of oral motor functioning, voice quality and speech fluency. Results of the evaluation may identify a significant delay or disorder in one or more of the following areas:

4.14.2.1.1 articulation errors of sounds that are considered to be developmentally appropriate for the child's age as measured by an articulation test,

4.14.2.1.2 conversational speech that is not developmentally appropriate for the child's age as measured by a speech and language pathologist,

4.14.2.1.3 oral motor involvement which may affect the development of normal articulation,

4.14.2.1.4 Speech Fluency, or

4.14.2.1.5 Voice Quality

4.14.3 Results of the evaluation may indicate a significant delay in receptive and/or expressive language which warrants further evaluation. In this event, the child is to be referred for a multidisciplinary evaluation to determine if he/she meets the eligibility criteria for developmental delay.

4.14.4 The age of eligibility for preschool children identified under this definition shall be from the third birth date until the fifth birth date.

See 3 **DE Reg.** 1551 (5/1/00)

5.0 Individualized Education Program (IEP): An IEP shall



be developed prior to delivery of services and within thirty (30) calendar days following the determination that a child is eligible for special education and related services.

5.1 Transition Between Grades or Levels: During the annual review, the IEP team shall consider the needs of the child with a disability who is scheduled for a move. Communication with the staff of the receiving program shall occur to ensure that a child's transition between grades or levels does not endanger his/her receipt of a free appropriate public education.

#### 5.2 IEP of Transferring Students with Disabilities

5.2.1 A child with a disability who transfers from one school district or other public agency educational program to another must be temporarily placed in an educational setting which appears to be most suited to the child's needs based on a decision mutually agreed upon by the parents and representative of the receiving school district or other public agency.

5.2.2 The request for, and the forwarding of, records shall be in accordance with 29 Delaware Code, Chapter 5.

5.2.3 A child's IEP from the sending school district or other public agency may be acceptable for temporary provision of special education services. The agreement shall be documented by the signatures of a parent and the receiving principal on a temporary placement form or the cover page of the IEP.

5.2.4 A review of the IEP shall be instituted and completed within thirty (30) calendar days from the date of initial attendance of the child in the receiving agency, and sixty (60) calendar days for students transferring from out-of-state schools. The receiving school is responsible for ensuring that all requirements concerning evaluation, IEP development, placement, and procedural safeguards shall be applied in determining the provision of special education and related services for transferring children.

5.3 IEP Team: Participants at an IEP meeting shall be collectively identified as the IEP Team.

5.3.1 The agency representative must have the authority to commit agency resources and be able to ensure that whatever services are set out in the IEP will actually be provided.

5.3.2 The district shall notify parents of the IEP meeting no less than ten (10) business days prior to the meeting (unless mutually agreed otherwise) to ensure that they have the opportunity to attend, and no less than three (3) business days for removal due to disciplinary action. See 12.0 Disciplinary Procedures.

5.4 Content of the Individualized Education Program: Each child who is determined to be eligible for special education and related services shall have a single IEP.

5.4.1 The IEP shall designate whether or not it is necessary to place the child who is transported from school by bus into the charge of a parent or other authorized

responsible person.

5.4.2 By the middle of the eighth grade, the IEP shall include plans to determine the child's interests/preferences, and to make application to high school and vocational education programs. Full transition services planning will apply by the end of the ninth grade or prior to the child's 15th birthday, whichever comes first, unless determined appropriate at a younger age by the IEP Team.

5.5 Monitoring IEPs: As part of the on-going responsibility for the monitoring and evaluation of programs to determine compliance with state and federal requirements, the school district and/or other public agency shall review the IEPs of children with disabilities to determine that their content is consistent with requirements of these regulations. Documentation of monitoring efforts shall be maintained by the school district and/or other public agencies.

5.6 Need for Extended School Year Services: Full consideration must be given to the educational needs of each child. The following factors are to be considered by the IEP team in making a decision that, without extended school year services over the summer months, the child would not receive a free appropriate public education (FAPE) during the regular school year.

5.6.1 Degree of Impairment: The team should determine whether, without extended school year services, appropriate and meaningful progress on IEP goals and objectives will not be achieved, given the nature and/or severity of the child's disability.

5.6.2 Regression/recoupment: Regression refers to a decline in skills specified on the IEP which results from an interruption in programming. Recoupment period is the amount of time required to relearn the skills following the interruption. In making a determination as to whether extended school year services are required, the team should consider that this criterion focuses on students who have a consistent pattern of substantial regression in critical skill areas and for whom the amount of time needed to relearn the skills becomes so significant as to preclude educational progress. The team may utilize predictive data for children in their initial year of programming.

5.6.3 Breakthrough opportunities: The team should determine whether, without extended school year services, the attainment of a nearly acquired critical skill would be significantly jeopardized over the summer break.

5.6.4 Vocational: For children ages 16-20 whose IEPs contain vocational/employment goals and objectives, the team should determine whether paid employment opportunities will be significantly jeopardized if training and job coaching are not provided during the summer break.

5.6.5 Other rare and unusual extenuating circumstances: The team should determine whether any special or extenuating circumstances exist which justify provision of extended school year services to meet FAPE requirements.

5.6.6 Extended school year services are to be based on needs and goals/objectives found within the child's IEP of the school year, though activities may be different.

5.6.7 This regulation does not diminish a child's entitlement to participate, with or without accommodations, in summer school programs provided by local school districts. Normally scheduled summer school programs may be an option for providing extended school year services if such programs can meet the individual needs of each child, per his/her IEP.

5.6.8 The decision of the setting for the delivery of extended school year services shall be an IEP team decision. The team shall document that the Least Restrictive Environment (LRE) was considered in making a decision. Districts are not required to establish school programs for non-disabled students for the sole purpose of satisfying the LRE requirements for students receiving extended school year services.

5.6.9 Transportation shall be provided to students except for service provided in the home or hospital. Mileage reimbursement to the family may be used as a transportation option if the parent voluntarily transports the student.

5.6.10 Written notice shall be provided to parents advising them that extended school year services will be discussed at the IEP meeting. The IEP team shall document that extended school year services were considered, and indicate the basis for a decision on the IEP. In cases where parents do not attend the IEP meeting, they would be advised of the decision on extended school year services through the usual IEP follow-up procedures used by the district.

5.6.11 In cases where parents do not agree with the decision on extended school year services, the use of normal procedural safeguards shall be followed. The process shall begin early enough to ensure settlement of the issue prior to the end of the school year.

See 3 DE Reg. 1551 (5/1/00)

6.0 Least Restrictive Environment is operationalized in terms of the degree of interaction between children with and without disabilities. The decision about placement within the least restrictive environment is made following the writing of the IEP and is directly related to the child's needs and identified services documented in the IEP. Settings in which services can be provided include:

6.1 Regulation Education Class: Children with disabilities receive special education and related services outside the regular classroom for less than 21 percent of the school day. This may include children with disabilities placed in:

6.1.1 regular class with special education/ related services provided within regular classes,

6.1.2 regular class with instruction within the regular class and with special education/related services provided outside regular classes, or

6.1.3 regular class with special education services provided in resource rooms.

6.2 Resource Class: Children with disabilities receiving special education and related services outside the regular classroom for at least 21 percent but no more than 60 percent of the school day. This may include children and youth placed in:

6.2.1 resource rooms with special education/ related services provided within the resource room, or

6.2.2 resource rooms with part-time instruction in a regular class.

6.3 Self-Contained Class: Children with disabilities receiving special education and related services outside the regular classroom for more than 60 percent of the school day. This does not include children who received education programs in public or private separate day or residential facilities. This may include children and youth placed in:

6.3.1 self-contained special classrooms with part-time instruction in a regular class.

6.3.2 self-contained special classrooms with full-time special education instruction on a regular school campus.

6.4 Public Separate Day School: Children with disabilities receive special education and related services for greater than 50 percent of the school day in public separate facilities. This may include children and youth placed in:

6.4.1 public day schools for children with disabilities, or

6.4.2 public day schools for children with disabilities for a portion of the school day (greater than 50 percent) and in regular school buildings for the remainder of the school day.

6.5 Private Separate Day School: Children with disabilities receive special education and related services, at public expense, for greater than 50 percent of the school day in private separate facilities. This may include children and youth placed in private day schools for students with disabilities.

6.6 Public Residential Placement: Children with disabilities receiving special education and related services for greater than 50 percent of the school day in public residential facilities. This may include children and youth placed in

6.6.1 public residential schools for children with disabilities, or

6.6.2 public residential schools for children with disabilities for a portion of the school day (greater than 50 percent) and in separate day schools or regular school buildings for the remainder of the school day.

6.7 Private Residential Facilities: Children with disabilities receive special education and related services, at public expense, for greater than 50 percent of the school day in private residential facilities. This may include children and youth placed in:

6.7.1 private residential schools for children with disabilities, or

6.7.2 private residential schools for students with disabilities for a portion of the school day (greater than 50 percent) and in separate day schools or regular school buildings for the remainder of the school day.

6.8 Homebound/Hospital Placement: Supportive Instruction (Homebound Instruction) is supportive instruction in an alternative program provided at home, hospital or related site for children suffering from an illness or injury. For other disabled children it may be the level of service which assures a free, appropriate public education.

6.8.1 Where the child with a disability is a danger to himself or to herself, or is so disruptive that his or her behavior substantially interferes with the learning of other students in the class, the IEP team may provide the child with supportive instruction and related services at home in lieu of the child's present educational placement.

6.8.2 Services provided under these conditions shall be considered a change in placement on an emergency basis and shall require IEP team documentation that such placement is both necessary and temporary and is consistent with requirements for the provision of a free, appropriate public education.

6.8.3 In instances of parental objection to such home instruction, due process provisions apply.

6.8.4 To be eligible for supportive instruction and related services, the following criteria shall be met:

6.8.4.1 The child shall be identified as disabled and in need of special education and/or related services and enrolled in the school district or other public educational program; and

6.8.4.2 If absence is due to medical condition, be documented by a physician's statement where absence will be for two weeks or longer; or

6.8.4.3 If absence is due to severe adjustment problem, be documented by an IEP team that includes a licensed or certified school psychologist or psychiatrist, and that such placement is both necessary and temporary; or if for transitional in-school program, be documented by the IEP team that it is necessary for an orderly return to the educational program.

6.8.5 IEPs specifying supportive instruction services shall be reviewed at intervals determined by the IEP team, sufficient to ensure appropriateness of instruction and continued placement.

6.8.6 Supportive instruction, related services and necessary materials shall be made available as soon as possible, but in no case longer than 30 days following the IEP meeting. Such instruction and related services may continue upon return to school when it is determined by the IEP team that the child needs a transitional program to facilitate his or her return to the school program.

6.9 Least Restrictive Environment Placement

Decisions: The school district shall ensure that when a child with a disability is placed, a chronologically age-appropriate placement is provided.

6.9.1 An educational placement deemed appropriate by a child's IEP team shall not be denied merely because of the category of the child's disability, configuration of the existing service/support delivery system, availability of educational or related services, availability of space, or curriculum content or methods of curriculum delivery.

6.9.2 A change in placement requiring an IEP team meeting occurs when the district proposes to initiate or change the placement of the child. This includes a change in:

6.9.2.1 The amount of time of regular, special education and/or related services; or

6.9.2.2 The settings as identified in 6.1 – 6.8 above.

6.9.3 A change of placement does not include a change of teachers when the same services are being provided, a change in the scheduled of service delivery, or routine movement within a feeder pattern, i.e., grade level changes.

See 3 DE Reg. 1551 (5/1/00)

7.0 Vocational Education: When appropriate to individual needs of the children, as determined by the IEP team, each school district or other public agency responsible for the education of a child with a disability shall provide vocational education programs for such children in the Least Restrictive Environment.

7.1 Children with disabilities will be provided with equal access to recruitment, enrollment and placement activities.

7.2 Children with disabilities will be provided with equal access to the full range of vocational programs available to all students including occupational specific courses of study, cooperative education, apprenticeship programs and to the extent practicable, comprehensive career guidance and counseling services.

7.3 In addition to the vocational program, each school district or other public agency shall ensure the following supplementary services are provided to children with disabilities:

7.3.1 Codification of curriculum, equipment and facilities as needed;

7.3.2 Supportive personnel;

7.3.3 Instructional aids and devices;

7.3.4 Guidance, counseling and career development staff who are associated with the provision of such special services;

7.3.5 Counseling services designed to facilitate the transition from school to post-school employment and career opportunities. Carl D. Perkins Vocational & Technical

Education Act of 1998.

7.3.6 Regular vocational programs with supportive services as identified by the IEP team; and

7.3.7 Special education vocational programs.

7.4 Each school district or other public agency must provide assurances that they will assist in fulfilling the transitional service requirement as defined in Individuals with Disabilities Education Act (IDEA).

7.5 Each school district or other public agency shall ensure the provision of an appropriate vocational education, including access to Career Pathways, as determined by the IEP team through the availability of a continuum of vocational education placements. The continuum of placements includes, but is not limited to:

7.5.1 Regular vocational programs with no supportive services;

7.5.2 Regular vocational programs with supportive services as identified by the IEP team;

7.5.3 Special education vocational programs;

7.5.4 Self-contained vocational programs; and

7.5.5 Community based job training programs.

See 3 **DE Reg.** 1551 (5/1/00)

8.0 Facilities, Equipment and Materials: All facilities which house programs for children with disabilities must meet the standards approved by the State Board of Education with regard to space, health, fire, safety, and barrier-free regulations.

8.1 All instructional or treatment programs for children with disabilities shall provide appropriate materials and equipment for implementation of individualized education programs.

See 3 **DE Reg.** 1551 (5/1/00)

9.0 Length of School Day: The minimum length of the instructional school day for a child with a disability in Kindergarten through grade twelve shall be the same as it is for non-disabled children in those grades. The minimum length of the school day for disabled pre-Kindergarten children shall approximate that of non-disabled pre-Kindergarten children, except in a program for the hearing impaired in which the parent is involved in the educational program. In such a program, the school and the parent together shall determine the schedule for the five (5) hours per week minimum instruction. Provision of fewer hours of instructional time than required by the above standards is authorized only in unusual circumstances where a child is medically unable to endure the required length of school day, and then only by IEP committee decision after disclosure of the above standards to the child's parents/guardian.

See 3 **DE Reg.** 1551 (5/1/00)

10.0 Compulsory Attendance: Compulsory attendance will

be in accordance with 14 *Del. C.*, Section 2703 and 2706, and shall apply to students with disabilities between the ages of 5 and 16. Attendance of children with disabilities under or over the compulsory school attendance age range, 14 *Del. C.*, Section 2702, shall be determined by the IEP conference and subject to the eligibility criteria and appeal procedures provided in these rules and regulations by the Department of Education.

See 3 **DE Reg.** 1551 (5/1/00)

11.0 Transportation: Transportation of all children to and from school is provided under 14 *Del. C.*, Ch. 29, and when special transportation needs are indicated in a child's IEP, transportation becomes a "related service."

11.1 Travel to and from school and between schools, including required specialized equipment, shall be at State expense when such travel and/or specialized equipment requirements are specified on the child's IEP and it is necessary for the implementation of the child's IEP; and

11.2 Travel arrangements are to be made in consultation with the local transportation representative when unusual requirements are indicated.

11.3 Transportation provided to accommodate a related service shall be at local school district or other public agency expense. Transportation incidental to the disabled child's educational program shall not be at State expense, including, but not limited to work study arrangements; cooperative work arrangements; and extracurricular activities.

See 3 **DE Reg.** 1551 (5/1/00)

12.0 Discipline Procedures

12.1 Documentation, including the reasons for the action, must be made for any removal for more than 10 days. In addition to the removals identified in CFR Section 300.519, the following removals shall constitute a change in placement:

12.1.1 in-school removals for more than 10 days. If it deprives a child from (1) meeting the goals set out in the IEP, (2) progressing in the general curriculum - though in another setting, and (3) receiving those services and modifications described in the IEP; and

12.1.2 removals from transportation, if it results in the child's absence from school for more than 10 days.

12.2 Expedited Due Process Hearings

12.2.1 An expedited due process hearing shall be conducted by a single, impartial hearing officer appointed by the Department of Education from the attorney members of its Registry of Impartial Hearing Officers, and shall result in a decision within 45 days of the receipt of the request for a hearing.

12.2.2 Procedural rules for an expedited due process hearing shall differ from those for a regular due process hearing as follows:

12.2.2.1 Any party to a hearing has the right to

prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least two (2) business days before the hearing.

12.2.2.2 At least two (2) business days prior to the hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

12.2.2.2.1 The hearing officer may bar any party that fails to comply with this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

12.3 Corporal Punishment: Prior to any proposed administration of corporal punishment to a child with a disability, a determination by the child's IEP team shall be made as to whether or not the misconduct prompting the proposed corporal punishment is related to, or a manifestation of, the child's disability.

12.3.1 The misconduct is related to, or a manifestation of, the child's disability, any discipline shall be in accordance with the child's IEP.

12.3.2 The misconduct is not related to, or a manifestation of the child's disability, corporal punishment may be administered in accordance with the same State and other provisions as applied to non-disabled children in the school district or other public agency.

12.4 Written Notice: The school district or other public agency shall ensure that the parents/guardian of each child with disabilities receive written notice of the rules and regulations applicable to such children with respect to discipline, suspension, expulsion, exclusion as a treatment procedure, and corporal punishment at the beginning of each school year or upon entry into a special education program during the school year.

See 3 **DE Reg.** 1551 (5/1/00)

13.0 Educational Surrogate Parent: An "Educational Surrogate Parent", hereinafter referred to as "Surrogate Parent", is defined as an individual appointed to represent a child who receives, or may be in need of, special education in all educational decision-making pertaining to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the child.

13.1 A surrogate parent shall be appointed by the Department of Education to represent a child in all matters pertaining to the identification, evaluation, educational placement and the provision of a free appropriate public education when any one of the following situations exist:

13.1.1 a parent cannot be identified;

13.1.2 after reasonable efforts, the whereabouts of the parent cannot be discovered. Reasonable efforts include, but are not limited to, telephone calls, letters, certified letter with return receipt or visit to the parents' last know address;

13.1.3 parental rights have been terminated, and legal responsibility has not been granted by a court of law to an individual, not to include a state agency, and the child has not been adopted; or

13.1.4 the child's parent has consented voluntarily, in writing, to the appointment of an educational surrogate parent. Such consent is revocable by the parent at any time by written notice to the Department of Education.

13.2 A surrogate parent is not required for a child who receives, or may be in need of, special education when the child is living in the home of a relative who agrees to act in the place of the parent.

13.3 An otherwise eligible child between the ages of 18 and 21 shall continue to be entitled to the services of a surrogate parent. Such child, however, who has not been declared incompetent by a court of law retains the right to make his/her own educational decisions. This right to make decisions is extended to include:

13.3.1 the right of access to a surrogate parent who shall act as an advisor to the student;

13.3.2 the right to refuse the appointment of a surrogate parent;

13.3.3 the right to participate in the selection of a surrogate parent; and

13.3.4 the right to terminate the services of a duly appointed surrogate parent.

13.3.5 To exercise any of the above rights, the child shall, upon notification of eligibility for services of a surrogate parent, declare his/her intentions in writing.

13.4 Nomination and Candidacy of Surrogate Parent: The Department of Education shall be notified in writing of the names of potential surrogate parents by anyone having knowledge of the person's willingness to serve.

13.5 Screening of Potential Surrogate Parents: Each potential surrogate parent shall be screened by the Department of Education, in consultation with school districts, to determine that he/she meets candidacy requirements.

13.6 To serve as a surrogate parent, each candidate shall:

13.6.1 be at least 18 years of age;

13.6.2 be a legal resident of the United States;

13.6.3 be competent to represent the child;

13.6.4 not be an employee of a district or other public or private agency responsible for, or involved in, the education or care of the child (a person is not an employee of a district or agency solely because he/she is paid by the district or agency to serve as a surrogate parent). Foster parents are not considered employees for purposes of this requirement.

13.6.5 have no interest that conflicts with the interest of the child he/she may represent (such determination is made on a case-by-case basis). In general, a person would have a conflict of interest if she/she were in a

position that might restrict or bias his/her ability to advocate for all of the services required to ensure a free appropriate public education for the child.

13.6.6 receive instruction about State and federal laws and regulations, due process procedures, disability conditions and the availability of programs and services for students with disabilities, as provided by the Department of Education; and

13.6.7 be able to converse in the primary communication mode used by the child, whenever possible.

13.7 Training for Surrogate Parents: Initial training for surrogate parents shall be provided by the Department of Education. Such training sessions shall be conducted at least annually.

13.7.1 The Department of Education shall issue a Certificate of Training to qualified persons who complete the required surrogate parent training.

13.7.2 The Department of Education shall notify districts and the Department of Services for Children, Youth and Their Families of persons who are certified as surrogate parents.

13.7.3 Follow-up training shall be provided by the Department of Education.

13.8 Appointment of Surrogate Parents: Each district shall be responsible for having procedures to locate and refer eligible children. Any person or entity, however, may identify a child believed to require a surrogate parent. Referral shall be made on the designated form to the Department of Education with a copy sent to the supervisor of special education in the district in which the child will receive or is receiving special education.

13.8.1 The Department of Education shall determine the child's eligibility for a surrogate parent.

13.8.2 The Department of Education staff person responsible for surrogate parents or his/her designee shall recommend to the Department of Education a certified surrogate parent to represent the student after consultation, as appropriate, with the local school district regarding the match of the surrogate parent to a particular child.

13.8.3 The Department of Education shall notify, in writing, the district and/or referring agency/person of the appointment.

13.8.4 A person may be appointed to serve as a surrogate parent for more than one child to the extent that such appointment is consistent with effective representation of the children. In no event shall one person be appointed as a surrogate parent for more than four children.

13.9 Responsibilities of Surrogate Parent: Each person assigned as a surrogate parent shall represent the child in all education decision-making processes concerning that child by:

13.9.1 becoming thoroughly acquainted with the child's educational history and other information contained in school records and reports relating to the child's

educational needs;

13.9.2 granting or denying permission for initial evaluation or placement, and safeguarding the confidentiality of all records and information pertaining to the child to comply with State and federal regulations, including the use of discretion when sharing information with appropriate people for the purpose of furthering the interests of the child;

13.9.3 participating in the development of an IEP for the child;

13.9.4 reviewing and evaluating special education programs pertaining to the child and other such programs as may be available;

13.9.5 initiating mediation, complaint, hearing, or appeal procedures when necessary regarding the identification, evaluation, or educational placement of the child, and seeking qualified legal assistance when such assistance is in the best interest of the child; and

13.9.6 taking part in training provided to become familiar with the State and federal laws and regulations, due process procedures regarding the education of children with disabilities, information about disabilities, and the availability of programs and services for such children.

13.10 The term of service of the surrogate parent shall be the length of time which the surrogate parent is willing to serve; or the length of time the child requires a surrogate parent; or so long as the qualifications to serve and the performance of duties as a surrogate parent are met.

13.11 Termination of Services of a Surrogate Parent: If the surrogate parent wishes to terminate his/her service in that capacity, he/she shall notify the Department of Education, in writing, at least thirty days prior to termination of such services.

13.11.1 The Department of Education shall determine whether each surrogate parent's appointment shall continue or be terminated. Termination shall be justified based only on material failure of the surrogate parent to discharge his/her duties or maintain confidentiality. The surrogate parent shall be given notice of a decision to terminate and shall have an opportunity to respond.

13.12 Compensation for Services as a Surrogate Parent: Surrogate parents shall be reimbursed by the Department of Education for all reasonable and necessary expenses incurred in performance of duties. Reasonable and necessary expenses include, but are not limited to:

13.12.1 mileage for attendance at meetings concerning the child being represented; and

13.12.2 long-distance telephone calls to the school in which the child is being served; and

13.12.3 photocopying of the child's records.

13.13 Liability of the Surrogate Parent: A person appointed as a surrogate parent shall not be held liable for actions taken in good faith on behalf of the child in protecting the special education rights of the child.

See 3 **DE Reg.** 1551 (5/1/00)

#### 14.0 Procedural Safeguards

14.1 The district may require advance notice when parents or guardians wish to visit a proposed educational program.

14.2 Written notice must be given to parents of children with disabilities no less than ten (10) business days unless waived by agreement of both parties. In cases involving a change of placement for disciplinary removal, written notice must be provided no less than three (3) business days.

14.3 Documentation of attempts to notify the parents/guardian, by the district or any other public agency, shall be maintained.

14.4 Mediation of other disputes between the school and the parents/guardian as to the child's education program shall be offered at the discretion of the Department of Education.

14.4.1 The process shall use an impartial, trained individual to assist the parties in working out acceptable solutions in an informed, non-adversarial context.

14.4.2 Parents may be accompanied and advised by individuals of their choice.

14.4.3 The district shall ensure the attendance of a representative with authority to make decisions and commit resources to agreed upon services.

14.4.4 If an agreement is reached as part of the mediation process, it is considered an educational record, which may be released at the parent's discretion.

See 3 **DE Reg.** 1551 (5/1/00)

#### 15.0 Due Process Procedures

15.1 **Initiation of Hearing Procedures:** A request for a Due Process Hearing shall be made in writing to the Secretary of Education.

15.2 **Legal Services:** The Secretary of Education's response to the request for a hearing shall include a statement regarding free or low cost legal services.

15.3 The attorney member shall act as chairperson for the Due Process Hearing Panel, shall preside at all hearings, and shall write the final decision of the Due Process Hearing Panel. Any decision must have the concurrence of two members of the due Process Hearing Panel. In those cases where the chairperson holds a minority opinion, the educator member shall write the decision. Any member holding a minority opinion may write a separate report, which shall be attached to the decision.

15.4 **Registry of Impartial Hearing Officers:** The Department of Education shall keep a list of persons who may serve as hearing officers.

15.5 The hearing shall be scheduled by the chairperson of the Due Process Hearing Panel.

15.6 Any party to a hearing has the right to prohibit the introduction at the hearing of testimony of any witness

whose identity has not been disclosed to the parties at least 5 business days before the hearing.

15.7 The parents/guardian shall have the right to receive a written decision which includes the following parts: statement of issues; summary of the proceedings; summary of evidence; findings of facts; conclusions of law; and summary of the issues on which the parties have prevailed.

15.8 The impartial Due Process Hearing Panel shall reach a final decision, and the chairperson shall record the vote of each panelist. The chairperson shall forward a copy of its final decision to the parties, and to the Department of Education.

15.9 The Department of Education shall forward the decision, with all personally identifiable information deleted, to the chairperson of the Governor's Advisory Council for Exceptional Citizens, and make those findings and decisions available to the public by placing legal notice annually in newspapers of sufficient circulation in each of the three Delaware counties, that this information may be obtained through the Department of Education.

15.10 The chairperson of the Panel shall establish a timeline for the hearing process. In granting specific extensions, the chairperson shall ensure that the petitioner's right to redress is in no way diminished or unnecessarily delayed.

15.11 **Non-Exclusivity of Remedies:** The remedies identified in this section should not be viewed as exclusive. In certain contexts, other remedies created by law or local district practice may be available.

15.12 **Non-Compliance:** When the finding indicates non-compliance, the following procedures shall be followed:

15.12.1 The agency shall be presented with the findings and a time frame for corrective action specified by the Department of Education.

15.12.1.1 If the agency agrees with the findings and completes a specified corrective action within a time frame specified by the Department of Education, follow-up activities by the Department of Education will be conducted to verify full compliance.

15.12.1.2 A report of the findings will be prepared and sent to the Chief Administrative Officer of the agency and to the State Secretary of Education and the complainant.

15.13 **Compliance:** When the findings reveal full compliance, no further action shall be taken.

15.14 Any complainant under this section shall file the complaint in writing with the Department of Education, P. O. Box 1402, Dover, DE 19903, and shall include in the complaint the following:

15.14.1 the name of the agency against which the complaint is filed;

15.14.2 a statement that the agency has violated a requirement of the Individuals with Disabilities Education

Act (IDEA) and/or the provisions of this Manual;

15.14.3 the facts on which the statement is based;

15.14.4 the time frame in which the incident(s) occurred;

15.14.5 a description of the attempts made to resolve the issue(s) prior to filing this action; and

15.14.6 name, address, phone number(s) of individual(s) filing the complaint and the legal representative, if any, or of individuals representing a public agency or private organization filing a complaint.

See 3 **DE Reg.** 1551 (5/1/00)

## 16.0 Confidentiality of Student Records

16.1 Parental Refusal to Release Records: In the event that a parent refuses to provide consent before personally identifiable information is disclosed to anyone other than officials of the district or State Department of Education, the parent shall be advised in writing that the district has either:

16.1.1 Recognized that refusal and will not forward the records; or the district will exercise its option to request an impartial due process hearing in order to effect the release of records. In the event that the district elects to seek a due process hearing, the district shall send the parent a copy of the *Special Education: Parents' Guide to Rights and Services* and a copy of parents' due process rights as delineated in this Manual.

See 3 **DE Reg.** 1551 (5/1/00)

## 17.0 High School Graduation

17.1 Continuing their Education: Students with disabilities who are unable to meet the requirements for a diploma shall be given the option to complete those requirements by continuing their education, at district expense, until their 21st birthday.

17.2 Graduation Process: Regardless of the document received at graduation by the student, whether a diploma or a certificate of performance, the student shall not be discriminated against during the graduation ceremonies. Specifically, a student with disabilities shall be allowed to participate in graduation exercises without reference to his/her disability, educational placement or the type of document conferred.

See 3 **DE Reg.** 1551 (5/1/00)

## 18.0 Interagency/Special Programs

18.1 Interagency and Least Restrictive Environment: When it is determined by the IEP team, in making the placement decision, that a child's educational needs cannot be met appropriately in the child's district of residence, inter-district or interagency programs shall be considered within least restrictive environment requirements.

18.2 Interagency Agreements: A written Interagency Agreement shall be developed between or among the local school districts or agencies when special education and

related services for children with disabilities are provided in whole, or in part, by a district or districts other than the district of residence.

18.2.1 The agreement may be initiated by the district, agency or the Department of Education (DOE).

18.2.2 The Department of Education (DOE) shall be a party to the agreement when the services are provided through a special school or program approved by the State Board of Education.

18.2.3 Each Interagency Agreement shall include the:

18.2.3.1 Title of the agreement;

18.2.3.2 Parties involved and their authority to provide special education and related services;

18.2.3.3 Purpose of the agreement;

18.2.3.4 Roles and responsibilities of each agency, including access to records and record transfer procedures, program implementation, dissemination, training activities, funding amounts and sources;

18.2.3.5 End dates and Reauthorization schedule;

18.2.3.6 Procedures to resolve disputes regarding program and fiscal issues; and

18.2.3.7 Signature and title of each party's authorized administrator.

18.3 Responsibility for Placement in Interagency Programs

18.3.1 For initial placement, the child's district of residence shall be responsible for identification, evaluation, and placement procedures including:

18.3.1.1 Setting the date, time, and place of all meetings;

18.3.1.2 Chairing, designating, or agreeing upon a chairperson for all meetings;

18.3.1.3 Communicating the name of the child to be discussed; the date and place of meeting to individuals involved; and

18.3.1.4 Communicating recommendations of staffing to all appropriate staff.

18.3.2 When it is suspected the child's need for special education can only be met in an inter-district/interagency program, then an IEP meeting shall be arranged by the district of residence. The following procedures for an IEP meeting shall be followed:

18.3.2.1 Representatives of the inter-district/interagency program shall participate in the IEP meeting.

18.3.2.2 A representative of The district of residence shall be a member of the child's IEP team.

18.3.2.3 Arrangements for all evaluation and diagnosis, whether initial or reevaluation, shall be the responsibility of the child's district of residence.

See 3 **DE Reg.** 1709 (6/1/00)

19.0 Special Programs for Children with a Visual



Impairment: Services provided to the children with visual impairments by the Department of Education, the local school districts and the Division for the Visually Impaired shall be implemented through an interagency agreement.

See 3 **DE Reg.** 1709 (6/1/00)

20.0 Special Programs for the Children who are Deafblind: The Margaret S. Sterck School, Delaware School for the Deaf (DSD), located in the Christina School District, shall have administrative responsibility for providing services to the deafblind program.

20.1 The Director and Coordinator of the Deafblind Program shall establish a program management committee in consultation with the Department of Education. Complete minutes of the committee meetings shall be sent to the State Department of Education.

See 3 **DE Reg.** 1709 (6/1/00)

21.0 Special Programs for Children with Autism:

21.1 Definitions of terms applicable only to special programs for children with autism.

21.1.1 "Behavior Management Procedure" means any procedure used to modify the rate or form of a target behavior.

21.1.2 "Behavior Management Target" means any child's behavior that either causes or is likely to cause (a) injury to the child (e.g., self-abuse), (b) injury to another person (e.g., aggression), (c) damage to property, (d) a significant reduction in the child's actual or anticipated rate of learning (e.g., self-stimulation, non-compliance, etc.) or (e) a significant reduction in the societal acceptability of a child (e.g., public masturbation, public disrobing, etc.).

21.1.3 "Emergency Intervention Procedure" means any procedure used to modify episodic dangerous behavior (e.g., self-injurious behaviors, physical aggression property destruction) identified in a behavioral intervention plan.

21.1.4 "Ethical Use" means the application of a procedure in a manner that is consistent with current community values and protects all of a child's rights.

21.1.5 "Informed Consent" means knowing and voluntary consent by the parent(s), based upon a thorough explanation by the program staff member supervising the individualized Behavior Management procedure, of the nature of the procedure, the possible alternative procedures, the expected behavior outcomes, the possible side effects (positive and negative), the risks and discomforts that may be involved, and the right to revoke the Procedure at any time.

21.1.6 Least Restrictive Procedure means that behavior management procedure which is the least intrusive into, and least disruptive of, the child's life, and that represents the least departure from normal patterns of living that can be effective in meeting the child's educational needs.

21.1.7 School means any public school or program (special education or otherwise), which has enrolled a child classified with autism.

21.1.8 Accepted Clinical Practice means any behavior management procedure or treatment, the effectiveness of which has received clear empirical support as documented by publication in peer-reviewed journals or similar professional literature.

21.2 Reserved.

21.3 A Parent Advisory Committee (PAC) shall be established by each local education agency operating a center for the Delaware Autistic Program.

21.3.1 The function of the PAC shall be to advise the local education agency on matters pertaining to the local center.

21.3.2 Each PAC shall meet no less than four times each year and must be representative of the age groups of children with autism served by the local center.

21.3.3 When a local education agency operates a residential program, at least one member of the PAC shall be a parent of a child with autism served in the residential program associated with that center.

21.4 A Statewide Parent Advisory Committee (SPAC) shall be established whose membership shall consist of one representative elected annually from each local education agency PAC.

21.4.1 The SPAC shall meet no less than four times each year with the Director of DAP advising on matters pertaining to the program.

21.4.2 The establishment of bylaws for the SPAC shall be by vote of all of its eligible members.

21.4.3 A current statewide membership list shall be provided to all parents.

21.4.4 Reimbursement for travel expenses shall be available to members of the Statewide Parent Advisory Committee (SPAC).

21.5 A Peer Review Committee (PRC) shall be established by the Director of the Delaware Autism Program (DAP) and the Department of Education in consultation with the Statewide Monitoring Review Board (SMRB).

21.5.1 Purpose: The purpose of the PRC shall be to review, in light of accepted clinical practice, the professional and clinical issues involved in the use of behavior management procedures to ensure their appropriate use by the staff of a school district serving children with autism.

21.5.2 Composition: The PRC shall consist of three to five members who shall be competent, knowledgeable professionals with at least three years of post-doctoral experience in the theory and ethical application of behavior management procedures. Membership shall be external to the Delaware Autism Program (DAP), the Department of Education, any Delaware school district, and any other State agency or department, excluding State

institutions of higher education. Members shall not belong to any in-State committee, council, board or program that deals directly with children with autism.

21.5.3 Operation: The PRC shall elect a chairperson and shall adopt a set of rules to guide its operation. A copy of these rules shall be provided to the Department of Education and the Director of the DAP.

21.5.4 Peer Review Committee (PRC) Responsibilities

21.5.4.1 The PRC shall meet at least every three months to review those behavior management procedures requiring after-the-fact examination. (See Section 21.7.1)

21.5.4.1.1 A quorum shall consist of a majority of the Committee.

21.5.4.1.2 The PRC chairperson shall announce the dates of review at least one month prior to the review date.

21.5.4.2 The PRC shall meet at least six (6) times per year to review procedures requiring prior, case-by-case review that have been granted interim or on-going approval. The monthly review shall continue until said procedure has been discontinued or the PRC votes otherwise. This review may be held jointly with HRC.

21.5.4.3 The PRC chairperson shall invite staff members of DAP responsible for implementation of behavior management procedures, the Director of DAP, or any other individual (e.g., a consultant to ensure expertise in a specific behavior management procedure under review) to participate as needed in a non-voting capacity.

21.5.4.4 The PRC shall provide technical assistance when requested by the Program Director to develop a behavior management procedure for children engaged in behaviors that pose a significant health risk to the child or others, a significant risk of damage to property, and/or a significant reduction of learning.

21.5.4.5 The PRC shall review and evaluate the training and supervision for the staff that will carry out all behavior management procedures requiring prior, individual review and may evaluate the training of staff carrying out procedures requiring after-the-fact review.

21.5.4.5.1 The PRC shall provide the Program Director with written comments and recommendations concerning the findings of this review.

21.5.4.6 The PRC shall keep written minutes of all its meetings and shall submit them to the Director of DAP, the Department of Education and the HRC chairperson.

21.5.4.6.1 These minutes shall be submitted within two weeks of each meeting.

21.5.4.6.2 An oral summary of the PRC recommendations shall be made within twenty-four hours following the PRC meeting to the Director of DAP and the HRC chairperson.

21.6 A Human Rights Committee (HRC) shall be established by the Director of the DAP and the Department of Education in consultation with the Statewide Autistic Program Monitoring Review Board.

21.6.1 Purpose: The purpose of the HRC shall be to review the ethical and children rights issues involved in the use of behavior management procedures to ensure their humane and proper application.

21.6.2 Composition: The HRC shall consist of five to ten members representing various occupations, who are not employees or relatives of children enrolled in the DAP, who are not employees of the Department of Education, and who are not members of any in-State organization, agency, or program that deals directly with children with autism. No member of the HRC shall be a member of the PRC.

21.6.3 Operation: The HRC shall elect a chairperson and shall adopt a set of rules to guide its operation. A copy of these rules shall be provided to the Department of Education and the Director of the DAP.

21.6.4 Human Rights Committee Responsibilities

21.6.4.1 Whenever a school proposed to use a behavior management procedure requiring review prior to implementation, the HRC shall meet and review the proposed use of the behavior management procedure. This review shall occur within seven days after the PRC chairperson informs the HRC chairperson of PRC's recommendations.

21.6.4.1.1 A quorum shall consist of a majority of the Committee.

21.6.4.1.2 This review, however, may be held jointly with the PRC.

21.6.4.2 The HRC chairperson shall invite staff members who are responsible for the implementation of behavior management procedures, the Director of DAP, or any other individual (e.g., consultant, parent) to participate as needed in a non-voting capacity.

21.6.4.3 The HRC shall develop a written form to be used to ensure that informed parental consent is obtained before implementation of specified behavior management procedures.

21.6.4.4 The HRC shall keep written minutes of all its meetings and shall submit them to the Director of DAP, the Director, Exceptional Children Group, and the PRC chairperson.

21.6.4.4.1 These minutes shall be submitted within two weeks of each meeting.

21.6.4.4.2 An oral summary of the HRC recommendations shall be made within twenty-four hours following the HRC meeting to the Director of DAP and the PRC chairperson.

21.7 Joint responsibilities of the Peer Review and Human Rights Committees are as follows:

21.7.1 Issue a written statement indicating which behavior management procedure(s) shall be recommended

for use:

21.7.1.1 Without further PRC/HRC review during the year approved;

21.7.1.2 Without a case-by-case PRC/HRC review but with after-the-fact review (timelines to be established by the PRC); or

21.7.1.3 Only with prior case-by-case PRC and HRC (before-the-fact) review;

21.7.2 Recommend written modifications, if necessary, of behavior management procedures along with accompanying rationale;

21.7.3 Review a school's proposed Emergency Intervention Procedures for children with autism and issue a written statement indicating which Emergency Intervention Procedures shall be recommended:

21.7.3.1 For use without after-the-fact reporting to the PRC/HRC; or

21.7.3.2 For use with after-the-fact reporting to the PRC/HRC;

21.7.4 Issue an advisory, not mandatory, statement presenting a recommended hierarchy of reviewed behavior management procedures according to the Least Restrictive Procedure principle.

21.7.4.1 Notice shall be given to parents of children with autism in the program of the availability upon request, and at no cost to parents, of copies of the reviewed behavior management procedures.

21.7.4.2 A copy shall also be forwarded to the Governor's Advisory Council for Exceptional Citizens.

21.7.5 The PRC chairperson, in cooperation with the HRC chairperson, shall announce the joint PRC/ HRC annual review at least one month prior to the review date.

21.7.5.1 At the discretion of either chairperson, Committees may meet jointly or separately to conduct before-the-fact and after-the-fact reviews.

21.7.6 Approve, before-the-fact, the housing of children under age twelve with a child over age sixteen in a community-based residential program for children with autism operated by a school district designated and approved by the Secretary of Education as the administering agency for the DAP.

21.7.7 Review, within 30 days of the granting of interim approval, any request by a school for the immediate implementation of a behavior management procedure requiring prior, case-by-case review.

21.7.7.1 Immediate implementation of a proposed procedure may occur after the Program Director has obtained unanimous interim approval from one PRC member and two HRC members.

21.7.7.2 Proposed prior review procedures not requiring immediate implementation shall be submitted by a school directly to PRC and HRC chairperson to be reviewed within two weeks of submission of the proposal.

21.7.8 Have access to the educational records of

any child with autism for purposes of 21.5.1 and 21.6.1 of this section.

21.7.8.1 A quorum of a joint meeting shall consist of a majority of combined membership.

21.7.9 Submit written Procedural Descriptions for Behavior Management and Emergency Interventions

21.7.9.1 Prior to utilizing a behavior management procedure or an emergency intervention procedure for a particular child with autism, a school shall submit written procedural descriptions for at least annual joint review by the PRC and HRC.

21.7.9.1.1 The annual date of review shall be announced by the HRC chairperson at least one month prior to the review date.

21.7.9.1.2 The school shall submit written procedural descriptions at least two weeks prior to the joint annual review date to the PRC and HRC chairpersons.

21.7.9.1.3 The written descriptions shall contain information determined by PRC and HRC and set forth in their operating rules.

21.7.9.1.4 PRC and HRC may request pertinent information needed for the completion of reviews.

21.7.9.2 After reviewing each behavior management and emergency procedure, the PRC and HRC shall indicate what kind of review each procedure requires (annual, after-the-fact, or prior case-by-case review). A school serving children with autism shall then submit proposals in accordance with PRC/HRC recommendations.

21.7.9.3 Behavior management and emergency intervention procedures that require annual review only may then be implemented by a school without further PRC/HRC review until the next annual joint review. A school shall require that the use of these procedures be indicated in a child's IEP.

21.7.9.4 Behavior management and emergency intervention procedures that require after-the-fact review only shall be used by a school without case-by-case review, but shall be reported after the fact to the PRC by dates specified by the Committee chairperson.

21.7.9.4.1 The school shall submit written records as set forth in PRC and HRC operating rules, or any other relevant information requested by either Committee, to the PRC chairperson at least one week prior to the review date.

21.7.9.5 Behavior management procedures that require prior case-by-case review shall be submitted to the PRC and HRC for joint review prior to implementation.

21.7.9.5.1 If the PRC and HRC decide not to review the case jointly, the PRC shall first review the proposal.

21.7.9.5.2 The proposal shall contain information determined by PRC and HRC and set forth in their operating rules.

21.7.9.5.3 Recommendations and rationale

for the decision shall be provided whenever the PRC fails to recommend use of a proposed procedure.

21.7.9.6 Following the PRC recommendation (or following joint PRC/HRC approval), written informed parental consent shall be obtained by the school.

21.7.9.6.1 If an interim consent is obtained by telephone, then two witnesses to the content of the conversation shall sign a form certifying that the parent(s) gave informed consent. The school must then obtain written verification of this consent from the parent(s).

21.7.9.6.2 Parents may withdraw consent at any time; if said withdrawal is done verbally in person or by telephone, the parent shall provide written verification of withdrawal within 10 days of the initial notice.

21.7.9.7 Whenever the PRC and HRC choose not to meet jointly, the information provided by a school shall be submitted to the HRC along with the PRC's recommendations.

21.7.9.7.1 Recommendations and rationale for the decision shall be provided whenever the HRC fails to recommend the use of a proposed procedure.

21.7.9.7.2 Whenever a proposal is recommended for implementation, an IEP objective shall be developed relating to the behavior management target and the proposed procedure.

21.7.9.8 Whenever the PRC or HRC fail to recommend or modify the proposed procedure, the parent(s) shall be notified by the school.

21.7.9.8.1 If the procedure is to be modified, informed written consent shall be obtained from the parents.

21.7.9.9 The school staff responsible for implementing the behavior management procedure shall provide written reports to the PRC and HRC, summarizing the records (which shall be kept on a daily basis) on the use and results obtained by implementing the procedure.

21.7.9.9.1 Records shall be kept in an objective, quantitative form, permitting easy evaluation of child data.

21.7.9.9.2 The PRC and HRC shall have unrestricted access to all data, records, and reports relating to the behavior management procedures used.

21.7.9.10 Any behavior management or emergency intervention procedure that is developed by a school after the joint annual review date for a particular school year shall be submitted to the PRC and HRC chairpersons for joint review prior to any implementation of the new procedure, unless interim approval has been recommended as described in 21.7.7.

21.8 Private facilities serving autistic children shall have Peer Review and Human Rights Committee policies as follows:

21.8.1 Private facilities serving children with autism located in Delaware shall have Peer Review

Committee and Human Rights Committee policies that comply with DELACARE standards (requirements for Residential Child Care Facilities, Department of Services for Children, Youth and their Families).

21.8.2 Private facilities serving Delaware children with autism located in other states shall comply with the Peer Review Committee and Human Rights Committee policies used by the state in which the facility is located.

21.8.2.1 Said policies shall be reviewed by Delaware's Department of Education to determine that they grant protection substantially equivalent to that provided by Delaware for children prior to any recommendation of approval for private placement by the State Board of Education.

21.8.3 Private facilities serving Delaware children with autism located in states which have no Peer Review Committee and Human Rights Committee policies shall have written Peer Review and Human Rights Committee policies that shall be reviewed by Delaware's Department of Education in consultation with Delaware's PRC, to determine that they grant protection substantially equivalent to that provided by Delaware for children, prior to any recommendation of approval for private placement by the Secretary of Education.

21.8.4 Private facilities serving Delaware children with autism located in states which require substituted judgment or other court order for the use of aversive or related restrictive procedures, and which have obtained such an order for each Delaware child, shall be deemed to have met the peer review and human rights requirements of this section.

21.9 Whenever psychotropic medication has been prescribed by a physician and appears to affect adversely the educational program of a child with autism, the administrator of the center shall contact the parent and request a medication review with the parent and physician.

21.10 Appropriate liaison with the Department of Health and Social Services and other agencies shall be established by the Director of DAP and the Department of Education.

See 3 **DE Reg.** 1709 (6/1/00)

22.0 Students in Need of Unique Educational Alternatives

22.1 Unique Educational Alternative support shall be available for those children with disabilities who have needs that cannot be addressed through the existing resources/programs of the State. Unique Educational Alternatives include, but are not limited to, private residential placements and private day programs.

22.1.1 The Secretary of Education shall approve children for Unique Educational Alternative support and the type of Unique Educational Alternative Support to be provided when such support is necessary to provide special education and related services to a child with a disability.

22.1.2 If the Unique Educational Alternative is a private residential or private day placement, the Secretary of Education shall approve the designation of each child eligible for private placement and the private school or facility in which the approved child is to be enrolled.

22.1.3 Such approval of unique educational alternatives shall be for no more than a one-year period, ending no later than August 31 of the year in which the child is to be enrolled.

22.2 To the extent authorized by the General Assembly in the Budget Act, the Department of Education shall convene the Interagency Collaborative Team (ICT) to review the expenditures for placements of students in need of Unique Educational Alternatives.

22.2.1 The Interagency Collaborative Team (ICT) membership shall consist of:

22.2.1.1 Division Director, Division of Child Mental Health Services, DSCYF;

22.2.1.2 Division Director, Family Services of DSCYF;

22.2.1.3 Division Director, Division of Youth Rehabilitation Services of DSCYF;

22.2.1.4 Division Director, Division of Mental Retardation of DHSS;

22.2.1.5 Division Director, Division of Alcoholism, Drug Abuse and Mental Health, DHSS;

22.2.1.6 Director of the Office of the Budget, or designee;

22.2.1.7 Controller General or designee;

22.2.1.8 Director, Exceptional Children's Group, Department of Education (DOE), who will serve as Chair;

22.2.1.9 Associate Secretary, Curriculum & Instructional Improvement, Department of Education (DOE).

22.2.2 A Director shall be assigned to the Interagency Collaborative Team (ICT) and may designate staff to be their representative on the Interagency Collaborative Team (ICT) only if these designated representatives are empowered to act on behalf of the Division Director, including commitment of Division resources, for a full fiscal year.

22.2.3 The Interagency Collaborative Team (ICT) shall invite to its meetings: a representative of a responsible school district for the case under consideration, the parents of the child, and other persons the team believes can contribute to their deliberations.

22.2.4 The Interagency Collaborative Team (ICT) shall:

22.2.4.1 Review existing assessments of new referrals;

22.2.4.2 Prescribe, if required, additional assessments for new referrals;

22.2.4.3 Review proposed treatment plans of

new referrals;

22.2.4.4 Recommend alternatives for treatment plans of new referrals;

22.2.4.5 Coordinate interagency delivery of services;

22.2.4.6 Review at least annually, current Unique Educational Alternatives for the appropriateness of treatment plans and transition planning;

22.2.4.7 If appropriate, designate a Primary Case Manager for the purpose of coordination of service agencies;

22.2.4.8 If appropriate, designate agencies to be involved in collaborative monitoring of individual cases.

22.2.5 The Interagency Collaborative Team (ICT) shall ensure that state costs incurred as the result of a Team recommendation or assessment of a child currently funded from the Unique Educational Alternatives appropriation for this purpose in the Budget Act will be covered from the existing appropriation.

22.2.5.1 New referrals will be assessed in the interagency manner described above.

22.2.5.2 The Interagency Collaborative Team (ICT) may accept and review cases initiated by other agencies, but in all cases, the school district of residence must be involved in the review.

22.2.5.3 Cases reviewed by the Interagency Collaborative Team (ICT) will employ Unique Educational Alternatives funding to cover state costs to the extent determined appropriate by the Interagency Collaborative Team.

22.2.5.4 Other agencies may recognize a portion of the responsibility for the treatment of these children if determined appropriate by the Team. Funds may be transferred upon the approval of the Budget Director and the Controller General.

22.2.6 The Interagency Collaborative Team (ICT) shall report on its activities to the Governor, Budget Director, President Pro-Tempore, Speaker of the House and the Controller General by February 15 of each year. The report shall address the status of items addressed in the previous February ICT Annual Report.

22.3 Interagency Collaborative Team (ICT) Review Criteria

22.3.1 The Interagency Collaborative Team (ITC) shall recommend to the Secretary of Education action on referrals for approval of Unique Educational Alternatives based on the following criteria:

22.3.1.1 A school district or other public agency support/program is either not available or is not adequate.

22.3.1.2 The school district certifies that the school district cannot meet the needs of the child with existing resources and/or program.

22.4 Procedures for Districts Seeking to Place Students

in Unique Educational Alternative Settings

22.4.1 The responsible district and fiscal agency for a child seeking Unique Educational Alternative support shall be the child's district of residence. The district is responsible for inviting the parent, and, if appropriate, the student, to the ICT meeting.

22.4.2 The chairperson of the Interagency Collaborative Team shall be contacted by the district special education supervisor or designee as soon as the district has reason to believe Unique Educational Alternative support may be needed.

22.4.3 The IEP team that includes district level representation shall meet and determine if the child's need for special education and related services can be met within the existing resources/programs available to the district.

22.4.3.1 Representatives of all agencies involved with the child shall be invited to attend this meeting.

22.4.4 The district shall submit an application to the Chair of the ICT at least five business days before the meeting if it is determined that the child's needs for special education and related services as delineated on the child's IEP cannot be met through existing resources/programs.

22.4.5 The application will include:

22.4.5.1 Current and other relevant assessment information;

22.4.5.2 A historical summary of all placements and/or major interventions and support services that have been provided to the student;

22.4.5.3 A current IEP;

22.4.5.4 A concise statement of the needs that cannot be addressed through existing recourses or programs;

22.4.5.5 A list of all agencies and resources that are currently supporting the child and the family; and

22.4.5.6 An Interagency Release of Information Form.

22.5 Procedures for the ICT

22.5.1 The ICT shall review the application at its next monthly meeting.

22.5.2 Parents and representatives of all involved agencies shall be invited to participate in the meeting.

22.5.3 Recommendations of the Interagency Collaborative Team shall be shared in writing with the school district, parents and other agency staff involved with the case within five business days. The ICT may:

22.5.3.1 Request additional information before making a final recommendation. This may include the involvement of additional agencies, additional assessments and/or review of additional programs/resources that the local team had not considered;

22.5.3.2 Request for additional information shall be sent to the school district, parents, and other agency staff involved in the case within five business days of the meeting and as soon as the additional information is

available, the case shall be brought back to the ICT for further review.

22.5.3.3 Recommend approval and agree that the child has needs that cannot be addressed through existing programs/resources. The local team may then develop the specifics of the Unique Educational Alternative support; or

22.5.3.4 Recommend rejection and ask the local team to use existing programs/resources to meet the educational needs of the children.

22.5.4 Final recommendations of the ITC shall be shared in writing with the school district, parents and other agency staff involved in the case within five business days.

22.5.4.1 If the recommendation is for approval, the local team shall develop the specifics, including costs, of the Unique Educational Alternative.

22.5.4.2 The final plan, with costs, shall be submitted to the Chair of the ICT.

22.5.4.3 The Chair shall submit the recommendations for approval to the Secretary of Education.

22.5.4.4 A recommendation for rejection shall be submitted by the Chair of the ICT to the Secretary of Education for final action.

22.5.4.5 The parent, district superintendent, the special education supervisor, and the director of any other involved agency shall be notified in writing by the Secretary of Education, following the action.

22.6 Financial Aid for Unique Educational Alternatives

22.6.1 Financial aid for children approved for Unique Educational Alternative support by the Secretary of Education, other than private residential or day schools, shall include only those costs that are not covered by an existing funding line.

22.6.1.1 The Department of Education shall pay 85% of the Unique Educational costs and the local school district will pay 15% of the costs unless waivers for the local school district are recommended by the Interagency Collaborative Team (ICT).

22.6.2 Financial aid for children with disabilities approved for private placement by the Department of Education shall include maintenance, transportation and tuition.

22.6.2.1 The Department of Education shall pay 85% of the private placement costs and the local school district shall pay 15% of the private placement costs.

22.6.2.2 The amount authorized for payment shall be the amounts charged by the private school or facility for tuition or program costs, transportation and maintenance, in accordance with the definitions in the *Delaware Code*.

22.7 Independent Placements by School District or Agency: A school district or other public agency may independently place a child with a disability in a private or public school or facility and provide the tuition from appropriate school district or other agency funds without Department of Education approval.

22.7.1 Such an independent placement in a private or public out-of-state facility using local funds must, nonetheless, be certified as a program meeting the applicable standards of the host state.

22.8 School District/Agency Responsibility for Private Placements: When a school district or other public agency responsible for the education of children with disabilities is unable to provide an appropriate program, the district or other public agency may refer the student for consideration of a unique educational alternative, including a private placement.

22.8.1 District Certification and Documentation

22.8.1.1 The local school district certification that the child is eligible for private placement and the statement pertaining to the lack of an appropriate program shall be forwarded on the designated forms to the Department of Education for review by the Interagency Collaborative Team (ICT) prior to action by the Secretary of Education.

22.8.1.2 Documentation shall accompany each application describing the nature and severity of the child's disabling condition(s).

22.8.1.3 Such documentation shall include report(s) of the appropriate specialist(s), depending upon the nature of the child's disability.

22.8.1.4 Additional documentation will be requested, if needed, in order to make a recommendation as to the child's eligibility for private placement or the appropriateness of the requested placement.

22.9 Responsibility for Individualized Education Program

22.9.1 The district or any other public agency shall develop the initial Individualized Education Program for each child with a disability referred for approval for placement that is in a private school or facility.

22.9.2 The district or other public agency shall ensure that a representative of the private school or facility attends the meeting. If a representative of the private school cannot attend the meeting, the district shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

22.9.3 After a child with a disability enters a private school or facility; any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the district or any other public agency.

22.9.4 If the private school or facility initiates and conducts these meetings, the district or any other public agency shall ensure that the parents and a district or any other public agency representative are involved in any decision about the child's IEP and agree to any proposed changes in the program before those changes are implemented.

22.9.5 District of Residence: The referring district

and fiscal agency for a child in private placement is the child's district of residence.

22.9.6 Responsibility for Compliance: Primary responsibility for compliance with State and federal regulations shall remain with the school district or other public agency responsible for the education of the child, even if a private school or facility implements a child's IEP.

22.10 State Responsibility for Private School Accountability: In implementing State and federal regulations governing accountability for and to private programs, the Department of Education shall have the authority to:

22.10.1 Monitor compliance through procedures such as written reports, on-site visits and parent questionnaires.

22.10.2 Develop regulations that define the standards by which private schools and facilities may be approved to serve children with disabilities, and a schedule for reevaluation.

22.10.3 Disseminate copies of applicable standards to each private program to which a public agency has referred or placed a child with disability.

22.10.4 Provide an opportunity for those private schools or facilities to participate in the development and revision of State standards which apply to them.

See 3 **DE Reg.** 1709 (6/1/00)

23.0 General Supervision of Education for Children with Disabilities: The Department of Education (DOE) shall ensure that each educational program for children with disabilities administered within the State, including each program administered by any other public agency, is under the general supervision of the persons responsible for educational programs for children with disabilities in the State educational agency; and meets education standards of the State educational agency.

23.1 Documentation of Department of Education (DOE) activity in meeting its responsibilities shall be maintained in a manner consistent with effective management procedures. Such documentation shall include, but not be limited to, issues pertaining to:

23.1.1 General Supervision, Cooperative Agreements, Complaint/Due Process Procedures, Compliance Monitoring, Project Coordination, Program Evaluation, Comprehensive System of Personnel Development, Dissemination; and Finance/Administration.

23.2 The Department of Education (DOE) shall, through its Comprehensive Compliance Monitoring System, ensure that each public agency develops and implements an IEP for each of its children with disabilities.

23.3 The Department of Education (DOE) shall distribute regulations, sample documents and letters of notification to all agencies (public and non-public) providing services to children with disabilities.

23.4 Nothing in the Individuals with Disabilities Education Act, as amended, or in these regulations shall be construed by any party as permitting any agency of the State to reduce medical or other assistance under, or alter the eligibility requirements of, programs funded in whole or in part through Title V (Maternal and Child Health) or Title XIX (Medicaid) of the Social Security Act, with respect to the provision of a free appropriate public education for children with disabilities within the State.

23.5 Compliance Monitoring: The Department of Education (DOE) shall fulfill a minimum of six administrative responsibilities regarding monitoring of programs for children with disabilities. These responsibilities are:

23.5.1 Adoption and use of policies and procedures to exercise general supervision over all educational programs for children with disabilities within the State.

23.5.2 Adoption and use of a method to continuously collect and analyze information sufficient to determine compliance of sub-grantees and other agencies providing services to children with disabilities within the State, and agencies providing services to Delaware children with disabilities in other states, with applicable State and federal program operation requirements.

23.5.3 Adoption and use of a method by which the Department of Education (DOE) formally directs that each deficiency identified in program operations be corrected by the appropriate agency.

23.5.4 Adoption and use of a method by which the Department of Education (DOE) enforces State and federal legal obligations by requiring written assurances of compliance with such obligations as a condition of a grant or contract; and imposition of appropriate sanctions when a public agency fails or refuses to correct a deficiency. If, after giving reasonable notice and an opportunity for a hearing, the Department of Education (DOE) determines that a local school district or other public agency has failed to comply with any requirement in the *Administrative Manual for Special Education Services*, the Department of Education (DOE) shall:

23.5.4.1 Make no further payments to the district or agency until the Department of Education (DOE) is satisfied that there is no longer any failure to comply with the requirement; or

23.5.4.2 Consider its decision in its review of any application made by the district or agency for IDEA- B payments;

23.5.4.3 Or both.

23.5.5 Any school district or other public agency receiving a notice from the Department of Education under 23.5.4 is subject to public notice provisions as required under 34 CFR 300.196.

23.5.6 If, through its regular monitoring procedures, complaints, hearing results or other sources of

information, there is evidence that the district or agency is making special education placements that are inconsistent with 34 CFR 300.550 (Least Restrictive Environment) or federal regulations, the Department of Education shall review the district or agency's justification for its action and shall assist the district or agency in planning and implementing any necessary corrective action.

23.6 Scope of Department of Education Compliant Monitoring Authority

23.6.1 The Department of Education, acting on behalf of the State Board of Education, shall have the authority to conduct monitoring, including collection and use of both off-site and on-site information.

23.6.2 The State Secretary of Education shall have the authority to compel the correction of deficiencies identified in program operations.

23.6.3 The State Secretary of Education shall have the authority to enforce legal obligations.

23.6.4 Department of Education standards relative to special education and related services shall be applicable to, and binding upon, all education programs for children with disabilities administered within the State.

23.7 The Department of Education Methods of Monitoring shall include:

23.7.1 Written monitoring procedures which cover all aspects of State and federal requirements and which are uniformly applied to all public agencies;

23.7.2 Identification of deficiencies in program operations by collecting, analyzing, and verifying information sufficient to make determinations of compliance/non-compliance with State and federal requirements;

23.7.3 Determination of whether or not each educational program for children with disabilities administered within the State, including private schools in which these children are placed by public agencies, meets educational standards of the Department of Education, the requirements of IDEA, Part B, and where applicable, of Educational General Administrative Requirements (EDGAR).

23.7.4 Use of other information provided to the Department of Education through complaints, hearings and court decisions, evaluation and performance reports, and other formally submitted documents to determine if agencies and programs are in need of specific compliance interventions;

23.7.5 Monitoring the implementation of any compliance agreement and the investigation of the implementation of any orders resulting from the resolution of complaints filed with the Department of Education against the agency being monitored;

23.7.6 Use of off-site review, on-site review, letters of inquiry, and follow-up or verification of specific activities;



23.7.7 Written documentation of each monitoring activity through correspondence and reports;

23.7.8 Specification of a reasonable period of time to complete the analysis of information collected for monitoring or evaluation purposes to identify deficiencies of a program or public agency in meeting State and federal requirements and report such deficiencies to the public agency; and, where applicable, of Educational General Administrative requirements (EDGAR);

23.7.9 Specification of a reasonable period of time for reaching a determination that a deficiency in program operations exists, and for notifying the agency in writing if required;

23.7.10 Requirement of a written notice (for example, monitoring report, letter of findings) that:

23.7.10.1 Describes each corrective action which must be taken, including a reasonable time frame for submission of a corrective action plan;

23.7.10.2 Requires that the corrective action plan provide for: the immediate discontinuance of the violation; the prevention of the occurrence of any future violation; documentation of the initiation and completion of actions to achieve current and future compliance; the timeframe for achieving full compliance; and the description of actions the agency must take to remedy the identified areas of non-compliance.

23.7.11 Specification of a reasonable period of time after receiving a corrective action plan from an agency in which the Department of Education shall determine whether the corrective action plan meets each of the requirements or if additional information is required from the agency;

23.7.12 Specification of a reasonable period of time from the date of the original written notice, in which the Department of Education shall determine that:

23.7.12.1 The agency has submitted an acceptable corrective action plan which complies fully with all of the requirements; or

23.7.12.2 Reasonable efforts have not resulted in voluntary compliance.

23.7.13 That a school district or other public agency be given reasonable notice and an opportunity for a hearing with respect to an identified deficiency.

23.7.13.1 If the school district or other public agency declines a hearing, the Department of Education shall reach a final decision of compliance or non-compliance within ten (10) days.

23.7.13.2 If the Department of Education conducts a hearing, the Department of Education shall reach a final decision of compliance or non-compliance within thirty (30) days after the conclusion of the hearing; or

23.7.13.3 If the Department of Education reaches a final decision of non-compliance (i.e., the school district or other public agency has violated State or federal

requirements); the Department of Education shall:

23.7.13.3.1 Make no further payments under Part B to the school district or other public agency until the school district or other public agency submits an acceptable corrective action plan;

23.7.13.3.2 Disapprove any pending school district or other public agency Part B local application, when appropriate;

23.7.13.3.3 Seek recovery of funds, and impose any other sanctions authorized by law.

23.8 Comprehensive System of Personnel Development: The Department of Education shall provide opportunities for all public and private institutions of higher education, and other agencies and organizations, including representatives of individuals with disabilities, parent, and other advocacy organizations in the State which have an interest in the education of children with disabilities, to participate fully in the development, review, and annual updating of the Comprehensive System of Personnel Development.

23.8.1 The Department of Education shall conduct an annual needs assessment to determine if a sufficient number of qualified personnel are available in the State, and to determine the training needs of personnel relative to the implementation of federal and State requirements for programs for children with disabilities.

23.8.2 The results of the annual needs assessment shall be used in planning and providing personnel development programs.

23.8.3 The Department of Education shall implement a Comprehensive System of Personnel Development which includes:

23.8.3.1 The inservice and preservice training of general and special education instruction, related services, and support personnel. Such training shall include training and technical assistance for ensuring that teachers and administrators in all public agencies are fully informed of their responsibilities in implementing the least restrictive environment requirements and other requirements for special education and related services;

23.8.3.2 Procedures to ensure that all personnel necessary to carry out the provision of special education and related services are qualified and that activities sufficient to carry out the personnel development plan are scheduled;

23.8.3.3 Procedures for acquiring and disseminating to teachers and administrators of programs for children with disabilities significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices and materials.

23.8.4 On-going inservice training programs shall be available to all personnel who are engaged in the education of children with disabilities.

23.8.4.1 These programs shall include: (1) use of incentives which ensure participation by teachers, such as released time, payment for participation, options for academic credit, salary step credit, certification renewal, new instructional materials, and/or updating professional skills; (2) involvement of local staff; and (3) use of innovative practices which have been found to be effective.

23.8.5 The Department of Education shall coordinate and facilitate efforts among the Department of Education, districts and agencies, including institutions of higher education and professional associations, to recruit, prepare, and retain qualified personnel, including personnel from minority backgrounds, and personnel with disabilities.

23.8.6 The Department of Education shall coordinate with each district, agency and/or institution of higher education all responsibilities relative to the gathering of data, training, recruitment and retention as delineated in 34 CFR 300.380.

23.8.7 The Department of Education shall disseminate copies of statutes, regulations, and standards applicable to programs for children with disabilities to each local education agency, institution, the GACEC and organization responsible for carrying out the programs.

23.8.7.1 Such dissemination includes each private school and facility to which a public agency has referred a child with a disability.

23.8.7.2 The Department of Education shall disseminate information on significant knowledge derived from educational research and other sources, promising practices, materials, and technology, proven effective through research and demonstration which may be of assistance to LEAs and other agencies in the improvement of education and related services for children with disabilities.

23.8.7.3 The Department of Education shall be responsible for the following dissemination activities:

23.8.7.3.1 Notice of any changes in statutes, regulations, or standards applicable to programs for children with disabilities shall be issued in writing, with copies to the head of each school district or other public agency, to each supervisor of programs for children with disabilities and to institutions of higher education;

23.8.7.3.2 Regular meetings, at least quarterly, of LEA and other agency supervisors of special education programs;

23.8.7.3.3 Learning Resource System publications relative to current issues and promising practices.

#### 23.9 Finance/Administration

23.9.1 Child Count Procedures: The Department of Education shall specify in writing the procedures and forms used to conduct the annual count of children served. Such procedures and forms shall conform to 34 CFR 300.750 through 300.755 and written instructions received from the Office of Special Education and Rehabilitative

Services (OSERS).

23.9.2 Administration of Funds: Funds for the education of children with disabilities shall be administered pursuant to Title 14 of the *Delaware Code*.

23.9.3 Review of LEA Application: The Department of Education shall develop and use a review sheet to document that all required IDEA-B, EDGAR, and State statutes and regulations have been applied to the review and approval of each LEA Application.

23.9.3.1 Each LEA shall be notified in writing, using a standard format of the status of its Application, i.e., approved, not approved, and any conditions which must be met in order for the Application to be approved.

23.9.3.2 All amendments to an LEA Application shall be reviewed and approved using the same requirements and procedures used for an initial Application.

23.9.3.3 In the event that the Department of Education and the LEA cannot negotiate and effect an approved LEA Application, the Department of Education shall notify the LEA in writing of its right to a hearing and the procedures for obtaining a hearing.

23.9.3.4 If, after a hearing, the district or agency application is found to be unapprovable, the district or agency may appeal this finding to the Secretary, U. S. Department of Education. The applicant shall file a notice of the appeal with the Secretary within 20 days after the applicant has been notified by the Department of Education of the results of the hearing.

23.9.3.5 The State shall make available at reasonable times and places to each applicant all records of the agency pertaining to any review or appeal the applicant is conducting under this section, including records of other applicants.

23.9.3.6 An applicant from a district or agency shall include the following information:

23.9.3.6.1 A description of how the applicant will meet the federal requirements for participation of children enrolled in private schools.

23.9.3.6.2 The numbers of children enrolled in private schools which have been identified as eligible for benefits under the program.

23.9.3.6.3 The basis the applicant used to select the children.

23.9.3.6.4 The manner and extent to which the applicant complied with Education Department General Administrative Regulations (EDGAR, January 1, 1996, USDE).

23.9.3.6.5 The places and times the children will receive benefits under the program.

23.9.3.6.6 The difference, if any, between the program benefits the applicant will provide to public and private school children, and the reasons for the differences.

23.9.4 Recovery of Funds for Misclassified Children: A State audit shall be conducted during the month

of October to ascertain that units awarded on September 30 are in full operation on or prior to that date with evidence of services being provided. If, during the audit of State units for the education of children with disabilities, it is discovered that a child has been erroneously classified, this discrepancy will be made known to the local education agency and will also be reported to the proper persons at the Department of Education.

23.9.4.1 The specific procedures used in order to authenticate the count of children will be found in the *Monitor's Handbook for the September Audit and Site Monitoring*.

23.9.4.2 The local education agency will be notified that its Part B grant award has been reduced by an amount equal to that fiscal year's per child allocation for each child determined to have been misclassified.

23.9.4.3 Should discovery of misclassification occur at a time other than during the audit of State units, such as in the fourth quarter of the Grant, the following year's Grant Award shall be reduced accordingly. The task of identifying children who have been misclassified shall not only during the September 30 audit of State units, but during all other IDEA monitoring and evaluation on-site visits as well.

#### 23.10 Other SEA Responsibilities

23.10.1 Ensure Adequate Evaluation: As a means of ensuring adequate evaluation of the effectiveness of the policies and procedures relative to child identification shall:

23.10.1.1 Incorporate within its Comprehensive Compliance Monitoring System process a series of questions about the Childfind activities which will be asked of special and regular education teachers, administrators, related services personnel, Part H personnel and other public agencies;

23.10.1.2 Systematically review each LEA's application for federal funds to ensure that it contains a complete description of the LEA's child identification process;

23.10.1.3 Annually review the child count data to determine trends and anomalies in the types and numbers of children identified.

See 3 **DE Reg.** 1709 (6/1/00)

#### 24.0 Funding Issues for Children with Disabilities

24.1 Reimbursement under the Unit System: Eligibility of the local education agencies to receive reimbursement under the unit system is contingent upon:

24.1.1 The proper identification of children with disabilities in accordance with Title 14 of the *Delaware Code* and Sections 2.0, 3.0, and 4.0 of these regulations; and

24.1.2 A State Department of Education audit to document the child count for units awarded on September 30, and to document the availability of current and complete IEPs for children included in the count.

24.2 Aide Positions for Services to Children with Disabilities (as authorized under 14 *Del. C.*, Section 1324).

24.2.1 All paraprofessionals in such positions shall work under the supervision of teachers.

24.2.2 The following positions may be authorized:

24.2.2.1 Trainable Mental Disability Unit: One classroom teacher, or in lieu of a teacher, two aides may be employed, as long as the number of aides does not exceed the number of teachers in any given special school. Such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred twenty-two (222) days.

24.2.2.2 Severe Mental Disability Unit: One classroom teacher and one classroom aide may be employed per unit in any given special school. In lieu of the teacher, two additional aides may be employed as long as the number of aides does not exceed the number of teachers in any given school by a 2 to 1 ratio. Such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred twenty-two (222) days.

24.2.2.3 Autism Unit: One teacher and one aide may be employed per unit. Such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred twenty-two (222) days.

24.2.2.4 Physical Impairment Unit: One classroom teacher and either one aide or attendant may be employed per unit in any given special school.

24.2.2.5 Hearing Impairment Unit: One classroom teacher and one aide per primary unit, one classroom teacher and one aide for other units (grades 4-12), and one clerk-aide for the parent-child program may be employed in any given special school.

24.2.2.6 Deaf/Blindness Unit: One classroom teacher and one classroom aide may be employed per unit. In lieu of the teacher, two additional aides may be employed as long as the number of aides does not exceed the number of teachers in any given school by a 2 to 1 ratio. Such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred and twenty-two (222) days.

24.2.2.7 Intensive Learning Center Unit: One classroom teacher, or in lieu of a teacher, two aides, may be employed as long as the number of aides does not exceed the number of teachers in any center, and that all aides work under the direct supervision of teachers.

24.2.3 The use and ratio of aides to teachers shall be dependent upon the rationale developed by the agency.

24.3 School Nurses (as authorized by 14 *Del. C.*, Section 1310)

24.3.1 A nurse shall be employed for eight (8) or more units of children with autism, physical impairment, trainable mental disability, severe mental disability, or a combination thereof, and for hearing impairment as per regular district formula, i.e., 40:1. Such units shall be subtracted from the district's total units so that they are not counted twice.

#### 24.4 Other Positions for Services to Children with Disabilities

24.4.1 Any special school with an enrollment of ten (10) or more units may employ a secretary (12 months) and proportional secretarial services for less than 10 units. Such units must be subtracted from the district's total units so that they are not counted twice.

24.4.2 Custodial services shall be provided upon the regular custodial formula with consideration given for residence hall care.

24.4.3 An instructional media specialist shall be assigned to the school for the hearing impaired when there is a minimum of ten (10) units.

24.4.4 A budget item shall be provided for contractual services in order to give to a school for hearing impaired the appropriate services in such fields as, but not limited to, speech pathology, school psychology, social work, and guidance counseling.

24.4.5 Whenever the State Board of Education designates a particular school district to serve as administrator for the statewide program for deaf/blind pupils, that district may employ as a statewide coordinator at the principal's rank and salary, a principal for eight (8) or more such units of deaf/blind children. If a principal is assigned responsibility for such a program for fewer than eight (8) units, the support for the assignment shall be in the same ratio as the number of authorized units is to eight (8) units.

See 3 DE Reg. 1709 (6/1/00)

25.0 Advisory Council for Exceptional Citizens. The Governor shall appoint an advisory council to act in an advisory capacity to the Department of Education, the State Board of Education and other state agencies on the needs of exceptional citizens. The General Assembly shall provide for the maintenance of the council. The council shall also serve in the capacity of the advisory panel as required by PL 94-142 (20 U.S.C. Section 1400 et seq.). (14 Del. C. 195, Section 3108; 51 Del. Laws. C. 287, Section 3; 61 Del. Laws, 190, Section 7; 71 Del. Laws, c. 180, Section 147.)

25.1 An annual report prepared by the Governor's Advisory Council for Exceptional Citizens shall be made available to the public in a manner consistent with other public reporting requirements.

25.1.1 The annual report shall be reviewed by the Department of Education and the Department's response shall be sent to the Governor's Advisory Council.

25.2 All Advisory Panel meetings and agenda items shall be publicly announced prior to the meeting, and meetings must be open to the public.

25.3 The State shall reimburse the Panel for reasonable and necessary expenses for attending meetings and performing duties. The State may use Part B funds for this purpose.

Administrative Manual: Programs for Exceptional Children

#### ~~I.G.8.SPECIAL PROGRAMS FOR THE HEARING IMPAIRED~~

~~a. The State Committee for the Hearing Impaired shall be established by the Director of the Delaware Programs for the Hearing Impaired and the Deaf/Blind in conjunction with the Team Leader of the Exceptional Children Team. The Committee shall consist of the following:~~

~~Audiologist: Sterek School for the Hearing Impaired  
Coordinator: Statewide Services for the Hearing Impaired~~

~~Director: Delaware Programs for the Hearing Impaired  
Principal: Sterek School for the Hearing Impaired  
Program Director: Speech and Hearing Services, Division of Public Health~~

~~Psychologist(s): Sterek School for the Hearing Impaired  
Representative(s): Public and Private Agencies (based upon the meeting agenda)~~

~~Representative(s): Local Education Agency (based upon the meeting agenda)~~

~~Representative(s): Public/Community  
Specialist(s): Professionals skilled in specific, pertinent areas (based upon the meeting agenda)~~

~~Education Associate: Exceptional Children Programs (responsible for the Programs for the Hearing Impaired)~~

~~b. The Chairperson of the Committee shall be the Director of the Delaware Programs for the Hearing Impaired and the Deaf/Blind whose leadership role includes efforts toward Committee consensus.~~

~~c. Decisions of the Committee shall be determined by a majority vote of the members present if a consensus is unattainable.~~

~~d. The Chairperson shall set the time and place for meetings, which should be scheduled monthly, contingent upon agenda items.~~

~~e. The Committee shall provide a means for determining eligibility, program development, and coordination that is unique for the low incidence group of students with disabilities whose major disability is hearing impairment.~~

~~f. Specific responsibilities shall include:  
(1) reviewing the status of all hearing impaired students in Delaware at the time of initial identification, and periodically as determined by the Committee;~~

~~(2) recommending appropriate services and/or programs necessary for hearing impaired students in Delaware;~~

~~(3) assisting local educational agencies and appropriate agencies in implementing State Committee~~

recommendations; and

~~(4) developing and reviewing (annually) for dissemination, policies, and procedures for the conduct of the Committee.~~

~~g. The Committee shall discharge its responsibilities in accordance with P.L. 101-476 (IDEA) and appropriate sections of this Manual.~~

~~h. Complete minutes of the Committee meetings shall be sent to the Team Leader of the Exceptional Children Team.~~

~~i. A copy of pertinent portions of the review and recommendations pertaining to the identification, evaluation, and educational program and placement of each student and the provision for a free, appropriate public education to such students shall be sent to the appropriate parents and school district or agency.~~

the form attached hereto as Exhibit B, and said regulation shall be cited in the *Regulations of the Department of Education*.

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del. C.* Section 122, in open session at the said Board's regularly scheduled meeting on August 17, 2000. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** this 17th day of August, 2000.

DEPARTMENT OF EDUCATION  
Valerie A. Woodruff, Secretary of Education  
Approved this 17th day of August, 2000.

STATE BOARD OF EDUCATION  
Dr. James L. Spartz, President  
Jean W. Allen, Vice President  
Mary B. Graham, Esquire  
John W. Jardine, Jr.  
Dr. Joseph A. Pika  
Dennis J. Savage  
Dr. Claibourne D. Smith

**Regulatory Implementing Order**  
**Supportive Instruction (Homebound)**

**I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the approval of the State Board of Education to amend the regulation Supportive Instruction (Homebound) found in the *Regulations of the Department of Education*. The amendment corrects the oversight in Section 3.1.1 (on minimum hours) by adding that it is a weekly minimum.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on June 21, 2000, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

**II. Findings of Facts**

The Secretary finds that it is necessary to amend this regulation because the frequency of allowable services needed to be clarified.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulation. Therefore, pursuant to 14 *Del. C.* Section 122, the regulations attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 *Del. C.* Section 122(e), the regulations hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text and Citation**

The text of the regulation amended hereby shall be in

**930 Supportive Instruction (Homebound)**

1.0 Definition: Supportive instruction is an alternative educational program provided at home, in a hospital or at a related site for students temporarily at home or hospitalized for a sudden illness, injury, episodic flare up of a chronic condition or accident considered to be of a temporary nature.

1.1 Procedures for eligibility shall be limited to appropriate certification that the student cannot attend school.

1.2 Services for children with disabilities as defined in the Individuals with Disabilities Act (IDEA) and the State Department of Education's regulations on Children with Disabilities shall be provided according to the *Administrative Manual: Special Education Services*, and shall be processed under the district's special education authority. Nothing in this regulation shall prevent a district from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and the Administrative Manual.

1.3 Nothing in this regulation shall alter a district's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a district from providing supportive instruction to such students.

2.0 Eligibility: A student enrolled in a school district is eligible for supportive instruction when the school receives the required certification that an accident, injury, sudden illness or episodic flareup of a chronic condition will prevent the student from attending school for at least ten (10) school days.

2.1 A physician must certify absences due to a medical condition.

2.2 Absences due to severe adjustment problems must be certified by a psychologist or psychiatrist and confirmed through a staff conference.

2.3 A physician must certify absences due to pregnancy complicated by illness or other abnormal conditions.

2.3.1 Students do not qualify for supportive instruction for normal pregnancies unless there are complications.

2.3.2 Students who remain enrolled in school are eligible for supportive instruction during a postpartum period not to exceed six weeks. Postpartum absences must be certified by a physician.

2.4 When the request for supportive instruction is for transitional in-school programs immediately following supportive instruction provided outside school, the request must be certified through a staff conference.

3.0 Implementation: Supportive instruction for students shall begin as soon as the certification required by 2.0 is received and may continue upon return to school only in those exceptional cases where it is determined that the student needs a transitional program to guarantee a successful return to the school program as in 2.4.

3.1 Supportive instruction shall adhere to the extent possible to the student's school curriculum and shall make full use of the available technology in order to facilitate the instruction.

3.1.1 The school shall provide a minimum of 3 hours of supportive instruction each week of eligibility for students K-5th grade, and a minimum of five hours each week of eligibility for students 6-12th grade. There is no minimum for in-school transition.

3.1.2 Nothing in this regulation shall prevent a school district from providing additional hours of supportive instruction to eligible students from either its Academic Excellence allotment or other available funding sources.

3.2 Summer instruction is permitted for a student who is otherwise eligible for supportive instruction and as determined by the student's teachers and principal, needs the instruction to complete course work or to maintain a level of instruction in order to continue in a school program the following school year.

## DEPARTMENT OF FINANCE

### DIVISION OF REVENUE

#### DELAWARE STATE LOTTERY OFFICE

Statutory Authority: 29 Delaware Code,  
Section 4805(a) (29 Del.C. §4805(a))

#### Order

Pursuant to 29 Del. C. §10118 and 29 Del. C. §4805(a), the Delaware State Lottery Office hereby issues this Order promulgating proposed Rules for the administration of the Delaware lottery and video lottery. Following notice in the Register of Regulations, the Lottery makes the following findings and conclusions:

#### Summary of Evidence and Information Submitted

1. The Lottery posted public notice of the proposed rule revisions in the July 1, 2000 Register of Regulations. The proposal contained eight amendments to the Lottery's Rules and Regulations and the Video Lottery Regulations. The proposed amendments to the Lottery Rules and Regulations are as follows: 1)amend the Introduction to provide for the statutory distribution of gross sales to the General Fund, and delete the current reference to agent commissions; 2)amend Section 13(c)(d) to provide that no employee of an instant ticket supplier or on-line games computer system can purchase Lottery tickets; 3)amend Section 16(c) to delete the redundant language "featuring the revised prize structure"; 4)amend Section 18(a) to provide that prizes are claimed at the agent's locations or the Division of Revenue, and that prizes greater than \$5,000 must be claimed at the Lottery Office; 5)amend Section 18(e) to clarify that all winning tickets must be validated and that all tickets are void if altered, torn, misprinted, illegible, or damaged unless the Director is satisfied the ticket is genuine; 6)amend section 19 to clarify that the Lottery will make payment to the person who signs the back of the ticket unless there is a conflict with the information on the claim form; 7)amend section 29 to clarify the process for the submission of fingerprinting information from retailer license applicants. The proposed amendments to the Video Lottery Regulations are as follows: 1)enact a new section 14.1 through 14.10 to set forth the procedures used by the Lottery and the Delaware State Police for the fingerprinting of licensees and employees; 2)amend the existing section 14.0 to be renumbered as 15.0.

2. The Lottery permitted the public to submit written comments from July 1, 2000 through July 30, 2000. The Lottery received no written comments regarding the proposed rules.

**Findings of Fact**

3. The public was given notice and an opportunity to provide written comments to the Lottery. The Lottery received no public comments.

4. The proposed amendments are essentially technical amendments that clarify the existing rules for consistency with existing Lottery procedures.

**Conclusions**

5. The proposed rules were promulgated by the Lottery in accord with its statutory duties and authority as set forth in 29 Del. C. §4805(a). The Lottery deems these rules as proposed to be necessary and desirable for the efficient and economical operation of the Lottery and Video Lottery under 29 Del. C. §4805(a). 6. The Lottery concludes that the adoption of the proposed rules would be in the best interests of the citizens of the State of Delaware and necessary to establish and administer the Delaware Lottery and Video Lottery.

7. The Lottery therefore adopts the proposed rules in the form published in the Register of Regulations on July 1, 2000.

8. The effective date of this Order shall be ten (10) days from the publication of this order in the Registrar of Regulations on September 1, 2000.

IT IS SO ORDERED this 4th day of August, 2000.

Wayne Lemons, Director, Delaware State Lottery Office

**Delaware State Lottery Rules and Regulations**

**Introduction**

The Delaware State Lottery ("Lottery") was established by the enactment of Chapter 348, Volume 59, of the Laws of Delaware. This chapter created the State Lottery Office ("Lottery Office") and the position of Director of the State Lottery Office ("Director").

The Lottery Law, 29 Delaware Code, Chapter 48, directs the Secretary of Finance to appoint, with written approval of the Governor, a Director of the State Lottery Office.

All monies received from the sale of lottery tickets are accounted for to the State Treasurer and receipts are placed into a special account known as the State Lottery Fund.

At least forty-five percent (45%) of gross sales is distributed as prizes to the holders of winning tickets. Not less than thirty percent (30%) of gross sales is paid to the State of Delaware General Fund. ~~Five percent (5%) may be paid to Agents as sales commissions.~~ The remaining twenty percent (20%) shall pay Lottery operating expenses with any

unused portion of this amount reverting to the State General Fund.

The following regulations are adopted pursuant to the State Lottery Law, 29 Delaware Code Chapter 48, the provisions of which are hereby incorporated by reference. These regulations apply to the operations of the lottery system established under title 29, chapter 48, except for video lottery operations. Video lottery operations will continue to be administered pursuant to the Video Lottery Regulations previously issued by the Director on December 31, 1994, and any subsequent amendments.

The Lottery Office is located at McKee Business Park, Suite 102, 1575 McKee Road, Dover, DE 19904-1903. Copies of these regulations can be obtained from the Lottery Office. The Lottery's phone number is (302)739-5291.

**(1) Definitions**

(a) "Act" or "Law" means the Delaware State Lottery Law, Chapter 348, Volume 59, of the Laws of Delaware, as may be amended from time to time.

(b) "Office" or "Lottery Office" means the State Lottery Office created in the Act.

(c) "Bank" means and includes all banks, banking associations, and trust companies organized under the authority of this State or the United State whose principal place of business is within the State.

(d) "Director" means the Director of the State Lottery Office or Acting Director as stipulated in the Act.

(e) "Licensee" or "Agent" means a person who has been licensed to sell lottery tickets.

(f) "Lottery" or "State Lottery" means the lottery established and operated pursuant to the Act.

(g) "Lottery Property" means and includes but is not limited to any Agent's License, unsold tickets, forms, promotional materials or any other tool issued to the agent by the State Lottery Office for the purpose of selling tickets.

(h) "Person" means and includes an individual, association, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" shall also mean and include all departments, commissions, agencies, and instrumentalities of the State, including counties and municipalities and agencies and instrumentalities thereof.

(i) "Regulations" means the regulations promulgated by the Lottery Office for the operation of the lottery.

(j) "Ticket" means a lottery ticket issued by the State Lottery Office for sale to the general public.

**(2) Director**

The Director shall have the power, duties and responsibilities as set out in the enabling legislation, Chapter

348, Volume 59, Laws of Delaware, and any subsequent amendments.

### (3) Licensing of Agents

#### (a) Application

Any person interested in obtaining a license as an Agent must first file an "Application for Lottery Sales Agent's License" with the Director of the State Lottery Office. The applications, as well as other documents submitted to the Lottery on behalf of the applicant for purposes of determining the qualifications of the applicant, shall be sworn to or affirmed before a notary public, or designated Lottery employee.

#### (b) Eligibility for License

No license as an Agent to sell lottery tickets shall be issued to any person to engage in business primarily as a lottery sales Agent. Before issuing such license, the Director shall consider such factors, including but not limited to:

1. The financial responsibility and security of the person and his business activity. The applicant must be willing to grant to the Lottery the right to perform a routine credit check such as any other supplier might require before extending credit. He or she must also be willing to grant to the Lottery the right to perform a security investigation to include the release of any criminal history by the State Bureau of Identification and the Federal Bureau of Identification.

2. The honesty and integrity of the applicant.

3. The accessibility of his place of business or activity to the public.

4. The sufficiency of existing licensees to serve the public convenience.

5. The volume of expected sales.

6. The veracity of the information supplied in the "Application for Lottery Sales Agent's License."

7. The results of the applicant's state and federal criminal history record check.

8. The extent to which the applicant is known to associate with persons of nefarious backgrounds or disreputable character such that the association could adversely affect the general credibility, security, integrity, honesty, fairness, or reputation of the Lottery.

#### (c) Ineligibility of Minors

No person under the age of twenty-one (21) shall be licensed as an Agent. Nothing herein shall be construed to mean an employee must be twenty-one (21) to sell tickets within the licensed establishment.

#### (d) Issuance of License

1. The Director shall, in accordance with the provisions of the Act and these Regulations, license such persons as Agents to sell lottery tickets who, as in his option, will best serve the public convenience and promote the sale of tickets.

2. The issuance of a license shall signify agreement

by the agent to abide by all provisions of the Lottery regulations.

3. An Agent's license shall be reviewed annually on or about the anniversary date of the original permanent issue.

4. The Director reserves the right to require a surety bond from every licensed Agent in such amount consistent with his determination of the financial stability of said Agent so as to avoid any monetary loss to the State because of the Agent's activities in the sale of lottery tickets.

#### (e) License to be Displayed

1. Every Agent shall prominently display his license in an area visible to the general public.

2. In addition, the Agent decal shall be mounted on a prominent public window of the Agent's premises.

3. The Agent shall maintain and display all promotional material in conjunction with ticket sales in accordance with instructions issued by the Lottery Office.

#### (f) Sale of Lottery Tickets at Specific

##### Locations Licensed and Nontransferability

1. The sale of lottery tickets shall be made only pursuant to a lottery Agent's license at a specific location named therein.

2. No other sales shall be permitted, except as provided in the Act or these Regulations.

#### (g) Sale and/or Transfer of Ownership of Specific Licensed Locations

1. All licensed agents are required to notify the Lottery Office of a pending sale of a specific licensed location. This requirement of notice includes ownership change in corporations as well as individual ownership change affecting a specific licensed location. No license may be transferred, assigned, or pledged as collateral. All licenses to sell Lottery tickets are nontransferable.

2. Any change in ownership of a specific licensed location requires a new Agent Application process. Change of ownership does not automatically guarantee the granting of a License to the new ownership. In the event of the death of a licensee, the Lottery will suspend operations at the Agent's location if and until a new Agent Application is approved for that location.

#### (h) Liability of Lottery Office and State of Delaware

It is agreed by the Agent that he shall hold the Lottery Office, all Lottery employees, and the State of Delaware harmless from any liability arising in connection with conducting lottery ticket sales.

### (4) Revocation of Licenses

(a) The license is evidence of an agency revocable at will by the Director. The Director may revoke without notice or a hearing, the license of any Agent who violates the Act or any rule or regulation promulgated pursuant to the Act. However, if the Director does revoke a license without notice and an opportunity for a hearing, the Director shall by



appropriate notice afford the person whose license has been revoked an opportunity for a hearing within thirty (30) days after the revocation order has been issued. The notice shall also specify the intended reasons for the revocation. As a result of any such hearing, the Director may confirm his action revoking the license or he may order the restoration of such license.

An Agent's license may be suspended, revoked, or its renewal rejected for any one or more of the following reasons:

1. Whenever the Agent knowingly uses false or misleading information in obtaining the license.
2. Whenever the Agent violates any of the provisions of the State Lottery Law or any regulations, directives, or instructions promulgated or issued thereunder.
3. Whenever the Agent's business address is changed.
4. Whenever the Agent does not display lottery point-of-sale material in a manner which is readily seen by and available to the public, including failure to make tickets available at points-of-sale within the licensed premises which the Director determines are necessary to the interest of the public and the lottery.
5. Whenever a Agent commits an act which seriously impairs his reputation for honesty and integrity.
6. Whenever the Agent has been convicted of a crime.
7. Whenever the Agent has been found guilty of any fraud or misrepresentation in any connection.
8. Whenever the Agent's experience, character, and general fitness are such that his participation as a lottery sales Agent is inconsistent with the public interest, convenience and necessity, or the security of the Lottery operations.
9. Whenever the Agent is delinquent in making required accounting or fails to pay weekly all monies owed to the State.
10. Whenever the Agent fails to take reasonable security precautions with regard to the handling of lottery tickets and other materials.
11. Whenever the Agent sells a lottery ticket for an amount less than or greater than its stated price.
12. Whenever the Agent fails to report information required by these regulations.

Whenever the Agent sells lottery tickets to known third-party ticket resalers or enters computer-generated betting slips from third-party ticket resalers for the sale of lottery tickets.

(b) Procedure for Revocation or Rejection of Renewal of License

1. The Director may, for any of the reasons stated above, revoke or reject the renewal of an Agent's license.
2. Immediately upon notice of revocation or rejection of renewal of an Agent's license, said Agent shall

suspend the sale of all lottery tickets and shall forthwith comply with the provisions of these Regulations for procedures upon suspension of license, unless otherwise notified by the Director.

**(5) Procedure Upon Suspension or Revocation of License**

(a) The license of any Agent may be temporarily suspended by the Director without prior notice, or having a hearing, pending further investigation, settlement of delinquent account, or prosecution.

(b) Upon suspension or revocation of an Agent's license for any reason whatsoever, the Agent shall meet with the Director or his designee on a date set by the Director for the purpose of rendering his final lottery accounting. This date shall be not more than seven (7) days from the date the notice of suspension or revocation was received by the Agent. Upon the Agent's failure to meet with the Director or his designee on or before the date set by the Director, the Director may take steps to impose such penalties and to enforce the powers of his Office against the delinquent Agent, his agents, or representatives, as may be provided by law and these Regulations.

(c) Upon receipt of notice of suspension, revocation, or rejection, the Agent may within fourteen (14) days of receipt of said notice make written request to the Director for a hearing to show cause why his license should not be revoked. The written request must contain:

- (1) A clear and concise assignment of each error which the licensee alleges to have been committed in the tentative determination to suspend or revoke the license. Each assignment of error should be listed in a separately numbered paragraph.
- (2) A clear and concise statement of the facts on which the licensee relies in support of each assignment of error.
- (3) A prayer setting forth the relief sought.
- (4) The signature of the licensee or an officer authorized to request the hearing.
- (5) A verification by the licensee or counsel for the licensee that the statements contained in the petition are true.

The Director shall provide an opportunity for the petitioner to be heard within thirty (30) days of receipt of the request for a hearing.

(d) The Director may appoint a hearing officer within a reasonable time for the purpose of hearing suspension or revocation cases. Said officer shall hear the case, and within thirty (30) days of the conclusion of said hearing, submit to the Director with a copy to the parties of record, a recommended report. Said report shall contain findings of facts and conclusions of law to support a recommendation to support the revocation, suspension, or rejection, or to support the relicensing of the Agent involved. The parties of record upon receipt of their copy of the recommended report

shall have ten (10) days in which to file exceptions, objections and replies to the Director. The Director, within fourteen (14) days, will advise the Agent of his final decision. The Director's decision shall be final.

(e) The licensee may appear individually, by legal counsel, or by any other duly authorized representative. In the absence of the licensee, written evidence of a representative's authority shall be presented to the hearing officer in a form satisfactory to the hearing officer.

(f) The licensee or his duly authorized representative, may, with the approval of a hearing officer, waive the hearing and agree to submit the case for decision on the record, with or without a written brief. Such a waiver or agreement shall be in writing and placed in the record.

(g) The licensee shall be given the opportunity for argument within the time limits fixed by the hearing officer following submission of the evidence. The hearing officer, upon request of licensee, may accept briefs in lieu of argument. The briefs shall be filed within ten days after the hearing date or within such time as fixed by the hearing officer.

(h) The hearing officer may admit any relevant evidence, except that he shall observe the rules of privilege recognized by law. The hearing officer may exclude any evidence which is irrelevant, unduly repetitious, or lacking a substantial probative effect.

(i) A record shall be made of all hearings and all witnesses shall be sworn and subject to cross examination.

#### **(6) Erroneous or Mutilated Tickets**

Unless the Director is satisfied that a mutilated lottery ticket is genuine, no credit or prize will be issued to the holder of said ticket. Tickets misprinted due to machine error shall be returned to the Lottery and the Agent's account shall be credited. If a ticket misprinted due to machine error (as determined by Lottery internal procedures) has been sold, the ticket holder shall be reimbursed for the cost of the ticket. Such tickets shall not be eligible for any prize. The Director may require Agents to comply with such directives as he deems necessary for erroneous or mutilated tickets received by an Agent.

#### **(7) Agent's Compensation**

All licensed Agents shall be entitled to a commission of a percentage of the price of each ticket sold by them as provided by the Director. In addition, each Agent shall be entitled to such bonus(es) as may be deemed desirable by the Director.

#### **(8) Special Agent Licensing**

The Director may license special lottery Agents, subject to such conditions or limitations as the Director may deem prudent and which is consistent with the laws of the State of Delaware and these Regulations. These limitations or

conditions may include, but are not limited to:

- (a) Length of license period.
- (b) Hours or day of sale.
- (c) Location of sale.
- (d) Specific persons who are allowed to sell lottery tickets.
- (e) Specific sporting, charitable, social, or other special events where lottery tickets may be sold if in conformity with law.

Special licensed Agents will be subject to these Regulations.

#### **(9) Obligations of Licensed Retailers**

Each Agent accepts and assumes the following obligations and responsibilities when he accepts a license to sell lottery tickets:

(a) Each agent shall deposit all proceeds resulting from his sales of lottery tickets into a specified lottery bank account.

(b) Each Agent should make available at all lawful times during his normal business hours lottery tickets for sale to the public in the place of business designated in the license.

(c) Each Agent shall abide by the law, these Regulations and all other directives or instructions issued by the Director.

(d) Each Agent grants to the Lottery Office, and its Agents and representatives, an irrevocable license to enter upon the premises listed as location(s) on the Agent's license in which tickets may be sold or any other location under the control of the Agent where the Director may have good cause to believe lottery materials or tickets are stored or kept in order to inspect said lottery property and the premises.

(e) All property given to an Agent remains the property of the Lottery Office, and upon demand, the Agent agrees to deliver forthwith same to the Director.

(f) All books and records pertaining to the Agent's lottery activities shall be made available for inspection and/or audit at reasonable hours, upon demand, to the Director.

(g) No Agent shall advertise or otherwise display advertising in any part of the Agent's licensed location which may be considered derogatory or adverse to the operation or dignity of the Lottery and the Agent shall remove same forthwith if requested by the Director or his representative.

(h) Each licensee shall accept full responsibility for the acts and conduct of his employees, agents and representatives in connection with all activities of the Lottery Office, and shall hold the Lottery harmless.

(i) Each Agent is required to sell a minimum number of tickets as determined by the Director.

(j) Each Agent is required to make available official game rules applying to any specific game to any player desiring to inspect same.

(k) Each Agent shall report promptly any violation or any facts or circumstances that may result in a violation of these regulations, or in a violation of State or Federal law, excluding violations concerning motor vehicle laws.

(l) Each Agent shall conduct lottery operations in a manner that does not pose a threat to the public, health, safety, or welfare of the citizens of Delaware, or reflect adversely on the security or integrity of the lottery.

**(10) Lottery Accounts**

(a) The Director may, in his discretion, require any or all lottery sales Agents to deposit to the credit of the State Lottery Fund, in banks designated by the Director, all monies received by such Agents from the sale of Lottery tickets, and to file with the Director or his designated agent, reports of their receipts and transactions in the sale of lottery tickets in such form and containing such information as he may require.

(b) The Director may make such arrangements for any person, including a bank, to perform such functions, activities, or services in connection with the operation of the Lottery as he may deem advisable pursuant to the Act and these Regulations, and such functions, activities, and services of such person.

(c) All deposits shall be secured in accordance with applicable State and Federal laws.

**(11) Lottery Tickets**

(a) Lottery tickets shall be prepared for sale and allocated to the Agent by the Lottery Office.

(b) Tickets which are not accounted for by an Agent on the settlement date and within the time period designated by the Director, regardless of the reason, shall be deemed sold to the Agent.

(c) The Lottery office shall not be responsible for lost, stolen, or mutilated tickets after sale of same to the public.

**(12) Sale of Tickets – Limitations**

No person may sell a ticket for less than or greater than its stated price. Any such ticket shall be considered an illegal ticket and shall not be validated by the Lottery. No Lottery sales Agent shall sell a ticket to a known third party ticket resaler or enter computer-generated betting slips from a third-party resaler for the sale of Lottery tickets. No person other than a duly licensed Lottery sales Agent or his employee may sell lottery tickets except that nothing in this section shall be construed to prevent a person who may lawfully make such a purchase from making a gift of lottery tickets to another. An Agent shall not sell a ticket away from locations listed in his license.

**(13) Purchasing Restrictions**

(a) No ticket or share in any Delaware Lottery game shall be purchased by, and no prize be paid to an employee

of the Lottery Office or any member of their immediate households. This restriction shall also prohibit the purchase of any lottery ticket for a game in which the Delaware Lottery is joint participant.

(b) No ticket or share in games where winners are determined by drawings, shall be purchased by, and no prize shall be paid to an employee of Lottery contractors, subcontractors or vendors, or any Lottery contract employee, that has any duty or responsibility associated with the Lottery’s drawings, or game operations.

(c) No ~~Lottery instant~~ game ticket shall be purchased and no prize shall be paid to any Lottery instant ticket supplier employee.

(d) No ~~Lottery on-line~~ games ticket shall be purchased and no prize shall be paid to an employee of the Lottery’s on-line games computer system supplier.

(e) All ticket sales shall be final and an Agent is not to accept ticket returns except as otherwise provided in these Regulations or with the approval of the Director.

(f) No ticket or share shall be sold to any person under the age of (18), but this shall not be deemed to prohibit the purchase of a ticket or share for the purpose of making a gift by a person 18 years of age or older to a person less than that age. Any Agent who knowingly sells or offers to sell a lottery ticket to any person under the age of 18 shall be subject to the penalties as provided in the Act.

**(14) Types of Lotteries**

The Lottery Office reserves the right to institute any type of lottery game as is allowable under the Act any time it is deemed in the best interest of the State.

Rules and regulations concerning individual games will be promulgated by the Director as required.

**(15) Manner of Random Selection**

(a) The dates, times, and locations for each Lottery drawing shall be determined by the Director.

(b) The lottery events shall be open to the public with no admission charge.

(c) The manner of winning number selections shall be defined for each game in the rules for that game.

**(16) Determination of Prize Winners**

(a) The Director shall adopt a prize structure for each type of lottery game administered by him and shall, from time to time, review and, if advisable, revise said prize structure.

(b) The pertinent prize structure shall become a part of the rules of each game offered by the State Lottery.

(c) Any prize structure adopted by the Director and any revisions thereof shall take effect on the date announced by the Director, provided, however, that no revision of the prize structure may take effect after the initiated time for sale of tickets for the winner determination ~~in the game featuring~~

~~the revised prize structure.~~

**(17) Notification of Prize Winners**

As soon as practicable after each drawing, each Agent shall, at each location for which a license has been issued, post in a prominent and conspicuous part of his business location in full view of the public, the winning lottery numbers. The winning weekly lottery numbers shall remain posted until the next weekly lottery makes new numbers available to be posted. Each Agent shall fully cooperate to give the public exposure and type of display of the winning lottery numbers in his location as may be requested by the Director.

**(18) Procedure for Claiming Prizes**

The following shall be the procedure by which prizes may be claimed and paid from the State Lottery Fund:

(a) Place of Claims: - All cash prizes under an amount defined by the Director may be claimed through a duly authorized claim center, which may be but is not limited to an Agent's licensed location or at the offices of the Division of Revenue. All ~~larger~~ cash prizes greater than \$5000 must be claimed ~~by mail or in person~~ at the Lottery Office Headquarters.

(b) Claim Forms – Each prize ticket winner may be required to complete a claim form and ~~or~~ to sign the winning ticket or both at the discretion of the Director. If the prize ticket owner is a minor or a person unable to complete the required form(s), then said minor or person shall have his guardian, conservator, adult member of his household, or other proper representative complete the claim form in his stead. If the Director determines that the person who completed the claim form on behalf of the owner is not the proper person to claim the prize on behalf of the owner, the Director may require a new claim form completed by a person to claim the true owner's prize. The claim form shall be in such form as the Director may, from time to time, deem necessary and proper to protect the Agency and the public interest.

(c) Listing Winning Tickets – Each Agent will be provided with a list containing winning lottery numbers for prior weeks.

(d) Lottery Verification – The Agent shall review the winning ticket and must be assured that the ticket is a proper winner and is signed by the claimant. The Agent shall validate the winning ticket and pay to the winner the amount of winnings up to the limit set by the Director. Should the Agent have any questions about the validity of a winning ticket, the ticket must be turned in to the Lottery office for payment.

(e) Lottery Validation – All winning tickets ~~over an amount defined by the Director and paid by Agents in the field~~ will be validated. A winning ticket must not be counterfeit in whole or in part and must be presented by a

person authorized to play the Lottery. In the event it is determined that a prize was paid by an Agent on a ticket which was not a winner, for any reason, the person signing the ticket will be contacted, advised of the error and will be required to reimburse the Lottery for said payment. If an Agent pays any claim, which was not a winner and the holder of the ticket fails to reimburse the Lottery or cannot be located, the Agent will be held responsible for the improper payment. All winning tickets submitted on a claim form to the Lottery Office for payment shall be validated. In the event that a ticket is determined to be invalid, the Director will notify the claimant that said ticket is invalid and no prize will be paid. All tickets will be considered void if altered, torn, misprinted, illegible or damaged unless the Director is satisfied that the ticket is genuine. If it is determined that a ticket contains a manufacturing defect which makes said ticket appear to be a winner when in fact it is not, the bearer shall have the right to expect reimbursement for the full purchase price of said ticket, but shall not be awarded any prize.

(f) Appeal by Claimant – If a claimant is aggrieved by the Director's denial of his claim or a prize, he may request an informal hearing with the Director to discuss his grievances and a reconsideration of his claim by the Director. If the Director concludes that there is meritorious basis for the claimant's complaint, he may revise his prior decision. The decision of the Director shall be final.

(g) Duration of Ticket Redeemability – A winning on-line ticket will be redeemable for a period of twelve (12) calendar months from the Drawing Date of the lottery for which it was purchased. A winning instant scratch game ticket will be redeemable for a period of twelve (12) calendar months from the announced end of that game's sales. Prizes not collected within that period revert to the State Lottery Fund of the Delaware State Lottery in order to fulfill the statutory prize requirement.

The Director reserves the right to offer special prizes above and beyond the normal prize structure. These prizes may be only redeemable for a specific period after which no prize will be awarded. These special situations will be clearly detailed in announcements to the public providing ample time for claims.

The Director may establish and modify procedures by which prizes may be claimed and paid by authorized Agents.

**(19) Ownership of Lottery Tickets**

Until such time as a name is imprinted or placed upon the rear portion of the lottery ticket in an area designated for "name", a lottery ticket which has been sold shall be owned by the physical possessor of said ticket. Unsold tickets remain the property of the Lottery Office. When a name is placed on the rear of said ticket in the place designated therefor, the person(s) whose name(s) appear in that area shall be the owner(s) of said ticket and shall be entitled to

any prize attributed thereto. ~~Notwithstanding any name(s) submitted on a claim form~~ Unless there is a conflict between the information on the claim form and the signature(s) on the back of the ticket, the Lottery Office shall make payment to the name(s) appearing on the back of the ticket in the space designated therefor, provided if more than one name appears on the rear of the lottery ticket, one of those persons whose name appears thereon may be designated to receive payment. This may be done by indicating on the claim form and by the signature on the claim form of all persons whose names appear on the rear of the ticket. The person(s) appearing for payment shall be the same as those whose name(s) that which appears on the rear portion of the lottery ticket in the space designated.

**(20) Prize Rights Unassignable**

No right of any person to a prize drawn shall be assignable, except that payment of any prize drawn may be paid to the designated Beneficiary(ies) of a deceased prize winner, and except that any person pursuant to an appropriate judicial order may be paid the prize to which the winner is entitled. The Director shall be discharged of all liability upon payment of a prize pursuant to this section.

**(21) Payment of Prizes to Persons Under 18 Years of Age**

If the person entitled to a prize for any winning ticket is under the age of eighteen (18) years, and such prize is less than \$5,000.00, the Director may direct payment of the prize by delivery to an adult member of the minor's family or a guardian of the minor of a check or draft payable to the order of the minor. If the person entitled to a prize on any winning ticket is under the age of eighteen (18) years, and the prize is \$5,000 or more, the Director may direct payment to the minor by depositing the amount of the prize in a bank to the credit of an adult member of the minor's family or a guardian of the minor as a custodian in accordance with Delaware Law and for the purpose of this section the term "adult member of minor's family," "guardian of minor," and "bank" shall have the same meaning as in the Uniform Gifts to Minors Act, as applicable in Delaware. The Director shall be discharged of all liability upon payment of a prize to a minor pursuant to this section.

**(22) Prizes Payable After Death or Disability of Owner**

All prizes or a portion thereof which remain unpaid at the time of the prize winner's death shall be payable to the prize winner's designated beneficiary(ies). The payment to the designated beneficiary(ies) of the deceased owner of any prize winnings by the Lottery Office shall absolve the Lottery Office and its Agents of any further liability for payment of said prize winnings. The Lottery Office need not look to the payment of the prize winning beyond the payee thereof. Under no circumstances will the payment of prize money be accelerated beyond its normal dates of payment by

the Lottery Office. The Director reserves the right to petition any court of competent jurisdiction to request a determination for the payments of any prize winnings, including those winnings which are or may become due to the designated beneficiary(ies) of a deceased owner or an owner under a disability because of, but not limited to, underage, mental deficiency, physical or mental incapacity. If the legatee(s) or heir(s) of a deceased owner entitled to prize winnings obtain an order from a court of competent jurisdiction directing payments due and to become due from the Lottery Office to be paid directly to said legatee(s) or heir(s) or otherwise directs the Lottery Office to make payments to another in the event of an owner's disability or otherwise, the Lottery Office shall pay the prize winnings accordingly.

**(23) Payment of Prizes**

(a) All prizes shall be paid within a reasonable time after they are awarded and after the claims are verified by the Director. For each prize requiring annual payments, all payments after the first payment shall be made on the anniversary date of the first payment in accordance with the type of prize awarded. The Director may, at any time, delay any payment in order to review a change of circumstances relative to the prize awarded, the payee, the claim, or any other matter that may have come to his attention. All delayed payments will be brought up to date immediately upon the Director's confirmation and continue to be paid on each original anniversary date thereafter.

(b) For Grand Prizes in the Lottery's Powerball game, those prizes shall be paid at the election of the player made no later than 60 days after the player becomes entitled to the prize with either a per winner annuity or cash payment. If the payment election is not made at the time of purchase and is not made by the player within 60 days after the player becomes entitled to the prize, then the prize shall be paid as an annuity prize. An election for an annuity payment made by a player before ticket purchase or by system default or design may be changed to a cash payment at the election of the player until the expiration of 60 days after the player becomes entitled to the prize. The election to take the cash payment may be made at the time of the prize claim or within 60 days after the player becomes entitled to the prize. An election made after the winner becomes entitled to the prize is final and cannot be revoked, withdrawn, or otherwise changed. Shares of the Grand Prize shall be determined by dividing the cash available in the Grand Prize pool equally among all winners of the Grand Prize. Winner(s) who elected a cash payment shall be paid their share(s) in a single cash payment. The annuitized option prize shall be determined in accordance with the rules and procedures approved by the Multi-State Lottery Association, of which the Delaware Lottery is a participating member. Neither the Multi-State Lottery Association nor the member lotteries

including the Delaware Lottery shall be responsible or liable for changes in the advertised or estimated annuity prize amount and the actual amount purchased after the prize payment method is actually known to the Multi-State Lottery Association. In certain instances announced by the Multi-State Lottery Association Product Group, the Grand Prize shall be a guaranteed amount and shall be determined pursuant to MUSL rules and procedures. If individual shares of the cash held to fund an annuity is less than \$250,000, the MUSL Product Group, in its sole discretion, may elect to pay the winners their share of the cash held in the Grand Prize pool. All annuitized prizes shall be paid annually in twenty-five equal payments with the initial payment being made in cash, to be followed by twenty-four payments funded by the annuity.

#### **(24) Discharge of State Lottery Upon Payment**

The State of Delaware, its Agents, officers, employees and representatives, the Lottery Office, its Director, Agents, officers, employees and representatives, shall be discharged of all liability upon payment of a prize or any one installment thereof to the holder of any winning lottery ticket or in accordance with the information set forth on the claim form supplied by the Director. If there is a conflict between the information on the winning lottery ticket and the information on the claim form, the Lottery Office may rely on the claim form after the ticket has been validated as a winning ticket and, in so doing, it will be relieved of all responsibility and liability in the payment of a prize in accordance with the information set forth therein. The Lottery Office's decision and judgment in respect to the determination of a winning ticket or of any other dispute arising from payment or awarding of prizes shall be final and binding upon all participants in the Lottery unless otherwise provided by law or these regulations. In the event a question arises relative to the winning ticket, a claim form, the payment, or the awarding of any prize, the Lottery Office may deposit the prize winnings into an escrow fund until it determines the controversy and reaches a decision, or it may petition a court of competent jurisdiction for instructions and a resolution of the controversy.

#### **(25) Declaratory Rulings by the Lottery Office**

On petition of any interested person, the Director may issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforceable by it, or the Director may refer such matters to the State Attorney General for such disposition. In the case of any matter concerning which a Declaratory ruling is brought for appeal, the petitioner may be represented by an attorney.

#### **(26) Postponement of Drawings**

The Director may postpone any drawing to a certain

time and publicize the same if he finds, in his sole discretion, that such postponement will serve the public interest and protect the public interest.

#### **(27) Amendments**

The Director may amend, modify, or otherwise change these Regulations upon full compliance with law; said amendments, modifications or changes shall become as effective and applicable to Lottery business and administration as if part of the original Regulations.

#### **(28) Freedom of Information Requests**

##### **I. PURPOSE**

The purpose of this section is to prescribe regulations for the inspection and copying of public records by any citizen of the State of Delaware, held by the Delaware State Lottery Office, pursuant to 29 Del. C. Chapter 100 (the "Act").

##### **II. AVAILABILITY OF RECORDS**

###### **1. Requirement of Citizenry**

A. Persons other than citizens of Delaware are not entitled to the public review of records pursuant to 29 Del. C. Chapter 100.

B. The requester shall submit proof of Delaware citizenship to the Lottery. The Lottery may require verification of any information provided concerning citizenry before considering the request to provide access to public records. If the requester does not submit the verification upon the request of the Lottery Office, the request shall be denied.

C. The Lottery Office reserves the right to deny access to anyone other than the requester.

D. The Lottery Office shall consider a requester submitting any of the following a citizen of Delaware for purposes of these Regulations:

(1) The requester's current residential or business address is within the State of Delaware

(2) A copy of a current Delaware driver's license of the individual requesting the documents;

(3) A copy of Certification of Incorporation or the corporate identification number if the requester is a corporation of the State of Delaware; or

(4) A copy of the requester's Delaware voter registration card.

###### **2. Department Record Review**

Public records may be examined by the requester after the records have been located and reviewed by the Lottery Office to exclude records that are not public pursuant to the Act and these Regulations.

##### **III. EXEMPTIONS**

Documents determined by the Lottery Office not to be

public pursuant to 29 Del. C. section 10002(d) will not be available for examination or public review.

**IV. RECORD REQUEST AND RESPONSE PROCEDURES**

**1. Form of Request**

A. All requests for access to records pursuant to the Act and these Regulations shall be made in writing. Except for subpoena duces tecum or other such requests for production, all envelopes containing the request and the letter itself shall both clearly indicate that the subject is a Freedom of Information Act request.

B. All requests for access to records shall adequately describe the record sought in sufficient detail to enable the Lottery Office to locate the record with reasonable effort. The application request shall contain the name of the person making the request, the name and address of the person to whom the request is made, the purpose for the request and the planned use of the records, a reasonable description of the records requested, including the name, subject matter, number and date where possible. Requests that lack sufficient detail to enable the Lottery Office to identify records responsive to the request may be denied.

C. All written applications for access to records shall be acknowledged within fifteen (15) working days. If access to the records is granted, the materials will be provided in a reasonable time period by taking into consideration such factors as the specificity of the request, the amount of research or time required to retrieve the records, and the extent or scope of the request.

D. If the records are in active use or in storage and therefore, are not available at the time a request for same is made, the Lottery Office will so inform the individual and will provide access to the records as expeditiously as they may be made available.

**2. Time and Place for Examination**

The public may examine public records which are available, by appointment, at the offices of the State Lottery Office between the hours of 9:30 a.m. and 3:00 p.m. on Monday through Friday, excluding state holidays.

(a) No individual shall remove the originals of the copies of any records from the Lottery Office without written permission of the Lottery Office's custodian of the records.

(b) The Lottery Office will provide reasonable facilities for conducting the inspection of the records.

(c) The Lottery Office will supervise the conduct of the inspection in order to protect the records and to prevent the disruption of the essential functions of the Office.

The Lottery Office will be under no duty or obligation to furnish copies of records by mail and may require the individual requesting the records to inspect said

records prior to furnishing copies if a request for access is voluminous, or too general, or both. If copies of the requested records are to be furnished by mail, however, the fee as determined by section V of these regulations and the mailing costs shall be collected before the copies are forwarded to the individual requesting same.

**3. Reproduction of Documents**

A. Public records may be reproduced and copies may be provided to the requester in accordance with Section V of these regulations.

B. When the Lottery Office determines that a request for reproduction is unduly burdensome, the Lottery Office may, in its discretion:

(1) Arrange for a commercial facility to make the reproductions at the expense of the requester; or

(2) Make any other arrangements for reproduction that are suitable to the Lottery Office.

C. When a request for reproduction is made that exceeds 100 photocopied pages, the Lottery Office may require the requester to provide, at the requestor's expense personnel and equipment to make the reproductions.

**V. FEES**

A. The cost of photocopying public records shall be .50 per photocopied page and the associated costs of delivery.

B. Where it is anticipated that the fee chargeable pursuant to this section will exceed twenty-five dollars (\$25.00) and the person making the request has not indicated in advance a willingness to pay such a fee, that person shall be promptly informed of the amount of the anticipated fee or such portion thereof as can be readily estimated. The notice shall afford and so advise the person of the opportunity to confer with the Lottery Office for the purpose of reformulating the request so as to meet that person's needs at a reduced cost.

C. The Lottery Office reserves the right to refuse access to requesters who have an outstanding balance for photocopies owed to the Lottery Office.

D. Payment of fees pursuant to this section shall be made in cash, U.S. money order, business check, or by certified bank check payable to the Delaware State Lottery Office.

**(29) Fingerprinting Procedures**

**I. State Bureau of Identification**

1. The applicant or licensee will contact the State Bureau of Identification ~~through the toll free telephone number 1-800-778-9000~~ to make arrangements for fingerprint processing.

2. A fee of ~~(\$49.00 as of June 13, 1995)~~ is required for state and federal processing of fingerprint cards and criminal history records, payment shall be made in the form of certified check or money order payable to the Delaware State

Police. The fee is set by the State Bureau of Identifications and payment is to be made directly to that agency.

3. Applicants must complete fingerprint cards with the necessary personal information to sign the waiver form to release criminal history record information to the Director. At the time of the processing, the applicant must show proof of identification to complete the criminal history request.

4. Certified copies of the criminal history will be forwarded to the ~~applicant and~~ Director of the Lottery, with a copy available to the applicant upon request.

5. A Verification Form of Processing will be completed by Delaware State Police personnel and provided to the applicant.

6. The State Bureau of Identification shall act as the intermediary for the receipt of the federal criminal history record checks performed by the Federal Bureau of Identification. The State Bureau of Identification shall forward the results of these federal record checks to the attention of the Lottery Director in a confidential manner.

## II. Lottery Office

### A. Determination of Suitability and Appeal Process

1. A person subject to 29 Del. C. §4807A shall have the opportunity to respond to the Lottery Director regarding any information obtained prior to a determination of suitability for licensure. Such a response shall be made within ten (10) working days of the person's receipt of the criminal background information from the State Bureau of Identification. The determination of suitability for licensure shall be made by the Lottery pursuant to the factors listed in 29 Del. C. §4807A in regard to an applicant's criminal history. The Lottery will also consider the factors contained in 29 Del. C. chapter 48 and the Lottery Regulations in considering agent applications for licensure.

2. The Lottery shall communicate the results of the determination of suitability in writing, within thirty (30) days of the receipt of the person's response to the criminal history information, unless extenuating circumstances require a longer period. If a determination is made to deny a person licensure, the person shall have an opportunity to appeal for reconsideration as set out below.

a. Appeal shall be initiated by a person notified that he/she is being denied a license pursuant to 29 Del. C. section 4807A and in compliance with Section 5(c) of these Regulations by submitting a letter of appeal to the Lottery Director within ten (10) working days of the receipt of the written notice.

b. The appeal shall be reviewed by the Lottery Director and the person shall be given the right to be heard by the Director or the Director's designee within ten (10) working days of the receipt of letter of appeal, unless extenuating circumstances require a longer period.

c. A written decision shall be rendered by the Director or the Director's designee within thirty (30)

working days of the hearing, unless extenuating circumstances require a longer period. All decisions made by the Lottery under this appeal procedure are final.

### B. Confidentiality

1. All records pertaining to criminal background checks, pursuant to 29 Del. C. §4807A and copies of suitability determinations of applicants for licensure, shall be maintained in a confidential manner, including, but not limited to, the following:

a. Access to criminal background check records, and letters of reference accompanying out-of-state criminal background checks, and determinations of suitability of applicants shall be limited to the Director and designated personnel;

b. All such records shall be kept in locked, fireproof cabinets;

c. No information from such records shall be released without the signed approval of and appropriate signed release of the applicant.

### C. Subsequent Criminal History Information

1. Subsequent criminal history shall be sent by the State Bureau of Identification to the Director of the Lottery and shall be used by the Lottery in making a determination about the person's continued suitability as a licensee.

## Delaware State Video Lottery Regulations

### 14.0 Fingerprinting Procedure

14.1. The license applicant, licensee, or video lottery agent or technology provider employee will contact the State Bureau of Identification or the Delaware State Police Video Lottery Enforcement Unit to make arrangements for fingerprint processing.

14.2. A fee is required to be paid for state and federal processing of fingerprint cards and criminal history records. The fee is set by the State Bureau of Identification and payment is to be made directly to that agency.

14.3. Applicants must complete fingerprint cards with the necessary personal information to sign the waiver form to release criminal history record information to the Director or the Video Lottery Enforcement Unit. At the time of the processing, the applicant must show proof of identification to complete the criminal history request.

14.4. Certified copies of the criminal history record will be forwarded to the Director of the Lottery or the Video Lottery Enforcement Unit. The Lottery Director or Video Lottery Enforcement Unit will forward copies of the criminal history to license applicants or licensees. For employees of video lottery agents or technology providers, the Director or the Video Lottery Enforcement Unit will forward copies of the employee's criminal history to the employer's designated contact person upon request.

14.5. The State Bureau of Identification shall act as the intermediary for the receipt of the federal criminal history



record checks performed by the Federal Bureau of Identification. The State Bureau of Identification shall forward the results of these federal record checks to the attention of the Lottery Director and/or the Video Lottery Enforcement Unit in a confidential manner.

14.6. A person subject to 29 Del. C. §4807A shall have the opportunity to respond to the Lottery Director regarding any information obtained prior to a determination of suitability for licensure. Such a response shall be made within (10) working days of the person's receipt of the criminal background information from the State Bureau of Identification.

The determination of suitability for licensure shall be made by the Lottery pursuant to the factors listed in 29 Del. C. §4807A regarding an applicant's criminal history. The Lottery will also consider the factors contained in 29 Del. C. chapter 48 and these Video Lottery Regulations in considering applications for licensure. The Lottery will consider the truthfulness of the applicant, licensee, or employee in disclosing their criminal history. Under 29 Del. C. §4805(a)(16)(17), the Lottery Director shall consider the background of key employees or video lottery operations employees in order to determine if the person's reputation, habits, and associations pose a threat to the public interest of the State or to the reputation of or effective regulation and control of the video lottery. It is specifically provided, pursuant to 29 Del. C. §4805(a)(16)(17), that any person convicted of any felony, a crime involving gambling, or a crime of moral turpitude within 10 years prior to applying for a license or at any time thereafter shall be deemed unfit. The Director may determine whether the licensing standards of another state are comprehensive, thorough and provide similar adequate safeguards and, if so, may in the Director's discretion, license an applicant already licensed in such state without the necessity of a full application and background check. The Delaware State Police shall conduct the security, fitness, and background checks required by §4805(a)(16)(17) and the Video Lottery Regulations.

14.7. The Lottery shall communicate the results of the determination of suitability in writing, to the license applicant or licensee within thirty (30) days of receipt of the criminal history information, unless extenuating circumstances require a longer period. If a determination is made to deny a person licensure, the person shall have an opportunity to appeal for reconsideration as set out below.

(1) Appeal shall be initiated by a person notified that he/she is being denied a license pursuant to 29 Del. C. §4807A and Video Lottery Regulation 13.3 by submitting a request for a hearing to the Director within ten (10) working days of the receipt of the written notice.

(2) The appeal shall be reviewed by the Lottery Director and the person shall be given the right to be heard by the Director or the Director's designee within thirty (30) working days of the receipt of letter of appeal, unless

extenuating circumstances require a longer period. Any hearing will be pursuant to the procedures in the Video Lottery Regulations 13.5-13.11, whichever is applicable.

(3) A written decision shall be rendered by the Director or the Director's designee within thirty (30) working days of the hearing unless extenuating circumstances require a longer period. All decisions made by the Lottery under this appeal procedure are final.

14.8 The Lottery or the Video Lottery Enforcement Unit will communicate the results of suitability in writing regarding an employee to either the video lottery agent or technology provider employing said individual. The Lottery will provide a copy of the criminal history record to the employee upon request.

14.9 All records pertaining to criminal background checks, pursuant to 29 Del. C. §4807A and copies of suitability determinations of applicants for licensure, shall be maintained in a confidential manner, including, but not limited to, the following:

(1) Access to criminal background check records, and letters of reference accompanying out-of-state criminal background checks, and determinations of suitability of applicants shall be limited to the Director and designated personnel;

(2) All such records shall be kept in locked, fireproof cabinets;

(3) No information from such records shall be released without the signed release of the applicant.

14.10 Subsequent criminal history shall be sent by the State Bureau of Identification to the Director of the Lottery and/or the Video Lottery Enforcement Unit. This subsequent criminal history information shall be used by the Lottery and the Video Lottery Enforcement Unit in making a determination about the person's continued suitability as a licensee or employee of a video lottery agent. The licensee or employee shall notify the Video Lottery Enforcement Unit within twenty-four (24) hours of any change in his criminal history information.

#### 15.0 ~~14.0~~ Severability

The sections and subsections of these rules and regulations shall be deemed severable. Should any section or subsection be deemed by judicial opinion or legislative enactment to be invalid, unconstitutional or in any manner contrary to the laws of the State of Delaware, then such opinion or enactment shall invalidate only that particular section or subsection of these rules and regulations and all other sections shall remain in full force and effect.

**DEPARTMENT OF JUSTICE****DELAWARE SECURITIES ACT**

Statutory Authority: 6 Delaware Code,  
Sections 7313, 7314 and 7325  
(6 Del.C. 7313, 7314 & 7325)

ADOPTION OF RULES AND  
REGULATIONS PURSUANT  
TO THE DELAWARE SECURITIES  
ACT AMENDING RULES 700-701  
AND ADDING RULE 710 | August 17, 2000

ORDER ADOPTING AND  
AMENDING RULES 700, 701 AND  
710 OF THE RULES AND  
REGULATIONS PURSUANT  
TO THE DELAWARE SECURITIES ACT |

On April 1, 2000, the Securities Commissioner issued for notice and comment proposed rules and regulations pursuant to the Delaware Securities Act. The proposed rules and regulations were thereafter filed, together with the required notice, with the Registrar for publication on or about April 1, 2000, in the Register of Regulations pursuant to 29 Del.C. §10154. The proposed amendments modify existing Rules 700 and 701, and add a new Rule 710, all relating to registration requirements for investment advisers and investment adviser representatives. The proposed rules and regulations were held open for public comment until April 30, 2000, and information was submitted to the Securities Commissioner during that comment period.

WHEREFORE, pursuant to 29 Del.C. §10118, upon consideration of the information submitted to the Securities Commissioner and all prior proceedings had herein,

IT IS HEREBY ORDERED that the following shall constitute the required summary of evidence and information submitted; the summary of findings of fact with respect to the evidence and information submitted; and Order to adopt the proposed rules and regulations as set forth herein.

**A. SUMMARY OF EVIDENCE  
AND INFORMATION SUBMITTED**

The following organizations submitted comments to the Securities Commissioner on the proposed rules and regulations:

1. Certified Financial Planner Board of Standards
2. Financial Planning Association
3. Investment Counsel Association of America
4. Investment Company Institute

Copies of the comment letters are on file with the Securities Division and are available for public inspection.

Pursuant to 29 Del.C. §10118(b)(1), the comments are summarized below.

**1. Certified Financial Planner Board of Standards**

The Certified Financial Planner Board of Standards (“CFPBS”) supplied the following comments on the proposed rules and regulations:

First, the CFPBS recommended a change to proposed rule 710, to correct the name of the certifying organization which has since been changed from “International Board of Standards and Practices for Certified Financial Planners, Inc.” to “Certified Financial Planner Board of Standards, Inc.”

Second, with regard to the proposal to amend Rules 700 and 701, the CFPBS found the proposed changes to be beneficial, in that they provide for a waiver of the examination requirements for persons holding the CFP designation. In its letter, the CFPBS discussed the rigorous and lofty standards required for the CFP designation, and CFPBS believes that the waiver of the exam requirement for those holding the CFP designation “allows both government agencies and financial planning professionals to lower their administrative costs [resulting in] a benefit to taxpayers, consumers and financial planning professionals.”

**2. Financial Planning Association**

The Financial Planning Association (“FPA”) offered the following comments on the proposed rules and regulations. In general, the FPA was pleased with the proposed amendments. It did, however, offer two “minor revisions” to the proposed amendments. First, the proposed amendments require the filing of a paper affidavit showing compliance with the examination requirement, or basis for waiver of the requirement. The FPA reasons that with the advent of the Investment Adviser Registration Depository (“IARD”), which is scheduled to come “on line” in the fall of 2000, compliance with the proposed rule could be accomplished “on line,” eliminating the need for this additional affidavit. The FPA suggested a “sunset” provision in the proposed regulations eliminating the need to file a hard copy once the IARD becomes operational.

The second concern involves the proposed affidavit. The FPA recommends a change of the proposed language in paragraph five of the affidavit requiring that, to obtain relief by way of the “grandfather” provision, the investment adviser must be registered in any U.S. jurisdiction on July 1, 2000 “and for two consecutive years prior to that date,” and recommends substitution of the language “or within two years prior to the date of application.”

**3. Investment Counsel Association of America**

The Investment Counsel Association of America (“ICAA”) submitted the following comments on the proposed rule changes for our consideration. The ICAA said it was pleased that Delaware had decided to adopt the NASAA model rule for the implementation of the new

Series 65/66 exams. Like the FPA, however, the ICAA noted that the anticipated operational date for the IARD is sometime in the fall of 2000. The ICAA recommends elimination of the paper affidavit once the IARD is operational.

**4. Investment Company Institute**

The Investment Company Institute (“ICI”) offered the following comments regarding the proposed amendments to the rules and regulations. The ICI supported adoption of the proposed rules. Specifically, it said:

We were very pleased, in particular, to see that Rule 710 is entirely consistent with the examination rule recommended by the North American Securities Administrators Association (“NASAA”). We commend you and your staff for ensuring that the examination requirements of your state will be uniform with the vast majority of other states that, too, have adopted the NASAA model.

The ICI did note a concern that the affidavit requirement might conflict with the federal legislation titled “National Securities Markets Improvement Act of 1996” (“NSMIA”). At the time of its response, the ICI had not been able to review an actual copy of an affidavit, so its concerns were not more specific. Upon further review, subsequent to receipt of the form affidavit, the ICI, through its representative Tamara K. Reed, stated that it was no longer concerned about potential conflicts between the proposed affidavit requirement and NSMIA.

**B. SUMMARY OF FINDINGS OF FACT**

1. Pursuant to 29 Del.C. §10118(b)(2), the following is a brief summary of the Securities Commissioner’s findings of fact with respect to the proposed adoption of Rule 710 and the amendments to Rules 700 and 701:

a. Adoption of the NASAA model rule for implementation of the new Series 65/66 exam will bring Delaware into conformity with the vast majority of the states that also have adopted the model rule in its entirety, or have adopted a substantially similar rule.

b. Adoption of the proposed rule changes will allow Delaware to continue to utilize the standardized exams for investment adviser representatives currently administered by the NASD to ensure a minimum standard of knowledge and competency for investment advisers and investment adviser representatives under Delaware’s regulatory control.

c. Continuation of uniform standard testing, pursuant to the NASAA model, will benefit the Delaware Securities Division, the financial services providers, and the citizens of the State of Delaware.

2. The following are specific findings by the Commissioner relating to comments of interested parties

who responded to notice of the proposed rule making.

a. Certified Financial Planner Board of Standards

Rule 710 should reflect the proper name of this certifying agency with regard to the rule’s discussion of the CFP designation and the rule will be amended to reflect the proper current name of the organization “Certified Financial Planner Board of Standards, Inc.” With regard to CFPBS concern about the necessity of filing a paper affidavit to show compliance with the new rule, in light of the anticipated implementation of the Web IARD, it is the finding and conclusion of the Commissioner that it is prudent to utilize the proposed affidavit until such time as the Web IARD System is operational and the applicant is able to submit all required information by use of that system. It is also not clear at this time whether some investment advisers and investment adviser representatives may decide to continue to register by traditional methods, as opposed to by computer. Once the Commissioner is satisfied that all required information can be supplied electronically, an amendment to the rule deleting the affidavit requirement will be reviewed and reconsidered for those utilizing the Web IARD for registration purposes.

b. Financial Planning Association

FPA’s first issue regarding a “sunset” provision for the paper compliance affidavit is discussed in the preceding paragraph and that paragraph adequately addresses the FPA’s concerns. With regard to the FPA’s proposal seeking to modify the language of the compliance affidavit, the Commissioner finds that FPA’s proposed change in the affidavit language is inconsistent with the intended purpose of the proposed regulations, and declines to adopt the FPA’s proposed language.

c. Investment Council Association of America

The affidavit requirement has been discussed above, and the same findings and conclusions apply here.

d. Investment Company Institute

As stated previously, the ICI has withdrawn its concern regarding potential conflicts between the proposed affidavit requirement and NSMIA. Consequently, no specific finding is required

**C. ORDER ADOPTING RULES AND REGULATIONS**

Pursuant to 29 Del.C. §10118, upon consideration of the information submitted to the Securities Commissioner, and based on the findings of fact with respect to the information submitted, it is hereby ordered as follows:

(1) Section 700 of the Rules and Regulations Pursuant to the Delaware Securities Act is stricken in its entirety and the following new section is inserted in lieu thereof:

**“§700 Registration of Investment Advisers**

(a) A person applying for a license as an investment

adviser in Delaware shall make application for such license on Form ADV (Uniform Application for Investment Adviser Registration under the Investment Advisers Act of 1940). Amendments to such application shall also be made on Form ADV.

(b) The applicant shall file the following items with the Commissioner: (i) the application on Form ADV; (ii) the fee required by Section 7314 of the Act; (iii) a balance sheet prepared in accordance with Schedule G of Form ADV; (iv) a list of all investment adviser representatives employed by the investment adviser; (v) proof of compliance with Rule 710 by filing an Investment Adviser Affidavit available at <http://www.state.de.us/securities> or by contacting the Division of Securities; and (vi) such other information as the Commissioner may reasonably require.

(c) Registration expires at the end of the calendar year. Any investment adviser may renew its registration by filing with the Commissioner an updated Form ADV, together with the fee required by Section 7314 of the Act and a list of all investment adviser representatives employed by the investment adviser.

(d) Every investment adviser must have at least one investment adviser representative registered with the Commissioner to obtain or to maintain its license as an investment adviser.”

(2) Section 701 of the Rules and Regulations Pursuant to the Delaware Securities Act is stricken in its entirety and the following new section is inserted in lieu thereof:

**“§701 Registration of Investment Adviser Representatives**

(a) A person applying for a license as an investment adviser representative in Delaware shall make application for such license on Form U-4 (Uniform Application for Securities Industry Registration or Transfer). Amendments to such application shall also be made on Form U-4.

(b) The applicant shall file the following items with the Commissioner: (i) the application on Form U-4; (ii) the fee required by Section 7314 of the Act; (iii) proof of compliance with Rule 710 by filing an Investment Adviser Representative Affidavit available at <http://www.state.de.us/securities> or by contacting the Division of Securities; and (iv) such other information as the Commissioner may reasonably require.

(c) Registration expires at the end of the calendar year. Any investment adviser representative may renew his or her registration by filing with the Commissioner a letter of intent to renew and the fee required by Section 7314 of the Act.”

(3) The following new section is added to the Rules and Regulations Pursuant to the Delaware Securities Act:

**“§ 710 Examination Requirements**

(a) Examination Requirements. An individual applying to be registered as an investment adviser or investment adviser representative under the Act shall provide the Commissioner with proof of obtaining a passing score on one of the following examinations:

(1) The Uniform Investment Adviser Law Examination (Series 65 examination); or

(2) The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

(b) Grandfathering.

(1) Any individual who is registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on the effective date of this Rule shall not be required to satisfy the examination requirements for continued registration, except that the Commissioner may require additional examinations for any individual found to have violated any state or federal securities law.

(2) An individual who has not been registered in any jurisdiction for a period of two (2) years shall be required to comply with the examinations requirements for this Rule.

(c) Waivers. The examination shall not apply to an individual who currently holds one of the following professional designations:

(1) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.

(2) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;

(3) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

(4) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;

(5) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or

(6) Such other professional designation as the Commissioner may by rule or order recognize.

(d) The Commissioner reserves the power to waive the exam requirements upon good cause shown.”

(4) These amended rules, as they will appear in printed form in the “Rules and Regulations Pursuant to the Delaware Securities Act” pamphlet, available to the public free of charge, are attached hereto as exhibit “A.”

(5) The changes to the Rules and Regulations Pursuant to the Delaware Securities Act as set forth herein are made pursuant to the authority granted in 6 Del.C. §§ 7314(b)(4) and 7325(b) and shall become effective ten days after publication of this Order in the Register of Regulations pursuant to 29 Del.C. § 10118.

SO ORDERED this 17th day of August, 2000.

James B. Ropp  
Securities Commissioner

### **Part G. Investment Advisers and Investment Adviser Representatives**

#### **§700 Registration of Investment Advisors**

(a) A person applying for a license as an investment adviser in Delaware shall make application for such license on Form ADV (Uniform Application for Investment Adviser Registration under the Investment Advisers Act of 1940). Amendments to such application shall also be made on Form ADV.

(b) The applicant shall file the following items with the Commissioner: (i) the application on Form ADV; (ii) the fee required by Section 7314 of the Act; (iii) a balance sheet prepared in accordance with Schedule G of Form ADV; (iv) a list of all investment adviser representatives employed by the investment adviser; (v) ~~such other information as the Commissioner may reasonably require~~ proof of compliance with Rule 710 by filing an Investment Adviser Affidavit available at <http://www.state.de.us/securities> or by contacting the Division of Securities; and (vi) such other information as the Commissioner may reasonably require.

(c) Registration expires at the end of the calendar year. Any investment adviser may renew its registration by filing with the Commissioner an updated Form ADV, together with the fee required by Section 7314 of the Act and a list of all investment adviser representatives employed by the investment adviser.

(d) Every investment adviser must have at least one investment adviser representative registered with the Commissioner to obtain or to maintain its license as an investment adviser.

#### **§701 Registration of Investment Adviser Representatives**

(a) A person applying for a license as an investment adviser representative in Delaware shall make application for such license on Form U-4 (Uniform Application for Securities Industry Registration or Transfer). Amendments to such application shall also be made on Form U-4.

(b) The applicant shall file the following items with the Commissioner: (i) the application on Form U-4; (ii) the fee required by Section 7314 of the Act; (iii) ~~a certification that the applicant has successfully completed the Uniform Investment Adviser Law Examination (Series 65 or 66) administered by the NASD~~ proof of compliance with Rule 710 by filing an Investment Adviser Representative Affidavit available at <http://www.state.de.us/securities> or by

contacting the Division of Securities; and (iv) such other information as the Commissioner may reasonably require. The Commissioner may waive the exam requirements upon good cause shown.

~~(e) Good cause for waiver of the exam requirement of subsection (b)(iii) of this Rule shall include holding a credential designated by the Commissioner by rule or order, so long as the individual is in good standing with the organization that issued the credential. Such credentials shall include the designation Certified Financial Planner awarded by the Certified Financial Planner Board of Standards.~~

~~(d) (c)~~ Registration expires at the end of the calendar year. Any investment adviser representative may renew his or her registration by filing with the Commissioner a letter of intent to renew and the fee required by Section 7314 of the Act.

#### **§ 710 Examination Requirements**

(a) Examination Requirements. An individual applying to be registered as an investment adviser or investment adviser representative under the Act shall provide the Commissioner with proof of obtaining a passing score on one of the following examinations:

(1) The Uniform Investment Adviser Law Examination (Series 65 examination); or

(2) The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

(b) Grandfathering.

(1) Any individual who is registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on the effective date of this Rule shall not be required to satisfy the examination requirements for continued registration, except that the Commissioner may require additional examinations for any individual found to have violated any state or federal securities law.

(2) An individual who has not been registered in any jurisdiction for a period of two (2) years shall be required to comply with the examinations requirements for this Rule.

(c) Waivers. The examination shall not apply to an individual who currently holds one of the following professional designations:

(1) Certified Financial Planner (CFP) awarded by the ~~International Board of Standards and Practices for Certified Financial Planners, Inc.~~ Certified Financial Planner Board of Standards, Inc.]

(2) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;

(3) Personal Financial Specialist (PFS) awarded by

the American Institute of Certified Public Accountants;

(4) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;

(5) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or

(6) Such other professional designation as the Commissioner may by rule or order recognize.

(d) The Commissioner reserves the power to waive the exam requirements upon good cause shown.

manner and form provided for by law.

#### IV. Reasons

Adopting the proposed amendments to the Regulations Governing Hazardous Waste will further the policies and purposes of 7 Del.C. Chapters 60 and 63, it will provide for appropriate regulation of hazardous waste, which is necessary to protect public health, welfare and the environment in Delaware.

Nicholas A. DiPasquale, Secretary

### 2000 AMENDMENTS TO DELAWARE REGULATIONS GOVERNING HAZARDOUS WASTE

#### SUMMARY

This summary presents a brief description of the 2000 amendments to *Delaware Regulations Governing Hazardous Waste* (DRGHW), and a list of those sections generally affected by the amendments. This summary is being provided solely for the convenience of the reader.

These changes incorporate certain Federal RCRA amendments into Delaware's hazardous waste management program. The State is required to adopt these amendments in order to maintain its RCRA program delegation and remain current with the Federal hazardous waste program.

The State is also making miscellaneous changes to the existing regulations for the purpose of correcting errors and to add consistency or clarification to the existing regulations. Some amendments are being made to the existing regulations in order to improve or enhance the performance of the hazardous waste management program.

The regulatory amendments in this package are listed below and organized by the promulgating **Federal Register** notice. For additional information please contact the Hazardous Waste Management Branch at (302) 739-3689.

#### 1. Title: Hazardous Remediation Waste Requirements (HWIR-Media)

Federal Register Reference: 63 FR 65874-65947

Federal Promulgation Date: November 30, 1998

**Summary:** This rule streamlines permitting for treatment, storage and disposal of remediation wastes managed at cleanup sites. The new requirements: 1) make permits faster and easier to obtain, 2) provide that obtaining these permits will not subject the owner/operator to facility-wide corrective action at remediation-only facilities, and 3) allow the use of Remediation Action Plans (RAPs) as an alternative to traditional RCRA hazardous waste permits.

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR AND WASTE MANAGEMENT HAZARDOUS WASTE MANAGEMENT SECTION

Statutory Authority: 7 Delaware Code, Chapters 60 and 63 ( 7 Del.C. Ch. 60, 63)

Secretary's Order No. 2000-A-0029

**Re: Proposed 2000 Amendments to the Regulations  
Governing Hazardous Waste**

**Date of Issuance: June 2, 2000**

**Effective Date of the Amendments: October 1, 2000**

#### I. Background

On Tuesday, May 9, 2000, at approximately 7:00 p.m., a public hearing was held in the DNREC Auditorium at 89 Kings Highway, Dover, Delaware. The purpose of this hearing was to receive public comment on proposed amendments to the *Regulations Governing Hazardous Waste*. After the hearing, the Hearing Officer prepared his report and recommendation in the form of a memorandum to the Secretary dated May 31, 2000, and that memorandum is expressly incorporated herein by reference.

#### II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Memorandum dated May 31, 2000, are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

#### III. Order

In view of the above, IT IS HEREBY ORDERED that the amendments to the Regulations Governing Hazardous Waste as proposed at the public hearing be adopted in the



This rule also finalizes regulations regarding use of staging piles during cleanup and providing an exclusion for dredged materials managed under appropriate Clean Water Act or Marine Protection Research and Sanctuaries Act permits.

Sections or portions of DRGHW affected by these changes include:

260.10, 261.4(g), 264.1(j), 264.73(b), 264.101(d), 264.552(a), 264.553(a), 264.554, 265.1(b), 268.2(c), 268.50(g), 122.2, 122.11(d), 122.42 Appendix I, 122.70, 122.73(a), 122 Subpart H.

**2. Title: Universal Waste Rule (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program)**

Federal Register Reference:63 **FR** 71225-71230  
Federal Promulgation Date:December 24, 1998

**Summary:** This rule corrects EPA errors that appeared in the May 11, 1995 **Federal Register**, Universal Waste Rule (60 **FR** 25492). No new regulatory requirements are created with this rule; instead it, (1) makes three corrections to regulations governing the management of spent lead-acid batteries that are reclaimed, (2) corrects the definition of a small quantity universal waste handler, and (3) clarifies the export requirements which apply to destination facilities, when the facilities act as universal waste handlers.

Sections or portions of DRGHW affected by these changes include: 266.80(a) and (b), 273.6.

**3. Title: Petroleum Refining Process Wastes Leachate Exemption**

Federal Register Reference:64 **FR** 6806  
Federal Promulgation Date:February 11, 1999

**Summary:** From the definition of hazardous waste, this rule temporarily defers landfill leachate and landfill gas condensate derived from previously disposed wastes that now meet the listing descriptions of one or more of the recently added petroleum refinery wastes (K169, K170, K171, and K172). This exemption applies to landfill leachate and gas condensate subject to regulation under the Clean Water Act. The exempted leachate may not ordinarily be managed in surface impoundments or otherwise placed on the land after February 13, 2001, except for the purpose of providing storage under temporary or emergency conditions.

Sections or portions of DRGHW affected by these changes include: 261.4(b)(15).

**4. Title: Land Disposal Restrictions Phase IV Technical Corrections and Clarification to Treatment Standards**

Federal Register Reference:64 **FR** 25408-25417  
Federal Promulgation Date:May 11, 1999

**Summary:** This rule clarifies and/or makes technical corrections to the following five final rules that were promulgated by EPA and adopted by DNREC in 1998 and 1999:

(1) Regulations promulgating Land Disposal Restrictions (LDR) treatment standards for wood preserving wastes, as well as reducing the paperwork burden for complying with LDRs;

(2) Regulations promulgating LDR treatment standards for metal-bearing wastes, as well as amending the LDR treatment standards for soil contaminated with hazardous waste, and amending the definition of which secondary materials from mineral processing are considered to be wastes subject to the LDRs;

(3) An administrative stay of the metal-bearing waste treatment standards as they apply to zinc micronutrient fertilizers;

(4) An emergency revision of the LDR treatment standards for hazardous wastes from the production of carbamate wastes; and,

(5) Revised treatment standards for spent aluminum potliners from primary aluminum production.

Sections or portions of DRGHW affected by these changes include:

261.2(c) and (e), 261.4(a), 262.34(d), 268.2(h), 268.7(a) and (b), 268.9(d), 268.40(i) and (j), 268.40/Table, 268.48(a), 268.49(c).

**5. Title: Test Procedures for the Analysis of Oil and Grease and Non-Polar Material**

Federal Register Reference:64 **FR** 26315-26327  
Federal Promulgation Date:May 14, 1999

**Summary:** This rule approves use of EPA Method 1664, Revision A: N-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated N-Hexane Extractable Material (SGT-HEM; Non-polar Material) by Extraction and Gravimetry (hereafter Method 1664) for use in EPA's Clean Water Act (CWA) programs, and incorporates Method 1664 by reference for use in EPA's Resource Conservation and Recovery Act (RCRA) programs. The rule also deletes Method 9070 and adds revised Method 9071B as Update IIIA to the Third Edition of the EPA-approved test methods manual SW-846. EPA has taken these actions as a part of the Agency's effort to reduce dependency on use of

chlorofluorocarbons (CFCs) to protect Earth's ozone layer and to meet the CFC phaseout agreed to in the Montreal Protocol and required by the Clean Air Act Amendments of 1990.

Sections or portions of DRGHW affected by these changes include:

260.11(a)(11), 260.11(a)(16).

**6. Title: Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps**

Federal Register Reference:64 **FR** 36466-36490

Federal Promulgation Date:July 6, 1999

**Summary:** With this rule, DNREC adds spent hazardous waste lamps to the list of universal wastes. Handlers of universal wastes are subject to less stringent standards for storing, transporting, and collecting these wastes. The streamlined universal waste management requirements under Part 273 should lead to better management of spent lamps and will facilitate compliance with hazardous waste requirements.

Sections or portions of DRGHW affected by these changes include:

260.10, 261.9(b)-(d), 264.1(g)(11), 265.1(c)(14), 268.1(f)(2)-(4), 122.1(c)(2)(viii), 273.1(a), 273.2(a)&(b), 273.3(a), 273.4(a), 273.5(a)-(c), 273.6, 273.7, 273.8(a)&(b), 273.9, 273.10, 273.13(d), 273.14(e), 273.30, 273.32(b)(4)&(5), 273.33(d), 273.34(e), 273.50, 273.60(a), 273.81(a).

**7. Miscellaneous Changes:** Miscellaneous changes will be made to the *Delaware Regulations Governing Hazardous Waste* to correct errors and inconsistencies in the regulations. In some cases, changes will be made to enhance the performance of the State's hazardous waste management program.

Sections or portions of DRGHW affected by these changes include but are not limited to:

Part 260, a Statement of Authority is being added indicating that enforcement may also occur under 7 **Del.C.**, Chapter 60 authority. Other changes being proposed affect §§261.3(c) & (d), 264.1(g)(2), 264.13, 265.13, 268 Appendix VIII, and 273.32(a)(1).

**PUBLIC SERVICE COMMISSION**

Statutory Authority: 26 Delaware Code,  
Section 209(a) (26 **Del.C.** 209(a))

In the Matter of the Sale, Resale, And Other Provisions of Intrastate Telecommunications Services (Opened May 1, 1984; Reopened November 17, 1998)		PSC Regulation Docket No. 10
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In the Matter of the Development of Regulations for the Facilitation of Competitive Entry into the Telecom- munications Local Exchange Service Market (Opened November 21, 1995; Reopened November 17, 1998)		PSC Regulation Docket No. 45
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**Findings, Opinion & Order No. 5521**  
**Summary of Proceedings**

The Commission initiated this consolidated proceeding on November 17, 1998, by PSC Order No. 4949, reopening two earlier proceedings captioned, respectively, In the Matter of the Sale, Resale, and Other Provisions of Intrastate Telecommunications Services, PSC Regulation Docket No. 10 and In the Matter of the Development of Regulations for the Facilitation of Competitive Entry into the Telecommunications Local Exchange Service Market, PSC Regulation Docket No. 45. The Commission reopened these dockets to consider amendment of the rules promulgated therein (the "*Docket 10 and 45 Rules*") for the purposes of harmonizing their provisions with each other and with the Commission's other regulations and governing law, lessening the regulatory burdens on regulated telecommunications carriers as well as on the Commission, and reflecting the changing regulatory environment.

The Commission arranged for the publication of notice of the proceeding and of the text of Staff's proposed amendments to the *Docket 10* and *Docket 45 Rules* as well as the text of those Rules in their current form, in the Register of Regulations as required by 29 *Del. C.* §§ 1133 and 10115 and also arranged for publication of legal notice of the proceeding in *The News Journal* and *Delaware State News* newspapers in accordance with 29 *Del. C.* § 10115. The Commission designated a Hearing Examiner who received comments and suggestions for further or differing proposed revisions to the Rules and who conducted public hearings on the proposed amendments, at which participants were given the opportunity to present evidence and comments, cross examine witnesses, and make further arguments. At this stage of the proceedings, Conectiv Communications, Inc. ("CCI"), the Division of Public Advocate ("DPA"), Telecommunications Resellers Association ("TRA"),



Hyperion Telecommunications, Inc. ("Hyperion"), Sprint Communications Company, LP ("Sprint"), MCIMetro Access Transmission Corporation and MCIMetro Access Transmission, LLC ("MCI"), Bell Atlantic-Delaware, Inc., ("BA-Del")<sup>1</sup>, AT&T Communications of Delaware, Inc. ("AT&T") and the Commission Staff ("Staff") submitted written comments and/or participated in the hearings

On September 7, 1999, the Hearing Examiner issued a Report to the Commission recommending the Commission adopt certain proposed amendments to the *Docket 10* and *45 Rules*. The Commission considered the Hearing Examiner's Report at its October 26, 1999 public meeting. On November 16, 1999, the Commission entered PSC Order No. 5277 remanding the proceeding to the Hearing Examiner to consider consolidation of the *Docket 10* and *Docket 45 Rules* and further revisions in light of specific policies identified by the Commission, and directed the Hearing Examiner to allow further opportunity for comment by participants.

On November 18, 1999, the Commission Staff submitted proposed consolidated *Rules for the Provision of Telecommunications Service* governing competitive provision of both intrastate and local exchange service to the Hearing Examiner. Thereafter, BA-Del, Sprint, AT&T and CCI submitted written comments concerning them. The Hearing Examiner conducted a public hearing on January 6, 2000 to consider argument on the Rules and comments thereto and to supplement the record with the latest filings. At the conclusion of the hearing, the Hearing Examiner closed the record which then consisted of 29 exhibits and 308 pages of transcripts of hearings. Staff and AT&T also submitted post-hearing letters arguing legal positions which the Hearing Examiner considered.

On January 26, 2000, the Hearing Examiner issued a second Report to the Commission recommending that the Commission adopt consolidated *Rules for the Provision of Telecommunications Service* and proposing such recommended Rules. Thereafter, the Commission afforded the participants an opportunity to submit written exceptions to the Report and Recommendations of the Hearing Examiner. Staff, the DPA, CCI, Sprint, AT&T and BA-Del all filed exceptions. The Commission considered the Hearing Examiner's Report, the Hearing Examiner's Proposed Rules and the exceptions of the participants at its public meeting of February 28, 2000.

Upon deliberation, the Commission by Order No. 5391, issued March 28, 2000, determined to repeal the present *Docket 10* and *45 Rules* in their entirety and to adopt the *Rules for the Provision of Telecommunications Services* as proposed by the Hearing Examiner with certain

modifications and revisions approved by the Commission. The Commission further determined that the *Rules for the Provision of Telecommunications Services*, as approved by the Commission differed in substantive nature from the proposed revised *Docket 10* and *45 Rules* earlier published in the Register of Regulations, pursuant to Order No. 4949. Accordingly, notice of (1) the Commission's intent to repeal the *Docket 10* and *45 Rules* in their entirety, (2) its proposal to adopt consolidated *Rules for the Provision of Telecommunications Services*, (3) its withdrawal of the previously published proposed revised *Docket 10* and *45 Rules* were published in the Register of Regulations, as were the (1) text of the current *Docket 10* and *45 Rules* and (2) the *Rules for the Provision of Telecommunications Services*, all as required by 29 Del. C. § 1133 and 1115. The Commission also arranged for publication of legal notice of the proceeding in *The News Journal* and *Delaware State News* newspapers in accordance with 29 Del. C. § 10155.

Following publication of these notices, the Commission received further written comment from BA-Del, AT&T and the Association of Communications Enterprises ("ASCENT"), (formerly TRA). On August 1, 2000, the Commission held a duly noticed public hearing to consider final adoption of the *Rules for the Provision of Telecommunications Services*. No member of the public attended. Following deliberations, the Commission by unanimous vote of the three Commissioners participating, determined to adopt the "*Rules for the Provisions of Telecommunications Services*" attached hereto as Exhibit A.

On August 2, 2000, the Governor signed Senate Bill No. 396, amending Title 26 of the Delaware Code to add a new subchapter 3 governing changes in customer selection of telecommunications service providers. This subchapter authorizes the Commission to promulgate regulations governing the implementation of customer preferred carrier change orders and preferred carrier freezes. The Commission adopts Part B of the *Rules for the Provision of Telecommunications Services* in furtherance of the authority granted it by the new statute.

#### **Summary of Evidence and Information Submitted and Findings of Fact**

The Hearing Examiner summarized the evidence and information submitted and recommended findings based thereon. The Commission adopts as its own and incorporates by reference herein the summary of evidence and information submitted and the findings as set out by the Hearing Examiner in his Report of January 26, 2000, except as specifically noted herein.

#### **Rule 1: Definitions**

BA-Del and the DPA proposed certain changes to the text of Rule 1, to eliminate surplus language and to clarify

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1. Effective August 1, 2000, BA-Del changed its name to Verizon Delaware Inc.

coverage of the Rule. The Commission does not accept BA-Del's proposal to revise Rule 1(b) to define "Carrier" to mean "any person or entity offering to the public telecommunications service that originates and terminates within the State of Delaware." The phrase "originates or terminates," employed by the Hearing Examiner, is not ambiguous and is preferable. (5-0) However, the Commission approves certain changes urged by the DPA and BA-Del to Rules 1(b)(iv), (j) and (m) to eliminate surplus language and foster consistency. (5-0)

### **Rule 3: Application and Conflict With Other Rules, Regulations, Tariffs and/or Pricelists**

Both AT&T and BA-Del proposed alternate language to Rule 3(a) concerning application of the *Rules for the Provision of Telecommunications Service* to BA-Del, the Incumbent Local Exchange Carrier ("ILEC"). The Commission agrees that AT&T's proposed language is preferable to that recommended by the Hearing Examiner. (5-0).

The DPA proposed a new Rule 3(c) governing applicability of the *Rules* to payphone providers. The Commission finds that the *Rules* as adopted unambiguously exclude payphone service providers from coverage and hence rejects the DPA proposal. (5-0) However, the Commission adopts certain clarifications proposed by BA-Del to Rules 3(e) and (g).(5-).

### **Rule 4 : Certification**

The Hearing Examiner's proposed Rule 4(h), concerning filing of initial tariffs and price lists, allows Staff to require an applicant to provide cost data demonstrating that rates are reasonably expected to cover the incremental cost of offering the service, upon an investigation into unjust and unreasonable pricing practices. Staff proposes alternate text to Rule 4(h) which would allow it to obtain cost data from an applicant at any time, upon written request. Staff argued that such a provision is a safeguard against predatory pricing practices. The carriers, other than BA-Del, opposed Staff's position. The Commission agrees with these carriers and the Hearing Examiner. The Commission rejects Staff's proposed modification to Rule 4(h). (4-1, McMahon opposed).

BA-Del pointed out that in Rule 4(a), as well as in other parts of his recommended *Rules* the Hearing Examiner uses the phrase "tariffs and price lists," not "tariffs or price lists." BA-Del urged that the phrase "tariffs or price lists" is more consistent with the Commission's intent and should be used consistently throughout the *Rules*. The Commission agrees (5-0).

### **Rule 5: New Options or Offerings; Changes to Existing Rates, Prices or Terms and Conditions**

BA-Del took exception to the Hearing Examiner's

recommended Rule 5(a) which provides that a Carrier offering a new telecommunications service option or offering must provide ten days prior notice to the Commission. BA-Del recommended the Rule be revised to require twenty day notice, consistent with the 20-day notice statutorily required of Carriers who elect coverage under the Telecommunications Technology Investment Act ("TTIA") (as BA-Del has done). Staff and the remaining Carriers opposed BA-Del's position. These parties argued that the twenty day period applicable to BA-Del allows the Commission's Staff to accomplish the administrative review the TTIA requires upon receipt of a filing. Staff is not required to perform a similar level of review concerning the filings of competitive Carriers. The Commission rejects BA-Del's proposal adopted Rule 5(a) as recommended by the Hearing Examiner. (5-0).

The Hearing Examiner's recommended Rule 5(b) imposed varying notice periods for revisions to existing tariffs or price lists depending upon whether the Carrier proposed to increase or decrease prices. He recommended that price decreases be allowed to go into effect upon three days notice but that implementation of price increases require twenty day notice to the Commission as well as mailed notice to all customers affected. The DPA supported the Hearing Examiner's proposed Rule 5(b). Prior to issuance of the Hearing Examiner's Report, no participant in the proceeding had urged adoption of differentiated notice periods for price increases as opposed to price decreases. Staff and AT&T urged that it would be inappropriate to adopt the Hearing Examiner's proposal on the current record. The Commission agrees and rejects the Hearing Examiner's proposal. The Commission adopts Staff's proposal that Carriers be required to provide three days notice to the Commission for all revisions to filed tariffs or price lists. (4-1, Twilley opposed).

Staff argued that Rule 5(d) (Investigation of Filings) should enunciate a pricing standard requiring that a Carrier's rates be accompanied by a statement that the rates are intended to generate sufficient revenue to cover the incremental cost of offering the service. The Commission rejected this proposal, consistent with its determination concerning Rule 4(h). Further, Rule 5(d) as adopted has been modified to employ the language as Rule 4(h). (5-0).

Staff also took exception to the Hearing Examiner's recommended Rule 5(e) governing special contracts. Staff proposed language requiring any Carrier entering a special (i.e., off-tariff or price list) contract with a customer be required to demonstrate affirmatively to the Commission that actual competition exists for the contract and that rates under the contract would at least equal incremental cost. The Commission rejects Staff's position, consistent with its earlier determination. (4-1, McMahon opposed).

**Rule 7: Abandonment or Discontinuation of Service**

Staff proposed alternate language to the Hearing Examiner's recommended Rule 7 which it argued was ambiguous. Bell Atlantic and AT&T supported the Staff's recommendation. The Commission adopts the language proposed by Staff. (5-0).

**Rule 8: Services to be Provided by CLECs Providing Voice Telephone Service**

Staff proposed clarification of Rule 8, listing minimum services to be provided by CLECs. The Commission approves Staff's recommended language. In addition, the DPA proposed amending subparagraph 8(f) to include directory de-listing as a required minimum service. Staff argued that de-listing appears to be a less essential service than directory listing and that its provision need not be mandated. The Commission adopts Staff's position. (5-0).

**Rule 9: Resale Prohibitions**

The DPA recommended revising the Hearing Examiner's proposed language regarding cross-class selling and other restrictions on resale. The Commission finds that the language proposed by the Hearing Examiner is sufficiently clear. (5-0).

**Rule 14: Applicability**

As recommended by AT&T, the Commission inserts Rule 14 governing applicability of the Part B Rules (5-0).

**Rule 15: Verification of Orders for Telecommunications Services**

The Commission corrects the typographical errors contained in the Hearing Examiner's recommended rules, as pointed out by BA-Del. (5-0).

**Rule 19: Customer Protection**

Rule 19(b) addresses steps a Carrier must take to resolve a customer's complaint concerning an unauthorized change in the customer's preferred Carrier. BA-Del suggested modification to allow a Carrier to notify customers orally (not only in writing) of the customer's right to file a complaint with the Commission. The Hearing Examiner adopts BA-Del's position. (5-0).

Rule 19(d) (Refunds and Penalties), as proposed by the Hearing Examiner authorizes the Commission, to require a Carrier to refund or void all customer charges resulting from an unauthorized change in preferred Carriers, in the Commission's discretion, following appropriate administrative process. AT&T, Sprint and BA-Del all took exception to this provision. BA-Del argued that the "customer absolution" period (i.e., the refund period) should be limited to 30 days. AT&T and Sprint proposed alternate language which would likewise limit the absolution period to 30 days except where the Commission determines the

circumstances warrant a longer refund period. These parties argued that the Federal Communications Commission ("FCC"), in its proceeding for the promulgation of policies and rules concerning unauthorized changes of consumer's long distance carriers (CC Docket No. 94-129) favored an absolution period limited to 30 days. Staff and the DPA supported the Hearing Examiner's Rule. Staff asserted that the FCC's Rule, in its then current version, did not prohibit refund to the customers for a period of longer than 30 days in appropriate circumstances. The Commission concludes that the text proposed by AT&T is not significantly different from the Hearing Examiner's recommended language. Accordingly, the Commission adopts Rule 19(d) as proposed by the Hearing Examiner. (5-0)

Subsequent to the Commission's consideration of the Hearing Examiner's Report and recommended *Rules for the Provision of Telecommunications Services*, BA-Del submitted additional comments requesting revision to Rule 18(e)(ii) which it claimed would facilitate the implementation of a voice response unit ("VRU") for implementation and lifting of preferred carrier freezes by customers. AT&T filed responsive comments and proposed an additional changes to Rule 19 authorizing creation of an independent third party administrator to govern slamming and cramming disputes. In the alternative, AT&T requested the Commission to open a new docket to explore creation of an independent third party administrator.

ASCENT submitted written comments opposing the bonding requirements of Rule 4 and suggesting certain "guiding principles" for the adjudication of slamming complaints.

The Commission considered these comments at its public hearing of August 1, 2000. The Commission deems it to be in the public interest to finally adopt the Rules it previously approved on March 28, without modification that could require further republication and additional administrative process. The Commission recognizes that the telecommunications industry is experiencing rapid change and that these *Rules* may require revision in the foreseeable future to accommodate changed circumstances. (5-0)

AND NOW, this 15<sup>th</sup> day of August, 2000, IT IS HEREBY ORDERED that:

1. The Commission adopts the *Rules for the Provision of Telecommunications Services* the exact text and citation of which are attached hereto as Exhibit A. (3-0)

2. The Commission repeals the "*Rules for the Provision of Competitive Intrastate Telecommunications Services*" adopted by PSC Order 3283 (June 18, 1991) entered In the Matter of the Sale, Resale and Other Provisions of Intrastate Telecommunications Services, PSC Regulation Docket No. 10 and the "*Interim Rules Governing Competition in the Market for Local Telecommunications Services*" adopted by

PSC Order 4468 (April 8, 1997) issued In the Matter of the Development of Regulations for the Facilitation of Competitive Entry into the Telecommunications Local Exchange Market, PSC Regulation Docket No. 45. (3-0)

3. The Secretary shall transmit this Order, together with the exact text of the *Rules for the Provision of Telecommunications Service* to the Registrar of Regulations for Publication on September 1, 2000.

4. The effective date of this Order shall be the later of September 10, 2000 or ten days after the date of publication in the Registrar of Regulations of the final text of the *Rules for the Provision of Telecommunications Services*.

5. The Commission reserves the jurisdiction and authority to enter such further orders in this matter as may be deemed necessary or proper by Order of the Commission.

BY ORDER OF THE COMMISSION:

Robert J. McMahon, Chairman  
 Joshua M. Twilley, Vice Chairman  
 Arnetta McRae, Commissioner  
 Donald J. Puglisi, Commissioner  
 John R. McClelland, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

**Public Service Commission of Delaware Rules for the  
 Provision of Telecommunications Services  
 Part A  
 Certification and Regulation of Carriers**

**Rule 1. Definitions.**

(a) Rules shall mean these Rules, including PARTS A and B, governing the provision of telecommunications services in Delaware.

(b) Carrier shall mean any person or entity offering to the public Telecommunications service that originates or terminates within the State of Delaware. The term "Carrier" does not include:

(i) any political subdivision, public or private institution of higher education or municipal corporation of this State or operated by their lessees or operating agents that provides telephone service for the sole use of such political subdivision, public or private institution of higher learning or municipal corporation;

(ii) a company that provides telecommunications services solely to itself and its affiliates or members or between points in the same building, or between closely located buildings which are affiliated through substantial common ownership and does not offer such services to the available general public;

(iii) providers of domestic public land mobile radio service provided by cellular technology excluded from the

Commission's jurisdiction under 26 *Del. C.* § 202(c); and

(iv) Payphone service providers regulated by this Commission under Rules promulgated in Regulation Docket No. 12.

(c) CPCN shall mean a Certificate of Public Convenience and Necessity issued by the Commission.

(d) Commission shall mean the Public Service Commission of Delaware.

(e) Competitive Local Exchange Carrier ("CLEC") shall mean a Carrier, other than the Incumbent Local Exchange Carrier, offering and/or providing local telecommunications exchange services within the State of Delaware.

(f) Incumbent Local Exchange Carrier ("ILEC") shall mean in Delaware Bell Atlantic-Delaware, Inc., and any successor thereto.

(g) Facilities-based Carrier shall mean a Local Exchange Carrier that directly owns, controls, operates, or manages plant and equipment through which it provides local exchange services to consumers within the local exchange portion of the public switched network.

(h) Local Exchange Carrier ("LEC") shall mean a Carrier offering and/or providing local telecommunications exchange services (i.e., CLECs and ILECs); including both facilities-based and non-facilities-based Carriers.

(i) Local Telecommunications Exchange Service shall mean non-toll, intrastate Telecommunications Services provided over a Local Exchange Carrier's network, including, but not limited to, exchange access services and basic local services.

(j) Resale shall mean the sale to an end user of any telecommunications service purchased from another Carrier.

(k) Telecommunications shall mean the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form and content of the information as sent and received.

(l) Telecommunications Service shall mean the offering of telecommunications for a fee directly to the public within the State of Delaware (originating or terminating within the State, without regard to how the Carrier decides to route the traffic), or to such classes of users as to be effectively available to the public, regardless of the facilities used.

"Telecommunications Service" does not include:

(i) the rent, sale, lease, or exchange for other value received, of customer premises equipment, except for specialized terminal equipment as defined in 48 U.S.C. § 610(g);

(ii) telephone or telecommunications answering services, paging services, and physical pickup and delivery incidental to the provision of information transmitted through electronic or electromagnetic media, including light transmission;

(iii) The one-way distribution of entertainment services or informational services with no more than

incidental customer interaction required for selection of such entertainment or information services; and

(iv) Telecommunications service provided by either primary cellular technology or by domestic public land mobile radio service, even in the event that such transmission originates or terminates in a wireline telephone.

**Rule 2. Applicability.**

These Rules shall apply to all Carriers, as defined by these Rules, and shall be construed consistently with Rule 3 of these Rules.

**Rule 3. Application of and Conflict With Other Rules, Regulations, Tariffs and/or Price Lists.**

(a) The ILEC.

(i) The ILEC will remain subject to the Telecommunications Technology [Investment] Act (TTIA), 26 *Del. C.* sub. Ch. VII-A, and any implementing regulations promulgated by the Commission during the term of its election thereunder. During such term, the ILEC shall not be subject to the requirements of these Part A. Rules; and

(ii) The ILEC has Carrier of last resort obligations in its service territory.

(b) Telephone Service Quality Regulations (Docket No. 20).

All Carriers shall provide telephone service in accordance with the Telephone Service Quality Regulations the Commission adopted in PSC Regulation Docket No. 20, by Order No. 3232 (January 15, 1991) as such may from time to time be amended, except to the extent these Rules impose obligations or grant privileges inconsistent therewith.

(c) Negotiation and Mediation Guidelines.

All Carriers must abide by the Commission's Guidelines for Negotiations, Mediation, Arbitration and Approval of Agreements between Local Exchange Telecommunications Carriers (Order No. 4245).

(d) Rules of Practice and Procedure

The practice and procedure governing any proceedings required or authorized by these Rules shall be as set forth by the Commission's Rules of Practice and Procedure adopted in PSC Docket No. 99-9, by Order No. 5057 (April 6, 1999) as the same may be hereafter from time to time amended.

(e) Other Rules and Statutes.

These Rules shall prevail over any inconsistent requirements imposed by prior Order or regulation of the Commission, except for Rule 3(a) preceding and where expressly authorized by a Commission Order granting a waiver. All Carriers remain subject to any and all applicable provisions of state and federal law.

(f) Tariffs or Price Lists.

To the extent that a tariff or price list of any Carrier is inconsistent with these Rules, then, and in that event, these Rules shall control, subject to Rule 3(a) preceding, unless where expressly authorized by a Commission Order granting

a waiver.

**Rule 4. Certification.**

(a) Certification Requirement.

No person or entity shall offer public intrastate or local exchange telecommunications service within the State of Delaware without first obtaining from the Commission a Certificate of Public Convenience and Necessity authorizing such service. A Carrier offering telecommunications service within the State of Delaware without a CPCN duly issued by this Commission is acting unlawfully and shall immediately cease offering such service until a CPCN is granted.

(b) Application.

An applicant for a CPCN shall file with the Commission an original and ten (10) copies of an Application for Certificate of Public Convenience and Necessity, together with the statutory filing fee set forth in 26 *Del. C.* § 114, as the same may from time to time be amended. Such application shall contain all the information and exhibits hereinafter required and may contain such additional information as the applicant deems appropriate to demonstrate to the Commission that it possesses the technical, financial and operational ability to adequately serve the public and that the public convenience and necessity requires or will require the operation of such business.

(c) Notice.

The applicant shall serve a notice of the filing of such an application upon the Public Advocate, and to such other entities as may be required by the Commission. The applicant shall provide public notice of the filing of the application in two (2) newspapers having general circulation throughout the county or counties where service is to be offered in a form to be prescribed by the Commission.

(d) Business License and Registered Agent.

An applicant shall demonstrate that it is legally authorized and qualified to do business in the State of Delaware, including that it has received authorization to do business issued by the Secretary of State. An applicant shall provide the name, address, and telephone number of its Delaware Resident Agent. Following certification, all Carriers shall promptly notify the Commission in writing of changes of Resident Agent or the name, address, or telephone number thereof.

(e) Identification and Billing of Intrastate and Interstate Traffic.

An applicant shall be required to set forth an effective plan for identifying and billing intrastate versus interstate traffic, and shall pay the appropriate LEC for access at the LEC's prevailing access charge rates. If adequate means of categorizing traffic as interstate versus intrastate are not or cannot be developed, then, for purposes of determining the access charge to be paid to the LEC for such undetermined traffic, the traffic shall be deemed to be of the jurisdiction having the higher access charges and billed at the higher

access charges.

(f) Bonds.

(i) Applicants with assets under \$250,000.

An applicant with total assets less than \$250,000 must post a \$10,000 performance bond with Delaware surety and renew such bond annually until the Carrier's assets exceed \$250,000.

(ii) Carriers requiring deposits, or any form of payment in advance for service.

No Carrier shall require its customers in Delaware to pay a deposit or pay or otherwise provide any security or advance as a condition of service unless that Carrier first has filed with the Commission a bond, issued by a corporate surety licensed to do business in Delaware, guaranteeing the repayment of all customer deposits and advances upon the termination of service. The bond need not be filed with the application, but no CPCN will be issued until such bond is filed with the Commission. The amount of the bond shall be the greater of: (A) 150% of the projected balance of deposits and advances at the end of three years of operation; or (B) \$50,000. If at any time the actual amount of deposits and advances held by a Carrier exceeds the bond, then the Carrier promptly shall file with the Commission a bond with surety to comply with the requirement of the preceding sentence. A Carrier may petition for waiver of the bond requirement three years from the date the certificate was issued and such waiver will be granted upon a demonstration of an adequate operating history and financial resources to insure the repayment to customers of any advance payments or deposits held.

(g) Minimum Financial Requirements for LECs.

(i) Any applicant for certification as a facilities-based CLEC shall demonstrate in its application that it possesses a minimum of \$100,000 of cash or cash equivalent, reasonably liquid and readily available;

(ii) Any applicant for certification to do business as a non-facilities-based CLEC shall demonstrate in its application that it possesses a minimum of \$25,000 of cash or cash equivalent, reasonably liquid and readily available;

(iii) Any applicant that has profitable interstate operations or operations in other states may meet the minimum financial requirements of subparagraphs (i) and (ii) above by submitting an audited balance sheet and income statement demonstrating sufficient cash flow to meet the above requirements; and

(iv) An applicant may demonstrate cash or cash equivalent by the following:

(A) Cash or cash equivalent, including cashier's check, sight draft, performance bond proceeds, or traveler's checks;

(B) Certificate of deposit or other liquid deposit, with a reputable bank or other financial institution;

(C) Preferred stock proceeds or other corporate shareholder equity, provided that use is restricted

to maintenance of working capital for a period of at least twelve (12) months beyond certification of the applicant by the Commission;

(D) Letter of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least (12) months beyond certification of the applicant by the Commission;

(E) Line of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission;

(F) Loan, issued by a qualified subsidiary, affiliate of applicant, or a qualified corporation holding a controlling interest in the applicant, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission, and payable on an interest-only basis for the same period;

(G) Guarantee, issued by a corporation, copartnership, or other person or association, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission;

(H) Guarantee, issued by a qualified subsidiary, affiliate of the applicant, or a qualified corporation holding controlling interests in the applicant irrevocable for a period of at least twelve (12) months beyond the certification of the applicant by the Commission.

(h) Initial Tariffs or Price Lists.

An applicant shall file proposed initial rates, prices, rules, regulations, terms and conditions of service specifically adopted for the State of Delaware. Upon an investigation into unjust and unreasonable pricing practices, the Commission Staff may require the applicant to provide cost data demonstrating that rates are reasonably expected to cover the incremental cost of offering the service. Copies of the applicant's rates and terms and condition of service in other jurisdictions must be provided to the Commission upon request. Any applicant's tariff or price lists must include at a minimum specific policies regarding:

(i) customer deposits and advances;

(ii) prompt reconciliation of customer billing problems and complaints; and

(iii) timely correction of service problems.

(i) Demonstration of Fitness.

An applicant shall be required to demonstrate to the Commission its financial, operational, and technical ability to render service within the State of Delaware. Such demonstration shall include, but is not limited to, the following:

(i) The applicant's certified financial statements current within twelve (12) months of the filing, and, where applicable, the most recent annual report to shareholders and SEC Form 10-K;

(ii) A brief narrative description of the applicant's proposed operations in Delaware, any present operations in

all other states, and states for which service applications are pending;

(iii) A description of the relevant operations experience of applicant's personnel principally responsible for the proposed Delaware operations;

(iv) A specific description of the applicant's engineering and technical expertise showing its qualifications to provide the intended service, including the names, addresses, and qualifications of the officers, directors, and technical or engineering personnel or contractors who will be operating and/or maintaining the equipment to be used to provide such service; and

(v) A description, including location, of the applicant's facilities that the applicant will use to provide the proposed service in the next three years. Upon written request of the Commission Staff, the applicant shall provide a one year construction, maintenance, engineering, and financial plan for all services intended to be provided within the State of Delaware with a technical description of the equipment which will be used to provide such service.

**Rule 5. New Options or Offerings; Changes to Existing Rates, Prices or Terms and Conditions.**

(a) Notice Required for New Service Options and Offerings.

No Carrier shall offer new telecommunication service options or offerings except ten (10) days after filing with the Commission the proposed tariff or price list.

(b) Notice Required to Revise Existing Tariff or Price List.

No Carrier shall revise an existing tariff or price list except three (3) days after filing with the Commission the proposed tariff or price list.

(c) Service of Notice.

A Carrier filing a new service or changes to an existing service pursuant to this Rule shall serve the filing on:

- (i) the Public Advocate; and
- (ii) all interested persons that submit a written request to the Commission to receive such notice.

A Carrier shall file with the Commission a certificate of service as part of its notice requirement. To the extent that any such documents contain information claimed to be proprietary and interested persons have submitted a written request for notice, but have not executed an appropriate proprietary agreement, the Carrier shall provide an expurgated version of the notice to such parties.

(d) Investigation of Filings.

A filing made pursuant to this rule shall not preclude the Commission or its Staff from an informal or formal investigation into the filing in order to protect fair competition, including requiring the Carrier to provide cost data demonstrating that rates are reasonably expected to cover the incremental cost of offering the service.

(e) Special Contracts

A Carrier shall file under this rule all contracts with a customer to the extent the contract changes the terms or conditions generally offered to the public in the carrier's tariff or price list on file with the Commission.

**Rule 6. Discrimination Prohibited.**

No Carrier shall unreasonably discriminate among persons requesting a service within the State of Delaware. Any finding of unreasonable discrimination shall be grounds for suspension or revocation of the Certificate of Public Convenience and Necessity granted by the Commission, as well as the imposition of monetary and other penalties pursuant to 26 Del. C. §§ 217 and 218.

**Rule 7. Abandonment or Discontinuation of Service.**

A Carrier may abandon or discontinue service, in whole or in part, in accordance with the terms of 26 Del. C. § 203A(c). The Carrier shall provide notice of its application to discontinue or abandon service to its customers subscribing to such service and to the Division of Public Advocate. Such notice shall describe the options available to the customers. The Carrier's application to abandon or discontinue a service shall contain proposed provision for payment of all relevant outstanding liabilities (deposits and advance payments), if any, to customers within the State of Delaware.

**Rule 8. Services to be Provided By CLECs Providing Voice Telephone Service.**

Any CLEC providing voice telephone service shall offer, at a minimum, the following telecommunication services to its customers:

- (a) access to the public switched network;
- (b) dial tone line services;
- (c) local usage services;
- (d) access to all available long distance Carriers;
- (e) TouchTone services;
- (f) White page listing;
- (g) Access to 911 enhanced emergency system;
- (h) Local directory assistance service;
- (i) Access to telecommunications relay service.

**Rule 9. Resale Prohibitions.**

(a) Cross-Class Selling.

A Carrier that by tariff or price list makes a service available only to residential customers or a limited class of residential customers may prohibit the purchaser from offering such services to classes of customers that are not eligible for such services from the providing Carrier.

(b) Other.

With respect to any restrictions on resale other than cross-class selling as described in paragraph (a) above, a Carrier may impose a restriction only if the Commission determines that the restriction is reasonable and nondiscriminatory.

**Rule 10. Reports to the Commission.**

## (a) Annual and Periodic Reports.

All Carriers shall file with the Commission an Annual Report as described below and such other reports or information as the Commission may from time to time require to fulfill its statutory obligations. The Annual Report shall include standard financial reports (balance sheet, statement of operations, supporting schedules, etc.). This report shall also include:

(i) the same after-the-fact information that management is provided concerning the measurement of performance provided in Delaware;

(ii) the information used to determine Delaware income tax liability;

(iii) financial and operating information for the smallest management unit that includes Delaware;

(iv) intrastate revenues (net of uncollectible) by service category;

(v) intrastate access and billing and collection cost by service category;

(vi) total number of customers by service category;

(vii) total intrastate minutes of use by service category;

(viii) total intrastate number of calls by service category;

(ix) a description of service offered;

(x) a description of each complaint received by service category (in the form of a single Complaints Log); and

(xi) verification of deposits, customer advances, the bond requirement and the bond with surety, where applicable.

## (b) Accounting System.

All Carriers shall use an accounting system in accordance with Generally Accepted Accounting Principles or such other uniform system of accounts previously approved in writing by the Chief of Technical Services of the Commission.

## (c) Attestation.

All Carriers shall file all reports required by these Rules with a sworn statement by the person under whose direction the report was prepared, that the information provided in the report is true and correct to the best of the person's knowledge and belief.

## (d) Time for Filing.

All periodic reports to be filed with this Commission must be received on or before the following due dates, unless otherwise specified herein, or unless good cause is demonstrated by the Carrier:

i. Annual Report: one hundred twenty (120) days after the end of the reported period; and

ii. Special and additional reports: as may be prescribed by the Commission unless good cause to the contrary is demonstrated.

**Rule 11. Enforcement.**

## (a) Commission Oversight.

The Commission shall have the authority and the discretion to take such action, upon complaint, motion, or formal or informal investigation, to remedy any alleged violations of these Rules. The Commission shall have available to it all remedies and enforcement powers bestowed by statute and consistent with due process.

## (b) Violation and Penalties.

Failure of a Carrier to comply with any provision of these Rules may result in the suspension or revocation of its CPCN, and/or of the imposition of monetary or other penalties as authorized by 26 *Del. C.* §§ 217 and 218.

## (c) Proceedings.

Upon application by any person affected, including the Division of the Public Advocate or another Carrier, or upon its own motion, the Commission may conduct a proceeding to determine whether a Carrier has violated any provision of these Rules. Such proceedings shall be conducted according to the Commission's Rules of Practice and Procedure.

## (d) Investigations.

For the purpose of determining whether it is necessary or advisable to commence a proceeding, the Commission or its Staff may, at any time, investigate whether a Carrier is in compliance with these Rules. Upon request, the Carrier shall provide to the Commission or its Staff sufficient information to demonstrate its compliance or noncompliance with the Rules, including such data as shall demonstrate that the Carriers' services are provided at rates that generate sufficient revenue to cover the incremental cost of offering that service.

(e) Customer Complaints as Ground for Proceeding or Investigation.

The Commission may hold a proceeding to determine whether to suspend or revoke the certificate of, or otherwise penalize any Carrier for reason of customer complaints. The Commission may investigate any customer complaints received.

**Rule 12. Waiver of Rules Upon Petition.**

A Carrier may petition the Commission for waiver of a Rule or Rules on a temporary or permanent basis by demonstrating to the satisfaction of the Commission that a waiver is in the public interest or for other good cause, including unreasonable hardship or burden. The Carrier shall comply with all Rules until the petition for waiver has been granted.

**Part B****Customer Election Of Preferred Carrier****Rule 13. Additional Definitions.**

For purposes of this PART B, in addition to the Definitions set forth by PART A, the following definitions



shall apply:

(a) Submitting Carrier shall mean a Carrier that: (i) requests on the behalf of a customer that the customer's telecommunications Carrier be changed; and (ii) seeks to provide retail services to an end user customer. A Carrier may be treated as a Submitting Carrier, however, if it is responsible for any unreasonable delays in the submission of Carrier change requests or for the submission of unauthorized Carrier change requests, including fraudulent authorizations.

(b) Executing Carrier shall mean a Carrier that effects a request that a customer's telecommunications Carrier be changed. A Carrier may be treated as an executing Carrier, however, if it is responsible for any unreasonable delays in the execution of unauthorized Carrier changes, including fraudulent authorizations.

(c) Preferred Carrier shall mean the Carrier providing service to the customer at the time of the adoption of these Rules, or such Carrier as the customer thereafter designates as the customer's Preferred Carrier.

Preferred Carrier Change Order shall mean generally any order changing a customer's designated Carrier for local exchange service, intraLATA intrastate toll service or both.

**Rule 14. Applicability.**

Any Carrier offering intrastate and/or local exchange service for public use within the State of Delaware, including the ILEC, Bell Atlantic-Delaware, Inc., shall be subject to the provisions of these Part B Rules.

**Rule 15. Verification of Orders for Telecommunications Service.**

No Carrier shall submit a Preferred Carrier Change Order unless and until the Order has been first confirmed in accordance with one of the following procedures:

(a) The Carrier has obtained the customer's written authorization in a form that meets the requirements of Rule 16; or

(b) The Carrier has obtained the customer's electronic authorization to submit the Preferred Carrier Change Order. Such authorization must be placed from the telephone number(s) on which the Preferred Carrier is to be changed and must confirm the information required in Rule 16(e). Carriers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism that records the required information regarding the Preferred Carrier change, including automatically recording the originating automatic numbering identification; or

(c) An appropriately qualified independent third party has obtained the customer's oral authorization to submit the Preferred Carrier Change Order that confirms and includes

appropriate verification data (e.g., the customer's date of birth or social security number). The independent third party must: (1) not be owned, managed, controlled, or directed by the Carrier or the Carrier's marketing agent; (2) must not have any financial incentive to confirm Preferred Carrier Change Orders for the Carrier or the Carrier's marketing agent; and (3) must operate in a location physically separate from the Carrier or the Carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the customer has authorized a Preferred Carrier change.

**Rule 16. Letter of Agency Form and Content.**

(a) A Carrier may use a letter of agency to obtain written authorization and/or verification of a customer's request to change his or her Preferred Carrier selection. A letter of agency that does not conform with this Rule is invalid.

(b) The letter of agency shall be a separate document (or an easily separable document) containing only the authorizing language described in paragraph (e) of this Rule having the sole purpose of authorizing a Carrier to initiate a Preferred Carrier change. The letter of agency must be signed and dated by the customer to the telephone line(s) requesting the Preferred Carrier change.

(c) The letter of agency shall not be combined on the same document with inducements of any kind.

(d) Notwithstanding paragraphs (b) and (c), a letter of agency authorizing a preferred Carrier selection affecting the customer's intrastate service provider only, may be combined with checks that contain only the required letter of agency as prescribed above together with the necessary information to make the check a negotiable instrument. Such a letter of agency check shall not contain any promotional language or material. Such a letter of agency check shall contain in easily readable, boldface type on the front of the check, a notice that the customer is authorizing a Preferred Carrier change by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

(e) At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

(i) The customer's billing name and address and each telephone number to be covered by the Preferred Carrier change order;

(ii) The decision to change the Preferred Carrier from the current Carrier to the soliciting Carrier;

(iii) That the customer designates the Submitting Carrier to act as the customer's agent for the Preferred Carrier change;

(iv) That the customer understands that only one Carrier may be designated as the customer's local exchange

or intrastate Carrier for any one telephone number; and

(v) That the customer understands that any Preferred Carrier selection the customer chooses may involve a charge to the customer for changing the customer's Preferred Carrier.

(f) Any Carrier designated in a letter of agency as a Preferred Carrier must be the Carrier directly setting the rates for the customer.

(g) Letters of agency shall not suggest or require that a customer take some action in order to retain the customer's current telecommunications Carrier.

(h) If any portion of a letter of agency is translated into another language, then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions, or instructions provided with the letter of agency.

**Rule 17. Submission and Execution of Changes in Customer Carrier Selections.**

(a) A Submitting Carrier shall maintain and preserve records of verification of customer authorization for a minimum period of two years after obtaining such verification.

(b) An Executing Carrier shall not verify the submission of a change in customer's selection of a provider of telecommunications service received from a Submitting Carrier. An Executing Carrier shall promptly execute, without an unreasonable delay, any changes that have been verified and submitted by a Submitting Carrier.

(c) Where a Carrier provides more than one type of telecommunications service (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll), that Carrier must obtain separate authorization from the customer for each service sold, although the authorizations may be made within the same solicitation. Each authorization must be verified separately from any other authorization obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in these Rules.

**Rule 18. Preferred Carrier Freezes.**

(a) A Preferred Carrier freeze prevents a change in a customer's Preferred Carrier selection unless the customer has given the Carrier from which the freeze was requested his or her express consent. All Carriers who offer Preferred Carrier freezes must comply with the provisions of this Rule.

(b) All Local Exchange Carriers that offer Preferred Carrier freezes shall offer freezes on a nondiscriminatory basis to all customers, regardless of the customer's Carrier selections.

(c) Preferred Carrier freeze procedures, including any solicitation, must clearly distinguish among

telecommunications services (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) subject to a Preferred Carrier freeze. The Carrier offering the freeze must obtain separate authorization for each service for which a Preferred Carrier freeze is requested.

(d) All Carrier-provided solicitation and other materials regarding Preferred Carrier freezes must include:

(i) An explanation, in clear and neutral language, of what a Preferred Carrier freeze is and what services may be subject to a freeze;

(ii) A description of the specific procedures necessary to lift a Preferred Carrier freeze; and explanation that these steps are in addition to the Commission's verification rules for changing a customer's Preferred Carrier selections; and an explanation that the customer will be unable to make a change in Carrier selection unless he or she lifts the freeze; and

(iii) An explanation of any charges associated with the Preferred Carrier freeze.

(e) No Carrier shall implement a Preferred Carrier freeze unless the customer's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

(i) The Local Exchange Carrier has obtained the customer's written and signed authorization in a form that meets the requirements of these Rules; or

(ii) The Local Exchange Carrier has obtained the customer's electronic authorization, placed from the telephone number(s) on which the Preferred Carrier freeze is to imposed, to impose a Preferred Carrier freeze. The electronic authorization should confirm appropriate verification data (e.g. the customer's date of birth or social security number) and the information required in these Rules. Carriers electing to confirm Preferred Carrier freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism that records the required information regarding the Preferred Carrier freeze request, including automatically recording the originating automatic number identification; or

(iii) An appropriately qualified independent third party has obtained the customer's oral authorization to submit the Preferred Carrier freeze and confirmed that appropriate verification data (e.g. the customer's date of birth or social security number) and the information required in these Rules. The independent third party must: (A) not be owned, managed, or directly controlled by the Carrier or the Carrier's marketing agent; (B) must not have any financial incentive to confirm Preferred Carrier freeze requests for the Carrier or the Carrier's marketing agent; and (C) must operate in a location physically separate from the Carrier or the Carrier's marketing agent. The content of the

verification must include clear and conspicuous confirmation that the customer has authorized a Preferred Carrier freeze.

(f) A Carrier may accept a customer's written and signed authorization to impose a freeze on his or her Preferred Carrier selection. A written authorization that does not conform to this Rule is invalid and may not be used to impose a Preferred Carrier freeze.

(i) The written authorization shall comply with these Rules concerning the form and content for letters of agency.

(ii) At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(A) The customer's billing name and address and the telephone number(s) to be covered by the Preferred Carrier freeze;

(B) The decision to place a Preferred Carrier freeze on the telephone number(s) and particular service(s). The authorization must contain a separate statement for each service to be frozen;

(C) That the customer understands that she or he will be unable to make a change in Carrier selection unless she or he lifts the Preferred Carrier freeze; and

(D) That the customer understands that any Preferred Carrier freeze may involve a charge to the customer.

(g) All Carriers who offer Preferred Carrier freezes must, at a minimum, offer customers the following procedures for lifting a Preferred Carrier freeze:

(i) A Local Exchange Carrier administering a Preferred Carrier freeze must accept a customer's written and signed authorization stating her or his intent to lift a Preferred Carrier freeze; and

(ii) A Local Exchange Carrier administering a Preferred Carrier freeze must accept a customer's oral authorization stating her or his intent to lift a Preferred Carrier freeze and must offer a mechanism that allows a submitting Carrier to conduct a three-way conference with the Carrier administering the freeze and the customer in order to lift a freeze. When engaged in oral authorization to lift a Preferred Carrier freeze, the Carrier administering the freeze shall confirm appropriate verification data (e.g., the customer's date of birth or social security number) and the customer's intent to lift the particular freeze.

#### **Rule 19. Customer Protection.**

(a) Procedures To Be Followed By The Customer.

A customer who believes his or her Carrier or Carriers have been changed, without the customer's authorization, and/or that the customer has been billed for charges not authorized by the customer, should first attempt to resolve the matter with the Carrier or Carriers responsible for the unauthorized

changes and/or charges. If the customer is not satisfied with the resolution offered by the Carrier, the customer may file a complaint with the Commission.

(b) Procedures To Be Followed By Carriers.

A Carrier who is informed by a customer that the customer believes the Carrier has caused or allowed a change in the customer's Carrier without the customer's authorization, or that the Carrier has caused or allowed the customer to be billed for charges not authorized by the customer shall attempt to resolve the complaint promptly and in good faith. If the customer and Carrier are not able to resolve the complaint, then the Carrier shall inform the customer orally or in writing of the right to file a complaint with the Commission and shall provide the customer with the Commission's address and telephone number.

(c) Carriers to Maintain Record of Complaints.

Each Carrier shall maintain a record of the complaints received by it alleging that the Carrier has caused or allowed a customer's Carrier to be changed without the customer's authorization or has caused or allowed the customer to be billed for charges not authorized by the customer. The Carrier shall maintain the record of each complaint for a period of two years following initial notification of the complaint. Upon request by the Commission or its staff, a Carrier shall furnish a copy of its complaint records and such other information as the Commission Staff may require. A Carrier's complaint records shall include at least the following information:

(i) name, address, and telephone number of complainant and the date and manner received by the Carrier; and

(ii) a chronological summary of the dispute and its current status, including any resolution and date of resolution.

(d) Refund and Penalties

In the event the Commission determines that a Carrier has caused a customer's Carrier for a service to be changed without the customer's authorization obtained in exact compliance with these Rules, or has caused the customer to be billed for charges imposed without exact compliance with these Rules, then the Commission may require the Carrier to promptly refund or void to the customer any charges the Carrier has caused to be billed as a result of the unauthorized change or charge, and/or any other remedies available for violation of these Rules as allowed by law.

# GOVERNOR'S APPOINTMENTS

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Board of Alcoholism, Drug Abuse and Mental Health	Ms. Wanda G. Bassano	07/19/03
Board of Dental Examiners	Dr. Martin W. Scanlon Dr. Thomas W. Mercer, D.M.D.	08/15/03 08/15/03
Board of Cosmetology & Barbering	Mr. Kevin J. Castaldi	07/19/03
Board of Pension Trustees	Mr. Robert W. Allen Ms. Jan M. King	07/03/04 07/03/04
Cash Management Policy Board	Mr. David F. Marvin Mr. Harold L. Slatcher	07/03/03 07/03/03
Coastal Zone Industrial Control Board	Mr. Pallather M. Subramanian	07/05/05
Delaware Alcoholic Beverage Control Commission	Mr. Kenneth W. Edwards, Chairman Mr. Frank G. Sullivan The Honorable William C. Torbert, Jr.	Pleasure of the Governor 07/15/00 01/31/03
Delaware Arts Council	Ms. Charlesa Lowell	06/30/03
Delaware Commission of Veterans Affairs	Mr. Richard M. Magner	08/08/04
Delaware Economic And Financial Advisory Council	Mr. Jeffrey W. Bullock	Pleasure of the Governor
Delaware Heritage Commission	Dr. James R. Soles	03/30/03
Delaware Humanities Council	Dr. Joseph E. Johnson, Jr. Ms. Megan T. Mantzavinos	08/08/03 08/08/03
Delaware Natural Areas Advisory Council	Mr. Peter S. Martin Mr. Michael E. Riska	07/05/04 07/05/04
Delaware Nutrient Management Commission	Mr. Richard W. Sterling	08/04/02
Diamond State Port Board of Directors	Mr. Douglas B. Catts Mr. Samuel E. Lathem Mr. Leonard W. Quill	05/13/01 07/03/03 07/03/03
Downtown Dover Development Corporation	Ms. Roberta G. Geir	Pleasure of the Governor
Justice of the Peace for New Castle County	Ms. Linda M. Gray Ms. Marilyn Letts	07/21/04 07/10/04
Kent County Board of Elections	Ms. Mable K. Glanden	05/17/03
Merit Employee Relations Board	Ms. Brenda Phillips, Chairperson	07/08/01

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**GOVERNOR'S APPOINTMENTS**

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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Neighborhood Assistance Act Advisory Council	The Reverend Chris A. Dolley	Pleasure of the Governor
	Ms. Bernice Edwards	Pleasure of the Governor
	Ms. Anne Farley	Pleasure of the Governor
	Ms. Helen Groft	Pleasure of the Governor
	Ms. Terri Hasson	Pleasure of the Governor
	Ms. Raheemah Jabbar-Bey	Pleasure of the Governor
	Ms. Lillian Jones	Pleasure of the Governor
	Mr. Gonzalo Martinez	Pleasure of the Governor
	Mr. Joseph L. Mastin	Pleasure of the Governor
	Ms. Emily G. Morris	Pleasure of the Governor
	Mr. Roger Pryor	Pleasure of the Governor
	Mr. Bryan Reardon	Pleasure of the Governor
	Mr. William Satterfield	Pleasure of the Governor
Mr. Edmund R. White, Sr.	Pleasure of the Governor	
Professional Standards Board	Mr. Charles T. Michels, Chairperson	06/29/04
Public Assessment and Accountability Advisory Committee	Mr. Bert Freeman	Pleasure of the Governor
Public Employment Relations Board	Mr. R. Robert Currie, Jr.	03/29/01
	Ms. Elizabeth D. Maron, Esq.	06/29/01
Purchase of Products and Services for the Blind and Other Severely Handicapped Individuals	Ms. Julie Fedele	08/08/04
Sewell C. Biggs Collection	Dr. John Ritchie Garrison, Ph.D.	Pleasure of the Governor
Superior Court of New Castle County	The Honorable Susan C. Del Pesco, Associate Judge	06/30/12
Supreme Court of the State of Delaware	The Honorable Myron T. Steele	07/28/12

# GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Tax Appeals Board	Ms. Regina C. Dudziec	07/03/03
	Ms. Joanne M. Winters	07/05/03
Violent Crimes Compensation Board	Mr. Thomas Castaldi	07/05/03
Water Supply Coordinating Council	Mr. Robert Appleby	Pleasure of the Governor
	Mr. Bruce Burcat	Pleasure of the Governor
	Ms. Carole Collier	Pleasure of the Governor
	The Honorable Nicholas A. DiPasquale, Chairperson	Pleasure of the Governor
	Mr. Joseph Dombrowski	Pleasure of the Governor
	Mr. Dan Dunkle	Pleasure of the Governor
	Ms. Lorraine Fleming	Pleasure of the Governor
	Mr. Thomas Gordon	Pleasure of the Governor
	Mr. Mark J. Headd	Pleasure of the Governor
	Mr. Charles Jenner	Pleasure of the Governor
	Mr. Anthony Langley	Pleasure of the Governor
	Ms. Naomi McCafferty	Pleasure of the Governor
	Mr. Spiros Mantzavinos	Pleasure of the Governor
	Mr. John P. Mulhern, Jr.	Pleasure of the Governor
	Mr. Kash Srinivasan	Pleasure of the Governor
	Mr. Paul S. Stead	Pleasure of the Governor
Ms. Patricia A. Stowell	Pleasure of the Governor	
	The Honorable John F. Tarburton	Pleasure of the Governor
	Ms. Dian Taylor	Pleasure of the Governor
	Dr. Ulder J. Tillman	Pleasure of the Governor
Workforce Investment Board	Ms. Patricia M. DiEmido	Pleasure of the Governor

**DELAWARE DEPARTMENT OF  
NATURAL RESOURCES &  
ENVIRONMENTAL CONTROL  
DIVISION OF AIR AND WASTE MANAGEMENT  
AIR QUALITY MANAGEMENT SECTION**

Building, 89 Kings Highway, Dover, Delaware

**7. Prepared By:**

Alfred R. Deramo, Project Leader (302)739-4791 July  
19, 2000

**Final Draft**

**Delaware Plan for Meeting the Nitrogen Oxide (NOx)  
Budget Requirements Contained in the  
EPA NOx Sip Call**

**Prepared For:**

**The U.S. Environmental Protection Agency  
August, 2000**

**Executive Summary**

This document constitutes a revision to the Delaware State Implementation Plan (SIP) for attainment of the National Ambient Air Quality Standard (NAAQS) for ground-level ozone. It sets forth Delaware's plan for meeting its obligations under Section 110(a)(2)(D) of the Clean Air Act Amendments of 1990 (CAAA) to reduce emissions transported to downwind ozone non-attainment areas. Under the authority of Section 110, the United States Environmental Protection Agency (EPA) promulgated a rule entitled "*Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone*" (63 FR 57397). This rule, along with its technical amendments, is commonly referred to as the "NOx SIP Call". Delaware is one of the states that must comply with the NOx SIP Call. The NOx SIP Call sets a statewide NOx emissions budget for Delaware of 22,861 tons over the five-month summer control period from May 1 through September 30. That budget must be met for the year 2007 and beyond. Delaware will meet this budget through the promulgation and implementation of "*Regulation No. 39 – Nitrogen Oxides (NOx) Budget Trading Program*" of the Delaware Regulations Governing the Control of Air Pollution.

Regulation No. 39 assigns NOx budget allocations to electric generating units (EGU's) with nameplate capacities of 15 megawatts electrical (Mwe) or greater, non-electric generating units (non-EGU's) with maximum design heat input capacities of 250 million British Thermal Units per hour (MMBTU/hr) or greater, and any units that voluntarily opt in to the program. Any unit subject to Regulation No. 39 must comply by the later of May 1, 2003 or the date the unit commences operation. All units in the program can participate in an inter-state trading program that allows for the selling, purchasing, or banking of excess emission reductions in order to facilitate compliance with the overall

**1. Title Of The Regulations:**

Delaware Plan for Meeting the Nitrogen Oxide (NOx) Budget Requirements Contained in the EPA NOx SIP Call (non-regulatory plan)

**2. Brief Synopsis Of The Subject, Substance And Issues:**

States, including Delaware, that are part of the Philadelphia-Wilmington-Trenton non-attainment area for the 1-hour ozone national ambient air quality standard (NAAQS) were unable to make their required attainment demonstrations without relying on a reduction in NOx emissions transported into the area from areas upwind of the non-attainment area. Likewise, non-attainment areas downwind of the Philadelphia-Wilmington-Trenton area were unable to demonstrate attainment without reductions in transported NOx emissions from states in the Philadelphia-Wilmington-Trenton non-attainment area, such as Delaware. Because of this pollution transport problem, from 1995 to 1997 EPA and the states sponsored an ozone transport study involving most of the eastern United States. The study group was called the Ozone Transport Assessment Group (OTAG). As a result of the study, in 1997 EPA issued a NOx SIP Call requiring revisions of the State Implementation Plans (SIPs) of 22 eastern states plus the District of Columbia. Delaware is one of the states that must comply by reducing and holding NOx emissions to the level specified for Delaware in the NOx SIP Call.

**3. Possible Terms Of The Agency Action:**

None

**4. Statutory Basis Or Legal Authority To Act:**

- 7 Del. C., Chapter 60, Section 6010
- Section 110 of the federal Clean Air Act Amendments of 1990
- NOx SIP Call final rule (63 FR 57356)

**5. Other Regulations That May Be Affected By The Proposal:**

The Delaware NOx SIP Call Plan is non-regulatory, and is dependent upon Delaware Air Quality Regulation No.39, the Nitrogen Oxides Budget Trading Program, for implementation of the necessary emission reductions.

**6. Notice Of Public Comment:**

Public Hearing scheduled for September 26, 6:00 PM in the DNREC Auditorium of the Richardson & Robbins

NOx budget.

### Responsible Personnel

This document was produced in the Planning & Community Protection (PCP) Branch of the Air Quality Management (AQM) Section of the Division of Air & Waste Management (DAWM) of the Delaware Department of Natural Resources & Environmental Control (DNREC). Department officials and responsible personnel are:

Nicholas A. Di Pasquale, DNREC Secretary  
Denise Ferguson-Southard, DAWM Director  
Darryl D. Tyler, AQM Program Administrator  
Raymond H. Malenfant, PCP Branch Manager  
Alfred R. Deramo, Planner and Principal Author

Department officials responsible for Regulation No. 39 are:

Robert J. Taggart, Branch Manager – Engineering & Compliance  
Ronald A. Amirikian, Group Manager – Regulation Development

## 1.0 Introduction

### 1.1 Background

Ground-level ozone is a pollutant formed when nitrogen oxides (NOx) and volatile organic compounds (VOC) react in heat and sunlight. Ozone is a toxic chemical that causes respiratory illness, eye irritation and plant damage.

States, including Delaware, that are part of the Philadelphia-Wilmington-Trenton non-attainment area for the 1-hour ground-level ozone National Ambient Air Quality Standard (NAAQS) have been unable to make their required attainment demonstrations without relying on a reduction in pollution transported into the area from areas upwind of the non-attainment area. Likewise, ozone non-attainment areas downwind of the Philadelphia-Wilmington-Trenton non-attainment area have been unable to demonstrate attainment without reductions in transported NOx emissions from states such as Delaware in the Philadelphia-Wilmington-Trenton non-attainment area.

Because of this pollution transport problem, a group called the Ozone Transport Assessment Group (OTAG) was formed as a partnership between the United States Environmental Protection Agency (EPA), the Environmental Council of States (ECOS) and various industry and environmental groups. ECOS is a national organization of environmental commissioners with members from fifty states and territories. OTAG membership included representatives of 37 eastern states plus the District of Columbia. The goal of this partnership was to perform a detailed scientific study of the ozone transport problem and propose efficient and cost-effective solutions. OTAG's

study focused on the eastern United States, where the ozone transport phenomenon is especially significant. OTAG was formed in 1995 and concluded its work in early 1997.

The OTAG study found that the main driver of the ozone transport problem is the transport of NOx emissions. As a result of the OTAG findings, on September 24, 1998, EPA finalized a rule entitled, "*Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone*" (63 FR 57396). This rule, along with its later technical amendments, has come to be known as the "NOx SIP Call". Originally the NOx SIP Call required 23 jurisdictions (i.e., 22 OTAG states plus the District of Columbia) to submit State Implementation Plan (SIP) revisions that address the regional transport of ground-level ozone. The original 23 jurisdictions were Alabama, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Michigan, Missouri, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Wisconsin, and West Virginia. However, a March 3, 2000 ruling by the D.C. Circuit Court of Appeals had the effect of eliminating Wisconsin, Georgia and Missouri from the original group, leaving the final SIP Call limited to the remaining 20 jurisdictions. The purpose of the NOx SIP Call is to require the 20 jurisdictions to reduce NOx emissions, thereby reducing NOx transport into downwind non-attainment areas.

### 1.2 The Problem

Nitrogen oxides are a class of compounds made of nitrogen and oxygen in varying percentages. Nitrogen dioxide (NO<sub>2</sub>) is the most common and prevalent component of nitrogen oxide emissions. NOx is emitted from high temperature combustion processes. Sources include motor vehicles, fossil fuel electric generators, and other industrial, commercial and residential sources that burn fuels. In 1997, over 23 million tons of nitrogen oxides were emitted into the air in the United States. An important characteristic of NOx emissions is that they can be transported long distances and cause problems far from the original emissions sources. Some of the possible problems of NOx transport include acid rain, greenhouse effect, regional haze, formation of toxic chemicals, and eutrophication of waterways due to nitrogen deposition. In particular, transported NOx emissions interfere with the ability of downwind states to attain or maintain the ozone NAAQS. The Plan herein addresses this immediate non-attainment problem.

### 1.3 The Solution

The NOx SIP Call does not mandate NOx reductions from specific sources in specific jurisdictions. Rather, it sets an overall NOx emission limit, known as a NOx budget, for each jurisdiction, and allows each jurisdiction to determine its preferred way of reducing



emissions to the level of its budget. The jurisdiction can choose to reduce emissions from one or any combination of the four NOx emission source sectors, i.e., point sources, stationary area sources, on-road mobile sources, and off-road mobile sources. The budget is a five-month budget that must be met for the period from May 1 through September 30 of each year, beginning with 2007.

As part of developing a cost-effective strategy, EPA developed a model, market-based emissions trading program (40 CFR 96) that states may use to provide more flexibility in controlling NOx emissions. The program allows controlled sources that exceed their emissions reduction requirements, or that achieve the required reductions ahead of schedule, to bank ‘credits’, or sell them to other sources that cannot meet their limits. Conversely, sources that have difficulty meeting their emission reduction requirements can purchase NOx credits to ensure compliance. EPA allows this trading program to be used as part of a jurisdiction’s plan to comply with the NOx SIP Call budget.

EPA anticipates that the full implementation of the NOx SIP Call will reduce total NOx emissions by an average of 28 percent over the control region, will remove approximately 1.2 million tons of NOx from the air, and will enable impacted non-attainment areas to attain the 1 hour ozone NAAQS.

**2.0 the NOx Budget Plan**

**2.1 Synopsis**

EPA, through the its final “*Technical Amendment to the Finding of Significant Contribution and Rulemaking for Certain States for Purposes of Reducing Regional Transport of Ozone*” (effective April 3, 2000), assigned Delaware a statewide NOx emissions budget of 22,861 tons/season. Delaware plans to meet this budget by: 1.) holding to EPA’s 2007 base NOx emission inventory projections for the source sectors of stationary area sources, on-road mobile sources and off-road mobile sources, and 2.) reducing point source electric generating unit (EGU) and non-electric generating unit (non-EGU) emissions from EPA’s 2007 base NOx emissions projections through the promulgation and implementation of the proposed “*Regulation No. 39 – Nitrogen Oxides (NOx) Budget Trading Program*” of the Delaware Regulations Governing the Control of Air Pollution.

**2.2 Derivation of Budget**

In order to derive a statewide total 2007 NOx budget, EPA first applied growth factors to the baseline emission inventories for each source sector (i.e., EGU, non-EGU, stationary area, on-road mobile and off-road mobile), thereby forecasting the emissions to 2007. These projected inventories are called 2007 base inventories. The 2007 base inventories reflect existing controls, and controls required to be implemented by 2007. For the stationary area, on-road mobile and off-road mobile source sectors, the 2007 base

inventories become the 2007 sector budgets. This is because EPA applied no additional controls to those sectors in deriving the total 2007 budget.

The situation for point sources is different. Point sources are divided into two sectors, i.e., EGUs and non-EGUs. For the EGU and non-EGU sectors, the 2007 budgets are derived from the 2007 base inventories by applying additional controls to those sectors. This was done by assuming an EGU control level of 0.15 pounds of NOx per million BTU (lb/mmBTU) on units rated at 25 megawatts (Mw) or more, and a non-EGU control level of 60% for boilers and turbines with maximum rated heat inputs of 250 mmBTU/hr or more.

After the budgets for all of the source sectors were derived, they were summed to derive the total statewide 2007 NOx emissions budget. This total budget is the budget to which the state must adhere.

The procedures for deriving the base and budget numbers are described in the EPA document, Development of Emission Budget Inventories For Regional Transport NOx SIP Call Technical Amendment Version (A-96-56:X-B-11), December, 1999. EPA revised the baseline and budget numbers several times, and released the final numbers in the April 3, 2000 rule entitled, “*Technical Amendment to the Finding of Significant Contribution and Rulemaking for certain States for Purposes of Reducing Regional Transport of Ozone.*” Delaware reviewed the procedures and baseline inventory numbers for each source sector, and agrees with EPA’s final baseline and budget numbers. The final baseline and budget numbers are given in Table 1.

**Table 1  
Final Base Inventory and Budget Numbers**

SOURCE SECTORS	2007 BASE (tons/season)	2007 BUDGET (tons/season)	REDUCTION (tons/season)	REDUCTION (%)
EGUs	5,838	5,250	588	10
Non-EGUs	2,821	2,473	348	12
Stationary Area	1,129	1,129	0	0
On-Road Mobile	8,358	8,358	0	0
Off-Road Mobile	5,651	5,651	0	0
Total	23,797	22,861	936	4

**2.3 Delaware’s Strategy**

The NOx SIP Call requires that the 20 jurisdictions each hold to their respective total budgets, but it allows jurisdictions the flexibility to meet that budget through any choice of NOx controls affecting any source sectors. In

other words, the state does not have to adhere to the budgets for the individual source sectors, as long as the total budget is met. Delaware's strategy for meeting the total statewide 2007 budget of 22,861 is twofold.

First, the State anticipates full implementation of the control measures that were included by EPA in developing the 2007 base inventories for each source sector. As previously discussed, the base inventories are equal to the budgets for the stationary area, on-road mobile and off-road mobile source sectors. Delaware will therefore comply with the budgets for these three sectors by holding to their base inventories.

Second, the State will promulgate and implement "Regulation No. 39 – Nitrogen Oxides (NOx) Budget Trading Program" in order to achieve the reductions in the EGU and non-EGU sectors as reflected in the EPA-derived budgets for those sectors. Regulation No. 39 will result in a reduction in the EGU and non-EGU sector base inventories that is equal to or greater than that used by EPA to calculate the budgets for those sectors. Therefore, Regulation No. 39 guarantees that the EGU and non-EGU sectors will stay at or below their sector budgets of 5,250 tons and 2,473 tons of NOx per 5-month season, respectively. Regulation No. 39 holds each EGU with a nameplate capacity of 25 Mwe or greater to an allocation that is determined by multiplying each unit's heat base heat capacity by a NOx emissions rate factor of 0.15 lb/MMBTU. Each non-EGU with a maximum design heat input capacity of 250 MMBTU/hr or greater is held to an allocation that is determined by multiplying each unit's base heat input by a NOx emissions rate factor of 0.17 lb/MMBTU, as recommended in EPA's model rule (40 CFR, Part 96). In addition, Regulation No. 39 goes beyond the NOx SIP Call by requiring that every EGU and process heater with a design capacity between 15 and 25 Mwe be held to an allocation. That allocation is determined by multiplying each unit's base heat input by the unit's actual average 1996 ozone season NOx emission rate. Therefore, as a group, sources between 15 and 25 Mwe are not allowed to grow beyond their 1996 levels. All allocations can be found in Table 1 of Appendix A of Regulation No. 39. All units subject to Regulation No. 39 must comply by May 1, 2003 or the date the unit commences operation, whichever is later.

The controls considered by EPA in development of the base inventories are listed in Table 2 for each source sector.

**Table 2**  
**2007 Base Inventory Controls**

SOURCE SECTOR	CONTROL MEASURE	IMPLEMENTATION MECHANISM	
EGUs	Title IV Controls	State Reg. No. 36 (adopts 40 CFR, Parts 72 through 78 by reference)	
	Prevention of Significant Deterioration	State Reg. No. 25	
	New Source Performance Standards	State Reg. No. 20	
	OTC MOU Phase II	State Reg. No. 37	
	NOx RACT	State Reg. No. 12	
Non-EGUs	New Source Review (LAER)	State Reg. No. 25	
	Prevention of Significant Deterioration	State Reg. No. 25	
	OTC MOU Phase II	State Reg. No. 37	
	New Source Performance Standards	State Reg. No. 20	
	New Source Review (LAER)	State Reg. No. 25	
Stationary Area	NOx RACT	State Reg. No. 12	
	N/A	N/A	
	On-Road Mobile	N/A	N/A
		National Low Emission Vehicle Stds.	State Reg. No. 40/Federal rule
		Reformulated Gasoline (RFG II)	Federal Rule
Low Enhanced Inspection & Maint.		State Reg. No. 31	
Clean Fuel Fleets		State Reg. No. 40 (substitute rule)	
Off-Road Mobile	Heavy Duty Vehicle Standards	Federal Rule	
	Phase II Small Engine Standards	Federal Rule	
	Marine Engine Standards	Federal Rule	
	Non-road Heavy Duty (50 hp or more) Engine Standards – Phase I	Federal Rule	
	Non-road Diesel Engine Standards – Phases 2 and 3	Federal Rule	
	Reformulated Gasoline (RFG II)	Federal Rule	
	On-board Vapor Recovery	Federal Rule	
	Locomotive Standards	Federal Rule	

All of the base inventories and budgets are listed in Table 1. For purposes of the NOx SIP Call, Delaware accepts EPA's 2007 base inventories and budgets for all

source sectors, and will implement the NO<sub>x</sub> SIP call as described above. By meeting the budgets for each source sector, Delaware will meet the statewide total statewide 2007 NO<sub>x</sub> budget of 22,861 tons/season.

#### 2.4 Reporting Requirements

In order to track compliance with the NO<sub>x</sub> SIP call, each jurisdiction must perform the following three types of emission inventory reporting:

(1) Annual Reporting. The state must report to EPA emissions data from the NO<sub>x</sub> sources within the state for which the state has adopted control measures specifically for the purpose of meeting the 2007 NO<sub>x</sub> budget. This includes any measures that differ from the measures included by EPA in the derivation of the 2007 base inventories. For Delaware, these sources will be all EGU and non-EGU sources covered by Regulation No. 39. The annual reporting requirements for these sources can be satisfied by meeting the monitoring and reporting requirements of subpart H of 40 CFR part 75. Regulation No. 39 requires that these monitoring and reporting requirements be met. Annual reporting is to begin with the data for emissions occurring in the year 2003, and must cover emissions for the 5-month compliance season.

(2) Triennial Reporting. For the year 2002 and every third year thereafter, the state must develop and submit an emission inventory covering NO<sub>x</sub> emissions from all sources within the state. Emissions must cover the 5-month compliance season.

(3) Year 2007 Reporting. In order to determine compliance with the 2007 budget, a separate 2007 NO<sub>x</sub> emission inventory must be developed and submitted. This inventory must cover emissions from the 5-month compliance season for all NO<sub>x</sub> sources. The 2007 inventory is a separate requirement because the year 2007 does not fall on the triennial reporting schedule.

States must submit data for a required year no later than 12 months after the end of the calendar year for which the data are collected. States are required to report emissions data in an electronic format.

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF LANDSCAPE ARCHITECTURE**

PLEASE TAKE NOTICE, pursuant to 29 Del. C. Chapter 101 and 24 Del. C. Section 205(1), the Delaware Board of Landscape Architecture proposes to revise its rules and regulations. Substantive changes to the regulations include clarification of the passing examination score; addition of rules regarding use of the seal on drawings and other documents; clarification of license renewal and inactive status procedural requirements; deletion of provisions regarding death or retirement; provisions for pre-approval of certain self-directed continuing education activities; and addition of procedural rules pertaining to disciplinary matters and hearings before the Board. In addition, material which unnecessarily duplicates the statutes or other rules and regulations has been stricken. The existing rules and regulations have been re-ordered and re-numbered.

A public hearing will be held on the proposed Rules and Regulations on Thursday, November 9, 2000 at 9:30 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Gayle Melvin at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Gayle Melvin at the above address or by calling (302) 739-4522, extension 218.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

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**DIVISION OF PROFESSIONAL REGULATION  
REAL ESTATE COMMISSION**

**Notice of Public Hearing**

The Delaware Real Estate Commission, in accordance with 24 Delaware Code §2905(a)(1) and 29 Delaware Code §10115 of the Administrative Procedures Act, hereby gives notice that it shall hold a public hearing on October 12, 2000 at 9:00 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware.

The Commission shall receive input in writing or by

oral testimony from interested persons regarding the following revision of the Rules and Regulations: Rule 3.2.1. (Experience). After the first sentence add: If the licensee fails to renew his or her license by the expiration date but then makes an application for reinstatement within sixty (60) days of the expiration of the license and the Commission otherwise approves the application for reinstatement, the five-years' continuity will not be broken.

The final date for interested persons to submit views in writing or orally shall be at the above scheduled public hearing. Anyone wishing to make oral or written comments or who would like a copy of the proposed change may contact the Commission office at 302-739-4522, extension 219, or write to the Delaware Real Estate Commission, 861 Silver Lake Boulevard Suite 203, Dover, DE 19904-2467.

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**DEPARTMENT OF AGRICULTURE  
THOROUGHBRED RACING COMMISSION**

The Commission will receive written public comment from September 1, 2000 through September 30, 2000. Written comments should be sent to John Wayne, Administrator of Racing, 2320 S. DuPont Highway, Dover, DE 19901. The Commission will conduct a public hearing on the proposed rules on September 27, 2000 at 9:30 a.m. at Delaware Park, 777 Delaware Park Blvd., Stanton DE. Copies of the proposed rules can be obtained from the Commission office at the above address.

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**STATE BOARD OF EDUCATION**

The State Board of Education will hold its monthly meeting on Tuesday, September 12, 2000 at 1 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
DIVISION OF PUBLIC HEALTH  
OFFICE OF EMERGENCY MEDICAL SERVICES**

**Notice of Public Hearing**

The Office of Emergency Medical Services, Division of Public Health of Delaware of Health and Social Services, will hold a public hearing to discuss proposed Delaware

Early Defibrillation Program Regulations. These proposed regulations describe the certification of providers and provider agencies to obtain and operate an automatic external defibrillator (AED). The Early Defibrillation Program Regulations apply to any individual, public or private agency that seeks to acquire an AED.

This public hearing will be held September 25, 2000 at 9:00 AM in Room 309, Jesse S. Cooper Building, Federal and Water Streets, Dover, Delaware.

Copies of the proposed regulation are available for review by calling :

Office of Emergency Medical Services  
Blue Hen Corporate Center, Suite 4-H  
655 Bay Road, Dover, Delaware 19901  
Telephone: (302) 739-4710

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Sonya Voshell at (302) 739-4710 by September 22, 2000. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony should submit such comments by September 30, 2000 to:

David Walton, Hearing Officer  
Division of Public Health  
P.O. Box 637  
Dover, DE 19901

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### **DIVISION OF SOCIAL SERVICES**

#### **Public Notice**

#### **Medicaid / Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its Medicaid Manual to increase the income limit from 185% to 200% of the Federal Poverty Limit for pregnant women and infants.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, DE 19720 September 30, 2000.

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### **DEPARTMENT OF LABOR** **OFFICE OF LABOR LAW ENFORCEMENT**

#### **Notice of Public Hearings**

Interested parties are invited to present their views at the public hearings which are scheduled as follows:

9:00 a.m., Thursday, September 21, 2000  
Delaware Department of Labor  
4425 North Market Street  
Wilmington, Delaware 19802  
First Floor, Room 049

1:30 p.m., Thursday, September 21, 2000  
Delaware Department of Labor, Milford Office  
13 S.W. Front Street, Suite 101  
Milford, Delaware 19963  
Hearing Room

Interested parties can obtain copies of the proposed amendment at no charge by contacting the Office of Labor Law Enforcement at the above address, or by telephone at (302) 761-8209.

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### **DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL** **DIVISION OF AIR AND WASTE MANAGEMENT** **AIR QUALITY MANAGEMENT SECTION**

#### **Title of the Regulations:**

Regulation No. 39, NO<sub>x</sub> Budget Trading Program.

#### **Brief Synopsis of the Subject, Substance and Issues:**

The Department is proposing to establish Delaware's participation in the NO<sub>x</sub> Budget Trading Program. The NO<sub>x</sub> Budget Trading Program is a multi-state NO<sub>x</sub> emission cap and trade program, established pursuant to Title 40, Part 96 of the Code of Federal Regulations. The goals of this regulation are to 1) improve air quality, 2) encourage NO<sub>x</sub> reductions in Delaware, 3) help to satisfy rate of progress requirements under Section 182(c) of the federal Clean Air Act, and 4) help to satisfy Delaware's obligations under Section 110(a)(2)(D) of the CAA to not contribute to other state's non-attainment. This regulation establishes a follow-on program to the program that was established by Regulation No. 37, NO<sub>x</sub> Budget Program, which ends with the end of the 2002 NO<sub>x</sub> control period.

**Possible Terms of the Agency Action:**

None.

**Statutory Basis or Legal Authority to Act:**

7 Del. C., Chapter 60.

**Other Regulations That May Be Affected by the Proposal:**

Regulation No. 37, NO<sub>x</sub> Budget Program, of the State of Delaware "Regulations Governing the Control of Air Pollution."

**Notice of Public Comment:**

A public hearing will be held on proposed Regulation No. 39 on September 26, 2000 beginning at 6:00 p.m. in the DNREC Auditorium, 89 Kings Highway, Dover, DE. Comments on this proposal may either be made at the hearing, or submitted to the Department in writing not later than the close of business, September 30, 2000.

**Prepared by:**

Ronald A. Amirikian/(302)323-4542/August 7, 2000

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**DELAWARE RIVER BASIN  
COMMISSION****P.O. Box 7360 West Trenton**

The Delaware River Basin Commission will meet on Thursday, September 28, 2000, in Wilmington, Delaware. For more information contact Pamela M. Bush at (609) 883-9500 extention 203.

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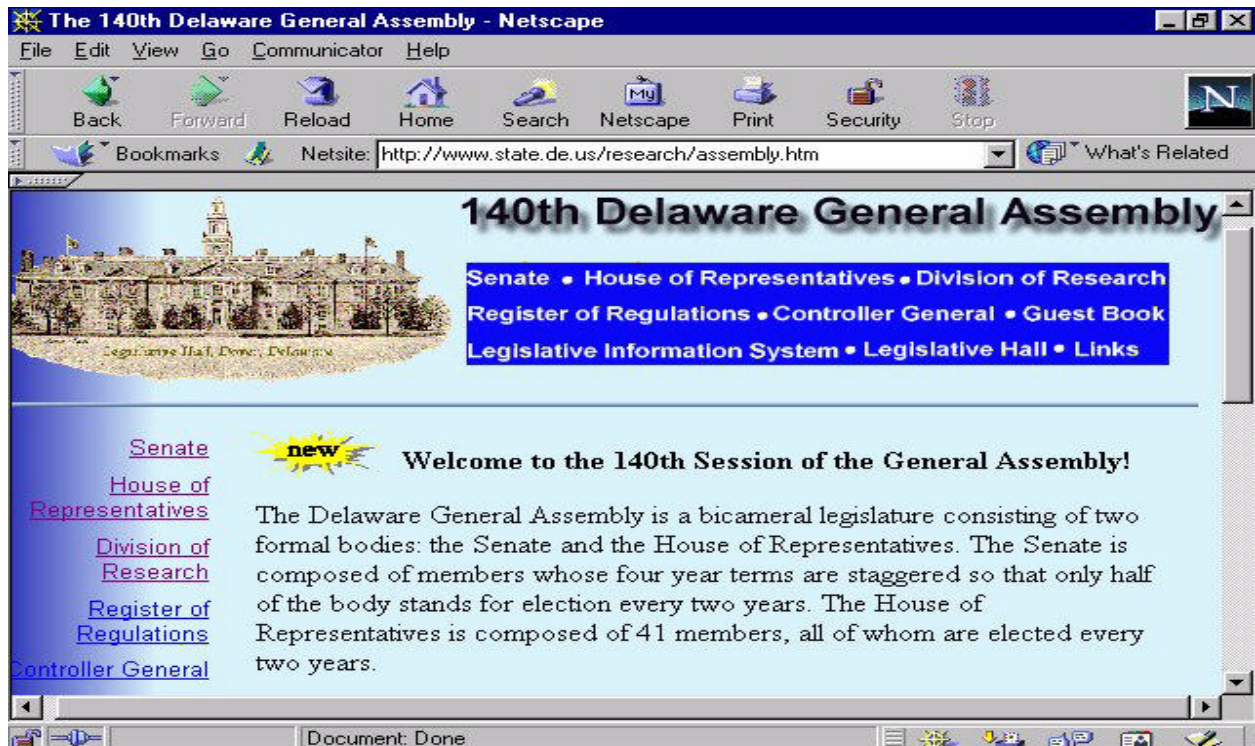
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