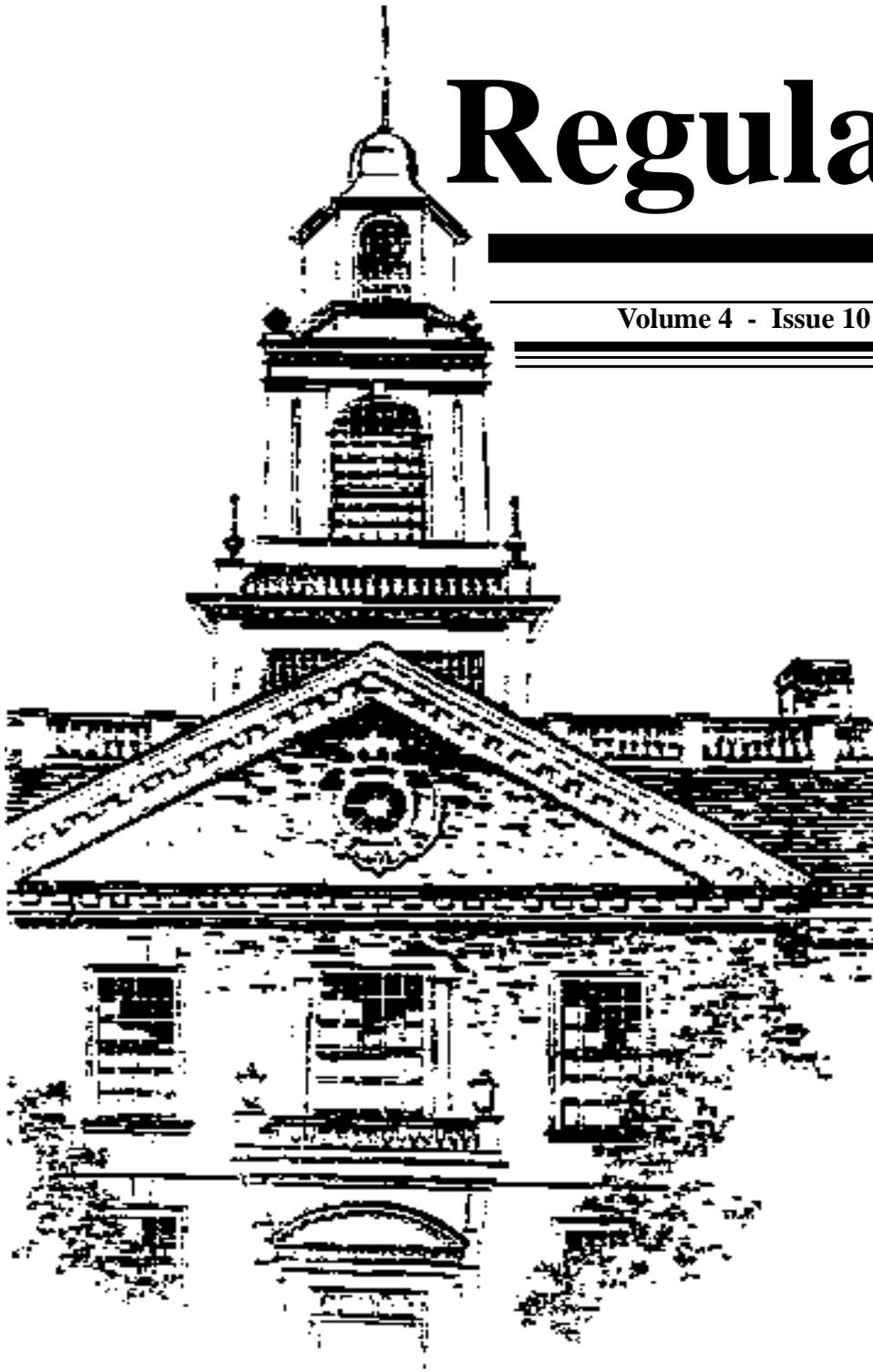

Delaware Register of Regulations



Issue Date: April 1, 2001

Volume 4 - Issue 10

Pages 1574 - 1670

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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 March 15, 2001.

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The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

CITATION TO THE DELAWARE REGISTER

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

4 **DE Reg.** 769 - 775 (11/1/00)

Refers to Volume 4, pages 769 - 775 of the Delaware Register issued on November 1, 2000.

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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 302-744-4114 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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
MAY 1	APRIL 15	4:30 P.M.
JUNE 1	MAY 15	4:30 P.M.
JULY 1	JUNE 15	4:30 P.M.
AUGUST 1	JULY 15	4:30 P.M.
SEPTEMBER 1	AUGUST 15	4:30 P.M.

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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.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES**

DIVISION OF PROFESSIONAL REGULATION

BOARD OF LANDSCAPE ARCHITECTURE

24 DE Admin. Code 200

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

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Sections 205(a)(1) and (a)(12), the Delaware Board of Landscape Architecture proposes to revise its Rules and Regulations. The proposed amendments revise the reporting requirements and the timing of submission of documentation of compliance with the continuing education requirements. In addition, the proposed revisions add clarifying cross references to other related continuing education rules and regulations.

A public hearing will be held on the proposed Rules and Regulations on Wednesday, May 2, 2001 at 9:00 a.m., in the Second Floor Conference Room B 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 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.

- 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.

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 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 a corporate officer in the case of a corporation, or the name of a partner in the case of a partnership, who is licensed to practice landscape architecture in this State and who shall be responsible for services in the practice of landscape architecture 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.

5.0 Seal

5.1 Technical Requirements

5.1.1 For the purpose of signing and sealing drawings, specifications, 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 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).

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 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 as defined in Rule 7.5. Such continuing education shall be obtained by active participation in courses, seminars, sessions, programs, or self-directed activities approved by the Board in accordance with Rule 7.6.

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 for approval as provided in Rules 7.3 and 7.4. The Board shall recommend any course, seminar, session or program for continuing education credit that meets the criteria in subparagraph 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 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, ~~2001~~ ~~1999~~ and thereafter, documentation as required by Rule 7.4 of all continuing education hours must requests for approval of continuing education activity, along with the required supporting documentation, shall be submitted to the Board for approval 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~~ a completed Verification of Continuing Education Form provided by the Division of Professional Regulation 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).~~

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 for submission to the Board upon request. Supporting materials include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity and a document showing proof of attendance (i.e., certificate, a signed letter from the sponsor attesting to attendance, report of passing test score). Licensees will be required to complete a continuing education log form prior to license renewal and to submit supporting materials upon request. The Board reserves its right to request additional information and/or documentation to verify continuing education compliance.

7.5 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 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.

DIVISION OF PROFESSIONAL REGULATION
BOARD OF CLINICAL SOCIAL WORK
EXAMINERS

24 DE Admin. Code 3900

Statutory Authority: 24 Delaware Code,
Section 3906(1) (24 **Del. C.** §3906(1))

PLEASE TAKE NOTICE, pursuant to 29 **Del. C.** Chapter 101 and 24 **Del. C.** Section 3906(1), the Delaware Board of Clinical Social Work Examiners proposes to revise its Rules and Regulations. The proposed amendments relate to the professional supervision requirements for work experience of applicants. The proposed rules and regulations are revised to provide that a specified portion of the required supervisory contact may be accomplished by live videoconferencing, while expressly disallowing supervision by telephone or e-mail.

A public hearing will be held on the proposed Rules and Regulations on Monday, May 14, 2001 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 Franzolino 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 Franzolino at the above address by calling (302) 739-4522, extension 220.

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

- 1.0 Election of Officers and Responsibilities
- 2.0 Professional Supervision
- 3.0 Application and Examination
- 4.0 Renewal
- 5.0 Continuing Education
- 6.0 Inactive Status (24 **Del. C.** §3911(c))
- 7.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 Election of Officers and Responsibilities

1.1 Officers shall be elected in September of each year, for a one year term. Special election to fill vacancies shall be held upon notice and shall be only for the balance of the original term.

1.2 Officers have the following responsibilities:

1.2.1 The President will preside at all meetings and sign official documents on behalf of the Board.

1.2.2 The Vice-President will perform the duties of the President when the latter is unavailable or unable to perform the duties of the President.

1.2.3 The Secretary will preside over meetings in the absence of the President and Vice-President.

2.0 Professional Supervision

2.1 Acceptable supervision shall be that amount of personal oversight by the licensed professional that would be considered usual and customary in the profession consistent with the applicant's level of skill, education and experience, but in any event should include the following activities, by way of example and not by way of limitation:

2.1.1 Individual case reviews.

2.1.2 Evaluations of diagnosis and courses of treatment.

2.1.3 Proper adherence to agency policy and procedures.

2.2 The amount of supervisory contact shall be at least one hour per week during the supervised period. This contact ~~must~~ may be on a one-to-one face-to-face basis or by live videoconferencing; provided, however, that supervision by live videoconferencing shall not exceed fifty percent (50 %) of the total supervision in any month. Supervision by telephone or e-mail is expressly not permitted.

2.3 The Board shall require submission of the following information from the supervisor(s): supervisor's name; business address; license number; professional field and State in which the license was granted during the period of supervision; agency in which the supervision took place (if applicable); the number of qualifying practice hours toward the statutory requirement; ~~and~~ the number of one-to-one face-to-face supervisory hours; and the number of live videoconferencing supervisory hours (if applicable).

2.4 A licensed Psychiatrist shall be defined as a licensed Medical Doctor with a specialty in psychiatry or a licensed Doctor of Osteopathic Medicine with a specialty in psychiatry.

3.0 Application and Examination

3.1 Applications will be kept active and on file for two (2) years. If the applicant fails to meet the licensure requirements and/or pass the examination within two (2) years, the application shall be deemed to have expired and the applicant must reapply in the same manner as for initial application, i.e., by submitting the application

documentation along with the proper fee to be eligible to sit for the examination.

3.2 The Board will not review incomplete applications.

3.3 All signatures must be original on all forms.

3.4 The applicant shall have obtained the passing score on the national clinical examination approved by the American Association of State Social Work Boards (AASSWB). The Board shall accept the passing grade as determined by the AASSWB.

3.5 Any applicant holding a degree from a program outside the United States or its territories must provide the Board with an educational credential evaluation from International Consultants of Delaware, Inc., its successor, or any other similar agency approved by the Board, demonstrating that their training and degree are equivalent to domestic accredited programs. No application is considered complete until the educational credential evaluation is received by the Board. (29 Del. C. § 3907(a)(1))

4.0 Renewal

4.1 The licensee's failure to receive notices or letters concerning renewal will not relieve the licensee of the responsibility to personally assure delivery of his/her renewal application to the Board.

4.2 In order to be eligible for license renewal during the first year after expiration, the practitioner shall be required to meet all continuing education credits for continued licensure, pay the licensure fee, and pay any late fee established by the Division of Professional Regulation.

5.0 Continuing Education

5.1 Required Continuing Education Hours:

5.1.1 Hours Required. All licensees must complete forty-five (45) hours of continuing education during each biennial license period. For license periods beginning January 1, 1999 and thereafter, documentation, as required by Rule 5.4, of all continuing education hours must be submitted to the Board for approval by October 31 of each biennial license period.

5.1.2 Proration. At the time of the initial license renewal, some individuals will have been licensed for less than two (2) years. Therefore, for these individuals only, the continuing education hours will be prorated as follows:

License Granted During First Year Of Licensing Period	Credit Hours Required
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January 1 - June 30	35 hours
July 1 - December 31	25 hours

License Granted During Second Year Of Licensing Period	Credit Hours Required
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January 1 - June 30	15 hours
July 1 - December 31	5 hours

5.1.3 Hardship. A candidate for license renewal may be granted an extension of time in which to complete continuing education hours upon a showing of good cause. "Good Cause" may include, but is not limited to, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period, along with payment of the appropriate renewal fee. No extension shall be granted for more than 120 days after the end of the licensing period. If the Board does not have sufficient time to consider and approve a request for hardship extension prior to the expiration of the license, the license will lapse upon the expiration date and be reinstated upon completion of continuing education pursuant to the hardship exception.

See 2 DE Reg 775 (11/1/98)

5.2 Definition and Scope of Continuing Education:

5.2.1 Continuing Education is defined to mean approved courses offered by colleges and universities, televised and extension courses, independent study courses which have a final exam or paper, workshops, seminars, conferences and lectures oriented toward the enhancement of clinical social work practice, values, skills and knowledge, including self-directed activity and preparation of a first-time clinical course as described herein.

5.2.1.1 Approved Courses shall be those courses which: increase the clinical social worker (CSW)'s knowledge about, skill in diagnosing and assessing, skill in treating, and/or skill in preventing mental and emotional disorders, developmental disabilities and substance abuse; AND are instructed or presented by persons who have received specialized graduate-level training in the subject, or who have no less than two (2) years of practical application or research experience pertaining to the subject.

5.2.1.2 Mental and Emotional Disorders, Developmental Disabilities and Substance Abuse are those disorders enumerated and described in the most current Diagnostic and Statistical Manual including, but not limited to, the V Codes and the Criteria Sets and Axes provided for further study.

5.2.1.3 Self-Directed Activity shall include teaching, research, preparation and/or presentation of professional papers and articles, and other activities specifically approved by the Board.

5.2.2 Any program submitted for continuing education hours must have been attended during the biennial licensing period for which it is submitted. Excess credits may not be carried over to the next licensing period.

5.2.3 An "hour" for purposes of continuing education credit shall mean 60 minutes of instruction or participation in an appropriate course or program. Meals and breaks shall be excluded from credit.

5.2.4 The Board may, upon request, review and approve credit for self-directed activities, to a maximum of

15 hours per 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 (e.g. research) and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee.

5.2.5 The Board may award a maximum of 5 continuing education hours for the first-time preparation and presentation of a clinical social work course, in-service training, workshop, or seminar. A copy of the course syllabus and verification that the course was presented is required for Board approval.

5.3 Continuing Education Content Requirements:

During each biennial licensing period, licensees shall complete a minimum of thirty (30) hours of continuing education in Category I courses. The remaining continuing education hours may be taken in Category II courses. At least three (3) of the 30 Category I hours shall be in the area of social work ethics.

Category I: Courses which have as their primary focus and content the assessment, diagnosis, and biopsychosocial (biological, psychological and social) treatment of mental and emotional disorders, developmental disabilities, and/or substance abuse; courses which have as their primary focus and content the ethical practice of social work.

Category II: Courses in any of the following areas which are related to and increase the CSW's knowledge of mental and emotional disorders, developmental disabilities, and/or substance abuse

- research methods and findings;
- psychology and sociology;
- human growth and development;
- child and family constructs;
- physical illness and health;
- social action;
- advocacy;
- human creativity;
- spirituality
- HIV

5.4 Continuing Education Reporting and Documentation

5.4.1 In order to receive continuing education credits, a licensee must complete and submit the appropriate continuing education form provided by the Division of Professional Regulation no later than October 31st of the biennial licensing period.

5.4.2 In addition to the form, each licensee must

submit the following documentation as to each course attended: a certificate of attendance or completion signed by the presenter and attesting to the number of hours the licensee attended; documentation identifying the date and location of the course, the total number of CE hours attended and the agenda, outline or brochure describing the course. Originals or photocopies will be accepted and retained by the Board. The Board reserves its right to request additional documentation, such as copies of program materials, to verify CE compliance. Statutory Authority: 24 Del.C. §§ 3906(7), 3912.

See 3 DE Reg 1680 (6/1/00)

6.0 Inactive Status (24 Del. C. § 3911(c))

6.1 A licensee asking to have his/her license placed on inactive status must notify the Board of his/her intention to do so, in writing, prior to the expiration of his/her current license. Each subsequent request for extensions of inactive status must be submitted to the Board in writing, before the end of the immediately prior inactive period.

6.2 A licensee on inactive status must comply with Rule 5.0, "Continuing Education," for each period of inactivity. A licensee on inactive status seeking to re-enter practice must notify the Board in writing of his/her intention, pay the appropriate fee, and provide the Board with documentation of any continuing education hours required by Rule 5.0.

6.3 On written request and a showing of hardship, the Board may grant additional time for completion of continuing education requirements to licensees returning to practice from inactive status. "Hardship" may include, but is not limited to, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities.

See 2 DE Reg 775 (11/1/98)

See 3 DE Reg 1680 (6/1/00)

7.0 Ethics

7.1 Duties to Client

7.1.1 The LCSW's primary responsibility is the welfare of the client.

7.1.2 In providing services, the LCSW must not discriminate on the basis of age, sex, race, color, religion/spirituality, national origin, handicap, political affiliation, or sexual orientation.

7.1.3 When a client needs other community services or resources, the LCSW has the responsibility to assist the client in securing the appropriate services.

7.1.4 The LCSW should refer a client to other service providers in the event that the LCSW cannot provide the service requested. In the case of a referral, no commission, rebate or any other remuneration may be given or received for referral of clients for professional services, whether by an individual or an organization.

7.1.5 The LCSW must, in cases where professional services are requested by a person already receiving

therapeutic assistance from another professional, clarify with the client and the other professional the scope of services and division of responsibility which each professional will provide.

7.1.6 The LCSW must maintain appropriate boundaries in his/her interactions with a client. The LCSW must not engage in sexual activity with a client. The LCSW must not treat a family member or close personal friend where detached judgment or objectivity would be impaired. Business, social or professional relationships with a client (outside of the counseling relationship) should be avoided, where such relationships may influence or impair the LCSW's professional judgment.

7.2 Confidentiality/privileged Communications

7.2.1 The LCSW must safeguard the confidentiality of information given by clients in the course of client services.

7.2.2 The LCSW must discuss with clients the nature of and potential limits to confidentiality that may arise in the course of therapeutic work.

7.2.3 No LCSW or employee of such person may disclose any confidential information they may have acquired from persons consulting them in their professional capacity except under the following conditions:

7.2.3.1 With the written consent of the person or persons (the guardian, in the case of a minor) or, in the case of death or disability, of his/her personal representative, or person authorized to sue, or the beneficiary of an insurance policy on his/her life, health or physical condition, or

7.2.3.2 Where the communication reveals the contemplation of a crime or harmful act.

7.2.3.3 When the person waives the privilege by initiating formal charges against the LCSW.

7.2.3.4 When otherwise specifically required by law or judicial order.

7.2.4 The disclosure of confidential information, as permitted by Rule 7.2.3, is restricted to what is necessary, relevant, verifiable and based on the recipients' need to know. The LCSW should, provided it will not adversely affect the client's condition, inform the client about the nature and scope of the information being disclosed, to whom the information will be released and the purpose for which it is sought.

7.3 Ethical Practice

7.3.1 The LCSW is responsible for confining his/her practice to those areas in which he/she is legally authorized and in which he/she is qualified to practice. When necessary the LCSW should utilize the knowledge and experience of members of other professions.

7.3.2 The LCSW is responsible for providing a clear description of what the client may expect in the way of scheduling services, fees and any other charges or reports

7.3.3 The LCSW, or any employee or supervisee of

the LCSW, must be accurately identified on any bill as the person providing a particular service, and the fee charged the client should be at the LCSW's usual and customary rate. Sliding fee scales are permissible.

7.3.4 An LCSW employed by an agency or clinic, and also engaged in private practice, must conform to contractual agreements with the employing facility. He/She must not solicit or accept a private fee or consideration of any kind for providing a service to which the client is entitled through the employing facility.

7.3.5 An LCSW having direct knowledge of a colleague's impairment, incompetence or unethical conduct should take adequate measures to assist the colleague in taking remedial action. In cases where the colleague does not address the problem, or in any case in which the welfare of a client appears to be in danger, the LCSW should report the impairment, incompetence or unethical conduct to the Board.

7.3.6 The Board has voted to adopt the Voluntary Treatment Option, in accordance with 29 Del.C. §8807(n).

7.3.7 An LCSW should safeguard the welfare of clients who willingly participate as research subjects. The LCSW must secure the informed consent of any research participant and safeguard the participant's interests and rights.

7.3.8 In advertising his or her services, the LCSW may use any information so long as it describes his/ her credentials and the services provided accurately and without misrepresentation.

7.3.9 In the areas of computer and Internet technology and non-established practice, the LCSW should inform the client of risks involved. The LCSW should exercise careful judgment and should take responsible steps (such as research, supervision, and training) to ensure the competence of the work and the protection of the client. All precautions should be taken with computer-based communications to ensure that no confidential information is disseminated to the wrong individual and identities are protected with respect to privacy.

7.4 Clinical Supervision

7.4.1 The LCSW should ensure that supervisees inform clients of their status as interns, and of the requirements of supervision (review of records, audiotaping, videotaping, etc.). The client shall sign a statement of informed consent attesting that services are being delivered by a supervisee and that the LCSW is ultimately responsible for the services. This document shall include the supervising LCSW's name and the telephone number where he/she can be reached. One copy shall be filed with the client's record and another given to the client. The LCSW must intervene in any situation where the client seems to be at risk.

7.4.2 The LCSW should inform the supervisee about the process of supervision, including goals, case management procedures, and agency or clinic policies.

7.4.3 The LCSW must avoid any relationship with a supervisee that may interfere with the supervisor's professional judgment or exploit the supervisee.

7.4.4 The LCSW must refrain from endorsing an impaired supervisee when such impairment deems it unlikely that the supervisee can provide adequate professional services.

7.4.5 The LCSW must refrain from supervising in areas outside his/her realm of competence. Statutory Authority: 24 Del.C. §§3901, 3906(1)(6)(9), 3913, 3915.

See 3 DE Reg 1680 (6/1/00)

8.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

8.1 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.

8.2 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.

8.3 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).

8.4 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.

8.5 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.

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

8.6.1 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.

8.6.2 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.

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

8.6.4 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.

8.6.5 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.

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

8.7 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.

8.8 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.

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

8.10 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.

8.11 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.

8.12 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.

See 3 DE Reg 1680 (6/1/00)

DEPARTMENT OF AGRICULTURE**PLANT INDUSTRIES SECTION**

Statutory Authority: 3 Delaware Code,
Section 1607 (3 Del.C. §1607)

PUBLIC NOTICE**Department of Agriculture
Plant Industries Section**

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 3 Del.C. §1607, the Department of Agriculture Plant Industries Section will hold a public hearing to discuss the proposed Grain Inspection and Certification Regulation. This regulation will govern the certification of granaries and the licensing of grain inspectors in Delaware.

A Public Hearing will be held Monday, April 23, 2001 at 1:30 p.m., in the Conference Center at the Delaware Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware, 19901. The Department will receive and consider input in writing from any person on the proposed Regulation. Any written comments should be submitted to the Department in care of Elizabeth Dawson at the above address. The final date to submit written comments is May 23, 2001. Anyone wishing to obtain a copy of the proposed Regulation should contact Elizabeth Dawson at the above address or by calling (302)698-4500.

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

Accommodations are available for individuals with disabilities. Persons with disabilities are encouraged to call Debbie Carey at (302)698-4500 to request an auxiliary aid or service.

1.0 General**1.1 Scope**

To insure all grain inspected within the State of Delaware is uniformly inspected for quality.

To provide standards and guidelines to all granaries and their employees insuring that grain is inspected uniformly.

To provide training annually, and as needed, to all granaries and their grain inspectors.

1.2 Authority

These regulations are issued under the authority of 3 Del. C., Chapter 16 of the Annotated Code of Delaware.

1.3 Effective Date

These regulations were adopted on Month xx, 2001, in accordance with 29 Del.C., Chapter 101 of the Annotated Code of Delaware.

2.0 Declaration of Policy

3 Del. C. §§ 1601-1611, places the enforcement of the Delaware Grain Inspection, Certification, and Grain Contracts Law with the Department of Agriculture and empowers the Department to establish regulations.

By virtue of the authority vested in me as Secretary of Agriculture by 3 Del. C., Chapter 16, I, John F. Tarburton, Secretary of Agriculture, do hereby promulgate the following rules and regulations governing inspection and certification of grain in Delaware.

3.0 Definitions

The following words and terms, when used in these regulations, shall have the following meanings, unless the context clearly indicates otherwise. All terms defined by the Delaware Grain Inspection, Certification, and Grain Contracts Law (3 Del. C., Chapter 16) are hereby incorporated by reference in this regulation.

'Department' means the State of Delaware Department of Agriculture and includes, but is not limited to: its officers, inspectors, employees, agents, or representatives.

'Devices' means any grain moisture testing devices.

'Grain' means includes, but is not limited to, corn, wheat, rye, oats, barley, flaxseed, sorghum, soybeans, mixed grain, and any other food grains, feed grains, and oilseeds for which standards have been established in the United States Grain Standards Act, U.S.C.A. Section 7 et. seq., A-D are incorporated here by reference.

'Granary' means any grain elevator facility that buys and/or sells grain.

'Standards' means the United States Grain Standards Act, U.S.C.A. Section 7 et. seq., A-D, and the USDA Grain Handling Procedures, Book I and Book II as amended and are incorporated here by reference.

'Grain Inspector' means anyone, who operates grain moisture testing devices, follows standard grain inspection procedures and uses other grain inspection equipment.

'Grain Law' means the Delaware Grain Inspection, Certification and Grain Contracts Law, 3 Del.C., Chapter 16.

4.0 Certification of Granaries

4.1 No business shall act as a grain facility without first having obtained a certification as herein provided.

4.2 Every grain facility proposing to transact business within the State of Delaware shall make annual application. The application shall be on a form furnished by the Department, and shall contain the following information and such other relevant information as the Department shall require:

4.2.1 The name and address of the applicant;

4.2.2 The name and address of all applicable local agent or agents, if any;

4.2.3 The location of the applicant's principle place of business;

4.2.4 The kind of grain the applicant proposes to handle;

4.2.5 The type of grain business the applicant proposes to conduct;

4.2.6 Registration of all grain testing equipment;

4.2.7 Registration of all employees who are proposed to conduct testing of grain.

4.3 No granary shall be certified, or shall remain certified, unless such granary:

4.3.1 Has applied for certification to the Department;

4.3.2 Employs licensed grain inspectors;

4.3.3 Has registered all grain testing equipment owned and operated by the granary;

4.3.4 Maintained a grain sample preservation protocol as approved by the Department;

4.3.5 Maintained good record keeping procedures, and keeps records for at least one year;

4.3.6 Has disclosed their grain discount schedules and posted them in a conspicuous location at the grain inspection station.

4.4 The Department, after due notice and opportunity for a hearing, may, in its sole and absolute discretion, deny, suspend, or revoke any certification where the Department finds the granary has committed any violation of the grain law or regulation of the Department.

4.5 The Department, after due notice and opportunity for a hearing, may deny an application for granary registration if the applicant has committed any violation under the grain law or regulation. Such decisions shall be final, binding and not subject to appeal.

5.0 Licensure of Employees

5.1 Granaries shall utilize only licensed grain inspectors for all grain sampling and testing.

5.2 Every granary shall register with the Department all employees that will be inspecting grain.

5.3 It shall be the responsibility of the granary to insure that all applicants have successfully completed an approved training program. All training shall be completed within 30 days of employment.

5.4 To obtain a Grain Inspector's license, applicants are required to file a written application with the Department and pass an examination conducted by the Department. Thereafter, grain inspectors shall renew their grain inspector's license biannually on or before January 1 by filing an application for license with the Department and shall contain the following information and such other relevant information as the Department shall require:

5.4.1 The name and address of the applicant;

5.4.2 The location of employment;

5.4.3 Types of grain the applicant proposes to inspect;

5.4.4 The types of grain testing equipment in

operation and expected to be used;

5.4.5 Satisfactory evidence of good character.

5.5 Written notification of employment termination of a licensed grain inspector shall be made to the Department within 30 days of termination.

5.6 The Department, after due notice and opportunity for a hearing, may deny, suspend, or revoke any grain inspector's license, if the Department finds that he or she has committed any violation of the grain law or regulation of the Department.

5.7 The Department, after due notice and opportunity for a hearing, may deny an application for a grain inspector's license, if the applicant has committed any violation under the grain law or regulation. Such decision shall be final, binding and not subject to appeal.

6.0 Fees and Renewal

6.1 Fees

6.1.1 Granaries shall pay to the State of Delaware a bi-annual license fee of \$10.00 per inspector, which should be sent to the Department. All licenses shall continue in full force and effect until December 31 of the year of expiration, whereupon, they shall become invalid unless renewed.

6.1.2 Federal, State or Local government employees who are licensed under this law are exempt from this fee.

6.2 License Renewal

6.2.1 A license, or renewal application, submitted to the Department shall remain in full force and effect until such time as the Department gives notice to the applicant of renewal or denial.

6.2.2 Grain inspectors shall be required to be re-examined and pass a written test prior to their bi-annual license renewal.

6.2.3 The re-examination requirement may be waived without taking a test, if the applicant provides the Department with evidence that he or she has attended a minimum of three (3) hours of education courses, seminars or programs approved by the Department during the two (2) calendar years preceding license renewal.

6.3 Expiration

6.3.1 The license held by a licensee, where no renewal application is received, shall lapse on the thirtieth day following its expiration. After such lapse the licensee shall be without authority to inspect grain for approval pursuant to this regulation.

6.3.2 The person holding a lapsed license must be examined as described by §6.2.2, in order to receive a new license.

7.0 Exemptions

The above standards do not apply to farmers, or groups of farmers, for storage or consumption on their farms.

8.0 Inspection Standards

Grain inspection will be performed under the guidelines of the United States Grain Standards Act, U.S.C.A. Section 7 et. seq., A-D, and the USDA Grain Handling Procedures, Book I and Book II as amended.

9.0 Grading Equipment

9.1 The equipment, equipment procedures, and sampling procedures used to determine factors pertaining to the value of grain shall be those contained in the USDA Grain Handling Procedures Book I and Book II.

9.2 The Department shall have the power to inspect and test as often as deemed necessary in its sole discretion, and to determine the accuracy of all equipment and procedures used to sample and grade grain purchased by the granaries.

9.3 The Department shall approve and mark, or seal for use, equipment found to be in proper and accurate operation and function. Any equipment deemed to be inaccurate or improperly functioning shall be marked and labeled "condemned for repairs" or "not for grain inspection."

9.4 Unapproved equipment shall be marked "not for grain inspection".

10.0 Grain Sample Preservation Program

10.1 The grain inspector who determines grade factors for the purpose of establishing the value of grain shall identify and preserve the sample of each lot used to determine these factors for a period of twenty-four hours (24).

10.2 The sample size shall be a minimum of one and one-half (1.5) quarts and shall be preserved in a moisture-proof container maintained in adequate environmental conditions in order to preserve the integrity of the samples.

10.3 The samples shall be available at the granaries' place of business, and shall be accessible for inspection by the Department or at the Department's Inspection Laboratory.

10.4 To facilitate the use of file samples, each granary shall establish and maintain a uniform file system approved by the Department.

11.0 Record Keeping

11.1 Each granary shall make a written record as provided in Section 11.2 for each lot of grain weighed and graded. Unless otherwise agreed to at the time of transaction, the granary, or his agent, shall deliver a copy of the record to the person whom:

11.1.1 Is delivering the grain to the granary;

11.1.2 Is selling the grain to the granary;

11.1.3 Is buying the grain from the granary.

11.2 The record shall include:

11.2.1 Name and address of the person for whom the grain was weighed or graded;

11.2.2 The date the grain was weighed and graded

(if separate dates, each shall be stated);

11.2.3 Type of grain;

11.2.4 Grade factors determined (see USDA Grain Handling Procedures Book I and II as amended);

11.2.5 Net weight from weigh ticket;

11.2.6 Specification of all discounts and deductions and how applied, and if no discount or deduction is given that fact shall be so stated;

11.2.7 The conversion from net weight to pricing unit;

11.2.8 Gross price per pricing unit;

11.2.9 Net price per pricing unit;

11.2.10 Total amount of sale.

11.3 The weigh ticket shall be attached to and made part of the record as provided in Section 11.2. The record shall be kept by the granary for one year, and upon request shall be made available to the Department.

12.0 Violations

12.1 The following acts shall be considered to be violations of the 3 Del. C. §1601 et. seq., and shall be punishable as provided in Section 1606.

12.1.1 Failure to apply for granary certification.

12.1.2 Failure to use licensed grain inspectors.

12.1.3 Failure to use approved grain testing equipment and procedures.

12.1.4 Failure to save, or have in place a sample preservation program.

12.1.5 Failure to keep adequate records.

12.1.6 Failure to post current discount where they can readily be viewed.

12.1.7 Granary has engaged in fraudulent or deceptive practices in the inspection of grain.

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)****401 MAJOR CAPITAL IMPROVEMENT PROGRAMS****A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF
REGULATION**

The Secretary of Education seeks to amend regulation 401 Major Capital Improvement Programs. The amendments include providing clarity in section 1.0 by

stating that Major Capital Improvement programs are programs having a cost of \$250,000, or more and adding Section 12.0 on Voluntary School Assessment. The General Assembly amended Title 14, Section 103 by adding a new section (c) thus requiring the Department of Education to amend this regulation.

C. IMPACT CRITERIA

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

The amended regulation addresses land use planning and education, not student achievement.

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

The amended regulation addresses land use planning and education, not equity issues.

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

The amended regulation addresses land use planning and education, not health and safety issues.

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

The amended regulation addresses land use planning and education, 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 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 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 amended regulation?

The *Delaware Code* requires the Department of Education to make this amendment to the regulation.

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 local school boards for compliance with the amended regulation.

401 Major Capital Improvement Programs

1.0 Major Capital Improvement Programs are projects ~~in~~ excess having a cost of \$250,000, or more.

1.1 The Secretary of Education shall annually review the current cost per square foot for construction and make needed adjustments as required.

2.0 Procedures for Approval of a Site for School Construction

2.1 Local school districts shall contact the Department of Education for a site review when they propose to purchase a site for school purposes. All prospective sites shall be reviewed at one time. It is preferable that at least four (4) sites be considered.

2.2 The Department of Education will forward all prospective sites to the following agencies for their review and comments. The Department of Education will consolidate the responses of the other agencies in order to review and rank the prospective sites and list all reasons for approval or rejection. The Department shall then notify the school district concerning their final decision.

2.2.1 State Planning Coordination Office

2.2.2 The Budget Office

2.2.3 The Department of Natural Resources and Environmental Control

2.2.4 The Department of Agriculture

2.2.5 The Department of Transportation

2.2.6 The Local Planning Agency having jurisdiction

3.0 Educational Specifications, Schematic Plans, Preliminary Plans, and Final Plan Approvals

3.1 Educational Specifications are defined as a document which presents to an architect what is required of an educational facility to house and implement the educational philosophy and institutional program in an

effective way.

3.1.1 Educational Specifications shall be approved by the local school board and the Department of Education. The Department will require ten (10) working days for completion of the review and approval process.

3.2 All Schematic Plans shall be approved by the local school board and the Department of Education and these approved plans should be sent to the county or city planning office for information purposes only.

3.3 All Preliminary Plans shall be approved by the local school board and the Department of Education.

3.4 All final plans shall be approved by the local school board and the Department of Education.

3.5 The local school district must involve the following groups in reviewing these plans prior to the final approval.

3.5.1 Fire Marshal to review the plans for fire safety.

3.5.2 Division of Public Health, Bureau of Environmental Health, Sanitary Engineering for Swimming Pools, and the County Health Unit for information on Kitchens and Cafeterias.

3.5.3 Division of Facilities Management, Chief of Engineering & Operations for compliance with building codes.

3.5.4 Division of Highways for review of the Site Plan showing entrances and exits.

3.5.5 Architectural Accessibility Board for access for persons with disabilities.

4.0 Certificates of Necessity

4.1 The Certificate of Necessity is a document issued by the Department of Education which certifies that a construction project is necessary and sets the scope and cost limits for that project.

4.2 Certificates of Necessity shall be obtained sufficiently in advance to meet all prerequisites for the holding of a local referendum as it must be quoted in the advertisement for the referendum and shall be issued only at the written request of the local school district.

5.0 Notification, Start of Construction, Completion of Construction and Certificate of Occupancy

5.1 The school district shall submit to the Department of Education and the State Budget Director a construction schedule, showing start dates, intermediate stages and final completion dates.

5.2 The school district shall notify the Department of Education, the State Budget Director and the Insurance Coverage Office at the completion of the construction, which is defined as when the school district, with the concurrence of the architect, accepts the building as complete.

5.3 The school district shall notify the Department of Education, the State Auditor, and the State Budget Director upon approval of the Certificate of Occupancy.

5.4 Local school districts shall submit to the Department of Education a copy of the electronic autocad files. Electronic autocad files shall be submitted no later than 30 calendar days after the completion of any major renovation or addition to an existing facility.

6.0 Purchase Orders: All purchase orders for any major capital improvement project shall be approved by both the Department of Education and the Director of Capital Budget and Special Projects prior to submission to the Division of Accounting.

7.0 Change Orders

7.1 Change Orders are changes in the construction contract negotiated with the contractor. The main purpose is to correct design omissions, faults of unforeseen circumstances which arise during the construction process.

7.2 All Change Orders must be agreed upon by the architect, the school district and the contractor and shall be forwarded to the Department of Education.

7.2.1 Submission of a Change Order must include the following documents: Completed purchase order as applicable; Local Board of Education minutes identifying and approving the changes; Completed AIA document G701; Correspondence which gives a breakdown in materials, mark-up and other expenses; and, if not contained in any of the preceding, an explanation of need plus any drawings needed to explain the requested change.

8.0 Transfer of Funds between Projects

8.1 The transfer of funds between projects during the bidding and construction process shall have the written approval of the Department of Education. Acceptability of the transfer of funds will meet the following criteria:

8.1.1 No project may have more than 10% of its funding moved to another project. For example -no more than \$10,000 could be transferred from a \$100,000 project to any other project.

8.1.2 No project may have more than 10% added to its initial funding. For example - no more than \$10,000 would be transferred from all other projects to a project originally budgeted at \$100,000.

9.0 Educational Technology: All school buildings being constructed or renovated under the Major Capital Improvement Program shall include, in the project, wiring for technology that meets the Delaware Center for Educational Technology standards appropriate to the building type, such as high school, administration, etc. The cost of such wiring shall be borne by project funds.

10.0 Air Conditioning: All school buildings with Certificates of Necessity issued after July 1, 2000 for new school construction and/or major renovation/rehabilitation

shall require the inclusion of air conditioning unless otherwise waived by the Secretary of Education.

11.0 Administration of the New School: The principle administrator of a new school may be hired for up to one (1) year prior to student occupancy to organize and hire staff. The State portion of salary/benefits may be paid from Major Capital Improvement Programs.

12.0 Voluntary School Assessment

12.1 The funds generated as a result of the Voluntary School Assessment, as authorized by the provisions of 14 Del. C. Section 103(c) relating to land use planning and education, shall be applied exclusively to offsetting the required local share of major capital construction costs.

12.1.1 Districts receiving Voluntary School Assessment funds shall have full discretion in the use of those funds for any construction activities that increase school capacity.

EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL. C. SECTION 122(d)

1051 & 1052, DELAWARE SCNDARY SCHOOL ATHLETIC ASSOCIATION (DSSAA)

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 regulations of the Delaware Secondary School Athletic Association (DSSAA). The regulations to be amended include 1051 DSSAA Senior High School Interscholastic Athletics and 1052 DSSAA Junior High/Middle School Interscholastic Athletics.

The most significant changes to the regulations include the following:

1. Inclusion of a provision in the residence and transfer regulations to deal with students who change schools as a result of the Caregivers School Authorization.

2. Eliminating the penalty for failing to complete a semester or being absent for one or more semesters provided the student is academically eligible upon his/her return.

3. Eliminating the requirement that the two core academic credits necessary to be academically eligible must be in separate disciplines.

4. Placing the same restrictions on intradistrict "choice" transfers as interdistrict "choice" transfers.

5. Permitting students to practice at a sending school and transfer to a receiving school prior to the start of the

academic year without any loss of eligibility.

6. Permitting schools to make protective equipment available to students who are participating in non-school sponsored camps/clinics and recreational leagues.

The remaining proposals represent editorial changes or minor modifications to a particular regulation. All of the proposed revisions have been reviewed by the Constitution and Bylaws Committee, discussed by the membership at the Annual Meeting, and have received two affirmative votes from the DSSAA Board of Directors.

C. IMPACT CRITERIA

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

The amended regulations address interscholastic athletics, not student achievement.

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

The amended regulations address interscholastic athletics, not equity issues.

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

The amended regulations address interscholastic athletics, not health and safety issues.

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

The amended regulations address interscholastic athletics, 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 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 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 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 amended regulations?

The regulations for DSSAA are reviewed annually and amended where necessary in order to reflect current practice and need.

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 of compliance with the regulations.

1051 DSSAA Senior High School Interscholastic Athletics

1.0 Eligibility

No student shall represent a school in an interscholastic scrimmage or contest if he/she does not meet the following requirements:

1.1 Age

1.1.1 Students who become 19 years of age on or after June 15 shall be eligible for all sports during the school year provided all other eligibility requirements are met. Students who have attained the age of 19 prior to June 15 shall be ineligible for all sports.

See 3 DE Reg 437 (9/1/99)

1.1.2 In determining the age of a contestant, the birth date as entered on the birth record of the Bureau of Vital Statistics shall be required and shall be so certified on all eligibility lists.

1.1.3 Requests for waiver of the age requirement shall be considered only for participation on an unofficial, non-scoring basis in non-contact or non-collision sports.

1.2 Enrollment and Attendance

1.2.1 A student must be legally enrolled in the high school which he/she represents and must be in regular attendance ~~by September 20~~ prior to the 11th school day of the academic year.

1.2.1.1 A student who enters school ~~after September 20~~ on or after the 11th school day of the academic year shall not be eligible to participate ~~until February 1~~ for

ninety (90) school days.

~~1.2.1.2 A student who enters school after February 1 shall not be eligible to participate during the remainder of the school year.~~

1.2.2 A shared-time student who attends two (2) different schools during the regular school day shall be eligible to participate only at his/her home school.

1.2.2.1 A student's home school shall be the school at which he/she is receiving instruction in the core academic areas and at which he/she is satisfying the majority of his/her graduation requirements.

1.2.2.2 A shared-time student shall not be eligible to participate at the school at which he/she is receiving only specialized educational instruction; e.g., vocational training.

1.2.3 A student who is participating in the Delaware School Choice Program, as authorized by 14 *Del. C.*, Ch. 4, is obligated to attend the "choice school" for a minimum of two (2) years unless the student's custodial parent(s) or legal guardian(s) relocate to a different school district or the student fails to meet the academic requirements of the "choice school". If a student attends a "choice school" for less than two (2) years and subsequently returns to his/her home school, the student must receive a release from the "choice district" in order to legally enroll at his/her home school. Without a release, the student would not be eligible to participate in interscholastic athletics (see 1.4.11).

1.2.4 A student may not participate in a practice, scrimmage, or contest during the time a suspension, either in-school or out-of-school, is in effect or during the time he/she is assigned to an alternative school for disciplinary reasons.

1.2.5 A student must be legally in attendance at school in order to participate in a practice, scrimmage, or contest except when excused by proper school authorities.

1.2.5.1 A student who is not legally in attendance at school due to illness or injury shall not be permitted to participate in a practice, scrimmage, or contest on that day.

1.2.6 An ineligible student who practices in violation of ~~these rules 1.2.4 or 1.2.5~~ shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

~~1.2.7 Failure to complete a semester or absence for one or more semesters for reasons other than personal illness shall disqualify a student for ninety (90) school days from the date of reentry to school.~~

1.3. Residence

1.3.1 A student must be living with his/her custodial parent(s) or court appointed legal guardian(s) in the attendance zone of the school which he/she attends in order to be eligible for interscholastic athletics in that school. In

cases of joint custody, the custodial parent shall be the parent with actual physical placement as determined by court action.

1.3.1.1 Maintaining multiple residences in order to circumvent this requirement shall render the student ineligible.

1.3.1.2 A student who, under authority of a policy of the local board of education pursuant to established school board policy or administrative procedure, remains in a school he/she has been attending after his/her legal residence changes to the attendance zone of a different school in the same school district, may exercise, prior to the first official student day of the subsequent academic year, a one time election to remain at his/her current school and thereby not lose athletic eligibility.

1.3.1.2.1 However, if a student chooses to remain at his/her current school and subsequently then transfers to the school in his/her new attendance zone on or after the first official student day of the subsequent academic year, he/she shall be ineligible, for ninety (90) school days.

1.3.1.3 If a student changes residence to a different attendance zone after the start of the last marking period and, pursuant to established school board policy or administrative procedure, is granted permission to continue attending his/her present school via established district policy for such, the student shall retain his/her athletic eligibility in that school for the remainder of the school year provided all other eligibility requirements are met.

1.3.1.4 A student shall be permitted to complete his/her senior year at the school he/she is attending and remain eligible even though a change of legal residence to the attendance zone of another school has occurred. This provision shall refer to any change of legal residence that occurs after the completion of the student's junior year.

1.3.1.5 A student may be residing outside of the attendance zone of the school which he/she attends if the student is participating in the Delaware School Choice Program as authorized by 14 *Del. C.*, Ch. 4.

1.3.1.6 A student who is a non-resident of Delaware shall be eligible at a public, vocational-technical, or charter school if, in accordance with 14 *Del. C.*, § 607, his/her custodial parent or court appointed legal guardian is a full-time employee of that district.

1.3.1.7 Notwithstanding 1.3.1, a student shall be eligible at a public or vocational-technical school if he/she enrolls in accordance with 14 *Del. C.* §202(a), the Caregivers' School Authorization.

1.3.1.7.1 An exception would be a student whose relative caregiver does not provide the documentation required by the Caregivers' School Authorization (proof of relation and proof of full-time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to

scrimmage or compete until the relative caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

See 3 DE Reg 437 (9/1/99)

1.3.2 Notwithstanding 1.4, a student who reaches the age of majority (18), leaves his/her parents' place of residency and jurisdiction thereof, and moves to another attendance zone to continue his/her high school education shall be ineligible to participate in athletics for 90 school days commencing with the first day of official attendance. This provision shall not apply to a student participating in the Delaware School Choice Program, as authorized by 14 *Del. C.*, Ch. 4, provided the student's choice application was properly submitted prior to the his/her change of residence.

See 3 DE Reg 437 (9/1/99)

1.4 Transfer

1.4.1 A student who has not previously participated in interscholastic athletics (previous participation is defined as having practiced, scrimmaged, or competed in grades 9 through 12 except as specified in 5.2) is released by a proper school authority from a sending school, has completed the registration process at the receiving school, and is pursuing an approved course of study shall be eligible immediately upon registration provided he/she meets all other DSSAA eligibility requirements.

1.4.2 If a student has previously participated in interscholastic athletics, he/she shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school unless one of the following exceptions applies:

1.4.2.1 The transfer is within a school district and is approved by the district's superintendent pursuant to local established school board policy or administrative procedure. This provision shall not apply to a student who transfers to his/her home school from a "choice school" within the district and who has not completed the two-year attendance requirement unless he/she satisfies the conditions stipulated in 1.4.2.5.1 through 1.4.2.5.4. This provision shall also not apply to a student who transfers from a "choice school" to another "choice school" within the district (see 1.4.7.1).

1.4.2.2 The transfer is caused by court action, court action being an order from a court of law affecting legally committed students.

1.4.2.2.1 In the case of a transfer of guardianship/custody, the transfer shall be the result of a court order signed by a judge, commissioner, or master of a court of competent jurisdiction. A petition for the transfer of guardianship/custody, an affidavit, (except as permitted by 1.4.2.3), or a notarized statement signed by the affected parties shall not be sufficient to render the student eligible to participate in interscholastic athletics.

1.4.2.3 The transfer is in accordance with 14

Del. C. §202(a), the Caregivers School Authorization.

~~1.4.2.3.1~~ An exception would be a student whose relative caregiver does not provide the documentation required by the Caregivers' School Authorization (proof of relation and proof of full-time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the relative caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

~~1.4.2.4~~ ~~1.4.2.3~~ The transfer is the result of a change in residence by the custodial parent(s) or court appointed legal guardian(s) from the attendance zone of the sending school to the attendance zone of the receiving school. A change in residence has occurred when all occupancy of the previous residence has ended.

~~1.4.3~~ ~~1.4.2.4.1~~ A student who transfers from a public, private, vocational-technical, charter, or choice school to another public, private, vocational-technical, charter, or choice school shall be eligible in the receiving school immediately, except as prohibited by 1.4.10.1, when the custodial parent(s) or court appointed legal guardian(s) has established a new legal residence in another public school attendance zone different from the one in which the custodial parent(s) or court appointed legal guardian(s) resided for attendance in the sending school. In the case of a transfer to a public or vocational-technical school, the new legal residence must be in the attendance zone of the receiving school.

~~1.4.6~~ ~~1.4.2.5~~ ~~No waiver shall be required for students who~~ The transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year provided:

~~1.4.6.1~~ ~~1.4.2.5.1~~ The student has completed the registration process at the receiving school prior to the first official student day of the academic year. The first official student day shall be defined as the first day on which students in any grade in that school are required to be in attendance.

See 3 DE Reg 437 (9/1/99)

~~1.4.6.2~~ ~~1.4.2.5.2~~ The student has not attended class, excluding summer school, or participated in a ~~practice~~, scrimmage, or contest at the sending school since the close of the previous academic year.

~~1.4.6.3~~ ~~1.4.2.5.3~~ The student's legal residence is located in the attendance zone of the receiving school.

~~1.4.6.4~~ ~~1.4.2.5.4~~ All other DSSAA eligibility requirements have been met.

~~1.4.4~~ ~~1.4.3~~ Promotion to the ninth grade from a school whose terminal point is the eighth grade, or to the tenth grade from a junior high school whose terminal point is the

ninth grade, shall not constitute a transfer. Students so promoted shall be eligible.

~~1.4.5~~ ~~1.4.4~~ If a waiver of the ninety (90) school day ineligibility clause is requested due to a desired change in the program of study or financial hardship, the parent(s) or court appointed legal guardian(s) is responsible for providing documentation to the DSSAA Board of Directors to support the request. Documentation should include the following ~~for~~ each specific request:

~~1.4.5.1~~ ~~1.4.4.1~~ Change in program of study (a multi-year, hierarchical sequence of courses with a common theme or subject matter leading to a specific outcome).

~~1.4.5.1.1~~ ~~1.4.4.1.1~~ Student schedule card.

~~1.4.5.1.2~~ ~~1.4.4.1.2~~ Student transcript.

~~1.4.5.1.3~~ ~~1.4.4.1.3~~ Current course descriptions from both the sending and receiving schools.

~~1.4.5.1.4~~ ~~1.4.4.1.4~~ Statement from the principal of the sending school indicating that a significant part of the student's desired program of study will not be offered and that it will place the student at a definite disadvantage to delay transfer until the end of the current school year.

~~1.4.5.1.5~~ ~~1.4.4.1.5~~ Statement from the principal of both the sending and receiving schools that the student is not transferring primarily for athletic advantage as defined in ~~1.4.8.1~~ ~~1.4.6.1~~ through ~~1.4.8.4~~ ~~1.4.6.4~~.

See 3 DE Reg 437 (9/1/99)

~~1.4.5.2~~ ~~Finances~~

1.4.4.2 Financial hardship

~~1.4.5.2.1~~ ~~1.4.4.2.1~~ Proof of extreme financial hardship caused by significant and unexpected reduction in income and/or increase in expenses.

~~1.4.5.2.2~~ ~~1.4.4.2.2~~ Statement from the principal of both the sending and receiving schools that the student is not transferring primarily for athletic advantage as defined in ~~1.4.8.1~~ ~~1.4.6.1~~ through ~~1.4.8.4~~ ~~1.4.6.4~~.

See 3 DE Reg 437 (9/1/99)

~~1.4.7~~ ~~1.4.5~~ In cases of joint custody when a primary residence is established, a change in a student's primary residence without court action subjects the student to the ninety (90) school day ineligibility clause.

~~1.4.8~~ ~~1.4.6~~ A change of custody or guardianship for athletic advantage shall render a student ineligible under the ninety (90) school day ineligibility clause if the primary reason for his/her transfer is one of the following:

~~1.4.8.1~~ ~~1.4.6.1~~ To seek a superior team.

~~1.4.8.2~~ ~~1.4.6.2~~ To seek a team more compatible with his/her abilities.

~~1.4.8.3~~ ~~1.4.6.3~~ Dissatisfaction with the philosophy, policies, methods, or actions of a coach or administrator pertaining to interscholastic athletics.

~~1.4.8.4~~ ~~1.4.6.4~~ To avoid disciplinary action imposed by the sending school related to or affecting interscholastic athletic participation.

~~1.4.9~~ If a student transfers at any time during the school year for reasons other than those specified in ~~1.4.2~~, the student shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school except as permitted by ~~1.4.1~~.

~~1.4.10~~ 1.4.7 A student who transfers from a public, private, vocational-technical, or charter school to a school of choice, as authorized by 14 *Del. C.*, Ch. 4, shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year and the student satisfies the conditions stipulated in ~~1.4.6.1~~, ~~1.4.6.2~~ and ~~1.4.6.4~~ 1.4.2.5.1, 1.4.2.5.2, and 1.4.2.5.4.

~~1.4.10.1~~ 1.4.7.1 A student who transfers from a school of choice to another school of choice shall be ineligible to participate in interscholastic athletics during his/her first year of attendance at the receiving school unless the receiving school sponsors a sport(s) not sponsored by the sending school in which case the student shall be eligible to participate in that sport(s) only.

~~1.4.11~~ 1.4.8 A student who transfers from a school of choice to either a private school or, after completing his/her two-year commitment, to a public, vocational technical, or charter school shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year and the student satisfies the conditions stipulated in ~~1.4.6.1~~ 1.4.2.5.1 through ~~1.4.6.4~~ 1.4.2.5.4.

~~1.4.9.1~~ 1.4.9 If a student transfers with fewer than ninety (90) school days left in the academic year, he/she shall be ineligible for the remainder of the school year but shall be eligible beginning with the subsequent fall sports season provided he/she is in compliance with all other eligibility requirements.

See 3 DE Reg 437 (9/1/99)

1.5 Amateur

1.5.1 A student may not participate in an interscholastic sport unless he/she is considered an amateur in that sport. A student forfeits his/her amateur status if he/she does any of the following:

1.5.1.1 Knowingly plays on or against a professional team. ~~This rule does not apply to an athlete who participates in summer baseball or other sports outside of the school's sports season in which he/she does not receive any form of remuneration for athletic services.~~

1.5.1.2 Signs a professional contract, accepts reimbursement for expenses to attend a professional tryout, or receives financial assistance in any form from a professional sports organization.

1.5.1.3 Enters competition under an assumed name. The surname and given name used by any player in his/her first game of interscholastic competition shall be

used during the remainder of the student's interscholastic career. Any change in spelling or use of another name shall be regarded as an attempt to evade this rule unless the change has been properly certified by the player to the principal of the school.

~~1.5.1.3.1~~ In the event a false name is used without the knowledge and consent of the player, or if the player has participated in a game without having his/her name appear in the box score, or if his/her name appears in the box score of a game in which he/she did not play, it becomes the sole obligation of the player involved to report the error or omission to the principal of the school within 48 hours from the time such game was played.

1.5.1.4 Receives remuneration of any kind or accepts reimbursement for expenses in excess of the actual and necessary costs of transportation, meals, and lodging for participating in a team or individual competition or an instructional camp or clinic. Reimbursement for the aforementioned expenses is permitted only if all of the participants receive the same benefit.

See 3 DE Reg 437 (9/1/99)

1.5.1.5 Receives cash or a cash equivalent (savings bond, certificate of deposit, etc.), merchandise (except as permitted by 26.5) or a merchandise discount, (except for discount arranged by school for part of team uniform) a reduction or waiver of fees, a gift certificate, or other valuable consideration as a result of his/her participation in an organized competition or instructional camp/clinic.

1.5.1.5.1 Accepting an event program and/or a complimentary item(s) (t-shirt, hat, equipment bag, etc.) that is inscribed with a reference to the event, has an aggregate retail value of no more than \$50.00, and is provided to all of the participants, shall not jeopardize his/her amateur status.

See 3 DE Reg 525 (10/1/99)

1.5.1.6 Sells or pawns awards received.

1.5.1.7 Uses his/her athletic status to promote or endorse a commercial product or service in a newsprint, radio, or television advertisement or personal appearance.

~~1.5.1.8~~ ~~Receives an award prohibited by DSSAA for being a member of some athletic organization.~~

1.5.2 Accepting compensation for teaching lessons, coaching, or officiating shall not jeopardize his/her amateur status.

1.5.3 A student who forfeits his/her amateur status under the provisions of this rule is ineligible to participate at the interscholastic level in the sport in which the violation occurred. He/she may be reinstated after a period of up to 180 school days provided that during the suspension, he/she complies with all of the provisions of this rule. The suspension shall date from the time of the last offense.

2.0 Use of Influence for Athletic Purposes

2.1 The use of influence by a person(s) employed by or representing a member school including members of alumni associations, booster groups, and similar organizations to persuade, induce, or facilitate the enrollment of a student in that school for athletic purposes shall render the student ineligible for up to 180 school days from the date the charge is substantiated. In addition, the offending school shall be placed on probation, as determined by the DSSAA Board of Directors, and the offending employee, if a coach, shall be suspended for up to 180 school days from the date the charge is substantiated.

2.2 The use of influence for athletic purposes shall include, but not be limited to, the following:

2.2.1 Offer of money, room, board, clothing, transportation, or other valuable consideration to a prospective athlete or his/her parent(s) or court appointed legal guardian(s).

2.2.2 Offer of waiver/reduction of tuition or financial aid if based, even partially, on athletic considerations.

2.2.3 Preference in job assignments or offer of compensation for work performed in excess of what is customarily paid for such services.

2.2.4 Offer of special privileges not accorded to other students.

2.2.5 Offer of financial assistance including free or reduced rent, payment of moving expenses, etc., to induce a prospective athlete or his/her parent(s) or court appointed legal guardian(s) to change residence.

2.3 A school employee or Board approved volunteer may not initiate contact or request that a booster club member, alumnus, or player initiate contact with a student enrolled in another school or his/her parent(s) or court appointed legal guardian(s) in order to persuade the student to enroll in a particular school for athletic purposes. Illegal contact shall include, but not be limited to, letters, questionnaires or brochures, telephone calls, and home visits or personal contact at athletic contests.

2.3.1 If a coach or athletic director is contacted by a prospective athlete or his/her parent(s) or court appointed legal guardian(s), the former must refer the individual(s) to the principal or school personnel responsible for admissions.

2.3.2 A school employee or Board approved volunteer may discuss the athletic program with a prospective student or his/her parent(s) or court appointed legal guardian(s) during an open house or approved visit initiated by the parent(s) or court appointed legal guardian(s).

2.3.2.1 A school employee or Board approved volunteer may provide information concerning sports offered, facilities, conference affiliation, and general athletic policies. However, he/she is not permitted to state or imply in any way that his/her athletic program is superior to that of another school or that it would be more beneficial or

advantageous for the prospective student to participate in athletics at his/her school.

2.3.3 A school employee or Board approved volunteer may conduct an informational presentation at a feeder school provided he/she observes the restrictions specified in 2.3.2.1.

2.4 If the number of applicants under the Delaware School Choice Program exceeds the number of available student openings, the selection criteria established by the district shall not include athletic considerations.

3.0 Non-School Competition (participants competing “unattached” and not representing their schools)

3.1 A student may participate on a non-school team or in a non-school individual event both during and out of the designated sport season. However, the student owes his/her primary loyalty and allegiance to the school team of which he/she is a member. A school shall have the authority to require attendance at practices and contests and students not in compliance shall be subject to disciplinary action as determined by the school.

3.2 Participation on a non-school team or in a non-school individual event shall be subject to the following conditions:

3.2.1 With the exception of organized intramurals, the student may not wear school uniforms ~~or use school equipment~~.

3.2.2 With the exception of organized intramurals, the student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

~~3.2.2~~ 3.2.3 The school or a school affiliated support group may not provide transportation.

~~3.2.3~~ 3.2.4 The school or a school affiliated support group may not pay entry fees or provide any form of financial assistance.

~~3.2.4~~ 3.2.5 The school coach may not require his/her athletes to participate in non-school competition or provide instruction to his/her athletes in non-school competition.

3.3 14 *Del. C.*, § 122(b)(15) requires written parental permission prior to participation on a similar team during the designated sport season. Written authorization must be on file in the student's school prior to engaging in a tryout, practice, or contest with a similar team. Consent forms shall be available in all member schools.

3.3.1 Similar teams shall include organized intramural teams as well as non-school teams in that sport.

4.0 Passing Work

4.1 In order to be eligible for participation in interscholastic athletics, including practices, a student must pursue a regular course of study or its equivalent as approved by the local governing body, and must be passing at least five (5) credits. Two (2) of those credits must be in the separate areas of English, Mathematics, Science, or Social

Studies.

4.1.1 A student who is receiving special education services and is precluded from meeting the aforementioned academic requirements due to modifications in the grading procedure or course of study, shall be adjudged eligible by the principal if he/she is making satisfactory progress in accordance with the requirements of his/her individualized education plan (IEP).

4.2 In the case of a student in the twelfth grade, he/she must be passing all courses necessary for graduation from high school in order to be eligible for participation. A course necessary for graduation shall be any course, whether taken during or outside the ~~normal regular~~ school day, that satisfies an unmet graduation requirement.

4.3 A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in interscholastic athletics, including practices, for the next marking period.

4.3.1 In the case of a conflict between the marking period grade and the final grade, the final grade shall determine eligibility.

4.3.2 The final accumulation of credits shall determine eligibility for the first marking period of the following school year. When a student makes up a failure or earns the required credit(s) during the summer, he/she shall become eligible provided he/she successfully completes the course work prior to the first official student day of the school year.

4.3.2.1 Written verification of the successful completion of a correspondence course must be received before a student shall regain his/her eligibility.

4.4 A student forfeits or regains his/her eligibility, in accordance with the provisions of this rule, on the day report cards are issued.

4.5 Local school boards and non-public schools may establish more stringent requirements for academic eligibility than the minimum standards herein prescribed.

See 3 DE Reg 437 (9/1/99)

4.6 An ineligible student who practices in violation of ~~these rules 4.1, 4.2, or 4.3~~ shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

5.0 Participation

5.1 No student shall represent a school in athletics after four (4) consecutive years from the date of his/her first entrance into the ninth grade unless a waiver is granted for hardship reasons.

5.1.1 No student shall have more than four (4) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or in a spring sport or combination of spring sports.

5.1.2 "Hardship" shall be defined as extenuating circumstances which are unusual, extraordinary and beyond

the control of the student or his/her parent(s) or court appointed legal guardian(s); preclude him/her from completing the academic requirements for graduation within the normal period of eligibility; and deprive him/her of all or part of one of his/her opportunities to participate in a particular sports season.

5.1.2.1 ~~The circumstances must be unusual, unavoidable, and extraordinary.~~ A clear and direct causal relationship must exist between the alleged hardship condition and the failure of the student to complete the academic requirements for graduation within the normal period of eligibility and the loss of all or part of one of his/her opportunities to participate in a particular sports season.

5.1.2.2 The burden of proof rests with the student in conjunction with the waiver/appeal process as described in 1053 ~~DSSAA~~ Waiver Procedure and 1055 ~~DSSAA~~ Appeal Procedure. Claims of extended illness, debilitating injury, emotional stress, etc., must be accompanied by appropriate documentation. Evidence must be submitted to verify that the student or his/her parent(s) or court appointed legal guardian(s) sought assistance to ameliorate the effects of the hardship condition.

5.1.3 Satisfactory completion of studies in accordance with promotion policies established by the local governing body shall determine when a student is beyond the eighth grade.

5.2 If the eighth grade is part of the same administrative unit as grades 9 through 12, participation on the part of an eighth-grade student toward five (5) years of eligibility shall be at the discretion of the individual school.

5.2.1 Seventh-grade students shall not be permitted to participate on senior high school interscholastic teams.

5.3 Participation shall be defined as taking part in a school sponsored practice (see 25.3), scrimmage, or contest on or after the first allowable date for practice in that sport.

6.0 Postgraduates/Higher Institutions

6.1 Postgraduates shall not be eligible to participate in interscholastic athletics.

6.1.1 All graduates of recognized senior high schools shall be considered postgraduates.

6.2 Students whose commencement exercises are prior to the completion of the school's regular season schedule and/or the state tournament shall be eligible to compete.

6.3 A regularly enrolled student taking courses in an institution of higher education shall be eligible provided he/she meets all other DSSAA requirements.

7.0 Foreign Exchange Students/Foreign Students

7.1 Notwithstanding 1.2, 1.3, and 1.4, foreign students may be eligible to participate in interscholastic athletics upon arrival at their host school provided they have not attained the age of 19 prior to June 15 and are enrolled as participants in a recognized foreign exchange program.

7.1.1 All foreign exchange programs which are included on the Advisory List of International Educational Travel and Exchange Programs of the Council on Standards for International Educational Travel (CSIET) and are two (2) semesters in length shall be considered as recognized.

7.1.2 Students participating in programs not included on the CSIET list shall be required to present evidence that the program is a bona fide educational exchange program before it shall be considered as recognized.

7.2 Foreign students who are not participating in a foreign exchange program are considered to be transfer students and are ineligible to compete in interscholastic athletics unless they are in compliance with all DSSAA eligibility requirements including 1.3.1.

7.2.1 With the exception of a boarding school student, a foreign student who is attending a private or parochial school must be residing with his/her court appointed legal guardian in order to be eligible to participate in interscholastic athletics.

7.3 Once enrolled, foreign exchange and other foreign students must comply with all DSSAA eligibility rules.

7.4 Athletic recruitment of foreign exchange students or other foreign students by a member school or any other entity is prohibited, and any such students recruited shall be adjudged ineligible.

8.0 Examinations

8.1 A student shall not be eligible to practice, scrimmage, or compete in an interscholastic contest unless he/she has been adequately examined by a licensed physician (M.D. or D.O.), a certified nurse practitioner, or a certified physician's assistant on or after June 1 and before beginning such athletic activity for the current school year.

8.1.1 A certificate to that effect, as well as the parent's or court appointed legal guardian's consent, shall be on file with the administrative head of the school prior to the student participating in a practice, scrimmage, or game.

8.2 For any subsequent sports season in the school year, a limited reexamination shall be performed under the following circumstances:

8.2.1 If the athlete has been treated for an injury during the ~~immediately~~ preceding sports season.

8.2.2 If the athlete has been out of school during the preceding ~~term~~ sports season with an illness other than the usual minor upper respiratory or gastrointestinal upset.

8.2.3 If an operation has been performed on the athlete during the preceding ~~term~~ sports season.

8.2.4 If the athlete has a remedial defect.

8.3 The medical history of the student should be available at the time of each examination.

8.4 A player who is properly certified to participate in interscholastic athletics but is physically unable to ~~practice~~ participate for five (5) consecutive days on which a practice,

scrimmage, or contest is held due to illness or injury, must present to the administrative head of the school a statement from a qualified physician that he/she is again physically able to participate.

9.0 Clarifying Eligibility

9.1 In cases of uncertainty or disagreement, the eligibility of a student shall be determined initially by the Executive Director. If the Executive Director determines that the student is ineligible, the school and the student shall be notified and the student suspended immediately from participation in interscholastic athletics.

9.2 The school and the student shall be informed that the decision of the Executive Director may be appealed to the DSSAA Board of Directors in accordance with the procedure described in 1055 DSSAA Appeal Procedure.

9.3 Decisions of the DSSAA Board of Directors to affirm, modify, or reverse the eligibility rulings of the Executive Director may be appealed to the State Board of Education in accordance with the procedure described in 1055 DSSAA Appeal Procedure.

10.0 Eligibility Lists

10.1 Member schools shall use eligibility forms approved by the Executive Director.

10.2 A copy of the original eligibility report and subsequent addenda must be either received by the Executive Director or postmarked prior to the first contest for which the students listed are eligible. Failure to file an eligibility report as prescribed shall result in a \$15.00 fine against the school.

10.3 In the case of a student who met all DSSAA eligibility requirements but was omitted from the eligibility report due to administrative or clerical error, he/she shall be adjudged eligible and the school assessed a \$10.00 fine.

See 3 DE Reg 437 (9/1/99)

11.0 Contracts Interchanged

11.1 Contracts between DSSAA member schools or between DSSAA member schools and full member schools of comparable state associations are encouraged but not required.

11.1.1 Conference master contracts are approved substitutes for individual contracts.

11.1.2 In the case of a dispute and provided either a signed individual contract or conference master contract is in place, appeal may be made to the DSSAA Board of Directors which, after review of the circumstances, may assign an appropriate penalty.

11.1.2.1 Without a signed individual contract or conference master contract, a member school has no right of appeal to the Executive Director or the DSSAA Board of Directors.

11.2 Contracts between DSSAA member schools and

non-member or associate member schools of comparable state associations are required.

11.2.1 A copy of the signed contract must be either received by the Executive Director or postmarked prior to the contest for which the agreement was drawn up. Failure to file a signed contract as prescribed shall result in the DSSAA member school being assessed a \$15.00 fine.

11.2.2 In the case of a dispute, a member school has no right of appeal to the Executive Director or the DSSAA Board of Directors unless a signed individual contract is in place.

11.3 Contracts shall be interchanged according to the following provisions:

11.3.1 Contracts on the accepted form shall be arranged by the competing schools for each season's interscholastic athletic contests.

11.3.2 Contracts shall be drawn up by the faculty manager or other designated staff member of the home school of the earlier varsity contest.

11.3.3 A signed contract or any part thereof may not be nullified or modified except by mutual agreement of both schools involved.

11.4 If a game is not played, it shall be considered "no contest" unless a signed individual contract or conference master contract was in place and one of the participating schools breached the agreement in which case appeal may be made to the Executive Director or the DSSAA Board of Directors.

11.4.1 If a game is not played because an out of state opponent qualifies for its state championship series and the date of the playoff game conflicts with the date of the regular season game, a forfeit shall not be awarded.

12.0 Spring Football

12.1 No member school shall participate in spring football games nor shall a member school conduct football practice of any type outside of the regular fall sports season except when participating in the state tournament.

12.2 "Organized football" or "organized football practice" shall be defined as any type of sport which is organized to promote efficiency in any of the various aspects of football. Rugby and touch football featuring blocking, tackling, ball handling, signaling, etc. shall be considered "organized football" and shall be illegal under the intent of this rule.

13.0 Licensed Physician

13.1 Provision shall be made for a licensed physician, a NATA certified athletic trainer, or a registered nurse to be present at all interscholastic football games in which a member school participates. The host school shall provide this service.

See 3 DE Reg 438 (9/1/99)

13.2 Failure by the host school to provide this service

shall result in the school being assessed a \$100.00 fine.

14.0 Use of Ineligible Athlete

14.1 The deliberate or inadvertent use of an ineligible athlete in the sports of soccer, football, volleyball, field hockey, basketball, baseball, softball, and lacrosse shall require the offending school to forfeit the contest(s) in which the ineligible athlete participated.

14.1.1 If the infraction occurs during a tournament, including a state championship, the offending school shall be replaced by its most recently defeated opponent. Teams eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

14.1.2 Team and/or individual awards shall be returned to the event sponsor.

14.1.3 Team and/or individual records and performances shall be nullified.

14.1.4 The offending school may appeal to the DSSAA Board of Directors for a waiver of the forfeiture penalty if the ineligible athlete had no tangible effect on the outcome of the contest(s). If the forfeiture penalty is waived, the offending school shall be reprimanded and fined \$200.00 unless the athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withheld information or provided false information that caused him/her to be eligible for interscholastic competition. The burden of proof, in both instances, rests entirely with the offending school.

See 3 DE Reg 438 (9/1/99)

14.1.5 A forfeit shall constitute a loss for the offending school and a win for its opponent for purposes of standings and playoff eligibility.

14.1.6 A forfeit shall be automatic and not subject to refusal by the offending school's opponent.

14.2 The deliberate or inadvertent use of an ineligible athlete in the sports of cross country, wrestling, swimming, track, golf, and tennis shall require the offending school to forfeit the matches won and/or points earned by the ineligible athlete or by a relay team of which he/she was a member. The points contributed by an ineligible athlete to his/her team score shall be deleted.

14.2.1 If the infraction occurs during a tournament, including a state championship, the ineligible athlete shall be replaced by his/her most recently defeated opponent or the next highest finisher. Contestants eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

14.2.2 Individual awards earned by the ineligible athlete and team awards, if necessary because of adjustments in the standings, shall be returned to the event sponsor.

14.2.3 Individual records and performances by the ineligible athlete shall be nullified.

14.3 If an ineligible athlete participates in interscholastic competition contrary to DSSAA rules but in accordance with a temporary restraining order or injunction

against his/her school and/or DSSAA, and the injunction is subsequently vacated, stayed, or reversed, or the courts determine that injunctive relief is not or was not justified, or the injunction expires without further judicial determination, the penalties stipulated in 14.1 and 14.2 shall be imposed.

14.4 The intentional use of an ineligible athlete by a member school or repeated indifference to its responsibility to determine the eligibility of its athletes will subject the school to additional penalties which may include suspension for up to 180 school days from the date the charge is substantiated.

14.5 If a coach knowingly withholds information or provides false information that causes an athlete to be eligible for interscholastic competition, the coach shall be suspended from coaching in any sport at any DSSAA member school for up to 180 school days from the date the charge is substantiated.

14.6 If an athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withholds information or provides false information that causes him/her to be eligible for interscholastic competition, the athlete shall be suspended from participation in any sport at any DSSAA member school for up to 180 school days from the date the charge is substantiated.

15.0 Reporting Violations

15.1 If a school violates a provision of the DSSAA Constitution and Bylaws, the administrative head or his/her designee shall notify the Executive Director in writing of the violation.

15.2 If a school uses an ineligible athlete, the administrative head or his/her designee shall notify the opposing school(s) or event sponsor, in the case of a tournament or meet, and the Executive Director in writing of the violation and the forfeiture of the appropriate game(s), match(es), and/or point(s) won.

15.3 All violations will be reviewed by the DSSAA Board of Directors which may impose additional penalties in accordance with 38.0.

16.0 Equivalent Rules

16.1 A member school shall not participate in a scrimmage or contest with any school that is not a member in good standing of DSSAA or a state association comparable to DSSAA.

16.1.1 A full member school shall not participate in a scrimmage or contest with an associate or non-member school of another state association unless the opposing school, as part of a written contract, certifies that its contestants are eligible under the rules of its home state association.

16.1.1.1 Postgraduate students shall not be allowed to participate.

16.1.2 An associate member school shall not

participate in a scrimmage or contest with an associate or non-member school of another state association unless the opposing school complies with the conditions specified in 16.1.1. However, the opposing school shall be exempt from those rules which DSSAA has waived for its associate member school.

16.1.2.1 Postgraduate students shall not be allowed to participate.

16.2 Member schools shall not participate in a practice, scrimmage, or contest with a non-school sponsored team.

16.3 Member schools shall not participate in a practice, scrimmage, or contest with ~~university, college, or junior college undergraduates~~ students.

~~16.4~~ 1.6.3.1 This rule provision shall not apply to games played against the alumni or faculty of the school when the game is sponsored by school authorities.

~~16.5~~ 16.4 A school which participates in a game against an illegal opponent shall be required to forfeit the contest and be assessed a \$100.00 fine.

17.0 Codes

17.1 DSSAA is affiliated with the National Federation of State High School Associations (NFHS). The playing codes, sanctions, and other rules of the NFHS are adopted except as modified by the DSSAA Board of Directors.

17.2 The playing rules of the United States Tennis Association, the United States Golf Association, and the United States Lacrosse Association are adopted for the sports of tennis, golf, and girls' lacrosse respectively except as modified by the DSSAA Board of Directors.

18.0 Conferences

18.1 Member schools may establish voluntary conference organizations according to the following rules:

18.1.1 Any such organization may be composed of public and non-public schools.

18.1.2 Any conference so formed must submit its proposed membership and its constitution and bylaws to the DSSAA Board of Directors and they must be approved before the schools may enter into any contractual agreements.

18.1.2.1 All subsequent amendments to the constitution and bylaws of the conference must be approved by the DSSAA Board of Directors.

See 3 DE Reg 438 (9/1/99)

19.0 All-Star Contests

19.1 An all-star contest shall be defined as an organized competition in which the participants are selected by the sponsoring organization or its designee on the basis of their performance during the interscholastic season in that sport.

19.2 Students who have completed their eligibility in a sport may participate in one all-star contest in that sport, if approved by DSSAA, prior to graduation from high school.

19.3 Member schools shall not make their facilities, equipment, or uniforms available to the sponsoring organization or the participants unless the all-star contest is approved by DSSAA.

19.4 The all-star contest must be approved by DSSAA in accordance with the following criteria:

19.4.1 The contest shall not be for determining a regional or national champion.

19.4.2 The contest shall be organized, promoted, and conducted by and all profits go to a nonprofit organization. Involvement by a commercial organization shall be limited to providing financial support.

19.4.3 The awards given shall be in compliance with 1.5.

19.4.4 Exceptions to the adopted rules code for the sport, including uniform regulations, shall require the approval of DSSAA.

19.4.5 A full financial report must be filed with the Executive Director within thirty (30) days of the contest. Failure to submit a financial report within the specified period of time shall result in the sponsoring organization being assessed a \$50.00 fine.

19.4.6 The event organizer shall not accept financial support or sell advertising to companies involved in the production or distribution of alcohol and tobacco products.

See 3 DE Reg 439 (9/1/99)

19.5 A student who participates in more than one all-star game or in a non-approved all-star game shall forfeit his/her eligibility for 90 school days.

20.0 Sponsoring Interscholastic Teams

20.1 Definition of Interscholastic Athletics

20.1.1 Interscholastic competition is defined as any athletic contest between students representing two (2) or more schools. Students are considered to be representing a school if the school does any of the following:

20.1.1.1 Partially or wholly subsidizes the activity (providing equipment, uniforms, transportation, entry fees, etc.).

20.1.1.2 Controls and administers the funds, regardless of their source, needed to conduct the activity.

20.1.1.3 Permits the students to compete under the name of the school.

20.1.1.4 Publicizes or promotes the activity through announcements, bulletins, or school sponsored publications.

20.1.1.5 Presents or displays individual/team awards.

20.1.2 Members of school clubs who participate in non-competitive, recreational activities or compete unattached are not considered to be engaged in interscholastic competition.

20.2 Sponsorship of Teams

20.2.1 Schools may sponsor teams for interscholastic competition in a sport provided the following criteria are met:

20.2.1.1 The governing body of the participating district or non-public school approves participation in the sport. The administrative head of the school shall notify the Executive Director in writing of the school's intent to sponsor a team in a new sport.

20.2.1.2 The governing body of the participating district or non-public school controls the funds needed to support the proposed team, regardless of their source, in the same manner as existing teams (coaches' salaries, purchase and repair of equipment, medical supervision, transportation, preparation and maintenance of practice and game facilities, awards, etc.). Requests from outside sources to make financial contributions or to donate equipment or services must be submitted in writing and must include an acknowledgment that the equipment becomes the property of the school. The contribution or donation must be approved in writing by the administrative head of the school.

See 3 DE Reg 439 (9/1/99)

20.2.1.3 The participating schools agree to comply with all applicable DSSAA rules and regulations as stated in the current DSSAA Official Handbook.

20.3 Levels of Participation

20.3.1 Level 1 or developmental sport - less than twelve (12) participating schools at the varsity level.

20.3.1.1 All DSSAA rules and regulations shall be in effect except 23.0, 24.0, and 32.0.

20.3.1.2 Schools shall not be permitted to scrimmage or compete against a non-school sponsored team.

20.3.2 Level 2 or recognized sport - twelve (12) or more participating schools at the varsity level.

20.3.2.1 At the time of official recognition, DSSAA shall provide rules publications to the participating schools, designate an approved officials' association, conduct an annual or biannual rules clinic for coaches and officials, establish a maximum game schedule, and form a committee to promote the continued development of the sport and prepare for a future state championship.

20.3.2.2 All DSSAA rules and regulations shall be in effect.

20.3.3 Level 3 or championship sport - sixteen (16) or more participating schools at the varsity level.

20.3.3.1 Upon petition by the sport committee and adoption of a tournament proposal, DSSAA shall establish a state championship.

20.3.4 Withdrawal of level 2 or level 3 status.

20.3.4.1 If, for two (2) consecutive years, less than the required number of schools participate in a sport, DSSAA may withdraw official recognition or suspend the state tournament/meet for a period of time as determined by the Board of Directors.

21.0 State Championships

21.1 The minimum number of high schools which must sponsor a sport at the varsity level in order for DSSAA to approve a state championship shall be sixteen (16).

21.2 State championship play shall be permitted at the varsity level only in football, basketball, indoor and outdoor track, cross country, swimming, wrestling, golf, baseball, soccer, tennis, field hockey, softball, girls' volleyball, and lacrosse provided such tournament or meet is under the direct control and supervision of and/or has the approval of DSSAA.

21.3 All state championships shall be managed by committees established in accordance with Sections 11. and 12. of Article IV of the DSSAA Constitution.

21.3.1 Each tournament format, as well as the criteria and procedures for selecting and seeding the participating teams, must be approved by the Board of Directors and any subsequent changes must also be approved by the Board. The Executive Director shall advise the committees as to which proposed changes must be presented to the Board. If the Executive Director and the committee cannot agree, the proposed change must be presented to the DSSAA Board of Directors for approval.

See 3 DE Reg 439 (9/1/99)

21.3.2 All financial arrangements, including the collection of monies and expenditures, must be approved by the Executive Director

21.4 Championship play in other sports must be confined to the individual conferences and conducted in accordance with the rules of the conference as approved by the DSSAA Board of Directors.

21.5 No member school shall participate in a post-season contest.

22.0 Certified Coaches

22.1 Only those professional employees certified by the Department of Education and whose salary is paid by the State and/or local Board of Education, or in the case of charter and non-public schools by a similar governing body, if acceptable as a coach by the governing body, shall coach, assist in coaching, or direct member school teams in any district.

22.1.1 The terms of employment must be for the regular school year and the professional assignment shall be no less than 1/2 of the school day, exclusive of coaching duties.

See 3 DE Reg 439 (9/1/99)

22.2 Emergency coaches

22.2.1 An emergency coach shall be defined as an individual who is either not certified by the Department of Education, or is certified by the Department of Education but is not employed for the regular school year or whose professional assignment is less than 1/2 of the school day.

22.2.2 An individual who meets the requirements of a certified coach as specified in 22.1 but whose

professional assignment is located in a different school or district than his/her coaching assignment shall not be considered an emergency coach by DSSAA.

22.2.3 Member schools shall be required to annually reopen all positions that are held by emergency coaches.

22.2.4 Emergency coaches may be employed provided the local governing body adheres to the following procedures:

22.2.4.1 The employing Board of Education must attempt to locate an acceptable, certified professional staff member by advertising the coaching vacancy in the district for as many days as are required by the district's collective bargaining agreement.

22.2.4.2 If an acceptable, certified professional staff member is not available, an individual who is acceptable to the employing Board of Education may be hired as an emergency coach.

22.2.4.3 Any individual employed as a coach under the emergency provision must comply with the following regulations:

22.2.4.3.1 He/she must be officially appointed by the local Board of Education. The superintendent or his/her designee may temporarily appoint an individual if a coaching vacancy arises and the sport season begins during the interim between meetings of the local Board of Education.

See 3 DE Reg 439 (9/1/99)

22.2.4.3.2 His/her coaching salary must be paid exclusively by the local Board of Education.

22.3 Students who are practice teaching in a member school shall be permitted to assist in all professional activities during their practice teaching period.

22.4 In addition to the members of the school's regular coaching staff, who must come from 22.1 through 22.3, the local governing body may supplement a school's coaching staff with volunteer coaches. Volunteer coaches are individuals who donate their services to a school and who have been approved by that school's local governing body. A current list of approved volunteer coaches shall be on file in the school's administrative office before any coaching duties are assumed.

22.5 All varsity head coaches (junior varsity if the school does not sponsor a varsity team) shall be required to attend the DSSAA rules clinic for their sport or, if applicable, pass an open book rules examination supplied by the DSSAA office.

22.5.1 A school shall be assessed a \$50.00 fine and the head coach shall be placed on probation if he/she fails to attend the DSSAA rules clinic or pass the open book rules examination in his/her sport. Failure to comply for a second consecutive year shall result in the school being assessed a \$50.00 fine and the coach being suspended for up to five contests as determined by the Executive Director.

22.6 Beginning with the ~~2000-01~~ 2001-02 school year, certified and emergency head coaches at all levels of competition shall be required to hold a current certification in adult CPR.

~~22.6.1 Beginning with the 2001-02 school year, assistant coaches at all levels of competition shall be required to hold a current certification in adult CPR.~~

See 3 DE Reg 439 (9/1/99)

23.0 Sports Seasons and Practices

23.1 The regular fall sports season shall begin with the first approved day for practice and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport.

23.2 The regular winter sports season shall begin with the first approved day for practice and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport.

See 3 DE Reg 439 (9/1/99)

23.3 The regular spring sports season shall begin on March 1 and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport.

23.4 Practice for any fall sport shall not begin earlier than 21 days before the first Friday after Labor Day. Practice for any winter sport shall not begin earlier than 21 days before the first Friday in December and practice for any spring sport shall not begin earlier than March 1.

See 3 DE Reg 439 (9/1/99)

23.4.1 The first three (3) days of football practice shall be primarily for the purpose of physical conditioning and shall be restricted to non-contact activities. Coaches may introduce offensive formations and defensive alignments, run plays "on air," practice non-contact phases of the kicking game, and teach non-contact positional skills. Protective equipment shall be restricted to helmets, mouthguards, and shoes. The use of dummies, hand shields, and sleds in contact drills is prohibited, Blocking, tackling, and block protection drills which involve any contact between players are also prohibited.

23.5 A school which participates in a game prior to the first allowable date or after the start of the state championship shall be required to forfeit the contest and be assessed a \$100.00 fine.

23.6 A school which conducts practice prior to the first

allowable date shall be assessed a fine of \$100.00 per illegal practice day.

23.7 A certified, emergency, or volunteer coach shall not be allowed to provide instruction out of the designated season in his/her assigned sport to returning members of the varsity or subvarsity teams of the school at which he/she coaches. He/she shall also be prohibited from coaching rising ninth graders (rising eighth graders if eighth grade is part of the same administrative unit as grades 9 through 12) who participated in his/her assigned sport at a feeder school.

23.7.1 A coach shall not be allowed to participate on a team in his/her assigned sport with the aforementioned players.

23.7.2 A coach shall also be prohibited from officiating contests in his/her assigned sport if the aforementioned players are participating except in organized league competition.

23.7.2.1 The league shall not be organized and conducted by the employing school, the employing school's booster club, or the employing school's coaching staff.

23.7.2.2 The league shall have written rules and regulations that govern the conduct of contests and establish the duties of contest officials.

23.7.2.3 The league shall have registration/entry procedures, forms, and fees; eligibility requirements; and fixed team rosters, team standings, and a master schedule of contests.

23.8 A certified, emergency, or volunteer coach shall not be allowed to provide instruction during the designated season in his/her assigned sport to current members of the varsity or subvarsity teams of the school at which he/she coaches outside of school sponsored practices, scrimmages, and contests.

23.9 A coach who is determined to be in violation of 23.7 or 23.8 shall be suspended from coaching in the specified sport at any DSSAA member school for up to 180 school days from the date the charge is substantiated.

24.0 Maximum Game Schedules and Designated Sport Season

24.1 The maximum number of regularly scheduled interscholastic contests/competition dates for each team and individual in the recognized sports and their designated season shall be as follows:

PROPOSED REGULATIONS

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Sport <i>Season</i>	Team Limitations <i>Week</i>	Individual Limitations <i>Week</i>	<i>Day</i>
Fall			
Cross Country (boys and girls)	16 competition dates	•+3 competition dates	•+3 competition dates
Field Hockey (girls)	16 contests	•3 contests	•3 competition dates 2 halves
Football (boys)	10 contests	1 contest	4 varsity quarters or any combination of 5 varsity and subvarsity quarters provided no more than 3 quarters are at the varsity level
Soccer (boys)	16 contests	•3 contests	•3 competition dates 2 halves
Volleyball (girls)	16 competition dates of which 1 date may involve more than 2 teams	•3 competition dates	•3 competition dates
Winter			
Basketball (boys and girls)	22 contests	•3 contests	•3 competition dates ⁴
Swimming (boys and girls)	*16 contests <u>16 Competition Dates</u>	•3 competition dates	•3 competition dates
Indoor Track (boys and girls)	12 contests	•+ 3 contests	•+3 contests
Wrestling (boys)	*18 contests	•3 competition dates	•3 competition dates ⁵
Spring			
Baseball (boys)	18 contests	•3 contests	•3 contests
Softball (girls)	18 contests	•3 contests	•3 contests
Golf (boys)	16 competition dates	•3 competition dates	•3 competition dates
Tennis (boys and girls)	16 contests	•3 contests	•3 contests
Outdoor Track (boys and girls)	18 competition dates	•+3 competition dates	•+3 competition dates
Lacrosse (boys and girls)	16 contests	•3 contests	•3 competition dates 4 quarters (boys) or 2 halves (girls)
Soccer (girls)	16 contests	•3 contests	•3 competition dates 2 halves

- *The third contest/competition date in a week must be held on Friday (no early dismissal permitted), Saturday or Sunday. This requirement is waived when a school is ~~not in session~~ closed for the entire week such as during winter or spring vacation.*
- + A team may not participate in two different cross country, indoor track or outdoor track meets on the same day.
- * Participation in a triangular meet shall count as two contests and participation in a quadrangular meet shall count as three contests toward the seasonal limitation.

24.2 Participation in any part of a quarter/half shall count as a quarter/half toward the weekly and daily limitations in that sport. However, in the case of football, participation on a free kick or a play from a scrimmage kick formation shall not count as a quarter. Overtime periods shall be considered as part of the fourth quarter or second half.

24.3 A week shall be designated as starting on Monday and ending on Sunday for all sports except football. A football week shall begin the day of the varsity game and end the day preceding the next varsity game or the following

Friday.

24.4 The preceding game limitations, with the exception of the individual daily limitation, shall not prohibit the rescheduling of postponed games at the discretion and convenience of the member schools involved provided the game was postponed due to inclement weather, unplayable field conditions, failure of the assigned officials to appear for the game, breakdown of the bus or van carrying the visiting team, or any other circumstances beyond the control of site management which preclude playing the game. However, a team may not participate in more than four (4) contests/

competition dates in a week.

24.5 The maximum number of regularly scheduled contests for each of the recognized sports, except football, shall be exclusive of conference championships, playoffs to determine tournament state berths, and the state tournament/meet. The maximum number of regularly scheduled football contests shall be exclusive of the state tournament.

24.5.1 Any playoffs to determine state tournament berths shall be under the control and supervision of the DSSAA tournament committee.

24.6 A student shall participate in a particular sport for only one season during each academic year.

~~24.6~~ 24.7 A school which participates in more than the allowable number of contests in a season shall be suspended from the state playoffs or, if a non-qualifying team, fined \$200.00.

~~24.7~~ 24.8 A school which exceeds the weekly contest limitation shall be required to forfeit the contest and be assessed a \$100.00 fine.

~~24.8~~ 24.9 A student who exceeds the weekly or daily contest limitation shall be considered an ineligible athlete and the school subject to the penalties stipulated in 14.0.

25.0 Practice Sessions

25.1 Member schools shall conduct a minimum of three (3) weeks of practice under the supervision of the school's coaching staff prior to the first scheduled contest in all sports.

~~25.1.1 The intent of this regulation is for each school to conduct regular daily practice during the aforementioned 21-day period, provided weather conditions and other safety related factors permit, without being required to practice on holidays and weekends.~~ Practicing on holidays and weekends shall be left to the discretion of the individual schools and conferences.

25.2 A student shall be required to practice for a period of at least seven (7) calendar days prior to participating in a contest. However, if a student has been participating in a state tournament during the preceding sports season and is unable to begin practicing at least seven (7) calendar days before his/her team's first contest, he/she shall be exempt from this requirement.

25.3 A practice session shall be defined as any instructional activity on the field, court, mat, or track or in the pool, weight room, or classroom such as team meetings, film reviews, blackboard sessions, warmup and cool down exercises, drills, mandatory strength training, etc.

25.3.1 All activities shall be under the supervision of a certified, emergency, or approved volunteer coach.

25.4 Practice sessions shall be limited to two (2) hours on official school days.

25.4.1 Split sessions may be conducted but practice time shall not exceed two hours for any individual athlete.

25.4.2 The two-hour practice limitation does not

include time for non-instructional activities such as dressing, showering, transportation, or training room care.

25.5 A school which deliberately exceeds the two-hour practice limitation shall be assessed a \$100.00 fine.

26.0 Awards

26.1 A member school and/or support group affiliated with a member school, such as an alumni association or booster club, shall be allowed to present recognition awards for team and/or individual accomplishments.

26.1.1 The awards, including artwork and lettering, shall require the approval of the administrative head of the school and their value shall be mostly symbolic.

26.1.2 Permissible awards include trophies, plaques, medals, letters, certificates, photographs, and similar items. Jackets, sweaters, shirts, watches, rings, charms, and similar items if properly inscribed (reference to the team or individual athletic accomplishment) are also acceptable.

26.1.3 Member schools and such support groups shall also be permitted to sponsor ~~team~~ banquets and present post-secondary scholarships.

26.2 A non-profit group such as a coaches association, booster club not affiliated with a member school, or community service organization shall be allowed to present recognition awards for team and/or individual accomplishments with the approval of the administrative head of the school.

26.2.1 With the exception of post-secondary scholarships, the awards shall have symbolic value only. Awards that have with utilitarian value are prohibited.

26.2.2 Non-profit groups shall also be permitted to sponsor ~~team~~ banquets.

26.3 Non-profit organizations co-sponsoring a tournament shall be allowed to give post-secondary scholarships to participating schools provided they are not awarded on the basis of team or individual performance in the tournament. Scholarship monies shall be administered in accordance with DSSAA and NCAA regulations.

See 3 DE Reg 440 (9/1/99)

26.4 Commercial organizations shall be allowed to present recognition awards for team and/or individual accomplishments with the approval of the administrative head of the school.

26.4.1 With the exception of post-secondary scholarships, the awards shall have symbolic value only. Awards with utilitarian value are prohibited. The aggregate retail value of the award shall not exceed \$50.00 per team or per recipient.

See 3 DE Reg 440 (9/1/99)

26.5 Non-symbolic competition awards (based on team's or individual's place finish), regardless of sponsor, shall have a ~~utilitarian~~ an aggregate retail value not to exceed \$50.00 per recipient and shall require the prior approval of

the Executive Director.

27.0 Boxing

Member schools shall not participate in interscholastic boxing.

28.0 Protests and Complaints

All protests and complaints brought before DSSAA shall be in writing and shall be acted on only after the administrative head of the school involved has been given an opportunity to appear before the Board of Directors.

29.0 Wrestling Weight Control Code

29.1 Each year, prior to January 15, a wrestler must establish his/her minimum weight class at a weigh-in witnessed by and attested to in writing by the athletic director or a designated staff member (excluding coaches) of the school the wrestler attends. Thereafter, a wrestler may not compete in a weight class below his/her duly established weight class. In addition, a wrestler may not compete in the individual state championship or a qualifying tournament in his/her duly established weight class unless the wrestler makes weight in at least fifty (50) percent of his/her conference and non-conference weigh-ins during the regular season.

29.1.1 A wrestler who weighs in at least once but fails to establish his/her minimum weight class prior to January 15 shall automatically be certified at the weight he/she last weighed in before that date.

29.1.2 A wrestler who does not weigh in at least once and fails to establish his/her minimum weight class prior to January 15 shall automatically be certified at the weight he/she first weighs in after that date.

29.1.3 A wrestler who is unable, prior to January 15, to get down to the maximum allowable weight of 275 pounds in order to compete in the heavyweight class shall be permitted to certify his/her minimum weight class at a later date in the season and thereafter be eligible to participate.

29.2 By January 15, a certified team roster listing the established minimum weight class of each wrestler shall be sent to the secretary of the conference to which the school belongs or to the secretary of the independent tournament. Further, duly attested notices of additions to the certified roster shall be sent to the conference secretary without delay.

29.2.1 The conference secretary shall in turn send to each school in his/her conference copies of the certified rosters of each school. Further, he/she shall note and send copies of the notices of additions to the rosters as these additions occur.

~~29.3 Violation of this code on the part of any coach shall be considered evidence of unethical conduct as shall other attempts to circumvent its intent which is to prevent harmful weight reduction.~~

30.0 Use of Officials

30.1 Member schools and tournament sponsors shall be required to use officials approved by DSSAA for interscholastic contests.

30.1.1 In the case of emergencies such as an act of God, refusal by an association to work games, or a shortage of qualified officials, schools which desire to use other than approved officials must obtain permission from the Executive Director.

30.2 Officials shall be required each year to attend the DSSAA rules interpretation clinic and pass the rules examination provided by the DSSAA office for the sport(s) they officiate.

30.2.1 Failure on the part of an official to attend the DSSAA rules interpretation clinic and pass the rules examination in the same season shall cause the official to be placed on probation and to lose his/her eligibility to officiate a state tournament contest ~~until both requirements have been satisfied in the same season~~ during that season.

30.2.2 Failure to ~~fulfill this obligation within one (1) year~~ satisfy both requirements in the same season for two (2) consecutive years shall cause the official to lose varsity officiating status during the second season. Failure to fulfill this obligation in subsequent years shall cause the official to continue to be restricted to subvarsity contests until both requirements have been satisfied in the same season.

30.2.3 Attending the fall soccer rules interpretation clinic shall satisfy the clinic attendance requirement for both the boys' and girls' soccer seasons. Attending the spring soccer rules interpretation clinic shall satisfy the clinic attendance requirement for only the girls' soccer season.

30.2.4 If, for a legitimate reason which is documented by the president of his/her association, an official is unable to attend the DSSAA rules interpretation clinic, he/she may view a videotape of the DSSAA clinic or, in the absence of a videotape, attend a clinic conducted by another NFHS member state association provided the following procedures are observed:

30.2.4.1 No later than the day of the DSSAA rules interpretation clinic, the president of the association notifies the Executive Director, in writing, of the official's inability to attend the clinic.

30.2.4.2 The out-of-state clinic is conducted by an individual either trained by the NFHS or designated as a clinician by the state's athletic association.

30.2.4.3 The official arranges for a letter to be sent to the Executive Director from the state's athletic association office verifying his/her attendance at the clinic.

30.3 Use of non-approved officials without permission from the Executive Director shall result in the school or tournament sponsor being assessed a \$50.00 fine per non-approved official.

31.0 ~~Summer~~ Out of Season Athletic Camp and Clinic Sponsorship

31.1 DSSAA does not restrict a student's decision to attend ~~a summer~~ an out of season athletic ~~camp~~ camp/clinic. However, schools, school organizations, coaches, or school related groups, such as booster clubs, may not sponsor an athletic ~~camp~~ camp/clinic which limits membership to their own district, locale, or teams. Coaches employed by ~~a summer~~ an out of season athletic camp may not instruct their own athletes as per 23.7.

31.2 School related groups, such as booster clubs, which desire to sponsor the attendance of their school's enrolled students at ~~summer~~ an out of season athletic ~~camp~~ camp/clinic, may do so with the approval of the local school board or governing body. The disbursement of funds to pay for ~~camp~~ camp/clinic related expenses (fees, travel costs, etc.) shall be administered by the principal or his/her designee and the funds shall be allocated according to the following guidelines:

31.2.1 All students and team members shall be notified of the available sponsorship by announcement, publication, etc.

31.2.2 All applicants shall share equally in the funds provided.

31.2.3 All applicants shall be academically eligible to participate in interscholastic athletics.

31.2.4 All applicants shall have one year of prior participation in the sport for which the ~~camp~~ camp/clinic is intended or, absent any prior participation, he/she shall be judged by the coach to benefit substantially from participation in the ~~camp~~ camp/clinic.

32.0 Sanctions - School Team Competition

32.1 Member schools may participate in tournaments/meets involving four (4) or more schools only if the event has been sanctioned by DSSAA and, if applicable, by the NFHS. Tournaments/meets shall be sanctioned in accordance with the following criteria:

32.1.1 The event shall not be for determining a regional or national champion.

32.1.2 The event shall be organized, promoted, and conducted by and all profits go to a nonprofit organization. Involvement by a commercial organization shall be limited to providing financial support.

32.1.3 Nonsymbolic competition awards shall have ~~a~~ an aggregate retail value of not more than \$50.00 per recipient and shall require the prior approval of the Executive Director.

32.1.4 Non-school event organizers shall submit a full financial report to the DSSAA office within ninety (90) calendar days of the completion of the event.

32.1.5 The event organizer shall submit a list of out-of-state schools which have been invited to participate and such schools shall be subject to approval by the

Executive Director.

32.1.6 Out-of-state schools which are not members of their state athletic association shall verify in writing that their participating athletes are in compliance with their state athletic association's eligibility rules and regulations.

32.1.7 The event organizer shall not accept financial support or sell advertising to companies involved in the production or distribution of alcohol and tobacco products.

32.1.8 The event organizer shall comply with all applicable NFHS sanctioning requirements.

See 3 DE Reg 525 (10/1/99)

32.2 Participation in a non-sanctioned event shall result in the offending school being assessed a \$25.00 fine. A second offense shall result in a \$50.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the sport season. A third offense shall result in a \$100.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the school year.

33.0 Coed Teams

33.1 If a school sponsors a boys' team and a girls' team in a particular sport, boys shall participate on the boys' team and girls shall participate on the girls' team even if the teams compete during different seasons.

~~33.1.1 A student shall participate in a particular sport for only one season during each academic year.~~

33.2 If a school sponsors only a boys' team in a particular sport, girls shall be permitted to participate on the boys' team.

33.2.1 Coed teams shall participate only in the boys' state championship tournament/meet.

33.3 If a school sponsors only a girls' team in a particular sport, boys shall not be permitted to participate on the girls' team.

34.0 Non-School Instructional Camps and Clinics

34.1 A student may participate in a commercial camp or clinic, including private lessons, both during and out of the designated sport season provided the following conditions are observed:

34.1.1 The student must participate unattached and may not wear school uniforms ~~or use school equipment~~.

34.1.2 The student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

~~34.1.2~~ 34.1.3 The school may not provide transportation or pay fees.

~~34.1.3~~ 34.1.4 The school coach may not require his/her athletes to participate in a camp or clinic or provide instruction to his/her returning athletes in a camp or clinic.

35.0 Open Gym Programs

35.1 A member school may open its gymnasium or

other facility for informal, recreational activities in accordance with the following provisions:

35.1.1 The open gym must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

35.1.2 Student participation must be voluntary and the open gym must not be a prerequisite for trying out for a particular team.

35.1.3 The activities must be unstructured and student-generated. Organized drills in the skills or techniques of a particular sport are prohibited. Organized competition with fixed team rosters is also prohibited.

35.1.3.1 A coach may not predetermine that the open gym will include only his/her sport and publicize the open gym as being restricted to that sport. It is the responsibility of the adult supervisor to permit as many different activities as the facility can effectively and safely accommodate.

See 3 DE Reg 440 (9/1/99)

35.1.4 A coach may open the facility and distribute playing equipment but may not instruct, officiate, participate, organize the activities, or choose teams in his/her assigned sport.

35.1.5 Playing equipment is restricted to that which is customarily used in a contest in a particular sport. Playing equipment which is only used in a practice session is prohibited.

35.1.6 The participants must provide their own workout clothing.

36.0 Conditioning Programs

36.1 A member school may conduct a conditioning program in accordance with the following provisions:

36.1.1 The conditioning program must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

36.1.2 Student participation must be voluntary. The conditioning program must not be a prerequisite for trying out for a particular team.

36.1.3 Permissible activities include stretching, lifting weights, jumping rope, running, calisthenics, aerobics, and similar generic conditioning activities. Organized drills in the skills or techniques of a particular sport are prohibited.

36.1.4 A coach may not provide instruction in sport specific skills or techniques.

36.1.5 Sport specific equipment is prohibited.

36.1.6 The participants must provide their own workout clothing.

37.0 Non-Payment of Fines

A school which does not pay, by July 1, all fines incurred during the school year shall be ineligible to participate in a state championship event in any sport during

the following school year until such time as all fines are paid.

38.0 Additional Penalties

Additional penalties may be imposed by the Executive Director or the DSSAA Board of Directors for repeat offenses or as deemed necessary to ensure the proper conduct of interscholastic competition.

1052 DSSAA Junior High/Middle School Interscholastic Athletics

1.0 Eligibility

No student shall represent a school in an interscholastic scrimmage or contest if he/she does not meet the following requirements:

1.1 Age

1.1.1 Eighth-grade students who become 15 years of age on or after June 15 in a school terminating in the eighth grade shall be eligible for all sports during the current school year provided all other eligibility requirements are met.

1.1.1.1 Permission shall be granted for 15-year old eighth-grade students in a school terminating in the eighth grade who are ineligible for junior high/middle school competition to participate in the district high school athletic program provided they meet all other eligibility requirements.

1.1.2 In determining the age of a contestant, the birth date as entered on the birth record of the Bureau of Vital Statistics shall be required and shall be so certified on all eligibility lists.

1.1.3 Requests for waiver of the age requirement shall be considered only for participation on an unofficial, non-scoring basis in non-contact sports.

1.2 Enrollment and Attendance

1.2.1 A student must be legally enrolled in the junior high/middle school which he/she represents and must be in regular attendance ~~by September 20~~ prior to the 11th school day of the academic year.

1.2.1.1 A student who enters school ~~after September 20~~ on or after the 11th school day of the academic year shall not be eligible to participate ~~until February 1~~ for ninety (90) school days.

~~1.2.1.2 A student who enters school after February 1 shall not be eligible to participate during the remainder of the school year.~~

1.2.2 A student who is participating in the Delaware School Choice Program, as authorized by 14 *Del. C.*, Ch. 4, is obligated to attend the "choice school" for a minimum of two (2) years unless the student's custodial parent(s) or court appointed legal guardian(s) relocate to a different school district or the student fails to meet the academic requirements of the "choice school". If a student

attends a "choice school" for less than two (2) years and subsequently returns to his/her home school, the student must receive a release from the "choice district" in order to legally enroll at his/her home school. Without a release, the student would not be eligible to participate in interscholastic athletics (see 1.4.9).

1.2.3 A student may not participate in a practice, scrimmage, or contest during the time a suspension, either in-school or out-of-school, is in effect or during the time he/she is assigned to an alternative school for disciplinary reasons.

1.2.4 A student must be legally in attendance at school in order to participate in a practice, scrimmage, or contest except when excused by proper school authorities.

1.2.4.1 A student who is not legally in attendance at school due to illness or injury shall not be permitted to participate in a practice, scrimmage, or contest on that day.

1.2.5 An ineligible student who practices in violation of ~~these rules~~ 1.2.3 or 1.2.4 shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

1.2.6 ~~Failure to complete a semester or absence for one or more semesters for reasons other than personal illness shall disqualify a student for ninety (90) school days from the date of reentry to school.~~

1.3 Residence

1.3.1 A student must be living with his/her custodial parent(s) or court appointed legal guardian(s) in the attendance zone of the school which he/she attends in order to be eligible for interscholastic athletics in that school. In cases of joint custody, the custodial parent shall be the parent with actual physical placement as determined by court action.

1.3.1.1 Maintaining multiple residences in order to circumvent this requirement shall render the student ineligible.

1.3.1.2 A student who, ~~under authority of a policy of the local board of education~~ pursuant to established school board policy or administrative procedure, remains in a school he/she has been attending after his/her legal residence changes to the attendance zone of a different school in the same school district, may exercise, prior to the first official student day of the subsequent academic year, a one time election to remain at his/her current school and thereby not lose athletic eligibility.

1.3.1.2.1 However, if a student chooses to remain at his/her current school and ~~subsequently then~~ transfers to the school in his/her new attendance zone on or after the first official student day of the subsequent academic year, he/she shall be ineligible, for ninety (90) school days.

1.3.1.3 If a student changes residence to a different attendance zone after the start of the last marking

period and, pursuant to established school board policy or administrative procedure, is granted permission to continue attending his/her present school ~~via established district policy for such~~, the student shall retain his/her athletic eligibility in that school for the remainder of the school year provided all other eligibility requirements are met.

1.3.1.4 A student may be residing outside of the attendance zone of the school which he/she attends if the student is participating in the Delaware School Choice Program as authorized by 14 *Del. C.*, Ch. 4.

1.3.1.5 A student who is a non-resident of Delaware shall be eligible at a public or charter school if, in accordance with 14 *Del. C.*, § 607, his/her custodial parent or court appointed legal guardian is a full-time employee of that district.

1.3.1.6 Notwithstanding 1.3.1, a student shall be eligible at a public or vocational-technical school if he/she enrolls in accordance with 14 *Del. C.* §202(a), the Caregivers School Authorization.

1.3.1.6.1 An exception would be a student whose relative caregiver does not provide the documentation required by the Caregivers' School Authorization (proof of relation and proof of full-time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the relative caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

1.4 Transfer

1.4.1 A student who has not previously participated in interscholastic athletics (previous participation is defined as having practiced, scrimmaged or competed in grades 6 through 8), is released by a proper school authority from a sending school, has completed the registration process at the receiving school, and is pursuing an approved course of study shall be eligible immediately upon registration provided he/she meets all other DSSAA eligibility requirements.

1.4.2 If a student has previously participated in interscholastic athletics, he/she shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school unless one of the following exceptions applies:

1.4.2.1 The transfer is within a school district and is approved by the district's superintendent pursuant to established school board policy or administrative procedure. This provision shall not apply to a student who transfers to his/her home school from a "choice school" within the district and who has not completed the two-year attendance requirement unless he/she satisfies the conditions stipulated in 1.4.2.5.1 through 1.4.2.5.4. This provision shall also not apply to a student who transfers from a "choice school" to

another "choice school" within the district (see 1.4.6.1).

~~1.4.2.1~~ 1.4.2.2 The transfer is caused by court action, court action being an order from a court of law affecting legally committed students.

~~1.4.2.1.1~~ 1.4.2.2.1 In the case of a transfer of guardianship/custody, the transfer shall be the result of a court order signed by a judge, commissioner, or master of a court of competent jurisdiction. A petition for the transfer of guardianship/custody, an affidavit, (except as permitted by 1.4.2.3) or a notarized statement signed by the affected parties shall not be sufficient to render the student eligible to participate in interscholastic athletics.

1.4.2.3 The transfer is in accordance with 14 Del. C. §202(a), the Caregivers School Authorization.

1.4.2.3.1 An exception would be a student whose relative caregiver does not provide the documentation required by the Caregivers School Authorization (proof of relation and proof of full-time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the relative caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

~~1.4.2.2~~ 1.4.2.4 The transfer is the result of a change in residence by the custodial parent(s) or court appointed legal guardian(s) from the attendance zone of the sending school to the attendance zone of the receiving school. A change in residence has occurred when all occupancy of the previous residence has ended.

~~1.4.3~~ 1.4.2.4.1 A student who transfers from a public, private, charter or choice school to another public, private, charter, or choice school, except as prohibited by 1.4.7.1, shall be eligible in the receiving school immediately when the custodial parent(s) or court appointed legal guardian(s) has established a new legal residence in another public school attendance zone different from the one in which the custodial parent(s) or court appointed legal guardian(s) resided for attendance in the sending school. In the case of a transfer to a public school, the new legal residence must be in the attendance zone of the receiving school.

~~1.4.5~~ 1.4.2.5 ~~No waiver shall be required for students who transfer~~ The transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year provided:

~~1.4.5.1~~ 1.4.2.5.1 The student has completed the registration process at the receiving school prior to the first official student day of the academic year. The first official student day shall be defined as the first day on which students in any grade in that school are required to be in attendance.

~~1.4.5.2~~ 1.4.2.5.2 The student has not attended class, excluding summer school, or participated in a practice, scrimmage, or contest at the sending school since the close of the previous academic year.

~~1.4.5.3~~ 1.4.2.5.3 The student's legal residence is located in the attendance zone of the receiving school.

~~1.4.5.4~~ 1.4.2.5.4 All other DSSAA eligibility requirements have been met.

~~1.4.4~~ 1.4.3 If a waiver of the ninety (90) school day ineligibility clause is requested due to a desired change in the program of study or financial hardship, the parent(s) or court appointed legal guardian(s) is responsible for providing documentation to the DSSAA Board of Directors to support the request. Documentation should include the following ~~for~~ each specific request:

~~1.4.4.1~~ 1.4.3.1 ~~Change in program~~ Program of study (a multi-year hierarchical sequence of courses with a common theme or subject matter leading to a specific outcome).

~~1.4.4.1.1~~ 1.4.3.1.1 Student schedule card.

~~1.4.4.1.2~~ 1.4.3.1.2 Student transcript.

~~1.4.4.1.3~~ 1.4.3.1.3 Current course descriptions from both the sending and receiving schools.

~~1.4.4.1.4~~ 1.4.3.1.4 Statement from the principal of the sending school indicating that a significant part of the student's desired program of study will not be offered and that it will place the student at a definite disadvantage to delay transfer until the end of the current school year.

~~1.4.4.1.5~~ 1.4.3.1.5 Statement from the principal of both the sending and receiving school that the student is not transferring primarily for athletic advantage as described in ~~1.4.6.1~~ 1.4.5.1 through ~~1.4.6.4~~ 1.4.5.4.

~~1.4.4.2~~ 1.4.3.2 ~~Finances~~ Financial hardship

~~1.4.4.2.1~~ 1.4.3.2.1 Proof of extreme financial hardship caused by significant loss of income and/or increased expenses.

~~1.4.4.2.2~~ 1.4.3.2.2 Statement from the principal of both the sending and receiving schools that the student is not transferring primarily for athletic advantage as defined in ~~1.4.6.1~~ 1.4.5.1 through ~~1.4.6.4~~ 1.4.5.4.

~~1.4.6~~ 1.4.4 In cases of joint custody when a primary residence is established, a change in a student's primary residence without court action subjects the student to the ninety (90) school-day ineligibility clause.

~~1.4.7~~ 1.4.5 A change of custody or guardianship for athletic advantage shall render a student ineligible under the ninety (90) school-day ineligibility clause if the primary reason for his/her transfer is one of the following:

~~1.4.7.1~~ 1.4.5.1 To seek a superior team.

~~1.4.7.2~~ 1.4.5.2 To seek a team more compatible with his/her abilities.

~~1.4.7.3~~ 1.4.5.3 Dissatisfaction with the philosophy, policies, methods, or actions of a coach or administrator

pertaining to interscholastic athletics.

~~1.4.7.4~~ 1.4.5.4 To avoid disciplinary action imposed by the sending school related to or affecting interscholastic athletic participation.

~~1.4.8~~ If a student transfers at any time during the school year for reasons other than those specified in ~~1.4.2~~, the student shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school except as permitted by ~~1.4.1~~.

~~1.4.9~~ 1.4.6 A student who transfers from a public, private, or charter school to a school of choice, as authorized by 14 Del. C., Chapter 4 shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of ~~the~~ the receiving school's academic year and the student satisfies the conditions stipulated in ~~1.4.5.1, 1.4.5.2, and 1.4.5.4~~ 1.4.2.5.1, 1.4.2.5.2, and 1.4.2.5.4.

~~1.4.9.1~~ 1.4.6.1 A student who transfers from a school of choice to another school of choice shall be ineligible to participate in interscholastic athletics during his/her first year of attendance at the receiving school unless the receiving school sponsors a sport(s) not sponsored by the sending school in which case the student shall be eligible to participate in that sport(s) only.

~~1.4.10~~ 1.4.7 A student who transfers from a school of choice to a public, private, or charter school shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year and the student satisfies the conditions stipulated in ~~1.4.5.1~~ 1.4.2.5.1 through ~~1.4.5.4~~ 1.4.2.5.4.

~~1.4.8.1~~ 1.4.8. If a student transfers with fewer than ninety (90) school days left in the academic year, he/she shall be ineligible for the remainder of the school year but shall be eligible beginning with the subsequent fall sports season provided he/she is in compliance with all other eligibility requirements.

1.5 Amateur

1.5.1 A student may not participate in an interscholastic sport unless he/she is considered an amateur in that sport. A student forfeits his/her amateur status if he/she does any of the following:

1.5.1.1 Knowingly plays on or against a professional team. ~~This rule does not apply to an athlete who participates in summer baseball or other sports outside of the school's sports season in which he/she does not receive any form of remuneration for athletic services.~~

1.5.1.2 Signs a professional contract, accepts reimbursement for expenses to attend a professional tryout, or receives financial assistance in any form from a professional sports organization.

1.5.1.3 Enters competition under an assumed name. The surname and given name used by any player in

~~the his/her~~ first game of interscholastic competition shall be used during the remainder of the student's interscholastic career. Any change in spelling or use of another name shall be regarded as an attempt to evade this rule unless the change has been properly certified by the player to the principal of the school.

~~1.5.1.3.1~~ In the event a false name is used without the knowledge and consent of the player, or if the player has participated in a game without having his/ her name appear in the box score, or if his/her name appears in the box score of a game in which he/she did not play, it becomes the sole obligation of the player involved to report the error or omission to the principal of the school within 48 hours from the time such game was played.

1.5.1.4 Receives remuneration of any kind or accepts reimbursement for expenses in excess of the actual and necessary costs of transportation, meals, and lodging for participating in a team or individual competition or an instructional camp/clinic. Reimbursement for the aforementioned expenses is permitted only if all of the participants receive the same benefit.

1.5.1.5 Receives cash or a cash equivalent (savings bond, certificate of deposit, etc.), merchandise (except as permitted by 25.4) or a merchandise discount (except for discount arranged by school for part of team uniform), a reduction or waiver of fees, a gift certificate, or other valuable consideration as a result of his/her participation in an organized competition or instructional camp/clinic.

1.5.1.5.1 Accepting an event program and/or a complimentary item(s) (t-shirt, hat, equipment bag, etc.) that is inscribed with a reference to the event, has an aggregate retail value of no more than \$50.00, and is provided to all of the participants, shall not jeopardize his/her amateur status.

1.5.1.6 Sells or pawns awards received.

1.5.1.7 Uses his/her athletic status to promote or endorse a commercial product or service in a newsprint, radio, or television advertisement or personal appearance.

~~1.5.1.8~~ ~~Receives an award prohibited by DSSAA for being a member of some athletic organization.~~

1.5.2 Accepting compensation for teaching lessons, coaching, or officiating shall not jeopardize his/her amateur status.

1.5.3 A student who forfeits his/her amateur status under the provisions of this rule is ineligible to participate at the interscholastic level in the sport in which the violation occurred. He/she may be reinstated after a period of up to 180 school days provided that during the suspension, he/she complies with all of the provisions of this rule. The suspension shall date from the time of the last offense.

2.0 Use of Influence for Athletic Purposes

2.1 The use of influence by a person(s) employed by or

representing a member school including members of alumni associations, booster groups, and similar organizations to persuade, induce, or facilitate the enrollment of a student in that school for athletic purposes shall render the student ineligible for up to 180 school days from the date the charge is substantiated. In addition, the offending school shall be placed on probation, as determined by the DSSAA Board of Directors, and the offending employee, if a coach, shall be suspended for up to 180 school days from the date the charge is substantiated.

2.2 The use of influence for athletic purposes shall include, but not be limited to, the following:

2.2.1 Offer of money, room, board, clothing, transportation, or other valuable consideration to a prospective athlete or his/her parent(s) or court appointed legal guardian(s).

2.2.2 Offer of waiver/reduction of tuition or financial aid if based, even partially, on athletic considerations.

2.2.3 Preference in job assignments or offer of compensation for work performed in excess of what is customarily paid for such services.

2.2.4 Offer of special privileges not accorded to other students.

2.2.5 Offer of financial assistance including free or reduced rent, payment of moving expenses, etc., to induce a prospective athlete or his/her custodial parent(s) or court appointed legal guardian(s) to change residence.

2.3 A school employee or Board approved volunteer may not initiate contact or request that a booster club member, alumnus, or player initiate contact with a student enrolled in another school or his/her parent(s) or court appointed legal guardian(s) in order to persuade the student to enroll in a particular school for athletic purposes. Illegal contact shall include, but not be limited to, letters, questionnaires or brochures, telephone calls, and home visits or personal contact at athletic contests.

2.3.1 If a coach or athletic director is contacted by a prospective athlete or his/her parent(s) or court appointed legal guardian(s), the former must refer the individual(s) to the principal or school personnel responsible for admissions.

2.3.2 A school employee or Board approved volunteer may discuss the athletic program with a prospective student or his/her parent(s) or court appointed legal guardian(s) during an open house or approved visit initiated by the parent(s) or court appointed legal guardian(s).

2.3.2.1 A school employee or Board approved volunteer may provide information concerning sports offered, facilities, conference affiliation, and general athletic policies. However, he/she is not permitted to state or imply in any way that his/her athletic program is superior to that of another school or that it would be more beneficial or advantageous for the prospective student to participate in

athletics at his/her school.

2.4 If the number of applicants under the Delaware School Choice Program exceeds the number of available student openings, the selection criteria established by the district shall not include athletic considerations.

3.0 Non-school Competition (participants competing "unattached" and not representing their schools)

3.1 A student may participate on a non-school team or in a non-school individual event both during and out of the designated sport season. However, the student owes his/her primary loyalty and allegiance to the school team of which he/she is a member. A school shall have the authority to require attendance at practices and contests and students not in compliance shall be subject to disciplinary action as determined by the school.

3.2 Participation on a non-school team or in a non-school individual event shall be subject to the following conditions:

3.2.1 With the exception of organized intramurals, the student may not wear school uniforms ~~or use school equipment~~.

3.2.2 With the exception of organized intramurals, the student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

~~3.2.2~~ 3.2.3 The school or a school affiliated support group may not provide transportation.

~~3.2.3~~ 3.2.4 The school or a school affiliated support group may not pay entry fees or provide any form of financial assistance.

~~3.2.4~~ 3.2.5 The school coach may not require his/her athletes to participate in non-school competition or provide instruction to his/her athletes in non-school competition.

3.3 14 *Del. C.*, § 122 (15) requires written parental permission prior to participation on a similar team during the designated sport season. Written authorization must be on file in the student's school prior to engaging in a tryout, practice, or contest with a similar team. Consent forms shall be available in all member schools.

3.3.1 Similar teams shall include organized intramural teams as well as non-school teams in that sport.

4.0 Passing Work

4.1 In order to be eligible for participation in interscholastic athletics, including practices, a student must pursue a regular course of study or its equivalent as approved by the local governing body; and must be passing at least four (4) credits. Two (2) of those credits must be in the ~~separate~~ areas of English, Mathematics, Science, or Social Studies.

4.1.1 A student who is receiving special education services and is precluded from meeting the aforementioned academic requirements due to modifications in the grading procedure or course of study, shall be adjudged eligible by

the principal if he/she is making satisfactory progress in accordance with the requirements of his/her individualized education plan (IEP).

4.2 A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in interscholastic athletics, including practices, for the next marking period.

4.2.1 In the case of a conflict between the marking period grade and the final grade, the final grade shall determine eligibility.

4.2.2 The final accumulation of credits shall determine eligibility for the first marking period of the following school year. When a student makes up a failure or earns the required credit(s) during the summer, he/she shall become eligible provided he/she successfully completes the course work prior to the first official student day of the school year.

4.2.2.1 Written verification of the successful completion of a correspondence course must be received before a student shall regain his/her eligibility.

4.3 A student forfeits or regains his/her eligibility, in accordance with the provisions of this rule, on the day report cards are issued.

4.4 Local school boards and non-public schools may establish more stringent requirements for academic eligibility than the minimum standards herein prescribed.

4.5 An ineligible student who practices in violation of ~~these rules 4.1 or 4.2~~ shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

5.0 Participation

5.1 ~~For the school year 2000-2001 through 2002-2003~~ During the 2001-02 and 2002-03 school years, the following provisions shall be in effect:

5.1.1 No student shall represent a school in athletics after six (6) consecutive semesters from the date of his/her first entrance into the seventh grade in schools with grades 7 through 8, inclusive.

5.1.2 No student shall represent a school in athletics after eight (8) consecutive semesters from the date of his/her first entrance into the sixth grade in schools with grades 6 through 8, inclusive.

5.1.2.1 Participation on the part of a sixth-grade student shall be at the discretion of the individual school.

5.1.2.2 Sixth-grade students shall not be permitted to participate in football unless the conference develops a classification system that is approved by the DSSAA Board of Directors.

5.2 Beginning with the 2003-2004 school year, 2003-2004 and thereafter the following provisions shall be in effect:

5.2.1 No student shall represent a school in

athletics after four (4) consecutive semesters from the date of his/her first entrance into the seventh grade in schools which restrict participation in interscholastic athletics to students in grades 7 and 8 unless a waiver is granted for hardship reasons.

5.2.1.1 No student shall have more than two (2) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or a spring sport or combination of spring sports.

5.2.1.2 "Hardship" shall be defined as extenuating circumstances which are unusual, extraordinary, and beyond the control of the student or his/her parent(s) or court appointed legal guardian(s), preclude him/her from completing the academic requirements for promotion within the normal period of eligibility; and deprive him/her of all or part of one of his/her opportunities to participate in a particular sports season.

5.2.1.2.1 ~~The circumstances must be unusual, unavoidable, and extraordinary.~~ A clear and direct causal relationship must exist between the alleged hardship condition and the failure of the student to complete the academic requirements for promotion within the normal period of eligibility and the loss of all or part of one of his/her opportunities to participate in a particular sports season.

5.2.1.2.2 The burden of proof rests with the student in conjunction with the waiver/appeal process as described in 1053 ~~DSSAA~~ Waiver Procedure and 1055 ~~DSSAA~~ Appeal Procedure. Claims of extended illness, debilitating injury, emotional stress, etc., must be accompanied by appropriate documentation. Evidence must be submitted to verify that the student or his/her parent(s) or court appointed legal guardian(s) sought assistance to ameliorate the effects of the hardship condition.

5.2.2 No student shall represent a school in athletics after six (6) consecutive semesters from the date of his/her first entrance into the sixth grade in schools which permit students in grades 6, 7 and 8 to participate in interscholastic athletics unless a waiver is granted for hardship reasons as specified in 5.2.1.2.

5.2.2.1 No student shall have more than three (3) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or a spring sport or combination of spring sports.

5.2.2.2 Participation on the part of a sixth-grade student shall be at the discretion of the individual school.

5.2.2.3 Sixth-grade students shall not be permitted to participate in football unless the conference develops a classification system that is approved by the DSSAA Board of Directors.

5.3 Students below the sixth grade shall not be permitted to practice, scrimmage, or compete on junior high/middle school interscholastic teams.

5.4 Participation shall be defined as taking part in a

school sponsored practice, (see 24.3), scrimmage, or contest on or after the first allowable date for practice in that sport.

6.0 Grades

The junior high/middle school interscholastic athletic program shall include grades 6 through 8, inclusive.

7.0 Junior High/Middle School and Senior High School Competition

7.1 No junior high/middle school student who has completed a season at the junior high/middle school level shall compete in the same sport at the senior high school level during the same school year.

7.2 A junior high/middle school student who participates in a varsity or subvarsity game at the high school level shall be ineligible to participate at the junior high/middle school level in the same sport.

8.0 Examinations

8.1 A student shall not be eligible to practice, scrimmage, or compete in an interscholastic contest unless he/she has been adequately examined by a licensed physician (M.D. or D.O.), a certified nurse practitioner, or a certified physician's assistant on or after June 1 and before beginning such athletic activity for the current school year.

8.1.1 A certificate to that effect, as well as the parent's or court appointed legal guardian's consent, shall be on file with the administrative head of the school prior to the student participating in a practice, scrimmage, or game.

8.2 For any subsequent sports season in the school year, a limited reexamination shall be performed under the following circumstances:

8.2.1 If the athlete has been treated for an injury during the ~~immediately~~ preceding sports season.

8.2.2 If the athlete has been out of school during the preceding ~~term~~ sports season with an illness other than the usual minor upper respiratory or gastrointestinal upset.

8.2.3 If an operation has been performed on the athlete during the preceding ~~term~~ sports season.

8.2.4 If the student has a remedial defect.

8.3 The medical history of the student should be available at the time of each examination.

8.4 A player who is properly certified to participate in interscholastic athletics but is physically unable to ~~practice~~ participate for five (5) consecutive days on which a practice, scrimmage, or contest is held due to illness or injury, must present to the administrative head of the school a statement from a qualified physician that he/she is again physically able to participate.

9.0 Clarifying Eligibility

9.1 In cases of ~~doubt~~ uncertainty or disagreement, the eligibility of a student shall be determined initially by the

Executive Director. If the Executive Director determines that the student is ineligible, the school and the student shall be notified and the student suspended immediately from participation in interscholastic athletics.

9.2 The school and the student shall be informed that the decision of the Executive Director may be appealed to the DSSAA Board of Directors in accordance with the procedure described in 1055 ~~DSSAA~~ Appeal Procedure.

9.3 Decisions of the DSSAA Board of Directors to affirm, modify, or reverse the eligibility rulings of the Executive Director may be appealed to the State Board of Education in accordance with the procedure described in 1055 ~~DSSAA~~ Appeal Procedure.

10.0 Eligibility Lists

10.1 Member schools shall use eligibility forms approved by the Executive Director.

10.2 A copy of the original eligibility report and subsequent addenda must be either received by the Executive Director or postmarked prior to the first contest for which the students listed are eligible. Failure to file an eligibility report as prescribed shall result in a \$15.00 fine against the school.

10.3 ~~A student not listed on the original eligibility report or subsequent addenda on file in the Executive Director's office shall be ineligible.~~ In the case of a student who met all DSSAA eligibility requirements but was omitted from the eligibility report due to administrative or clerical error, he/she shall be adjudged eligible and the school assessed a \$10.00 fine.

11.0 Contracts Interchanged

11.1 Contracts between DSSAA member schools or between DSSAA member schools and full member schools of comparable state associations are encouraged but not required.

11.1.1 Conference master contracts are approved substitutes for individual contracts.

11.1.2 In the case of a dispute and provided either a signed individual contract or conference master contract is in place, appeal may be made to the DSSAA Board of Directors which, after review of the circumstances, may assign an appropriate penalty.

11.1.2.1 Without a signed individual contract or conference master contract, a member school has no right of appeal to the Executive Director or the DSSAA Board of Directors.

11.2 Contracts ~~are required~~ between DSSAA member schools and non-member or associate member schools of comparable state associations are required.

11.2.1 A copy of the signed contract must be either received by the Executive Director or postmarked prior to the contest for which the agreement was drawn up. Failure to file a signed contract as prescribed shall result in the

DSSAA member school being assessed a \$15.00 fine.

11.2.2 In the case of a dispute, a member school has no right of appeal to the Executive Director or the DSSAA Board of Directors unless a signed individual contract is in place.

11.3 Contracts shall be interchanged according to the following provisions:

11.3.1 Contracts on the accepted form shall be arranged by the competing schools for each season's interscholastic athletic contests.

11.3.2 Contracts shall be drawn up by the faculty manager or other designated staff member of the home school of the earlier contest.

11.3.3 A signed contract or any part thereof may not be nullified or modified except by mutual agreement of both schools involved.

11.4 If a game is not played, it shall be considered "no contest" unless a signed individual contract or conference master contract was in place and one of the participating schools breached the agreement in which case appeal may be made to the Executive Director or the DSSAA Board of Directors.

12.0 Spring Football

12.1 No member school shall participate in spring football games nor shall a member school conduct football practice of any type outside of the regular fall sports season.

12.2 "Organized football" or "organized football practice" shall be defined as any type of sport which is organized to promote efficiency in any of the various aspects of football. Rugby and touch football featuring blocking, tackling, ball handling, signaling, etc. shall be considered "organized football" and shall be illegal under the intent of this rule.

13.0 Licensed Physician

13.1 Provision shall be made for a licensed physician, a NATA certified athletic trainer, or a registered nurse to be present at all interscholastic football games in which a member school participates. The host school shall provide this service.

13.2 Failure by the host school to provide this service shall result in the school being assessed a \$100.00 fine.

14.0 Use of Ineligible Athlete

14.1 The deliberate or inadvertent use of an ineligible athlete in the sports of soccer, football, volleyball, field hockey, basketball, baseball, softball, and lacrosse shall require the offending school to forfeit the contest(s) in which the ineligible athlete participated.

14.1.1 If the infraction occurs during a tournament, the offending school shall be replaced by its most recently defeated opponent. Teams eliminated prior to the most recently defeated opponent shall not be allowed to reenter

the tournament.

14.1.2 Team and/or individual awards shall be returned to the event sponsor.

14.1.3 Team and/or individual records and performances shall be nullified.

14.1.4 The offending school may appeal to the DSSAA Board of Directors for a waiver of the forfeiture penalty if the ineligible athlete had no tangible effect on the outcome of the contest(s). If the forfeiture penalty is waived, the offending school shall be reprimanded and fined \$200.00 unless the athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withheld information or provided false information that caused him/her to be eligible for interscholastic competition. The burden of proof, in both cases, rests entirely with the offending school.

14.1.5 A forfeit shall constitute a loss for the offending school and a win for its opponent for purposes of standings.

14.1.6 A forfeit shall be automatic and not subject to refusal by the offending school's opponent.

14.2 The deliberate or inadvertent use of an ineligible athlete in the sports of cross country, wrestling, swimming, track, golf, and tennis shall require the offending school to forfeit the matches won and/or points earned by the ineligible athlete or by a relay team of which he/she was a member. The points contributed by an ineligible athlete to his/her team score shall be deleted.

14.2.1 If the infraction occurs during a tournament, the ineligible athlete shall be replaced by his/her most recently defeated opponent or next highest finisher. Contestants eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

14.2.2 Individual awards earned by the ineligible athlete and team awards, if necessary because of adjustments in the standings, shall be returned to the event sponsor.

14.2.3 Individual records and performances by the ineligible athlete shall be nullified.

14.3 If an ineligible athlete participates in interscholastic competition contrary to DSSAA rules but in accordance with a temporary restraining order or injunction against his/her school and/or DSSAA, and the injunction is subsequently vacated, stayed, or reversed, or the courts determine that injunctive relief is not or was not justified, or the injunction expires without further judicial determination, the penalties stipulated in 14.1 and 14.2 above shall be imposed.

14.4 The intentional use of an ineligible athlete by a member school or repeated indifference to its responsibility to determine the eligibility of its athletes will subject the school to additional penalties which may include suspension for up to 180 school days from the date the charge is substantiated.

14.5 If a coach knowingly withholds information or provides false information that causes an athlete to be

eligible for interscholastic competition, the coach shall be suspended from coaching in any sport at any DSSAA member school for up to 180 school days from the date the charge is substantiated.

14.6 If an athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withholds information or provides false information that causes him/her to be eligible for interscholastic competition, the athlete shall be suspended from participation in any sport at any DSSAA member school for up to 180 school days from the date the charge is substantiated.

15.0 Reporting Violations

15.1 If a school violates a provision of the DSSAA Constitution and Bylaws, the administrative head or his/her designee shall notify the Executive Director in writing of the violation.

15.2 If a school uses an ineligible athlete, the administrative head or his/her designee shall notify the opposing school(s) or event sponsor, in the case of a tournament or meet, and the Executive Director in writing of the violation and the forfeiture of the appropriate game(s), match(es), and/or point(s) won.

15.3 All violations will be reviewed by the DSSAA Board of Directors which may impose additional penalties in accordance with 36.0.

16.0 Equivalent Rules

16.1 A full member school shall not participate in a scrimmage or contest with an in-state school that is not a member in good standing of DSSAA unless the opposing school, as part of a written contract, certifies that its contestants are eligible under DSSAA rules.

16.2 A full member school shall not participate in a scrimmage or contest with an associate or non-member school of another state association unless the opposing school, as part of a written contract, certifies that its contestants are eligible under the rules of its home state association.

16.3 An associate member school shall not participate in a scrimmage or contest with an in-state school that is not a member in good standing of DSSAA unless the opposing school complies with the conditions specified in 16.1. However, the opposing school shall be exempt from those rules which DSSAA has waived for its associate member school.

16.4 An associate member school shall not participate in a scrimmage or contest with an associate or non-member school of another state association unless the opposing school complies with the conditions specified in 16.2. However, the opposing school shall be exempt from those rules which DSSAA has waived for its associate member school.

16.5 Member schools shall not participate in a practice,

scrimmage, or contest with a non-school sponsored team.

16.6 Member schools shall not participate in a practice, scrimmage, or contest with ~~university, college students, or junior college undergraduates.~~

~~16.7~~ 16.6.1 This ~~rule~~ provision shall not apply to games played against the alumni or faculty of the school when the game is sponsored by school authorities.

~~16.8~~ 16.7 A school which participates in a game against an illegal opponent shall be required to forfeit the contest and be assessed a \$100.00 fine.

17.0 Codes

17.1 DSSAA is affiliated with the National Federation of State High School Associations (NFHS). The playing codes, sanctions, and other rules of the NFHS are adopted except as modified by the DSSAA Board of Directors.

17.2 The playing rules of the United States Tennis Association, the United States Golf Association and the United States Lacrosse Association are adopted for the sports of tennis, golf and girls' lacrosse respectively except as modified by the DSSAA Board of Directors.

18.0 Conferences

18.1 Member schools may establish voluntary conference organizations according to the following rules:

18.1.1 Any such organization may be composed of public and non-public schools.

18.1.2 Any conference so formed must submit its proposed membership and its constitution and bylaws to the DSSAA Board of Directors and they must be approved before the schools may enter into any contractual agreements.

18.1.2.1 All subsequent amendments to the constitution and bylaws of the conference must be approved by the DSSAA Board of Directors.

19.0 All-Star Contests

19.1 Junior high/middle school students shall not participate in an all-star event until they have completed their high school eligibility in that sport.

20.0 Sponsoring Interscholastic Teams

20.1 Definition of Interscholastic Athletics

20.1.1 Interscholastic competition is defined as any athletic contest between students representing two (2) or more schools. Students are considered to be representing a school if the school does any of the following:

20.1.1.1 Partially or wholly subsidizes the activity (providing equipment, uniforms, transportation, entry fees, etc.).

20.1.1.2 Controls and administers the funds, regardless of their source, needed to conduct the activity.

20.1.1.3 Permits the students to compete under the name of the school.

20.1.1.4 Publicizes or promotes the activity through announcements, bulletins, or school sponsored publications.

20.1.1.5 Presents or displays individual/team awards.

20.1.2 Members of school clubs who participate in non-competitive, recreational activities or compete unattached are not considered to be engaged in interscholastic competition.

20.2 Sponsorship of Teams

20.2.1 Schools may sponsor teams for interscholastic competition in a sport provided the following criteria are met:

20.2.1.1 The governing body of the participating district or non-public school approves participation in the sport. The administrative head of the school shall notify the Executive Director in writing of the school's intent to sponsor a team in a new sport.

20.2.1.2 The governing ~~body~~ bodies of the participating district or non-public school controls the funds needed to support the proposed team, regardless of their source, in the same manner as existing teams (coaches' salaries, purchase and repair of equipment, medical supervision, transportation, preparation and maintenance of practice and game facilities, awards, etc.). Requests from outside sources to make financial contributions or to donate equipment or services must be submitted in writing and must include an acknowledgement that the equipment becomes the property of the school. The contribution or donation must be approved in writing by the administrative head of the school.

20.2.1.3 The participating schools agree to comply with all applicable DSSAA rules and regulations as stated in the current DSSAA Official Handbook.

20.3 Levels of Participation

20.3.1 Level 1 or developmental sport - less than seven (7) participating schools.

20.3.1.1 All DSSAA rules and regulations shall be in effect except 22.0, 23.0, and 29.0.

20.3.1.2 Schools shall not be permitted to scrimmage or compete against a non-school sponsored team.

20.3.2 Level 2 or recognized sport - seven (7) or more participating schools.

20.3.2.1 At the time of official recognition, DSSAA shall provide rules publications to the participating schools, designate an approved officials' association, conduct an annual or biannual rules clinic for coaches and officials, and establish a maximum game schedule.

20.3.2.2 All DSSAA rules and regulations shall be in effect.

20.3.3 Withdrawal of level 2 status

20.3.3.1 If, for two (2) consecutive years, less than the required number of schools participate in a sport, DSSAA may withdraw official recognition for a period of

time as determined by the Board of Directors.

21.0 Certified Coaches

21.1 Only those professional employees certified by the Department of Education and whose salary is paid by the State and/or local Board of Education, or in the case of charter and non-public schools by a similar governing body, if acceptable as a coach by the governing body, shall coach, assist in coaching, or direct member school teams in any district.

21.1.1 The terms of employment must be for the regular school year and the professional assignment shall be no less than 1/2 of the school day, exclusive of coaching duties.

~~21.1.2 All head coaches shall be required to attend the DSSAA rules clinic for their sport or pass an open book rules examination supplied by the DSSAA office.~~

21.2 Emergency coaches

21.2.1 An emergency coach shall be defined as an individual who is either not certified by the Department of Education, or is certified by the Department of Education but is not employed for the school year or whose professional assignment is less than 1/2 of the school day.

21.2.2 An individual who meets the requirements of a certified coach as specified in 21.1, but whose professional assignment is located in a different school or district than his/her coaching assignment shall not be considered an emergency coach by DSSAA.

21.2.3 Member schools shall be required to annually reopen all positions that are held by emergency coaches.

21.2.4 Emergency coaches may be employed provided the local governing body adheres to the following procedures:

21.2.4.1 The employing Board of Education must attempt to locate an acceptable, certified professional staff member by advertising the coaching vacancy in the district for as many days as are required by the district's collective bargaining agreement.

21.2.4.2 If an acceptable, certified professional staff member is not available, an individual who is acceptable to the employing Board of Education may be hired as an emergency coach.

21.2.4.3 Any individual employed as a coach under the emergency provision must comply with the following regulations:

21.2.4.3.1 He/she must be officially appointed by the local Board of Education. The superintendent or his/her designee may temporarily appoint an individual if a coaching vacancy arises and the sport season begins during the interim between meetings of the local Board of Education.

21.2.4.3.2 His/her coaching salary must be paid exclusively by the local Board of Education.

21.3 Students who are practice teaching in a member school shall be permitted to assist in all professional activities during their practice teaching period.

21.4 In addition to the members of the school's regular coaching staff, who must come from 21.1 through 21.3, the local governing body may supplement a school's coaching staff with volunteer coaches. Volunteer coaches are individuals who donate their services to a school and who have been approved by that school's local governing body. A current list of approved volunteer coaches shall be on file in the school's administrative office before any coaching duties are assumed.

21.5 All head coaches shall be required to attend the DSSAA rules clinic for their sport or, if applicable, pass an open book rules examination supplied by the DSSAA office.

21.5.1 A school shall be assessed a \$50.00 fine and the head coach shall be placed on probation if he/she fails to attend the DSSAA rules clinic or pass the open book rules examination in his/her sport. Failure to comply for a second consecutive year shall result in the school being assessed a \$50.00 fine and the coach being suspended for up to five (5) contests as determined by the Executive Director.

21.6 Beginning with the ~~2000-01~~ 2001-02 school year, ~~all head coaches certified and emergency coaches at all levels of competition~~ shall be required to hold a current certification in adult CPR.

~~21.6.1 Beginning with the 2001-02 school year, all assistant coaches shall be required to hold a current certification in adult CPR.~~

22.0 Sports Seasons and Practices

22.1 The fall sports season shall begin on August 25 and end not later than December 1.

22.2 The winter sports season shall begin 21 days before the first Friday in December and end not later than March 1.

22.3 The spring sports season shall begin on March 1 and end not later than the last school day.

22.4 Practice for any fall sport shall not begin earlier than August 25. Practice for any winter sport shall not begin earlier than 21 days before the first Friday in December and practice for any spring sport shall not begin earlier than March 1.

22.4.1 The first three (3) days of football practice shall be primarily for the purpose of physical conditioning and shall be restricted to non-contact activities. Coaches may introduce offensive formations and defensive alignments, run plays "on air," practice non-contact phases of the kicking game, and teach non-contact positional skills. Protective equipment shall be restricted to helmets, mouthguards, and shoes. The use of dummies, hand shields, and sleds in contact drills is prohibited. Blocking, tackling, and block protection drills which involve any contact between players are also prohibited.

22.5 A school which participates in a game prior to the first allowable date ~~or after the start of the state championship~~ shall be required to forfeit the contest and be assessed a \$100.00 fine.

22.6 A school which conducts practice prior to the first allowable date shall be assessed a fine of \$100.00 per illegal practice day.

22.7 A certified, emergency, or volunteer coach shall not be allowed to provide instruction out of the designated season in his/her assigned sport to returning members of the teams of the school at which he/she coaches.

22.7.1 A coach shall not be allowed to participate on a team in his/her assigned sport with the aforementioned players.

22.7.2 A coach shall also be prohibited from officiating contests in his/her assigned sport if the aforementioned players are participating except in organized league competition.

22.7.2.1 The league shall not be organized and conducted by the employing school, the employing school's booster club, or the employing school's coaching staff.

22.7.2.2 The league shall have written rules and regulations that govern the conduct of contests and establish the duties of contest officials.

22.7.2.3 The league shall have registration/entry procedures, forms, and fees; eligibility requirements; and fixed team rosters, team standings, and a master schedule of contests.

22.8 A certified, emergency, or volunteer coach shall not be allowed to provide instruction during the designated season in his/her assigned sport to current members of the teams of the school at which he/she coaches outside of school sponsored practices, scrimmages, and contests.

22.9 A coach who is determined to be in violation of 22.7 and 22.8 shall be suspended from coaching in the specified sport at any DSSAA member school for up to 180 school days from the date the charge is substantiated.

23.0 Maximum Game Schedules and Designated Sport Season

23.1 The maximum number of regularly scheduled interscholastic contests/competition dates for each team and individual in the recognized sports and their designated season shall be as follows:

PROPOSED REGULATIONS

Sport <i>Season</i>	Team Limitations		Individual Limitations	
	<i>Week</i>		<i>Week</i>	<i>Day</i>
Fall				
Cross Country (boys and girls)	12 competition dates	+2 competition dates	+2 competition dates	
Field Hockey (girls)	12 contests	2 contests	2 competition dates	2 halves
Football (boys)	8 contests	1 contest	4 quarters	
Soccer (boys)	12 contests	2 contests	2 competition dates	2 halves
Volleyball (girls)	12 competition dates of which 1 date may involve more than 2 teams	2 competition dates	2 competition dates	
Winter				
Basketball (boys and girls)	14 contests	2 contests	2 competition dates	4 quarters
Wrestling (boys)	*10 contests	2 competition dates	2 competition dates	5 matches
Spring				
Baseball (boys)	12 contests	2 contests	2 contests	
Softball (girls)	12 contests	2 contests	2 contests	
Tennis (boys and girls)	12 contests	2 contests	2 contests	
Outdoor Track (boys and girls)	10 competition dates	+2 competition dates	+2 competition dates	
Soccer (girls)	12 contests	2 contests	2 competition dates	2 halves

+ A team may not participate in two different cross country or outdoor track meets on the same day.

*Participation in a triangular meet shall count as two contests and participation in a quadrangular meet shall count as three contests toward the seasonal limitation.

Participation in any part of a quarter/half shall count as a quarter/half toward the weekly and daily limitations in that sport. However, in the case of football, participation on a free kick or a play from a scrimmage kick formation shall not count as a quarter. Overtime periods shall be considered as part of the fourth quarter or second ~~half~~ half.

23.2 The preceding game limitations, with the exception of the individual daily limitation, shall not prohibit the rescheduling of postponed games at the discretion and convenience of the member schools involved provided the game was postponed due to inclement weather, unplayable field conditions, failure of the assigned officials to appear for the game, breakdown of the bus or van carrying the visiting team, or any other circumstances beyond the control of site management which preclude playing the game. However, a team may not participate in more than three (3) contests/competition dates in a week.

23.3 A student shall participate in a particular sport for only one season during each academic year.

~~23.3~~ 23.4 A school which participates in more than the allowable number of contests in a season shall be fined \$200.00.

~~23.4~~ 23.5 A school which exceeds the weekly contest limitation shall be required to forfeit the contest and be assessed a \$100.00 fine.

~~23.5~~ 23.6 A student who exceeds the weekly or daily contest limitation shall be considered an ineligible athlete and the school subject to the penalties stipulated in 14.0.

24.0 Practice Sessions

24.1 Member schools shall conduct a minimum of three (3) weeks of practice under the supervision of the school's coaching staff prior to the first scheduled contest in all sports.

~~24.1.1 The intent of this regulation is for each school to conduct regular daily practice during the aforementioned 21-day period, provided weather conditions and other safety related factors permit, without being required to practice on holidays and weekends. Practicing on holidays and weekends shall be left to the discretion of the individual schools and conferences.~~

24.2 A student shall be required to practice for a period of at least seven (7) calendar days prior to participating in a contest. However, if a an eighth-grade student has been participating in a state tournament during the preceding sports season and is unable to begin practicing at least seven (7) calendar days before his/her team's first contest, he/she shall be exempt from this requirement.

24.3 A practice session shall be defined as any instructional or conditioning activity on the field, court, mat, or track or in the pool, weight room, or classroom such as team meetings, film reviews, ~~black~~ chalkboard sessions, warmup and cool down exercises, drills, and mandatory

strength training, etc.

24.3.1 All activities shall be under the supervision of a certified, emergency, or approved volunteer coach.

24.4 Practice sessions shall be limited to two (2) hours on official school days.

24.4.1 Split sessions may be conducted, but practice time shall not exceed two (2) hours for any individual athlete.

24.4.2 The two-hour practice limitation does not include time for non-instructional activities such as dressing, showering, transportation, or training room care.

24.5 A school which deliberately exceeds the two-hour practice limitation shall be assessed a \$100.00 fine.

25.0 Awards

25.1 A member school and/or support group affiliated with a member school, such as an alumni association or booster club, shall be allowed to present recognition awards for team and/or individual accomplishments.

25.1.1 The awards, including artwork and lettering, shall require the approval of the administrative head of the school and their value shall be mostly symbolic.

25.1.2 Permissible awards include trophies, plaques, medals, letters, certificates, photographs, and similar items. Jackets, sweaters, shirts, watches, rings, charms and similar items if properly inscribed (reference to the team or individual accomplishment) are also acceptable.

25.1.3 Member schools and such support groups shall also be permitted to sponsor ~~team~~ banquets.

25.2 A non-profit group such as a coaches association, booster club not affiliated with a member school, or community service organization shall be allowed to present recognition awards for team and/or individual accomplishments with the approval of the administrative head of the school.

25.2.1 The awards shall have symbolic value only. Awards ~~that have~~ with utilitarian value are prohibited.

25.2.2 Non-profit groups shall also be permitted to sponsor ~~team~~ banquets.

~~25.2.3 Tournament sponsors shall be allowed to present the members of participating teams with a complimentary item(s) in accordance with 1.5.1.5.~~

25.3 Commercial organizations shall be allowed to present recognition awards for team and/or individual accomplishments with the approval of the administrative head of the school.

25.3.1 The awards shall have symbolic value only. Awards with utilitarian value are prohibited. The aggregate retail value of the award shall not exceed \$50.00 per team or per recipient.

25.4 Non-symbolic competition awards (based on team's or individual's place finish), regardless of sponsor, shall have ~~a utilitarian~~ an aggregate retail value not to exceed \$50.00 per recipient and shall require the prior approval of

the Executive Director.

26.0 Boxing

Member schools shall not participate in interscholastic boxing.

27.0 Protests and Complaints

All protests and complaints brought before DSSAA shall be in writing and shall be acted on only after the administrative head of the school involved has been given an opportunity to appear before the Board of Directors.

28.0 Wrestling Weight Control Code

28.1 Each year, four (4) weeks from the first day he/she appears at practice, a wrestler must establish his/her minimum weight class at a weigh-in witnessed by and attested to in writing by the athletic director or a designated staff member (excluding coaches) of the school the wrestler attends. Thereafter, a wrestler may not compete in a weight class below his duly established weight class.

28.2 The weight classifications shall be as follows:

76 lbs. 100 lbs. 124 lbs. 148 lbs.

82 lbs. 106 lbs. 130 lbs. 155 lbs.

88 lbs. 112 lbs. 136 lbs. 165 lbs.

94 lbs. 118 lbs. 142 lbs. 250 lbs. (minimum weight 164 lbs.)

28.3 With the exception of the above weight classifications, the current edition of the NFHS Wrestling Rules Book shall apply.

28.4 By the end of four (4) weeks of practice, a certified team roster listing the established minimum weight class of each wrestler shall be sent to the Executive Director ~~of DSSAA~~. Further, duly attested notices of additions to the certified roster shall be sent to the Executive Director without delay.

28.5 Schools which desire to conduct their wrestling program at a time other than the season specified in 23.1 must request permission from the Executive Director.

28.5.1 A team which begins its season in October shall receive a one-pound growth allowance in November and an additional pound in December. A team which begins its season in November shall receive a one-pound growth allowance in December, an additional pound in January, and a third pound in February.

~~28.6 Violation of this code on the part of any coach shall be considered evidence of unethical conduct as shall other attempts to circumvent its intent which is to prevent harmful weight reduction.~~

29.0 Use of Officials

29.1 Member schools and tournament sponsors shall be required to use officials approved by DSSAA for interscholastic contests.

29.1.1 In the case of emergencies such as an act of

God, refusal by an officials' association to work games, or a shortage of qualified officials, schools which desire to use other than approved officials must obtain permission from the Executive Director.

29.2 Officials shall be required each year to attend the DSSAA rules interpretation clinic and pass the rules examination provided by the DSSAA office for the sport(s) they officiate.

29.2.1 Failure on the part of an official to attend the DSSAA rules interpretation clinic and pass the rules examination in the same season shall cause the official to be placed on probation and to lose his/her eligibility to officiate in a state tournament contest ~~until both requirements have been satisfied in the same season~~ during that season.

29.2.2 Failure to ~~fulfill this obligation within one~~ (1) year satisfy both requirements in the same season for two (2) consecutive years shall cause the official to lose varsity officiating status during the second season. Failure to fulfill this obligation in subsequent years shall cause the official to continue to be restricted to subvarsity contests until both requirements have been satisfied in the same season.

29.2.3 Attending the fall soccer rules interpretation clinic shall satisfy the clinic attendance requirement for both the boys' and girls' soccer seasons. Attending the spring soccer rules interpretation clinic shall satisfy the clinic attendance requirement for only the girls' soccer season.

29.2.4 If, for a legitimate reason which is documented by the president of his/her association, an official is unable to attend the DSSAA rules interpretation clinic, he/she may view a videotape of the DSSAA clinic or, in the absence of a videotape, attend a clinic conducted by another NFHS member state association provided the following procedures are observed:

29.2.4.1 No later than the day of the DSSAA rules interpretation clinic, the president of the association notifies the Executive Director, in writing, of the official's inability to attend the clinic.

29.2.4.2 The out-of-state clinic is conducted by an individual either trained by the NFHS or designated as a clinician by the state's athletic association.

29.2.4.3 The official arranges for a letter to be sent to the Executive Director from the state's athletic association office verifying his/her attendance at the clinic.

29.3 Use of non-approved officials without permission from the Executive Director shall result in the school or tournament sponsor being assessed a \$50.00 fine per non-approved official.

30.0 ~~Summer~~ Out of Season Athletic Camp and Clinic Sponsorship

30.1 DSSAA does not restrict a student's decision to attend a ~~summer~~ an out of season athletic camp/clinic. However, schools, school organizations, coaches, or school related groups, such as booster clubs, may not sponsor an

athletic camp/clinic which limits membership to their own district, locale, or teams. Coaches employed by a ~~summer~~ an out of season athletic camp/clinic may not instruct their own athletes as per 22.8.

30.2 School related groups, such as booster clubs, which desire to sponsor the attendance of their school's enrolled students at ~~summer~~ an out of season athletic ~~camp~~ camp/clinic, may do so with the approval of the local school board or governing body. The disbursement of funds to pay for camp/clinic related expenses (fees, travel costs, etc.) shall be administered by the principal or his/her designee and the funds shall be allocated according to the following guidelines:

30.2.1 All students and team members shall be notified of the available sponsorship by announcement, publication, etc.

30.2.2 All applicants shall share equally in the funds provided.

30.2.3 All applicants shall be academically eligible to participate in interscholastic athletics.

30.2.4 All applicants shall have one year of prior participation in the sport for which the camp/clinic is intended or, absent any prior participation, he/she shall be judged by the coach to benefit substantially from participation in the camp/clinic.

31.0 Sanctions – School Team Competition

31.1 Member schools may participate in tournaments/meets involving four (4) or more schools only if the event has been sanctioned by DSSAA and, if applicable, by the NFHS. Tournaments/meets shall be sanctioned in accordance with the following criteria:

31.1.1 The event shall not be for determining a regional or national champion.

31.1.2 The event shall be organized, promoted, and conducted by and all profits go to a nonprofit organization. Involvement by a commercial organization shall be limited to providing financial support.

31.1.3 Nonsymbolic competition awards shall have a value of not more than \$50.00 per recipient and shall require the prior approval of the Executive Director.

31.1.4 Non-school event organizers shall submit a full financial report to the DSSAA office within ninety (90) calendar days of the completion of the event.

31.1.5 The event organizer shall submit a list of out-of-state schools which have been invited to participate and such schools shall be subject to approval by the Executive Director.

31.1.6 Out-of-state schools which are not members of their state athletic association shall verify in writing that their participating athletes are in compliance with their state athletic association's eligibility rules and regulations.

31.1.7 The event organizer shall not accept financial support or sell advertising to companies involved in

the production or distribution of alcohol and tobacco products.

31.1.8 The event organizer shall comply with all applicable NFHS sanctioning requirements.

31.2 Participation in a non-sanctioned event shall result in the offending school being assessed a \$25.00 fine. A second offense shall result in a \$50.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the sport season. A third offense shall result in a \$100.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the school year.

32.0 Coed Teams

32.1 If a school sponsors a boys' team and a girls' team in a particular sport, boys shall participate on the boys' team and girls shall participate on the girls' team even if the teams compete during different seasons.

32.1.1 A student shall participate in a particular sport for only one season during each academic year.

32.2 If a school sponsors only a boys' team in a particular sport, girls shall be permitted to participate on the boys' team.

32.3 If a school sponsors only a girls' team in a particular sport, boys shall not be permitted to participate on the girls' team.

33.0 Non-School Instructional Camps and Clinics

33.1 A student may participate in a commercial camp or clinic, including private lessons, both during and out of the designated sport season provided the following conditions are observed:

33.1.1 The student must participate unattached and may not wear school uniforms or use school equipment.

33.1.2 The student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

~~33.1.2~~ 33.1.3 The school may not provide transportation or pay fees.

~~33.1.3~~ 33.1.4 The school coach may not require his/her athletes to participate in a camp or clinic or provide instruction to his/her returning athletes in a camp or clinic.

34.0 Open Gym Programs

34.1 A member school may open its gymnasium or other facility for informal, recreational activities in accordance with the following provisions:

34.1.1 The open gym must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

34.1.2 Student participation must be voluntary and the open gym must not be a prerequisite for trying out for a particular team.

34.1.3 The activities must be unstructured and student-generated. Organized drills in the skills or

techniques of a particular sport are prohibited. Organized competition with fixed team rosters is also prohibited.

34.1.3.1 A coach may not predetermine that the open gym will include only his/her sport and publicize the open gym as being restricted to that sport. It is the responsibility of the adult supervisor to permit as many different activities as the facility can effectively and safely accommodate.

34.1.4 A coach may open the facility and distribute playing equipment but may not instruct, officiate, participate, organize the activities, or choose teams in his/her assigned sport.

34.1.5 Playing equipment is restricted to that which is customarily used in a contest in a particular sport. Playing equipment which is only used in a practice session is prohibited.

34.1.6 The participants must provide their own workout clothing.

35.0 Conditioning Programs

35.1 A member school may conduct a conditioning program in accordance with the following provisions:

35.1.1 The conditioning program must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

35.1.2 Student participation must be voluntary. The conditioning program must not be a prerequisite for trying out for a particular team.

35.1.3 Permissible activities include stretching, lifting weights, jumping rope, running, calisthenics, aerobics, and similar generic conditioning activities. Organized drills in the skills or techniques of a particular sport are prohibited.

35.1.4 A coach may not provide instruction in sport specific skills or techniques.

35.1.5 Sport specific equipment is prohibited.

35.1.6 The participants must provide their own workout clothing.

36.0 Additional Penalties

Additional penalties may be imposed by the Executive Director or the DSSAA Board of Directors for repeat offenses or as deemed necessary to ensure the proper conduct of interscholastic competition.

DEPARTMENT OF FINANCE**DIVISION OF REVENUE**

Statutory Authority: 30 Delaware Code,
Sections 1805 and 1815 (30 Del.C. §§1805, 1815)

Technical Information Memorandum 2001 - 01.
Proposed

Date: March 8, 2001

Subject: No Sale of Land Conservation Credits

AUTHORITY

This regulation is published pursuant to authority given the Department of Finance in sections 1805 and 1815 of Chapter 18 of Title 30 of the Delaware Code.

COMMENTS

Public Comments will be received for 30 days from the date of issuance of this proposed regulation and they may be submitted to Ronald Kaminski, Manager, Division of Revenue, State Office Building, 820 French Street, Wilmington, DE 19801. Telephone (302) 577-8445.

PROPOSED REGULATION

Chapter 18 of Title 30 of the Delaware Code was enacted by the General Assembly in 1999. It contained the Delaware Land and Historic Resources Protection Incentives Act ("Land Incentives Act"). The Act is designed to induce private landowners to protect and conserve open space, natural resources, and biodiverse habitats by providing tax credits for the preservation or conservation of land in perpetuity. The Act did not permit the sale, transfer or assignment of the tax credits by the private landowner.

In 2000, the General Assembly amended Chapter 18 by designating the existing Land Incentives Act as subchapter I and adding a new subchapter II containing the Historic Preservation Tax Credit Act. This Act is designed to promote community revitalization and restoration through the rehabilitation of historic property by providing tax credits for expenditures made to rehabilitate any certified historic property. Unlike the Land Incentives credit, this credit may be transferred, sold or assigned.

The first sentence of section 1813 (d) says "Any person eligible for credits under this **Chapter** may transfer, sell or assign any or all unused credits" Section 1814 (a) says "Any person eligible for credit under this **subchapter** may transfer, sell or assign any unused credits." The word "**subchapter**" is also used in subsection (c) of section 1814. An ambiguity arises because the word "**Chapter**" is used in

section 1813 and the word "**subchapter**" is used in section 1814. May the credits provided by the Land Incentives Act which is contained in the same "Chapter" be transferred, sold or assigned or is the ability to transfer, sell or assign credits limited to the Historic Preservation Tax Credits?

It is the Division of Revenue's interpretation that only the Historic Preservation Tax Credits may be transferred, sold or assigned and the Land Incentives credits may not be.

The synopsis to the amendment to Chapter 18 creating the second subchapter contains no mention of Land Incentives Act and speaks of the ability to transfer credits only in the context of the Historic Preservation credits. The synopsis describes the ability to transfer credits (particularly to banks) as a funding mechanism to raise the necessary capital to make the required rehabilitation expenditures. This purpose would appear to have no application to the Land Incentives credits since the taxpayers already own the land and owners are not required to make expenditures to qualify for those credits. If the legislature had intended to make the Land Incentives credits transferable we believe that the insertion of such an unusual right would have been clearly expressed as an amendment to the Land Incentives Act itself. Finally, reading the two credit acts together (particularly section 1 of House Bill No. 1 which changes all reference to "Chapter" in the Land Incentives Act to "subchapter") we can discern no basis to believe the legislature intended to make the Land Incentive credits transferable. Therefore, the Division rules that credits earned under the Land Incentives Act are not transferable.

William M. Remington
Director of Revenue

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES**

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE**Division of Social Services****Delaware's 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/Medical Assistance Program is proposing to implement a Medicaid State Plan change related to the reimbursement

methodology for Nursing Facility Services. This change is made as a result of State law, which established minimum staffing levels for residential health facilities in Delaware. State law also mandates changes to the Delaware Medical Assistance Program reimbursement methodology to reflect the additional costs associated with the increased staffing levels.

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, Delaware by April 30, 2001.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

REVISION

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES

PROSPECTIVE REIMBURSEMENT SYSTEM FOR LONG TERM CARE FACILITIES

STATE PLAN AMENDMENT 4.19-D

I. General Provisions

A. Purpose

This plan establishes a reimbursement system for long-term care facilities that complies with federal requirements, including but not limited to:

- Requirements of the Omnibus Reconciliation Act of 1981 that nursing facility provider reimbursements be reasonable and adequate to assure an efficient and economically operated facility.
- The requirement that Medicaid payments in the aggregate do not exceed what would have been paid by Medicare based on allowable cost principles.
- Limitations on the revaluation of assets subsequent to a change of ownership since July 18, 1984.
- Requirements of the Omnibus Reconciliation Act of 1987 to establish one level of nursing care, i.e., Nursing Facility Care, to eliminate the designation of Skilled and Intermediate Care, and to provide sufficient staff to meet these requirements.
- The requirement to employ only nurse aides who have successfully completed a training and competency evaluation program or a competency evaluation program.

B. Reimbursement Principles

1. Providers of nursing facility care shall be reimbursed prospectively determined per diem rates based on a patient based classification system. Providers of ICF-MR and ICF-IMD services shall be reimbursed prospectively determined per diem rates.

2. The Delaware Medicaid Program shall reimburse qualified providers of long-term care based on the individual Medicaid recipient's days of care multiplied by the applicable per diem rate for that patient's classification less any payments made by recipients or third parties.

II. Rate Determination for Nursing Facilities

A. Basis for Reimbursement

Per Diem reimbursement for nursing facility services shall be composed of five prospectively determined rate components that reimburse providers for primary patient care, secondary patient care, support services, administration, and capital costs.

The primary patient care component of the per diem rate is based on the nursing care costs related specifically to each patient's classification. In addition to assignment to case mix classifications, patients may qualify for supplementary primary care reimbursement based on their characteristics and special service needs. Primary care component reimbursement for each basic patient classification will be the same for each facility within a group. A schedule of primary rates, including rate additions, is established for each of three groups of facilities:

- Private facilities in New Castle County
- Private facilities in Kent and Sussex Counties
- Public facilities

Payment for the secondary, support, administrative, and capital costs comprise the base rate, and is unique to each facility. Provider costs are reported annually to Medicaid and are used to establish rate ceilings for the secondary, support, and administrative cost centers in each provider group.

The sections that follow provide specific details on rate computation for each of the five rate components.

B. Rate Components

Payment for services is based on the sum of five rate components. The rate components are defined as:

- **Primary Patient Care.** This cost center encompasses all costs that are involved in the provision of basic nursing care for nursing home patients and is inclusive of nursing staff salaries, fringe benefits, and training costs. Costs of completing Resident Assessment and Plans of Care will be covered in this cost center.
- **Secondary Patient Care.** This cost center encompasses other patient care costs that directly affect patient health status and quality of care and is

inclusive of clinical consultants, social services, raw food, medical supplies, and non prescription drugs, dietitian services, dental services, and activities personnel.

- **Support Services.** This cost center includes costs for departments that provide supportive services other than medical care and is inclusive of dietary, operation and maintenance of the facility, housekeeping, laundry and linen, and patient recreation.
- **Administrative.** This category includes costs that are not patient related and is inclusive of owner/administrator salary, medical and nursing director salary (excluding such time spent in direct patient care), administrative salaries, medical records, working capital, benefits associated with administrative personnel, home office expenses, management of resident personal funds, and monitoring and resolving patient's rights issues.
- **Capital.** This category includes costs related to the purchase and lease of property, plant and equipment and is inclusive of lease costs, mortgage interest, property taxes and depreciation.

C. Excluded Services

Those services to residents of private long term care facilities that are ordinarily billed directly by practitioners will continue to be billed separately and are not covered by the rate component categories. This includes prescription drugs, Medicare Part B covered services, physician services, hospitalization and dental services, laboratory, radiology, and certain ancillary therapies.

For public facilities, laboratory, radiology, prescription drugs, physician services, dental services, and ancillary therapies are included in the per diem.

Costs of training and certification of nurse aides are billed separately by the facilities as they are incurred, and reimbursed directly by Medicaid.

D. Primary Payment Component Computations

The primary patient care rate component is based on a patient index system in which all nursing home patients are classified into patient classes. The lowest resource intensive clients are placed in the lowest class.

The Department will assign classes to nursing home patients. Initial classification of patients occurs through the State's pre-admission screening program. These initial classifications will be reviewed by Department nurses within 31 to 45 days after assignment. Patient classification will then be reviewed on an ongoing 90-day basis. Facilities will receive notices from the Department concerning class changes and relevant effective dates.

1. In order to establish the patient classification for reimbursement, patients are evaluated and scored by

Medicaid review nurses according to the specific amount of staff assistance needed in Activity of Daily Living (ADL) dependency areas. These include Bathing, Eating, Mobility/Transfer/Toileting. Potential scores are as follows:

0 - Independent

1 - Supervision (includes verbal cueing and occasional staff standby)

2 - Moderate assistance (requires staff standby/physical presence)

3 - Maximum Assistance

Patients receiving moderate or maximum assistance will be considered "dependent" in that ADL area. Patients receiving supervision will not be considered dependent.

Reimbursement is determined by assigning the patient to a patient classification based on their ADL scores or range of scores.

Each patient classification is related to specific nursing time ~~requirements determined by the time and motion study last updated in 1994.~~ These time factors are multiplied by the ~~median~~ 75th percentile nurse wage in each provider group to determine the per diem rate for each classification.

2. Patients receiving an active rehabilitative/preventive program as defined and approved by the Department shall be reimbursed at the next higher patient class. For qualifying patients at the highest level, the facility will receive an additional 10 percent of the primary care rate component.

To be considered for the added reimbursement allowed under this provision, a facility must develop and prepare an individual rehabilitative/preventive care plan. This plan of care must contain rehabilitative/preventive care programs as described in a Department approved list of programs. The services must seek to address specific activity of daily living and other functional problems of the patient. The care plan must also indicate specific six-month and one-year patient goals, and must have a physician's approval.

The Department will evaluate new facility-developed rehabilitative/preventive care plans during its patient classification reviews of nursing homes.

Interim provisional approval of plans can be provided by Department review nurses. When reviewed, the Department will examine facility documentation on the provision of rehabilitative/preventive services to patients with previously approved care plans as well as progress towards patient goals.

3. Patients exhibiting disruptive psycho social behaviors on a frequent basis as defined and classified by the Department shall receive an additional 10 percent of the primary care rate component for the appropriate classification.

The specific psycho social behaviors that will be

considered for added reimbursement under this provision are those that necessitate additional nursing staff intervention in the provision of personal and nursing care. Such behaviors include: verbal and physically disruptive actions, inappropriate social behavior, non-territorial wandering, and any other similar patient problems as designated by the Department.

Facilities must have complete documentation on frequency of such behaviors in a patient's chart for the Department to consider the facility for added reimbursement under this provision. This documentation will be evaluated during patient classification reviews of a nursing home.

4. Patient class rates are determined based on the time required to care for patients in each classification, and nursing wage, fringe benefit, and training costs tabulated separately for private facilities in New Castle County, private facilities in Kent and Sussex Counties, and public facilities statewide.

Primary rates are established by the following methodology

- Annual wage surveys and cost reports required of each provider are used to determine ~~median~~ 75th percentile hourly nursing wages.

The cost report used in the calculations will represent the fiscal year ending June 30th of the previous reimbursement year. The Delaware reimbursement year, for purposes of rate setting, is from October 1 through September 30.

This is calculated by first dividing total pay by total hours for each nursing classification (RN, LPN, Aide) in each facility, then arraying the representative averages 75th percentile wages of each facility to determine the ~~median~~ 75th percentile within each provider group. Based on cost data from each provider group, hourly wage rates are adjusted to include hourly training and fringe benefit costs within each provider group.

- In each of the three provider groups (private facilities in New Castle County, Kent and Sussex Counties, and public facilities), the rates are established in the same manner.

The primary component of the Medicaid nursing home rate is determined by multiplying the ~~median~~ 75th percentile hourly nursing wage for RNs, LPNs, and Aides by standard nursing time factors for each of the base levels of patient acuity. ~~The nursing time factor was determined by a 1981 Maryland work measurement study, and updated in 1987 by Peat Marwick and again in 1991 by Lewin/ICF. The time factors based on this, the most recent time and motion study, are included in the Delaware reimbursement calculation documentation.~~

- Providers will be reimbursed for agency nurse costs if their use of agency nurses does not exceed the allowable agency nurse cap determined each year

by the Delaware Medicaid staff. Any nursing cost incurred in excess of the allowable cap will not be included in the nursing cost calculation. ~~The caps on the agency nurse contribution to hourly nursing costs is set at the median utilization ratio of agency to staff nurse hours for those facilities that use agency nurses.~~

- Within each of the patient classes, Medicaid provides "Incentive Add-ons" to encourage rehabilitative and preventive programs. Rehabilitative and preventive services shall be reimbursed at the same rate as the next highest patient class. In the case of patients in the highest class, the facility will receive an additional 10 percent of the primary care rate component. Incentive payments discourage the deterioration of patients into higher classifications.

E. Non-Primary Rate Component Computations

Facility rates for the four non-primary components of secondary, support, administrative, and capital are computed from annual provider cost report data on reimbursable costs. Reimbursable costs are defined to be those that are allowable based on Medicare principles, according to HIM 15. Costs applicable to services, facilities, and supplies furnished to a provider by commonly owned, controlled or related organizations shall not exceed the lower cost of comparable services purchased elsewhere.

The cost report used in the calculations will represent the fiscal year ending June 30th of the previous reimbursement year. The Delaware reimbursement year, for purposes of rate setting, is from October 1 through September 30.

The discussion that follows explains rate computation for the secondary, support, administrative, and capital payment centers.

1. Secondary patient care rates are reimbursed according to the cost of care determined prospectively up to a calculated ceiling (115 percent of median per diem costs). Three steps are required:

- Facilities are grouped into the three peer groups - private facilities in New Castle County, private facilities in Kent and Sussex Counties, and public facilities.
- Individual allowable cost items from cost reports for each facility comprising the secondary care component are summed and divided by patient days. For established facilities, the patient day amount used in this computation equals actual patient days or estimated days based on a 90 percent occupancy of Medicaid certified beds, whichever is greater. The day amount for new facilities¹ equals actual patient days for the period

of operation, or estimated days based on a 75 percent occupancy of Medicaid certified beds, whichever is greater.

- The median per diem cost is determined for each category of facility and inflated by 15 percent. The secondary care per diem assigned to a facility is the actual allowable cost up to a maximum of 115 percent of the median.

2. Support service component rates are determined in a manner that parallels the secondary component rate calculation process. However, the ceiling is set at 110 percent of median support costs per day for the appropriate category of facility. In addition, facilities which maintain costs below the cap are entitled to an incentive payment 25 percent of the difference between the facility's actual per day cost and the applicable cap, up to a maximum incentive of 5 percent of the cap amount.

3. Administrative component rates are determined in a manner parallel to the secondary component. However, the ceiling is set at 105 percent of median costs per day. A facility is entitled to an incentive payment of 50 percent of the difference between its actual costs and the cap. The incentive payment is limited to 10 percent of the ceiling amount.

4. Capital component rates are determined prospectively and are subject to a rate floor and rate ceiling. The dollar amounts representing the 20th percentile of actual per diem capital cost (floor) and the 80th percentile of actual per diem capital cost (ceiling) are calculated. If the facility's costs are greater than or equal to the floor, and less than or equal to the ceiling, the facility's prospective rate is equal to its actual cost. If the facility's costs are below the floor, the prospective rate is equal to the lower of the floor or actual cost plus twenty-five percent of actual cost. If the facility's cost are greater than the ceiling, the prospective rate is equal to the higher of the ceiling or ninety-five percent of actual cost. Costs associated with revaluation of assets of a facility will not be recognized.

F. Computation of Total Rate from Components

A facility's secondary, support, administrative, and capital payments will be summed and called its basic rate. The total rate for a patient is then determined by adding the primary rate for which a patient qualifies to the facility's basic rate component. The basic payment amount will not

1. * "New facility" is defined as: (1) New construction built to provide a new service of either intermediate or skilled nursing care for which the existing facility has never before been certified, or (2) construction of an entirely new facility totally and administratively independent of an existing facility.

vary across patients in a nursing home. However, the primary payment will depend on a patient's class and qualification for added rehabilitative/preventive and/or psycho social reimbursement.

G. OBRA '87 Additional Costs

1. Nurse Aide Training and Certification

Providers of long-term care services will be reimbursed directly for the reasonable costs of training, competency testing and certification of nurse aides in compliance with the requirements of OBRA '87. The training and competency testing must be in a program approved by the Delaware Department of Health and Social Services, Division of Public Health. A "Statement of Reimbursement Cost of Nurse Aide Training" is submitted to the state by each facility quarterly.

Costs reported on the Statement of Reimbursement Cost are reimbursed directly and claimed by the State as administrative costs. They include:

- Costs incurred in testing and certifying currently employed nurse aides, i.e., testing fees, tuition, books, and training materials.
- Costs of providing State approved training or refresher training in preparation for competency evaluation testing to employed nurse aides who have not yet received certification.
- Salaries of in-service instructions to conduct State approved training programs for the portion of their time involved with training, or fees charged by providers of a State approved training program.
- Costs of transporting nurse aides from the nursing facility to a testing or training site.

The following costs of nurse aide training are considered operational, and will be reported annually on the Medicaid cost report. These costs will be reimbursed through the Primary cost component of the per diem rate.

- Salaries of nurse aides while in training or competency evaluation.
- Costs of additional staff to replace nurse aides participating in training or competency evaluation.
- Continuing education or nurse aides following certification.

2. Additional Nurse Staff Requirements

Additional nurse staff required by a nursing facility to comply with the requirements of OBRA '87 will be reimbursed under the provisions of the Delaware Medicaid Patient Index Reimbursement System (PIRS). This system makes no distinction between levels of care for reimbursement. Nursing costs are derived from average hourly wage, benefit, and training cost data provided on the Nursing Wage Survey submitted by each facility. Prospective rates for each patient acuity classification are

calculated by these costs by the minimum nursing time factors. Although representative of actual costs incurred, these prospectively determined rates are independent of the number employed or the number of staff vacancies at any given time.

3. Additional Non-Nursing Requirements

The Delaware Medicaid reimbursement system will recognize the incremental costs of additional staff and services incurred by nursing facilities to comply with the mandates of OBRA '87. Prospective rate calculations will be adjusted to account for costs incurred on or after October 1, 1990.

Where services are currently contracted by the nursing facility to a practitioner, additional services may be billed directly. These services are not covered by the rate component categories. This includes therapies, physician services, dental services, and prescription drugs.

A supplemental schedule to the Statement of Reimbursement Costs (Medicaid Cost Report) will be submitted by each facility to demonstrate projected staff and service costs required to comply with OBRA'87. For the rate year beginning October 1, 1990, facilities may project full year costs onto prior year reported actual costs to be included in the rate calculation.

The supplemental schedule will be used to project costs incurred for programs effective October 1, 1990 into the prospective reimbursement rates. Where nursing care facilities indicate new and anticipated staff positions, those costs will be included with the actual SFY '90 costs when calculating the reimbursement rates effective October 1, 1990.

Additional staff requirements include dietitian, medical director, medical records, activities personnel, and social worker.

H. Hold Harmless Provision

For the first year under the patient index reimbursement system the Department will have in effect a hold-harmless provision. The purpose of the provision is to give facilities an opportunity to adjust their operations to the new system. Under this provision, no facility will be paid less by Medicaid under the patient index system than it would have been paid had Federal Fiscal Year 1988 rates, adjusted by an inflation factor, been retained.

For the period October 1, 1990 to September 30, 1991, the Department will have in effect a hold-harmless provision with respect to capital reimbursement rates. The purpose of this provision is to give facilities an opportunity to adjust their operations to the new system. Under this provision, facilities will be paid the greater of the rate under the prospective capital rate methodology or the rate based on reimbursable costs. Beginning October 1, 1991, all facilities will be subject to the prospective capital rate methodology described in Section II.E.4.

I. Annual Rate Recalculation

1. Primary Payment Component

Rates for the primary patient care component will be rebased annually. Two sources of provider-supplied data will be used in this rate rebasing:

- An annual nursing wage and salary survey that the Department will conduct of all Medicaid-participating nursing facilities in Delaware.
- Nursing home cost report data on nurses' fringe benefits and training costs.

~~Median~~ The 75th percentile wages will be redetermined annually from the wage and salary survey, and the standard nurse time factors will be applied for each patient classification. The cost report and wage and salary survey will be for the previous year ending June 30.

2. Non-Primary Payment Components

The payment caps for the secondary, support, and administrative components will be rebased every fourth year using the computation methods specified in Section E above. For the interim periods between rebasing, the payment caps will be inflated annually based on reasonable inflation estimates as published by the Department. Facility-specific payment rates for these cost centers shall then be calculated using these inflated caps and cost report data from the most recently available cost reporting period.

The capital floor and ceiling will be rebased annually.

3. Inflation Adjustment

Per diem caps for primary, secondary, support and administrative cost centers will be adjusted each year by inflation indices. The inflation indices are obtained from the Department of Economics of the University of Delaware and include both regional and national health care-specific economic trends. The inflation forecast is based on the U.S. Consumer Price Indexed. Factors reviewed on the demand side include recent growth rates in the money supply, employment, and business and government debt, as well as the state of the business cycle. Current capacity utilization rates and new capital spending plans, production delivery delays, employment to population ratios, wages, and trends in energy, housing, and food are studies on the supply side. The forecast is also confirmed by reviewing the Consumer Estimates and Columbia University Leading Index of Inflation, interest rates in the futures markets, the Commodity Research Bureau's Index of Futures Prices, and the trade weighted price of the dollar.

The inflation factors are applied to the actual nursing wage rates to compensate for the annual inflation in nursing costs. This adjustment is made before the nurse training and benefits are added and the wages are multiplied by the standard nurse time factors.

Cost center caps are used to set an upper limit on

the amount a provider will be reimbursed for the costs in the secondary, support, and administrative cost centers. Initially, these caps are computed by determining the median value of the provider's actual daily costs, then adjusting upwardly according to the particular cost center. The Secondary cost center cap is 115% of the provider group median, and Administrative costs are capped at 105% of the median. Delaware Medicaid will recalculate non-primary cost center caps every three years. In interim rate years, these cost center caps will not be recomputed. Instead, cost center caps will be adjusted by inflation factors. The inflation index provided by the University of Delaware will be applied to the current cap in each cost center in each provider group to establish the new cap. The actual reported costs will be compared to the cap. Facilities with costs above the cap will receive the amount of the cap.

J. Medicare Aggregate Upper Limitations

The State of Delaware assures HCFA that in no case shall aggregate payments made under this plan, inclusive of DEFRA capital limitations, exceed the amount that would have been paid under Medicare principles of reimbursement. As a result of a change of ownership, on or after July 18, 1984, the State will not increase payments to providers for depreciation, interest on capital and return on equity, in the aggregate, more than the amount that would be recognized under section 1861(v)(1)(O) of the Social Security Act. Average projected rates of payment shall be tested against such limitations. In the event that average payment rates exceed such limitations, rates shall be reduced for those facilities exceeding Medicare principles as applied to all nursing facilities.

III. Rate Determination ICF/MR and ICF/IMD Facilities

Delaware will recalculate the prospective per diem rates for ICF/MRs and ICF/IMDs annually for the reimbursement year or October through September 30. ICF/MR and ICF/IMD facilities shall be reimbursed actual total per diem costs determined prospectively up to a ceiling. The ceiling is set at the 75th percentile of the distribution of costs of the facilities in each class. There are four (4) classes of facilities, which are:

1. Public ICF/MR facilities of 8 beds or less.
2. Public ICF/MR facilities of greater than 8 beds.
3. Private ICF/MR facilities of 60 beds or less.
4. Public ICF/IMD facilities.

An inflation factor (as described in II.H.3 above) will be applied to prior year's costs to determine the current year's rate.

IV. Rate Reconsideration

A. Primary Rate Component

Long-term care providers shall have the right to

request a rate reconsideration for alleged patient misclassification relating to the Department's assignment of the ~~class~~ case mix classification. Conditions for reconsideration are specified in the Department's nursing home appeals process as specified in the long-term care provider manual.

1. Exclusions from Reconsideration

Specifically excluded from patient class reconsiderations are:

- Changes in patient status between regular patient class reviews.
- Patient classification determinations, unless the loss of revenues for a month's period of alleged misclassification equals ten percent or more of the facility's Medicaid revenues in that month.

2. Procedures for Filing

Facilities shall submit requests for reconsiderations within sixty days after patient classifications are provided to a facility. All requests shall be submitted in writing and must be accompanied by supporting documentation as required by the Department.

3. Patient Reclassifications

Any reclassification resulting from the reconsideration process will become effective on the first day of the month following such reclassification.

B. Non-Primary Rate Components

Long-term care providers shall have the right to request a rate reconsideration for any alleged Department miscalculation of one or more non-primary payment rates. Miscalculation is defined as incorrect computation of payment rates from provider supplied data in annual cost reports.

1. Exclusions from Reconsideration

Specifically excluded from rate consideration are:

- Department classification of cost items into payment centers.
- Peer-group rate ceilings.
- Department inflation adjustments.
- Capital floor and ceiling rate percentiles.

2. Procedures for Filing

Rate reconsiderations shall be submitted within sixty days after payment rate schedules are provided to a facility. All requests shall be submitted in writing and must be accompanied by supporting documentation as requested by the Department.

3. Rate Adjustments

Any rate adjustments resulting from the reconsideration process will take place on the first day of the month following such adjustment. Rate adjustments resulting from this provision will only affect the facility that had rate miscalculations. Payment ceilings and incentive amounts for other facilities in a peer group will not be altered by these adjustments.

V. Reimbursement for Super Skilled Care

A higher rate will be paid for individuals who need a greater level of skilled care than that which is currently reimbursed in Delaware nursing facilities. For patients in the Super Skilled program prior to 4/1/93, the rate will be determined as follows:

A summary of each individual who qualified under the Medicaid program's criteria for a "Super Skilled" level of care will be sent to local nursing facilities which have expressed an interest in providing this level of care. They will be asked to submit bids, within a specific time frame, for their per diem charge for caring for the individual. The Medicaid program will review the bids and select the one that most meets the needs of the patient at the lowest cost.

Effective 4/1/93, all new patients who would have formerly been placed in a super skilled level will be placed in one of the patient class levels and reimbursed as any other client. The Medicaid program will pay outside of the per diem rate for the exceptional costs of their care, such as ventilator equipment and special supplies required.

VI. Reporting and Audit Requirements**A. Reporting**

All facilities certified to participate in the Medicaid program are required to maintain cost data and submit cost reports on the form and in the format specified by the Department. Such reports shall be filed annually. Cost reports are due within ninety days of the close of the state fiscal year. All Medicaid participating facilities shall report allowable costs on a state fiscal year basis, which begins on July 1 and ends the following June 30. The allowable costs recognized by Delaware are those defined by Medicare principles.

In addition, all facilities are required to complete and submit an annual nursing wage survey on a form specified by the Department. All facilities must provide nursing wage data for the time periods requested on the survey form.

For patients in the Super Skilled program prior to 4/1/93, annual Super Skilled bids will be considered the cost report for Super Skilled services. The nursing facility cost report must be adjusted to reflect costs associated with care for Super Skilled patients.

Failure to submit timely cost reports or nursing wage surveys within the allowed time periods, when the facility has not been granted an extension by the Department, shall be grounds for suspension from the program. The Department may levy fines for failure to submit timely data as described in Section II.D. of the General Instructions to the Medicaid nursing facility cost report.

B. Audit

The Department shall conduct a field audit of facilities each year in at least 15 percent of participating

facilities, in accordance with federal regulation and State law. Both cost reports and the nursing wage surveys will be subject to audit.

Overpayments identified and documented as a result of field audit activities, or other findings made available to the Department, will be recovered. Such overpayments will be accounted for on the Quarterly Report of Expenditures ~~within 60 days of the time the error is found~~ as required by regulation.

Rate revisions resulting from field audit will only affect payments to those facilities that had an identified overpayment. Payment ceilings and incentive payments for other facilities within a peer group will not be altered by these revisions.

C. Desk Review

All cost reports and nursing wage surveys shall be subjected to a desk review annually. Only desk reviewed cost report and nursing wage survey data will be used to calculate rates.

VII. Reimbursement for Out-of-State Facilities

Facilities located outside of Delaware will be paid the lesser of the Medicaid reimbursement rate from the state in which they are located or the highest rate established by Delaware for comparably certified non-state operated facilities as specified above.

VIII. Reimbursement of Ancillary Service for Private Facilities

Oxygen, physical therapy, occupational therapy, and speech therapy will be reimbursed on a fee-for-service basis. The rates for these services are determined by a survey of all enrolled facilities' costs. The costs are then arrayed and a cap set at the median rate. Facilities will be paid the lower of their cost or the cap. The cap will be recomputed every three years based on new surveys.

The Delaware Medicaid Program's nursing home rate calculation, the Patient Index Reimbursement System, complies with requirements found in the Nursing Home Reform Act and all subsequent revisions. A detailed description of the methodology and analysis used in determining the adjustment in payment amount for nursing facilities to take into account the cost of services required to attain or maintain the highest practicable physical, mental and psycho social well-being of each resident eligible for benefits under Title XIX is found in Attachment A.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE
Statutory Authority: 7 Delaware Code,
Section 1902(a) (7 Del.C. §1902(a))

REGISTER NOTICE

SAN # Waived by Secretary

1. TITLE OF THE REGULATION:

Tidal Finfish Regulation No. 4 Summer Flounder Size Limits; Possession Limits; Season

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

Tidal Finfish Regulation No. 4 is proposed to be amended by closing recreational fishing for summer flounder on two days a week throughout the year to further reduce the 2001 harvest of summer flounder as required by the Atlantic States Marine Fisheries Commission.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

Revised analysis of harvest data requires coastal states to further reduce recreational landings of summer flounder to comply with the summer flounder FMP or face closure of the fishery by the Department of Commerce.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code §903 (e)(2)(a).

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover Delaware 19901, (302)739-3441. A public hearing on these proposed amendments will be held at the Department of Natural Resources and Environmental Control Auditorium, 89 Kings Highway, Dover DE at 7:30 PM on Tuesday, May 1, 2001. The record will remain open for written comments until 4:30 PM on May 4, 2001.

7. PREPARED BY:

Charles A. Lesser, (302)-739-3441, March 12, 2001

PROPOSED TIDAL FINFISH REGULATION NO. 4 SUMMER FLOUNDER SIZE LIMITS; POSSESSION LIMITS; SEASONS

a) It shall be unlawful for any recreational fisherman or any commercial hook and line fisherman to take and reduce to possession or to land any summer flounder at any time on each Monday and Tuesday during the period beginning at 12:01 AM on January 1 and ending at midnight June 30 and at any time on each Monday during the period beginning at 12:01 AM on July 1 and ending at midnight on August 25 and at any time on each Monday and Tuesday during the period beginning at 12:01 AM on August 26 and ending at midnight on December 31.

*** (Note: Two specific days for closing the recreational fishing each week for summer flounder will be decided after a public hearing and the public record is closed.)**

b) It shall be unlawful for any recreational fisherman to have in possession more than seven (7) summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

c) It shall be unlawful for any person, other than qualified persons as set forth in paragraph (f) of this regulation, to possess any summer flounder that measure less than sixteen (16) inches between the tip of the snout and the furthest tip of the tail.

d) It shall be unlawful for any person, while on board a vessel, to have in possession any part of a summer flounder that measures less than sixteen (16) inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.

e) Is omitted intentionally.

f) Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:

1) A valid billofsale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder;

2) A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or

3) A bill of lading while transporting fresh or frozen summer flounder.

g) Is omitted intentionally.

h) It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that

is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.

i) It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.

j) It shall be unlawful for any person, who has been issued a commercial foodfishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than seven (7) summer flounder at or between the place where said summer flounder were caught and said persons personal abode or temporary or transient place of lodging.

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF FAMILY SERVICES

OFFICE OF CHILD CARE LICENSING

CRIMINAL HISTORY UNIT

Statutory Authority: 31 Delaware Code,
Section 309 (31 Del.C. §309)

PLEASE TAKE NOTICE, pursuant to the 31 Del. C., Section 309, the Office of Child Care Licensing - Criminal History unit proposes to revise its regulations. The proposed revisions to the Regulations for Criminal History Record Checks will bring these regulations in compliance with the Adoption and Safe Families Act of 1997 and reflect updated wording in reference to changes within the Department, Delaware code and general clarification.

Public comment shall run from April 1, 2001 through April 30, 2001 and comments must be received by April 30, 2001. Comments shall be made in writing and addressed to the Office of Child Care Licensing, Criminal History Unit, 1825 Faulkland Road, Wilmington, DE 19805, Attention: Lynn Jezyk or emailed to Lynn Jezyk at Ljezyk@state.de.us

REGULATIONS FOR CRIMINAL HISTORY RECORD CHECKS FOR CHILD ~~YOUTH~~ CARE PERSONS

1.0 LEGAL BASE

1.1 The legal base for these regulations is in the Delaware Code, ~~Title 31, Chapter 3, Chapter 3, Title 31~~ Subsection 309.

2.0 PURPOSE

2.1 The overall purpose of these regulations is the protection of children ~~youth~~ who are in the care or custody of the Department. To this end, persons in residential child care facilities and/or employees or volunteers of the Department will have their criminal history checked prior to employment or during a conditional period of employment with the Department or one of its contractors. In addition, foster/respite/adoptive parents will have their criminal history checked prior to approval or during a period of provisional approval with the Department or contracted providers.

3.0 DEFINITIONS

"Child ~~Youth~~ Care Person" means any person employed in a residential child care facility and/or employed by the Department in a position which involves supervisory or disciplinary authority over a child ~~youth~~ or in a position which provides the opportunity to have direct access to/contact with foster parents a child ~~youth~~ without the presence of other employees or adults. This definition includes foster parents and volunteers.

"Conditional Child ~~Youth~~ Care Person" means a child ~~youth~~ care person who has been offered a position or has agreed to volunteer with the Department or in a residential child care facility. Under the provisions of the law, a child ~~youth~~ care person may be hired on a temporary basis until the determination of suitability is made by the Department. Foster parents may be provisionally approved prior to the results of the criminal background check and in accordance with the Division of ~~Child Protective Family Services~~ policy. If a determination of unsuitability is made, the child ~~youth~~ care person will be dismissed and in the case of foster parents the conditional placement will be rescinded.

"Criminal History ~~Specialist Supervisor~~" means the Department staff member, located in the Office of Child Care Licensing, who is responsible for the implementation of the criminal history policies and procedures.

"Criminal History Specialist" means the Department staff member, located in the Office of Child Care Licensing, who is responsible for processing and reviewing criminal history information consistent with Departmental policies, procedures and regulations.

"Department" means the Department of Services for Children, Youth and Their Families.

"Direct Access" means the opportunity to approach children ~~youth~~ without the presence of other adults in the course of one's assigned duties and responsibilities.

"Employer" means any of the following:

- The Divisions within the Department of Services for Children, Youth and Their Families (PLEASE NOTE: The Divisions within the Department do not "employ" foster/adoptive parents or volunteers, but for purposes of this document, the Divisions are referred to as employer.)

- Any contractor who operates a program that matches the definition of a residential child care facility.

- Any contractor who provides foster care ~~and~~ or adoption services.

"Foster Parents" means foster/respite/adoptive parents and all household members 18 years of age or older.

"Residential Child Care Facility" means any facility that provides care ~~and~~ or treatment for children ~~youth~~ overnight ~~and~~ or is a 24 hour facility. This facility is State owned and operated or is both licensed by and contracts with the Department to provide services.

"Volunteer" means any person who has direct access to children ~~youth~~ in the performance of unpaid duties and who will be in a facility or in the service of the Department for 5 or more days in a fiscal year. Student interns, regularly scheduled volunteers, and volunteer counselors will be required to have a criminal history check under these regulations. (For limited, occasional, sporadic, one-time volunteer efforts that last less than 5 days or 40 hours, employers must ensure that these volunteers will be supervised during any activities with children.)

4.0 INDIVIDUALS SUBJECT TO THE LAW (formerly Section 13)

4.1 Generally, child ~~youth~~ care persons subject to a criminal history record check shall be 1) persons employed or volunteering in a residential child care facility; or 2) employed by the Department; or 3) foster/ adoptive parents; who are in a position which involves:

4.1.1 Supervisory or disciplinary authority over children ~~youth~~, or

4.1.2 The opportunity to have direct access to ~~or~~ contact with a child ~~youth~~ without the presence of other employees or adults.

4.1.3 Individuals subject to the law shall be those individuals who are hired or apply for the status described in 4.1 to 4.4 on or after September 1, 1990 or have less than one year service prior to that date.

4.2 Residential Child Care Facilities (formerly Section 14)

4.2.1 Criminal history record checks shall be conducted on the following types of employees of State owned and operated residential child care facilities and those facilities which are both licensed by and contract with the Department for residential child care services:

4.2.1.2 Child care workers

4.2.1.3 Child care supervisors

4.2.1.4 Maintenance, transportation, kitchen, clerical workers

4.2.1.5 Teachers, aides, principals

4.2.1.6 Administrators, coordinators, directors

4.2.1.7 Volunteers as defined in 3.0

4.2.1.8 Social Workers

4.2.1.9 Recreation staff

4.2.1.10 Medical staff

(This list is not necessarily all-inclusive, due to the various titles used in different facilities. Section 4.2 above is to be used for guidance.)

4.3 Foster/Adoptive Parents (formerly Section 15)

4.3.1 Criminal history record checks shall be conducted on:

4.3.1.1 Applicants for foster/respite care within the Department and in licensed child placing agencies providing foster care.

4.3.1.2 Applicants for adoption within the Department and in licensed child placing agencies providing adoption services.

4.3.1.3 Petitioners in relative adoptions.

4.3.1.4 Interstate applicants for adoption or foster placement when a child is from another state and is being placed in Delaware and when a Delaware child is being placed in another state.

4.3.1.5 A criminal history check will not be required in a stepparent adoption.

4.4 Department Employees (formerly Section 16)

4.4.1 Criminal history record checks shall, at the discretion of the Cabinet Secretary, be conducted on individuals filling the following positions within the Department:

4.4.1.1 all Division of ~~Administration~~ ~~Education~~ Management Support Services employees

4.4.1.2 all Division of ~~Child Protective~~ Family Services employees

4.4.1.3 all Division of Youth Rehabilitative Services employees

4.4.1.4 all Division of Child Mental Health employees

E. ~~Division of Program Support~~

i. ~~Division Director~~

ii. ~~Deputy Director~~

iii. ~~Master Family Service Specialists~~

iv. ~~Child Care Licensing Specialists~~

v. ~~Criminal History Specialist~~

vi. ~~Institutional Abuse Investigator~~

vii. ~~Child Care Licensing Supervisors~~

F. ~~Division of Administration~~

i. ~~Cabinet Secretary~~

ii. ~~Division Director~~

iii. ~~Deputy Director~~

5.0 CRIMINAL HISTORY RECORD CHECK PROCESS (formerly Sections 17-25)

5.1 The employer shall require each individual subject to the law, either as soon as that individual has accepted a position, or has agreed to serve as a volunteer, or no later than the fifth working day to complete the Criminal History Record Request form and be fingerprinted. In the case of foster parents, the Criminal History Record Request form

and fingerprinting must be completed prior to completion of pre-service training or the home study process.

5.2 The child ~~youth~~ care person or foster parent goes to ~~any a designated~~ Delaware State Police Barrack and has two sets of fingerprints taken.

5.3 The Delaware State Police follow established State Bureau of Identification procedures to obtain criminal history information from the State Bureau of Identification and Federal Bureau of ~~Identification~~ Investigation. A report of the child ~~youth~~ care person's or foster parent's criminal history record or a statement that there is no criminal history information relating to that person is forwarded to the Criminal History Specialist.

5.4 Simultaneously, the Criminal History Specialist conducts a review of the Child Abuse Registry to determine if the child ~~youth~~ care person is named as a perpetrator in a substantiated report of child abuse or neglect.

5.5 When the Criminal History Specialist receives the information from the State Bureau of Identification, Child Abuse Registry, and Federal Bureau of ~~Identification~~ Investigation she/he reviews that information, along with the Criminal History Record Request form. This review is guided by the criteria specified in Sections 6.1-7.2.

5.6 When there is no record, the Criminal History Specialist provides notification to the appropriate Division Director, who notifies the employer or child placing agency and the child ~~youth~~ care person or foster parent.

5.7 When there is a criminal history, the Criminal History Specialist provides a written summary of the findings of the check with a recommendation to the appropriate Division Director.

5.8 The appropriate Division Director makes the determination of suitability for employment, volunteering or foster parenting and notifies the child ~~youth~~ care person or foster parent and employer or child placing agency, with a copy of the findings attached.

5.9 In the event that the child ~~youth~~ care person or foster parent has reason to provide additional information regarding the information in her/his criminal history check, an administrative review will be held, as delineated in sections 9.1-9.10.

6.0 CRITERIA FOR PROHIBITED OFFENSES (formerly Sections 26-27)

6.1 Child ~~youth~~ care persons or foster parents convicted of a sexually related offense(s) or other offenses against children shall be prohibited from employment, volunteering or foster care/adoption without consideration of other criteria. ~~The following offenses shall be considered prohibited offenses. The prohibited offenses shall include but not be limited to:~~

6.1.1 Incest

6.1.2 Unlawful sexual contact

6.1.3 ~~Unlawful sexual penetration~~ Rape

6.1.4 ~~Unlawful sexual intercourse~~ Continuous sexual abuse of a child

6.1.5 Sexual exploitation of a child

6.1.6 Abandonment of child

6.1.7 ~~Promoting prostitution of a person less than 18 years old~~ Sexual solicitation of a child

6.1.8 ~~Obscene literature harmful to minors~~ Unlawful dealing with a child

6.1.9 Unlawfully dealing in material depicting a child engaging in a prohibited sexual act

~~J. Distribution of drugs to a minor~~

~~K. Delivery of drugs to a minor~~

6.1.10 Murder of a child.

6.1.11 Endangering the welfare of a child

6.2 The Adoption and Safe Families Act of 1997 prohibits individuals from becoming foster or adoptive parents if they have the following felony convictions:

6.2.1 Child abuse or neglect, spousal abuse, crimes against children (including child pornography), and crimes involving violence including rape, sexual assault and homicide committed at any time.

6.2.2 Physical assault, battery and drug related offenses committed within the past five years.

7.0 CRITERIA FOR UNSUITABILITY (formerly Sections 28-29)

(Please note: each employer uses his/her own employment/acceptance criteria which are different from and may be stricter than those described herein.)

7.1 Information received from the criminal history record and Child Abuse Registry checks shall be reviewed by the Criminal History Specialist and Division Director on the basis of the following criteria for a determination of suitability for employment, volunteering, or foster care/adoption.

7.1.1 Type of offense(s)/child abuse or neglect activity

~~i. A prohibited offense(s) shall require a determination of unsuitability for employment, volunteering, or foster care/adoption without consideration of other criteria.~~

7.1.1.1 Offenses other than those that are prohibited shall be reviewed in consideration of other criteria below. Other convictions and arrests for offenses which may make a child ~~youth~~ care person unsuitable for employment or volunteering, or may make a prospective foster parent unsuitable for foster parenting, are those in the Delaware Code, Titles 11 and 16 which may contain (but are not limited to) the following characteristics:

7.1.1.1.1 Offenses against the person where physical harm or death has taken place

7.1.1.1.2 Offenses involving weapons, explosive devices or threat of harm

7.1.1.1.3 Offenses involving public

indecenty and obscenity which may have been the result of plea bargain situations

7.1.1.1.4 Offenses that show a disregard of others, such as reckless endangering, arson

7.1.1.1.5 Cruelty to animals or deviant behavior such as abusing a corpse

7.1.1.1.6 Offenses against the Uniform Controlled Substances Act

7.1.1.2 The existence of a substantiated report of child abuse ~~/ or~~ neglect involving the child/youth care person or foster parent as perpetrator shall be reviewed in consideration of other criteria below.

7.1.2 Frequency of offense (s)

7.1.3 Length of time since the offense(s)

7.1.4 Age at the time of the offense(s)

7.1.5 Severity of the offense(s)

7.1.6 Record since the offense(s)

7.1.7 Relationship of the offense(s) to the type of job assignment and/or responsibilities of the child ~~/ youth~~ care person or foster parent

7.1.8 Policies of the agency

7.2 Failure by a child ~~/ youth~~ care person or foster parent to disclose relevant criminal history or child abuse registry information on the Criminal History Record Request form that is subsequently disclosed as a result of the criminal history record check may be grounds for immediate termination of an employee or denial of approval for foster or adoptive care.

8.0 SANCTIONS (formerly Sections 30-32)

8.1 Sanctions against employers (division/facility/agency) shall be applied and enforced in the following circumstances:

8.1.1 An employer fails to require criminal history record checks for affected employees, volunteers, or applicants for foster care ~~/ or~~ adoption.

8.1.2 An employer knowingly hires or approves a child ~~/ youth~~ care person who is prohibited from employment or foster care ~~/ or~~ adoption as a result of a conviction for a prohibited offense.

8.1.3 An employer does not comply with the final recommendation of an administrative review.

8.2 Sanctions applied to contracted residential facilities and child placing agencies for violation of the law ~~and/~~ or the regulations may include:

8.2.1 Amendment or dissolution of any agreements with the Department to provide the contracted service

8.2.2 Removal of children ~~/ youth~~ from placement

8.2.3 Suspension of future child referrals

8.2.4 Revocation of licensure

8.3 Sanctions against Department Divisions for violation of the law ~~and/~~ or regulations shall be applied to responsible staff by the Secretary on a case-by-case basis and may include:

8.3.1 Involuntary reassignment

8.3.2 Discipline up to and including dismissal

9.0 ADMINISTRATIVE REVIEW (formerly Sections 33-41)

9.1 Criminal history is only one factor being considered in the hiring ~~/ or~~ approval process. If the employer makes an adverse judgment based on any criterion other than criminal history, this administrative review process does not apply.

9.2 Any child ~~/ youth~~ care person or foster parent who is denied ~~/ recommended for termination / terminated from employment / volunteering or foster care / adoption~~ as a result of an adverse judgment made on the basis of a criminal history record check shall be entitled to an administrative review.

9.3 The child ~~/ youth~~ care person will be notified of the right to an administrative review when a determination of unsuitability has been made.

9.4 If the child ~~/ youth~~ care person believes the criminal history information is incorrect or incomplete, she/he shall submit a request for a review of the facts of the criminal history to the Criminal History Specialist in writing or reduced to writing within 5 working days of the receipt of the decision for denial/recommending termination/termination of employment, volunteering, ~~or~~ foster care ~~/ or~~ adoption resulting from a determination of unsuitability. When the corrected information is obtained by the child ~~/ youth~~ care person, it will be reviewed by the Criminal History Specialist's Supervisor ~~or the Division of Program Support Director~~ and the Criminal History Specialist. A ~~report /~~ recommendation will be issued to the appropriate Division Director based on the corrected information. The Division Director makes a final decision and notifies the child ~~/ youth~~ care person, ~~or~~ foster or adoptive parent and copies the employer or child placing agency and the Criminal History Specialist.

9.5 If the child ~~/ youth~~ care person believes that additional information regarding the circumstances of the particular offense(s) would clarify the situation, she/he shall submit a written or reduced to writing request for an administrative review and the written documentation to be considered in the review to the appropriate Division Director with a copy to the employer and the Criminal History Specialist. This shall be submitted within 10 working days of the receipt of the decision for denial ~~/ a~~ recommendation ~~termination / termination~~ of to terminate employment, volunteering, ~~or~~ foster care ~~/ a~~ or adoption resulting from a determination of unsuitability. The Division Director makes a final decision and notifies the child ~~/ youth~~ care person or foster parent and copies the employer or child placing agency and the Criminal History Specialist.

9.5.1 If the individual had previously requested a review of the facts of the criminal history, the request for an

administrative review shall be submitted within 5 working days of the receipt of the decision based on the results of that review.

9.5.2 The child ~~youth~~ care person may also request to give an oral presentation at her/his administrative review.

9.6 When a child ~~youth~~ care person has requested a review of the facts of the criminal history and/or an administrative review, the following shall apply:

9.6.1 The child ~~youth~~ care person shall be removed from direct access to children ~~youth~~ or provisions made for on-site supervision of the person during working hours pending the results of the review.

9.6.2 In the case of foster parents, children may be removed from the home or no further placements shall be made pending the results of the review.

9.6.3 In the case of adoptive parents, the application shall remain active, but children may be removed from the home pending results of the review.

9.6.4 The employer shall notify the Criminal History Specialist of the action taken with the child ~~youth~~ care person pending the results of the administrative review. (This notification is in addition to following established procedures already governing state personnel or individual facilities ~~or~~ agencies.)

9.7 In the case of a review of a decision involving a Department operated facility or Department staff, the Division Director (or designee) shall conduct the review in conjunction with Personnel and within the context of these regulations, merit rules/labor agreements and the employment status of the child ~~youth~~ care person. The Criminal History Specialist shall be present as a witness.

9.8 When the review involves a Division of ~~Child Protective Family Services~~ approved foster parent, the Director of the Division of ~~Child Protective Family Services~~ (or designee) shall conduct the review with the County Foster Home Coordinator staffing the review and the Criminal History Specialist present as a witness.

9.9 In the case of a review of a decision involving a contracted facility or child placing agency, the Director (or designee) of the contracting Division shall conduct the review with the employer staffing the review and the Criminal History Specialist present as a witness.

9.10 The employer and the child ~~youth~~ care person shall be bound by the final decision of the administrative review which is made by the Division Director or designee. If the employer does not accept the decision, sanctions shall apply.

10.0 EMPLOYER RESPONSIBILITIES (formerly Sections 42-44)

10.1 The employer (division/facility/agency) shall ensure that a Criminal History Record Request has been completed as specified by law and that the employer copy is maintained in the personnel/application file. Employers

shall direct child ~~youth~~ care persons to the State Police to have fingerprints taken and shall ensure the completion of this process.

10.1.1 The employer whenever possible, will notify the Criminal History Specialist if a child ~~youth~~ care person is terminated prior to completion of the criminal history check process.

10.1.2 The employer shall require all child ~~youth~~ care persons and foster parents to notify them of any subsequent arrests ~~or~~ charges as a condition of continued employment ~~or~~ approval.

10.2 When the employer is notified of a history of prohibited offense(s), the employer shall immediately take steps to terminate the child ~~youth~~ care person. A copy of this letter shall be sent to the Criminal History Specialist and a copy maintained in the personnel/application file.

10.3 In the event that a child ~~youth~~ care person requests an administrative review, the employer shall notify the Criminal History Specialist of the action taken to remove the child ~~youth~~ care person from direct access to children ~~youth~~ pending the results of the review. The employer shall abide by the decision of the administrative review. Copies of written documentation related to the administrative review shall be maintained in the personnel/application file.

11.0 CONFIDENTIALITY (formerly Sections 45-50)

11.1 Title 11, subsection 8513 (c) (1) of the Delaware Code permits the State Bureau of Identification to "furnish information pertaining to the identification and conviction data of any person ~~of whom the Bureau has record to~~ individuals and agencies for the purpose of employment of the person whose record is sought, provided: ~~the use of the conviction data shall be is limited to the purpose for which it was given;~~"

11.2 The Department shall ensure that written and electronically recorded criminal history record information shall be stored in a systematic manner, to provide for the security and confidentiality of records and to protect against any anticipated threats to their security and integrity.

11.3 The Department shall ensure that the use of the criminal history record information is restricted to its purpose of determining suitability for employment ~~or~~ approval to provide child care services for child ~~youth~~ care persons or foster parents as defined in these regulations.

11.4 The Department shall not release to employers as defined in these regulations copies of actual written reports of criminal history records prepared by the State Bureau of Identification, Federal Bureau of ~~Identification Investigation~~ or Division of ~~Child Protective Family Services~~.

11.5 The Department shall provide to employers and child ~~youth~~ care persons or foster parents written summaries of criminal record information for a child ~~youth~~ care person or foster parent whose criminal history record check results in a finding of prohibited offense(s), other arrests and

convictions, or information that the individual is named in the Child Abuse Registry as the perpetrator of a substantiated report of child abuse or neglect.

11.6 The following procedure shall be established to permit the review of criminal history record files by the child ~~youth~~ care person or foster parent:

11.6.1 An individual shall submit a request in writing to the Criminal History Specialist for the on-site review of his/her criminal history record file.

11.6.2 An appointment shall be made for the individual to review the record in the offices of the Office of Child Care Licensing. Identification will be required at the time of the review.

11.6.3 The record shall be reviewed in the presence of the Criminal History Specialist.

11.6.4 Written documentation of the date and time of the review and the name of the reviewer shall be filed in the criminal history record file for the child ~~youth~~ care person or foster parent.

11.6.5 The Department shall ensure that criminal history record files (written and electronic computer-generated) be removed from the secure files for any purpose other than to permit review by the named child ~~youth~~ care person or foster parent.

11.7 Criminal history record information shall not be disseminated to any persons other than the child ~~youth~~ care person or foster parent whose record is being sought and his/her employer, the Division Director or County Foster Home Coordinator, in compliance with Title 11, subsection 8513 (d) of the Delaware Code.

Gramm-Leach-Bliley Act of 1999 and Part 362 of the Rules and Regulations of the Federal Deposit Insurance Corporation that implements Section 24 of the Federal Deposit Insurance Act. Proposed new Regulation No. 5.2202(b).0007 ("Exemption of Licensed Lenders") establishes a procedure for lenders to apply for exemption from the licensing requirements in Chapter 22 of Title 5 of the Delaware Code. Proposed amended Regulation No. 5.761.0017 and proposed new Regulation No. 5.2202(b).0007 would be adopted by the State Bank Commissioner on or after May 2, 2001. Other regulations issued by the State Bank Commissioner are not affected by these proposed new and amended regulations. These regulations are issued by the State Bank Commissioner in accordance with Title 5 of the Delaware Code.

Comments

Copies of the proposed new and amended regulations are published in the Delaware Register of Regulations. Copies also are on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, Delaware, and will be available for inspection during regular office hours. Copies are available upon request.

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether these proposed new and amended regulations should be adopted, rejected or modified. Written materials submitted will be available for public inspection at the above address. Comments must be received before the public hearing on May 2, 2001.

Public Hearing

A public hearing on the proposed new and amended regulations will be held at the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, Delaware on Wednesday, May 2, 2001 at 10:00 a.m.

This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the Delaware Code.

Regulation No.: 5.2202(b).0007

Proposed

EXEMPTION OF LICENSED LENDERS

1. Purpose

This regulation governs the procedures and requirements for exemptions pursuant to 5 Del. C. §2202(b).

2. Definitions

For the purpose of this regulation, the following

DEPARTMENT OF STATE OFFICE OF THE STATE BANKING COMMISSIONER

Statutory Authority: 5 Delaware Code,
Section 121(b) (5 Del.C. §121(b))

NOTICE OF PROPOSED AMENDMENT OF REGULATIONS OF THE STATE BANK COMMISSIONER

Summary

The State Bank Commissioner proposes to adopt amended Regulation No. 5.761.0017 and new Regulation No. 5.2202(b).0007. Proposed amended Regulation No. 5.761.0017 ("Incidental Powers") provides for state-chartered banks and trust companies to exercise their incidental powers authorized by Section 761(a)(17) of Title 5 of the Delaware Code. Regulation No. 5.761.0017 is being revised to reflect changes in the federal law, including the

definitions apply:

“Person” means an individual, corporation, partnership, or any other business entity or group or combination of individuals however organized.

“Statute” means 5 Del. C. Chapter 22.

“Commissioner” means the State Bank Commissioner.

“Existing exemption” means an exemption from the Statute granted before the effective date of this regulation.

“Exempt person” means a person that has been granted an exemption from the Statute pursuant to 5 Del. C. §2202(b) and this regulation.

3. Applicability

(a) This regulation and the Statute apply only to persons engaged in consumer credit transactions, including but not limited to mortgage lending secured by one to four family residential, owner occupied property located in Delaware and intended for personal, family or household purposes.

(b) This regulation and the Statute’s licensing requirements do not apply to:

- 1) Any person who makes 5 or less loans within any 12 month period;
- 2) Any banking organization, as defined by 5 Del. C. §101;
- 3) Any federal credit union;
- 4) Any insurance company;
- 5) Any person if and to the extent that such person is lending money in accordance with, and as authorized by, any other applicable law of the State of Delaware; and
- 6) Any person if and to the extent that such person is lending money in accordance with, and as authorized by, any applicable law of the United States of America.

(c) A person shall not be deemed to be transacting the business of lending money within the meaning of 5 Del. C. §2202 and shall not be subject to this regulation or the licensing requirements of the Statute solely because the person is a participating merchant as the term is used in the Statute.

4. Qualifications

An exempt person shall at all times maintain such financial responsibility, experience, character, and general fitness as to command the confidence of the community and to warrant belief that its business will be operated honestly, fairly, and efficiently within the purposes of the Statute.

5. Grant of Exemptions

Upon finding the qualifications of Section 4 of this regulation have been met, the Commissioner may grant an exemption to:

(a) Any person whose lending operations are regularly examined, either separately or as part of an examination of an affiliated company, by an agency of the State of Delaware or the United States of America, if that agency regulates

banks.

(b) Any person exempt from federal taxation under 26 USC §501(c)(3), as amended.

(c) Any other person whom the Commissioner determines to be inappropriate to include within the coverage of the Statute, including any person whose operations and financial condition are regularly examined by any other agency of the State of Delaware, the United States of America, or another state.

6. Nature of Exemption

(a) An exemption granted pursuant to Section 5(a) and (b) of this regulation shall include at minimum an exemption from the licensing and surety bond requirements of the Statute. The Commissioner may also grant an exemption from any other provision of the Statute that the Commissioner deems appropriate.

(b) The Commissioner shall determine the nature and extent of any exemption granted pursuant to Section 5(c) of this regulation.

7. Application of the Statute to Exempt Persons

Unless the Commissioner specifies otherwise, Subchapter II and Subchapter III of the Statute shall apply to all exempt persons as if they were licensees.

8. Expiration

Except as otherwise provided in this regulation, exemptions shall expire one year from the date granted.

9. Application and Renewals

(a) Any person who desires an exemption from the Statute shall apply to the Commissioner on such forms as the Commissioner may designate.

(b) An exempt person shall apply for a renewal of the exemption at least 30 days before the expiration of the exemption on such forms as the Commissioner may designate.

10. Changed Information

Exempt persons shall notify the Commissioner within 30 days of any changes in the information contained in the application for its exemption or the renewal thereof.

11. Extensions on License Applications

An exempt person who applies for a license under the Statute before the expiration or revocation of its exemption shall have the exemption automatically extended until a final decision is made on the license application.

12. Existing Exemptions

- (a) Existing exemptions shall expire on July 1, 2002.
- (b) Persons with existing exemptions may apply for a renewal of their exemption pursuant to this regulation at any

time before June 30, 2000.

(c) The provisions of all existing exemptions shall remain in effect until the exemption expires pursuant to subsection 12(a) of this regulation.

13. Suspension or Revocation

(a) The Commissioner may suspend or revoke any exemption upon a finding that:

1) The exempt person has violated any statute, judicial order, administrative order, rule, regulation or other law of the State of Delaware, any other state or the United States of America;

2) Any fact or condition exists which if it had existed at the time of the application or renewal for the exemption, would have warranted the Commissioner in refusing to issue the exemption or its renewal;

3) The exempt person has engaged in unfair or deceptive business activities or practices in connection with extensions of credit to consumers. Unfair or deceptive activities and practices include, but are not limited to, the use of tactics which mislead the consumer, misrepresent the consumer transaction or any part thereof, or otherwise create false expectations on the part of the consumer; or

4) The exempt person does not meet the qualifications specified in Section 4 of this regulation.

(b) No exemption shall be suspended or revoked except in accordance with the procedures for suspending or revoking a license that are specified in the Statute and in the Delaware Administrative Procedures Act, 29 Del. C., Chapter 101.

(c) No suspension or revocation of an exemption shall impair or affect the obligation of any preexisting lawful contract between the exempt person and any other person.

14. Exemption Denials

If the Commissioner denies an exemption or the renewal of an exemption, the Commissioner shall promptly send the applicant or exempt person a written order to that effect which states the grounds for the denial. The applicant or exempt person may request that the Commissioner hold a hearing to reconsider that denial, in accordance with the procedures for requesting a hearing on the denial of a license application that are specified in the Statute and in the Delaware Administrative Procedures Act, 29 Del. C. Chapter 101. The Commissioner may extend the term of any exemption whose renewal has been denied until the final resolution of that hearing.

15. Fees

(a) The investigation fee for an application for an exemption shall be \$250.00.

(b) The investigation fee for renewal of an exemption shall be \$100.00. A renewal application must be submitted more than 30 days in advance of the exemption's expiration.

(c) A renewal application submitted less than 30 days in advance of the exemption's expiration shall be treated as a new application for an exemption and shall be subject to the investigation fee of \$250.

Regulation No.: 5.761.0017
Proposed

INCIDENTAL POWERS

(5 Del. C. §761(a)(17))

1. Purpose and Scope

(a) This regulation specifies certain activities that are within the scope of the powers incident to a banking corporation under 5 Del. C. §761(a)(17) and also establishes the procedure for a bank to exercise its powers under that section by engaging in those and other activities, either directly or through a subsidiary.

(b) This regulation is not intended to limit, restrict or define any other powers granted to a bank or any of its subsidiaries by any other Delaware statute, legislative charter, or regulation.

2. Definitions

(a) "Bank" means any bank as defined by 5 Del. C. §101 that is established pursuant to 5 Del. C. Chapter 7, or pursuant to any other law of this State if the bank is entitled to amend its charter or certificate of incorporation in accordance with 5 Del. C. §749.

(b) "Commissioner" means the State Bank Commissioner.

3. Specified Activities

(a) Any bank that desires to exercise its incidental powers under 5 Del. C. §761(a)(17) by engaging in any of the following specified activities, either directly or through a subsidiary, shall notify the Commissioner in writing before commencing that activity:

(1) Any activity that is permissible for a national bank as principal.

(2) Any activity that is permissible for a bank holding company pursuant to Section 4(c)(8) of the Bank Holding Company Act of 1956, as amended (12 USC §1843(c)(8)).

(3) Any activity that is permissible in accordance with Part 362.3 of the Rules and Regulations of the Federal Deposit Insurance Corporation (the "FDIC") (12 CFR §362.3), which implements provisions of Section 24 of the Federal Deposit Insurance Act (12 USC §1831a), other than activities that are otherwise specifically limited or prohibited under Delaware law.

(4) The provision of travel agency services. Banks

chartered by the Delaware General Assembly before 1933 traditionally provided travel agency services to their customers, in reliance on the broad grants of agency power typically conferred by their charters. Delaware bank customers historically relied upon Delaware banks as providers of travel agency services, and continue to look to Delaware banks for such services. Accordingly, the Commissioner has concluded that travel agency services constituted part of the generally accepted business of banking when Delaware's Corporation Law for State Banks and Trust Companies was enacted in 1933, and that the provision of travel agency services continues to be authorized by the powers incident to a banking corporation pursuant to 5 Del. C. §761(a)(17).

(5) The provision of general management consulting services. Many banks chartered by the Delaware General Assembly before 1933 were given broad powers to act in a fiduciary capacity, and the fulfillment of fiduciary duties in the context of banking affairs ordinarily involves the provision by banks of disinterested advice on many business and financial matters. Accordingly, the Commissioner has concluded that general management consulting services constituted part of the generally accepted business of banking when Delaware's Corporation Law for State Banks and Trust Companies was enacted in 1933, and that the provision of general management consulting services continues to be authorized by the powers incident to a banking corporation pursuant to 5 Del. C. §761(a)(17).

(b) Any bank that desires to exercise its incidental powers under 5 Del. C. §761(a)(17) by engaging in any of the following specified activities through a subsidiary shall notify the Commissioner in writing before commencing that activity:

(1) Any activity that is permissible for a financial subsidiary of a national bank pursuant to Section 5136A of the Revised Statutes of the United States, as amended (12 USC §24a), other than activities that are otherwise specifically limited or prohibited under Delaware law;

(2) Any activity that is permissible in accordance with Part 362.3 or Part 362.4 of the Rules and Regulations of the FDIC (12 CFR §362.3 or §362.4), which implement provisions of Section 24 of the Federal Deposit Insurance Act (12 USC §1831a), other than activities that are otherwise specifically limited or prohibited under Delaware law.

(c) If the Commissioner does not object in writing to the proposed activity within 30 days of receiving the notice, the bank may then exercise its incidental powers by engaging in the specified activity described in the notice. The Commissioner may also permit the bank to engage in the specified activity before the end of the 30-day notice period.

(d) The Commissioner may require the bank to conduct the specified activity only through a subsidiary, and may also impose any conditions related to the conduct of that activity

that are necessary or appropriate for the bank's safety and soundness, as the Commissioner may determine.

(e) (1) If the Commissioner objects in writing to the proposed activity within 30 days of receiving the bank's notice, the bank may not engage in that activity either directly or through a subsidiary, until the Commissioner issues a written order approving such activity.

(2) The bank or its subsidiary may submit an application to the Commissioner seeking approval of the proposed activity. The Commissioner has discretion to require any additional information deemed necessary and the application shall not be considered complete until such additional information is provided. Within 30 days of receiving the completed application, the Commissioner shall issue an order approving or disapproving the application.

4. Other Activities

A bank may apply to the Commissioner for permission to exercise its incidental powers under 5 Del. C. §761(a)(17) by engaging, either directly or through a subsidiary, in any activity that is not specified in Section 3 of this regulation.

(a) The bank's application must describe the proposed activity in detail and demonstrate that the activity is within the powers, rights, privileges and franchises incident to a banking corporation, and is also necessary and proper to the transaction of the business of the corporation within the meaning of 5 Del. C. §761(a)(17).

(b) Upon receipt of the application, the Commissioner may require additional information appropriate to evaluate the request, and the application shall not be considered complete until such additional information is received.

(c) Within 30 days of receiving the completed application, the Commissioner shall issue a written order approving or disapproving the bank's application. In issuing that order, the Commissioner shall consider all information that the bank has provided as well as the bank's general financial condition and performance.

(d) The Commissioner may require that the activity be conducted only through a subsidiary, and may also impose any conditions related to the conduct of the activity that are necessary or appropriate to the bank's safety and soundness, as the Commissioner may determine.

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 AGRICULTURE HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code,
Section 10027 (3 **Del.C.** 10027)

23, 2001 and received no public comments. The Commission accepted written comments on the proposal for the month of January 2001. No written comments were submitted by the public.

FINDINGS OF FACT

ORDER

Pursuant to 29 **Del.C.** 10118 and 3 **Del.C.** 10027, the Delaware Harness Racing Commission ("Commission") hereby issues this Order promulgating a proposed amendment of the Commission's Rules. following notice and a public hearing held on January 23, 2001 on the proposed rule amendment to Rule 6.3.3.13, the Commission makes the following findings and conclusions:

SUMMARY OF EVIDENCE AND INFORMATION SUBMITTED

1. The Commission posted public notice of the proposed rule revisions in the January 1, 2001 Register of Regulations and in the News-Journal and the Delaware State News. The proposal contained a proposed amendment to Rule 6.3.3.13 to add the following provision after the first two sentences of the existing rule: "Any claimed horse not otherwise selected for testing by the State Steward or judges shall be tested if requested by the claimant at the time the claim form is submitted in accordance with these rules."

2. The Commission held a public hearing on January

3. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing regarding the proposed rule amendments. The Commission received no public comments on the proposed Rule amendment.

4. The Commission finds that the proposed amendment to Rule 6.3.3.13 should be adopted in its current form. The proposed amendment was recommended by the Medication Committee that conducted an extensive review of the Commission's existing medication rules. The Commission has previously considered this rule in prior versions and finds that the rule is necessary to further the purposed of the Commission's Medication testing rules.

CONCLUSIONS

5. The proposed rule amendment to Rule 6.3.3.13 was promulgated by the Commission in accord with its statutory duties and authority as set forth in 3 **Del.C.** 10027. The proposed rule is necessary for the commission to regulate and oversee the sport of harness racing in the public interest as required by 3 **Del.C.** 10005. The Commission concludes

that the proposed Rule should be adopted in its proposed form.

6. The effective date of this Order shall be ten (10) days from the publication of this order in the Register of Regulations on April 1, 2001.

IT IS SO ORDERED this 20th day of February, 2001.

Anthony G. Flynn, Chairman.
Terry Johnson, Commissioner
Beth Steele, Commissioner
Mary Ann Lambertson, Commissioner
Robert Kerr, Commissioner.

6.0 Types of Races

6.1 Types of Races Permitted

In presenting a program of racing, the racing secretary shall use exclusively the following types of races:

6.1.1 Overnight events which include:

- 6.1.1.1 Conditioned races;
- 6.1.1.2 Claiming races;
- 6.1.1.3 Preferred, invitational, handicap, open or free-for-all races;
- 6.1.1.4 Schooling races; and
- 6.1.1.5 Matinee races

6.1.2 Added money events which include:

- 6.1.2.1 Stakes;
- 6.1.2.2 Futurities;
- 6.1.2.3 Early closing events; and
- 6.1.2.4 Late closing events

6.1.3 Match races

6.1.4 Qualifying Races (See Rule 7.0 --"Rules of the Race")

6.1.5 Delaware-owned or bred races as specified in 3 Del. C. §10032

2 DE Reg. 1240 (01/01/99)

6.2 Overnight Events

6.2.1 General Provisions

6.2.1.1 For the purpose of this rule, overnight events shall include conditioned, claiming, preferred, invitational, handicap, open, free-for-all, schooling or matinee races or a combination thereof.

6.2.1.2 At extended meetings, condition sheets must be available to participants at least 18 hours prior to closing declarations to any race program contained therein. At other meetings, conditions must be posted and available to participants at least 18 hours prior to closing declarations.

6.2.1.3 A fair and reasonable racing opportunity shall be afforded both trotters and pacers in reasonable proportion from those available and qualified to race.

6.2.1.4 Substitute races may be provided for each race program and shall be so designated in condition books sheets. A substitute race may be used when a regularly scheduled race fails to fill.

6.2.1.5 Regularly scheduled races or substitute races may be divided where necessary to fill a program of racing, or may be divided and carried over to a subsequent racing program, subject to the following:

6.2.1.5.1 No such divisions shall be used in the place of regularly scheduled races which fill.

6.2.1.5.2 Where races are divided in order to fill a program starters for each division must be determined by lot after preference has been applied, unless the conditions provide for divisions based upon age, performance, earnings or sex.

6.2.1.5.3 However, where necessary to fill a card, not more than one race per day may be divided into not more than two divisions after preference has been applied. The divisions may be selected by the racing secretary. For all other overnight races that are divided, the division must be by lot unless the conditions provide for a division based on performance, earnings or sex.

6.2.2 Conditions

6.2.2.1 Conditions may be based only on:

6.2.2.1.1 horses' money winnings in a specified number of previous races or during a specified previous time;

6.2.2.1.2 horses' finishing positions in a specified number of previous races or during a specified period of time;

6.2.2.1.3 age, provided that no horse that is 15 years of age or older shall be eligible to perform in any race except in a matinee race;

2 DE Reg. 1243 (01/01/99)

6.2.2.1.4 sex;

6.2.2.1.5 number of starts during a specified period of time;

6.2.2.1.6 special qualifications for foreign horses that do not have a representative number of starts in the United States or Canada;

6.2.2.1.7 the exclusion of schooling races;

or

6.2.2.1.8 Delaware-owned or bred races as specified in 3 Del. C. §10032; or

2 DE Reg. 1241 (01/01/99)

6.2.2.1.9 any one or more combinations of the qualifications herein listed.

6.2.2.2 Conditions shall not be written in such a way that any horse is deprived of an opportunity to race in a normal preference cycle. Where the word preference is used in a condition, it shall not supersede date preference as provided in the rules. Not more than three also eligible conditions shall be used in writing the conditions for overnight events.

6.2.2.3 The Commission may, upon application from the racing secretary, approve conditions other than those listed above for special events.

6.2.2.4 In the event there are conflicting

published conditions and neither one nor the other is withdrawn by the association, the one more favorable to the declarer shall govern.

6.2.2.5 For the purpose of eligibility, a racing season or racing year shall be the calendar year. All races based on winnings will be programmed as Non-Winners of a multiple of \$100 plus \$1 or Winners over a multiple of \$100. Additional conditions may be added. When recording winnings, gross winnings shall be used and cents shall be disregarded. In the case of a bonus, the present value of the bonus shall be credited to the horse as earnings for the race or series of races for which it received the bonus. It shall be the responsibility of the organization offering the bonus to report the present value of the bonus to the United States Trotting Association in a timely manner.

1 DE Reg. 503 (11/01/97)

2 DE Reg. 1243 (01/01/99)

6.2.2.6 Records, time bars shall not be used as a condition of eligibility.

6.2.2.7 Horses must be eligible when declarations close subject to the provision that:

6.2.2.7.1 Wins and winnings on or after the closing date of declarations shall not be considered;

6.2.2.7.2 Age allowances shall be given according to the age of the horse on the date the race is contested.

6.2.2.7.3 In mixed races, trotting and pacing, a horse must be eligible under the conditions for the gait at which it is stated in the declaration the horse will perform.

6.2.2.8 When conditions refer to previous performances, those performances shall only include those in a purse race. Each dash or heat shall be considered as a separate performance for the purpose of condition races.

6.2.2.9 In overnight events, not more than one trailer shall be permitted, regardless of the size of the track except with the approval of the Commission. At least eight feet per horse must be provided the starters in the front tier.

6.2.2.10 The racing secretary may reject the declaration to an overnight event of any horse whose past performance indicates that it would be below the competitive level of other horses declared to that particular event.

6.3 Claiming Races

6.3.1 General Provisions

6.3.1.1 No horse will be eligible to start in a claiming race unless the owner has provided written authorization, which must include the minimum price for which the horse may be claimed, to the racing secretary at least one hour prior to post time of its race. If the horse is owned by more than one party, all parties must sign the authorization. Any question relating to the validity of a claiming authorization shall be referred to the judges who shall have the authority to disallow a declaration or scratch the horse if they deem the authorization to be improper.

6.3.1.2 Except for the lowest claiming price offered at each meeting, conditions and allowances in claiming races may be based only on age and sex. Whenever possible, claiming races shall be written to separate horses five years old and up from young horses and to separate males from females. If sexes are mixed, mares shall be given a price allowance; provided, however, that there shall be no price allowance given to a spayed mare racing in a claiming race.

6.3.1.3 Registration certificate in current ownership, together with the application for transfer thereon duly endorsed by all registered owners, must be filed in the office of the racing secretary for all horses claimed within a reasonable time after the race from which the horse was claimed.

6.3.1.4 The price allowances that govern for claiming races must be approved by the Commission. Claiming prices recorded on past performance lines in the daily race program and on eligibility certificates shall not include allowances.

6.3.1.5 The claiming price, including any allowances, of each horse shall be printed on the official program adjacent to the horse's program number and claims shall be for the amount designated, subject to correction if printed in error.

6.3.1.6 In handicap claiming races, in the event of an also eligible horse moving into the race, the also eligible horse shall take the place of the horse that it replaces provided that the handicap is the same. In the event the handicap is different, the also eligible horse shall take the position on the outside of horses with a similar handicap, except when the horse that is scratched is a trailing horse, in which case the also eligible horse shall take the trailing position, regardless of its handicap. In handicap claiming races with one trailer, the trailer shall be determined as the fourth best post position.

6.3.1.7 To be eligible to be claimed a horse must start in the event in which it has been declared to race, except as provided in 6.3.1.8 of this subsection.

6.3.1.8 The successful claimant of a horse programmed to start may, at his option, acquire ownership of a claimed horse, even though such claimed horse was scratched and did not start in the claiming race from which it was scratched. The successful claimant must exercise his/her option by 9:00 a.m. of the next day following the claiming race to which the horse was programmed and scratched. Upon notification that the successful claimant has exercised his/her option, the owner shall present the horse for inspection, and the claim shall not be final until the successful claimant has had the opportunity to inspect the horse. No horse may be claimed from a claiming race unless the race is contested.

6.3.1.9 Any licensed owner or the authorized agent of such person who holds a current valid Commission

license may claim any horse or any person who has properly applied for and been granted a claiming certificate shall be permitted to claim any horse. Any person or authorized agent eligible to claim a horse shall be allowed access to the grounds of the association, excluding the paddock, in order to effect a claim at the designated place of making claims and to take possession of the horse claimed.

6.3.1.10 Claiming certificates are valid on day of issue and expire at the end of the race meeting for which it was granted. These certificates may be applied for at the office designated by the association prior to post time on any day of racing.

6.3.1.11 There shall be no change of ownership or trainer once a horse is programmed.

6.3.2 Prohibitions on Claims

6.3.2.1 A person shall not claim directly or indirectly his/her own horse or a horse trained or driven by him/her or cause such horse to be claimed directly or indirectly for his/her own account.

6.3.2.2 A person shall not directly or indirectly offer, or directly or indirectly enter into an agreement, to claim or not to claim or directly or indirectly attempt to prevent another person from claiming any horse in a claiming race.

6.3.2.3 A person shall not have more than one claim on any one horse in any claiming race.

6.3.2.4 A person shall not directly or indirectly conspire to protect a horse from being claimed by arranging another person to lodge claims, a procedure known as protection claims.

6.3.2.5 No qualified owner or his agent shall claim a horse for another person.

6.3.2.6 No person shall enter in a claiming race a horse against which there is a mortgage, bill or sale, or lien of any kind, unless the written consent of the holder thereof shall be filed with the Clerk of the Course of the association conducting such claiming race.

6.3.2.7 Any mare which has been bred shall not be declared into a claiming race for at least 30 days following the last breeding of the mare, and thereafter such a mare may only be declared into a claiming race after a veterinarian has pronounced the mare not to be in foal. Any mare pronounced in foal shall not be declared into a claiming race. Where a mare is claimed out of a claiming race and subsequently proves to be in foal from a breeding which occurred prior to the race from which she was claimed, the claim may be voided by the judges at the option of the successful claimant provided the mare is subjected to a pregnancy examination within 18 days of the date of the claim, and is found pregnant as a result of that pregnancy examination. A successful claimant seeking to void the claim must file a petition to void said claim with the judges within 10 days after this pregnancy examination and shall thereafter be heard by the judges after due notice of the

hearing to the parties concerned.

1 DE Reg. 503 (01/11/97)

6.3.2.8 No person shall claim more than one horse in a race either alone, in a partnership, corporation or other legal entity.

6.3.2.9 If a horse is claimed, no right, title or interest therein shall be sold or transferred except in a claiming race for a period of thirty (30) days following the date of the claiming.

4 DE Reg 336 (8/1/00)

6.3.3 Claiming Procedure

6.3.3.1 A person desiring to claim a horse must have the required amount of money, in the form of cash or certified check, on deposit with the association at the time the completed claim form is deposited. Such deposit also may be made by wire transfer prior to 2:00 p.m. on the day of the claiming race.

6.3.3.2 The claimant shall provide all information required on the claim form provided by the association.

6.3.3.3 The claim form shall be completed and signed by the claimant prior to placing it in an envelope provided for this purpose by the association and approved by the Commission. The claimant shall seal the envelope and identify on the outside the date, time of day, race number and track name only.

6.3.3.4 The envelope shall be delivered to the designated area, or licensed delegate, at least fifteen (15) minutes before post time of the race from which the claim is being made. That person shall certify on the outside of the envelope the time it was received, the current license status of the claimant and whether credit in the required amount has been established.

6.3.3.5 It shall be the responsibility of the association to ensure that all such claim envelopes are delivered unopened or otherwise undisturbed to the judges prior to the race from which the claim is being made. The association shall provide for an agent who shall, immediately after closing, deliver the claim to the judges' stand.

6.3.3.6 The claim shall be opened and the claims, if any, examined by the judges prior to the start of the race. The association's auditor, or his/her agent, shall be prepared to state whether the claimant has on deposit, the amount equivalent to the specified claiming price and any other required fees and taxes.

6.3.3.7 The judges shall disallow any claim made on a form or in a manner which fails to comply with all requirements of this rule.

6.3.3.8 Documentation supporting all claims for horses, whether successful or unsuccessful, shall include details of the method of payment either by way of a photostatic copy of the check presented, or written detailed information to include the name of the claimant, the bank,

branch, account number and drawer of any checks or details of any other method of payment. This documentation is to be kept on file at race tracks for three (3) years and is to be produced to the Commission for inspection at any time during the period.

6.3.3.9 When a claim has been lodged it is irrevocable, unless otherwise provided for in these rules.

6.3.3.10 In the event more than one claim is submitted for the same horse, the successful claimant shall be determined by lot by the judges, and all unsuccessful claims involved in the decision by lot shall, at that time, become null and void, notwithstanding any future disposition of such claim.

6.3.3.11 Upon determining that a claim is valid, the judges shall notify the paddock judge of the name of the horse claimed, the name of the claimant and the name of the person to whom the horse is to be delivered. Also, the judges shall cause a public announcement to be made.

6.3.3.12 Every horse entered in a claiming race shall race for the account of the owner who declared it in the event, but title to a claimed horse shall be vested in the successful claimant from the time the horse is deemed to have started, and the successful claimant shall become the owner of the horse, whether it be alive or dead, or sound or unsound, or injured during or after the race. If a horse is claimed out of a heat or dash of an event having multiple heats or dashes, the judges shall scratch the horse from any subsequent heat or dash of the event.

6.3.3.13 A post-race urinalysis test may be taken from any horse claimed out of a claiming race. The trainer of the horse at the time of entry for the race from which the horse was claimed shall be responsible for the claimed horse until the post-race urine sample is collected. Any claimed horse not otherwise selected for testing by the State Steward or judges shall be tested if requested by the claimant at the time the claim form is submitted in accordance with these rules. The successful claimant shall have the right to void the claim should the forensic analysis be positive for any prohibited substance or an illegal level of a permitted medication. The horse's halter must accompany the horse. Altering or removing the horse's shoes will be considered a violation, and, until the Commission chemist issues a report on his forensic analysis of the samples taken from the horse, the claimed horse shall not be permitted to be entered to race.

3 DE Reg 1520 (5/1/00)

6.3.3.14 Any person who refuses to deliver a horse legally claimed out of a claiming race shall be suspended, together with the horse, until delivery is made.

6.3.3.15 A claimed horse shall not be eligible to start in any race in the name or interest of the owner of the horse at the time of entry for the race from which the horse was claimed for thirty (30) days, unless reclaimed out of another claiming race. Nor shall such horse remain in or be

returned to the same stable or care or management of the first owner or out of another claiming race. Further, such horse shall be required to continue to race the track where claimed for a period of 60 days or the balance of the current racing meet, whichever comes first, unless released by the Racing Secretary.

2 DE Reg. 1765 (1/1/98)

3 DE Reg 1520 (5/1/00)

6.3.3.16 The claiming price shall be paid to the owner of the horse at the time entry for the race from which the horse was claimed only when the judges are satisfied that the successful claim is valid and the registration and eligibility certificates have been received by the racing secretary for transfer to the new owner.

6.3.3.17 The judges shall rule a claim invalid:

6.3.3.17.1 at the option of the claimant if the official racing chemist reports a positive test on a horse that was claimed, provided such option is exercised within 48 hours following notification to the claimant of the positive test by the judges;

2 DE Reg. 1243 (01/01/99)

6.3.3.17.2 if the horse has been found ineligible to the event from which it was claimed, regardless of the position of the claimant.

2 DE Reg. 1243 (01/01/99)

6.3.3.18 Mares and fillies who are in foal are ineligible to claiming races. Upon receipt of the horse, if a claimant determines within 48 hours that a claimed filly or mare is in foal, he/she may, at their option, return the horse to the owner of the horse at the time of entry for the race from which the horse was claimed.

6.3.3.19 When the judges rule that a claim is invalid and the horse is returned to the owner of the horse at the time of entry for the race in which the invalid claim was made:

6.3.3.19.1 the amount of the claiming price and any other required fees and/or taxes shall be repaid to the claimant;

6.3.3.19.2 any purse monies earned subsequent to the date of the claim and before the date on which the claim is ruled invalid shall be the property of the claimant; and

6.3.3.19.3 the claimant shall be responsible for any reasonable costs incurred through the care, training or racing of the horse while it was in his/her possession.

6.4 Added Money Events

6.4.1 General Provisions

6.4.1.1 For the purpose of this rule, added money events include stakes, futurities, early closing events and late closing events.

6.4.1.2 All sponsors and presenters of added money events must comply with the rules and must submit to the Commission the conditions and other information

pertaining to such events.

6.4.1.3 Any conditions contrary to the provisions of any of these rules are prohibited.

6.4.2 Conditions

Conditions for added money events must specify:

6.4.2.1 which horses are eligible to be nominated;

6.4.2.2 the amount to be added to the purse by the sponsor or presenter, should the amount be known at the time;

6.4.2.3 the dates and amounts of nomination, sustaining and starting payments;

6.4.2.4 whether the event will be raced in divisions or conducted in elimination heats, and;

6.4.2.5 the distribution of the purse, in percent, to the money winners in each heat or dash, and the distribution should the number of starters be less than the number of premiums advertised; and

6.4.2.6 whether also eligible horses may be carded prior to the running heats or legs of added money events.

6.4.3 Requirements of Sponsors/Presenters

6.4.3.1 Sponsors or presenters of stakes, futurities or early closing events shall provide a list of nominations to each nominator or owner and to the associations concerned within sixty (60) days after the date on which nominations close, other than for nominations payable prior to January 1st of a horse's two-year-old year.

6.4.3.2 In the case of nominations for futurities payable during the foaling year, such lists must be forwarded out prior to October 15th of that year and, in the case of nominations payable in the yearling year, such lists must be forwarded out not later than September 1 of that year.

6.4.3.3 Sponsors or presenters of stakes, futurities or early closing events shall also provide a list of horses remaining eligible to each owner of an eligible within 45 days after the date on which sustaining payments are payable. All lists shall include a resume of the current financial status of the event.

6.4.3.4 The Commission may require the sponsor or presenter to file with the Commission a surety bond in the amount of the fund to ensure faithful performance of the conditions, including a guarantee that the event will be raced as advertised and all funds will be segregated and all premiums paid. Commission consent must be obtained to transfer or change the date of the event, or to alter the conditions. In any instance where a sponsor or presenter furnishes the Commission with substantial evidence of financial responsibility satisfactory to the Commission, such evidence may be accepted in lieu of a surety bond.

6.4.4 Nominations, Fees and Purses

6.4.4.1 All nominations to added money

events must be made in accordance with the conditions.

6.4.4.2 Dates for added money event nominations payments are:

6.4.4.2.1 Stakes: The date for closing of nominations on yearlings shall be May 15th. The date foreclosing of nominations to all other stakes shall fall on the fifteenth day of a month.

6.4.4.2.2 Futurity: The date for closing of nominations shall be July 15th of the year of foaling.

6.4.4.2.3 Early Closing Events: The date for closing of nominations shall fall on the first or fifteenth day of a month. Nominations on two-year-olds shall not be taken prior to February 15th.

6.4.4.2.4 Late Closing Events: The date for closing of nominations shall be at the discretion of the sponsor or presenter.

6.4.4.3 Dates for added money event sustaining payments are:

6.4.4.3.1 Stakes and Futurities: Sustaining payments shall fall on the fifteenth day of a month. No stake or futurity sustaining fee shall become due prior to (Month) 15th of the year in which the horses nominated become two years of age.

6.4.4.3.2 Early and Late Closing Events: Sustaining payments shall fall on the first or fifteenth day of a month.

6.4.4.4 The starting fee shall become due when a horse is properly declared to start and shall be payable in accordance with the conditions of the added money event. Once a horse has been properly declared to start, the starting fee shall be forfeited, whether or not the horse starts. Should payment not be made thirty (30) minutes before the post time of the event, the horse may be scratched and the payment shall become a liability of the owner who shall, together with the horse or horses, be suspended until payment is made in full, providing the association notifies the Commission within thirty (30) days after the starting date.

6.4.4.5 Failure to make any payment required by the conditions constitutes an automatic withdrawal from the event.

6.4.4.6 Conditions that will eliminate horses nominated to an event, or add horses that have not been nominated to an event by reason of performance of such horses at an earlier meeting, are invalid. Early and late closing events shall have not more than two also eligible conditions.

6.4.4.7 The date and place where early and late closing events will be raced must be announced before nominations are taken. The date and place where stakes and futurities will be raced must be announced as soon as determined but, in any event, such announcement must be made no later than March 30th of the year in which the event is to be raced.

6.4.4.8 Deductions may not be made from nomination, sustaining and starting payments or from the advertised purse for clerical or any other expenses.

6.4.4.9 Every nomination shall constitute an agreement by the person making the nomination and the horse shall be subject to these rules. All disputes and questions arising out of such nomination shall be submitted to the Commission, whose decision shall be final.

6.4.4.10 Nominations and sustaining payments must be received by the sponsor or presenter not later than the hour of closing, except those made by mail must bear a postmark placed thereon not later than the hour of closing. In the event the hour of closing falls on a Saturday, Sunday or legal holiday, the hour of closing shall be extended to the same hour of the next business day. The hour of closing shall be midnight of the due date.

6.4.4.11 If conditions require a minimum number of nominations and the event does not fill, the Commission and each nominator shall be notified within twenty (20) days of the closing of nominations and a refund of nomination fees shall accompany such notice to nominators.

6.4.4.12 If conditions for early or late closing events allow transfer for change of gait, such transfer shall be to the lowest class the horse is eligible to at the adopted gait, eligibility to be determined at the time of closing nominations. The race to which the transfer may be made must be the one nearest the date of the event originally nominated to. Two-year-olds, three-year-olds, or four-year-olds, nominated in classes for their age, may only transfer to classes for the same age group at the adopted gait to the race nearest the date of the event they were originally nominated to, and entry fees to be adjusted.

6.4.4.13 A nominator is required to guarantee the identity and eligibility of nominations, and if this information is given incorrectly he or she may be fined, suspended, or expelled and the horse declared ineligible. If any purse money was obtained by an ineligible horse, the monies shall be forfeited and redistributed among those justly entitled to the same.

6.4.4.14 Early or late closing events must be contested if six or more betting interests are declared to start. If less horses are declared to start than required, the race may be declared off, in which case the total of nominations, sustaining and starting payments received shall be divided equally to the horses declared to start. Such distribution shall not be credited as purse winnings.

6.4.4.15 Stakes or futurities must be contested if one or more horses are declared to start. In the event only one horse, or only horses in the same interest start, it constitutes a walk-over. In the event no declarations are made, the total of nomination and sustaining payments shall be divided equally to the horses remaining eligible after payment to the last sustaining payment, but such distribution

shall not be credited as purse winnings.

6.4.4.16 Associations shall provide stable space for each horse declared on the day before, the day of and the day following the race.

6.4.4.17 The maximum size of fields permitted in any added money event shall be no more than one trailer unless otherwise approved by the Commission.

6.4.4.18 An association may elect to go with less than the number of trailers specified in subdivision 17 above.

6.4.4.19 In the event more horses are declared to start than allowed in one field, the race will be conducted in divisions or eliminations, as specified in the conditions.

6.4.4.20 In early closing races, late closing races and overnight races requiring entry fees, all monies paid in by the nominators in excess of 85 percent of the advertised purse shall be added to the advertised purse and the total shall then be considered to be the minimum purse. If the race is split and raced in divisions, the provisions of subdivision 21 below shall apply. Provided further that where overnight races are split and raced in eliminations rather than divisions, all starting fees payable under the provisions of this rule shall be added to the advertised purse.

6.4.4.21 Where a race other than a stake or futurity is divided, each division must race for at least 75 percent of the advertised purse.

6.4.4.22 In added money events conducted in eliminations, starters shall be divided by lot. Unless conditions provide otherwise, sixty percent of the total purse will be divided equally among the elimination heats. The final heat will be contested for 40 percent of the total purse. Unless the conditions provide otherwise, all elimination heats and the final heat must be raced on the same day. If the conditions provide otherwise, elimination heats must be contested not more than six days, excluding Sundays, prior to the date of the final heat. The winner of the final heat shall be the winner of the race.

6.4.4.23 The number of horses allowed to qualify for the final heat of an event conducted in elimination heats shall not exceed the maximum number permitted to start in accordance with the rules. In any elimination dash where there are horses unable to finish due to an accident and there are fewer horses finishing than would normally qualify for the final, the additional horses qualifying for the final shall be drawn by lot from among those unoffending horses not finishing.

1 DE Reg. 503 (01/01/97)

6.4.4.24 The judges' decisions in arriving at the official order of finish of elimination heats on the same program shall be final and irrevocable and not subject to appeal or protest.

6.4.4.25 Unless the conditions for the added money event provide otherwise the judges shall draw by lot the post positions for the final heat in elimination events, i.e.

they shall draw positions to determine which of the two elimination heat winners shall have the pole, and which the second position; which of the two horses that were second shall start in the third position, and which in the fourth, etc.

6.4.4.26 In a two-in-three race, a horse must win two heats to win a race and there shall be 10 percent set aside for the race winner. Unless conditions state otherwise, the purse shall be divided and awarded according to the finish in each of the first two or three heats, as the case may be. If the number of advertised premiums exceeds the number of finishers, the excess premiums shall go to the winner of the heat. The fourth heat, when required, shall be raced for 10 percent of the purse set aside for the race winner. In the event there are three separate heat or dash winners and they alone come back in order to determine the race winner, they will take post positions according to the order of their finish in the previous heat. In a two-year-old race, if there are two heat winners and they have made a dead heat in the third heat, the race shall be declared finished and the one standing best in the summary shall be awarded the 10 percent. If the two heat winners make a dead heat and stand the same in the summary, the 10 percent shall be divided equally among them.

6.5 Cancellation of a Race

In case of cancellation of races, see Rule 7.3 "Postponement and Cancellation."

6.6 Delaware Owned or Bred Races

6.6.1 Persons licensed to conduct harness horse racing meets under title 3, chapter 100, may offer non-stakes races limited to horses wholly owned by Delaware residents or sired by Delaware stallions.

6.6.2 For purposes of this rule, a Delaware bred horse shall be defined as one sired by a Delaware stallion who stood in Delaware during the entire breeding season in which it sired a Delaware bred horse or a horse whose dam was a wholly-owned Delaware mare at the time of breeding as shown on the horse's United State Trotting Association registration or eligibility papers. The breeding season means that period of time beginning February 1 and ending August 1 of each year.

6.6.3 All horses to be entered in Delaware owned or bred races must first be registered and approved by the Commission or its designee. The Commission may establish a date upon which a horse must be wholly-owned by a Delaware resident(s) to be eligible to be nominated, entered, or raced as Delaware-owned. In the case of a corporation seeking to enter a horse in a Delaware-owned or bred event as a Delaware-owned entry, all owners, officers, shareholders, and directors must meet the requirements for a Delaware resident specified below. In the case of an association or other entity seeking to enter a horse in a Delaware owned or bred event as a Delaware-owned entry, all owners must meet the requirements for a Delaware resident specified below. Leased horses are ineligible as

Delaware owned entries unless both the lessor and the lessee are Delaware residents as set forth in this Rule and 3 Del.C. section 10032.

6.6.4 The following actions shall be prohibited for Delaware-owned races and such horses shall be deemed ineligible to be nominated, entered, or raced as Delaware-owned horses:

6.6.4.1 Payment of the purchase price over time beyond the date of registration;

6.6.4.2 Payment of the purchase price through earnings beyond the date of registration;

6.6.4.3 Payment of the purchase price with a loan, other than from a commercial lender regulated in Delaware and balance due beyond the date of registration;

6.6.4.4 Any management fees, agent fees, consulting fees, or any other form of compensation to non-residents of Delaware, except industry standard training and driving fees; or

6.6.4.5 Leasing a horse to a non-resident of Delaware.

6.6.5 The Commission or its designee shall determine all questions about a person's eligibility to participate in Delaware-owned races. In determining whether a person is a Delaware Resident, the term "resident" shall mean the place where an individual has his or her permanent home, at which that person remains when not called elsewhere for labor or other special or temporary purposes, and to which that person returns in seasons of repose. The term "residence" shall mean a place a person voluntarily fixed as a permanent habitation with an intent to remain in such place for the indefinite future.

6.6.6 The Commission or its designee may review and subpoena any information which is deemed relevant to determine a person's residence, including but not limited to, the following:

6.6.6.1 Where the person lives and has been living;

6.6.6.2 The location of the person's sources of income;

6.6.6.3 The address used by the person for payment of taxes, including federal, state and property taxes;

6.6.6.4 The state in which the person's personal automobiles are registered;

6.6.6.5 The state issuing the person's driver's license;

6.6.6.6 The state in which the person is registered to vote;

6.6.6.7 Ownership of property in Delaware or outside of Delaware;

6.6.6.8 The residence used for U.S.T.A. membership and U.S.T.A. registration of a horse, whichever is applicable;

6.6.6.9 The residence claimed by a person on a

loan application or other similar document;

6.6.6.10 Membership in civic, community, and other organizations in Delaware and elsewhere.

6.6.6.11 None of these factors when considered alone shall be dispositive, except that a person must have resided in the State of Delaware in the preceding calendar year for a minimum of one hundred and eighty three (183) days. Consideration of all of these factors together, as well as a person's expressed intention, shall be considered in arriving at a determination. The burden shall be on the applicant to prove Delaware residency and eligibility for Delaware-owned or bred races. The Commission may promulgate by regulation any other relevant requirements necessary to ensure that the licensee is a Delaware resident. In the event of disputes about a person's eligibility to enter a Delaware-owned or bred race, the Commission shall resolve all disputes and that decision shall be final.

6.6.7 Each owner and trainer, or the authorized agent of an owner or trainer, or the nominator (collectively, the "entrant"), is required to disclose the true and entire ownership of each horse with the Commission or its designee, and to disclose any changes in the owners of the registered horse to the Commission or its designee. All licensees and racing officials shall immediately report any questions concerning the ownership status of a horse to the Commission racing officials, and the Commission racing officials may place such a horse on the steward's or judge's list. A horse placed on the steward's or judge's list shall be ineligible to start in a race until questions concerning the ownership status of the horse are answered to the satisfaction of the Commission or the Commission's designee, and the horse is removed from the steward or judge's list.

6.6.8 If the Commission, or the Commission's designee, finds a lack of sufficient evidence of ownership status, residency, or other information required for eligibility, prior to a race, the Commission or the Commission's designee, may order the entrant's horse scratched from the race or ineligible to participate.

6.6.9 After a race, the Commission or the Commission's designee, may upon reasonable suspicion, withhold purse money pending an inquiry into ownership status, residency, or other information required to determine eligibility. If the purse money is ultimately forfeited because of a ruling by the Commission or the Commission's designee, the purse money shall be redistributed per order of the Commission or the Commission's designee.

6.6.10 If purse money has been paid prior to reasonable suspicion, the Commission or the Commission's designee may conduct an inquiry and make a determination as to eligibility. If the Commission or the Commission's designee determines there has been a violation of ownership status, residency, or other information required for eligibility, it shall order the purse money returned and

redistributed per order of the Commission or the Commission's designee.

6.6.11 Anyone who willfully provides incorrect or untruthful information to the Commission or its designee pertaining to the ownership of a Delaware-owned or bred horse, or who attempts to enter a horse restricted to Delaware-owned entry who is determined not to be a Delaware resident, or who commits any other fraudulent act in connection with the entry or registration of a Delaware-owned or bred horse, in addition to other penalties imposed by law, shall be subject to mandatory revocation of licensing privileges in the State of Delaware for a period to be determined by the Commission in its discretion except that absent extraordinary circumstances, the Commission shall impose a minimum revocation period of two years and a minimum fine of \$5,000 from the date of the violation of these rules or the decision of the Commission, whichever occurs later.

6.6.12 Any person whose license is suspended or revoked under subsection (k) of this rule shall be required to apply for reinstatement of licensure and the burden shall be on the applicant to demonstrate that his or he licensure will not reflect adversely on the honesty and integrity of harness racing or interfere with the orderly conduct of a race meeting. Any person whose license is reinstated under this subsection shall be subject to a two year probationary period, and may no participate in any Delaware-owned or bred race during this probationary period. Any further violations of this section by the licensee during the period of probationary licensure shall, absent extraordinary circumstances, result in the Commission imposing revocation of all licensure privileges for a five year period along with any other penalty the Commission deems reasonable and just.

6.6.13 Any suspension imposed by the Commission under this rule shall not be subject to the stay provisions in 29 Del. C. §10144.

2 DE Reg. 1241 (1/1/99)

DEPARTMENT OF EDUCATION

14 DE Admin. Code 103

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. 122(d))**REGULATORY IMPLEMENTING ORDER****103 SCHOOL ACCOUNTABILITY FOR
ACADEMIC PERFORMANCE****I. SUMMARY OF THE EVIDENCE AND
INFORMATION SUBMITTED**

The Secretary of Education seeks the approval of the State Board of Education to adopt sections 1.0, 2.0, and 3.0 of regulation 103 School Accountability for Academic Performance. Sections 4.0 and 5.0 are labeled "reserved" and action will occur following further discussion on these sections. Section 2.1.1 now states that for students who take the assessment more than once within a measurement cycle the best test score will be included in the composite score. In section 3.3.1 the phrase "by a targeted amount" has been added for clarity in the last line and 3.3.1.1 has been added to clarify that "all regulations utilized to calculate school composite scores pursuant to 2.0 shall also apply to calculate distributional performance".

Notice of the proposed amendment to the regulation was published in the News Journal and the Delaware State News on January 25, 2001 in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

Comments were received from four other sources: the President of the Conrad Middle School PTA, the Colonial School District, the State Council for Persons with Disabilities, and the Delaware School Administrators Association (DASA).

The letter from Mr. Allison, the PTA President, expressed general concerns about using the State Tests to evaluate teachers and the negative effects of labeling schools as "on accreditation watch" and as "non-accredited".

The Colonial School District recommended specific changes to section 1.0, the definition of an Accountability School, and to section 2.0 the Composite Score. The Department's position is that the amount of time that a student must be enrolled in an accountability school (section 1.0) should remain at 530 hours or 90 days because the increase in time recommended does not significantly impact the school composite score. In sections 1.1 and 1.1.1 the Department's position is that the regulations already permit districts to assign schools as accountability schools but maintains that the accountability school must have at least thirty students because less than thirty students results in unstable data.

Lastly, the Department's position is that the exceptions

recommended for 2.1.2 and through the deletion of 2.1.4 are not needed because there are already provisions for test taking exceptions on a case-by-case basis. The District also made general comments about using multiple indicators to accredit schools and having distributional performance defined simply as an increase in the percentage of students who meet the state standard.

The State Council for Persons with Disabilities endorsed a number of changes made in this version of the regulations but still expressed concern about counting students with an alternative portfolio as a zero the same as students who willfully refuse to take the test. Section 2.1.2 of the regulations states that "For school accountability purposes a student not assessed either pursuant to 14 *Del. C.*, Section 151 (b) and (c) or with alternate assessments approved by the Department of Education shall be assigned to Performance Level 0, and such score shall be assigned to the school that failed to assess the student." Their performance level is not counted as a zero.

The Delaware Association of Secondary School Administrators (DASA) wanted to have students' best scores count when they are retested and this has been accommodated.

II. FINDINGS OF FACTS

The Secretary finds that it is necessary to adopt this regulation because 14 *Del. C.* Section 154 requires the Department of Education to adopt regulations in the area of School Accountability.

III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Secretary concludes that it is necessary to adopt the regulation. Therefore, pursuant to 14 *Del. C.* Section 122, the regulation attached hereto as Exhibit B is hereby adopted. Pursuant to the provisions of 14 *Del. C.* Section 122(e), the regulation hereby adopted 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 adopted hereby shall be in 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 March 15, 2001. 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 15th day of March, 2001.

DEPARTMENT OF EDUCATION
Valerie A Woodruff, Secretary of Education

Approved this 15th day of March, 2001.
STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Mary B. Graham, Esquire
John W. Jardine, Jr.
Dennis J. Savage
Dr. Claibourne D. Smith

103 School Accountability for Academic Performance

1.0 Accountability School: The school to which a student's performance is assigned shall be the Accountability School. Except as defined in sections 1.1 to 1.3 the Accountability School shall be the school that provided the majority of instructional services to that student in a given school year so long as the student was enrolled in the school for more than 530 school hours or more than 90 school days. No student shall have his/her performance assigned to more than one Accountability School in a given school year.

1.1 Except as in section 1.1.1, for students enrolled in an intra-district intensive learning center or intra-district special school or program operating within one or more existing school facilities the school facility in which the student is served shall be the Accountability School.

1.1.1 If in such a program the number of students included in a School Composite Score would be greater than or equal to 30 a school district may elect to define the program as an Accountability School.

1.1.2 Within 30 days of request by the Secretary of Education school districts shall inform the Secretary of Education in writing of any Accountability Schools they elect to define pursuant to section 1.1.1. Such definitions may not be changed for four measurement cycles.

1.2 For students enrolled in inter-district special schools or programs that have an agreement to serve students from multiple school districts that school or program shall be the Accountability School provided the number of students included in the School Composite Score is greater than or equal to 30.

1.2.1 If in such a school or program the number of students included in a School Composite Score is less than 30 the student scores shall be assigned to the Accountability School the student would have been assigned to if an Individual Education Program was not in place.

1.3 For students enrolled in alternative school programs

pursuant to 14 Del. C., Chapter 16, or the Delaware Adolescent Program the Accountability School shall be the school that assigned them to the program. For the purposes of this chapter the time the students were enrolled in the alternative or transitional program shall be credited to the Accountability School.

2.0 Composite Score: A School Composite Score for each Accountability School shall be created utilizing the formula found in 14 Del. C., Section 154(b)(1).

2.1 The School Composite Score shall include the collective performance of all students in each Standards Cluster as defined in section 2.6 and 2.7 below on the assessments administered pursuant to 14 Del. C., Section 151 (b) and (c).

2.1.1 For students who take a portion of the assessment more than once within a measurement cycle, ~~all~~ **administrations** the best test score] except re-tests by 12th grade students shall be included in the School Composite Score.

2.1.2 For school accountability purposes a student not assessed either pursuant to 14 Del. C., Section 151 (b) and (c) or **[not assessed]** with alternate assessments approved by the Department of Education shall be assigned to Performance Level 0, and such score shall be assigned to the school that failed to assess the student.

2.1.3 Except for students who participate in out-of-level testing, students who test with non-aggregable conditions as defined in the Department of Education's *Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency* shall have her/his performance level included in the School Composite Score.

2.1.4 For school accountability purposes a student who tests but does not meet attemptedness rules as defined in the Department of Education's Scoring Specifications, who participates in out-of-level testing or otherwise receives an invalid score shall be assigned to Performance Level 1.

2.1.5 A student participating in alternate assessments shall have her/his performance level included in the School Composite Score.

2.2 Schools with more than one tested grade shall receive a single School Composite Score determined by aggregating the performance levels of students who score at each performance level in each tested grade.

2.3 Baselines for Accountability Schools shall be determined using two years of their students' performance, beginning with the Accountability School's first two administrations of the Delaware Student Testing Program. New School Composite Scores shall be established each two years thereafter.

2.3.1 Prior to 2003 reading, writing and mathematics results shall be utilized to determine School Composite Scores.

2.3.2 In 2003 two School Composite Scores shall be calculated. The School Composite Score used to determine accreditation shall include reading, writing and mathematics results. The School Composite Score used as the school's new baseline shall include reading, writing, mathematics, science and social studies results.

2.3.3 After 2003 reading, writing, mathematics, science and social studies results shall be utilized to determine all School Composite Scores.

2.4 Schools shall be evaluated for accreditation by comparing their performance on the three measures defined in section 3.0 over a measurement cycle.

2.5 Student performance in a tested grade shall be apportioned in equal weights to each grade in a Standards Cluster, except that Kindergarten shall be weighted at 10%.

2.6 Prior to the inclusion of science and social studies results in the School Composite Score the weights assigned to each subject shall be 40% for reading, 40% for mathematics and 20% for writing.

2.6.1 Standards Clusters shall be defined as follows:

Standards Cluster	Spring Assessments, Calendar Year A
Grades K-3	Grade 3 reading, writing, mathematics
Grades 4-5	Grade 5 reading, writing, mathematics
Grades 6-8	Grade 8 reading, writing, mathematics
Grades 9-10	Grade 10 reading, writing, mathematics

2.7 When science and social studies results are included in the School Composite Score, the weights assigned to each subject shall be as follows:

2.7.1 For assessments in grades 3 through grade 6: 35% for reading, 35% for mathematics, 10% for writing, 10% for science and 10% for social studies.

2.7.2 For assessments in grades 8 through grade 11: 20% for reading, 20% for mathematics, 20% for writing, 20% for science and 20% for social studies.

2.7.3 Standards Clusters shall be defined as follows:

Standards Cluster	Spring Assessments, Calendar Year A	Fall Assessments, Calendar Year A
Grades K-3	Grade 3 reading, writing, mathematics	Grade 4 science, social studies

Grades 4-5	Grade 5 reading, writing, mathematics	Grade 6 science, social studies
Grades 6-8	Grade 8 reading, writing, mathematics, science, social studies	
Grades 9-10	Grade 10 reading, writing, mathematics	
Grades 9-11	Grade 11 science, social studies	

3.0 Performance Criteria: The Department of Education shall determine the accreditation status of a school by utilizing three measures of performance.

3.1 Absolute Performance: The Absolute Performance of the school's student body on the assessments administered pursuant to 14 Del. C., Section 151 (b) and (c) measured using the School Composite Score. Target School Composite Scores shall be determined by the Department of Education with the consent of the State Board of Education.

3.2 Improvement Performance: The school's record in improving its School Composite Score over a measurement cycle by an amount determined by the Department of Education with the consent of the State Board of Education.

3.2.1 The expected improvement for a given school shall be the difference between the school's current composite score and a target School Composite Score that all schools are expected to achieve divided by the number of measurement cycles the school has to reach the target School Composite Score.

3.2.2 For schools that have already met the target School Composite Score, a higher target shall be established. Target School Composite Scores and time periods shall be determined by the Department of Education with the consent of the State Board of Education.

3.3 Distributional Performance: The school's record in improving the performance of low achieving students over a measurement cycle by an amount determined by the Department of Education with the consent of the State Board of Education.

3.3.1 The expected Distributional Performance for a given school shall be a specified decrease in the percentage of students performing below the standard (those in levels 0, 1, and 2) in tested content areas while the percentage of students in Level 0 and the percentage of students in Level 1 in tested content areas do not increase. [by a targeted amount.

3.3.1.1. All regulations utilized to calculate

school composite scores pursuant to 2.0 shall also apply to calculate distributional performance.]

3.3.2 An Accountability School that has no change in the percentage of students performing below the standard or reduces that percentage by less than the target shall be assessed by whether the Distributional Composite Score, calculated by including only those students who have not met the standard, increases by a targeted amount. Distributional Targets shall be determined by the Department of Education with the consent of the State Board of Education.

4.0 Accreditation: [RESERVED ~~Schools shall be accredited by the Department of Education based on the collective performance of their students on the assessments administered pursuant to the Delaware Student Testing Program. The accreditation status of each school shall be reported in School Profiles.~~

~~4.1 Superior Accredited: A school's performance is deemed excellent. Schools in this category shall have Absolute Performance at or above a threshold determined by the Department of Education with the consent of the State Board of Education and have met Improvement and/or Distributional Performance targets determined by the Department of Education with the consent of the State Board of Education. Schools in this category shall receive awards as defined in 14 Del. C., Section 154(e).~~

~~4.2 Accredited: A school's performance is deemed satisfactory. Schools in this category shall have Absolute Performance at or above a minimally required threshold determined pursuant to 14 Del. C., Section 154(d) by the Department of Education with the consent of the State Board of Education and have met Improvement and/or Distributional Performance targets determined by the Department of Education with the consent of the State Board of Education. Schools in this category may be eligible for awards if they meet Superior Absolute, Improvement or Distributional Performance targets determined by the Department of Education with the consent of the State Board of Education.~~

~~4.3 Accreditation Watch: A school's performance is deemed unsatisfactory. Schools in this category have Absolute Performance below a minimally required threshold determined pursuant to 14 Del. C., Section 154(d) by the Department of Education with the consent of the State Board of Education or have not met Improvement and/or Distributional Performance targets determined by the Department of Education with the consent of the State Board of Education. Schools in this category shall be required to undertake improvement and accountability activities as defined in 14 Del. C., Section 154(d)(2). Schools in this category may be eligible for awards if they meet Superior Improvement or~~

~~Distributional Performance targets determined by the Department of Education with the consent of the State Board of Education.~~

~~4.4 Non Accredited: Schools on Accreditation Watch who have not met Absolute, Improvement and/or Distributional Performance targets determined by the Department of Education with the consent of the State Board of Education after two years shall be Non Accredited. Schools in this category shall be required to undertake improvement and accountability activities as defined in 14 Del. C., Section 154(d)(3). Schools in this category shall not be eligible for awards.~~

~~4.5 Schools required to develop a school improvement plan pursuant to 14 Del. C., Section 154(d)(2) and (3) shall include a plan to improve the performance of students in each low performing sub-population as defined by the Improving America's Schools Act, Title I, Part A.]~~

5.0 Appeals process: [RESERVED ~~A school may appeal its accreditation status to the Department of Education within 30 days of receiving notice of its classification status by filing a written notice of appeal with the Secretary of Education. The notice of appeal shall state the grounds there for with specificity. The school must prove by clear and convincing evidence that the classification was contrary to law or regulation, not supported by substantial evidence, was arbitrary or capricious, or should be changed because of circumstances beyond the school's control.~~

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH & WILDLIFE

Statutory Authority: 7 Delaware Code,
Section 903(e)(2)(a), (7 Del.C. §903(e)(2)(a))



Adoption of Amendment To Tidal Finfish Regulation No. 23

Order No. 2001-F-0010

ORDER

SUMMARY OF EVIDENCE AND INFORMATION

Pursuant to due notice 4 DE Reg. 1225 (02/01/01), the Department of Natural Resources and Environmental Control proposed to amend **Tidal Finfish Regulation No. 23** pertaining to the minimum size limit, possession limit and closed season for the recreational fishery of black sea bass. These proposed measures are required in order to remain in compliance with Amendment 9 to the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan. The Black Sea Bass Management Board of the Atlantic States Marine Fisheries Commission (ASMFC) adopted a motion to require Atlantic coastal states to implement a minimum size limit of 11 inches, a possession limit of 25 fish and a closed fishing season of March 1 through May 9 for the recreational black sea bass fishery in order to reduce the 2001 recreational harvest by 27% relative to the 2000 landings. The Atlantic Coastal Fishery Cooperative Management Act (1993) requires Atlantic coastal states to comply with interstate fishery management plans adopted by the ASMFC. A public hearing was held on February 20, 2001.

FINDINGS OF FACT

I find the following facts from the testimony and evidence presented.

- Delaware is required to comply with the management measures for black sea bass approved by the Black Sea Bass Fishery Management Board, Atlan-

tic States Marine Fisheries Commission or face the probable closure of the sea bass fishery.

- Black sea bass recreational landings are to be reduced by 27% in 2001 relative to the 2000 recreational landings to meet the 2001 fishing mortality rate target in Amendment 9 of the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan
- Only one individual expressed opposition to the closed season for recreational fishing for black sea bass.

CONCLUSIONS

I have reached the following conclusions:

- Tidal Finfish Regulation No. 23 should be amended to implement the required changes in the recreational fishery for black sea bass.
- The minimum size limit for recreational fishermen possessing black sea bass should be 11 inches.
- The possession limit of black sea bass for recreational fishermen should be 25 fish.
- A closed recreational fishing season for black sea bass should begin on March 1 and end at midnight on May 9.

ORDER

It is hereby ordered this 7th day of March in the year 2001 that an amendment to Tidal Finfish Regulation No. 23, a copy of which is attached hereto, is adopted pursuant to 7 Del.C. §903 and supported by the Department's findings of evidence and testimony received. This order shall become effective on April 10, 2001.

Nicholas A. DiPasquale
Department of Natural Resources and
Environmental Control

TIDAL FINFISH REGULATION NO. 23 BLACK SEA BASS SIZE LIMIT; TRIP LIMITS; SEASONS; QUOTAS

- a) It shall be unlawful for any [~~person~~ **commercial fisherman**] to have in possession any black sea bass *Centropristis striata* that measures less than ten (10) inches, total length.
- b) Is omitted intentionally. [**Is shall be unlawful for any recreational fisherman to have in possession any black sea bass that measures less than eleven (11) inches, total length.**]
- c) It shall be unlawful for any [~~person~~ **commercial fisherman**] to possess on board a vessel at any time or to

land after one trip more than the ~~[following quantities following quantities quantity]~~ of black sea bass ~~[during the quarter listed during the quarter listed. determined by the Atlantic States Marine Fisheries Commission for any quarter.]~~

[First Quarter (January, February and March) - 9,000 pounds.

Second Quarter (April, May and June) – 3,000 pounds.

Third Quarter (July, August and September) – 2,000 pounds.

Fourth Quarter (October, November and December) – 3,000 pounds.

~~First Quarter (January, February and March)– 9,000 pounds.~~

~~Second Quarter (April, May and June)– 3,000 pounds.~~

~~Third Quarter (July, August and September)– 2,000 pounds.~~

~~Fourth Quarter (October, November and December)– 3,000 pounds.]~~

~~[The Department shall notify each individual licensed in Delaware to land black sea bass for commercial purposes of the quarterly trip limits established by the Atlantic States Marine Fisheries Commission.]~~ One trip shall mean the time between a vessel leaving its home port and the next time said vessel returns to any port in Delaware.

d) It shall be unlawful for any person to fish for black sea bass for commercial purposes or to land any black sea bass for commercial purposes during any quarter ~~[indicated in subsection (c) indicated in subsection (e)]~~ after the date in said quarter that the ~~[National Marine Fisheries Services National Marine Fisheries Services Atlantic States Marine Fisheries Commission]~~ determines that quarter's quota is filled. ~~The Department shall notify each individual licensed in Delaware to land black sea bass for commercial purposes of any closure when a quarterly quota is filled.]~~

[e. It shall be unlawful for any recreational fisherman to take and reduce to possession or to land any black sea bass during the period beginning at 12:01 a.m. on March 1 and ending at midnight on May 9, next ensuing.

f. It shall be unlawful for any recreational fisherman to have in possession more than 25 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.]

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF HIGHWAY SAFETY

Statutory Authority: 21 Delaware Code,
Section 4713 (21 Del.C. 4713)

REGULATORY IMPLEMENTING ORDER

I. Summary of the Evidence and Information Submitted

The Secretary of the Department of Public Safety approves the proposed regulations as published in the Delaware Registry of Regulations on February 1, 2001. Notices of the proposed regulations were published in The News Journal and the Delaware State News on January 31, 2001 in the form attached hereto as Exhibit A. The notices invited written comments and none were received from the newspaper advertisements. The notices also invited the public to attend a hearing on February 27, 2001 to comment on the proposed regulations but no member of the public attended the hearing.

II. Findings of Facts

The Secretary finds that it is necessary to adopt the regulations to promote motor carrier safety and to comply with federal laws and regulations.

III. Decision To Adopt the Regulations

For the foregoing reasons, the Secretary concludes that it is necessary to adopt the regulations. Therefore, pursuant to 21 Delaware Code

§ 4713, the regulations attached hereto as Exhibit B are hereby adopted.

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 Public Safety**.

V. Effective Date of Order

The action referred to above was taken on March 6, 2001. 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 6th day of March, 2001.

James L. Ford, Jr., Secretary
Department of Public Safety

**DEPARTMENT OF PUBLIC SAFETY
DIVISION OF STATE POLICE
REGULATION "A" – MOTOR CARRIER SAFETY
ENFORCEMENT**

Pursuant to Section 4713 of Title 21 of the Delaware Code, the Department of Public Safety, on behalf of its Division of State Police, hereby adopts regulations to implement the mandates set forth in Chapter 47 of Title 21 to ensure motor carrier safety in the State of Delaware.

Section 1. Inspection of Records

(A) Authorized representatives of the Division of State Police, upon presenting credentials, may enter a motor carrier's established place of business, without undue delay, to inspect and examine records of motor carriers to determine compliance with the federal Motor Carrier Safety Regulations ("MCSR").

(B) The motor carrier or a representative of the motor carrier shall be entitled to be present during an inspection conducted pursuant to this Section. However, the presence of the motor carrier or an authorized representative of the motor carrier is not a condition precedent to such an inspection.

(C) An inspection conducted pursuant to this Section may be initiated at any time that business is being conducted or work is being performed by the motor carrier, or its representatives, agents, or employees, whether or not open to the public, or when the motor carrier or a representative of the motor carrier other than a custodian or watchman is present. The fact that a motor carrier or representative of a motor carrier leaves the premises after an inspection has been initiated shall not require the termination of the inspection.

(D) Any inspection conducted pursuant to this Section shall not continue for more than twenty-four (24) clock hours after initiation, without the consent of the motor carrier or representative of the motor carrier, but in no event shall the inspection continue for more than seventy-two (72) hours after initiation.

(E) In the event information comes to the attention of the individuals conducting an investigation that may give rise to the necessity of obtaining a search warrant, and in the event steps are initiated for the procurement of a search warrant, the individuals conducting such inspection may take all necessary steps to secure the premises under inspection until the warrant application is acted upon by a judicial officer.

(F) No more than three (3) inspections of a motor carrier shall be conducted pursuant to this Section within any six (6) month period except pursuant to a search warrant.

(G) Notwithstanding the limitation in subsection (F), nothing in this Section shall be construed to limit the authority of the State Police to respond to complaints of

violations of the MCSR by inspecting the records of a commercial motor vehicle operating on the highways of the State of Delaware. For purposes of this subsection, a public complaint is one in which the complainant identifies himself or herself and sets forth the specific basis for his or her complaint against the motor carrier.

(H) Nothing in this Section shall be construed to limit the authority of the State Police, pursuant to this Section, to conduct a search of motor carrier records pursuant to an authorized search warrant.

**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.** Sections 205(a)(1) and (a)(12), the Delaware Board of Landscape Architecture proposes to revise its Rules and Regulations. The proposed amendments revise the reporting requirements and the timing of submission of documentation of compliance with the continuing education requirements. In addition, the proposed revisions add clarifying cross references to other related continuing education rules and regulations.

A public hearing will be held on the proposed Rules and Regulations on Wednesday, May 2, 2001 at 9:00 a.m., in the Second Floor Conference Room B 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 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.

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF CLINICAL SOCIAL WORK
EXAMINERS**

PLEASE TAKE NOTICE, pursuant to 29 **Del. C.** Chapter 101 and 24 **Del. C.** Section 3906(1), the Delaware Board of Clinical Social Work Examiners proposes to revise its Rules and Regulations. The proposed amendments relate to the professional supervision requirements for work experience of applicants. The proposed rules and regulations are revised to provide that a specified portion of the required supervisory contact may be accomplished by live videoconferencing, while expressly disallowing supervision by telephone or e-mail.

A public hearing will be held on the proposed Rules and Regulations on Monday, May 14, 2001 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 Franzolino 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 Franzolino at the above address by calling (302) 739-4522, extension 220.

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

**DEPARTMENT OF AGRICULTURE
PLANT INDUSTRIES SECTION**

**PUBLIC NOTICE
Department of Agriculture
Plant Industries Section**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 3 **Del.C.** §1607, the Department of Agriculture Plant Industries Section will hold a public hearing to discuss the proposed Grain Inspection and Certification Regulation. This regulation will govern the certification of granaries and the licensing of grain inspectors in Delaware.

A Public Hearing will be held Monday, April 23, 2001 at 1:30 p.m., in the Conference Center at the Delaware Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware, 19901. The Department will receive and consider input in writing from any person on the proposed Regulation. Any written comments should be submitted to the Department in care of Elizabeth Dawson at the above address. The final date to submit written comments is May 23, 2001. Anyone wishing to obtain a copy of the proposed Regulation should contact Elizabeth Dawson at the above address or by calling (302)698-4500.

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

Acomodations are available for individuals with disabilities. Persons with disabilities are encouraged to call Debbie Carey at (302)698-4500 to request an auxillary aid or service.

STATE BOARD OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, April 11, 2001 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF FINANCE
DIVISION OF REVENUE**Technical Information Memorandum 2001 - 01.**

Proposed

Date: March 8, 2001

Subject: No Sale of Land Conservation Credits

COMMENTS: Public Comments will be received for 30 days from the date of issuance of this proposed regulation and they may be submitted to Ronald Kaminski, Manager, Division of Revenue, State Office Building, 820 French Street, Wilmington, DE 19801. Telephone (302) 577-8445.

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES****DIVISION OF SOCIAL SERVICES****PROPOSED CHILD CARE AND DEVELOPMENT
FUND PLAN
PROJECT DESCRIPTION AND PUBLIC HEARING
ANNOUNCEMENT**

The Delaware Health and Social Services, Division of Social Services will hold three public hearings on the proposed Plan for the Child Care and Development Fund. The program focuses on providing child care services and improving the availability and quality of child care programs for low-income families.

The public hearings will be held as follows: on Wednesday, April 25, 2001 at 6:00 p.m. in the Auditorium of the Carvel State Office Building, 820 N. French St., Wilmington, Delaware; on Wednesday, May 2, 2001 at 4:00 p.m. in Rooms 535 A-D, Del Tech Owens Campus, Georgetown, Delaware; and, on Wednesday, May 9, 2001 in Room 400A, Del Tech Terry Campus, Dover, Delaware.

Any person who wishes to review or obtain a copy of the Proposed Plan should contact the Division of Social Services at 577-4880, extension 234 on or after April 20, 2001. Written comments are welcomed and should be addressed to John Falkowski, Division of Social Services, Lewis Building - Herman Holloway Campus, 1901 N. DuPont Highway, New Castle, Delaware 19720. Comments will be accepted through June 15, 2001.

DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE**Division of Social Services****Delaware's 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/Medical Assistance Program is proposing to implement a Medicaid State Plan change related to the reimbursement methodology for Nursing Facility Services. This change is made as a result of State law, which established minimum staffing levels for residential health facilities in Delaware. State law also mandates changes to the Delaware Medical Assistance Program reimbursement methodology to reflect the additional costs associated with the increased staffing levels.

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, Delaware by April 30, 2001.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL****DIVISION OF FISH AND WILDLIFE****REGISTER NOTICE****SAN # Waived by Secretary****TITLE OF THE REGULATION**

Tidal Finfish Regulation No. 4 Summer Flounder Size Limits; Possession Limits; Season

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE
AND ISSUES:**

Tidal Finfish Regulation No. 4 is proposed to be amended by closing recreational fishing for summer flounder on two days a week throughout the year to further reduce the 2001 harvest of summer flounder as required by the Atlantic States Marine Fisheries Commission.

NOTICE OF PUBLIC COMMENT:

Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover Delaware 19901, (302)739-3441. A public hearing on these proposed amendments will be held at the Department of Natural Resources and Environmental Control Auditorium, 89 Kings Highway, Dover DE at 7:30 PM on Tuesday, May 1, 2001. The record will remain open for written comments until 4:30 PM on May 4, 2001.

PREPARED BY:

Charles A. Lesser, (302)-739-3441, March 12, 2001

**DEPARTMENT OF SERVICES FOR
CHILDREN, YOUTH AND THEIR
FAMILIES**

**DIVISION OF FAMILY SERVICES
OFFICE OF CHILD CARE LICENSING
CRIMINAL HISTORY UNIT**

PLEASE TAKE NOTICE, pursuant to the 31 Del. C., Section 309, the Office of Child Care Licensing - Criminal History unit proposes to revise its regulations. The proposed revisions to the Regulations for Criminal History Record Checks will bring these regulations in compliance with the Adoption and Safe Families Act of 1997 and reflect updated wording in reference to changes within the Department, Delaware code and general clarification.

Public comment shall run from April 1, 2001 through April 30, 2001 and comments must be received by April 30, 2001. Comments shall be made in writing and addressed to the Office of Child Care Licensing, Criminal History Unit, 1825 Faulkland Road, Wilmington, DE 19805, Attention: Lynn Jezyk or emailed to Lynn Jezyk at Ljezyk@state.de.us

**DEPARTMENT OF STATE
OFFICE OF THE STATE BANKING
COMMISSIONER**

**NOTICE OF PROPOSED AMENDMENT OF
REGULATIONS OF THE STATE BANK
COMMISSIONER**

Summary:

The State Bank Commissioner proposes to adopt amended Regulation No. 5.761.0017 and new Regulation No. 5.2202(b).0007. Proposed amended Regulation No.

5.761.0017 ("Incidental Powers") provides for state-chartered banks and trust companies to exercise their incidental powers authorized by Section 761(a)(17) of Title 5 of the Delaware Code. Regulation No. 5.761.0017 is being revised to reflect changes in the federal law, including the Gramm-Leach-Bliley Act of 1999 and Part 362 of the Rules and Regulations of the Federal Deposit Insurance Corporation that implements Section 24 of the Federal Deposit Insurance Act. Proposed new Regulation No. 5.2202(b).0007 ("Exemption of Licensed Lenders") establishes a procedure for lenders to apply for exemption from the licensing requirements in Chapter 22 of Title 5 of the Delaware Code. Proposed amended Regulation No. 5.761.0017 and proposed new Regulation No. 5.2202(b).0007 would be adopted by the State Bank Commissioner on or after May 2, 2001. Other regulations issued by the State Bank Commissioner are not affected by these proposed new and amended regulations. These regulations are issued by the State Bank Commissioner in accordance with Title 5 of the Delaware Code.

Comments:

Copies of the proposed new and amended regulations are published in the Delaware Register of Regulations. Copies also are on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, Delaware, and will be available for inspection during regular office hours. Copies are available upon request.

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether these proposed new and amended regulations should be adopted, rejected or modified. Written materials submitted will be available for public inspection at the above address. Comments must be received before the public hearing on May 2, 2001.

**DELAWARE RIVER BASIN
COMMISSION
P.O. Box 7360 West Trenton**

The Delaware River Basin Commission will meet on Thursday, April 19, 2001, at the New York City Municipal Building, One Centre Street, Building One, Room 1019, in lower Manhattan. For more information contact Pamela M. Bush at (609) 883-9500 extension 203.

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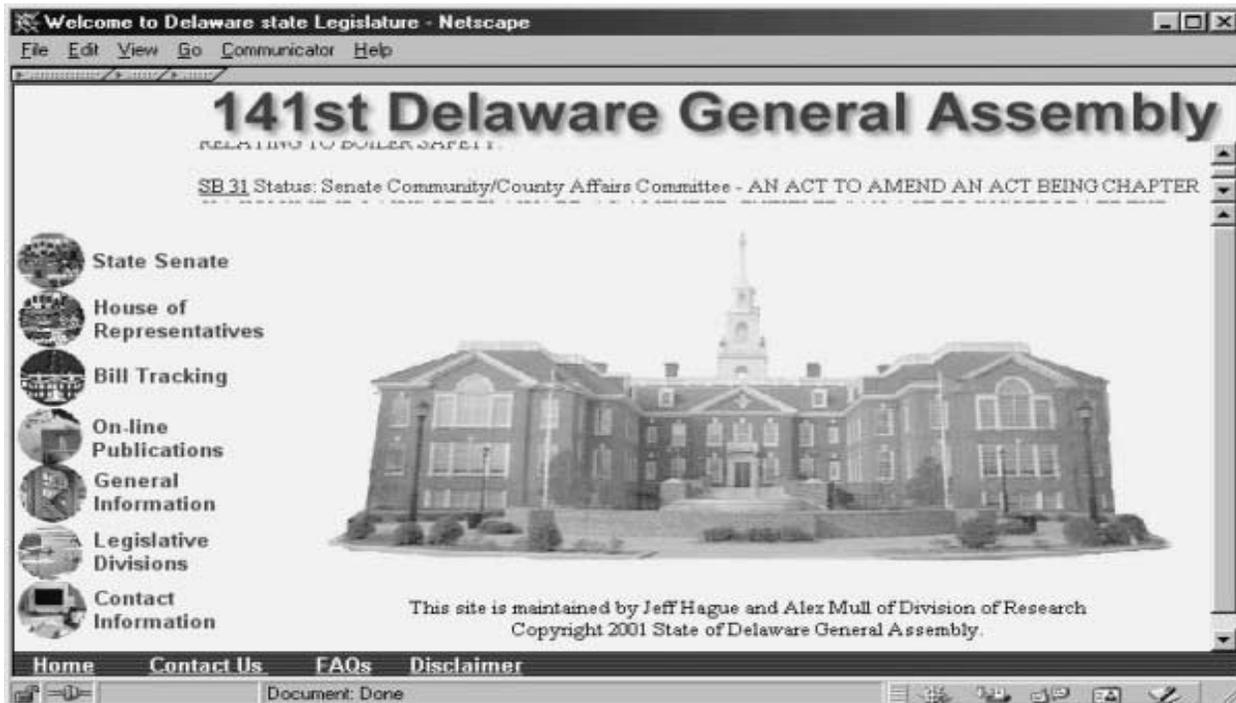
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