
Delaware Register of Regulations

Issue Date: November 1, 2007

Volume 11 - Issue 5, Pages 539 - 701



IN THIS ISSUE:

Regulations:
Proposed
Final

Governor:
Executive Orders
Calendar of Events &
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before October 15, 2007.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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
 - Agency Hearing and Meeting Notices
 - Other documents considered to be in the public interest.
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CITATION TO THE DELAWARE REGISTER

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

9 **DE Reg.** 1036-1040 (01/01/06)

Refers to Volume 9, pages 1036-1040 of the *Delaware Register* issued on January 1, 2006.

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the *Delaware Register of Regulations* is \$135.00. 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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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.

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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.

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
December 1	November 15	4:30 p.m.
January 1	December 17	4:30 p.m.
February 1	January 15	4:30 p.m.
March 1	February 15	4:30 p.m.
April 1	March 17	4:30 p.m.

DIVISION OF RESEARCH STAFF

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The regulations are listed alphabetically by the promulgating agency, followed by a citation to that issue of the *Register* in which the regulation was published. Proposed regulations are designated with (Prop.); Final regulations are designated with (Final); Emergency regulations are designated with (Emer.); and regulations that have been repealed are designated with (Rep.).

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Symbol Key

Arial 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.

DELAWARE MANUFACTURED HOME RELOCATION AUTHORITY

Statutory Authority: 25 **Del.C.** §7011(f) and 7013(c)(2)

NOTICE OF PUBLIC HEARING

The Delaware Manufactured Home Relocation Authority (the "Authority") will hold a public hearing to discuss proposed amendments to the Authority's regulations relating to the administration of the Delaware Manufactured Home Relocation Trust Fund ("Trust Fund") established pursuant to 25 **Del.C.** §7012. The Authority was established by the Delaware Legislature pursuant to 25 **Del.C.** §7011. The primary purpose of the Authority is to: (a) provide financial assistance to manufactured homeowners who are tenants in a manufactured home community where the community owner changes the use of land or converts the manufactured home community to a condominium or cooperative community; and (b) to provide financial assistance to manufactured home community owners for the removal and/or disposal of non-relocatable or abandoned manufactured homes when there is a change in use or conversion.

Pursuant to its statutory authority, at the Authority's meeting on April 11, 2007, the Authority adopted a resolution proposing for adoption certain revisions to the existing regulations to be used for the administration of the Trust Fund. The proposed regulations approved at the April 11, 2007 meeting of the Authority and published herein will set the maximum payment available to a landlord for a single section home and a multi-section home that has been abandoned or that has been determined to be non-relocatable at \$500.00 and \$1,000.00 respectively.

The public hearing will be on Monday, December 10, 2007, beginning at 6:00 p.m. and ending at 7:30 p.m. in the Auditorium located at the offices of the Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, DE 19901.

Copies of the proposed regulations are available for review by contacting:

William A. Denman, Esquire
Parkowski, Guerke & Swayze, P.A.
116 W. Water Street
Dover, DE 19904
(302) 678-3262
Email: wdenman@pgslegal.com

Anyone wishing to present oral comments at this hearing should contact Mr. William A. Denman at (302) 678-3262 by Friday, December 7, 2007. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony, should submit such comments by December 31, 2007 to:

William A. Denman, Esquire
Parkowski, Guerke & Swayze, P.A.
116 W. Water Street
Dover, DE 19904
(302) 678-3262
Email: wdenman@pgslegal.com

201 Delaware Manufactured Home Relocation Trust Fund Regulations

The Authority is granted authority to establish rules and regulations and establish criteria for the disbursement of benefits available to landlords and tenants under the provisions of 25 Del.C. §7011, et. seq. (the "Act"). The regulations set forth below establish criteria for benefits eligibility, pursuant to the statute, application procedures, application review procedures, and payment procedures.

(Break in Continuity of Sections)

2.0 Criteria for Landlord Benefits

2.1 If pursuant to the Act and these regulations, a manufactured home is determined to be non-relocatable or a Tenant abandons the home, upon application by the Landlord duly submitted to the Authority, a Landlord of a manufactured home community is entitled to receive from the Relocation Trust Fund payment in an amount determined by the Authority to be sufficient to remove and/or dispose of the manufactured home. The maximum relocation payment available to a Landlord is ~~\$4,000.00~~ \$500.00 for a single section home or ~~\$8,000.00~~ \$1,000.00 for a multi-section home. To qualify for this benefit, the Landlord must submit an application pursuant to the provisions of Section 3. Notwithstanding anything stated herein to the contrary, a Landlord shall not be entitled to any of the benefits described herein unless all of the statutory requirements set forth in the Act have been met.

2.2 Upon receipt of the title documents from the Tenant for the manufactured home that is considered to be non-relocatable or abandoned pursuant to the Act, the Authority will relinquish the title to the Landlord to facilitate the removal and/or disposal of the home from the manufactured home community. Within ten (10) calendar days after the removal and/or disposal of the manufactured home by the Landlord, the Landlord shall notify the Authority in writing of the amount of funds received by the Landlord, if any, from any subsequent sale or disposal of the manufactured home, and a copy of all documents relating to the removal and/or disposal shall be provided to the Authority, including documents relating to any expenses incurred by the Landlord in removing and/or disposing of the home.

2.3 Within thirty (30) days after receipt of the information and documents required under the Act and these regulations, the Authority shall cause a voucher to be issued to the Division of Revenue of the Department of Finance, directing the Division to issue a check in a designated amount to the Landlord which amount shall represent the amount determined by the Authority to be sufficient to cover the cost of the removal and/or disposal of the manufactured home, less any profit realized by the Landlord from the removal and/or disposal of the home, subject to the maximum relocation payment set forth in Section 2.1 hereof.

2.4 A Landlord shall not be entitled to any payment from the Trust Fund if the Landlord has failed to pay the Landlord's share of the total Trust Fund assessment during the course of the tenancies relating to the manufactured home community or if the Landlord has failed to remit the Tenant's share of said assessment.

***Please Note: As the rest of the sections were not amended, they are not being published here. A copy of the regulation is available at:**

[201 Delaware Manufactured Home Relocation Trust Fund Regulations](#)

PROPOSED REGULATIONS

DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10005 (3 Del.C. §10005)
3 DE Admin. Code 501

PUBLIC NOTICE

The Delaware Harness Racing Commission, pursuant to 3 Del.C. §10005, proposes to change its Rules 1, 5, 6, 7, and 8. The Commission will hold a public hearing on the proposed rule changes on December 11, 2007. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the Register of Regulations on November 1, 2007.

The proposed changes are for the purpose of updating Rules 1, 6, 7, 8 and 10 to reflect current policies, practices and procedures. Copies are published online at the Register of Regulations website: http://regulations.delaware.gov/services/current_issue.shtml. A copy is also available for inspection at the Racing Commission office.

501 Harness Racing Rules and Regulations

1.0 Definitions

“**Act**” is Chapter 100 of Title 3 of the **Delaware Code**.

“**Added Money**” is the amount exclusive of trophy added into a stakes by the association, or by sponsors, state-bred programs or other funds added to those monies gathered by nomination, entry, sustaining and other fees coming from the horsemen.

“**Age**” of a horse foaled in North America shall be reckoned from the first day of January of the year of foaling.

“**Also Eligible**” pertains to a number of eligible horses, properly entered, which were not drawn for inclusion in a race, but which become eligible according to preference or lot if an entry is scratched prior to the scratch time deadline.

“**Appeal**” is a request for the Commission or its designee to investigate, consider and review any decisions or rulings of steward/judges of a meeting.

“**Association**” is a person or business entity holding a license from the commission to conduct racing and/or pari-mutuel wagering.

“**Association Grounds**” is all real property utilized by the association in the conduct of its race meeting, including the racetrack, grandstand, concession stands, offices, barns, stable area, employee housing facilities and parking lots and any other areas under the jurisdiction of the Commission.

“**Authorized Agent**” is a person licensed by the Commission and appointed by a written instrument, signed and acknowledged before a notary public by the owner in whose behalf the agent will act.

“**Betting Interest**” is one or more horses in a pari-mutuel contest which are identified by a single program number for wagering purposes.

“**Bleeder**” is a horse which has demonstrated external evidence of exercise induced pulmonary hemorrhage (epistaxis, or bleeding from one or both nostrils) and/or the existence of hemorrhage into the trachea post exercise as observed upon endoscopic examination.

“**Bleeder List**” is a tabulation of all bleeders to be maintained by the Commission.

“**Claiming Race**” is a race in which any horse starting may be claimed (purchased for a designated amount) in conformance with the rules.

“**Commission**” is the Delaware Harness Racing Commission.

“**Conditioned Race**” is an overnight race to which eligibility is determined according to specified conditions which include age, sex, earnings, number of starts and position of finishes.

“**Controlled Substance**” is any substance included in the five classification schedules of the (U.S.) Controlled Substance Act of 1970.

“**Coupled Entry**” is two or more contestants in a contest that are treated as a single betting interest for pari-mutuel wagering purposes (also see "Entry").

“**Course**” is the track over which horses race.

“**Dead Heat**” is the finish of a race in which the noses of two or more horses reach the finish line at the same time.

“**Declaration**” is the naming of a particular horse as a starter in a particular race.

“**Draw**” is the process of assigning post positions and the process of selecting contestants in a manner to ensure compliance with the conditions of the rules of racing.

“**Driver**” is a person who is licensed to drive in races.

“**Early Closing Race**” is a race for a definite amount of money to which entries close at least six weeks prior to the race.

“**Entry**” (see "Coupled Entry").

“**Exhibition Race**” is a race on which no wagering is permitted.

“**Financial Interest**” is an interest that could result directly or indirectly in receiving a pecuniary gain or sustaining a pecuniary loss as a result of ownership or interest in a horse or business entity; or as a result of salary, gratuity or other compensation or remuneration from any person. The lessee and lessor of a horse have a financial interest.

“**Guest Association**” is an association which offers licensed pari-mutuel wagering on contests conducted by another association (the host) in either the same jurisdiction or another jurisdiction.

“**Handicap**” is a race in which allowances are made according to a horse's age, sex, claiming price and performance.

“**Handle**” is the total amount of all pari-mutuel wagering sales excluding refunds and cancellations.

“**Host Association**” is the association conducting a licensed pari-mutuel meeting from which authorized contests or entire performances are simulcast.

“**In Harness**” is when the horses are attached to a dual shaft sulky. All sulkies used in a race must be equipped with unicolored or colorless wheel discs of a type approved by the Commission and placed on the inside and outside of the wheel. Any change in the basic design of a sulky and/or major equipment shall require Commission approval. Rules, regulations, standards and/or guidelines affecting the use of any new sulky and/or equipment must be approved by the Commission before their adoption.

“**Inquiry**” is when the judges suspect that a foul or any other misconduct occurred during a heat or dash.

“**Late Closing Race**” is a race for a fixed amount of money to which entries close less than six weeks but not more than three days before the race is to be contested.

“**Licensee**” is any person or entity holding a license from the Commission to engage in racing or a regulated activity.

“**Maiden**” is a stallion, mare or gelding that has never won a heat or race at the gait at which it is entered to start and for which a purse is offered; provided, however, that other provisions of these Rules notwithstanding, races and/or purse money awarded to a horse after the 'Official Sign' has been posted shall be considered winning performance and effect status as a maiden, and in such cases a horse placed first by virtue of disqualification shall acquire a win race record only if such horse's actual time can be determined by photo finish or electronic timing in accordance with the provisions of Rule 7.2.1.

“**Match Race**” is a race between two or more horses under conditions agreed to by their owners.

“**Matinee Race**” is a race in which no entrance fee is charged and where the premiums, if any, are other than money.

“**Meeting**” is the specified period and dates each year during which an association is authorized to conduct racing and/or pari-mutuel wagering by approval of the Commission.

“**Minus Pool**” occurs when the amount of money to be distributed on winning wagers is in excess of the amount of money comprising the net pool.

“Mutuel Field” is two or more contestants treated as a single betting interest for pari-mutuel wagering purposes because the number of betting interests exceeds the number that can be handled individually by the pari-mutuel system.

“Net Pool” is the amount of gross ticket sales less refundable wagers and statutory commissions.

“No Contest” is a race canceled for any reason by the stewards/judges.

“Nomination” is the naming of a horse to a certain race or series of races generally accompanied by payment of a prescribed fee.

“Objection” is a verbal claim of foul in a race lodged by the horse's driver.

“Off Time” is the moment at which, on the signal of the official starter, the starting gate is opened, officially dispatching the horses in each contest.

“Official Order of Finish” is the order of finish of the horses in a contest as declared official by the judges.

“Official Starter” is the official responsible for dispatching the horses for a race.

“Official Time” is the elapsed time from the moment the first horse crosses the timing beam until the first horse crosses the finish line.

“Optional Claiming Race” is a conditioned race in which a horse may be entered for a stated claiming price. In the case of horses entered to be claimed in such a race, the race shall be considered, for the purpose of these rules, a claiming race. In the case of horses not entered to be claimed in such a race, the race shall be considered a conditioned race.

“Overnight Race” is a contest for which declarations close not more than seven days, omitting Sunday, before the date on which it will be contested. In the absence of conditions or notice to the contrary, declarations must close not later than 6:00 p.m. of the day preceding the race.

“Owner” is a person who holds any title, right or interest, whole or partial in a horse, including the lessee and lessor of a horse.

“Paddock” is an enclosure in which horses scheduled to compete in a contest are confined prior to racing.

“Pari-Mutuel System” is the manual, electro-mechanical or computerized system and all software (including the totalisator, account betting system and off-site betting equipment) that is used to record bets and transmit wagering data.

“Pari-Mutuel Wagering” is a form of wagering on the outcome of an event in which all wagers are pooled and held by an association for distribution of the total amount, less the deductions authorized by law, to holders of tickets on the winning horses.

“Patron” is a member of the public present on the grounds of a pari-mutuel association during a meeting for the purpose of wagering or to observe racing.

“Person” is any individual, partnership, corporation or other association or entity.

“Post Position” is the preassigned position from which a horse will leave the starting gate.

“Post Time” is the scheduled starting time for a contest.

“Primary Laboratory” is a facility designated by the Commission for the testing of samples.

“Programmed” means listed in the official program made available for sale or distribution to the public.

“Protest” is a written complaint alleging that a horse is ineligible to race.

“Purse” is the total cash amount for which a race is contested.

“Race” is a contest between horses at a licensed meeting.

“Requalifying Test” An analysis of any biological substance procured from a horse that has been deemed ineligible to perform in any race or official workout due to a violation of DHRC medication rules. A requalifying test is taken when a horse is out-of-competition and/or on the Stewards and/or Veterinarians list. A requalifying test is taken with the intent of providing a negative test of prohibited substances or to show compliance with permissible thresholds.

“Required Days Off” horses restricted from racing for a specified number of days will start their days the day of the scheduled race.

“Restricted Area” is an enclosed portion of the association grounds to which access is limited to licensees whose occupation or participation requires access.

“**Result**” is that part of the official order of finish used to determine the pari-mutuel payout of pools for each individual contest.

“**Rules**” are the Rules of the Delaware Harness Racing Commission.

“**Satisfactory Charted Line**” is one that meets the standards at the track at which a horse participates.

“**Scoring**” is the preliminary practice given to horses after the post parade and prior to being called to line up for the start of a race by the official starter.

“**Scratch**” is the act of withdrawing an entered horse from a contest after the closing of entries.

“**Simulcast**” is the live audio and visual transmission of a contest to another location for pari-mutuel wagering purposes.

“**Split Sample Laboratory**” is a facility approved by the Commission to test split samples.

“**Stakes Race**” is a race which will be contested in a calendar year subsequent to the closing of nominations.

“**Sulky**” is a dual wheel racing vehicle with dual shafts not exceeding the height of the horse's withers. Shafts must be hooked separately on each side.

“**Totalisator**” is the system used for recording, calculating, and disseminating information about ticket sales, wagers, odds and payoff prices to patrons at a pari-mutuel wagering facility.

“**Tubing**” is the administration of any substance via a naso-gastric tube.

1 DE Reg. 501 (11/01/97)

2 DE Reg. 1068 (1/1/99)

5 DE Reg. 832 (10/1/01)

(Break in Continuity of Sections)

5.0 Licensees

5.1 General Provisions

5.1.1 Licenses Required

5.1.1.1 A person shall not participate in pari-mutuel racing under the jurisdiction of the Commission without a valid license issued by the Commission. License categories shall include the following and others as may be established by the Commission:

5.1.1.1.1 racing participants and personnel (including owner, authorized agent, trainer, assistant trainer, driver, veterinarian, veterinary assistant, horseshoer and stable employees);

5.1.1.1.2 racing officials (including the ~~State Steward~~, judges, racing secretary, paddock judge, horse identifier and equipment checker, clerk of the course official starter, official charter, official timer, photo finish technician, patrol judge, program director, State veterinarian and Lasix veterinarian);

5.1.1.1.3 persons employed by the association, or employed by a person or concern contracting with or approved by the association or Commission to provide a service or commodity, which requires their presence in a restricted area; and

5.1.1.1.4 all Commission employees.

5.1.1.2 Persons required to be licensed shall submit a completed application on forms furnished by the Commission and accompanied by the required fee, which shall be determined by the Commission.

5.1.1.3 License applicants may be required to furnish to the Commission a set(s) of fingerprints and a recent photograph and may be required to be re-fingerprinted or re-photographed periodically as determined by the Commission.

5.1.2 Licensing Reciprocity

The Commission may license persons holding valid permanent (not temporary) licenses issued by Association of Racing Commissioners International (RCI) member racing jurisdictions in North America. The licensee must be in good standing; have cleared a Federal Bureau of Investigation (FBI) or Royal Canadian Mounted Police (RCMP) fingerprint check within the previous 36 months, or such other period as is required by the Commission; file an application and/or affidavit as may be required by the Commission; and pay the required fees prior to participating in racing.

5.1.2.1 The Commission may recognize the issuance of racing licenses from RCI

member jurisdictions in North America for purposes of issuance of licenses in this jurisdiction.

5.1.2.2 Only permanent licenses in good standing shall be considered.

Temporary or probationary licenses shall not be considered.

5.1.2.3 An applicant must be in good standing in each jurisdiction where they

hold or have held a racing license.

5.1.2.4 The applicant must have submitted fingerprints within the past 36 months,

or such other period as is required by this jurisdiction, for the purpose of a criminal records check by the FBI or RCMP. The applicant shall provide this jurisdiction with proof of licensure from another RCI member jurisdiction to which fingerprints were submitted.

5.1.2.5 The applicant shall submit the license application form and license fee

required by this jurisdiction.

5.1.2.6 Provided the above requirements have been met, this jurisdiction may

issue either a license and/or a validation sticker. The validation sticker shall be affixed to either a license issued by this jurisdiction or a valid license issued by another RCI member jurisdiction. This Commission shall determine the period of time that such license shall be valid in Delaware.

5.1.2.7 In the event the licensee is absent from this jurisdiction, and upon

payment of the applicable fees, a receipt shall be mailed to the licensee's permanent address. The receipt may then be presented at the Commission office by the licensee so that a Commission representative may affix the proper validation sticker to the racing license badge.

5.1.3 Multi-State Licensing Information

In lieu of a license application from this jurisdiction, the Commission shall accept an RCI Multi-State License and Information form.

5.1.4 Age Requirement

Applicants for licensing shall be a minimum of 14 years of age unless otherwise specified in these rules. An applicant may be required to submit a certified copy of his/~~her~~ birth certificate. Persons under the age of 18 may be required to show evidence of active participation in a certified educational program or have a high school diploma or equivalent.

5.1.5 Consent to Investigation

The filing of an application for license shall authorize the Commission to investigate criminal and employment records, to engage in interviews to determine applicant's character and qualifications and to verify information provided by the applicant.

5.1.6 Consent to Search and Seizure

By acceptance of a license, a licensee consents to search and inspection by the Commission or its agents and to the seizure of any prohibited medication, drugs, paraphernalia or devices in accordance with state/provincial and federal law. Any drugs, medication or other materials seized may be forwarded by the Commission to the official chemist for analysis.

5.1.7 Licensees' Obligation to Protect Horses

Each person licensed by the Commission shall do all that is reasonable and within his/her power and scope of duty to guard against and prevent the administration of any drug, medication or other substance, including permissible medication in excess of the maximum allowable level, to any horse entered or to be entered in an official workout or race, as prohibited by these rules.

5.1.8 Substance Abuse/Addiction

5.1.8.1 All licensees shall be deemed to be exercising the privileges of their

license, and to be subject to the requirements of these rules, when engaged in activities that could affect the outcome of a race or diminish the conditions of safety or decorum required in restricted areas.

5.1.8.2 It shall be a violation to exercise the privileges granted by a license from

this Commission if the licensee:

5.1.8.2.1 Is engaged in the illegal sale or distribution of alcohol or a

controlled substance;

5.1.8.2.2 Possesses, without a valid prescription, a controlled substance;

5.1.8.2.3 Is intoxicated or under the influence of alcohol or a controlled

substance;

5.1.8.2.4 Is addicted, having been determined to be so by a professional

evaluation, to alcohol or other drugs and not engaged in an abstinence-based program of recovery acceptable to

the Commission;

5.1.8.2.5 Has in his/~~her~~ possession within the enclosure any equipment, products or materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled dangerous substance;

5.1.8.2.6 Refuses to submit to urine or drug testing, when notified that such testing is based on a random drug testing procedure, is based on reasonable suspicion that the person is using drugs or alcohol or is based on the licensee's acting as if in an impaired condition; or

5.1.8.2.7 Presently has drugs (controlled substances) or alcohol in his or her body. With regard to alcohol, the results of a breathalyzer test showing a reading of more than .05 percent of alcohol in the blood shall be the criterion for a finding of alcohol present in the body; provided, however, that with respect to licensees under the age of 21, the presence of any measurable level of alcohol in the blood shall constitute a violation. With regard to other controlled substances, presence of the drug in any quantity measured by the testing instrument establishes the presence of the drug for purposes of this paragraph.

5.1.8.3 At its discretion, the Commission may conduct random or episodic random drug testing, as well as testing based on reasonable suspicion, in order to ensure safety on the racetrack.

5.1.8.4 When conducted, random drug testing shall apply equally to all licensees who are, at the time of the random testing, exercising the privileges of their license in such ways as may affect the outcome of a race or diminish the conditions of safety or decorum required in restricted areas.

5.1.8.5 No notice need be given as to onset or cessation of random testing.

5.1.8.6 For licensees who are tested under the provisions in this chapter, and whose urine testing shows the presence of drugs (controlled substances) or alcohol, any field screening test results shall be confirmed by a laboratory acceptable to the Commission which shall include Gas Chromatography/Mass Spectrometry (GC/MS) procedures.

5.1.8.7 When the sample quantity permits, each test sample may be divided into portions so that one portion may be used for the confirmation procedure and another portion may be utilized to obtain an independent analysis of the urine sample.

5.1.8.8 The Commission shall provide for a secure chain of custody for the sample.

5.1.8.9 Assuming that laboratory procedures confirm the field screening test results, all costs for the transportation and testing of the sample, including the costs of the independent analysis of the divided portion of the sample, shall be the financial responsibility of the licensee.

5.1.8.10 Payment shall be due from the requesting person immediately upon receipt of notice of the costs.

5.1.8.11 A licensee penalized or restricted pursuant to this chapter shall retain rights of due process with respect to any determination of alleged violations which may adversely affect the right to hold a license.

5.1.8.12 If there has been a violation, as specified in 5.1.8.2 above, the following procedures will be followed:

5.1.8.12.1 The Commission or ~~State Steward~~ Presiding Judge may, at its or his/~~her~~ discretion, order the licensee to obtain a professional assessment to determine whether there is a substantial probability that the licensee is dependent on, or abuses, alcohol or other drugs or the Commission or ~~State Steward~~ Presiding Judge may act on the information at hand.

5.1.8.12.2 Actions in the case of first violators may include revocation of the license, suspension of the license for up to six months, placing the violator on probation for up to 90 days or ordering formal assessment and treatment.

5.1.8.12.3 Treatment or assessment, if ordered, must meet the conditions set forth below.

5.1.8.12.4 The license of the person may be revoked or suspended for a period of up to one year or a professional assessment of the person may be ordered by the Commission or ~~State Steward~~ Presiding Judge.

5.1.8.12.5 If a professional assessment indicates presence of a problem of alcohol or other drug abuse that is not treatable within the reasonably foreseeable future (360 days) the license

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may be suspended for a period of up to one year.

5.1.8.12.6 If a professional assessment indicates presence of a treatable problem of alcohol or other drug abuse or dependence, the Commission or ~~State Steward~~ Presiding Judge may order the licensee to undergo treatment as a condition of continuing licensure. Such treatment will be through a program or by a practitioner, acceptable to the licensee and the Commission or ~~State Steward~~ Presiding Judge. Required features of any program or practitioner acceptable to the Commission will be:

5.1.8.12.6.1 Accreditation or licensure by an appropriate government agency, if required by Delaware law;

5.1.8.12.6.2 A minimum of one year follow-up of formal treatment; and

5.1.8.12.6.3 A formal contract indicating the elements of the treatment

and follow up program that will be completed by the licensee and, upon completion, certified to the Commission or ~~State Steward~~ Presiding Judge as completed. To effect the contract, the licensee will authorize release of information by the treating agency, hospital or individual.

5.1.8.12.7 For third-time violators, the violator's license may be revoked and the violator may be deemed ineligible for licensure for up to five years.

5.1.8.13 Although relapse (failure to maintain abstinence) is not inevitable, it is common for relapse to occur in recovery from alcoholism or other substance dependence. Therefore, a licensee who is engaged in a formal program of recovery, and is compliant with all provisions other than abstinence, will not be regarded automatically as having committed a new violation.

5.1.8.14 When a licensee is determined to have failed in maintaining abstinence, the licensee shall furnish to the Commission or ~~State Steward~~ Presiding Judge an assessment by the treating agency, hospital or individual practitioner indicating whether the licensee was compliant with the agreed upon program of recovery, and an opinion as to whether a "new violation" occurred.

5.1.8.15 The Commission or ~~State Steward~~ Presiding Judge will determine whether a new violation has occurred in each instance. If a new violation has occurred, the Commission or ~~State Steward~~ Presiding Judge will proceed under 5.1.8.12.1 - 5.1.8.12.3 above or 5.1.8.12.4 - 5.1.8.12.6 above. Otherwise, the licensee shall continue in the agreed upon program of recovery.

5.1.9 Approval or Recommendations by ~~State Steward~~ or Presiding Judge

The Commission may designate categories of licenses which shall require ~~State Steward's~~ or the Presiding Judge's prior approval or recommendation.

5.1.10 Employer Responsibility

5.1.10.1 The employment or harboring of any unlicensed person at facilities under the jurisdiction of the Commission is prohibited.

5.1.10.2 With respect to personnel actions based on a violation of any rule of the Commission relating to racing or pari-mutuel wagering, every employer shall report the discharge of any licensed employee in writing to the Commission or its designee, including the person's name, occupation and reason for the discharge.

5.1.11 Employer Endorsement of License Applications

The license application of an employee shall be signed by the employer.

5.1.12 Workers' Compensation

Licensed employers shall carry workers' compensation insurance covering their employees as required by Delaware law.

5.1.13 Financial Responsibility

Applicants for a license may be required to submit evidence of financial responsibility and shall maintain financial responsibility during the period for which the license is issued.

5.1.14 License Refusal

The Commission or its designee may refuse to issue a license and give the applicant the option of withdrawal of an application without prejudice. If an applicant is refused, the applicant may reapply for a license.

5.1.15 License Denial

The Commission may formally deny an application in accordance with these rules. An application denied shall be reported in writing to the applicant stating the reasons for denial, the date when a reapplication may be submitted, and shall be reported to the United States Trotting Association, which shall then advise other racing jurisdictions.

5.1.16 Grounds for Refusal, Denial, Suspension or Revocation of License

5.1.16.1 The Commission or its designee may refuse to issue or may deny a license to an applicant, or may suspend or revoke a license issued, or may order disciplinary measures, if the applicant:

5.1.16.1.1 has been convicted of a felony;
5.1.16.1.2 has been convicted of violating any law regarding gambling or a controlled dangerous substance;

5.1.16.1.3 has pending criminal charges; or
5.1.16.1.4 is unqualified to perform the duties required of the applicant;
5.1.16.1.5 has failed to disclose or states falsely any information required in the application;

5.1.16.1.6 has been found in violation of statutes or rules governing racing in this state or other jurisdictions;
5.1.16.1.7 has racing disciplinary charges pending in this state or other jurisdictions;

5.1.16.1.8 has been or is currently excluded from association grounds by a recognized racing jurisdiction;
5.1.16.1.9 has had a license denied, suspended or revoked by any racing jurisdiction;

5.1.16.1.10 is a person whose conduct or reputation may adversely reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of a race meeting;

5.1.16.1.11 demonstrates financial irresponsibility by accumulating unpaid obligations, defaulting in obligations or issuing drafts or checks that are dishonored or payment refused;

5.1.16.1.12 is ineligible for employment pursuant to federal or state law because of age or citizenship; or

5.1.16.1.13 has violated any of the alcohol or substance abuse provisions outlined in these rules.

5.1.16.2 A license suspension or revocation shall be reported in writing to the applicant and the United States Trotting Association whereby other racing jurisdictions shall be advised.

5.1.17 License Restrictions, Limitations and Conditions

The Commission or its designee, for cause, may restrict, limit or place conditions on any license.

5.1.18 Duration of License

5.1.18.1 Licenses are valid for such other period as permitted by the Commission.

5.1.18.2 A license is valid only under the condition that the licensee remains eligible to hold such license.

5.1.19 Changes in Application Information

During the period for which a license has been issued, the licensee shall report to the Commission changes in information provided on the license applications as to current legal name, marital status, permanent address, criminal convictions, license suspensions of 10 days or more or license revocations or fines of \$500 or more in other jurisdictions.

5.1.20 Temporary Licenses

The Commission may establish provisions for temporary licenses or may permit applicants to participate in racing pending action on an application.

5.1.21 More Than One License

More than one license to participate in horse racing may be granted to a person except when prohibited by these rules due to a potential conflict of interest.

5.1.22 Conflict of Interest

5.1.22.1 The Commission or its designee shall refuse, deny, suspend or revoke the license of a person whose spouse holds a license and which the Commission ~~State Steward~~ or judges find to be a conflict of interest.

5.1.22.2 A commissioner or Commission employee or racing official shall not be an owner of a horse entered to race, and shall not accept breeder awards at, a race meeting where the Commission has jurisdiction.

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5.1.22.3 A racing official who is an owner of either the sire or dam of a horse entered to race shall not act as an official with respect to that race.

5.1.22.4 A person who is licensed as an owner or trainer, or has any financial interest in a horse registered for racing at a race meeting in Delaware shall not be employed or licensed at that race meeting as a racing official; racetrack managing employee; photo finish operator; racing chemist or testing laboratory employee; provided, further, that a racing official who is the parent, child or sibling of such person shall not officiate on any day when the horse owned or trained, or in which the person has any financial interest, is entered to race at association grounds; provided, however, that a parent, child or sibling acting as a groom for such a horse shall not be deemed to pose a conflict of interest for an official.

5.1.23 License Presentation

5.1.23.1 A person shall present an appropriate license to enter a restricted area.

5.1.23.2 The ~~State Steward~~ or Presiding Judge may require visible display of a license in a restricted area.

5.1.23.3 A license may only be used by the person to whom it is issued.

5.1.24 Visitor's Pass

Track security may authorize unlicensed persons temporary access to restricted areas. Such persons shall be identified and their purpose and credentials verified and approved in writing by track security. A copy of the written approval shall be filed with the Commission or its designee within 48 hours. Such authorization or credential may only be used by the person to whom it is issued.

5.1.25 Safety Helmets and Vests

5.1.25.1 Safety Helmets: A protective helmet, meeting the Snell Foundation standards for protective harness racing headwear, securely fastened under the chin, must be worn at all times on association grounds when:

5.1.25.1.1 racing, parading or warming up a horse prior to racing; or

5.1.25.1.2 jogging, training or exercising a horse at any time.

5.1.25.2 Safety Vests: A safety vest approved by the Delaware Harness Racing Commission must be worn by all person at all times when on the main track whether for jogging, exercising, qualifying or racings.

5.1.25.3 A violation of this rule shall result in a suspension or fine and the participant may be referred to the Commission.

5.1.26 Knowledge of Rules

5.1.26.1 A licensee shall be knowledgeable of the rules of the Commission; and by acceptance of the license, agrees to abide by the rules.

5.1.26.2 A licensee shall report to track security or to the ~~State Steward~~ or judges any knowledge he/she has that a violation of these rules has occurred or may occur.

5.1.27 Standards of Conduct

5.1.27.1 No licensee shall use improper language to any race official, or be guilty of any improper conduct toward such officials or persons serving under their orders, such improper language or conduct having reference to the administration of the course, or of any race.

5.1.27.2 No licensee shall commit an assault, or an assault and battery, upon any driver, trainer, groom, racing official or Commission appointee on the grounds of a racing association, or upon a racing official or Commission appointee who is in the performance of his official duties, nor shall any licensee threaten to do bodily or other injury to any driver, trainer, groom, racing official or Commission appointee, nor shall any licensee address to any such person language which is outrageously insulting.

5.1.27.3 If any licensee shall threaten, or join with others in threatening, not to race, or not to declare in, because of the entry of a certain horse or horses, or of a particular stable, thereby compelling or trying to compel the Racing Secretary to reject certain eligible entries, it shall be reported immediately to the ~~State Steward~~ Presiding Judge, and the offending parties may be suspended by the ~~State Steward~~ Presiding Judge pending a hearing before the Commission.

5.1.27.4 No owner, agent, trainer or driver who has entered a horse shall thereafter demand of the association a bonus of money or other special award or consideration as a condition for starting the horse.

5.1.27.5 No owner, trainer or driver of a horse shall bet or cause any other person to bet on his behalf on any other horse in any race in which there shall be a horse owned, trained or driven by him,

or which he in anywise represents or handles or in which he has an interest; provided, however, that such a person may participate in multiple pool wagering on a race in which his/her horse is included in the wager only in the first (winning) position.

5.1.27.6 If any licensee shall be approached with any offer or promise of a bribe, or a wager or with a request or suggestion for a bribe, or for any improper, corrupt or fraudulent act in relation to racing, or that any race shall be conducted otherwise than fairly and honestly, it shall be the duty of such licensee to report the details thereof immediately to the Presiding Judge or State Steward.

5.1.27.7 Any misconduct on the part of a licensee or patron, fraudulent in its nature or injurious to racing, although not specified in these rules, is forbidden. Any licensee or other person who, individually or in concert with one another, shall fraudulently and corruptly, by any means, affect the outcome of any race or affect a false registration, or commit any other act injurious to racing, shall be guilty of a violation of these rules.

5.1.27.8 If two or more persons combine and confederate together, in any manner, regardless of where the said persons may be located, for the purpose of violating any of the Rules and Regulations of the Commission, and shall commit some act in furtherance of the said purpose or plan, it shall constitute a conspiracy and a violation of these rules.

5.1.27.9 In any case where an oath is administered by the judges, by the ~~State Steward~~ Presiding Judge, by the Commission or by a hearing officer thereof, under these rules, or by a Notary Public and any other person legally authorized to administer oaths, if the party knowingly swears falsely or withholds information pertinent to the investigation, he shall be fined, suspended, or both, or expelled.

5.1.27.10 The Commission may impose a fine or suspension on, or may refuse to license, any person subject to the jurisdiction of the Commission if the Commission finds that such person:

5.1.27.10.1 Is associating, consorting or negotiating with bookmakers, touts or other persons of similar pursuits; or

5.1.27.10.2 Is associating, consorting or negotiating with persons who have been convicted of a crime; or

5.1.27.10.3 Is guilty of fraud or has attempted any fraud or misrepresentation in connection with racing, breeding or otherwise; or

5.1.27.10.4 Has violated any law, rule or regulation with respect to racing in any jurisdiction; or

5.1.27.10.5 Has violated any rule, regulation or order of the Commission; or

5.1.27.10.6 Is of such experience, character or general unfitness that the person's participation in harness racing or related activities would be inconsistent with the public interest, convenience or necessity, or with the best interests of racing generally.

5.1.27.11 The Commission may refuse admission to race meeting grounds, and/or may eject from the enclosure of a race track operated by any association, any person whose presence there is, in the judgment of the Commission, inconsistent with the orderly or proper conduct of a race meeting, or whose presence or conduct is deemed detrimental to the best interests of harness racing.

5.1.27.12 Any person, whether a licensee or a patron, may be expelled from the enclosure of a race track operated by any association for any violation of Rule 5.1.27.

5.1.27.13 All licensees, officials and appointees of the Commission, and all employees of any association, are required to conduct themselves in a forthright and courteous manner at all times while on or near the premises of an association during the operation of a licensed harness race meeting. The Commission at any time may require the removal of any licensee, official, appointee or employee whose conduct does not comport with this requirement.

5.1.27.14 Licensees tampering with eligibility certificates may be fined, or their licenses may be suspended or revoked. Further, any winnings of such licensees in races in which a horse was entered whose eligibility certificate was tampered with by such licensee may be ordered forfeited.

5.2 Owners

5.2.1 Licensing Requirements for Owners

5.2.1.1 Each person who has an ownership or beneficial interest in a horse is required to be licensed.

5.2.1.2 An applicant for an owner's license shall own or lease a horse which is eligible to race, registered with the racing secretary and under the care of a trainer licensed by the Commission. An

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owner shall notify the stewards/judges of a change in trainer of his/her horse. A horse shall not be transferred to a new trainer after entry.

5.2.1.3 The provisions of 5.1.4 notwithstanding, a person younger than 14 years of age may apply for an owner's license, provided that no licensed owner younger than 14 years of age will be permitted paddock access at any licensed association. If younger than 18 years of age, an applicant for an owner's license shall submit a notarized affidavit from his/her parent or legal guardian stating that the parent or legal guardian expressly assumes responsibility for the applicant's financial, contractual and other obligations relating to the applicant's participation in racing.

5.2.1.4 If the Commission or its designee has reason to doubt the financial responsibility of an applicant for an owner's license, the applicant may be required to complete a verified financial statement.

5.2.1.5 Horses not under lease must race in the name of the bona fide owner. Each owner shall comply with all licensing requirements.

5.2.1.6 The Commission or its designee may refuse, deny, suspend or revoke an owner's license for the spouse or member of the immediate family or household of a person ineligible to be licensed as an owner, unless there is a showing on the part of the applicant or licensed owner, and the Commission determines that participation in racing will not permit a person to serve as a substitute for an ineligible person. The transfer of a horse to circumvent the intent of a Commission rule or ruling is prohibited.

5.2.2 Licensing Requirements for Multiple Owners

5.2.2.1 If the legal owner of any horse is a partnership, corporation, limited liability company, syndicate or other association or entity, each shareholder, member or partner shall be licensed as required in 5.1.1 of this section.

5.2.2.2 Each partnership, corporation, limited liability company, syndicate or other association or entity shall disclose to the Commission all owners holding a five percent or greater beneficial interest, unless otherwise required by the Commission.

5.2.2.3 Each partnership, corporation, limited liability company, syndicate or other association or entity which includes an owner with less than a five percent ownership or beneficial interest shall file with the Commission an affidavit which attests that, to the best of their knowledge, every owner, regardless of their ownership or beneficial interest, is not presently ineligible for licensing or suspended in any racing jurisdiction.

5.2.2.4 To obtain an owner's license, an owner with less than a five percent ownership or beneficial interest in a horse shall establish a bona fide need for the license and the issuance of such license shall be approved by the Commission.

5.2.2.5 Application for joint ownership shall include a designation of a managing owner and a business address. Receipt of any correspondence, notice or order at such address shall constitute official notice to all persons involved in the ownership of such horse.

5.2.2.6 The written appointment of a managing owner or authorized agent shall be filed with the United State Trotting Association or Canadian Trotting Association and with the Commission.

5.2.3 Lease Agreements

A horse may be raced under lease provided a completed breed registry or other lease form acceptable to the Commission is attached to the certificate of registration and on file with the Commission. The lessor and lessee shall be licensed as horse owners. For purposes of issuance of eligibility certificates and/or transfers of ownership, a lease for an indefinite term shall be considered terminable at the will of either party unless extended or reduced to a term certain by written documentation executed by both lessor and lessee.

5.2.4 Racing Colors

Drivers must wear distinguishing colors, and shall not be permitted to drive in a race or other public performance unless, in the opinion of the judges/stewards, they are properly dressed, their driving outfits are clean and they are well groomed. During inclement weather conditions, drivers must wear rain suits in either of their colors or made of a transparent material through which their colors can be distinguished.

5.3 Trainers

5.3.1 Eligibility

5.3.1.1 A person shall not train horses, or be programmed as trainer of record at extended meetings, without first having obtained a trainer license valid for the current year by meeting the standards for trainers, as laid down by the United State Trotting Association, and being licensed by the Commission. The "trainer of record" shall be any individual who receives compensation for training the horse. The

holder of a driver's license issued by the United States Trotting Association is entitled to all privileges of a trainer and is subject to all rules respecting trainers.

5.3.1.2 Valid categories of licenses are:

5.3.1.2.1 "A," a full license valid for all meetings and permitting operation of a public stable.; and

5.3.1.2.2 "L," a license restricted to the training of horses while owned by the holder and/or his or her immediate family at all race meetings.

5.3.1.3 If more than one person receives any form of compensation, directly or indirectly, for training the horse, then the principal trainer or trainers must be listed as "trainer of record". It shall be a violation for the principal trainer or trainers of a horse not to be listed as "trainer of record", and, if such unlisted principal trainer or trainers are licensees of the Commission, then he, she or they shall be subject to a fine and/or suspension for such violation. In addition, it shall be a violation for a person who is not the principal trainer of the horse to be listed as "trainer of record", and such person shall be subject to a fine and/or suspension for such violation. Principal trainers and programmed trainers shall be equally liable for all rule violations. For purposes of this rule, the Steward and judges shall use the following criteria in determining the identity of the principal trainer or trainers of a horse:

5.3.1.3.1 The identity of the person who is responsible for the business decisions regarding the horse, including, but not limited to, business arrangements with and any payments to or from owners or other trainers, licensed or otherwise, veterinarians, feed companies, hiring and firing of employees, obtaining workers' compensation or proof of adequate insurance coverage, payroll, horsemen's bookkeeper, etc.;

5.3.1.3.2 The identity of the person responsible for communicating, or who in fact does communicate, with the racing secretary's office, stall manager, association and track management, owners, etc. regarding racing schedules and other matters pertaining to the entry, shipping and racing of the horse;

5.3.1.3.3 The identity of the person responsible for the principal conditioning of the horse;

5.3.1.3.4 The identity of the person responsible for race day preparation including, but not limited to, accompanying the horse to the paddock or ship-in barn, selection of equipment, authority to warm up the horse before the public, discussion with the driver of race strategy, etc.; and

5.3.1.3.5 The identity of the person who communicates on behalf of the owner with the Steward, judges and other Commission personnel regarding the horse, including regarding any questions concerning the location or condition of the horse, racing or medication violations, etc.

5.3.2 Trainer Responsibility

5.3.2.1 A trainer is responsible for the condition of horses entered in an official race and is responsible for the presence of any prohibited drug, medication or other substance, including permitted medication in excess of the maximum allowable level, in such horses. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable level, as reported by a Commission-approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer shall be responsible. Whenever a trainer of a horse names a substitute trainer for program purposes due to his or her inability to be in attendance with the horse on the day of the race, or for any other reason, both trainers shall be responsible for the condition of the horse should the horse test positive.

5.3.2.2 A trainer shall prevent the administration of any drug or medication or other prohibited substance that may cause a violation of these rules.

5.3.2.3 A trainer whose horse has been claimed remains responsible for any violation of rules regarding that horse's participation in the race in which the horse is claimed.

5.3.3 Other Responsibilities

A trainer is responsible for:

5.3.3.1 the condition and contents of stalls, tack rooms, feed rooms, sleeping rooms and other areas which have been assigned by the association;

5.3.3.2 maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

5.3.3.3 ensuring that fire prevention rules are strictly observed in the assigned stable area;

5.3.3.4 providing a list to the Commission of the trainer's employees on association grounds and any other area under the jurisdiction of the Commission. The list shall include each

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employee's name, occupation, social security number and occupational license number. The Commission shall be notified by the trainer, in writing, within 24 hours of any change;

5.3.3.5 the proper identity, custody, care, health, condition and safety of horses in his/her charge;

5.3.3.6 disclosure of the true and entire ownership of each horse in his/her care, custody or control;

5.3.3.8 registering with the racing secretary each horse in his/her charge within 24 hours of the horse's arrival on association grounds;

5.3.3.9 ensuring that, at the time of arrival at a licensed racetrack, each horse in his/her care is accompanied by a valid health certificate which shall be filed with the racing secretary;

5.3.3.10 having each horse in his/her care that is racing, or is stabled on association grounds, tested for Equine Infectious Anemia (EIA) in accordance with state/provincial law and for filing evidence of such negative test results with the racing secretary;

5.3.3.11 using the services of those veterinarians licensed by the Commission to attend horses that are on association grounds;

5.3.3.12 immediately reporting the alteration of the sex of a horse in his/her care to the horse identifier and the racing secretary, whose office shall note such alteration on the certificate of registration;

5.3.3.13 promptly reporting to the Presiding Judge, racing secretary and the State veterinarian any horse on which a posterior digital neurectomy (heel nerving) is performed and ensuring that such fact is designated on its certificate of registration;

5.3.3.14 promptly notifying the State veterinarian of any reportable disease and any unusual incidence of a communicable illness of any horse in his/her charge;

5.3.3.15 promptly reporting the death of any horse in his/her care on association grounds to the ~~State Steward~~ or judges and the State veterinarian and compliance with the rules in Chapter 8 governing post-mortem examinations;

5.3.3.16 maintaining a knowledge of the medication record and status of all horses in his/her care;

5.3.3.17 immediately reporting to the ~~State Steward~~ Presiding Judge and the State veterinarian if he/she knows, or has cause to believe, that a horse in his/her custody, care or control has received any prohibited drugs or medication;

5.3.3.18 representing an owner in making entries and scratches and in all other matters pertaining to racing;

5.3.3.19 horses entered as to eligibility and allowances claimed;

5.3.3.20 ensuring the fitness of a horse to perform creditably at the distance entered;

5.3.3.21 ensuring that his/her horses are properly prepared and equipped;

5.3.3.22 presenting his/her horse in the paddock at a time prescribed by the Presiding Judge before the race in which the horse is entered;

5.3.3.23 personally attending to his/her horses in the paddock and supervising the preparation thereof, unless excused by the Paddock Judge;

5.3.3.24 attending the collection of a urine or blood sample from the horse in his/her charge or delegating a licensed employee or the owner of the horse to do so; and

5.3.3.25 notifying horse owners upon the revocation or suspension of his/her trainer's license. Upon application by the owner, the ~~State Steward~~ Presiding Judge may approve the transfer of such horses to the care of another licensed trainer, and upon such approved transfer, such horses may be entered to race.

5.3.4 Restrictions on Wagering

A trainer shall only be allowed to wager on his/her horse or entries to win or finish first in combination with other horses.

5.3.5 Substitute Trainers

If any licensed trainer is to be absent from the association grounds where his/her horse is programmed to race the Presiding Judge shall be immediately notified and at that time a licensed substitute trainer, acceptable to the Presiding Judge, shall be appointed to assume responsibility for the horse(s) racing during the absence of the regular trainer. The name of the substitute trainer shall appear on the program if possible.

5.4 Owners' Authorized Agents**5.4.1 Licenses Required**

5.4.1.1 An authorized agent shall obtain a license from the Commission.

5.4.1.2 Application for license shall be filed for each owner represented.

5.4.1.3 A written instrument signed by the owner shall accompany the application and shall clearly set forth the delegated powers of the authorized agent. The owner's signature on the written instrument shall be acknowledged before a notary public.

5.4.1.4 If the written instrument is a power of attorney it shall be filed with the Commission and attached to the regular application form.

5.4.1.5 Any changes shall be made in writing and filed as provided in 5.4.1.3 above.

5.4.1.6 The authorized agent's appointment may be terminated by the owner, in writing, acknowledged before a notary public and filed with the Commission whereupon the license shall not be valid.

5.4.2 Powers and Duties

5.4.2.1 A licensed authorized agent may perform on behalf of the licensed owner-principal all acts as relate to racing, as specified in the agency appointment, that could be performed by the principal if such principal were present.

5.4.2.2 In executing any document on behalf of the principal, the authorized agent shall clearly identify the authorized agent and the owner-principal.

5.4.2.3 When an authorized agent enters a claim for the account of a principal, the name of the licensed owner for whom the claim is being made and the name of the authorized agent shall appear on the claim slip or card.

5.4.2.4 Authorized Agents are responsible for disclosure of the true and entire ownership of each horse for which they have authority at a race meeting. Any change in ownership shall be reported immediately to, and approved by, the ~~stewards/~~judges and recorded by the United States Trotting Association.

5.5 Drivers

5.5.1 A person shall not drive a horse in any race or performance against time, other than an exhibition race, without having first obtained a driver license valid for the current year by meeting the standards as established by the United States Trotting Association and being licensed by the Commission. The driver license shall be presented to the judges prior to participating for the first time at any race meeting.

5.5.2 The judges may review the performance of a driver at any time and may take the following actions:

5.5.2.1 amend the license category;

5.5.2.2 revoke the license;

5.5.2.3 apply conditions to the license; or

5.5.2.4 require the driver to re-qualify for his/~~her~~ license in accordance with the United States Trotting Association regulations.

5.5.3 Drivers must report to the Paddock Judge at least one hour before post time of any race in which they are programmed to drive, unless excused by the Presiding Judge.

5.5.4 Where advanced wagering takes place on any feature betting race, drivers programmed to drive in such races must make their presence known to the Paddock Judge prior to commencement of the advanced wagering.

5.5.5 A driver cannot decline to be substituted by the judges. Any driver who refuses shall be suspended and may be fined.

5.5.6 Once a driver reports to the paddock he/she shall not enter the public stands or the betting area until his/~~her~~ driving duties for the day have been completed and upon completion of driving duties the driver shall not enter the public stands until he/she has replaced his/~~her~~ driving outfit with ordinary clothing.

5.5.7 The ~~State Steward~~ or judges may remove a driver at any time if, in his or their opinion, his/~~her~~ driving would not be in the best interests of harness racing.

5.5.8 A driver shall not drive for any other person in a race in which one of the horses he/~~she~~ trains or owns has been declared into race, except where such horses are coupled as an entry.

5.5.9 Drivers shall fulfil all engagements, unless excused by the judges.

1 DE Reg. 502 (11/01/97)

5 DE Reg. 832 (10/1/01)

10 DE Reg. 1422 (3/1/07)

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

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, e~~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 on 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 may be determined by the racing secretary.

6.2.1.5.3 However, where necessary to fill a card, not more than three races per day may be divided into not more than three 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;

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~~ horse's race condition in a specified number of previous races or during a specified period of time;

6.2.2.1.8 claiming price in a horse's last one to three previous races;

6.2.2.1.89 Delaware-owned or bred races as specified in 3 **Del.C.** §10032;

or

6.2.2.1.910 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.

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 and eligibility 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, on a half mile racetrack there shall be no trailing horses. On a bigger racetrack there shall be no more than one trailing horse. 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 Claiming Procedure and Determination of Claiming Price. -- The trainer or authorized agent entering a horse in a claiming race warrants that ~~he/she~~ has authorization from the registered owner(s) to enter said horse in a claiming race for the designated amount. In the event of a claim, the owner(s) or authorized agent shall submit a signed registration to the ~~State Steward or~~ Presiding Judge prior to receiving proceeds from the claim and the registration shall be immediately forwarded to the U.S.T.A. registrar for transfer.

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~~

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are mixed, m 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. noon 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~~ may be allowed access to the grounds of the ~~a~~ 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~~ for a 30 day period from the date of issue issuance 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 ~~a~~ 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 ~~a~~ 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.

6.3.2.8 No ~~person~~ one 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.

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 ~~a~~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. The deposit shall be in cash or may be in a certified check at the discretion of the Association. The Association may require that a certified check clear the bank upon which it was drawn and funds transferred to the Association's account prior to the credit being "established."~~

6.3.3.2 The claimant shall provide all information required on the claim form provided by the ~~a~~Association, including any and all testing requests.

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 ~~a~~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 ~~a~~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 ~~a~~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 ~~a~~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,

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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 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 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, or if a blood sample exhibits a positive response to Darbepoietin (DPO), the Erythropoietin (EPO) in itself, or through an antibody test. ~~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~~ may be entered to race while results are pending, but not be permitted to race until the approved laboratory chemist notifies the DHRC on his findings in the samples taken from the horse.

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. The horse's halter must accompany the horse. Altering or removing the horse's shoes will be considered a violation of these rules.

6.3.3.15 No horse claimed out of a claiming race shall be eligible to start in any race in the name or interest of the prior owner for 30 days, nor shall such horse remain in the same stable or under the care or management of the prior owner or trainer, or anyone connected therewith unless reclaimed out of another claiming race. Further, such claimed horse shall only be eligible to enter in races in the state of Delaware for a period of 60 days following the date of the claim, unless released in writing by an authorized representative of the Association.

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~~ has been received by the racing secretary for transfer to the new owner and the Presiding Judge has signed a release notice of horse claimed and application for transfer form.

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~~ 24 hours following notification to the claimant of the positive test by the judges;

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.

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 of 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 ~~a~~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.

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~~ he covered a book of mares or a horse whose dam was a wholly-owned Delaware brood mare at the time of breeding as shown on the horse's United State Trotting Association registration or electronic 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.** §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;

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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 her 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 not 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.

- 1 DE Reg. 503 (1/1/97)
- 2 DE Reg. 1241 (1/1/99)
- 2 DE Reg. 1765 (4/1/99)
- 3 DE Reg. 432 (9/1/99)
- 3 DE Reg 1520 (5/1/00)
- 4 DE Reg. 1123 (1/1/01)
- 4 DE Reg 1652 (4/1/01)
- 5 DE Reg. 1691 (3/1/02)
- 6 DE Reg. 862 (1/1/03)
- 7 DE Reg. 1512 (5/1/04)
- 11 DE Reg. 308 (09/01/07)

7.0 Rules of the Race

7.1 Declarations and Drawing

7.1.1 Declarations

~~7.1.1.1 Unless otherwise specified in the conditions, the declaration time shall be as follows: Declaration time shall be as specified in the Association's general conditions.~~

~~7.1.1.1.1 Extended pari-mutuel meetings, 9:00 a.m.~~

~~7.1.1.1.2 All other meetings, 10:00 a.m.~~

~~7.1.1.2 The time when declarations close will be considered to be local time at the track where the race is being contested.~~

~~7.1.1.32 No horse shall be permitted to start in more than one race on any one racing day. Races decided by more than one heat are considered a single race.~~

~~7.1.1.43 The Association shall provide a locked box with an aperture through which declarations shall be deposited.~~

~~7.1.1.54 The Presiding Judge shall be in charge of the declaration box.~~

~~7.1.1.65 Just prior to opening of the box at extended pari-mutuel meetings where futurities, stakes, early closing or late closing events are on the program, the Presiding Judge shall check with the racing secretary to ascertain if any declarations by mail, telegraph, facsimile machine or otherwise, are in the office and not deposited in the entry box, and shall see that they are declared and drawn in the proper event. At other meetings, the Presiding Judge shall ascertain if any such declarations have been received by the speed superintendent or racing secretary of the fair, and shall see that they are properly declared and drawn.~~

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7.1.2 Drawing

7.1.2.1 The entry box shall be opened at the advertised time by the Presiding Judge, ~~who shall ensure that at least one horseman or an official representative of the horsemen is present.~~ No owner or agent for a horse with a declaration in the entry box shall be denied the privilege of being present. Under the supervision of the Presiding Judge, all entries shall be listed, the eligibility verified, preference ascertained, starters selected and post positions drawn. If it is necessary to reopen any race, public announcement shall be made at least twice and the box reopened to a definite time.

7.1.2.2 Subject to Commission approval, at non-extended meetings in the event of the absence or incapacity of the Presiding Judge, the functions enumerated above may be performed by one or more associate judges, or by a person designated by the Presiding Judge, for whose acts and conduct Presiding Judge shall be wholly responsible. If a substitution is made as herein provided, the name and address of the associate judge(s) or person so substituting shall be entered in the Judges' Book.

At extended meetings in the event of the absence or incapacity of the Presiding Judge, the functions enumerated above may be performed by one or more associate judges who shall have been designated by the Presiding Judge, prior to the start of the meeting, in the form of a written notice to the Commission and to the Association conducting the meeting. A record shall be kept in the Judges' Book showing the name of the individual who performed such functions on each day of the meeting.

7.1.2.3 In races of a duration of more than one dash or heat at pari-mutuel meetings, the judges may draw post positions from the stand for succeeding dashes or heats.

7.1.2.4 ~~Declarations by mail, telegraph, facsimile machine or telephone actually received and evidence of which is deposited in the box before the time specified to declare in, shall be drawn in the same manner as the others. Such drawings shall be final. Mail, telegraph, facsimile machine and telephone declarations must state the name and address of the owner or lessee; the name, color, sex, sire and dam of the horse; the driver's name and racing colors; the date and place of last start; a current summary, including the number of starts, firsts, seconds, thirds, earnings and best winning time for the current year; and the event or events in which the horse is to be entered.~~ Declarations by telephone or other means approved by the Association's race office that are actually received and evidence of which is deposited in the box before the time specified to declare in, shall be drawn in the same manner as the others. Telephone declarations, or other means of declarations approved by the Association's race office must state the horse's name, the driver's name, the trainer's name, and the event in which the horse is to be entered.

7.1.2.5 Failure to declare as required shall be considered a withdrawal from the event.

7.1.2.6 After declaration to start has been made no horse shall be withdrawn except by permission of the judges. A fine, not to exceed ~~\$500~~ \$2,000, or suspension may be imposed for withdrawing a horse without permission, the penalty to apply to both the horse and the party who violates the regulation.

7.1.2.7 Where the person making the declaration fails to honor it and there is no opportunity for a hearing by the judges, this penalty may be imposed by the commission representative.

7.1.2.8 ~~Where a horse properly declared is omitted from the race by error of the Association, the race shall be redrawn~~ the omitted horse may take the post position of the incorrect horse included in the race. If two horses are incorrectly included in the event, one shall be drawn by lot and included in the race, provided, however, that the error is discovered prior to the publication of the official program.

7.1.2.9 In the event there are two tiers of horses, the withdrawing of a horse that has drawn or earned a position in the front tier shall not affect the position of the horses that have drawn or earned positions in the second tier, except as provided for in handicap claiming races. Whenever a horse is drawn from any tier, horses on the outside move in to fill up the vacancy. When there is only one trailer, it may start from any position in the second tier. When there is more than one trailer, they must start from inside any horse with a higher post position.

7.1.3 Qualifying Races

7.1.3.1 Qualifying races and starting gate schooling shall be held according to the demand as determined by the Presiding Judge ~~or State Steward.~~

7.1.3.2 Qualifying standards shall be set at each track by the racing secretary and the judges. These may vary at different times of the year to accommodate weather and the class of horse available. Standards for trotters will be two seconds slower than pacers.

7.1.3.3 At all extended pari-mutuel meetings declarations for overnight events shall be governed by the following:

7.1.3.3.1 Before racing at a chosen gait, a horse must go a qualifying race at that gait under the supervision of a licensed judge and acquire at least one charted line by a licensed charter. In order to provide complete and accurate chart information on time and beaten lengths, a standard photo finish shall be in use.

7.1.3.3.2 Any horse that fails to race within thirty (30) days of its last start must go a qualifying race as set forth in a) above. However, at any race meeting this period can be extended up to sixty (60) days upon receiving approval of the Commission. The time period allowed shall be calculated from the date of the last race to and including the date of declaration. Horses entered and in to go in a race or races which are canceled due to no fault of their own, shall be considered to have raced in that race, and no start shall be counted for date preference purposes.

7.1.3.3.3 When a horse has raced at a charted meeting and then gone to meetings where the races are not charted the information from the uncharted lines may be summarized including each start and consolidated in favor of charted lines to include a charted line within the last thirty (30) days before the horse is permitted to race. The consolidated line shall carry date, place, time, driver, finish, track condition and distance.

7.1.3.3.4 The judges may permit a horse to qualify by means of a timed workout consistent with the time of the races in which he will compete in the event adequate competition is not available for a qualifying race.

7.1.3.3.5 When, for the purpose of qualifying the driver, a horse is declared in to race in a qualifying race, its performance shall be applicable to the horse's eligibility to race and the chart line shall be notated to indicate driver qualifying.

7.1.3.3.6 If a horse takes a win race record in either a qualifying race or a matinee race, such record must be prefaced with the letter "Q" wherever it appears, except in a case where, immediately prior to or following the race, the horse taking the record has been submitted to an approved urine, saliva or blood test. It will be the responsibility of the Presiding Judge to report the test on the Judges' Sheet.

7.1.3.4 Any horse regularly wearing hobbles shall not be permitted to be declared to race without them and any horse regularly racing without hobbles shall not be permitted to wear hobbles in a race without first having qualified with this equipment change. In addition to the foregoing, any horse regularly wearing hobbles and which is not on a qualifying list or Stewards' List, is allowed one start without hobbles in a qualifying race; and this single performance shall not affect its eligibility to race with hobbles in a subsequent event to which it is declared.

7.1.3.5 In their discretion the judges may require a horse to qualify for any reason; provided, however, that a horse making a break in each of two consecutive races may not be required to qualify if the breaks were solely equipment breaks and/or were caused solely by interference and/or track conditions.

7.1.3.6 A horse must qualify if:

7.1.3.6.1 it does not finish for reasons other than interference or broken equipment.

7.1.3.7 A charted line containing only a break or breaks caused by interference or an equipment break shall be considered a satisfactory charted line.

7.1.3.8 The judges shall use the interference break mark only when they have reason to believe that the horse was interfered with by another horse or the equipment of another horse.

~~7.1.3.9 If qualifying races are postponed or canceled, an announcement shall be made to the participants as soon as the decision is made.~~

7.1.4 Coupled Entries

When the starters in a race include two or more horses owned by the same person, or trained in the same stable or by the same management, they shall be coupled as an "entry", and a wager on one horse in the entry shall be a wager on all horses in the "entry"; provided, however, that when a trainer enters two or more horses in a stake, early closing, futurity, free-for-all or other special event under bona fide separate ownership, such horses may, at the request of the Association, made through the State Steward, and with the approval of the Commission, Presiding Judge be permitted to race as separate entries. If the race is split in two or more divisions, horses in an "entry" shall be seeded in separate divisions insofar as possible, but the divisions in

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which they compete and their post positions shall be drawn by lots. The above provisions shall also apply to elimination heats. The person making the declaration of a horse that qualifies as a coupled entry with another horse entered in the same event shall be responsible to designate the word "entry" on the declaration blank. The Presiding Judge shall be responsible for coupling horses. In addition to the foregoing, horses separately owned or trained may be coupled as an entry where it is necessary to do so to protect the public interest for the purpose of pari-mutuel wagering only; provided, however, that where this is done entries may not be rejected.

7.1.5 Also Eligibles

Not more than two horses may be drawn as also eligibles for a race and their positions shall be drawn along with the starters in the race. In the event one or more horses are excused by the judges, the also eligible horse or horses shall race and take the post position drawn by the horse that it replaces, except in handicap races. In handicap races the also eligible horses shall take the place of the horse that it replaces in the event 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. No horse may be added to a race as an also eligible unless the horse was drawn as such at the time declarations closed. No horse may be barred from a race to which it is otherwise eligible by reason of its preference due to the fact that it has been drawn as an also eligible. A horse moved into the race from the also eligible list cannot be drawn except by permission of the judges, but the owner or trainer of such a horse shall be notified that the horse is to race and it shall be posted at the racing secretary's office. All horses on the also eligible list and not moved in to race by Scratch Time on the day of the race shall be released.

7.1.6 Preference Dates

Preference dates shall be given to horses in all overnight events at extended pari-mutuel tracks in accordance with the following:

7.1.6.1 The date of the horse's last previous start in a purse race is its preference date with the following exceptions:

7.1.6.1.1 The preference date on a horse that has drawn to race and has been scratched is the date of the race from which scratched.

7.1.6.1.2 When a horse is racing for the first time in a calendar year after August 1st, the date of its first successful qualifying race shall be considered its preference date. When a horse is racing for the first time ever, the date of its first successful qualifying race shall be considered its preference date.

7.1.6.1.3 Wherever horses have equal preference in a race, the actual preference of said horses in relation to one another shall be determined by backdating, up to two starts, the horse having raced closest to the draw having the least preference. If no preference is determined, preference will be determined by lot.

7.1.6.1.4 When an overnight race has been re-opened because it did not fill, all eligible horses declared into the race prior to the re-opening shall receive preference over other horses subsequently declared, irrespective of the actual preference dates, excluding horses already in to go.

7.1.6.2 This rule relative to preference is not applicable at any meeting at which an agricultural fair is in progress. All horses granted stalls and eligible must be given an opportunity to compete at these meetings.

7.2 Timing and Records

7.2.1 Timing

7.2.1.1 The time of each heat or dash shall be accurately taken by two timers or an approved electric timing device, in which case there shall be one timer, and placed in the record in minutes, seconds and fifths of seconds, and upon the decision of each heat the time thereof shall be publicly announced or admitted to the record. When the timers fail to act, no time shall be announced or recorded.

7.2.1.2 The time shall be taken from the first horse leaving the point from which the distance of the race is measured until the winner reaches the wire.

7.2.1.3 The leading horse shall be timed and its time only shall be announced. No horse shall obtain a win race record by reason of the disqualification of another horse unless the horse's actual race time can be determined by photo finish or electronic timing.

7.2.1.4 In the case of a dead heat, the time shall constitute a record for the horses making the dead heat and both shall be considered winners.

7.2.2 Records

7.2.2.1 In order that performances thereon may be recognized or published as official, every aAssociation shall have filed with the Commission the certificate of a duly licensed civil engineer or land surveyor that the track has been measured from wire to wire three feet out from the inside hub rail or other fixed marker and certifying exactly the result of such measurement. Each track shall be measured and re-certified in the event of any changes or relocation of the hub rail or other fixed marker.

7.2.2.2 A record will be the fastest time made by a horse in a heat or dash which it won, or in a performance against time.

7.2.2.3 No time record shall be recognized as a world record if obtained on a track without an inside rail or other fixed marker.

7.2.2.4 In any case of alleged error in the record, announcement or publication of the time made by a horse, the time so questioned shall not be changed to favor said horse or owner, except upon the sworn statement of the judges and timers who officiated in the race.

7.2.2.5 If a horse takes a win-race record in a qualifying race or schooling race, such record must be prefaced with the letter "Q" wherever it appears, except in a case where the horse was subjected to the collection of a test sample. The Presiding Judge shall note on the judges' official race reports each qualifying race from which test samples were collected.

7.2.2.6 For horses bred in North America and subsequently exported, foreign earnings shall be converted to U.S. dollars and credited to the horse's official records. A winning performance at a mile or greater distance, expressed at a mile rate, shall receive recognition as the horse's record.

7.2.2.7 Any person found guilty of fraudulent misrepresentation of time or the alteration of the record thereof, in any race, shall be fined, suspended, expelled or a combination thereof and time declared not a record.

7.3 Postponement and Cancellation

7.3.1 In case of unfavorable weather or other unavoidable cause, the aAssociation upon notifying the Commission shall postpone or cancel races in accordance with the following rules.

7.3.2 Added money events shall be postponed to a definite hour on a scheduled race date when favorable conditions prevail.

7.3.3 An early closing event or a late closing event that cannot be raced during the scheduled meeting shall be declared off and the total of nomination, sustaining and starting payments divided equally among the owners of eligibles in proportion to the number of horses declared to start.

7.3.4 An early closing event or late closing event that has been started, but remains unfinished on the last day of the scheduled meeting shall be declared ended and the full purse divided according to the summary.

7.3.5 Stakes and futurities should be raced where advertised and the meeting may be extended to accomplish this. Any stake or futurity that has been started, but which remains unfinished on the last day of the scheduled meeting shall be declared ended and the full purse divided according to the summary, except where the aAssociation elects to extend the meeting to complete the race. Horses that are scratched after a heat and before the race is declared finished shall not participate in purse distributions for subsequent heats in the event the race is called off and declared finished.

7.3.6 Unless otherwise provided in the conditions, in order to transfer stakes and futurities to another meeting, unanimous consent must be obtained from the aAssociation and all those having eligibles in the event.

7.3.7 At extended meetings, overnight events may be postponed and rescheduled within two days, or may be canceled if circumstances or weather conditions warrant. Postponed overnight events not raced within two days shall then be canceled.

7.3.8 At non-extended meetings, overnight events shall be canceled, unless the aAssociation is willing to add the postponed races to the advertised program for subsequent days of the meeting. At the option of the aAssociation, any postponed races may be contested in single one-mile dashes. Where races are postponed under this rule, the aAssociation shall have the privilege of selecting the order in which events will be raced in any combination program.

7.3.9 If the track conditions are questionable for the warming up or racing of horses, the Presiding Judges shall call a meeting consisting of a committee including himself/herself, an Agent of the track and a Representative of the Horsemen. The Agent of the track will notify the Track Superintendent to attempt to correct any problem with the racing surface as soon as possible. Once the Track Superintendent has addressed

the problem, The Horsemen's Representative will physically review the areas in question. If all are in agreement that the problem has been corrected, racing will proceed. If the Representative of the Horsemen is not satisfied, the Track Superintendent will be given a final opportunity to rectify the problem.

If after the second attempt to rectify the problem, the Horsemen's Representative is still not satisfied, there will be a vote of the Drivers and Trainers of horses participating in that night's program to determine if racing will be conducted. A secret vote will be taken of those participants and will be conducted and monitored by the Judges. The Judges will count the ballots and inform Track Management of the outcome. If a tally of the drivers and trainers determines that 25 percent or less vote to race, the card shall be canceled. If more than 25 percent and less than 75 percent vote to race, trainers will be allowed to withdraw horses without penalty. If 75 percent or more vote to race, the regular rules of withdrawal and scratching of horses will apply. The foregoing does not preclude race track management from canceling racing due to track or weather conditions without consultation with the Presiding Judges and the Horsemen's Representative upon notification of the Commission or its designee.

7.3.10 If qualifying races are postponed or canceled, an announcement shall be made to the participants as soon as the decision is made.

7.3.11 Where a race is postponed pursuant to any of the foregoing provisions only those horses originally declared in to the postponed event shall to be eligible to race. Where a race is postponed and moved to another location, horses previously declared may withdraw without penalty.

7.3.12 In the event the ~~State Steward~~/Judges declare a "No Contest", the designated purse for that contest shall be divided equally among those horses that were eligible to participate in that contest. The declaration date for those horses credited with earnings in this manner shall be the scheduled date of the "No Contest" race.

7.4 Horses Permitted to Race

7.4.1 A horse shall be eligible to be declared in to race provided the following conditions have been met:

7.4.1.1 the eligibility fee, which shall become due and payable when a horse makes its first start in any type of race in a calendar year, has been paid to the United States Trotting Association, or a current eligibility certificate has been granted for the horse by the United States Trotting Association or by the Canadian Trotting Association.

7.4.1.2 the horse has been registered in the current ownership with the Canadian Standardbred Horse Society or in the United States Trotting Association Register;

7.4.1.3 if leased, a copy of the lease is on file with, and is acceptable to the United States Trotting Association or Canadian Trotting Association, as appropriate. The horse must race in the name of the lessee;

7.4.1.4 for overnight races, the horse has qualified at an extended meeting in accordance with the rules prior to the time of closing of declarations in accordance with the qualifying standards of the track presenting the race.

7.4.1.5 for added money events, the horse has qualified at an extended meeting in accordance with the rules prior to the time of closing of declarations.

7.4.1.6 not more than 30 days prior to the time of closing of declarations, the horse was credited with a satisfactory charted past performance line obtained in a purse, qualifying or schooling race conducted at a charted meeting; provided, however, that with the permission of the Presiding Judge, a satisfactory charted past performance within 60 days prior to the time of closing of declarations may be used;

7.4.1.7 the horse is at least two years of age to race at any meeting but not older than 14 years of age;

7.4.1.8 the horse has not been denerved by any method above its pastern. The decision at any given time whether the horse has been denerved shall be the State veterinarian's.

7.4.1.9 if a mare has been spayed, the United States Trotting Association or Canadian Trotting Association, as appropriate, has been notified in writing by the owner, trainer or veterinarian;

7.4.1.10 the horse does not have a trachea tube or a hole in its throat for a trachea tube;

7.4.1.11 the horse has unimpaired vision in at least one eye; and

7.4.1.12 the horse has been lip tattooed or freeze-branded in accordance with the constitution and bylaws and regulations of the United States Trotting Association or Canadian Standardbred Horse

Society.

7.4.2 Any participant who declares, or causes to be declared, an ineligible horse to start shall be guilty of a violation of the rules and subject to disciplinary action by the judges. If after declarations close, and prior to the race, the judges become aware that an ineligible horse has been declared, they shall immediately scratch the horse and starting fees, if applicable, shall be forfeited.

7.4.3 If the ownership of a horse changes, such horse may start under the new ownership not more than one time without reasonable evidence being given to the judges that the registration certificate has been forwarded to the United States Trotting Association.

7.4.4 Any participant skipping or omitting transfers of ownership of any horse shall be guilty of a violation.

7.4.5 For the purposes of these rules, the term eligibility certificate shall refer to a printed document or its electronically produced equivalent.

7.4.6 Horses not under lease must race in the name of the bona fide owner.

7.5 Equipment

7.5.1 Any owner or trainer who wishes to change any equipment or hobbles on a horse from one race to another shall apply to the judges for permission to do so, and no change shall be made without such permission. The judges shall assure themselves of the necessity for any change of equipment or hobbles before granting permission.

7.5.2 No horse will be permitted in a race to wear any type of equipment that covers, protrudes, or extends beyond its nose or that in any way could interfere with the true placing of the horse.

7.5.3 It shall be the responsibility of the owner and trainer to provide every sulky used in a race with unicolored or colorless wheel discs on the inside and outside of each wheel of a type approved by the Commission. In his discretion, the Presiding Judge may order the use of mud guards.

7.6 Racing Rules

7.6.1 Under Supervision of Starter

7.6.1.1 Horses shall be under supervision of the starter from the time they arrive on the track until the start of the race.

7.6.1.2 All horses shall parade from the paddock to the starting post, and no driver shall dismount without the permission of the starter. Attendants may not care for the horses during the parade except by permission of the starter.

7.6.1.3 After entering the track not more than ten (10) minutes shall be consumed in the parade of the horses to the post except in cases of unavoidable delay.

7.6.1.4 Horses awaiting post time may not be held on the backstretch in excess of five (5) minutes, except when delayed by an emergency.

7.6.2 Pre-Race Accidents

When, before a race starts:

7.6.2.1 A horse is a runaway or is otherwise involved in an accident, such horse shall be examined by the racing veterinarian and if the horse is not ordered scratched by the veterinarian, the judges may permit the horse to compete and have this decision announced.

7.6.2.2 A driver is unseated and appears to have been injured, the horse that was being driven by that driver may compete with a substitute driver.

7.6.2.3 If a horse is scratched in error and cannot be added back into the pari-mutuel system, the horse may race for purse only. The judges shall ensure that the race announcer informs the public that the horse will be racing without pari-mutuel wagering.

7.6.3 Fair Start

The starter shall give such orders and take such measures that do not conflict with the rules of racing, as are necessary to secure a fair start.

7.6.4 Starter's Duties

7.6.4.1 The starter shall be in the starting gate ten (10) minutes before the post time of the race.

7.6.4.2 The starter shall have control over the horses and authority to assess fines and/or suspend drivers for any violation of the rules from the formation of the parade until the word "go" is given.

7.6.4.3 The starter may assist in placing the horses when requested by the

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judges to do so.

7.6.4.4 The starter shall notify the judges and the drivers in writing of penalties

imposed by him/her.

7.6.5 Starting

7.6.5.1 The starter shall have control of the formation of the parade until giving

the word "go".

7.6.5.2 After warming up scores, the starter shall notify the drivers to come to the

starting gate.

7.6.5.3 The horses shall be brought to the starting gate as near one-quarter of a mile before the start as the track will permit.

7.6.5.4 Allowing sufficient time so that the speed of the gate can be increased gradually, the following minimum speeds will be maintained:

7.6.5.4.1 For the first one-eighth of a mile, not less than 11 miles per hour.

7.6.5.4.2 For the next one-sixteenth of a mile, not less than 18 miles per

hour.

7.6.5.4.3 From that point to the starting point, the speed will be gradually

increased to maximum speed.

~~7.6.5.4.4 On mile tracks horses will be brought to the starting gate at the head of the stretch and the relative speeds mentioned in a), b) and c) above will be maintained.~~

7.6.5.5 The starting point will be a point marked at a designated spot not less than 200 feet from the first turn. The starter shall give the word "go" at the starting point.

7.6.5.6 When a speed has been reached in the course of a start there shall be no decrease except in the case of a recall.

7.6.6 Recall Rules

7.6.6.1 In case of a recall, a light plainly visible to the drivers shall be flashed and a recall sounded, but the starting gate shall proceed out of the path of the horses. In the case of a recall, whenever possible, the starter shall leave the wings of the gate extended and gradually slow the speed of the gate to assist in stopping the field of horses. In an emergency, however, the starter shall use his/her discretion to close the wings of the gate.

7.6.6.2 There shall be no recall after the word "go" has been give unless there is a mechanical failure of the starting gate.

7.6.6.3 The starter shall attempt to dispatch all horses away in position and on gait but there shall be no recall for a breaking horse.

7.6.6.4 In the event a horse causes two recalls, it may be an automatic ruling of the judges that the offending horse be scratched by the judges.

7.6.6.5 The starter may sound a recall for the following reasons:

7.6.6.5.1 A horse scores ahead of the gate;

7.6.6.5.2 There is interference;

7.6.6.5.3 A horse has broken equipment;

7.6.6.5.4 A horse falls before the word "go" is given; or

7.6.6.5.5 A mechanical failure of the starting gate.

7.6.6.5.6 A horse comes to the gate out of position.

7.6.6.7 A fine and/or suspension may be applied to any driver for:

7.6.6.7.1 Delaying the start;

7.6.6.7.2 Failure to obey the starter's instructions;

7.6.6.7.3 Rushing ahead of the inside or outside wing of the gate;

7.6.6.7.4 Coming to the starting gate out of position;

7.6.6.7.5 Crossing over before reaching the starting point;

7.6.6.7.6 Interference with another driver during the start; or

7.6.6.7.7 Failure to come up into position;

7.6.7 Starting Gate

7.6.7.1 No persons shall be allowed to ride in the starting gate except the starter and the driver or operator and a patrol judge, unless permission has been granted by the ~~State Steward~~ Presiding Judge.

7.6.7.2 Use of the mechanical loudspeaker for any purpose other than to give instructions to the drivers is prohibited. The volume shall be no higher than necessary to carry the voice of the starter to the drivers.

7.6.7.3 The arms of all starting gates shall be provided with a screen or shield in front of the position for each horse, and such arms shall be perpendicular to the rail.

7.6.7.4 The official starter must ensure that the starting gate is in good working order prior to the beginning of each race program.

7.6.7.5 The official starter and starting gate driver shall operate the starting gate in a manner consistent with the safe conduct of the race, the safety of the race participants and the safety of the patrons.

7.6.8 Two-Tiered Races

7.6.8.1 In the event there are two tiers of horses, the withdrawing of a horse that has drawn or earned a position in the front tier shall not affect the positions of horses that have drawn or entered positions in the second tier.

7.6.8.2 Whenever a horse is drawn from any tier, horses on the outside move in to fill the vacancy. Where a horse has drawn a post position in the second tier, the driver of such horse may elect to score out behind any horse in the front tier so long as it does not interfere with another trailing horse or deprive another trailing horse of a drawn position.

7.6.8.3 When there is only one trailer, it may start from any position in the second tier. When there is more than one trailer, they must start from inside any horse with a higher post position.

7.6.9 Starting Without a Gate

7.6.9.1 When horses are started without a gate the starter shall have control of the horses from the formation of the parade until giving the word "go". The starter shall be located at the wire or other point of start of the race at which point as nearly as possible the word "go" shall be given. No driver shall cause unnecessary delay after the horses are called. After two preliminary warming-up scores, the starter shall notify the drivers to form in parade.

7.6.9.2 The driver of any horse refusing or failing to follow the instructions of the starter as to the parade or scoring ahead of the pole horse may be set down for the heat in which the offense occurs, or for such other period as the starter shall determine, and may be fined. Whenever a driver is taken down, the substitute shall be permitted to score the horse once. A horse delaying the race may be started regardless of its position or gait and there shall not be a recall because of a bad acting horse. If the word "go" is not given, all the horses in the race shall immediately turn on signal, and jog back to their parade positions for a fresh start. There shall be no recall after the starting word is given.

7.6.10 Horse Deemed a Starter

Horses shall be deemed to have started when the word "go" is given by the starter and all horses must go the course except in the case of an accident in which it is the opinion of the judges that it is impossible to go the course.

7.6.11 Unmanageable/Bad Acting Horses

7.6.11.1 If, in the opinion(s) of the judges and/or the starter, a horse is unmanageable or liable to cause accidents or injury to any other horse or to any driver, it may be sent to the barn. When this action is taken, the starter will notify the judges who will in turn notify the public and order any refunds as may be required in Rule 10 of these rules.

7.6.11.2 The starter may place a bad acting horse on the outside at his/her discretion. Such action may be taken only where there is time for the starter to notify the judges who will in turn notify the public prior to any pari-mutuel wagering on the race. If pari-mutuel wagering has already begun on the race, the horse must be scratched as stipulated in subdivision 1 above.

7.6.12 Post Positions, Heat Racing

7.6.12.1 The horse winning a heat shall take the inside position in the succeeding heat, unless otherwise specified in the published conditions of the race, and all others shall take their positions in the order they were placed in the prior heat.

7.6.12.2 When two or more horses dead heat, their positions shall be determined by lot.

7.6.13 Conduct of the Race

7.6.13.1 A driver shall not commit any of the following acts which are considered

violations of driving rules:

7.6.13.1.1 Change course or position, or swerve in or out, or bear in or out during any part of the race in such a manner as to compel a horse to shorten its stride or cause another driver to change course, take his or her horse back, or pull his/her horse out of its stride.

7.6.13.1.2 Impede the progress of another horse or cause it to break from its gait.

7.6.13.1.3 Cross over too sharply in front of another horse or in front of the field.

7.6.13.1.4 Crowd another horse by 'putting a wheel under it.'

7.6.13.1.5 Allow another horse to pass needlessly on the inside, or commit any other act that helps another horse to improve its position.

7.6.13.1.6 Carry another horse out.

7.6.13.1.7 Take up or slow up in front of other horses so as to cause confusion or interference among the trailing horses.

7.6.13.1.8 Maintain an outside position without making the necessary effort to improve his/her overall position.

7.6.13.1.9 Strike or hook wheels with another sulky.

7.6.13.1.10 Lay off a normal pace and leave a hole when it is well within the horse's capacity to keep the hole closed.

7.6.13.1.11 Drive in a careless or reckless manner.

7.6.13.1.12 Fail to set, maintain or properly contest a pace comparable to the class in which he/she is racing considering the horse's ability, track conditions, weather and circumstances confronted in the race.

7.6.13.1.13 Riding 'half-in' or 'half-out'.

7.6.13.1.14 Kicking a horse.

7.6.13.1.15 Excessive and/or unnecessary conversation between and among drivers while on the racetrack during the time when colors are required is prohibited. Any violation of this rule may be punished by a fine, suspension or combination thereof.

7.6.13.2 A complaint by a driver of any foul, violation of the rules or other misconduct during a race shall be made immediately after the race to which it relates, unless the driver is prevented from doing so by an accident or injury or other reasonable excuse. A driver desiring to enter a claim of foul, or other complaint of violation of the rules, shall make this known to the starter before dismounting and shall proceed immediately to the paddock telephone to communicate immediately with the judges. Any driver who is involved in an objection or inquiry shall proceed immediately to the paddock telephone to communicate with the judges. The judges shall not cause the official sign to be posted until the matter has been dealt with.

7.6.13.3 If a violation is committed by a person driving a horse coupled as an entry the judges may set both horses back if, in their opinion, the violation may have affected the finish of the race, otherwise penalties may be applied individually.

7.6.13.4 In the case of interference, collision, or violation of any rules, the offending horse may be placed back one or more positions in that heat or dash, and in the event of such collisions, interference or violation preventing any horse from finishing the heat or dash, the offending horse may be disqualified from receiving any winnings and the driver may be fined or suspended. If a horse is set back, it must be placed behind the horse with which it interfered. If an offending horse has interfered with a horse involved in a dead heat and the offending horse is set back, it must be placed behind the horses in the dead heat.

7.6.13.5 If the judges believe that a horse is, or has been driven with design to prevent it winning a race or races, they shall consider it a violation by the driver.

7.6.13.6 If the judges believe that a horse has been driven in an inconsistent manner, they shall consider it a violation.

7.6.13.7 If the judges believe that a horse has been driven in an unsatisfactory manner due to lack of effort or a horse has been driven in an unsatisfactory manner for any reason, they shall consider it a violation punishable by a fine and/or suspension.

7.6.13.8 If a horse is suspected to have choked or bled during a race, the driver and/or trainer of that horse is required to report this to the judges immediately after the race.

7.6.13.9 If, in the opinion of the judges, a driver is for any reason unfit or

incompetent to drive, or is reckless in his/her conduct and endangers the safety of horses or other drivers in a race, he/she shall be removed and another driver substituted at any time and the offending driver may be fined, suspended or expelled.

7.6.13.10 If for any cause other than being interfered with, or broken equipment, a horse fails to finish after starting a race, that horse shall be ruled out of any subsequent heat of the same event. If it is alleged that a horse failed to finish a race because of broken equipment, this fact must be reported to the paddock judge who shall make an examination to verify the allegation and report the findings to the judges.

7.6.13.11 A driver must be mounted in the sulky at all times during the race or the horse shall be placed as a non-finisher.

7.6.13.12 Shouting or other improper conduct in a race is forbidden.

7.6.13.13 Drivers shall keep both feet in the stirrups during the post parade and from the time the horses are brought to the starting gate until the race has been completed. Drivers shall be permitted to remove a foot from the stirrups during the course of the race solely for the purpose of pulling ear plugs and once same have been pulled the foot must be placed back into the stirrup. Drivers who violate this rule may be subject to a fine and/or suspension.

7.6.13.14 ~~Drivers will be allowed to use whips not to exceed three feet, nine inches in length plus a snapper not to exceed six inches in length. Drivers will be allowed whips not to exceed 4 feet, plus a snapper not longer than 6 inches. Provided further that the following actions shall be considered as excessive or an indiscriminate use of the whip: a) Causing visible injury. b) Whipping a horse after a race. c) Whipping under the arch or shafts of the sulky. The use of the whip shall be confined to an area above and between the sulky shafts, to include the sulky shafts and the outside wheel discs.~~ Drivers shall keep a line in each hand from the start of the race until the quarter pole. From the quarter pole to the 7/8th pole, a driver may only use the whip once for a maximum of three strokes. Once the lead horse is at the 7/8th pole, these restrictions do not apply. Drivers shall keep a line in each hand from the start of the race until the head of the stretch finishing the race. The Judges shall have the authority to order and/or conduct such visual inspections at their discretion.

7.6.13.15 The use of any goading device, or chain, or spur, or mechanical or electrical device other than a whip as allowed in the rules, upon any horse, shall constitute a violation.

7.6.13.16 The possession of any mechanical or electrical goading device on the grounds of an Association shall constitute a violation.

7.6.13.17 The judges shall have the authority to disallow the use of any equipment or harness that they feel is unsafe or not in the best interests of racing.

7.6.13.18 Brutal or excessive or indiscriminate use of a whip, or striking a horse with the butt end of a whip, or striking a wheel disc of a sulky with a whip, shall be a violation. At extended pari-mutuel meetings, under the supervision of the judges, there may be a mandatory visual inspection of each horse following each race for evidence of excessive or brutal use of the whip. At all other meetings, the judges shall have the authority to order and/or conduct such visual inspections at their discretion.

7.6.13.19 Whipping a horse by using the whip below the level of the shafts or the seat of the sulky or between the legs of the horse shall be a violation.

7.6.13.20 When a horse breaks from its gait, it shall be considered a violation on the part of the driver for:

7.6.13.20.1 Failure to take the horse to the outside of other horses where clearance exists.

7.6.13.20.2 Failure to properly attempt to pull the horse to its gait.

7.6.13.20.3 Failure to lose ground while on a break.

7.6.13.20.4 If no violation has been committed, the horse shall not be set back unless a contending horse on his/her gait is lapped on the hind quarter of the breaking horse at the finish. The judges may set any horse back one or more places if in their judgment, any of the above violations have been committed, and the driver may be penalized.

7.6.13.20.5 Any horse making a break which causes interference to other horses may be placed behind all offended horses. If there has been no failure on the part of the driver of the breaking horse in complying with Rule 7.6.13.20, no fine or suspension shall be imposed on the driver as a consequence.

7.6.13.21 If, in the opinion of the judges, a driver allows a horse to break for the purpose of losing a race, he or she shall be in violation of the rules.

7.6.13.22 It shall be the duty of one of the judges to call out every break made and have them duly recorded in judges official race reports.

7.6.13.23 The horse whose nose reaches the wire first is the winner. If there is a dead heat for first, both horses shall be considered winners. In races having more than one heat or dash, where two horses are tied in the summary, the winner of the longer dash or heat shall be entitled to the trophy. Where the dashes or heats are of the same distance and the horses are tied in the summary, the winner of the faster dash or heat shall be entitled to the trophy. Where the dashes or heats are of the same time, both horses shall be considered winners and the entitlement of the trophy will be decided by lot.

7.6.13.24 The wire or finish line is a real line established with the aid of a surveyor's transit, or an imaginary line running from the center of the judges' stand to a point immediately across and at right angles to the track.

7.6.13.25 If, during the preliminary scores or during a race a driver is unseated in such a manner that he or she falls to the ground, the ~~State Steward~~ Presiding Judge or judges may direct the driver to report to the infirmary or to the emergency department of the nearest hospital for examination and receive clearance to continue with driving assignments on that day of racing.

7.6.13.26 If a horse is to warm up it must go its last warm-up on the same racing strip as it will compete on unless excused by the judges.

7.6.14 Harness Race Track Without a Hubrail

7.6.14.1 If at a racetrack which does not have a continuous solid inside hub rail, a horse or part of the horse's sulky leaves the course by running over or going inside the pylons or other demarcation which constitutes the inside limits of the course, the offending horse may be placed one or more positions where, in the opinion of the judges, the action gave the horse an unfair advantage over other horses in the race, or the action helped the horse improve its position in the race. Drivers may be fined or suspended for permitting a horse's sulky to run over or go inside the pylons or other demarcation which constitutes the inside limits of the course. In addition, when an act of interference causes a horse or part of the horse's sulky to cross the inside limits of the course, and the horse is placed by the judges, the offending horse shall be placed behind the horse with which it interfered.

7.6.14.2 In the event a horse or part of a horse's sulky leaves the course for any reason, it shall be the driver's responsibility to take all reasonable steps to safely reenter the race course as soon as possible.

7.6.15 Extended Homestretch

7.6.15.1 With approval of the Commission, a track may extend the width of its homestretch up to 10 feet inward in relation to the width of the rest of the racetrack.

7.6.15.2 In the event the home stretch is expanded pursuant to 7.6.15.1 above, the following shall apply:

7.6.15.2.1 When entering or while going through the homestretch for the first time in a race, no horse shall use the expanded inside lane in an attempt to pass other horses or improve its position. Any horse, which does so shall be disqualified and placed last in the order of finish.

7.6.15.2.2 the lead horse in the homestretch shall maintain as straight a course as possible while allowing trailing horses full access to the extended inside lane.

If, in the opinion of the judges, the lead horse changes course in the homestretch in an attempt to prevent a trailing horse from passing, said horse shall be placed accordingly.

7.6.15.2.3 Horses using the expanded inside lane during the homestretch drive for the finish of the race, must first have complete clearance of the pylons marking the inside boundary of the racecourse. Any horse or sulky running over one or more of the pylons or going inside the pylons while attempting to use the expanded inside lane, may be disqualified or placed back one or more positions.

7.6.15.2.4 A horse may only be driven into the expanded homestretch lane for the purpose of passing another horse and may not be driven into the expanded homestretch lane for the purpose of blocking a trailing horse. If, in the opinion of the judges, a horse is driven into the expanded homestretch lane for the purpose of blocking a trailing horse, the driver of the blocking horse may be fined and/or suspended and the horse may be placed accordingly.

1 DE Reg. 923 (1/1/98)

2 DE Reg. 684 (10/01/98)

2 DE Reg. 1764 (4/1/99)

- 3 DE Reg. 432 (9/1/99)**
- 3 DE Reg 1520 (5/1/00)**
- 4 DE Reg 336 (8/1/00)**
- 5 DE Reg. 832 (10/1/01)**
- 7 DE Reg. 42 (7/1/03)**

8.0 Veterinary Practices, Equine Health Medication**8.1 General Provisions**

The purpose of this Rule is to protect the integrity of horse racing, to ensure the health and welfare of race horses and to safeguard the interests of the public and the participants in racing.

8.2 Veterinary Practices**8.2.1 Veterinarians Under Authority of ~~Commission~~ Chief DHRC Veterinarian**

Veterinarians licensed by the Commission and practicing at any location under the jurisdiction of the Commission are subject to these Rules, which shall be enforced under the authority of the ~~Commission~~ Chief DHRC Veterinarian and the State Steward. Without limiting the authority of the ~~State Steward Presiding Judge~~ to enforce these Rules, the ~~Commission~~ Chief DHRC Veterinarian may recommend to the ~~State Steward Presiding Judge~~ or the Commission the discipline which may be imposed upon a veterinarian who violates the rules.

8.2.2 Treatment Restrictions

8.2.2.1 Except as otherwise provided by this subsection, no person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the Commission may administer a prescription or controlled medication, drug, chemical or other substance (including any medication, drug, chemical or other substance by injection) to a horse at any location under the jurisdiction of the Commission.

8.2.2.2 This subsection does not apply to the administration of the following substances except in approved quantitative levels, if any, present in post-race samples or as they may interfere with post-race testing:

8.2.2.2.1 a recognized non-injectable nutritional supplement or other substance approved by the official veterinarian;

8.2.2.2.2 a non-injectable substance on the direction or by prescription of a licensed veterinarian; or

8.2.2.2.3 a non-injectable non-prescription medication or substance.

8.2.2.3 No person shall possess a hypodermic needle, syringe or injectable of any kind on association premises, unless otherwise approved by the Commission. At any location under the jurisdiction of the Commission, veterinarians may use only one-time disposable needles, and shall dispose of them in a manner approved by the Commission. If a person has a medical condition which makes it necessary to have a syringe at any location under the jurisdiction of the Commission, that person may request permission of the ~~State Steward, judges~~ Board of Judges and/or the Commission in writing, furnish a letter from a licensed physician explaining why it is necessary for the person to possess a syringe, and must comply with any conditions and restrictions set by the ~~State Steward, judges~~ Board of Judges and/or the Commission.

8.3 Medications and Foreign Substances

Foreign substances shall mean all substances, except those which exist naturally in the untreated horse at normal physiological concentration, and shall include all narcotics, stimulants, depressants or other drugs or medications of any type. Except as specifically permitted by these rules, no foreign substance shall be carried in the body of the horse at the time of the running of the race. Upon a finding of a violation of these medication and prohibited substances rules, the ~~State Steward Presiding Judge~~ or other designee of the Commission shall consider the classification level of the violation as listed at the time of the violation by the Uniform Classification Guidelines of Foreign Substances as promulgated by the Association of Racing Commissioners International and shall consider all other relevant available evidence including but not limited to: i) whether the violation created a risk of injury to the horse or driver; ii) whether the violation undermined or corrupted the integrity of the sport of harness racing; iii) whether the violation misled the wagering public and those desiring to claim the horse as to the condition and ability of the horse; iv) whether the violation permitted the trainer or licensee to alter the performance of the horse or permitted the trainer or licensee to gain an advantage over other horses entered in the race; v) the amount of the purse involved in the race in which the violation occurred. The ~~State Steward Presiding Judge~~ may impose penalties and disciplinary measures consistent with the recommendations contained in subsection 8.3.2 of

this section.

8.3.1 Uniform Classification Guidelines

The following outline describes the types of substances placed in each category. This list shall be publicly posted in the offices of the ~~Commission~~ Chief DHRC Veterinarian and the racing secretary.

8.3.1.1 Class 1

Opiates, opium derivatives, synthetic opiates, psychoactive drugs, amphetamines and U.S. Drug Enforcement Agency (DEA) scheduled I and II drugs. Also found in this class are drugs which are potent stimulants of the nervous system. Drugs in this class have no generally accepted medical use in the race horse and their pharmacological potential for altering the performance of a race is very high.

8.3.1.2 Class 2

Drugs in this category have a high potential for affecting the outcome of a race. Most are not generally accepted as therapeutic agents in the race horse. Many are products intended to alter consciousness or the psychic state of humans, and have no approved or indicated use in the horse. Some, such as injectable local anesthetics, have legitimate use in equine medicine, but should not be found in a race horse. The following groups of drugs are in this class:

- 8.3.1.2.1 Opiate partial agonist, or agonist-antagonists;
- 8.3.1.2.2 Non-opiate psychotropic drugs, which may have stimulant, depressant, analgesic or neuroleptic effects;
- 8.3.1.2.3 Miscellaneous drugs which might have a stimulant effect on the central nervous system (CNS);
- 8.3.1.2.4 Drugs with prominent CNS depressant action;
- 8.3.1.2.5 Antidepressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects;
- 8.3.1.2.6 Muscle blocking drugs which have a direct neuromuscular blocking action;
- 8.3.1.2.7 Local anesthetics which have a reasonable potential for use as nerve blocking agents (except procaine); and
- 8.3.1.2.8 Snake venoms and other biologic substances which may be used as nerve blocking agents.

8.3.1.3 Class 3

Drugs in this class may or may not have an accepted therapeutic use in the horse. Many are drugs that affect the cardiovascular, pulmonary and autonomic nervous systems. They all have the potential of affecting the performance of a race horse. The following groups of drugs are in this class:

- 8.3.1.3.1 Drugs affecting the autonomic nervous system which do not have prominent CNS effects, but which do have prominent cardiovascular or respiratory system effects (bronchodilators are included in this class);
- 8.3.1.3.2 A local anesthetic which has nerve blocking potential but also has a high potential for producing urine residue levels from a method of use not related to the anesthetic effect of the drug (procaine);
- 8.3.1.3.3 Miscellaneous drugs with mild sedative action, such as the sleep inducing antihistamines;
- 8.3.1.3.4 Primary vasodilating/hypotensive agents; and
- 8.3.1.3.5 Potent diuretics affecting renal function and body fluid composition.

8.3.1.4 Class 4

This category is comprised primarily of therapeutic medications routinely used in race horses. These may influence performance, but generally have a more limited ability to do so. Groups of drugs assigned to this category include the following:

- 8.3.1.4.1 Non-opiate drugs which have a mild central analgesic effect;
- 8.3.1.4.2 Drugs affecting the autonomic nervous system which do not have prominent CNS, cardiovascular or respiratory effects
 - 8.3.1.4.2.1 Drugs used solely as topical vasoconstrictors or decongestants
 - 8.3.1.4.2.2 Drugs used as gastrointestinal antispasmodics

8.3.1.4.2.3 Drugs used to void the urinary bladder

8.3.1.4.2.4 Drugs with a major effect on CNS vasculature or smooth muscle of visceral organs.

8.3.1.4.3 Antihistamines which do not have a significant CNS depressant effect (This does not include H1 blocking agents, which are listed in Class 5);

8.3.1.4.4 Mineralocorticoid drugs;

8.3.1.4.5 Skeletal muscle relaxants;

8.3.1.4.6 Anti-inflammatory drugs--those that may reduce pain as a consequence of their anti-inflammatory actions, which include:

8.3.1.4.6.1 Non-Steroidal Anti-Inflammatory Drugs (NSAIDs)--aspirin-like drugs;

8.3.1.4.6.2 Corticosteroids (glucocorticoids); and

8.3.1.4.6.3 Miscellaneous anti-inflammatory agents.

8.3.1.4.7 Anabolic and/or androgenic steroids and other drugs;

8.3.1.4.8 Less potent diuretics;

8.3.1.4.9 Cardiac glycosides and antiarrhythmics including:

8.3.1.4.9.1 Cardiac glycosides;

8.3.1.4.9.2 Antiarrhythmic agents (exclusive of lidocaine, bretylium and propranolol); and

8.3.1.4.9.3 Miscellaneous cardiotoxic drugs.

8.3.1.4.10 Topical Anesthetics--agents not available in injectable formulations;

8.3.1.4.11 Antidiarrheal agents; and

8.3.1.4.12 Miscellaneous drugs including:

8.3.1.4.12.1 Expectorants with little or no other pharmacologic action;

8.3.1.4.12.2 Stomachics; and

8.3.1.4.12.3 Mucolytic agents.

8.3.1.5 Class 5

Drugs in this category are therapeutic medications for which concentration limits have been established as well as certain miscellaneous agents. Included specifically are agents which have very localized action only, such as anti-ulcer drugs and certain antiallergic drugs. The anticoagulant drugs are also included.

8.3.2 Penalty Recommendations

The following penalties and disciplinary measures may be imposed for violations of these medication and prohibited substances rules:

8.3.2.1 Class 1 - in the absence of extraordinary circumstances, a minimum license revocation of eighteen months and a minimum fine of \$5,000, and a maximum fine up to the amount of the purse money for the race in which the infraction occurred, forfeiture of the purse money, and assessment for cost of the drug testing.

8.3.2.2 Class 2 - in the absence of extraordinary circumstances, a minimum license revocation of nine months and a minimum fine of \$3,000, and a maximum fine of up to the amount of the purse money for the race in which the violation occurred, forfeiture of the purse money, and assessment for cost of the drug testing.

8.3.2.3 Class 3 - in the absence of extraordinary circumstances, a minimum license revocation of ninety days, and a minimum fine of \$3,000, and a maximum fine of up to the amount of the purse money for the race in which the violation occurred, forfeiture of the purse money, and assessment for cost of the drug testing.

8.3.2.4 Class 4 - in the absence of extraordinary circumstances, a minimum license revocation of thirty days, and a minimum fine of \$2,000, and a maximum fine of up to the amount of the purse money for the race in which the violation occurred, forfeiture of the purse money, and assessment for the cost of the drug testing.

8.3.2.5 Class 5 - Zero to 15 days suspension with a possible loss of purse and/or fine and assessment for the cost of the drug testing.

8.3.2.6 In determining the appropriate penalty with respect to a medication rule

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violation, the ~~State Steward~~ Presiding Judge or other designee of the Commission may use his discretion in the application of the foregoing penalty recommendations, and shall consult with the ~~Commission Chief DHRC~~ Veterinarian and/or the Commission chemist to determine the seriousness of the laboratory finding or the medication violation. Aggravating or mitigating circumstances in any case should be considered and greater or lesser penalties and/or disciplinary measures may be imposed than those set forth above. Specifically, if the ~~State Steward~~ Presiding Judge or other designee of the Commission determine that mitigating circumstances warrant imposition of a lesser penalty than the recommendations suggest, he may impose a lesser penalty. If the ~~State Steward~~ Presiding Judge or other designee of the Commission determines that aggravating circumstances require imposition of a greater penalty, however, he may only impose up to the maximum recommended penalty, and must refer the case to the Commission for its review, with a recommendation for specific action. Without limitation, the presence of the following aggravating circumstances may warrant imposition of greater penalties than those recommended, up to and including a lifetime suspension:

- 8.3.2.6.1 Repeated violations of these medication and prohibited substances rules by the same trainer or with respect to the same horse;
- 8.3.2.6.2 Prior violations of similar rules in other racing jurisdictions by the same trainer or with respect to the same horse; or
- 8.3.2.6.3 Violations which endanger the life or health of the horse.
- 8.3.2.6.4 Violations that mislead the wagering public and those desiring to claim a horse as to the condition and ability of the horse;
- 8.3.2.6.5 Violations that undermine or corrupt the integrity of the sport of harness racing.

8.3.2.7 Any person whose license is reinstated after a prior violation involving class 1 or class 2 drugs and who commits a subsequent violation within five years of the prior violation, shall absent extraordinary circumstances, be subject to a minimum revocation of license for five years, and a minimum fine in the amount of the purse money of the race in which the infraction occurred, along with any other penalty just and reasonable under the circumstances.

8.3.2.7.1 With respect to Class 1, 2 and 3 drugs detect in a urine sample but not in a blood sample, and in addition to the foregoing factors, in determining the length of a suspension and/or the amount of a fine, or both, the ~~State Steward or judges~~ Board of Judges may take in consideration, without limitation, whether the drug has any equine therapeutic use, the time and method of administration, if determined, whether more than one foreign substance was detected in the sample, and any other appropriate aggravating or mitigating factors.

8.3.2.8 Whenever a trainer is suspended more than once within a two-year period for a violation of this chapter regarding medication rules, any suspension imposed on the trainer for any such subsequent violation also shall apply to the horse involved in such violation. The ~~State Steward or judges~~ Board of Judges may impose a shorter suspension on the horse than on the trainer.

8.3.2.9 At the discretion of the ~~State Steward~~ Presiding Judge or other designee of the Commission, a horse as to which an initial finding of a prohibited substance has been made by the Commission chemist may be prohibited from racing pending a timely hearing; provided, however, that other horses registered under the care of the trainer of such a horse may, with the consent of the ~~State Steward~~ Presiding Judge or other designee of the Commission be released to the care of another trainer, and may race.

8.3.3 Medication Restrictions

8.3.3.1 Drugs or medications in horses are permissible, provided:

8.3.3.1.1 the drug or medication is listed by the Association of Racing Commissioners International's Drug Testing and Quality Assurance Program; and

8.3.3.1.2 the maximum permissible urine or blood concentration of the drug or medication does not exceed the limit established in these Rules or otherwise approved and published by the Commission.

8.3.3.2 Except as otherwise provided by this chapter, a person may not administer or cause to be administered by any means to a horse a prohibited drug, medication, chemical or other substance, including any restricted medication pursuant to this chapter during the 24-hour period before post time for the race in which the horse is entered. Such administration shall result in the horse being scratched from the race and may result in disciplinary actions being taken.

8.3.3.3 A finding by the official chemist of a prohibited drug, chemical or other

substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. Prohibited substances include:

8.3.3.3.1 drugs or medications for which no acceptable levels have been established in these Rules or otherwise approved and published by the Commission.

8.3.3.3.2 therapeutic medications in excess of acceptable limits established in these rules or otherwise approved and published by the Commission.

8.3.3.3.3 Substances present in the horse in excess of levels at which such substances could occur naturally and such prohibited substances shall include a total carbon dioxide level of 37 mmol/L or serum in a submitted blood sample from a horse or 39 mmol/L if serum from a horse which has been administered furosemide in compliance with these rules, provided that a licensee has the right, pursuant to such procedures as may be established from time to time by the Commission, to attempt to prove that a horse has a naturally high carbon dioxide level in excess of the above-mentioned levels; and provided, further, that an excess total carbon dioxide level shall be penalized in accordance with the penalty recommendation applicable to a Class 2 substance.

8.3.3.3.4 substances foreign to a horse at levels that cause interference with testing procedures. The detection of any such substance is a violation, regardless of the classification or definition of the substance or its properties under the Uniform Classification Guidelines for Foreign Substances.

8.3.3.4 The tubing, dosing or jugging of any horse for any reason within 24 hours prior to its scheduled race is prohibited unless administered for medical emergency purposes by a licensed veterinarian, in which case the horse shall be scratched. The practice of administration of any substance via a naso-gastric tube or dose syringe into a horse's stomach within 24 hours prior to its scheduled race is considered a violation of these rules and subject to disciplinary action, which may include fine, suspension and revocation or license.

8.3.3.5 A finding by the official chemist that Erythropietin (EPO) darbopietin (DPO) or their antibodies was present in a post-race test specimen of a horse shall be promptly reported in writing to the judges. The judges shall notify the owner and trainer of the positive test result for EPO, DPO or their antibodies. The judges shall notify the ~~Commission~~ Chief DHRC Veterinarian of the name of the horse for placement on the Veterinarian's List, pursuant to Rule 8.6.1.1, if the positive test result indicates that the horse is unfit to race. Any horse placed on the Veterinarian's List pursuant to this Rule shall not be permitted to enter a race until the owner or trainer, at their own expense, provides proof of a negative test result for EPO, DPO or their antibodies from a laboratory approved by the Commission, provided said test sample is obtained under collection procedures acceptable to the Commission or its designee under these Rules.

10 DE Reg. 980 (12/01/06)

8.3.4 Medical Labeling

8.3.4.1 No person on association grounds where horses are lodged or kept, excluding licensed veterinarians, shall have in or upon association grounds which that person occupies or has the right to occupy, or in that person's personal property or effects or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labelled in accordance with this subsection.

8.3.4.2 Any drug or medication which is used or kept on association grounds and which, by federal or Delaware law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with the applicable federal and state statutes. All such allowable medications must have a prescription label which is securely attached and clearly ascribed to show the following:

8.3.4.2.1 the name of the product;

8.3.4.2.2 the name, address and telephone number of the veterinarian prescribing or dispensing the product;

8.3.4.2.3 the name of each patient (horse) for whom the product is intended/prescribed;

8.3.4.2.4 the dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; and

8.3.4.2.5 the name of the person (trainer) to whom the product was dispensed.

8.3.5 Furosemide (Salix) and Aminocaproic Acid (Amicar)

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8.3.5.1 General

Furosemide (Salix) and Aminocaproic Acid (Amicar)

may be administered intravenously to a horse on the grounds of the association at which it is entered to compete in a race. Furosemide or Furosemide with Aminocaproic Acid shall be permitted only after the Commission Veterinarian has placed the horse on the Bleeder List or to facilitate the collection of a pot-race urine sample.

8.3.5.2 Method of Administration

Furosemide or Furosemide with Aminocaproic Acid shall be administered intravenously by the licensed Bleeder Medication Veterinarian, unless he/she determines that a horse cannot receive an intravenous administration of Furosemide or Furosemide with Aminocaproic Acid. Permission for an intramuscular administration must be authorized by the Presiding Judge or his/her representative; provided, however, that once Furosemide or Furosemide with Aminocaproic Acid is administered intramuscularly, the horse shall remain in a detention area under the supervision of a Commission representative until it races.

8.3.5.3 Dosage

Aminocaproic Acid shall be administered to a horse on the Bleeder List only by the licensed Bleeder Medication Veterinarian, who will administer not more than 7.5 grams or less than 2.5 grams intravenously. Furosemide shall be administered to horses on the Bleeder List only by the licensed Bleeder Medication Veterinarian, who will administer not more than 500 milligrams nor less than 100 milligrams, subject to the following conditions:

8.3.5.3.1 Not more than 750 milligrams may be administered if (1) the Commission veterinarian grants permission for a dosage greater than 500 milligrams, and (2) after the administration of such greater dosage, the horse remains in a detention area under the supervision of a Commission representative until it races; and

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

8.3.5.4 Timing of Administration

Horses must be presented at their assigned stalls in the paddock for Aminocaproic Acid treatment. Aminocaproic Acid will be administered not more than 90 minutes (1 1/2 hours) and not less than 60 minutes (1 hour) prior to post time of their respective races and must be treated prior to going on the track the first time. Failure to meet this time frame will result in scratching the horse and the trainer may be fined. Horses must be presented at the Furosemide stall in the paddock, and the Furosemide administered, not more than three hours and 30 minutes (3-1/2 hours) nor less than three hours (three hours) prior to post time of their respective races. Failure to meet this time frame will result in scratching the horse, and the trainer may be fined.

8.3.5.5 Veterinary Charges

It is the responsibility of the owner or trainer, prior to the administration of the medication, to pay the licensed Bleeder Medication veterinarian at the rate approved by the Commission. No credit shall be given without approval of the Bleeder Medication Veterinarian.

8.3.5.6 Restrictions

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

8.3.5.7 Post-Race Quantification

The presence of Aminocaproic Acid in a horse following the running of the race in which it was not declared or reported, may result in the disqualification of the horse or other sanctions being imposed upon the trainer and the administering veterinarian.

Conversely, the absence of a bleeder medication following the running of a race, which was declared and reported may result in the disqualification of the horse and other sanctions being imposed upon the trainer and the bleeder Medication Veterinarian

8.3.5.7.1 As indicated by post-race quantification, a horse may not carry in its body at the time of the running of the race more than 100 nanograms of Furosemide per milliliter of plasma in conjunction with a urine that has a specific gravity of less than 1.01, unless the dosage of Furosemide:

8.3.5.7.1.1 Was administered intramuscularly as provided in 8.3.5.2;

or

8.3.5.7.1.2 Exceeded 500 milligrams as provided in 8.3.5.3.1.

8.3.5.7.2 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 100 nanograms of furosemide per milliliter of plasma in conjunction with a urine that has a specific gravity of less than 1.01, and provided that the dosage of furosemide was not administered intramuscularly as provided in 8.3.5.2 or exceeded 500 milligrams as provided in 8.3.5.3.1, then a penalty shall be imposed as follows:

8.3.5.7.2.1 If such overage is the first violation of this rule within a 12-month period: Up to a \$250 fine and loss of purse.

8.3.5.7.2.2 If such overage is the second violation of this rule within a 12-month period: Up to a \$1,000 fine and loss of purse.

8.3.5.7.2.3 If such overage is the third violation of this rule within a 12-month period: Up to a \$1,000 fine and up to a 15-day suspension and loss of purse.

8.3.5.7.2.4 If in the opinion of the official chemist any such overage caused interference with testing procedures, then for each such overage a penalty of up to a \$1,000 fine and a suspension of from 15 to 50 days may be imposed.

8.3.5.8 Reports

8.3.5.8.1 The Bleeder Medication Veterinarian who administers Aminocaproic Acid or Furosemide or Furosemide with Aminocaproic Acid to a horse scheduled to race shall prepare a written certification indicating the time, dosage and method of administration.

8.3.5.8.2 The written certification shall be delivered to a Commission representative designated by the Judges within one (1) hour of the last scheduled race for that day.

8.3.5.9 Bleeder List

8.3.5.9.1 The Bleeder Medication Veterinarian shall maintain a Bleeder List of all horses which have demonstrated external evidence of exercise induced pulmonary hemorrhage (EIPH) or the existence of hemorrhage in the trachea post exercise upon:

8.3.5.9.1.1 visual examination wherein blood is noted in one or both nostrils either:

8.3.5.9.1.1.1 during a race;

8.3.5.9.1.1.2 immediately post-race or post-exercise on track;

or

8.3.5.9.1.1.3 within one hour post-race or post-exercise in paddock and/or stable area, confirmed by endoscopic examination; or

8.3.5.9.1.2 endoscopic examination, which may be requested by the owner or trainer who feels his ~~or her~~ horse is a bleeder. Such endoscopic examination must be done by a practicing veterinarian, at the owner's or trainer's expense, and in the presence of the Commission Veterinarian. Such an examination shall take place within one hour post-race or post-exercise; or

8.3.5.9.1.3 presentation to the Commission Veterinarian, at least 48 hours prior to racing, of a current Bleeder Certificate from an official veterinarian from any other jurisdiction, which show the date, place and method -- visual or endoscopy -- by which the horse was determined to have bled, or which attests that the horse is a known bleeder and receives bleeder medication in that jurisdiction, provided that such jurisdiction's criteria for the identification of bleeders are satisfactory to the Commission Veterinarian.

8.3.5.9.2 The confirmation of a bleeder horse must be certified in writing by the Commission Veterinarian and entered on the Bleeder List. Copies of the certification shall be issued to the owner of the horse or the owner's designee upon request. A copy of the bleeder certificate shall be attached to the horse's eligibility certificate.

8.3.5.9.3 Every confirmed bleeder, regardless of age, shall be placed on the Bleeder List, and furosemide or Furosemide with Aminocaproic Acid, if applicable must be administered to the horse in accordance with these rules prior to every race, including qualifying races, in which the horse starts.

8.3.5.9.4 A horse which bleeds based on the criteria set forth in 8.3.5.9.1 above shall be restricted from racing at any facility under the jurisdiction of the Commission, as follows:

8.3.5.9.4.1 1st time - 10 days;

8.3.5.9.4.2 2nd time - 30 days, provided that the horse must be added to or remain on the Bleeder List, and must complete a satisfactory qualifying race before resuming racing;

8.3.5.9.4.3 3rd time - 30 days, and the horse shall be added to the Steward's List, to be removed at the discretion of the Commission Veterinarian following a satisfactory qualifying

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race after the mandatory 30-day rest period; and

8.3.5.9.4.4 4th time - barred for life.

8.3.5.9.5 An owner or trainer must notify the Commission Veterinarian immediately of evidence that a horse is bleeding following exercise or racing.

8.3.5.9.6 A horse may be removed from the Bleeder List at the request of the owner or trainer, if the horse completes a 10-day rest period following such request, and then re-qualifies. A horse may discontinue the use of Aminocaproic Acid without a ten (10) day rest period or having to reliquary provided the horse was on Aminocaproic Acid for thirty (34) days or more. In addition, once a horse discontinues the use of Aminocaproic Acid, it is prohibited from using said medication for ninety (90) days from the date of its last administration for Aminocaproic Acid.

8.3.5.9.7 Any horse on the Bleeder List which races in a jurisdiction where it is not eligible for bleeder medication, whether such ineligibility is due to the fact that it does not qualify for bleeder medication in that jurisdiction or because bleeder medication is prohibited in that jurisdiction, shall automatically remain on the Bleeder List at the discretion of the owner or trainer, provided that such decision by the owner or trainer must be declared at the time of the first subsequent entry in Delaware, and the Furosemide and Aminocaproic Acid symbols in the program shall appropriately reflect that the horse did not receive Furosemide or Furosemide with Aminocaproic Acid its last time out. Such an election by the owner or trainer shall not preclude the ~~Commission~~ Chief DHRC Veterinarian, ~~State Steward~~ or Presiding Judge from requiring re-qualification whenever a horse on the Bleeder List races in another jurisdiction without bleeder medication, and the integrity of the Bleeder List may be questioned.

8.3.5.9.8 Any horse on the Bleeder List which races without Furosemide or Furosemide with Aminocaproic Acid in any jurisdiction which permits the use of Furosemide or Furosemide with Aminocaproic Acid in any jurisdiction which permits the use of Lasix shall automatically be removed from the Bleeder List. In order to be restored to the Bleeder List, the horse must demonstrate EIPH in accordance with the criteria set forth in subdivision 8.3.5.9.1 above. If the horse does demonstrate EIPH and is restored to the Bleeder List, the horse shall be suspended from racing in accordance with the provisions of 8.3.5.9.4 above.

8.3.5.9.9 The ~~State Steward~~ or Presiding Judge, in consultation with the Commission Veterinarian, will rule on any questions relating to the Bleeder List.

8.3.5.10 Medication Program Entries

It is the responsibility of the trainer at the time of entry of a horse to provide the racing secretary with the bleeder medication status of the horse on the entry blank, and also to provide the Commission Veterinarian with a bleeder certificate, if the horse previously raced out-of-state on bleeder medication.

8.3.6 Phenylbutazone (Bute)

8.3.6.1 General

8.3.6.1.1 Phenylbutazone or oxyphenbutazone may be administered to horses in such dosage amount that the official test sample shall contain not more than 2.5 micrograms per milliliter of blood plasma.

8.3.6.1.2 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 2.0 but not more than 2.6 micrograms per milliliter of blood plasma of phenylbutazone or oxyphenbutazone, then warnings shall be issued to the trainer.

8.3.6.1.3 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 2.6 micrograms per milliliter of blood plasma of phenylbutazone or oxyphenbutazone, then a penalty shall be imposed as follows:

8.3.6.1.3.1 For an average between 2.6 and less than 5.0 micrograms per milliliter:

8.3.6.1.3.1.1 If such overage is the first violation of this rule within a 12-month period: Up to a \$250 fine and loss of purse.

8.3.6.1.3.1.2 If such overage is the second violation of this rule within a 12-month period: Up to a \$1,000 fine and loss of purse.

8.3.6.1.3.1.3 If such overage is the third violation of this rule within a 12-month period: Up to a \$1,000 fine and up to a 15-day suspension and loss of purse.

8.3.6.1.3.1.4 For an average of 5.0 micrograms or more per milliliter: Up to a \$1,000 fine and up to a 5-day suspension and loss of purse.

8.3.6.1.4 If post-race quantification indicates that a horse carried in its body at the time of the running of the race any quantity of phenylbutazone or oxyphenbutazone, and also carried in its body at the time of the running of the race any quantity of any other non-steroidal anti-inflammatory drug, including but not limited to naproxen, flunixin and meclufenamic acid, then such presence of phenylbutazone or oxyphenbutazone, shall constitute a violation of this rule and shall be subject to a penalty of up to a \$1,000 fine and up to a 50-day suspension and loss of purse.

8.4 Testing

8.4.1 Reporting to the Test Barn

8.4.1.1 Horses shall be selected for pre- and/or post-racing testing according to the following protocol:

8.4.1.1.1 At least one horse in each race, selected by the judges from among the horses finishing in the first four positions in each race, shall be tested.

8.4.1.1.2 Horses selected for testing shall be taken to the testing area to have a blood, urine and/or other specimen sample taken at the direction of the State veterinarian.

8.4.1.2 Random or for cause testing may be required by the Commission, at any time on any horse that has been entered to race at a Commission licensed Association.

8.4.1.3 Unless otherwise directed by the Board of Judges or the Chief DHRC Veterinarian, a horse that is selected for testing must be taken directly to the Test Barn or testing area.

8.4.1.4 Trainers shall fully comply with the instructions of the Commission, which may include, but not be limited to the following: Trainers shall present their horse(s) for testing at the specified time and place mandated by the Commission. Testing procedures may be performed on the grounds of any Commission licensed Association, at the trainer's training facility, or any other location under Commission jurisdiction. Failure to comply shall result in the horse(s) being scratched, and shall be considered a violation equivalent to a Class 1 positive.

8.4.2 Sample Collection

8.4.2.1 Sample collection shall be done in accordance with the RCI Drug Testing and Quality Assurance Program External Chain of Custody Guidelines, or other guidelines and instructions provided by the Commission Veterinarian.

8.4.2.2 The Commission veterinarian shall determine a minimum sample requirement for the primary testing laboratory. A primary testing laboratory must be approved by the Commission.

8.4.3 Procedure for Taking Specimens

8.4.3.1 Horses from which specimens are to be drawn shall be taken to the detention area at the prescribed time and remain there until released by the Commission Veterinarian. Only the owner, trainer or groom, ~~or hot walker~~ of horses to be tested shall be admitted to the detention area without permission of the Commission Veterinarian.

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

8.4.3.2.1 Buckets and water shall be furnished by the Commission Veterinarian.

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

8.4.3.2.3 A licensed veterinarian shall attend a horse in the detention area only in the presence of the Commission Veterinarian.

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

8.4.3.3.1 The owner;

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

8.4.3.3.3 A stable representative designated by such owner or trainer.

8.4.3.4

8.4.3.4.1 All urine containers shall be supplied by the Commission laboratory and shall be sealed with the laboratory security seal which shall not be broken, except in the presence of the witness as provided by (subsection (3)) subsection 8.4.3.3 of this section.

8.4.3.4.2 Blood sample receptacles will also be supplied by the

Commission laboratory in sealed packages as received from the manufacturer.

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

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

8.4.3.5.2 The Commission Veterinarian shall:

8.4.3.5.2.1 Identify the horse from which the specimen was taken.

8.4.3.5.2.2 Document the race and day, verified by the witness; and

8.4.3.5.2.3 Place the detached portions of the identification tags in a

sealed envelope for delivery only to the stewards.

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

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

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

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

8.4.3.5.7 If after a horse remains a reasonable time in the detention area and a specimen can not be taken from the horse, the Commission Veterinarian may permit the horse to be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the Commission Veterinarian.

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

8.4.3.5.9 Two (2) blood samples shall be collected in sample receptacles approved by the Commission, one for the "primary" and one for the "secondary" sample.

8.4.3.5.10 In the event of an initial finding of a prohibited substance or in violation of these Rules and Regulations, the Commission chemist shall notify the Commission, both orally and in writing, and an oral or written notice shall be issued by the Commission to the owner and trainer or other responsible person no more than twenty-four (24) hours after the receipt of the initial finding, unless extenuating circumstances require a longer period, in which case the Commission shall provide notice as soon as possible in order to allow for testing of the "secondary" sample; provided, however, that with respect to a finding of a prohibited level of total carbon dioxide in a blood sample, there shall be no right to testing of the "secondary sample" unless such finding initially is made at the racetrack on the same day that the tested horse raced, and in every such circumstance a "secondary sample" shall be transported to the Commission laboratory on an anonymous basis for confirmatory testing.

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

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

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

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

that the testing is satisfactorily performed.

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

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

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

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

8.5 Trainer Responsibility

The purpose of this subsection is to identify responsibilities of the trainer that pertain specifically to the health and well-being of horses in his/her care.

8.5.1 The trainer is responsible for the condition of horses entered in an official workout or race and is responsible for the presence of any prohibited drug, medication or other substance, including permitted medication in excess of the maximum allowable level, in such horses. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable level, as reported by a Commission-approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer shall be responsible. Whenever a trainer of a horse names a substitute trainer for program purposes due to his or her inability to be in attendance with the horse on the day of the race, or for any other reason, both trainers shall be responsible for the condition of the horse should the horse test positive; provided further that, except as otherwise provided herein, the trainer of record (programmed trainer) shall be any individual who receives any compensation for training the horse.

8.5.2 A trainer shall prevent the administration of any drug or medication or other foreign substance that may cause a violation of these rules.

8.5.3 A trainer whose horse has been claimed remains responsible for any violation of rules regarding that horse's participation in the race in which the horse is claimed.

8.5.4 The trainer is responsible for:

8.5.4.1 maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

8.5.4.2 using the services of those veterinarians licensed by the Commission to attend horses that are on association grounds;

8.5.5 Additionally, with respect to horses in his/her care or custody, the trainer is responsible for:

8.5.5.1 the proper identity, custody, care, health, condition and safety of horses;

8.5.5.2 ensuring that at the time of arrival at locations under the jurisdiction of the Commission a valid health certificate and a valid negative Equine Infectious Anemia (EIA) test certificate accompany each horse and which, where applicable, shall be filed with the Racing Secretary;

8.5.5.3 having each horse in his/her care that is racing, or is stabled on association grounds, tested for Equine Infectious Anemia (EIA) in accordance with state law and for filing evidence of such negative test results with the Racing Secretary;

8.5.5.4 using the services of those veterinarians licensed by the Commission to attend horses that are on association grounds;

8.5.5.5 immediately reporting the alteration of the sex of a horse to the clerk of the course, the United States Trotting Association and the Racing Secretary;

8.5.5.6 promptly reporting to the Racing Secretary and the Commission Veterinarian when a posterior digital neurectomy (heel nerving) has been performed and ensuring that such fact is designated on its certificate of registration;

8.5.5.7 promptly notifying the Commission Veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in his/her charge;

8.5.5.8 promptly reporting the serious injury and/or death of any horse at

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locations under the jurisdiction of the Commission to the ~~State Stewards and Judges Board of Judges~~, the ~~Commission Chief DHRC~~ Veterinarian, and the United States Trotting Association;

8.5.5.9 maintaining a knowledge of the medication record and status;

8.5.5.10 immediately reporting to the ~~State Stewards and Judges Board of Judges~~

and the ~~Commission Chief DHRC~~ Veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;

8.5.5.11 ensuring the fitness to perform creditably at the distance entered;

8.5.5.12 ensuring that every horse ~~he/she~~ has entered to race is present at its assigned stall for a pre-race soundness inspection as prescribed in this chapter;

8.5.5.13 ensuring proper bandages, equipment and shoes;

8.5.5.14 presence in the paddock at least one hour before post time or at a time otherwise appointed before the race in which the horse is entered;

8.5.5.15 personally attending in the paddock and supervising the harnessing thereof, unless excused by the Paddock Judge;

8.5.5.16 attending the collection of a urine or blood sample or delegating a licensed employee or the owner to do so; and

8.5.5.17 immediately reporting to the ~~State Steward or Presiding Judge~~ or other Commission designee, or to the State Veterinarian or ~~Commission Chief DHRC~~ Veterinarian if the ~~State Steward or Presiding Judge~~ or other Commission designee is unavailable, the death of any horse drawn in to start in a race in this jurisdiction provided that the death occurred within 60 days of the date of the draw.

8.6 Physical Inspection of Horses

8.6.1 Veterinarian's List

8.6.1.1 The Commission Veterinarian shall maintain a list of all horses which are determined to be unfit to compete in a race due to physical distress, unsoundness, infirmity or medical condition.

8.6.1.2 A horse may be removed from the Veterinarian's List when, in the opinion of the Commission Veterinarian, the horse has satisfactorily recovered the capability of competing in a race.

8.6.2 Postmortem Examination

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

8.6.2.2 The Commission may conduct a postmortem examination of any horse that expires while housed on a ~~Association~~ grounds or at recognized training facilities within this jurisdiction. Trainers and owners shall be required to comply with such action as a condition of licensure.

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

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

8.6.2.5 The cost of Commission-ordered postmortem examinations, testing and disposal shall be borne by the Commission.

1 DE Reg. 505 (11/01/97)

1 DE Reg. 923 (1/1/98)

3 DE Reg 1520 (5/1/00)

4 DE Reg. 6 (7/1/00)

4 DE Reg 336 (8/1/00)

5 DE Reg. 832 (10/1/01)

5 DE Reg. 1691 (3/1/02)

6 DE Reg. 862 (1/1/03)

7 DE Reg. 1512 (5/1/04)

8 DE Reg. 329 (8/1/04)

8.7 Prohibited Practices

8.7.1 The following conduct shall be prohibited for all licensees:

8.7.1.1 The possession and/or use of a drug, substance, or medication, specified below for which a recognized analytical method has been developed to detect and confirm the administration of such substance including but not limited to erythropoietin, darbepoietin, and perfluorocarbon emulsions; or the use of which may endanger the health and welfare of the horse or endanger the safety of the driver; or the use of which may adversely affect the integrity of racing.

8.7.1.2 The possession and/or use of a drug, substance, or medication that has not been approved by the United States Food and Drug Administration (FDA) for use in the United States.

8.7.1.3 The possession and/or use of Blood Doping Agents including but not limited to: EPO, DPO, Oxyglobin, Hemopure or any other substance that abnormally enhances the oxygenation of equine body tissue is considered a prohibited practice that endangers the health and welfare of a horse and/or the safety and welfare of a driver.

8.7.2 Testing

8.7.2.1 Horses may be tested for EPO, DPO, Oxyglobin, Hemopure or any other substance that abnormally enhances the oxygenation of equine body tissue as follows:

8.7.2.1.1 Once a horse is entered to race

8.7.2.1.2 Any horse that was entered or raced within sixty (60) days of entry and/or race

8.7.2.1.3 Any horse showing the presence of EPO, DPO and/or like antibodies

8.7.2.1.4 Any horse in the care, custody and control of a trainer having a horse that has tested positive for EPO, DPO and like substances through a screening test

8.7.2.1.5 Any horse that expires; consistent with DHRC Rules 8.6.2.1-8.6.2.5.

8.7.2.2 Two blood samples shall be collected in DHRC approved sample receptacles; one is the primary sample; and the other is the secondary sample.

8.7.2.3 In the event that the presence of EPO, DPO and/or any EPO analogues is determined to be present in a primary sample, the primary sample shall be sent to a DHRC approved laboratory for a confirmation test.

8.7.2.4 The trainer and/or owner of any horse that tests positive for the confirmed presence of EPO, DPO, Oxyglobin, Hemopure or any other substance that abnormally enhances the oxygenation of equine body tissue has the right to request a testing of the secondary sample consistent with DHRC Rule 8.4.3.5.10 through and inclusive of DHRC Rule 8.4.3.5.13.

8.7.2.5 Upon positive notification from the confirmatory laboratory of the primary sample, if uncontested by the trainer; or notification of confirmation in the secondary sample, the trainer shall be summarily suspended and any/all horses entered, by the trainer, to race shall be scratched. Notice of a hearing shall be delivered to the trainer within twenty-four (24) hours.

8.7.2.6 The following penalties and disciplinary measures may be imposed for the confirmed presence of EPO, DPO, Oxyglobin, Hemopure or any other substance that abnormally enhances the oxygenation of equine body tissue:

In the absence of extraordinary circumstances, a minimum penalty of \$10,000 and/or a 10 year suspension, forfeiture of the purse money and assessment for cost of the drug testing. Additionally, the Board of Judges may consider possible violations including, but not limited to: DHRC Rule 5.1.7 and DHRC Rule 5.1.16.1.10.

6 DE Reg. 862 (1/1/03)

8.8 Prohibited Substances Protests; Testing**8.8.1 Protest-Request for Super Test**

8.8.1.1 If a licensed owner, trainer, driver, or claimant has a reasonable belief that a competing or claimed horse has, or may have an unfair competitive advantage due to a violation of the Commission Rules, that owner, trainer, driver, or claimant may file a "Prohibited Substances Protest" with the Commission.

8.8.1.2 A "Prohibited Substances Protest" empowers the owner, trainer, driver, or claimant to request that any horse or horses he or she competes against or claims in a specified race have a blood

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and urine sample collected and then tested at an official Association of Racing Commissioners International (ARCI) approved laboratory of his or her choice. The designated laboratory shall employ state-of-the-art testing methods when testing these protested samples, which shall include, but not be limited to, Enzyme-Linked Immunosorbent Assay (ELISA), Thin Layer Chromatography (TLC), Gas Chromatography Mass Spectrometry (GCM-S), Liquid Chromatography Mass Spectrometry (LCMSMS), and Total Carbon Dioxide (TCO₂) tests.

8.8.1.3 The owner, trainer, driver, or claimant must file a verbal protest with either the starter or paddock judge before the race has been made official. The starter or paddock judge must notify the Presiding Judge immediately, who shall order a veterinary assistant to escort and remain with the horse in accordance with established policy for obtaining a blood and urine sample. Within fifteen (15) minutes after the official sign has been posted for the race in which the protested horse competed, the protesting party shall file a written protest with the paddock judge and post a deposit of \$1,000 which shall be used to offset the following costs:

8.8.1.3.1 The collection of sufficient blood and urine samples, including the costs of the State veterinary assistant and State veterinarian and all necessary collection apparatus;

8.8.1.3.2 The packing of and transportation of these samples by bonded courier to the selected laboratory; and

8.8.1.3.3 All costs incurred by the state-of-the-art testing methods employed by the ARCI laboratory.

8.8.1.4 In the event the costs exceed the \$1,000 deposit, the protesting party shall be required to post additional monies to cover such costs.

8.8.1.5 The owner and/or trainer of the protested horse shall have the right to be present during the collection, packaging and shipping of these test samples.

8.8.1.6 Upon completion of all testing, the laboratory shall notify the Commission of the results. The Commission shall immediately notify the trainer of the protested horse as well as the protesting party of these test results.

8.8.1.7 If the test results substantiate a violation of the Commission rules in effect on the date of the race, the trainer of the tested horse shall be afforded the same rights every trainer receives when charged with any rules violation. This shall include the right to request a split sample test at a designated ARCI laboratory that has agreed to accept split samples from the Commission.

8.8.1.8 Penalties shall be assessed in accordance with the Commission penalty recommendations for a violation of the rules in effect on the date of the race. In no case, however, shall the penalty imposed for a medication violation be less than a \$500 fine. If the test results substantiate the presence of antibodies to erythropoietin (EPO), darbepoietin, or any EPO analogues, in addition to any DHRC penalties, the horse shall immediately be placed on the Steward's List and shall not be permitted to enter a race until the horse tests negative for the presence of EPO, darbepoietin, or any EPO analogue antibody(ies) previously detected. All testing must be performed by the DHRC official lab.

8.8.1.9 If the test results substantiate a violation of the Commission rules in effect on the date of the race, a successful claimant may void the claim in accordance with Commission Rules.

8.8.1.10 Any monies remaining from the protest deposit after costs shall be returned to the protesting party even if a violation of the Commission Rules is not detected. If a violation is detected, costs shall be assessed against the trainer of the protested horse and the Commission shall reimburse the protesting party upon receipt thereof.

8.8.1.11 The owner, trainer, driver, or claimant who files a Prohibited Substances Protest pursuant to this Section shall be immune from civil liability for filing the protest.

8.8.2 Routine Post Race Testing

8.8.2.1 Routine Post Race Testing shall include but not be limited to screening for antibodies to erythropoietin (EPO), darbepoietin, or any EPO analogues.

8.8.2.2 Any claimed horse not otherwise selected for testing by the racing officials shall be tested if requested by the claimant at the time the claim form is submitted in accordance with the Commission Rules.

8.8.2.3 The successful claimant shall have the right to void the claim should the forensic analysis be positive for any prohibited substance, illegal level of a permitted medication, or presence of antibodies to erythropoietin (EPO), darbepoietin, or any EPO analogues.

8.8.2.4 If the test results substantiate the presence of antibodies to erythropoietin

(EPO), darbepoietin, or any EPO analogues, in addition to assessing penalties in accordance with the DHRC rules, the horse shall immediately be placed on the steward's list and shall not be permitted to enter a race until the horse tests negative for the presence of EPO, darbepoietin, or any EPO analogue antibody(ies) previously detected and said horse is removed from the Steward's List. All testing must be performed by the DHRC official lab.

8.8.3 This Rule enacts the provisions of 74 **Del. Laws** c. 236 (2004) which amended 28 **Del.C.** §706 in its entirety, and this Rule shall apply in the event these provisions conflict with or are otherwise inconsistent with any other Commission Rule.

8.9 Prerace Testing by Blood Gas Analyzer or Similar Equipment

8.9.1 Notwithstanding any other provisions of these Rules to the contrary, the Commission may conduct prerace and postrace testing with the use of any accepted, reliable testing instrument, including but not limited to a blood gas analyzer for measuring excess carbon dioxide in blood samples.

8.9.2 The Presiding Judge shall announce the selected races or horses for testing and the appropriate time and location.

8.9.3 All horses shall be brought to the paddock or other secure, designated area for the prerace testing before its first warm up, based on the Commission published paddock times.

8.9.4 Each horse entered to compete in the racing program shall be present in his or her designated paddock stall with a groom for the purpose of having a blood sample drawn by the Commission Veterinarian.

8.9.5 The order and number of horses which shall have blood drawn for prerace testing shall be at the discretion of the Commission and the Presiding Judge.

8.9.6 The Commission Veterinarian will be responsible to verify with the testing machine technician that the blood gas analyzer test is completed for the specific horse in question. The Commission Veterinarian or his designee will inform the trainer or groom if their horse will be retested or can be given permission to leave the paddock.

8.9.7 *Refusal* - Failure or refusal by a licensee to present a selected horse under his care, custody, or control for blood gas analyzer testing, or who refuses in any other way, shall result in an automatic scratch of the horse from the racing program, and any other appropriate disciplinary action in the discretion of the judges. The Commission Veterinarian shall document the name of the trainer or person who refuses to have blood drawn from the horse, and shall file a report with the Commission.

8.9.8 *Exercise Prior to Testing* - In the event that the horse has exercised prior to testing and the horse tests below the Commission standard for a high blood gas test, the horse can be retested upon the discretion of the Commission Veterinarian or presiding judge, or tested post race.

8.9.9 *Post Race Testing* - The blood gas analyzer machine or similar testing equipment may be used for the post-race blood gas testing on selected horses. The collection of samples will be pursuant to Rule 8.4.3 and testing of split samples will be pursuant to Rule 8.4.3.5.10.

8.9.10 The Commission Veterinarian will provide documentation reflecting the tattoo or name of the horse from which the blood was drawn, the date and time the blood was drawn, and any other identifying information.

8.9.11 *Trainer Observation of Testing* - The trainer or other designated representative is permitted to observe the testing procedure, but not to question the technician or otherwise disrupt the testing.

8.9.12 The Presiding Judge, Commission Veterinarian, and blood gas technician will ensure that the blood gas analyzer or other testing equipment is calibrated in compliance with the recommended calibration and maintenance procedures for the machine, and that the testing machine is in proper working order.

8.9.13 In addition to the provisions of Rule 8.3 and unless otherwise permitted by these Rules, no foreign substance shall be carried in the body of a horse when the horse is on the grounds of the licensed racetrack; it shall be a violation of this rule for a horse to test positive in a pre-race test result using a blood gas analyzer or other testing equipment.

8.9.14 The penalties for post-race positive tests contained in Rule 8.3.2, may apply to pre-race test samples that are positive for a prohibited substance.

8.9.14.1 A positive test result from a pre-race sample tested on the blood gas analyzer machine is subject to the recommended penalty in ~~Rules 8.3.2 and 8.3.3.3~~ Rule 8.9.1.15. For pre-race testing the Commission may use a testing machine that uses the Commission standard in Rule 8.3.3.3--substances present in a horse in excess of levels at which such substances could occur naturally and such prohibited substances shall include a total carbon dioxide level of 37 mmol/L or serum in a submitted blood sample

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from a horse or 39 mmol/L if serum from a horse which has been administered furosemide in compliance with these rules.

8.9.14.2 The Commission may alternatively use a testing machine that measures carbon dioxide levels in pre-race samples using a Base Excess testing protocol.

8.9.14.2.1 Under this alternative protocol, the prohibitive Base Excess concentrations are as follows: Base Excess level of 10.0 mmol/l (mEq/l) or higher for non-furosemide (Lasix) treated horses and Base Excess (BE) level of 12.0 mmol/l (mEq/l) or higher for furosemide (Lasix) treated horses. The level of uncertainty will be included before it is considered a violation of these Rules. The level of uncertainty is 0.4 mmol/l (mEq/l) and a positive test report must include this level of uncertainty. A horse must show a Base Excess (BE) level of 10.4 mmol/l (mEq/l) or higher for a non-furosemide (Lasix) treated horse and a Base Excess (BE) level of 12.4 mmol/l (mEq/l) or higher for a furosemide (Lasix) treated horse in order for a violation to be reported under this Rule.

8.9.14.2.2 A commission representative will notify the trainer or licensed designee and the primary blood sample of the horse in question shall be immediately retested. In the event that a second blood gas analyzer test is necessary, the Commission Veterinarian or his designee will take a rectal temperature of said horse. The horse's temperature will be recorded on the veterinarian's control sheet. A second blood sample shall be extracted from the horse by the Commission Veterinarian.

8.9.14.2.3 With respect to a finding of a prohibited level of carbon dioxide in the second extraction obtained from a prerace blood gas analyzer test result, there shall be no right to testing of the second extraction by the licensee. In the event that the initial blood gas analyzer test result is confirmed by the test results of the second extraction in the designated Commission testing area at the racetrack, such test results shall be *prima facie* evidence that a prohibitive base excess concentration was present in the horse at the time it was scheduled to participate in a race.

8.9.15 Absent aggravating or mitigating findings of fact, the following penalties and disciplinary measures may be imposed for positive test result from a pre-race sample tested on the blood gas analyzer machine:

8.9.15.1 First offense:

8.9.15.1.1 horse to be placed on Stewards List for 14 days, must pass a requalifying test and requalify to compete in purse events;

8.9.15.1.2 trainer to be assessed \$1,000 fine;

8.9.15.2 Second offense within two years of first offense:

8.9.15.2.1 horse to be placed on Stewards List for 30 days, must pass a requalifying test and requalify to compete in purse events;

8.9.15.2.2 trainer to be assessed \$2,000 fine and suspended for ten days;

8.9.15.3 Third offense within two years of second offense:

8.9.15.3.1 horse to be placed on Stewards List for 90 days, must pass a requalifying test and requalify to compete in purse events;

8.9.15.3.2 trainer to be assessed \$3,500 fine and full suspension for one hundred and fifty days and license made probationary;

8.9.15.4 Fourth offense within two years of third offense:

8.9.15.4.1 horse to be prohibited from racing in Delaware;

8.9.15.4.2 trainer to be assessed \$5,000 fine and full suspension for three hundred and sixty five days and required to reapply for licenses following completion of suspension;

8.9.15.5 In determining the appropriate penalty with respect to a positive test result

from a pre-race sample tested on the blood gas analyzer machine, the Presiding Judge or other designee of the Commission may use his discretion in the application of the foregoing penalty recommendations, and may consult with the Commission veterinarian and/or the Commission chemist to determine the seriousness of the test result. Aggravating or mitigating circumstances in any case should be considered and greater or lesser penalties and/or disciplinary measures may be imposed than those set forth above. Specifically, if the Presiding Judge or other designee of the Commission determines that mitigating circumstances warrant imposition of a lesser penalty than the recommendations suggest, he may impose a lesser penalty. If the Presiding Judge or other designee of the Commission determines that aggravating circumstances require imposition of a greater penalty, however, he may only impose up to the maximum recommended penalty, and must refer the case to the Commission for its review, with a recommendation for specific action;

8.9.15.6 A requalifying test with respect to a particular offense shall not give rise to a subsequent offense. A trainer shall be subject to the increased penalties and disciplinary measures in Regulation 8.9.15 for second, third and fourth offenses with respect to any horse trained by the trainer.

8.10 Quarantine Procedure For Carbon Dioxide Positive Tests (Prerace Or Postrace)

8.10.1 Detention/Quarantine of Horses: The owner or trainer must request use of the quarantine procedure by sending written notice to the presiding judge within forty-eight (48) hours of notification of the positive carbon dioxide test report. The owner or trainer will then be permitted, totally at his/her own expense, to make the necessary scheduling arrangements with the Judges and the Commission Veterinarian. The horse in question will be quarantined on the grounds for periodic blood gas testing by the DHRC (up to three days) at the trainer's expense. All caretaker activities for the horse in question will be the responsibility of the horse's trainer.

8.10.2 Procedure: The owner or trainer will be responsible for providing the DHRC with a minimum check for \$1,500.00 to cover the costs for the quarantine. A professionally trained Track Security Officer must be with the horse at all times, and the Security Officer must be knowledgeable about the importance of monitoring all activity pertaining to the quarantined horse.

8.10.3 The quarantine of a horse is subject to the following mandatory requirements:

8.10.3.1 The owner or trainer will be required to deposit sufficient funds with the DHRC Presiding Judge to cover the costs of the quarantine of the horse. The minimum quarantine cost will be \$1,500, and this figure may be higher if additional special circumstances are required for a particular horse. None of these procedures will be initiated until the Commission has in its possession a certified check or other method of payment acceptable to the Commission. The owner or trainer is responsible for all costs for the quarantine, including but not limited to, the costs of: stall bedding, daily cleaning of the stall, feed and hay, stall rent, hourly guard salary, portable toilet rental, veterinary charge, courier or shipping charges to the laboratory, laboratory analysis costs. Unused funds will be returned to the trainer.

8.10.3.2 The expected period of the quarantine will be seventy-two hours.

8.10.3.3 The owner or trainer is required to execute a reasonable liability waiver form if requested to do so by the track for the quarantine of the horse on track grounds.

8.10.3.4 The owner or trainer is obligated to reimburse the track if the racing association is required to purchase additional insurance to cover risks from the quarantine of the trainer's horse. The owner or trainer is also responsible for any additional costs required by the track to pad or otherwise specially equip the quarantine stall.

8.10.3.5 All activity of the quarantined horse is observed, documented, and recorded by security officers for the track and the DHRC.

8.10.3.6 The Commission will be responsible for arranging for and providing for bedding, feed, water, and daily cleaning of the stall, all of which are at the owner's expense. Feed for the horse will be purchased by DHRC officials as specified by the owner or trainer. Samples of the feed will be retained by the DHRC designated official.

8.10.3.7 Each bale of hay/straw will be intact and uncut for inspection of contraband. Four small samples of hay are to be taken from the bale of hay used to feed the animal (one from each end of the bale of hay and two from the middle of the bale of hay). These samples with the ingredient tags from the bag of feed used by the horse will be retained by the DHRC designated official.

8.10.3.8 Every trainer, groom, or caretaker is subject to continuous observation and may be searched when with the horse for contraband.

8.10.3.9 Horses may be trained, but if leg paints or salves are used, they must be new and in unopened containers, and the track Security Officer must monitor the preparation of the horse.

8.10.3.10 A Security Officer must observe the horse during training and ensure that it does not leave the track except to return to the quarantine stall.

8.10.3.11 A sick horse must only be determined ill by the Commission Veterinarian and the quarantine of the horse will be terminated. Any bills incurred for the quarantine of the horse prior to the illness and termination of the detention will be prorated.

8.10.3.12 Stalls for the quarantine of horses are designated by the Presiding Judge of the DHRC, in cooperation with the racetrack.

8.10.3.13 Trainers can restrict water based on previous pre-race preparation schedules.

8.10.3.14 Trainers are expected to train their horse in the same manner as the

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horse was trained on previous racing events. The horse will be equipped with all the items that it would normally carry, taken to the paddock, and handled in a manner similar to previous racing events.

8.10.3.15 Blood samples will be taken from the quarantined horse by the Commission Veterinarian, as he or she deems appropriate and necessary during the quarantine period. A blood sample should be taken when the horse first enters the quarantine stall and again at the pre-arranged time between sixty (60) and seventy-two (72) hours. At the discretion of the Commission, another sample may be taken between the initial sample and the sample taken at the cessation of the quarantine period. Blood samples will only be taken from the horse that is at rest for a period of time approved by the Commission Veterinarian. The owner or trainer or his/her representative must be present and witness the collection of the blood samples. Blood samples will be shipped promptly to the Commission's designated testing laboratory, pursuant to the Commission's standard chain-of-custody procedures.

8.10.3.16 At the conclusion of the quarantine period, the party requesting the quarantine will be provided timely notice of the test results from the DHRC. The trainer may present such evidence at a hearing before the Judges if he or she attempts to prove that the horse has a naturally high carbon dioxide level.

8 DE Reg. 698 (11/01/04)

8 DE Reg. 1108 (02/01/05)

9 DE Reg. 1066 (01/01/06)

9 DE Reg. 1367 (03/01/06)

9 DE Reg. 1951 (06/01/06)

10 DE Reg. 980 (12/01/06)

10 DE Reg. 1424 (03/01/06)

***Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Harness Racing Commission is available at:**

<http://regulations.delaware.gov/AdminCode/title3/500/index.shtml#TopOfPage>

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(11) (14 Del.C. §122(b)(11))
14 DE Admin. Code 735

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)

735 Standardized Financial Reporting

A. Type of Regulatory Action Required
New Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 DE Admin. Code by adding a new regulation titled 735 Standardized Financial Reporting that is now required by passage of House Bill 21 from the 144th General Assembly. This regulation requires all school districts and charter schools to post the summary of their financial documentation on their respective website. The format of the documentation is prescribed by the Department.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 5, 2007 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, DE 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

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

achievement standards? This regulation outlines the criteria and process for school districts and charter schools in reporting financial information to the public in a standardized format and does not specifically address student achievement as measured against the state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? This regulation outlines the criteria and process for school districts and charter schools in reporting financial information to the public in a standardized format and does not specifically address the assurance that all students receive and equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation outlines the criteria and process for school districts and charter schools in reporting financial information to the public in a standardized format and does not specifically address the health and safety of students.

4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation outlines the criteria and process for school districts and charter schools in reporting financial information to the public in a standardized format and does not specifically address the assurance that all students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation outlines the criteria and process for school districts and charter schools in reporting financial information to the public in a standardized format and does not change any of the authority or flexibility of decision making at the local board or 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? This regulation outlines the criteria and process for school districts and charter schools in reporting financial information to the public in a standardized format so therefore does affect the reporting and administrative requirements. This is a new requirement pursuant to the 14 **Del. C.** §122 (b)(11).

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? This regulation outlines the criteria and process for school districts and charter schools in reporting financial information to the public in a standardized format and does not change the entity where decision making authority or accountability currently lies.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? This regulation outlines the criteria and process for school districts and charter schools in reporting financial information to the public in a standardized format and is not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? This regulation outlines the criteria and process for school districts and charter schools in reporting financial information to the public in a standardized format as mandated by statute. There is not a less burdensome method for addressing this requirement.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no substantive additional costs to the State or local school boards for compliance with this regulation.

735 Standardized Financial Reporting

1.0 Purpose

The purpose of this regulation is to outline the criteria and process for the required standardized financial reporting pursuant to 14 **Del.C.** §122 (b)(11).

2.0 Definitions

"Charter School" shall mean a charter school board established pursuant to Chapter 5 of Title 14 of the Delaware Code.

"District" shall mean a reorganized school district or vocational technical school district established pursuant to Chapter 10 of Title 14 of the Delaware Code.

3.0 Standardized Financial Report

3.1 Standardized Financial Report shall mean the summary of the District's or Charter School's

financial documentation provided in a format approved by the Department of Education that includes, but is not limited to, the District's or Charter School's most current expenditure and revenue budgets. This documentation shall include encumbrances, expenditures, and remaining balances by category as prescribed in the approved format. Districts and Charter Schools shall indicate on the Standardized Financial Report whether the most current expenditure and revenue budgets are preliminary, amended or have been finalized by its approving entity.

4.0 Reporting Requirements and Timelines

4.1 Effective February 1, 2008, each District and Charter school, no later than five (5) working days after the most recent District or Charter School board meeting, shall post the current Standardized Financial Report on its website. Provided further, the District or Charter School shall provide the preliminary or final Standardized Financial Report for the current school year, no later than January 1st of each year.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)p (16 Del.C. §122(3)p)
16 DE Admin. Code 4403

4403 Free Standing Birthing Centers

PUBLIC NOTICE

The Department Health and Social Services is proposing regulations which establish standards for regulation of the operation of Free Standing Birthing Centers. The regulations for Free Standing Birthing Centers apply to any program that provides prenatal, intrapartum and postpartum care for individuals with uncomplicated pregnancy, labor and vaginal birth and newborns during the recovery period. Services shall be provided by a licensed physician, certified nurse midwife or certified professional midwife and a registered nurse.

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services (DHSS), will hold a public hearing to discuss the proposed Delaware Regulations for Free Standing Birthing Centers. The regulations for Free Standing Birthing Centers apply to any program that provides prenatal, intrapartum and postpartum care for individuals with uncomplicated pregnancy, labor and vaginal birth and newborns during the recovery period. Services shall be provided by a licensed physician, certified nurse midwife or certified professional midwife and a registered nurse.

The public hearing will be held on November 27, 2007 at 10:00 a.m. in the Felton-Farmington Room, located in the Delaware Department of Transportation Building, 800 Bay Road, Dover, Delaware.

Copies of the proposed regulations are available for review in the November 1, 2007, edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Facilities Licensing and Certification at (302) 995-8521.

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Deborah Harvey at (302) 744-4700 by November 21, 2007. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by November 30, 2007 to:

Deborah Harvey, Hearing Officer
Division of Public Health
417 Federal Street
Dover, DE 19901
Fax (302) 739-6659

4403 Free Standing Birthing Centers

1.0 Definitions

~~“Birthing Center” means any public or private health facility or institution which is not licensed as a hospital or as a part of a hospital and provides care during delivery and immediately after delivery for generally less than twenty-four hours.~~

~~“Services” means those services provided in a birthing center shall be limited in the following manner: a) surgical services shall be limited to those normally performed during uncomplicated childbirth, such as episiotomy and repair, and shall not include operative obstetrics or caesarean sections; b) labor shall not be stimulated or augmented with chemical agents during first or second stage of labor; c) systemic analgesia may be administered and local anesthesia for pudendal block and episiotomy and laceration repair may be performed.~~

2.0 Licensing Requirements

~~2.1 The term birthing center shall not be used as part of the name of any agency or description of services in the State unless it has been so classified by the Division of Public Health.~~

~~2.2 License:~~

~~2.2.1 A license shall be effective for a twelve (12) month period and may be issued for that period only if the Birthing Center is in full compliance with these regulations.~~

~~2.2.2 A provisional license may be granted by the Department of Health and Social Services for a period not exceeding three (3) months when the Birthing Center is in compliance with most but not all of these regulations and has demonstrated the ability and willingness to comply within the three (3) month period.~~

~~2.2.3 A license is not transferable from person to person nor from one location to another.~~

~~2.2.4 The license shall be conspicuously posted.~~

~~2.2.5 All applications for renewal of licenses shall be filed with the Department of Health and Social Services at least thirty (30) days prior to expiration.~~

3.0 Governing Body

~~3.1 Responsibility: A governing Body shall provide facilities, personnel and services necessary for the welfare and safety of the patients.~~

~~3.2 Duties: The Governing Body shall:~~

~~3.2.1 adopt by laws in accordance with legal requirements;~~

~~3.2.2 meet regularly and maintain accurate records of such meetings;~~

~~3.2.3 appoint a credentials committee, composed of clinical staff, which shall have the authority and responsibility for appointments and reappointments of clinical staff and ensure that only members of the clinical staff shall admit patients to the birthing center;~~

~~3.2.4 appoint and delineate clinical privileges of practitioners based upon recommendations by the clinical staff and other appropriate indicators of physicians and certified nurse mid-wife competence;~~

~~3.2.5 establish a formal means of liaison with the clinical staff;~~

~~3.2.6 clinical staff must abide by the protocols of the center and be licensed;~~

~~3.2.7 appoint committees consistent with the needs of the birthing center.~~

~~3.3 Quality of Care:~~

~~3.3.1 Conduct, with the active participation of the clinical staff, an ongoing, comprehensive self-assessment of the quality of care provided, including the medical necessity of procedures performed, the appropriateness of care, and the appropriateness of utilization. This information shall provide a basis for the revision of facility policies and the granting of continuation of clinical privileges.~~

~~3.3.2 Require that the facility's Quality Assurance Program ensures the adequate investigation, control and prevention of infections.~~

~~3.3.3 Provide that there shall be on file in the center an agreement with an ambulance service (air or ground) for emergency transfer of patients to hospital.~~

4.0 Administrator

~~4.1 Responsibility: The administrator shall be the official representative of the governing body and the chief executive officer of the birthing center. The administrator shall be delegated responsibility and authority in~~

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writing by the governing body for the management of the birthing center and shall provide liaison among the governing body, clinical staff and other departments of the birthing center.

4.2 Duties: The administrator shall be responsible for the development of Birthing Center policies and procedures for employee and clinical staff use. All policies and procedures shall be reviewed and/or updated as necessary but at least annually.

5.0 Clinical Staff

5.1 Organization: The birthing center shall have an organized clinical staff restricted to physicians and certified nurse mid-wives.

5.2 Definition: Certified Nurse Mid-wife (CNM) — a professional nurse licensed in the State of Delaware who is educated in the two disciplines of nursing and midwifery, who possesses evidence of certification according to the requirements of the Department of Health and Social Services

5.3 Duties: The clinical staff or a delegated committee shall:

5.3.1 be responsible for the quality of all medical care provided patients in the facility;

5.3.2 hold meetings regularly and maintain accurate records of such meetings;

5.3.3 formulate, adopt and enforce by laws, rules, regulations and policies for the proper conduct of its members;

5.3.4 recommend staff privileges to the governing body;

5.3.5 establish formal liaison with the governing body;

5.3.6 participate actively in the quality assurance program;

5.3.7 recommend admission and procedure policies to the governing body.

5.4 Clinical Staff Requirements:

5.4.1 Each staff physician shall be licensed to practice medicine in the State of Delaware and provide proof of licensure number.

5.4.2 Each certified nurse mid-wife (CNM) shall be licensed as a professional nurse and provide proof of licensure number.

5.4.3 Any physician applying for privileges at the birthing center must demonstrate hospital admitting privileges for patients who develop complications.

5.4.4 Any certified nurse mid-wife applying for privileges must provide proof of a back-up agreement with a physician who will accept consultation calls and referrals from the CNM 24 hours a day. Proof of hospital admitting privileges of the back-up physicians must be submitted.

5.4.5 A physician or certified nurse mid-wife licensed in the State of Delaware shall be present at each birth and until the woman and newborn are stable postpartum. A second person in addition to the above, who is a registered nurse with adult and infant resuscitation skills, shall be present during the delivery.

5.4.6 A certified nurse mid-wife or registered nurse with adult and infant resuscitation skills shall be present at the birthing center at all times when a patient is present. Additional and sufficient personnel shall be provided when more than one woman is in active labor.

6.0 Medical Records

6.1 Facilities: The center shall provide sufficient space and equipment for the processing and safe storage of records.

6.2 Personnel: A person knowledgeable in the management of Medical Records shall be responsible for the proper administration and functioning of the medical records section.

6.3 Security: Medical records shall be protected from loss, damage and unauthorized use.

6.4 Preservation: With the exception of medical records of minors (individuals under the age of 18 years) medical records shall be preserved as original records or on microfilm for no less than five years after the most recent patient care usage, after which time records may be destroyed at the discretion of the facility.

6.4.1 Medical records of minors shall be preserved for the period of minority plus five (5) years.

6.4.2 Facilities shall establish procedures for notification to patients to the destruction of such records.

6.4.3 The sole responsibility for the destruction of all medical records shall be the facility involved.

6.5 Content: The medical records shall contain sufficient accurate information to justify the diagnosis and warrant the treatment and end results including, but not limited to:

- ~~6.5.1 complete patient identification and a unique identification number;~~
- ~~6.5.2 admission and discharge dates;~~
- ~~6.5.3 chief complaint and admission diagnosis;~~
- ~~6.5.4 medical history and physical examination completed prior to birth;~~
- ~~6.5.5 diagnostic tests, laboratory and x-ray reports when appropriate;~~
- ~~6.5.6 progress notes if appropriate;~~
- ~~6.5.7 properly executed informed consent which shall be obtained prior to the onset of labor and~~

~~shall include evidence of an explanation by personnel of the birth services offered and the potential risks;~~

~~6.5.8 patient's condition on discharge, final diagnosis and instructions given patient for follow up care of patient and child;~~

~~6.5.9 obstetrical records shall include in addition to the requirements for medical records the following:~~

~~6.5.9.1 prenatal care record containing at least a hemoglobin or hematocrit, urine screening, prenatal blood serology, RH factor determination, rubella titre, past obstetrical history and physical examination;~~

~~6.5.9.2 record of prenatal instructions;~~

~~6.5.9.3 labor and delivery record, including reasons for induction and operative procedures if any;~~

~~6.5.9.4 records of anesthesia and analgesia and medication given in the course of labor, delivery and postpartum.~~

~~6.5.10 Records of newborn infants shall be maintained as separate records and shall include in addition to the requirements for medical records the following information:~~

~~6.5.10.1 date and hour of birth, birth weight and length, period of gestation, sex and condition of infant on delivery (including Apgar and any resuscitative measures taken);~~

~~6.5.10.2 mother's name and method of identification;~~

~~6.5.10.3 record of ophthalmic prophylaxis;~~

~~6.5.10.4 record of administration of RH immune globulin if any;~~

~~6.5.10.5 appropriate physical examination at birth and at discharge;~~

~~6.5.10.6 genetic screening, PKU or other metabolic disorders report;~~

~~6.5.10.7 fetal monitoring record;~~

~~6.5.10.8 copy of birth certificate;~~

~~6.5.10.9 record of follow up of mother and newborn following discharge from the center; i.e., referral to pediatrician and/or visiting nurse, home and/or office visit.~~

~~6.6 Nursing Records: Standard nursing practice and procedure shall be followed in the recording of medications and treatments, including delivery and post-delivery notes. Nursing notes shall include notation of the instructions given patients pre-delivery and at the time of discharge. All recordings shall be in ink and properly signed, including name and identifying title.~~

~~6.7 Entries: All orders for diagnostic procedures, treatments and medications will conform to the respective State Regulations.~~

7.0 Personnel

~~7.1 Orientation: The purpose and objectives of the birthing center shall be explained to all personnel as part of an overall orientation program.~~

~~7.2 Policies: There shall be appropriate written personnel policies, rules and regulations governing the conditions of employment, the management of employees and the types of functions to be performed.~~

8.0 Admissions

~~8.1 Admissions: All persons admitted to a birthing center shall be under the direct care of a member of the clinical staff and agree to remain at the center not less than four hours postpartum.~~

~~8.2 Disclosure Document: As a condition of acceptance for birthing center care all persons shall sign prior to the onset of labor a disclosure document which shall contain:~~

~~8.2.1 an explanation of the services available;~~

~~8.2.2 an explanation of the services not available, including types of anesthesia;~~

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- and child;
- 8.2.3 a statement of the time to and location of the nearest hospital facilities for care of mother
- 8.2.4 a statement of cost.
- 8.3 Prohibitions from Birthing Center Delivery:
- 8.3.1 Medical limitations:
- 8.3.1.1 current drug or alcohol addiction;
- 8.3.1.2 paraplegia, quadriplegics;
- 8.3.1.3 hypertensives on medications;
- 8.3.1.4 hypertension over 140/90;
- 8.3.1.5 diabetes (insulin dependent);
- 8.3.1.6 thrombophlebitis with this pregnancy;
- 8.3.1.7 severe anemia (hct. below 30 at admission);
- 8.3.1.8 epileptics on medication;
- 8.3.1.9 mental impairment that would interfere with the ability to follow directions;
- 8.3.1.10 morbid obesity (100 over ideal body weight);
- 8.3.2 Obstetrical Limitations:
- 8.3.2.1 grand multiparity with other risk factors;.
- 8.3.2.2 previous birth of a baby with serious congenital anomaly of a probably repeating type that cannot be excluded through antenatal evaluation;
- 8.3.2.3 suspected congenital anomaly;
- 8.3.2.4 previous Caesarean delivery;
- 8.3.2.5 pre-eclampsia;
- 8.3.2.6 multiple gestation;
- 8.3.2.7 intrauterine growth retardation or macrosomia;
- 8.3.2.8 documented oligohydramnios or polyhydramnios;
- 8.3.2.9 abnormal fetal surveillance studies;
- 8.3.2.10 fetal presentation other than vertex;
- 8.3.2.11 rising antibody titre of any type that is known to affect fetal well being;
- 8.3.2.12 all RH sensitizations;
- 8.3.2.13 significant third trimester bleeding of unexplained cause;
- 8.3.2.14 need for induction of labor (no induction allowed);
- 8.3.2.15 need for general or conduction anesthesia;
- 8.3.2.16 need for C-section (no C-section allowed);
- 8.3.2.17 placental abnormalities (previa or abruptio) which might threaten the neonate;
- 8.3.2.18 known or suspected active genital herpes at the time of admission;
- 8.3.2.19 premature labor (before 37 weeks) or postmaturity (after 43 weeks by dates);
- 8.3.2.20 any other condition or need which will adversely affect the health of the mother or infant during pregnancy, labor, birth, or the immediate postpartum period.
- 8.4 Conditions Requiring Intrapartum Transfer from Birthing Center to a Hospital:
- 8.4.1 a desire for transfer from birth center care;
- 8.4.2 patient inadvertently admitted with any of the listed conditions which preclude birthing center delivery;
- 8.4.3 excessive need for analgesia during labor, or for anesthesia other than pudendal or local;
- 8.4.4 failure of progressive cervical dilation or descent after trial of therapeutic steps capable of being applied at the center;
- 8.4.5 fetal distress without delivery imminent;
- 8.4.6 passage of gross meconium when delivery is not imminent;
- 8.4.7 development of hypertension or preeclampsia;
- 8.4.8 intrapartum hemorrhage (placenta previa or abruptio placentae);
- 8.4.9 prolapsed cord;
- 8.4.10 change to non vertex presentation;
- 8.4.11 evidence of amnionitis;

- 8.4.12 development of other severe medical or surgical problems.
- 8-5 ~~Conditions Requiring for Post-partum Transfer from Birthing Center to a Hospital:~~
 - 8.5.1 ~~Maternal:~~
 - 8.5.1.1 hemorrhage not responding to treatment;
 - 8.5.1.2 need for transfusion;
 - 8.5.1.3 retained placenta greater than 60 minutes;
 - 8.5.1.4 needed for extended observation that prevents discharge home;
 - 8.5.1.5 any other significant morbidity.
 - 8.5.2 ~~Infant:~~
 - 8.5.2.1 Apgar less than 7 at 5 minutes;
 - 8.5.2.2 need for oxygen beyond 5 minutes;
 - 8.5.2.3 signs of prematurity;
 - 8.5.2.4 signs of respiratory distress;
 - 8.5.2.5 jaundice, anemia, polycythemia, or hypoglycemia;
 - 8.5.2.6 persistent hypothermia (less than 97% at 2 hours of life);
 - 8.5.2.7 persistent hypotonia;
 - 8.5.2.8 exaggerated tremors, seizures or irritability;
 - 8.5.2.9 any significant congenital anomaly, seen or suspected;
 - 8.5.2.10 sign of significant birth trauma;
 - 8.5.2.11 any other significant morbidity.

9-0 ~~Equipment and Supplies~~

- 9.1 ~~There shall be appropriate equipment and supplies maintained for the mother and newborn to include, but not be limited to:~~
 - 9.1.1 a bed suitable for labor, birth and recovery;
 - 9.1.2 oxygen with flow meters and masks or equivalent;
 - 9.1.3 mechanical and/or bulb suction (immediately available);
 - 9.1.4 ~~resuscitation equipment to include resuscitation bags, endotracheal tubes and oral airways for the mother and newborn;~~
 - 9.1.5 firm surfaces suitable for resuscitation;
 - 9.1.6 ~~emergency medications, intravenous fluids and related supplies and equipment for both mother and newborn;~~
 - 9.1.7 fetoscope and doppler for fetal monitoring;
 - 9.1.8 a means for monitoring and maintaining the optimum body temperature of the newborn;
 - 9.1.9 infant scale;
 - 9.1.10 a clock with a sweep second hand;
 - 9.1.11 sterile suturing equipment and supplies;
 - 9.1.12 adjustable examination light;
 - 9.1.13 containers for soiled linen and waste materials which shall be closed or covered;
 - 9.1.14 autoclave;
 - 9.1.15 log book for registration of birth which shall contain at least the following:
 - 9.1.15.1 mother's name
 - 9.1.15.2 mother's facility number
 - 9.1.15.3 date of delivery
 - 9.1.15.4 time of delivery
 - 9.1.15.5 mother's age
 - 9.1.15.6 Gravida, Para.
 - 9.1.15.7 newborn weight
 - 9.1.15.8 newborn sex
 - 9.1.15.9 gestational age
 - 9.1.15.10 transport:
 - 9.1.15.10.1 mother
 - 9.1.15.10.2 baby
 - 9.1.15.10.3 where

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9.1.15.10.4	when
9.1.15.10.5	by whom
9.1.15.11	indication for hospital delivery
9.1.15.12	maternal outcome after transfer
9.1.15.13	indication for newborn transfer
9.1.15.14	newborn outcome after transfer
9.1.15.15	death:
9.1.15.15.1	neonatal
9.1.15.15.2	maternal
9.1.15.15.3	stillborn
9.1.15.16	type of delivery
9.1.15.17	condition of newborn at delivery/congenital anomalies
9.1.15.18	delivery person
9.1.15.19	Apgar
9.1.15.20	any required resuscitation.

10.0 Laboratory

10.1 Services: Clinical pathology services shall be available as required by the needs of the patients as determined by the provider staff.

10.1.1 Quality Control: Internal quality control shall be established to insure compliance with generally accepted standards of laboratory practice and procedure.

11.0 Pharmaceutical Services

11.1 There shall be methods, procedures and controls which ensure the appropriation, acquisition, storage, dispensing and administration of drugs and biologicals in accordance with acceptable pharmaceutical practice and applicable state and federal laws and regulations.

11.2 When the facility maintains its own pharmaceutical services, it shall comply with applicable regulations of the Delaware State Board of Pharmacy.

12.0 Housekeeping Services

12.1 Organization: Each facility shall provide housekeeping services which ensure a pleasant, safe and sanitary environment. The facility shall be kept clean and orderly.

12.2 Written Policies and Procedures: Appropriate written policies and procedures shall be established and followed which ensure adequate cleaning and/or disinfection of the physical plant and equipment.

12.3 Storage: All cleaning materials, solutions, cleaning compounds and hazardous substances shall be properly identified and stored in a safe place.

12.4 Rubbish and Refuse Containers: All rubbish and refuse containers in treatment areas shall be impervious, lined and clean.

12.5 Handwashing: All personnel shall wash their hands immediately after handling refuse.

13.0 Laundry and Linens

13.1 Written provisions shall be made for the proper handling of linens and washable goods.

13.2 Outside Laundry: Laundry that is sent out shall be sent to a commercial or hospital laundry. A contract for laundry services performed by commercial laundries for birthing centers shall include these standards.

13.3 Storage: If soiled linen is not processed on a daily basis, a separate, properly ventilated storage area shall be provided.

13.4 Processing: The laundry processing area shall be arranged to allow for an orderly progressive flow of work from the soiled to the clean area.

13.5 Washing Temperatures: The temperature of water during the washing process shall be controlled to provide a minimum temperature of 165 degrees F. for 25 minutes or 130 degrees F. if the soap/detergent supplier will verify that their products will work effectively at that lower temperature. A label indicating same shall be affixed to the laundry machine.

13.6 Packaging: The linens to be returned from the outside laundry to the facility shall be completely wrapped or covered to protect against contamination.

~~13.7 Soiled Linen Transportation: Soiled linen shall be enclosed in an impervious bag and removed from the birth room after each procedure.~~

~~13.8 Soiled Linen Carts: Carts, if used to transport soiled linen, shall be constructed of impervious materials, cleaned and disinfected after each use.~~

~~13.9 Clean Linen Storage: Adequate provisions shall be made for storage of clean linen.~~

~~13.10 Contaminated Linens: Contaminated linens shall be afforded appropriate special treatment by the laundry.~~

~~13.11 Procedures: Adequate procedures for the handling of all laundry and for the positive identifications and proper packaging and storage of sterile linens must be developed and followed.~~

14.0 Maintenance

~~14.1 Written Policies and Procedures: There shall be written policies and procedures for a preventive maintenance program which is implemented to keep the entire facility and equipment in good repair and to provide for the safety, welfare and comfort of the occupants of the buildings).~~

15.0 Pest Control

~~15.1 Pest Control: Adequate written policies and procedures shall be developed and implemented to provide for effective control and eradication of insects and rodents.~~

~~15.2 Outer Air Openings: All openings to the outer air shall be effectively protected against the entrance of insects and rodents, etc., by self-closing doors, closed windows, screens, controlled air currents or, other effective means.~~

16.0 Waste Storage and Disposal

~~16.1 Sewage and Sewer Systems: All sewage shall be discharged into a public sewer system, or if such is not available, shall be disposed of in a manner approved by the Department of Health and Social Services.~~

17.0 General Building

~~17.1 The Birthing Center shall be maintained to provide a safe, clean and sanitary environment.~~

~~17.2 Each birthing room shall be maintained in a condition which is adequate and appropriate to provide for the equipment, staff, supplies and emergency procedures required for the physical and emotional care of a mother, her support persons) and the newborn during birth, labor and the recovery period.~~

~~17.1.1 Birthing rooms shall have at least 120 square feet with minimum room dimension of 10 feet.~~

~~17.1.2 Birthing rooms shall be located to provide unimpeded, rapid access to an exit of the building which will accommodate emergency transportation vehicles and equipment.~~

~~17.3 Patient toilet and bathing facilities.~~

~~17.3.1 A toilet and lavatory shall be maintained in or adjacent to the vicinity of the birthing room.~~

~~17.3.2 A shower shall be available for mother's use.~~

~~17.3.3 All wall, ceiling, floor surfaces, toilets, lavatories, tubs and showers shall be kept clean and in good repair.~~

~~17.4 Hallways and doors providing entry/exit and access into the birthing center and birth room(s) shall be of adequate width and/or configuration to accommodate maneuvering of ambulance stretchers and wheelchairs and other emergency equipment.~~

~~17.5 Water Supply There shall be an adequate supply of hot and cold running water under pressure for human consumption and other purposes which shall be in compliance with Delaware Department of Health and Social Services' Drinking Water Standards.~~

~~17.6 Heating and Ventilation:~~

~~17.6.1 A safe and adequate source of heat capable of maintaining a room temperature of at least 72 degrees F. shall be provided and maintained.~~

~~17.6.2 Ventilation shall remove objectionable odors, excessive heat and condensations.~~

~~17.6.3 Mechanically operated systems shall be used to supply air to and/or exhaust air from soiled workrooms or soiled holding rooms, janitor's closets, soiled storage areas, toilet rooms and from~~

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~~spaces which are not provided with openable windows or outside doors. All fans serving exhaust systems shall be located at the discharge end of the system.~~

~~17.7 Food Service:~~

~~17.7.1~~

~~When birthing center policy provides for allowing the preparation and/or storage of personal food brought in by the patient or families of patients for consumption of that family, there shall be an adequate electric or gas refrigerator and dishwashing facilities.~~

~~17.8 Every bathroom door lock shall be designed to permit the opening of the locked door from the outside in an emergency.~~

~~17.9 There shall be no pets on the premises.~~

~~17.10 Each birthing room shall have a nurse call system.~~

~~17.11 Grab bars and nurse call system shall be available in each patient bathing and toilet area.~~

~~17.12 Automatic regulations of water supply temperature not to exceed 110 degrees F. at shower, bathing and handwashing facilities. Control devices shall be inaccessible to unauthorized personnel.~~

18.0 Fire Safety

~~18.1 Fire Safety in Birthing Centers shall comply with the adopted rules and regulations of the State Fire Prevention Commission. Enforcement of the State Fire Regulations is the responsibility of the State Fire Prevention Commission. All applications for license or renewal of license must include, with the application, a letter certifying compliance by the Fire Marshal having jurisdiction. Notification on non-compliance with the Rules and Regulations of the State Fire Prevention Commission shall be grounds for revocation of license.~~

~~18.2 Accident Prevention~~

~~18.2.1 Emergency numbers shall be located near the telephone.~~

~~18.2.2 There shall be a written evacuation and fire plan for the removal of patients in case of fire and other emergencies. The plan shall be posted in a conspicuous place in the building.~~

~~18.2.3 A simulated drill shall be performed every quarter per work shift. A written record~~

~~of each drill shall be kept on file.~~

19.0 Severability

~~Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be thereby affected.~~

1.0 Definitions

1.1 The following words and terms, when used in this regulation, should have the following meaning unless the context clearly indicates otherwise:

“Acute Postpartum Period” means a minimum of two hours following delivery of the placenta and until the patient is clinically stable.

“Administrator” means a person who is delegated the responsibility for the implementation and proper application of policies, programs and services established for the birthing center.

“Birthing Center” means a public or private health facility other than a hospital which is established for the purpose of delivering babies and providing immediate postpartum care. Non-emergency births are planned to occur away from the mother’s usual residence following a documented period of prenatal care for a normal uncomplicated pregnancy which has been determined to be low risk through a formal risk scoring examination.

“Birthing Service” means the prenatal, intrapartum and postpartum care provided for individuals with uncomplicated pregnancy, labor and vaginal birth and newborns during the recovery period. Services provided in a birthing center shall be provided by a licensed physician, certified nurse midwife or certified professional midwife and a registered nurse. Services provided in a birthing center shall be limited in the following manner:

(1) surgical services shall be limited to those normally performed during uncomplicated childbirth, such as episiotomy and repair, and shall not include operative obstetrics or cesarean sections;

(2) surgical repair of a fourth degree laceration is beyond the scope of practice for the midwife;

(3) labor shall not be inhibited, stimulated or augmented with chemical agents during the first or second stage of labor;

(4) systemic analgesia may be administered and local anesthesia for pudendal block and episiotomy repair may be performed;

(5) general and conductive anesthesia shall not be administered at birthing centers;

(6) patients shall not routinely remain in the facility in excess of twenty-four (24) hours.

“Bylaws” means a set of rules adopted by a birthing center for governing the facility’s operation.

“Certified Midwife” means either a Certified Nurse Midwife or a Certified Professional Midwife as defined in these regulations.

“Certified Nurse Midwife” means an individual who is currently licensed to practice nursing as a nurse midwife pursuant to 24 Del.C. Ch. 19.

“Certified Professional Midwife” means an individual who is currently certified to practice midwifery pursuant to 16 Del.C. §122(3)h and who holds a permit from the Division of Public Health.

“Change of Ownership (CHOW)” see “Modification of Ownership and Control (MOC)”.

“Department” means the Delaware Department of Health and Social Services.

“Governing Body or Other Legal Authority” means the individual, partnership, agency, group, or corporation designated to assume full legal responsibility for the policy determination, management, operation and financial liability of the birthing center.

“Hospital” means a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care for not less than 24 hours in any week of 4 or more non-related individuals suffering from illness, disease, injury or deformity or a place devoted primarily to providing for not less than 24 hours in any week of obstetrical or other medical or nursing care for 2 or more non-related individuals but does not include sanatoriums, rest homes, nursing homes or boarding homes.

“Immediate Jeopardy” means a crisis situation in which the health and safety of patients is at risk. It is a deficient practice which indicates an inability to furnish safe care and services.

“Legal Entity” means a business organizational structure that is recognized as such by 6 Del.C. or 8 Del.C.

“License” means the document issued by the Department which constitutes the authority to receive patients and perform services included within the scope of these regulations.

“Licensee” means the individual, corporation, or public entity with whom rests the ultimate responsibility for maintaining approved standards for the birthing center.

“Low Risk” means normal, uncomplicated prenatal course as determined by adequate prenatal care and prospects for a normal, uncomplicated birth as defined by reasonable and generally accepted criteria of maternal and fetal health.

“Majority Interest” means the largest percentage of ownership interest.

“Minority Interest” means any percentage of ownership less than the majority interest.

“Modification of Ownership and Control (MOC)” means the sale, purchase, transfer or re-organization of ownership rights.

“Owner” means an individual or legal entity with ownership rights of the facility.

“Ownership” means the state or fact of exclusive possession and control of the facility.

“Ownership Interest” means the percentage of ownership an individual or legal entity possesses.

“Patient” means a pregnant female who plans to deliver away from her usual residence following a documented period of prenatal care for a normal uncomplicated pregnancy which has been determined to be low risk through risk status criteria.

“Patient Record” means a written account of all services provided to a patient by the birthing center, as well as other pertinent information necessary to provide care.

“Physician” means an individual currently licensed as such pursuant to 24 Del.C. Ch. 17.

“Plan of Correction” means a birthing center’s written response to findings of regulatory non-compliance. Plans must adhere to the format specified by the licensing agency, must include acceptable timeframes in which deficiencies will be corrected and must be approved by the licensing agency.

“Recovery Period” means that period of time starting at the birth and ending with the discharge of the patient from the birthing center.

“Registered Nurse” means an individual who is currently licensed to practice nursing pursuant to 24 Del.C. Ch. 19.

“Risk Status Criteria” means

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(1) patients are limited to those women who are initially determined to be at low maternity risk and who are evaluated regularly throughout pregnancy to assure that they remain at low risk for a poor pregnancy outcome;

(2) an established written risk assessment system;

(3) determination of general health status and risk assessment by a physician or certified midwife after obtaining a detailed medical history, performing a physical examination and taking into account family circumstances and other social and psychological factors;

(4) acceptance for and continuation of care throughout pregnancy and labor is limited to those women for whom it is appropriate to give birth in a setting where anesthesia is limited to local infiltration of the perineum or a pudendal block and where analgesia is limited;

(5) minimum risk factor criteria shall be applied to all patients prior to acceptance for birthing center services and throughout the pregnancy for continuation of services.

"Survey" means an inspection conducted by a representative of the Department to determine if a licensee is in compliance with Del.C. and this chapter.

"Transfer Agreement" means an agreement with a hospital which has an organized obstetrical services with an obstetrician and a pediatrician on active staff and 24-hour emergency care and cesarean section capability within thirty (30) minutes, providing such service on a continuing basis, stating that said hospital agrees to accept from the birthing center such cases as may need to be referred for whatever reason, and agrees to accept phone consultation for problems that arise in the birthing center.

2.0 Licensing Requirements and Procedures

2.1 General Requirements

2.1.1 No person shall establish, conduct, or maintain in this State any birthing center without first obtaining a license from the Department.

2.1.2 Separate licenses are required for facilities maintained in separate locations, even though operated under the same management.

2.1.3 A license is not transferable from person to person or from one location to another.

2.1.4 The license shall be posted in a conspicuous place on the licensed premises.

2.1.5 Any facility that undergoes a change of ownership is required to re-apply as a new facility.

2.2 Application Process

2.2.1 All persons or entities applying for a license shall submit a written statement of intent to the Department describing the services to be offered by the facility and requesting a licensure application from the Department.

2.2.1.1 The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the Department.

2.2.1.2 Patients shall not be admitted to a facility until a license has been issued.

2.2.1.3 Applicants shall not hold themselves out to the public as being a birthing center until a license has been issued.

2.2.2 Applicants shall submit to the Department the following information:

2.2.2.1 The names, addresses and types of facilities owned or managed by the applicant;

2.2.2.2 Identity of:

2.2.2.2.1 Each officer and director of the corporation if the entity is organized as a corporation;

2.2.2.2.2 Each general partner or managing member if the entity is organized as an unincorporated entity;

2.2.2.2.3 The governing body;

2.2.2.2.4 Proof of not-for-profit status if claiming tax-exempt status; and,

2.2.2.2.5 Any officers/directors, partners, or managing members, or members of a governing body who have a financial interest of five percent (5%) or more in a licensee's operation or related businesses.

2.2.2.3 Disclosure of any officer, director, partner, employee, managing member, or member of the governing body with a felony criminal record;

2.2.2.4 Name of the individual (administrator) who is responsible for the management of the birthing center;

2.2.2.5 Policy and procedure manuals as requested;

2.2.2.6 A list of management personnel, including qualifications; and,

2.2.2.7 Any other information required by the Department.

2.3 Issuance of Licenses

2.3.1 Probationary license

2.3.1.1 A probationary license shall be granted for a period of one (1) year to all birthing

centers:

2.3.1.1.1 Which have completed the blueprint and construction approval

processes; and

2.3.1.1.2 Which have completed the application process and whose

policies and procedures have demonstrated willingness to comply with the rules and regulations pertaining to

birthing center licensure; or

2.3.1.1.3 Which have experienced a change of ownership (CHOW) and

have completed the application process demonstrating a willingness to continue to comply with the rules and

regulations pertaining to birthing center licensure.

2.3.1.2 All birthing centers shall have an on-site survey during the first year of operation.

2.3.1.3 A probationary license will permit a facility to hire personnel and establish a

patient caseload.

2.3.1.4 A probationary license may not be renewed. A birthing center, at the time of an initial on-site survey, must meet the definition of a birthing center as contained within these regulations and must be in operation and caring for patients.

2.3.1.5 Birthing centers which, at the time of an on-site survey, do not meet the definition of a birthing center or which are not in substantial compliance with these regulations will not be granted a license.

2.3.2 Provisional license

2.3.2.1 A provisional license shall be granted, for a period of less than one year, to all

birthing centers

regulations; or

2.3.2.1.1 Which are not in substantial compliance with these rules and

these regulations.

2.3.2.1.2 Which fail to renew a license within the timeframe prescribed by

2.3.2.2 The Department shall designate the conditions and the time period under which a provisional license is issued.

2.3.2.3 A provisional license may not be renewed unless a Plan of Correction for coming into substantial compliance with these rules and regulations, has been approved by the Department and implemented by the birthing center.

2.3.2.4 A license will not be granted pursuant to 2.3.3. after the provisional licensure period to any facility that is not in substantial compliance with these rules and regulations.

2.3.3 License

2.3.3.1 A license shall be granted, for a period of one year (12 months), to all birthing centers which are in substantial compliance with these rules and regulations at the time of application.

2.3.3.2 A license shall be effective for a twelve-month period following date of issue and shall expire one year following the issue date, unless it is: modified to a provisional, suspended or revoked, or surrendered prior to the expiration date.

2.3.3.3 Existing birthing centers must apply for renewal of licensure at least thirty (30) calendar days prior to the expiration date of the license.

2.3.3.4 A license may not be issued to a birthing center which is not in substantial compliance with these regulations or whose deficient practices present an immediate threat to the health and safety of its patients.

2.4 Disciplinary proceedings

2.4.1 The Department may impose any of the following sanctions (subsection 2.4.2 of this section) singly or in combination when it finds a licensee or former licensee is guilty of any offense described herein:

2.4.1.1 Violated any of these regulations;

2.4.1.2 Failed to submit a reasonable timetable for correction of deficiencies;

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2.4.1.3 Exhibited a pattern of cyclical deficiencies which extends over a period of two or more years;

2.4.1.4 Failed to correct deficiencies in accordance with a timetable submitted by the applicant and agreed upon by the Department;

2.4.1.5 Engaged in any conduct or practices detrimental to the welfare of the patients;

2.4.1.6 Exhibited incompetence, negligence, or misconduct in operating the birthing center or in providing services to patients;

2.4.1.7 Mistreated or abused patients cared for by the birthing center; or

2.4.1.8 Refused to allow the Department access to the facility or records for the purpose of conducting surveys as deemed necessary by the Department.

2.4.2 Disciplinary sanctions:

2.4.2.1 Permanently revoke a license.

2.4.2.2 Suspend a license.

2.4.2.3 Issue a letter of reprimand.

2.4.2.4 Place a licensee on provisional status and require the licensee to:

2.4.2.4.1 Report regularly to the Department upon the matters which are the basis of the provisional status.

2.4.2.4.2 Limit practice to those areas prescribed by the Department.

2.4.2.4.3 Suspend all admissions.

2.4.2.5 Refuse a license.

2.4.2.6 Refuse to renew a license.

2.4.2.7 Otherwise discipline.

2.4.3 Imposition of Disciplinary Action

2.4.3.1 Before any disciplinary action under this chapter is taken (except as authorized by 2.4.4):

2.4.3.1.1 The Department shall give twenty (20) calendar days written notice to the holder of the license, setting forth the reasons for the determination.

2.4.3.1.2 The suspension or revocation shall become final twenty (20) calendar days after the mailing of the notice unless the licensee, within such twenty (20) calendar day period, shall give written notice of the facility's desire for a hearing.

2.4.3.1.3 If the licensee gives such notice, the facility shall be given a hearing before the Secretary of the Department or her/his designee and may present such evidence as may be proper.

2.4.3.1.4 The Secretary of the Department or her/his designee shall make a determination based upon the evidence presented.

2.4.3.1.5 A written copy of the determination and the reasons upon which it is based shall be sent to the facility.

2.4.3.1.6 The decision shall become final twenty (20) calendar days after the mailing of the determination letter unless the licensee, within the twenty (20) calendar day period, appeals the decision to the appropriate court of the State.

2.4.4 Order to immediately suspend a license

2.4.4.1 In the event the Department identifies activities which the Department determines present an immediate or imminent danger to the public health, welfare and safety requiring emergency action, the Department may issue an order temporarily suspending the licensee's license, pending a final hearing on the complaint. No order temporarily suspending a license shall be issued by the Department, with less than 24 hours prior written or oral notice to the licensee or the licensee's attorney so that the licensee may be heard in opposition to the proposed suspension. An order of temporary suspension under this section shall remain in effect for a period not longer than 60 calendar days from the date of the issuance of said order, unless the suspended licensee requests a continuance of the date for the final hearing before the Department. If a continuance is requested, the order of temporary suspension shall remain in effect until the Department has rendered a decision after the final hearing.

2.4.4.2 The licensee, whose license has been temporarily suspended, shall be notified forthwith in writing. Notification shall consist of a copy of the deficiency report and the order of temporary suspension pending a hearing and shall be personally served upon the licensee or sent by certified mail, return

receipt requested, to the licensee's last known address.

2.4.4.3 A licensee whose license has been temporarily suspended pursuant to this section may request an expedited hearing. The Department shall schedule the hearing on an expedited basis provided that the Department receives the licensee's request for an expedited hearing within 5 calendar days from the date on which the licensee received notification of the Department's decision to temporarily suspend the licensee's license.

2.4.4.4 As soon as possible, but in no event later than 60 calendar days after the issuance of the order of temporary suspension, the Department shall convene for a hearing on the reasons for suspension. In the event that a licensee, in a timely manner, requests an expedited hearing, the Department shall convene within 15 calendar days of the receipt by the Department of such a request and shall render a decision within 30 calendar days.

2.4.4.5 In no event shall an order of temporary suspension remain in effect for longer than 60 calendar days unless the suspended licensee requests an extension of the order of temporary suspension pending a final decision of the Department. Upon a final decision of the Department, the order of temporary suspension shall be vacated in favor of the disciplinary action ordered by the Department.

2.4.5 Termination of license

2.4.5.1 Termination of a license to provide services as a birthing center occurs secondary to:

2.4.5.1.1 Revocation of a license or the voluntary surrender of a license in avoidance of revocation action.

2.4.5.2 Termination of rights to provide services extends to:

2.4.5.2.1 Facility;

2.4.5.2.2 Owner(s);

2.4.5.2.3 Officers/Directors, partners, managing members, or members of a governing body who have a financial interest of five percent (5%) or more in the birthing center; and

2.4.5.2.4 Corporation officers.

2.5 Modification of Ownership and Control (MOC)

2.5.1 Any proposed MOC must be reported to the Department a minimum of thirty (30) calendar days prior to the change.

2.5.2 A MOC voids the current license in possession of the facility.

2.5.3 A MOC may include but is not limited to:

2.5.3.1 Transfer of full ownership rights to a new owner;

2.5.3.2 Transfer of the majority interest to a new owner;

2.5.3.3 Transfer of ownership interests that result in the owner with the majority interest becoming a minority interest owner;

2.5.3.4 Transfer or re-organization that results in an additional majority interest that is equal in ownership rights; or,

2.5.3.5 Transfer resulting in a measurable impact upon the operational control of the facility.

2.6 Fees

2.6.1 Fees shall be in accordance with 16 Del.C. §122 (3)p.

2.7 Inspection

2.7.1 A representative of the Department shall periodically inspect every birthing center for which a license has been issued under this chapter. Inspections by authorized representatives of the Department may occur at any time and may be scheduled or unannounced.

2.8 Notice to Patients

2.8.1 The birthing center shall notify each patient, the patient's attending physician (as appropriate) and any third-party payers at least thirty (30) calendar days before the voluntary surrender of its license, or as directed under an order of denial, revocation, or suspension of license issued by the Department.

3.0 General Requirements

3.1 The birthing center shall not admit, nor continue to care for, patients whose needs cannot be met by the facility.

3.1.1 A physician or certified midwife shall make a determination of general health status and

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risk factors after obtaining a detailed medical history, performing a physical examination and taking into account family circumstances and other social and psychological factors.

3.1.2 Acceptance for and continuation of care throughout pregnancy and labor is limited to those women for whom it is appropriate to give birth in a setting where anesthesia is limited to local infiltration of the perineum or a pudendal block and where analgesia is limited.

3.2 The birthing center shall utilize an established written risk assessment system.

3.2.1 Minimum risk factor criteria shall be applied to all patients prior to acceptance for birthing center services and throughout the pregnancy for continuation of services.

3.2.2 Patients with any minimum risk factors, including but not limited to those listed in 3.2.3, shall be referred to a physician for continuing maternity care and hospital delivery.

3.2.3 Minimum risk factors include but may not be limited to:

3.2.3.1 Patient is less than 16 years of age.

3.2.3.2 Major medical problems including but not limited to:

3.2.3.2.1 Chronic hypertension;

3.2.3.2.2 Chronic heart disease;

3.2.3.2.3 Pulmonary embolus;

3.2.3.2.4 Congenital heart defects;

3.2.3.2.5 Severe renal disease;

3.2.3.2.6 Lupus erythematosus;

3.2.3.2.7 Drug or alcohol addiction;

3.2.3.2.8 Required use of anticonvulsant drugs;

3.2.3.2.9 Bleeding disorder or hemolytic disease;

3.2.3.2.10 Paraplegia/quadruplegia;

3.2.3.2.11 Diabetes mellitus;

3.2.3.2.12 Cognitive impairment that would interfere with the ability to follow

directions:

3.2.3.2.13 Morbid obesity;

3.2.3.2.14 Active genital herpes, syphilis or HIV positive;

3.2.3.2.15 The need for general or conduction anesthesia;

3.2.3.2.16 The need for a caesarian section; or

3.2.3.2.17 Serious congenital anomaly in a previous birth whose recurrence

cannot be ruled out by antenatal evaluation.

3.2.3.3 Previous history of significant obstetrical complications including but not limited to:

3.2.3.3.1 Rh sensitization;

3.2.3.3.2 Previous uterine wall surgery including cesarean section;

3.2.3.3.3 Five or more term pregnancies;

3.2.3.3.4 Nullipara of greater than 40 years of age;

3.2.3.3.5 Multipara over 45 years of age; or

3.2.3.3.6 Previous placenta abruption.

3.2.3.4 Significant signs or symptoms of:

3.2.3.4.1 Hypertension;

3.2.3.4.2 Toxemia;

3.2.3.4.3 Polyhydramnios or oligohydramnios;

3.2.3.4.4 Abruptio placenta;

3.2.3.4.5 Chorioamnionitis;

3.2.3.4.6 Malformed fetus;

3.2.3.4.7 Fetal distress;

3.2.3.4.8 Multiple gestation;

3.2.3.4.9 Intrauterine growth retardation or macrosomia;

3.2.3.4.10 Thrombophlebitis; or

3.2.3.4.11 Pyelonephritis.

3.3 All records maintained by the birthing center shall at all times be open to inspection by the authorized representatives of the Department.

3.4 No policies shall be adopted by the birthing center which are in conflict with these regulations.

3.5 The birthing center shall establish written policies regarding the rights and responsibilities of patients.

3.6 The birthing center shall establish policies and procedures that address the handling and documentation of incidents, accidents and medical emergencies.

3.7 Reports of incidents, accidents and medical emergencies shall be kept on file at the facility.

3.8 The birthing center shall establish policies which control the exposure of patients and staff to persons with communicable diseases.

3.9 The birthing center shall establish policies which require reporting of all reportable communicable diseases to the Department.

3.10 A procedure, approved by the Department and including the patients and families right to report concerns/complaints to the Department at a telephone number established for that purpose, shall be established to enable patients and their families to have their concerns addressed without fear of reprisal.

3.11 The birthing center shall advise the Department in writing within fifteen (15) calendar days following any change in the designation of the director/administrator or other administrative personnel within the facility.

3.12 The birthing center may not establish separate facilities without first contacting and receiving approval from the Department.

3.13 The birthing center may contract for services to be provided to its patients. Individuals providing services under contract must meet the same requirements as those persons employed directly by the facility.

3.14 The director/designee shall be available at all times during the operating hours of the birthing center.

3.15 The birthing center must permit photocopying of any records or other information by, or on behalf of authorized representatives of the Department, as necessary to determine or verify compliance with these regulations.

3.16 Report of Major Adverse Incidents

3.16.1 The facility must report all major adverse incidents involving a patient to the Department within forty-eight (48) hours in addition to other reporting requirements required by law.

3.16.2 A major adverse incident includes but is not limited to:

3.16.2.1 Suspected abuse, neglect, mistreatment, financial exploitation of a patient, solicitation or harassment;

3.16.2.2 An accident that causes injury to a patient; and

3.16.2.3 The unexpected death of a patient.

3.16.3 Major adverse incidents must be investigated by the facility and a report must be generated.

3.16.4 A complete report will be forwarded to the Department within thirty (30) calendar days of occurrence or of the date that the facility first became aware of the incident.

4.0 Governing Body

4.1 Each birthing center shall have an organized governing body (governing authority, owner or person(s) designated by the owner).

4.2 The governing body shall be ultimately responsible for:

4.2.1 The management and control of the facility;

4.2.2 The assurance of quality care and services;

4.2.3 Compliance with all federal, state and local laws and regulations;

4.2.4 Adoption of written policies and procedures which describe the functions and services of the birthing center;

4.2.5 Providing a sufficient number of appropriately qualified personnel;

4.2.6 Providing physical resources and equipment, supplies and services for the provision of safe, effective and efficient delivery of services for normal uncomplicated pregnancies to low risk mothers;

4.2.7 Developing an organizational structure establishing lines of authority and responsibility;

4.2.8 Appointing a qualified administrator;

4.2.9 Appointing members of the clinical staff, ensuring their competence and delineating their clinical privileges;

4.2.10 Conducting meetings, when the governing body is more than one person, at least annually

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and maintaining written minutes of the meeting(s):

4.2.11 Annual review and evaluation of the birthing center policies and services; and

4.2.12 Other relevant health and safety requirements.

5.0 Administration/Personnel

5.1 Administrator

5.1.1 There shall be a full-time facility administrator.

5.1.2 The administrator shall be responsible for implementing the policies adopted by the governing body.

5.1.3 The administrator shall have the overall authority and responsibility for the daily operation and management of the facility.

5.1.4 The administrator shall designate, in writing, a qualified person to act in her/his behalf during her/his absence.

5.1.5 The administrator shall review facility policies and procedures at least annually and report to the governing body on the review.

5.1.6 The authority, duties and responsibilities of the administrator shall be defined in writing and shall include but not be limited to:

5.1.6.1 Interpretation and execution of the policies of the facility;

5.1.6.2 Program planning, budgeting, management and evaluation;

5.1.6.3 Maintenance of the facility's compliance with licensure regulations and standards;

5.1.6.4 Preparation and submission of required reports;

5.1.6.5 Distribution of a written plan for the delegation of administrative responsibilities and functions in the absence of the director;

5.1.6.6 Documentation of complaints relating to the conduct or actions by licensed health care professionals and action taken secondary to the complaints; and

5.1.6.7 Conducting or supervising the resolution of complaints received from patients in the delivery of care or services received at the facility.

5.2 Clinical Director

5.2.1 The clinical director shall be responsible for implementing, coordinating and assuring quality of patient care services.

5.2.2 The clinical director shall:

5.2.2.1 Be currently licensed as a physician or nurse midwife; and

5.2.2.2 Have training and expertise in obstetric and newborn services to ensure adequate supervision of patient care services.

5.2.3 The authority, duties and responsibilities of the clinical director shall be defined in writing and shall include but not be limited to:

5.2.3.1 Review and update of facility policies, procedures and protocols;

5.2.3.2 Review and evaluate clinical staff privileges;

5.2.3.3 Recommend, to the governing body, names of qualified personnel to perform approved procedures and the corresponding clinical staff privileges to be granted;

5.2.3.4 Coordinate, direct and evaluate clinical operations of the facility;

5.2.3.5 Evaluate and recommend to the administrator the type and amount of equipment needed in the facility;

5.2.3.6 Ensure that qualified staff are on the premises when patients are in the facility;

5.2.3.7 Ensure clinical staff documentation is recorded immediately and reflects a description of care given;

5.2.3.8 Ensure that planned birthing center services are within the scope of privileges granted to the clinical staff;

5.2.3.9 Ensure the accuracy of public education information materials and activities in relation to pregnancy and birth, mother and infant care, and the facility; and,

5.2.3.10 Recommend to the administrator appropriate remedial action and disciplinary action, when necessary, to correct violations of clinical protocols.

5.3 Clinical Staff

5.3.1 There shall be a single organized professional staff consisting of physicians, nurse

midwives or certified professional midwives and registered nurses.

5.3.2 The organized professional staff shall have the overall responsibility for the quality of all clinical care provided to patients.

5.3.3 There shall be sufficient, qualified personnel available to perform the services offered by the facility.

5.3.4 All clinical staff who perform services in the facility who are required by state law to be licensed, registered or certified shall have valid licenses, registrations or certificates.

5.3.5 A physician certified by the American Board of Obstetrics and Gynecology or who is qualified and authorized by training and experience in obstetrics and gynecology shall be immediately available by telephone twenty-four hours a day.

5.3.6 Each physician providing services for the facility must demonstrate hospital admitting privileges for patients who develop complications.

5.3.7 Each certified mid-wife (nurse or professional) providing services for the facility must provide proof of a back-up agreement with a physician who will accept consultation calls and referrals twenty-four (24) hours a day, seven (7) days a week.

5.3.7.1 The back-up physician must demonstrate hospital admitting privileges for patients who develop complications.

5.3.8 The facility shall establish a job description for each classification of position, which clearly delineates qualifications, duties, authority, and responsibilities inherent in each position.

5.3.9 A physician or certified mid-wife shall be present at each birth and until the woman and newborn are stable postpartum.

5.3.9.1 A second person in addition to the above, who is a registered nurse with adult and infant resuscitation skills, shall be present during the delivery.

5.3.10 A certified mid-wife or registered nurse with adult and infant resuscitation skills shall be present at the facility at all times when a patient is present.

5.3.11 Clinical staff shall comply with facility policies and procedures.

5.3.12 Clinical staff shall comply with applicable professional practice standards.

5.4 Written Policies

5.4.1 Policy manuals shall be prepared and followed which outline the procedures and practices of the facility.

5.4.2 There shall be written policies regarding the screening criteria, risk status criteria and procedures for identifying:

5.4.2.1 Low-risk patients who shall be eligible for birthing services offered by the birthing center, and

5.4.2.2 Individuals who shall be ineligible for birthing services at the birthing center.

5.4.3 There shall be written policies regarding:

5.4.3.1 Identification and transfer of patients who, during the course of pregnancy, are determined to be ineligible, and

5.4.3.2 Identification and transfer of patients who, during the course of labor or recovery, are determined to be ineligible for continued care in the birthing center.

5.4.4 There shall be written policies for:

5.4.4.1 Consultation, back-up services, transfer and transport of a newborn or maternal patient to a hospital;

5.4.4.2 Routine and emergency care of both the maternal and the fetus or newborn patient until completion of care by the birthing center either through completion of the care program or through transfer to another level of care;

5.4.4.3 Care following discharge for both the patient and the newborn;

5.4.4.4 The provision of education to patients, family and support persons in childbirth and newborn care;

5.4.4.5 Birth reporting requirements; and

5.4.4.6 Infection control.

5.4.5 There shall be written personnel policies, including but not limited to:

5.4.5.1 Pre-employment requirements;

5.4.5.2 Position descriptions;

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5.4.5.3 Orientation of all new employees;

5.4.5.4 Inservice education;

5.4.5.5 Annual performance review and competency; and

5.4.5.6 The process of appointment to the professional staff whereby it can satisfactorily be determined that the individual is appropriately licensed and qualified for the privileges and responsibilities to be given.

5.4.6 There shall be written policies designed to enhance safety within the facility and on its premises and to minimize hazards to patients, staff and visitors including:

5.4.6.1 Rules and practices pertaining to personnel, equipment, liquids, drugs and hazards to children including but not limited to electrical outlets, unsafe toys, stairs, storage cabinets, kitchen cabinets and outdoor areas;

5.4.6.2 Reporting and investigation of accidental events and corrective action taken;

5.4.6.3 Dissemination of safety-related information to employees and users of the facility;

5.4.6.4 Syringe and needle storage, handling and disposal;

5.4.6.5 Storage and handling of drugs and biologicals;

5.4.6.6 A preventative maintenance program which is implemented to keep the entire facility and equipment in good repair and to provide for the safety, welfare and comfort of the occupants of the building(s);

5.4.6.7 Housekeeping;

5.4.6.8 Safe storage of cleaning materials and pesticides and other potentially toxic materials;

5.4.6.9 Safe storage and handling of soiled linen and clothing;

5.4.6.10 Pest control; and

5.4.6.11 Waste disposal.

5.4.7 Policies shall be reviewed and dated annually and revised as necessary.

5.4.8 Policies shall be made available to representatives of the Department upon request.

5.5 Personnel Records

5.5.1 Records of each employee/contractor shall be kept current and available upon request by authorized representatives of the Department.

5.5.2 The facility shall maintain individual personnel records which shall contain at least:

5.5.2.1 Written verification of compliance with pre-employment requirements;

5.5.2.2 Documentation of participation in a formal orientation program to the facility;

5.5.2.3 Copies of professional licenses, registrations or certifications;

5.5.2.4 Documentation of competence;

5.5.2.5 Educational preparation and work history;

5.5.2.6 Written performance reviews (annually); and

5.5.2.7 A letter of appointment specifying conditions of employment.

5.6 Employment Practices

5.6.1 Health History

5.6.1.1 All new personnel shall be required to have a physical examination prior to providing care.

5.6.1.1.1 The physical examination must have been completed within 3 months prior to initial employment.

5.6.1.1.2 A copy of the physical examination shall be maintained in individual files.

5.6.1.2 Minimum requirements for tuberculosis (TB) testing are those currently recommended by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services. Testing must be completed within ninety (90) calendar days prior to provision of birthing center services and annually thereafter.

5.6.1.2.1 No person found to have active TB in an infectious stage shall be permitted to give care or service to patients.

5.6.1.2.2 Any person having a positive skin test but a negative chest X-ray must complete a statement annually attesting that they have experienced no symptoms which may indicate active TB infection.

5.6.1.2.3 A report of all TB test results and all attestation statements shall be on file.

5.6.2 It is the responsibility of the birthing center to ensure that personnel are proficient to carry out the care assigned in a safe, effective and efficient manner.

5.6.3 Any individual who cannot adequately perform her/his duties or who may jeopardize the health or safety of the patients shall be relieved of his duties and removed from the facility until such time as the condition is resolved. This includes infections of a temporary nature.

6.0 Patient Care

6.1 Admissions

6.1.1 Only those mothers who demonstrate the potential for a normal uncomplicated course of pregnancy and labor may be accepted for childbirth at the facility.

6.1.1.1 The facility must utilize a written risk assessment system to determine risk status criteria.

6.1.1.2 Those mothers determined to be at risk as defined in Sec. 3.2 must be referred to a physician for care.

6.1.2 All patients admitted to the facility shall be under the direct care of a member of the clinical staff and agree to remain at the facility not less than four (4) hours postpartum.

6.1.3 The facility and the patient shall have a written agreement for services which shall include:

6.1.3.1 An explanation of the services available;

6.1.3.2 An explanation of services not available, including types of anesthesia;

6.1.3.3 The location (distance and driving time) of the nearest hospital providing obstetrical/gynecological/pediatric services; and

6.1.3.4 A statement of charges for services.

6.1.4 Every woman seeking birthing center services shall have an initial assessment by a professional member of the staff to determine eligibility for admission.

6.2 Prenatal Care

6.2.1 A childbirth education program shall be provided or made available by the birthing center. The program shall include but not be limited to:

6.2.1.1 Prenatal care and its outcome;

6.2.1.2 Care of the newborn;

6.2.1.3 Instruction regarding labor and delivery; and

6.2.1.4 Preparation for participation in the childbirth process.

6.2.2 Prenatal care shall be in accordance with acceptable standards.

6.2.3 When, in the course of prenatal care, risk factors are identified which preclude childbirth at the facility, the patient shall be referred for care to a qualified physician.

6.2.4 Prenatal visits shall be scheduled:

6.2.4.1 At least every four (4) weeks until the twenty-eighth (28th) week;

6.2.4.2 At least every two (2) weeks between the twenty-eighth (28th) week and the thirty-sixth (36th) week; and

6.2.4.3 At least every week between the thirty-sixth (36th) week and delivery.

6.3 Intrapartum Care

6.3.1 A professional staff member must be present and available to the patient at all times during her stay at the facility.

6.3.2 The professional staff shall monitor the progress of labor and the condition of the patient and fetus at sufficient frequent intervals to identify abnormalities or complications at the earliest possible time.

6.3.3 If complications occur in the course of labor and delivery, it is the responsibility of the professional staff to arrange for the patient to be transferred to the hospital.

6.3.4 The family or support persons shall be instructed as needed to assist the patient during labor and delivery.

6.3.5 Interventions shall be limited to those required to accomplish a vaginal delivery.

6.3.6 Labor shall not be inhibited, stimulated or augmented with chemical agents.

6.3.7 No surgical procedures shall be performed except episiotomy, repair of episiotomy or laceration, or circumcision.

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6.3.8 Systemic analgesics and local anesthesia may be administered under the following conditions:

6.3.8.1 The professional staff member who administers the systemic analgesic is legally authorized to do so:

6.3.8.2 The dosage and drug are specifically noted in the protocols for clinical services: and

6.3.8.3 The use of such drugs is in conformance with the policies and procedures of the facility and with national standards.

6.3.9 General and conduction anesthesia shall not be administered.

6.4 Postpartum Care

6.4.1 The patient shall remain at the facility a minimum of four (4) hours postpartum after a normal uncomplicated birth.

6.4.2 Postpartum care shall be delivered in accordance with acceptable professional standards and legal requirements.

6.4.3 The newborn shall be referred to a physician or a hospital for any condition requiring medical care.

6.4.4 The condition of the patient shall be monitored frequently to detect signs of hemorrhage or other complications requiring prompt transfer to a hospital.

6.4.5 The patient shall be counseled regarding breast feeding, perineal care, family planning, signs of common complications, activities and exercise, sexual relations, care and feeding of the newborn and changing family relationships.

6.4.6 A member of the facility's professional staff must be accessible to patients by telephone, twenty-four (24) hours a day.

6.4.7 The facility must make provisions for appropriate follow-up care for the patient and newborn after discharge.

6.5 Management of Emergencies

6.5.1 Criteria shall be established to determine risk status which requires medical consultation or transfer to a hospital and shall include but not be limited to:

6.5.1.1 Premature labor (occurring at less than thirty-seven (37) weeks gestation):

6.5.1.2 Development of hypertension or pre-eclampsia:

6.5.1.3 Non-vertex presentation

6.5.1.4 Failure to progress in labor

6.5.1.5 Evidence of an infectious process:

6.5.1.6 Suspected placenta previa or abruption:

6.5.1.7 Hemorrhage of greater than 500 cc of blood:

6.5.1.8 Premature rupture of the membranes (occurring more than twelve (12) hours before onset of active labor):

6.5.1.9 Suspected congenital anomaly:

6.5.1.10 Anemia consisting of less than ten (10) grams of hemoglobin per one hundred (100) milliliters of blood or thirty (30) percent hematocrit:

6.5.1.11 Persistent fetal tachycardia (heart rate greater than 160 beats per minute), repetitive fetal bradycardia (heart rate less than 120 beats per minute) or undiagnosed abnormalities of the fetal heart tones:

6.5.1.12 Rising antibody titre of any type that is known to affect fetal well-being:

6.5.1.13 Excessive need for analgesia during labor, or for anesthesia other than pudendal or local; or

6.5.1.14 Persistent hypothermia in the newborn.

6.5.2 Criteria shall be established to determine risk status which requires immediate emergency transfer to a hospital and shall include but not be limited to:

6.5.2.1 Prolapsed cord:

6.5.2.2 Uncontrolled hemorrhage:

6.5.2.3 Need for transfusion:

6.5.2.4 Placenta abruption:

6.5.2.5 Retained placenta greater than sixty (60) minutes:

- 6.5.2.6 Convulsions;
- 6.5.2.7 Thick meconium staining at the time of membrane rupture;
- 6.5.2.8 Apgar score of seven (7) or less at five (5) minutes;
- 6.5.2.9 Fetal heart rate of ninety (90) or less beats per minute for three (3) minutes;
- 6.5.2.10 Major anomaly of the newborn;
- 6.5.2.11 Respiratory distress in the newborn;
- 6.5.2.12 Newborn weight less than 2500 grams;
- 6.5.2.13 Newborn need for oxygen beyond five (5) minutes; or
- 6.5.2.14 Signs of prematurity.

6.6 Food Service

6.6.1 The facility may provide patients and families with nutritious liquids and snacks as needed.

6.6.2 When the facility policy allows for the preparation and/or storage of food brought in by the patients or families:

Fahrenheit or lower:

6.6.2.1 There shall be refrigerator able to maintain cold foods at a temperature of 45°

6.6.2.2 There shall be a stove and/or a microwave oven;

6.6.2.3 There shall be dry storage and counter space; and

6.6.2.4 There shall be a dishwashing machine and/or a sink.

6.6.3 Food may not be stored together with medications requiring refrigeration.

6.6.4 All refrigerated food items must be labeled and dated.

6.6.5 If applicable, the facility's food services will be subject to the food establishment requirements.

6.7 Pharmaceutical Service

6.7.1 Medicines and drugs maintained at the facility shall be properly stored and secured in specifically designated cabinets, closets, drawers or storerooms.

6.7.2 Only authorized persons shall have access to storage enclosures.

6.7.3 Controlled drugs shall be stored in accordance with state and federal laws.

6.7.3.1 Records shall be kept on the receipt and disposition of all controlled substances.

6.7.4 Medicines and drugs shall not be administered to patients unless ordered by an independent licensed practitioner with prescriptive authority.

6.7.4.1 Orders for medicines and drugs must be in writing and must be signed by the prescribing licensed practitioner.

6.7.4.1.1 Verbal and telephone orders may only be received by a registered nurse, midwife, physician or pharmacist.

6.7.4.1.2 All verbal and telephone orders must be countersigned by the ordering practitioner within forty-eight (48) hours of the order.

6.7.4.2 Pain control should depend primarily on close emotional support and adequate preparation for the birth experience.

6.7.5 All medicines and drugs must be properly labeled according to state and federal law.

6.7.6 Medicines and drugs requiring refrigeration must be stored and secured in a refrigerator for that purpose.

6.7.7 Medicines and drugs shall be administered only by persons authorized and licensed to administer medicines and drugs.

6.7.8 When the facility maintains its own pharmaceutical services, it shall comply with applicable state laws and regulations.

6.8 Laboratory Service

6.8.1 Clinical pathology services shall be available as required by the needs of the patients and as determined by the facility staff.

6.8.2 The facility may either provide a clinical laboratory or make contractual arrangement with an outside laboratory.

7.0 **Clinical Record**

7.1 A clinical record shall be maintained for every patient and newborn admitted to and cared for in the facility.

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7.2 A person knowledgeable in the management of clinical records shall be responsible for the proper administration and functioning of the clinical records section.

7.3 There shall be an identified locked area for clinical record storage at the facility.

7.4 Clinical records shall be protected from loss, damage and unauthorized use.

7.5 The facility shall ensure that each clinical record is treated with confidentiality and is maintained according to professional standards of practice.

7.6 The clinical records shall contain sufficient accurate documentation of significant clinical information pertaining to the patient and newborn to justify the diagnosis and warrant the treatment and end results including but not limited to:

7.6.1 Complete patient identification including a unique identification number;

7.6.2 Admission date and time;

7.6.3 Discharge date and time;

7.6.4 Admission diagnosis;

7.6.5 Medical history;

7.6.6 Physical examination completed prior to the birth;

7.6.7 Labor and delivery record;

7.6.8 Diagnostic tests, laboratory and x-ray reports when appropriate;

7.6.9 Progress notes;

7.6.10 Properly executed informed consent;

7.6.11 Record of anesthesia, analgesia and medications administered during the course of labor, delivery and postpartum;

7.6.12 Condition upon discharge;

7.6.13 Final diagnosis;

7.6.14 Instructions for follow-up care of the patient and newborn;

7.6.15 Prenatal care record including at least:

7.6.15.1 Hemoglobin/Hematocrit;

7.6.15.2 Urine screening;

7.6.15.3 Prenatal blood serology;

7.6.15.4 RH factor determination;

7.6.15.5 Rubella titre; and

7.6.15.6 Prenatal instructions.

7.7 Newborn clinical records shall be maintained separately and shall include:

7.7.1 Date and hour of birth;

7.7.2 Birth weight;

7.7.3 Birth length;

7.7.4 Period of gestation;

7.7.5 Sex;

7.7.6 Condition of newborn on delivery, including APGAR rating and any resuscitative measures taken;

7.7.7 Mother's name and unique identification number;

7.7.8 Record of:

7.7.8.1 Ophthalmic prophylaxis;

7.7.8.2 Administration of RH immune globulin as appropriate;

7.7.8.3 Genetic screening; and

7.7.8.4 Fetal monitoring.

7.7.9 Birth and discharge physical examination;

7.7.10 Copy of birth certificate; and

7.7.11 Instructions for follow-up care.

7.8 All entries in the clinical record must be signed and dated by the responsible person in accordance with the facility's policies and procedures.

7.9 Computerized clinical records must be printed by the facility as requested by authorized representatives of the Department.

7.10 The facility records shall be retained in a retrievable form until destroyed.

7.10.1 Records of adults (18 years of age and older) shall be retained for a minimum of six (6)

years after the last date of service before being destroyed.

7.10.2 Records of minors (less than 18 years of age) shall be retained for a minimum of six (6) years after the patient reaches eighteen (18) years of age.

7.10.3 The facility must establish procedures for the notification to patients regarding the pending destruction of clinical records.

7.10.4 All records must be disposed of by shredding, burning, or other similar protective measure in order to preserve the patients' rights of confidentiality.

7.10.5 Documentation of record destruction must be maintained by the facility.

7.11 The facility must develop acceptable policies for authentication of any computerized records.

8.0 Physical Environment

8.1 Laundry and Linens

8.1.1 An adequate supply of clean linen or disposable materials shall be maintained.

8.1.2 Clean linen shall be stored, handled and transported to prevent contamination.

8.1.3 Linens shall be maintained in good repair.

8.1.4 Soiled linen shall be handled, transported, stored and processed in a manner to prevent leakage and the spread of infection.

8.1.5 There shall be distinct areas for the storage and handling of clean and soiled linens.

8.1.6 Soiled linen not processed on a daily basis must be stored in a separate properly ventilated storage area.

8.1.7 Soiled linen must be removed from the birth room after each procedure.

8.1.8 Carts used to transport soiled linen must be constructed of impervious materials and must be cleaned and disinfected after each use.

8.1.9 Laundry processed on-site:

8.1.9.1 The laundry processing area shall be arranged to allow for an orderly progressive flow of work from the soiled to the clean area.

8.1.9.2 The temperature of water during the washing process shall be controlled to provide a minimum temperature of 165° Fahrenheit for 25 minutes or 130° Fahrenheit if the soap/detergent supplier will verify that their products will work effectively at that lower temperature. A label indicating same shall be affixed to the laundry machine.

8.1.10 Laundry processed off-site:

8.1.10.1 The facility must have a contract with a commercial or hospital laundry.

8.1.10.2 Clean linens returned to the facility must be completely wrapped or covered to protect against contamination.

8.2 Sanitation and Housekeeping

8.2.1 The facility shall provide housekeeping services to maintain a clean, sanitary, safe environment which is free from odors.

8.2.2 Birth rooms shall be thoroughly cleaned after each use.

8.2.3 All cleaning materials, solutions, cleaning compounds and hazardous substances shall be:

8.2.3.1 Properly identified;

8.2.3.2 Stored in a safe place; and

8.2.3.3 Stored separate from care items and food.

8.2.4 Cleaning shall be performed in a manner which minimizes the spread of pathogenic organisms in the environment.

8.2.5 The facility shall be kept free of insects and rodents. A contract with a pest control agency shall be executed and available for review.

8.3 Waste Storage and Disposal

8.3.1 All rubbish and refuse containers shall be impervious, lined and clean.

8.3.2 All rubbish and refuse shall be collected, stored and disposed of in a manner designed to prevent transmission of disease.

8.3.3 All contaminated dressings, pathological or similar waste shall be properly disposed of.

8.3.4 All personnel must wash their hands immediately after handling rubbish or refuse.

8.4 Maintenance

8.4.1 The facility shall establish and implement a written program of preventive maintenance to

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ensure that all essential mechanical, electrical and patient care equipment is in safe operating condition.

8.4.2 Stairwells and corridors shall be kept free from obstruction at all times.

8.5 Safety

8.5.1 Fire safety:

8.5.1.1 The facility shall comply with the rules and regulations of the State Fire Prevention Commission.

8.5.1.2 The facility must be inspected annually by the fire marshal having jurisdiction and all applications for license (new and renewal) must include a letter certifying compliance by the fire marshal having jurisdiction.

8.5.1.3 Notification of non-compliance with the rules and regulations of the State Fire Prevention Commission shall be grounds for licensure action.

8.5.1.4 A simulated fire drill shall be performed every quarter on each work shift.

8.5.1.4.1 A written record of each fire drill shall be kept on file at the facility.

8.5.1.4.2 The written record must include the following:

8.5.1.4.2.1 Date and time of the drill;

8.5.1.4.2.2 Description of the simulated emergency fire condition;

8.5.1.4.2.3 Signatures and titles of those participating in the drill;

8.5.1.4.2.4 Duration of the drill; and,

8.5.1.4.2.5 Evaluation of the drill.

8.5.2 Facility safety:

8.5.2.1 The facility shall make provisions for the reporting and investigation of and corrective action for accidental events regarding patients, visitors and personnel.

8.5.2.2 Needles and syringes shall be disposed of appropriately.

8.5.2.3 Every bathroom door lock shall be designed to permit the opening of the locked door from the outside in an emergency.

8.5.2.4 Each birthing room shall have a nurse call system.

8.5.2.5 Each toilet and bathing area shall have grab bars and a nurse call system.

8.5.2.6 The temperature of the water supply to shower, bathing and handwashing facilities shall be automatically regulated not to exceed 110° Fahrenheit.

8.5.2.7 Emergency numbers shall be located near the telephone.

8.5.2.8 There shall be a written evacuation plan for the removal of patients in the event of an emergency.

8.5.2.8.1 The evacuation plan shall be posted in a conspicuous place on each floor of the building.

9.0 Physical Plant

9.1 Minimum construction requirements are set forth herein.

9.2 All construction, new/renovations/remodeling, must conform to the design and construction standards recognized by the Department.

9.3 In the event that there is a conflict between the design and construction standard utilized by the Department and the minimum standard set forth herein, the higher standard or requirement shall prevail.

9.4 When a facility is classified under this law or regulation and plans to construct, extensively remodel or convert any building, one (1) copy of properly prepared plans and specifications for the entire facility shall be presented to the Department.

9.4.1 An approval, in writing, shall be obtained from the Department before construction/renovation/remodeling work is begun.

9.4.2 Upon completion of construction/renovation/remodeling, in accordance with the plans and specifications, the Department will inspect and approve the site prior to occupancy/use by the facility.

9.5 All facilities shall either be at grade level or shall be equipped with ramps or elevators to allow easy access for persons with disabilities.

9.6 The facility shall comply with all local and state building codes and ordinances as pertain to this occupancy.

10.0 Equipment and Supplies

10.1 The facility shall be equipped with those items needed to provide low risk maternity care and shall include equipment to initiate emergency procedures in life-threatening events to mother and newborn.

10.2 Equipment shall include but not be limited to:

10.2.1 Furnishings suitable for labor, delivery and recovery;

10.2.2 Oxygen with flow meters and masks or equivalent;

10.2.3 Mechanical and bulb suction;

10.2.4 Resuscitation equipment for the mother and newborn;

10.2.5 Emergency medications, intravenous fluids and related supplies and equipment for both the mother and newborn;

10.2.6 Fetal monitoring equipment;

10.2.7 A means for monitoring and maintaining the optimum body temperature of the newborn;

10.2.8 An infant scale;

10.2.9 A clock with a sweep second hand;

10.2.10 Sterile suturing equipment and supplies; and

10.2.11 An adjustable examination light.

11.0 Patient Rights

11.1 The facility shall establish and implement policies and procedures regarding the rights of patients.

11.2 The facility must provide the patient with a written notice of the patient's rights during the initial assessment visit or before admission for services.

11.3 Each patient shall have the right to:

11.3.1 Be treated with courtesy, consideration, respect and dignity;

11.3.2 Self-determination and choice, including the opportunity to participate in developing one's plan for care;

11.3.3 Privacy and confidentiality;

11.3.4 Be protected from abuse, neglect, mistreatment, financial exploitation, solicitation and harassment;

11.3.5 Voice grievances without discrimination or reprisal;

11.3.6 Be fully informed, as evidenced by the patient's written acknowledgment of these rights, of all rules and regulations regarding patient conduct and responsibilities;

11.3.7 Be fully informed, at the time of admission, of services and activities available and related charges;

11.3.8 Be served by individuals who are properly trained and competent to perform their duties;

11.3.9 Refuse services and to be informed of possible negative consequences of her refusal;

11.3.10 To refuse to participate in experimental research;

11.3.11 Receive all the information needed to give informed consent for any proposed procedure or treatment. This information shall include the possible risks and benefits of the procedure or treatment; and,

11.3.12 Request transfer from the facility to another health care facility.

12.0 Disaster Preparedness

12.1 The facility shall have a current internal emergency plan(s) that provides for fires, bomb threats, severe weather, utility service failures and other disasters such as earthquakes, flooding, chemical spills and toxic fumes.

12.2 The disaster preparedness plan(s) must include provisions for relocation of persons within the building and/or partial or total evacuation.

12.3 All facility staff must be oriented to the disaster preparedness plan(s).

12.3.1 Records of staff attendance must be maintained in the employee file.

12.4 A copy of the disaster preparedness plan(s) shall be available to all staff.

13.0 Quality Improvement

13.1 Each facility shall develop and implement a documented ongoing quality improvement program. The program shall include at a minimum:

13.1.1 An internal monitoring process that tracks performance measures;

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- 13.1.2 A review of the program's goals and objectives at least annually;
- 13.1.3 A review of the grievance/complaint process;
- 13.1.4 A review of all major adverse incidents;
- 13.1.5 A review of actions taken to address identified issues; and
- 13.1.6 A process to monitor the satisfaction of the patients with the services of the facility.

14.0 Severability

14.1 In the event any particular clause or section of these regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 311, 2501, 2304(15)(c) and 2312 (18 Del.C. §§311, 2501, 2304(15)(c) & 2312)
18 DE Admin. Code 906

PUBLIC NOTICE

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice that a PUBLIC HEARING will be held on Tuesday December 4, 2007 at 1:30 p.m. in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to receive public comment in **Docket No. 2007-538**, proposed amendments to **Regulation 906** relating to **THE USE OF CREDIT SCORES IN IN SETTING INSURANCE PREMIUMS IN AUTOMOBILE, MOTORCYCLE, BOAT AND PERSONAL WATERCRAFT, SNOWMOBILES AND OTHER RECREATIONAL VEHICLES, HOMEOWNERS, MOBILE-HOMEOWNERS, MANUFACTURED HOMES AND NON-COMMERCIAL DWELLING FIRE INSURANCE FOR PERSONAL OR FAMILY PROTECTION.**

The purpose for proposing amendments to Regulation 906 is to comply with Delaware law and to prohibit insurance companies using consumer credit information in the setting of renewal premiums in insurance policies in areas noted above, except that consumers may request the use of credit information in renewals if such information would result in a reduction of premiums. The text of the proposed regulation is produced in the November 2007 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.state.de.us/Inscom/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The hearing will be conducted in accordance with 18 Del.C. §311 and the Delaware Administrative Procedures Act, 29 Del.C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 9:00 a.m., Tuesday December 4, 2007, and should be addressed to Regulatory Specialist Mitchell G. Crane, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

906 Use of Credit Information [Formerly Regulation 87]

1.0 Authority

This regulation is adopted by the Commissioner pursuant to the authority granted by 18 Del.C. §§ 311, 2501, 2304(15)(c), and 2312, and promulgated in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Chapter 101.

6 DE Reg. 1706 (6/1/03)

2.0 Scope

This regulation shall apply to all insurers offering automobile, motorcycle, boat and personal watercraft, snowmobiles and other recreational vehicles, homeowners, mobile-homeowners, manufactured-home owners and non-commercial dwelling fire insurance policies for personal or family protection. This regulation shall not apply to any line of commercial insurance.

6 DE Reg. 1706 (6/1/03)

3.0 Purpose

The purposes of this regulation are:

3.1 To prohibit insurers from engaging in unfair discrimination in the offering or granting of insurance due to the grouping of risks based on criteria which are not actuarially supported and shown to be relevant to risk.

3.2 To prohibit insurers from engaging in unfair discrimination in the cancellation or non-renewal of insurance coverage based on criteria which are not actuarially supported and shown to be relevant to risk or experience.

3.3 To assure that ~~consumers, whether on initial application or renewal,~~ applicants are given notice when consumer reports will be requested and reviewed in connection with ~~a consumer's~~ their eligibility for ~~and/or the continuance of~~ insurance coverage and/or ~~a consumer's~~ their tier or level of premium payment.

3.4 To prohibit the practice of assigning ~~a consumer~~ an applicant to a premium level based solely on the ~~consumer's~~ applicant's credit rating or credit score.

3.5 To assure that the consumer has adequate relief from any adverse action taken by an insurer through the use of credit scoring.

3.6 To prohibit the practice of using a policyholder's credit rating or credit score in any way, except at the policyholder's request as provided for in 18 Del.C. §8303 (c).

3.7 To establish a procedure for policyholders to request, on an annual basis, a recalculation of their insurance score based in a current credit report.

6 DE Reg. 1706 (6/1/03)

4.0 Definitions

4.1 "**Adverse action**" has the meaning given that term in the Fair Credit Reporting Act, 15 U.S.C. sec. 1681 et seq. (referred to in this regulation as "the FCRA"). An adverse action includes but is not limited to the following:

4.1.1 Cancellation, denial or nonrenewal of insurance coverage;

4.1.2 Charging a higher insurance premium than would have been offered if the credit history or insurance score had been more favorable in the absence of a rate change occasioned by other applicable underwriting factors independent of credit related information, whether the charge is by:

4.1.2.1 application of a rating rule;

4.1.2.2 assignment to a rating category within a single insurer, into which insureds with substantially like insuring, risk or exposure factors and expense elements are placed for purposes of determining rate or premium, that does not have the lowest available rates; or

4.1.3 A reduction or an adverse or unfavorable change in the terms of coverage or amount of insurance owing to a consumer's credit history or insurance score. A reduction or an adverse or unfavorable change in the terms of coverage occurs when:

4.1.3.1 coverage provided to the consumer is not as broad in scope as coverage requested by the consumer but available to other insureds of the insurer or any affiliate; or

4.1.3.2 the consumer is not eligible for benefits such as dividends that are available through affiliate insurers.

4.14 The placement of the consumer with an affiliated company shall not be considered an adverse action under this regulation.

4.1.5 Notwithstanding the foregoing, a decision to reject an insurance application, to deny renewal or to condition renewal, to assign an application or renewal to a tier, class or group, or to issue the policy based on or with restrictions that would not apply but for the consideration of the consumer report.

4.1.6 Notwithstanding the foregoing, if a consumer, upon renewal, is not assigned to a less favorable tier or if there is a change in premium not resulting from any use of credit information, such event shall not be deemed an adverse action.

4.2 "Applicant" shall mean an applicant for insurance coverage but shall not include persons receiving a quote for premium that would be due under a policy of insurance, provided however, that such insurance is not ultimately applied for and that the process for making and delivering such quotes is not used as a means for denying coverage on the basis of a credit score in violation of this regulation.

4.23 **"Commissioner"** shall mean the Insurance Commissioner of the State of Delaware, or any person designated by the Commissioner to enforce the provisions of this regulation or any related statute or regulation.

4.4 "Consumer" shall mean applicants or policyholders.

4.35 **"Consumer report"** means any written, oral, or other communication of any information by a consumer reporting agency (as defined in the FCRA) bearing on a consumer's credit worthiness, credit standing, or credit capacity, which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for personal lines automobile or homeowner insurance to be used primarily for person, family, or household purposes. Consumer report shall not include motor vehicle reports or claims history reports or any other report that is not credit related.

4.46 **"Credit score"** means any alpha, numeric and/or alpha-numeric rating or classification of any person based on information contained in said person's consumer report created by an insurer or any person, firm or entity for use by an insurer.

4.57 **"Document"** or "public record" shall have the same meaning as described in 29 **Del.C.** §10002(d) and 18 **Del.C.** §§ 320, 321.

4.68 **"Insurance score"** shall have the same meaning as "credit score."

4.79 ~~**"Insured," "Policyholder" or "consumer"**~~ shall mean the applicant(s) for coverage or person or persons insured under a policy of insurance but shall not include persons receiving a quote for premium that would be due under a policy of insurance, provided however, that such insurance is not ultimately applied for and that the process for making and delivering such quotes is not used as a means for denying coverage on the basis of a credit score in violation of this regulation.

6 DE Reg. 1706 (6/1/03)

5.0 Prohibited Practices

5.1 No individual consumer report or credit score shall be valid if the age of the report is greater than two years from the date of its first use for an individual application ~~or renewal of coverage~~ if the repost or credit score or utilizes in any manner, factors which include any or all of race, color, creed, sex, religion, national origin, place of residency, marital status, nature of employment, physical disability, or any similar category prohibited by federal or state law.

5.2 Each insurer proposing to use an insurance score as part of its rating or underwriting criteria shall file with the Commissioner, as part of its rate filings required pursuant to 18 **Del.C.** Ch. 25, such supporting models, algorithms, actuarial and statistical data and reports sufficient, in the discretion of the Commissioner, to permit the Commissioner to determine that the use of such credit report or score shall not:

5.2.1 Unfairly discriminate or assign a consumer to a class or tier based on criteria which are not actuarially supported and shown to be relevant to risk or experience, or

5.2.2 Be the sole basis upon which the insurer denies coverage ~~or upon which the insurer cancels, refuses to renew~~ or sets a premium or rate for insurance coverage without consideration of other underwriting or rating factors.

5.2.3 Be used in any way in connection with renewal decisions and tier or level of premium payment for policyholders, except at the policyholder's request as provided by 18 **Del.C.** §8303 (c).

5.3 No insurer shall be permitted to use the services of a third party to develop a consumer report or credit score unless the third party shall, without qualification, consent to provide any information, documents, reports (except for consumer reports which may not be disclosed), actuarial and/or statistical bases or models, or other such information required by the Commissioner as part of the insurer's rate approval process.

5.4 In rating a policy or assigning a consumer to a premium level or tier, no insurer shall be permitted to consider the consumer report or score of any person other than the named applicant or policyholder or person(s) who have an insurable interest to be covered under the policy. In the case of homeowner's coverage, no insurer

shall be permitted to deny, penalize, impose a higher rate or take any action adverse or detrimental to a ~~current or prospective policyholder~~ an applicant based solely on the credit score of a spouse who has no title or ownership interest in the property to be insured and is not a named ~~policyholder or applicant~~.

5.5 No insurer, or entity from which the insurer may obtain credit scoring information, shall use credit or consumer reports in any manner prohibited by law.

5.6 No insurer shall be permitted to use obsolete information which shall be defined as follows:

5.6.1 Bankruptcies which, from date of the adjudication of the most recent bankruptcy, antedate the report by more than 10 years;

5.6.2 Suits and judgments which, from date of entry, antedate the report by more than 7 years or until the governing statute of limitations has expired, whichever is the longer period;

5.6.3 Paid tax liens which, from date of payment, antedate the report by more than 7 years;

5.6.4 Accounts placed for collection or charged to profit and loss which antedate the report by more than 7 years;

5.6.5 Records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than 7 years; and

5.6.6 Any other adverse item of information which antedates the report by more than 7 years.

5.7 The following factors shall not be used by an insurer or by any entity retained by the insurer for the purposes of generating a credit score for underwriting, tier placement or rating purposes:

5.7.1 Information that is disputed by the consumer and has been identified by the consumer reporting agency and coded as such, if the use of such disputed information would result in an adverse action;

5.7.2 Information that has been identified by the consumer reporting agency as related to insurance inquiries and/or non-consumer initiated inquiries and coded as such;

5.7.3 Information that has been identified by the consumer reporting agency as related to collection accounts with a medical industry code;

5.7.4 Information that includes multiple lender inquiries, if coded by the consumer reporting agency as being from the home mortgage industry and made within 30 days of one another, unless only one inquiry is considered.

5.7.5 Information that includes multiple lender inquiries, if coded by the consumer reporting agency as being from the automobile lending industry and made within 30 days of one another, unless only one inquiry is considered.

5.7.6 The total available line of credit, however, an insurer may consider the total amount of outstanding debt in relation to the total available line of credit.

5.8 If a consumer has no available credit history or has insufficient credit history to develop a credit score, the consumer must be underwritten and rated in accordance with the remaining actuarial principles and standards of practice set forth in the appropriate rate filing that are exclusive of the credit score. However, an insurer may consider insufficient credit history or no available credit history in setting a premium or rate, or underwriting an insurance policy, to the extent such use is actuarially justified and consistent with the rate filing in the office of the Commissioner.

5.9 No insurer shall, by underwriting standards or practices, use a consumer's credit score inconsistent with or in violation of this regulation.

6 DE Reg. 1706 (6/1/03)

6.0 Written Notice to Consumers

6.1 If an insurer uses credit information in underwriting or rating a consumer, the insurer or its agent shall ~~disclose, either on the insurance application or at the time the insurance application is taken, that it may obtain credit information on the consumer, other persons residing in the consumer's home, or other persons whose credit information may affect the underwriting or rating of the policy in connection with such application. Such disclosure shall be either written or provided to an applicant in the same medium as the application for insurance. The insurer need not provide the disclosure statement required under this section to any insured on a renewal policy if such consumer has previously been provided a disclosure statement. The use of the following example disclosure statement constitutes compliance with this section: "In connection with this application for insurance, we may review your credit report or obtain or use a credit based (credit)(insurance) score based on the information contained in that credit report. We may use a third party in connection with the development of your (credit)(insurance) score."~~ make the following disclosures to the consumer:

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6.1.1 Either on the insurance application or at the time the insurance application is taken, the insurer shall disclose to the applicant that it may obtain credit information on the applicant, other persons residing in the applicant's home, or other persons whose credit information may affect the underwriting or rating of the policy in connection with such application. Such disclosure shall be either written or provided to an applicant in the same medium as the application for insurance. The use of the following example disclosure statement constitutes compliance with this section: "In connection with this application for insurance, we may review your credit report or obtain or use a credit based (credit) (insurance) score based on the information contained in that credit report. We may use a third party in connection with the development of your (credit) (insurance) score".

6.1.2 Either on the insurance application or at the time the insurance application is taken, the insurer shall inform the applicant that, if the application is approved and the applicant becomes a policyholder, he or she has the right to have their insurance score reviewed on an annual basis based on a new consumer report. The notice shall state that the review will be conducted for the sole purpose of determining whether the consumer's credit information would lead to a reduction in insurance premiums and will not be used for any other purpose, including an increase in premiums. The use of the following example disclosure statement constitutes compliance with this section: "If we do use a credit based score, you will have the right on an annual basis to request that we obtain a current credit report for you and determine whether use of the new credit report would reduce your premiums. If the new credit report that we receive would result in a decrease in your premium insurance, we will make that reduction. If the new credit information would not reduce your insurance premiums, the credit report will not be used to impact your premiums in any way."

6.1.3 On an annual basis, the insurer shall inform its policyholders of their right to have their credit information reviewed to determine whether the use of the current credit report would result in a lower premium. This notification shall be sent to policyholders no more than 8 weeks prior to the start of the new policy period for the policyholder. The notification shall inform the policyholder that the policyholder can complete and send to the insurer to request that the credit report be obtained and reviewed. The notification shall inform the policyholder that the policyholder must mail the request form within two weeks of the date of mailing by the insurer in order for the re-rating to occur in time for a premium adjustment to be made for the upcoming policy period.

6.2 A notice denying an application for insurance ~~or a notice refusing to renew or cancel insurance~~ shall, to the extent that the insurer's action is based on information contained in a consumer report relating to the applicant, insured and/or other named person, contain the following:

6.2.1 The name, address and toll free number of the institutional source from whom the insurer obtained the credit information;

6.2.2 A summary of the most significant reasons for the adverse action that relate to the ~~consumer's~~ applicant's credit history or to the credit factors of the credit score. The reasons need not exceed four, shall be specific and shall identify the information associated with each reason. The notice shall be sufficiently clear and specific that a ~~consumer~~ applicant of reasonable intelligence can identify the basis for the insurer's decision without making further inquiry. For the purpose of the summary, the use of a generalized term such as "poor credit history," "poor credit rating," or "poor credit score" does not meet the requirement of a sufficiently clear and specific summary, however standardized credit explanations provided by consumer reporting agencies or other third party vendors that satisfy the requirements of this section are deemed to comply with this section.

6.2.3 A statement advising the applicant ~~or insured~~ that, if the ~~insured~~ applicant wishes to inquire further about the credit information on which the refusal ~~denial or nonrenewal~~ is based and obtain a free copy of the "consumer report," the ~~insured~~ applicant may do so by mailing a written request to the insurer, or such other party as the insurer shall identify in the notice, no more than thirty days after the date on which the notice of refusal ~~denial or nonrenewal~~ was mailed to the ~~insured~~ applicant.

6.2.4 A statement that the consumer reporting agency that provided the information upon which the credit score was based did not make the decision to take the adverse action and is unable to provide the applicant or insured the specific reasons why the adverse action was taken.

6.3 If the applicant ~~or insured~~ submits the written notification required under section 6.2.3, the refusal ~~denial or nonrenewal~~ shall not become effective until thirty days after the accuracy of the credit information, which the applicant ~~or insured~~ has questioned and on which the refusal ~~denial or nonrenewal~~ was based, has been verified and communicated to the applicant ~~or insured~~. Such verification shall be deemed to have been made upon completion of the investigation of the credit information which the applicant ~~or insured~~ has questioned and on which the refusal ~~denial or nonrenewal~~ was based. The applicant ~~or insured~~ must cooperate in the investigation of the credit information, including responding to any communication submitted by, or on behalf of, the insurer or

credit reporting agency no more than ten days after the date on which such communication subsequent to the notice required under section 6.2.3 was mailed to the applicant ~~or insured~~. If the applicant or insured fails to cooperate in the investigation of the credit information, the insurer may, after providing a minimum of fifteen days' written notice to the applicant ~~or insured~~, terminate such investigation and may refuse to insure the applicant or cancel ~~or nonrenew the policy~~.

6.4 If the applicant or insured, after receipt of a notice under this section, and pursuant to procedures established under the FCRA, obtains changes, modifications or corrections to his/her credit information maintained by one or more credit reporting agencies, the insured shall notify the insurer who shall recalculate or obtain a new credit score. In that case, the provisions of section 7.2 shall apply to any adjustments to be made to the insured's premium.

6 DE Reg. 1706 (6/1/03)

7.0 Corrections or Changes to a Consumer's Credit Score

7.1 When an insurer uses credit histories or credit scores for the purpose of rating, if the insurer receives notice of corrected information affecting the credit history or the credit factors of the credit score of a consumer from the consumer reporting agency of the insurer, the insurer shall correct the consumer's credit score or obtain a corrected credit score or credit history, as appropriate, based on the corrected information.

7.2 When an insurer has taken an adverse action against a consumer on the basis of the consumer's credit history or the credit factors of the consumer's credit score, if the insurer subsequently makes or obtains a correction or change under section 6.4 or 7.1, the insurer shall determine the difference between the premium paid by the consumer based on the prior credit history or credit score and the premium based on the current history or score. If the policy period is 12 months or more, the difference shall be determined for the most recent 12 months. If the policy period is less than 12 months, the difference shall be determined for the current period of the policy. If the difference is in favor of the consumer, the insurer shall credit or refund the difference to the consumer. If the difference is in favor of the insurer, the insurer may charge the difference to the consumer or collect the difference from the consumer.

7.3 ~~An insured or an applicant for insurance~~ A consumer, upon written request to an insurer, shall have a right to seek review by the insurer of its use of a credit score in the event ~~an insured's or applicant's~~ a consumer's consumer report is adversely affected by extraordinary personal circumstances.

7.3.1 Extraordinary personal circumstance is defined as serious illness or injury, involuntary unemployment, divorce, identity theft, and involuntary interruption of alimony or support payments. An insurer may elect to extend this definition to consider an extraordinary personal circumstance not listed in this section. In no event is an insurer required to review repeated events or events the insurer reviewed previously as an extraordinary personal circumstance.

7.3.2 An insurer may require that ~~an insured or applicant~~ a consumer provide sufficient documentation to establish the existence and duration of such extraordinary personal circumstance.

7.3.3 An insurer may elect to eliminate the credit score from consideration in such instance and rely on its other underwriting and rating guidelines, may assign a neutral credit score or may elect to establish such procedural guidelines as will allow the insurer to consider such requests in a consistent manner.

7.3.4 An insurer will not be considered out of compliance with any law or rule relating to underwriting, rating or rate filing as a result of granting an exception under this section.

6 DE Reg. 1706 (6/1/03)

8.0 Requesting Re-rating Based on Current Credit Report

8.1 Any policyholder whose credit report has been used by his/her insurer for the purpose of rating renewals or initial underwriting and who wishes to have a current credit report reviewed by his/her insurer to determine whether the current report will result in an improvement in the policyholder's insurance score must, within two weeks of receipt of the notice from the insurer required by paragraph 6.1.3, submit the form provided with the notice to the insurer.

8.2 After receiving notice from a policyholder that he/she is requesting that his/her credit report be obtained and reviewed for the purpose of lowering his/her insurance score, the insurer shall obtain the credit information and recalculate the insurance score for the policyholder to determine whether the credit information will lower the policyholder's premium.

8.3 If the new credit report results in a reduction in premium, the notice of insurance renewal and the accompanying bill for premium payment that is sent to the policyholder for the upcoming year shall reflect the lowered premium amount and shall inform the policyholder that the premium has been lowered due to the review of their credit report.

8.4 If the credit report would result in no change or an increase in the premium or in any adverse action, the insurer shall take no further action regarding the credit report except that the notice of insurance renewal shall inform the policyholder that the review was conducted and that it did not result in any changes to the premium or policy.

8.5 Sections 8.1 through 8.4 do not apply to any renewal for which the insurer's filed rating plan does not use any credit information, including any residual effect from the use of credit information at initial underwriting.

89.0 General Business Practices

89.1 Any insurer that elects to use credit scoring to determine, in whole or in part, the premium to be paid by the insured or the tier or class of risk to which the insured shall be assigned, shall be deemed to have done so under the provisions of 18 Del.C. Ch. 25.

89.2 No insurer shall implement credit scoring for rate making or underwriting purposes without first having obtained the approval of the Commissioner as part of a rate filing under 18 Del.C. Ch. 25. Policies and renewal notices issued on or before the effective date of this regulation ~~September 1, 2003~~, in which credit information was used in the underwriting or rating of the policy shall be deemed valid for the term thereof but not for any renewal thereunder in the absence of compliance with this regulation.

89.3 No insurer shall alter or modify the approved tier or classification structure or change the premiums applicable to any such tier or classification system without having first obtained the Commissioner's approval to do so under 18 Del.C. Ch. 25.

89.4 When an insurer denies or fails to renew a policy, evidence of the notice of denial or nonrenewal shall be retained by the insurer and a record of the insurance score, related notice and correspondence with the insured applicant shall be maintained by the insurer and/or by the appropriate vendor (source of the credit score) pursuant to the insurer's agreement with such vendor for a minimum of three years from the date of notice to the insured applicant.

89.5 An insurer shall indemnify, defend, and hold agents harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of an insurer who obtains or uses credit information and/or credit scores from an independent source, provided that the agent follows the instructions of or procedures established by the insurer and complies with any applicable law or regulation. Nothing in this section shall be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this section.

6 DE Reg. 1706 (6/1/03)

910.0 Confidentiality

910.1 Any document, report, model or other supporting information filed with the Commissioner, irrespective of the format or media in which it is contained, shall be considered proprietary or trade secret and subject to the confidentiality provisions of 18 Del.C. §321(g) and/or, upon the request of the insurer or owner of the document, 29 Del.C. §10002(d)(2). Where an insurer or third party is required to file proprietary or trade secret insurance scoring algorithms, models, documents or supporting information as part of its filed rates, the insurer or third party may elect to segregate such materials from the remainder of its rate filing by filing such materials separately in a sealed envelope or container. Materials filed in this manner shall remain segregated from the publicly accessible portions of the rate filing for so long as these materials are on file with the Department, or until the insurer or third party notifies the Department that such materials are no longer proprietary or trade secret. In the event there is a dispute with respect to the confidentiality of a document, the Commissioner shall make the final determination of whether any part or the whole of a disputed document shall be given confidential treatment.

6 DE Reg. 1706 (6/1/03)

4011.0 Severability

If any provision of this Regulation or the application of any such provision to any person or circumstance shall be held invalid the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected.

6 DE Reg. 1706 (6/1/03)

4412.0 Causes of Action and Defenses

This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against an insurer or its representative based upon a violation of 18 **Del.C.** §2304(15)(c). In the same manner, nothing in this regulation shall establish a defense for any party to any cause of action based upon a violation of 18 **Del.C.** §2304(15)(c).

6 DE Reg. 1706 (6/1/03)

4213.0 Effective Date

This regulation shall become effective on ~~September 1, 2003~~ January 1, 2008.

6 DE Reg. 1706 (6/1/03)

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 311, 333, 6408 (18 **Del.C.** §§311, 2501, 2304(15)(c) & 2312)
18 **DE Admin. Code** 1313

PUBLIC NOTICE

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 1313 relating to arbitration of health disputes. The docket number for this proposed amendment is 539.

The purpose of the proposed regulation is to require health insurance carriers to submit to arbitration any dispute with a health care provider regarding reimbursement for an individual claim, procedure or service upon request by the health care provider. The text of the proposed amendment is reproduced in the November 2007 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.state.de.us/inscom/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday December 3, 2007, and should be addressed to Mitchell G. Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

1313 Arbitration of Health Insurance Disputes Between Carriers and Providers

1.0 Purpose and Statutory Authority

1.1 The purpose of this Regulation is to implement 18 **Del.C.** §333, which requires health insurance carriers to submit to arbitration any dispute with a health care provider regarding reimbursement for an individual claim, procedure or service upon a request for arbitration by the health care provider. This Regulation is promulgated pursuant to 18 **Del.C.** §§311, 333 and 6408 and 29 **Del.C.**, Ch. 101. This Regulation should not be construed to create any cause of action not otherwise existing at law.

2.0 Definitions

2.1 "Carrier" or "insurance carrier" shall have the same meaning as defined at 18 **Del.C.** § 333(a) (2).

2.2 "Health care provider" or "provider" shall have the same meaning as defined at 18 **Del.C.** §333(a)

(1).

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3.0 Notice

3.1 At the time a carrier provides to a health care provider written notice of a carrier's final decision regarding reimbursement for an individual claim, procedure or service, if the decision does not authorize reimbursement of the provider's charge in its entirety, the carrier shall give the provider written notice of the provider's right to arbitration. Such notice may be separate from or a part of the written notice of the carrier's decision. Any such notice given to a provider shall, at a minimum, contain the following language:

"You have the right to seek review of our decision regarding the amount of your reimbursement. The Delaware Insurance Department provides claim arbitration services which are in addition to, but do not replace, any other legal or equitable right you may have to review of this decision or any right of review based on your contract with us. You can contact the Delaware Insurance Department for information about arbitration by calling the Arbitration Secretary at 302-674-7322. You may also go to the Delaware Insurance Department at The Rodney Building, 841 Silver Lake Blvd., Dover, DE 19904 between the hours of 8:30 a.m. and 4:00 p.m. to personally discuss the arbitration process. All requests for arbitration must be filed within 60 days from the date you receive this notice; otherwise, this decision will be final."

3.2 Such notice is not required if the Commissioner has determined, pursuant to Section 6.0 of this regulation, that the insurance carrier has a program that is substantially similar to the arbitration procedure provided pursuant to 18 Del.C. §333 and this Regulation.

4.0 Procedure

4.1 Petition for Arbitration

4.1.1 A health care provider or his authorized representative may request review of a carrier's final reimbursement decision through arbitration by delivering a Petition for Arbitration to the Department so that it is received by the Department no later than 60 days after the date of mailing of the carrier's final reimbursement decision. The Department shall make available, by mail and on its web site, a standardized form for a Petition for Arbitration.

4.1.2 A health care provider or his authorized representative must deliver to the Department an original and three copies of the Petition for Arbitration.

4.1.3 At the time of delivering the Petition for Arbitration to the Department, a health care provider or his authorized representative must also:

4.1.3.1 send a copy of the Petition to the carrier by certified mail, return receipt requested;

4.1.3.2 deliver to the Department a Proof of Service confirming that a copy of the Petition has been sent to the carrier by certified mail, return receipt requested; and

4.1.3.3 deliver to the Department a non-refundable filing fee. The fee shall be \$50 for claims of \$1,000 or less, in all other cases the fee shall be \$100.

4.1.4 The Department may refuse to accept any Petition that is not timely filed or does not otherwise meet the criteria for arbitration, including the disputes described in 18 Del.C. §333(j)(1) - (3).

4.2 Response to Petition for Arbitration

4.2.1 Within 20 days of receipt of the Petition, the carrier must deliver to the Department an original and three copies of a Response with supporting documents or other evidence attached.

4.2.2 At the time of delivering the Response to the Department, the carrier must also:

4.2.2.1 send a copy of the Response and supporting documentation to the health care provider or his authorized representative by first class U.S. mail, postage prepaid; and

4.2.2.2 deliver to the Department a Proof of Service confirming that a copy of the Response was mailed to the health care provider or his authorized representative.

4.2.3 The Department may return any non-conforming Response to the carrier.

4.2.4 If the carrier fails to deliver a Response to the Department in a timely fashion, the Department, after verifying proper service, and with written notice to the parties, may assign the matter to the next scheduled Arbitrator for summary disposition.

4.2.4.1 The Arbitrator may determine the matter in the nature of a default judgment after establishing that the Petition is properly supported and was properly served on the carrier.

4.2.4.2 The Arbitrator may allow the re-opening of the matter to prevent a manifest injustice. A request for re-opening must be made no later than seven days after notice of the default judgment.

4.3 Summary Dismissal of Petition by the Department

4.3.1 If the Department determines that the subject of the Petition is not appropriate for arbitration or is meritless on its face, the Department may summarily dismiss the Petition and provide notice of such dismissal to the parties.

4.4 Appointment of Arbitrator

4.4.1 Upon receipt of a proper Response, the Department shall assign an Arbitrator who shall schedule the matter for a hearing so that the Arbitrator can render a written decision within 45 days of the delivery to the Department of the Petition for Arbitration.

4.4.2 The Arbitrator shall be of suitable background and experience to decide the matter in dispute and shall not be affiliated with any of the parties or with the patient whose care is at issue in the dispute.

4.5 Arbitration Hearing

4.5.1 The Arbitrator shall give notice of the arbitration hearing date to the parties at least 10 days prior to the hearing. The parties are not required to appear and may rely on the papers delivered to the Department.

4.5.2 The arbitration hearing is to be limited, to the maximum extent possible, to each party being given the opportunity to explain their view of the previously submitted evidence and to answer questions by the Arbitrator.

4.5.3 If the Arbitrator allows any brief testimony, the Arbitrator shall allow brief cross-examination or other response by the opposing party.

4.5.4 The Delaware Uniform Rules of Evidence will be used for general guidance but will not be strictly applied.

4.5.5 Because the testimony may involve evidence relating to personal health information that is confidential and protected by state or federal laws from public disclosure, the arbitration hearing shall be closed.

4.5.6 The Arbitrator may contact, with the parties' consent, individuals or entities identified in the papers by telephone in or outside of the parties' presence for information to resolve the matter.

4.5.7 The Arbitrator is to consider the matter based on the submissions of the parties and information otherwise obtained by the Arbitrator in accordance with this regulation. The Arbitrator shall not consider any matter not contained in the original or supplemental submissions of the parties that has not been provided to the opposing party with at least five days notice, except claims of a continuing nature that are set out in the filed papers.

4.6 Arbitrator's Written Decision.

4.6.1 The Arbitrator shall render his decision and mail a copy of the decision to the parties within 45 days of the filing of the Petition.

4.6.2 The Arbitrator's decision is binding upon the parties except as provided in 18 Del.C. §333(f).

5.0 Carrier Recordkeeping Reporting Requirements

5.1 A carrier shall maintain written or electronic records documenting all Petitions for Arbitration including, at a minimum, the following information:

5.1.1 The date the petition was filed;

5.1.2 The name and identifying information of the health care provider on whose behalf the petition was filed;

5.1.3 A general description of the reason for the petition; and

5.1.4 The date and description of the Arbitration decision or other disposition of the petition.

5.2 A carrier shall file with its annual report to the Department the total number of Petitions for Arbitration filed, with a breakdown showing:

5.2.1 The total number of final reimbursement decisions upheld through arbitration; and

5.2.2 The total number of final reimbursement decisions reversed through arbitration.

5.3 A carrier shall make available to the Department upon request any of the information specified in the foregoing sections 4.1 and 4.2.

6.0 Exemption from Arbitration Requirement

6.1 Any carrier having a dispute resolution method established by contract with its providers which method the carrier believes to be substantially similar to the arbitration method described by this regulation may

PROPOSED REGULATIONS

submit information regarding said method to the Insurance Commissioner for a determination as to whether the carrier should be exempted from the arbitration requirement of 18 Del.C. §333. The information submitted shall include a copy of the contractual language as well as any other information the carrier believes is relevant to the Insurance Commissioner's decision.

7.0 Non-Retaliation

7.1 A carrier shall not terminate or in any way penalize a provider with whom it has a contractual relationship and who exercises the right to file a Petition for Arbitration solely on the basis of such filing.

8.0 Confidentiality of Health Information

8.1 Nothing in this Regulation shall supersede any federal or state law or regulation governing the privacy of health information.

DEPARTMENT OF JUSTICE FRAUD AND CONSUMER PROTECTION UNIT

Statutory Authority: 6 Delaware Code, Section 2432A(h) (6 Del.C., §2432A(h))

PUBLIC NOTICE

102 Debt Management Services

The Attorney General in accordance with 6 Del.C. §2432(h) has proposed to adopt changes in the rules and regulations implementing the Delaware Uniform Debt Management Act in 6 Del.C. Chapter 24A as amended by HB 164.

The rules change the insurance requirement and eliminate the need for an overdraft notification agreement. In addition, the rules clarify the exception for individuals in an attorney-client relationship in Regulation 2.2.1. Provisions regarding fees payable to providers of debt settlement services are addressed in Regulation 4.2.11.

Since the Delaware Act was based on the uniform act developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL), the Comments to the uniform act have been used to provide clarification of the Delaware law. See, for example, Regulation 11.6 that clarifies that interest on a trust account belongs to the individuals who provide the deposits and not to the provider and Regulation 6.7 that clarifies advertising. Comments to the NCCUSL uniform act that were considered in these proposals are indicated in italics after the regulations. These are not intended to become part of the final regulations but rather to provide background. The NCCUSL final draft and Comments can be found for reference at <http://www.law.upenn.edu/bll/archives/ulc/ucdc/2005Final.htm>

A public hearing will be held at 9:00 A.M. on Monday, December 10, 2007 in the Attorney General's conference on the 6th floor of the Carvel State Office Building, 820 N. French Street, Wilmington, De 19801, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Consumer Protection Unit of the Department of Justice at Carvel State Office Building, 5th floor, 820 N. French Street, Wilmington, DE 19801. Persons wishing to submit written comments may forward these to the Director of the Consumer Protection Unit at the above address. The final date to receive written comments will be at the public hearing.

102 Debt Management Services

1.0 Definitions

1.1 The following terms are defined in 6 Del.C. §2402A and have the same meaning when used in these rules.

“affiliate”

“agreement”

“bank”
“business address”
“certified counselor”
“Attorney General”
“Concessions”
“Day”
“Debt-management services”
“Entity”
“Good faith”
“Person”
“Plan”
“Principal amount of debt”
“Provider”
“Record”
“Settlement fee”
“Sign”
“State”
“Trust account”

1.2 The following terms used herein mean:

1.2.1 “**Accreditation**” means certified as meeting a prescribed standard.

1.2.2 “**Administrative Procedures Act**” or “APA” means 29 **Del.C.** Chapter 101.

1.2.3 “**Consumer Protection Unit**” or “Consumer Protection Division” means the section of the Department of Justice established under 29 **Del.C.** §2517.

1.2.4 “**Debt Management Services**” as defined in 6 **Del.C.** §2402(9) include, but are not limited to, debt negotiation and settlement.

1.2.5 “**Delaware Uniform Debt Management Services Act**” or “Act” means the provisions in Chapter 24A of Title 6 of the **Delaware Code**.

1.2.6 “**Director**” means the Deputy Attorney General assigned as head of the Consumer Protection Unit.

1.2.7 “**Hearing Officer**” means an attorney assigned to conduct an administrative hearing.

2.0 Applicability

2.1 A provider of debt management services is not required to be licensed under the Delaware Uniform Debt Management Services Act if the provider:

2.1.1 has no reason to know the individual receiving services by agreement resides in Delaware; or

2.1.2 receives no compensation from the individual receiving services or a creditor of that individual.

2.2 Debt management services do not include:

2.2.1 legal services provided by an attorney authorized to practice law in Delaware and in an attorney-client relationship or

2.2.1.1 The exclusion for legal services applies only when there is an attorney-client relationship. If an out of State firm is providing legal services in association with a licensed Delaware attorney, the Delaware attorney must be identified in the debt management agreement which shall include the Delaware attorney's address and phone number.

2.2.2 accounting services provided by a certified public accountant licensed to provide accounting services in Delaware and in an accountant-client relationship.

2.2.3 services provided within the scope of the business or profession by

2.2.3.1 a judicial officer; or person acting under court or administrative order;

2.2.3.2 an assignee for the benefit of creditors;

2.2.3.3 a bank or government regulated bank affiliate;

2.2.3.4 a title insurer, an escrow company, or a person providing bill paying

services if the provision of debt-management services is incidental to the bill-paying services.

2.3 The person forming an agreement to provide debt management services and any person to whom

the account is then transferred are providers subject to the provisions of the Act.

3.0 Administration

3.1 The Consumer Protection Unit of the Fraud and Consumer Protection Division is designated by the Attorney General to administer the Delaware Uniform Debt Management Services Act in Chapter 24A of Title 6 of the **Delaware Code**.

3.1.1 The address of the Consumer Protection Unit is 820 N. French St., Fifth Floor, Wilmington, DE 19801. The phone number is (302) 577-8600 or (800) 220-5454 (in Delaware).

3.1.2 The address for the Attorney General on the internet is <http://www.state.de.us/atggen> <http://attorneygeneral.delaware.gov>

3.1.3 Business hours are 8:30 to 5:00 p.m. Mondays through Fridays excluding legal State holidays as defined in 1 **Del.C.** §501.

3.2 Copies of the law and rules are available by contacting the office above or from the web site.

3.3 Applicants are required to read and comply with the law and the rules. The rules are intended to be explanatory and do not contain all of the details found in the law.

4.0 Applications

4.1 Applications for licensure shall be submitted on forms approved by the Director of the Consumer Protection Unit. Application forms will be mailed to an applicant upon request and are also available in person or through the web site at the addresses provided in Rule 3.1.

4.2 Applications must be complete before they are submitted for consideration. Incomplete applications may be denied or returned to the applicant. Applications shall include:

4.2.1 An audited review by a certified accountant of the applicant's financial statements for the two years preceding the application or the period of existence, whichever is less. 6 **Del.C.** §2406A (8).

4.2.2 At the applicant's expense, the results of a criminal history record check, including fingerprints, provided pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. §534) and 28 C.F.R. §50.12., conducted within the last 12 months for every officer of the applicant and every employee with access to the trust account.

4.2.2.1 The applicant may request sufficient fingerprint cards and authorization forms from the Consumer Protection Unit of the Delaware Attorney General's Office for the individuals needing criminal records checks. The cards can then be taken to a local law enforcement agency for fingerprinting. The completed cards and authorizations shall be returned to the Consumer Protection Unit for further processing by the Delaware Bureau of Identification.

4.2.2.2 The Delaware Bureau of Identification shall be the intermediary and the Office of the Attorney General of Delaware - Consumer Protection Unit shall be the screening point for the receipt of the federal criminal history records.

4.2.2.3 A license will not be denied based on the information contained in an FBI identification record until a person has a reasonable time to correct or complete the record, or has declined to do so. Procedures for obtaining a change, correction or updating an FBI identification record are set forth in 28 C.F.R. §50.12.

4.2.2.4 A criminal records check obtained for the purpose of doing business in any state, that was issued within the last 12 months and based on the fingerprints of the officer or person with access to the trust account, satisfies this requirement if the criminal records check is provided by the licensing state and received by that state from a central repository.

4.2.2.5 The criminal records check of an individual obtained for licensure in Delaware will be provided to another State regulator only with the express written consent of the individual.

4.2.3 A corporate surety bond on the form provided in an amount of at least \$50,000 from a surety company authorized to do business in Delaware (or an irrevocable letter of credit with the consent of the Attorney General) as provided in 6 **Del.C.** §§2405A(b)(2), 2413A, and 2414A.

4.2.3.1 The amount of the bond may be required to be increased after consideration of the value of the applicant's business in Delaware and the balance of the trust account.

4.2.3.2 The term of the bond is continuous.

4.2.3.3 The bond shall run to the State for the benefit of the Attorney General and consumers injured by any wrongful act, omission, default, fraud or misrepresentation by the applicant.

4.2.3.4 If the bond is amended, the licensee shall provide an amended copy of the original security bond to the Director of the Consumer Protection Unit of the Attorney General's Office.

4.2.3.5 No cancellation of a bond by the surety shall be effective unless written notice of an intent to cancel is filed with the Director of the Consumer Protection Unit of the Attorney General's Office at least 30 days before the effective date of cancellation.

4.2.3.6 A surety company that receives a claim against the bond shall immediately notify the Director of the Consumer Protection Unit of the Attorney General's Office. No payment shall be made without the approval of the Director of the Consumer Protection Unit of the Attorney General's Office.

4.2.4 Evidence of insurance against the risks of dishonesty, fraud, theft, and other misconduct on the part of the applicant or a director, employee, or agent of the applicant in the amount of ~~\$500,000~~ \$250,000. 6 **Del.C.** §2405A(b)(4).

4.2.4.1 Insurer must be authorized to do business in the State of Delaware and be rated at least A by a nationally recognized rating organization.

4.2.4.2 The deductible shall be no greater than \$5,000.

4.2.4.3 ~~The policy shall not be subject to cancellation by the applicant without the approval of the Director of the Consumer Protection Unit of the Attorney General's Office. The Attorney General shall be named as an interested party to receive timely notice of cancellation.~~

4.2.4.4 ~~The policy shall be payable to the Applicant, the individuals having agreements with the Applicant, and the State of Delaware, as their interests may appear.~~

4.2.5 Identification of trust accounts and an irrevocable consent permitting the Attorney General and/or the designee(s) of the Attorney General to review and examine accounts ~~along with an overdraft notification agreement~~. 6 **Del.C.** §§2405A(b)(3) and 2422A.

4.2.6 Evidence of accreditation by an independent accrediting organization approved by the Director of the Consumer Protection Unit of the Attorney General's Office that assures compliance with industry standards. A list of organizations that have been approved can be found on the website provided in Rule 3.1.2 or obtained by contacting the Consumer Protection Unit.

4.2.7 Documentation of counselor certifications or a statement that a counselor will become certified within 12 months of employment. Certification shall be by a bona fide third-party provider approved by the Director of the Consumer Protection Unit of the Attorney General's Office. Documentation can be in a log or other record of counselors, their certifications, and dates of certification. A list of organizations or programs that have been approved can be found on the website provided in Rule 3.1.2 or obtained by contacting the Consumer Protection Unit.

4.2.8 A description of the three most common educational programs provided for Delaware residents and a copy of the materials. 6 **Del.C.** §2406A(11).

4.2.9 A description of the financial analysis and initial budget plan including any form or electronic model used to evaluate the financial conditions of individuals. 6 **Del.C.** §2406A(2).

4.2.10 A copy of each form of agreement used with Delaware residents. 6 **Del.C.** §2406A(13).

4.2.11 A schedule of all fees, including any recommended donations, used with Delaware residents. 6 **Del.C.** §2406A(14).

4.2.11.1 If a plan contemplates that creditors will reduce finance charges or fees for late payment, default, or delinquency, the provider may charge an initial fee of up to \$50 and a monthly service fee not to exceed \$10 times the number of creditors in the plan when the fee is assessed, but not more than \$50 in any month.

4.2.11.2 If a plan or program contemplates settling a debt for less than the principal amount of the debt, the provider may charge a non-refundable initial fee that represents the value of obtaining a credit report and consultation.

4.2.11.2.1 Each plan or program payment may include a reasonable monthly service fee and must include an amount designated for the settlement fund to pay the creditors following a negotiated settlement.

4.2.11.2.2 The settlement fee, which represents the compensation for services in connection with settling a debt, paid to the provider cannot exceed 18% of the principal amount of the debt including the initial fee and monthly service fees.

4.2.11.2.3 The settlement fee may be collected in installments over the

expected length of the program but in no event shall the final installment be due before the conclusion of the program either by termination or by settlement of all debts included in the program.

4.2.12 The application fee in the amount of \$2000. 6 **Del.C.** §2405A(b)(1).

4.3 The Director of the Consumer Protection Unit:

4.3.1 will make a preliminary decision on a completed application within 120 days unless additional information is needed. In that case, the period is extended by 60 days.

4.3.2 may deny a license application for any of the reasons in 6 **Del.C.** §2409A(b) including:

4.3.2.1 the application contains information that is materially erroneous or incomplete;

4.3.2.2 an officer, director, or owner of the applicant has been convicted of a crime, or suffered a civil judgment, involving dishonesty or the violation of state or federal securities laws;

4.3.2.3 the applicant or any of its officers, directors, or owners has defaulted in the payment of money collected for others; or

4.3.2.4 the Attorney General, or designee, finds that the financial responsibility experience, character, or general fitness of the applicant or its owners, directors, employees, or agents does not warrant belief that the business will be operated in compliance with this chapter.

4.3.3 shall deny a license as provided in 6 **Del.C.** §2409A(c) if no fee accompanies the application or if the Board of Directors of a not-for-profit or tax exempt applicant is not independent of the applicant's employees and agents.

4.4 An applicant must be notified in writing of a preliminary decision to deny the application within 7 days of the decision along with the reasons for the intended action. The notification must advise the applicant of the right to a hearing.

4.5 An applicant may request a hearing within twenty (20) days after receipt of the preliminary decision to deny the application.

4.5.1 If an applicant does not timely request a hearing, the preliminary decision is final.

4.5.2 A hearing will be scheduled upon timely request by the applicant as provided in Subchapter IV of the Administrative Procedures Act.

4.5.3 The Director, or an attorney designated by the Director, will serve as hearing officer after a preliminary decision to deny a license is made.

5.0 Renewals

5.1 Licenses shall expire one year following the date of issuance unless it is renewed as provided in 6 **Del.C.** §2411A.

5.2 Licensees are responsible for annual renewal whether or not a notice of renewal is received from the Consumer Protection Unit.

5.3 Renewal applications shall be on forms approved by the Director of the Consumer Protection Unit. The following shall be included with the completed renewal application form as described in the section of the Act indicated:

5.3.1 A non refundable fee of \$1000.00. 6 **Del.C.** 2411A §(b)(2).

5.3.2 Evidence of accreditation by an independent accrediting organization. 6 **Del.C.** 2411A §(b)(3).

5.3.3 Evidence of certification by applicants' counselors. 6 **Del.C.** 2411A §(b)(3).

5.3.4 A financial statement, audited by an accountant licensed to conduct audits, for the fiscal year immediately preceding the renewal application. 6 **Del.C.** §2411A(b)(3).

5.3.5 Evidence of insurance in an amount equal to the larger of \$250,000 or the highest daily balance in the required trust account with terms consistent 6 **Del.C.** §2411A (b)(5). [See Rule 4.2.4.1 through 4.2.4.4]. The balance refers to the balance attributable to clients in Delaware whose money is deposited in the trust account.

5.3.6 ~~A statement disclosing~~ An accounting of the total amount of money received by a licensee or its designee on behalf of ~~each debtor individuals~~ who resides in this State to pay creditors, and the amount distributed to each creditor in the 12 months immediately preceding the renewal application, if any. The distributions to creditors must be disclosed by licensees regardless of whether they receive payments or direct individuals to accumulate an account for debt settlement. 6 **Del.C.** §2411(a)(6).

5.3.7 If known to the licensee, the gross amount of money accumulated for settlements in the 12

months immediately preceding the renewal application pursuant to ~~plans~~ programs by or on behalf of individuals who reside in this State who are parties to agreements with the licensee. 6 **Del.C.** §2411A(a)(7).

5.3.8 A statement indicating the number of individuals who enrolled in debt management plans and the number of individuals who successfully completed debt management plans in the year preceding the renewal application.

5.4 Applications for renewal must be filed with the Director of the Consumer Protection Unit no fewer than 30 days or more than 60 days before the expiration.

5.5 If a timely and complete application for renewal is filed, a license remains in effect until the licensee is advised of a preliminary decision to deny the application along with the reasons.

5.6 An applicant may make a request for a hearing within twenty (20) days after receipt of a preliminary decision to deny the renewal application pursuant to Subchapter IV of the Administrative Procedures Act. If no hearing is requested, the preliminary decision is final.

5.7 If a timely and complete application for renewal is not received in the Consumer Protection Unit by the expiration date of the license, the license is expired and the former licensee is prohibited from conducting business which requires a license for Debt Management Services in this State. The applicant may apply for a new license.

6.0 Debt Management Services

6.1 Before entering into an agreement for debt management services, a licensee must provide an itemized list of goods and services and disclose all fees as required under 6 **Del.C.** §2417A.

6.1.1 The list must be clear and conspicuous.

6.1.2 The list must be provided in a record the consumer may retain regardless of whether an agreement is reached for services.

6.2 No debt management services may be furnished until a certified counselor conducts the education and financial analysis required, and prepare a suitable plan if appropriate, as provided in 2417A(a) and the consumer is

6.2.1 given a copy of the financial analysis and plan.

6.2.2 informed in a record of the availability, at the consumer's option, of assistance by toll-free communication or in person to discuss the financial analysis.

6.2.3 informed that some of the creditors, identified by the individual or known by the provider to be creditors of the individuals, may be unwilling to negotiate with the provider.

6.2.4 given the separate disclosures required under 6 **Del.C.** §2417A(d).

6.3 A plan or program is suitable under 6 **Del.C.** §2417A(b)(3)(B) when, at a minimum, the provider determines:

6.3.1 for a plan that provides for payment of principal in full, that the individual has the ability to repay the debt but only after there are concessions by creditors.

6.3.2 for a program that contemplates settling the debts of an individual for less than the principal amount owed, that the individual does not have the ability to satisfy creditors out of current income in a reasonable time even if the creditors made concessions other than reduction of principal.

~~6.34~~ Agreements must include the provisions required under 6 **Del.C.** §2419A.

~~6.34.1~~ Agreements must be accompanied by the "Notice of Right to Cancel" in bold-face type surrounded by bold black line as required under 6 **Del.C.** §2420A.

~~6.34.2~~ Any agreement that does not comply with the law or rules is voidable.

~~6.34.3~~ Agreements may be terminated as provided in 6 **Del.C.** §2426A.

6.4.4 In a plan that provides for regular payments to creditors, the concessions that the provider believes may be offered by each creditor must be identified in the agreement. The concessions may include reduction in finance charge or interest, reduction or waiver of charges for late payment, default or delinquency. Concessions may also include more favorable terms on a judgment.

6.4.5 An agreement may not:

6.4.5.1 provide for the application of the law of a jurisdiction other than the United States and Delaware or

6.4.5.2 limit or release the liability of any person for not performing the agreement or violating the law or

6.4.5.3 indemnify any person for liability arising under the agreement or the law.

PROPOSED REGULATIONS

6.5 If an individual residing in Delaware is referred by a licensee to another provider of debt management services, e.g. a referral by a credit counseling company to a debt settlement company, then it is the responsibility of the referring licensee to insure that such referral is made to a provider who is licensed or exempt from licensure in Delaware. If referrals are made through links on a licensee's web page, then the page must disclose if the referral is to a provider that is not authorized to provide services in Delaware.

6.6 If a provider uses a third party to solicit or qualify individuals for debt management services, any fee paid by the individual to the third party is an indirect charge attributed to the provider in calculating the fees or charges permitted by the provider under the Act.

6.7 Advertising must comply with the provisions is 6 Del.C. §2430A and applies to any medium, e.g. print, broadcast, telecast, electronic, internet, or other.

6.7.1 "Easily comprehensible" as used in the §2430A means that type must be large enough, and a video ad must be on the screen long enough, to be read by an individual of average eyesight. An audio ad must be spoken slowly enough to be understood by a person of average hearing.

6.7.2 A mere listing of the name, address, and phone number of a provider in a directory is not advertising under this section.

7.0 Complaints

7.1 Any person, including employees in the Consumer Protection Unit, may file a complaint against a licensee in writing on a form provided by the Consumer Protection Unit.

7.2 The Director may refer a completed and signed complaint to the Special Investigation Unit for investigation.

7.2.1 If, after review and/or investigation, there is insufficient evidence to support a finding the licensee is in violation of the Debt Management Services Act or the lawful rules promulgated under the Act, the Director may on his or her own accord dismiss the complaint.

7.2.2 If, after review and/or investigation, there is sufficient evidence to support a finding the licensee is in violation of the Debt Management Services Act or the lawful rules promulgated under the Act, the Director may

7.2.2.1 enter a preliminary order directed to a licensee to cease and desist from any violation, to correct a violation including providing restitution, and/or to pay a civil penalty as provided in 6 Del.C. §2433A;

7.2.2.2 enter a preliminary order suspending or revoking the license of licensee as provided in 6 Del.C. §2434A;

7.2.2.3 without entering a preliminary order, assign the matter to a Deputy Attorney General for preparation and prosecution of a formal complaint before a hearing officer;

7.2.2.4 impose civil penalties and/or recover costs of enforcement; or

7.2.2.5 proceed in any other manner permitted under the Act.

7.2.3 A licensee has twenty (20) days from receipt of a preliminary order in which to request a hearing before a hearing officer.

7.2.3.1 If no hearing is requested, the preliminary order becomes final.

7.2.3.2 If a hearing is requested, the matter will be assigned to a Deputy Attorney General as provided in 7.2.2.3.

7.2.4 When a hearing is requested following issuance of a preliminary order by the Director, enforcement is stayed pending a final determination by a hearing officer except in the case of an order issued with reference to 6 Del.C. §2433A(g)(2) or 2434A(c).

7.2.5 Any requested hearing will proceed as provided under the Administrative Procedures Act.

8.0 Hearings

8.1 All hearings are open to the public.

8.2 An individual may represent himself or herself in a hearing. An artificial entity shall be represented by an attorney authorized to practice law in Delaware.

8.2.1 Delaware Supreme Court Rule 72 is applicable to the admission of attorneys, who are not licensed in Delaware, *pro hac vice* before administrative agencies.

8.3 Testimony shall be under oath or affirmation.

8.4 The hearing officer shall preserve the record of the hearing including the pleadings and

documentary evidence.

8.5 The hearing shall be recorded verbatim by a court reporter. The expense of preparing any transcript for any purpose, including an appeal, shall be borne by the person requesting it.

8.6 The Delaware Uniform Rules of Evidence will provide a reference for the hearing officer. However, the hearing officer may admit any evidence that reasonable and prudent individuals would commonly accept in the conduct of their affairs and give probative effect that evidence. Evidence may not be excluded solely on the ground that it is hearsay, but a decision may not be based solely on hearsay.

9.0 Summary suspension.

9.1 The Director of Consumer Protection, by designation of the Attorney General, may order a summary suspension of a license effective the date specified in the order as provided in 6 **Del.C.** §2434A (c).

10.0 Appeals

10.1 Judicial review of regulations is authorized under 29 **Del.C.** §10141.

10.2 Judicial review of case decisions is authorized under 29 **Del.C.** §10142.

10.3 There is no automatic stay of enforcement of a decision when an appeal is filed from the final order of the Director or hearing officer. The requirements for a stay of enforcement are provided in 29 **Del.C.** §10144.

11.0 Trust Account

11.1 All money provided to a licensee pursuant to a plan for distribution to creditors shall be deposited in a trust account within two (2) business days after receipt and distributed to creditors within eight (8) days.

11.2 The licensee shall maintain separate records for each individual.

11.3 Each trust account shall be reconciled at least once each month. The balance must at all time equal the sum of the balances of each individual's account.

11.4 If the agreement is terminated or the plan fails, the licensee shall return the funds remaining in the trust account, less fees permitted under the Act, to the individual client.

11.5 A licensee shall notify the Director of the Consumer Protection Unit of the Attorney General's Office before a trust account is moved and shall provide the name, address, and telephone number of the new bank along with the new account number.

11.6 ~~A licensee must enter an overdraft notification agreement that requires the financial institution to notify the Director of the Consumer Protection Unit of the Attorney General's Office in the event that an instrument is presented for payment and the trust account contains insufficient funds, regardless of whether the instrument is honored. A provider may not co-mingle funds of others with those being held in trust for participants of debt management plans. Interest payable on the account must be credited to the individual depositors and not to the provider except that such interest may be used to pay the fees of the financial institution related to the trust account.~~

11.7 A licensee shall comply with all provisions related to the trust account required by 6 **Del.C.** §2422A.

12.0 Examinations

12.1 An on-site examination of assets, securities, books, accounts, papers, and records of a licensee or affiliate can be conducted by an examiner designated by the Director with or without notice during regular business hours. The records shall document the information in 6 **Del.C.** §2427A including at least the following:

12.1.1 A file for each consumer containing the preliminary financial analysis prepared for the consumer, the original agreement, the consumer's total income along with the debt balance, the monthly payment due each creditor, and copies of the periodic statements provided to the consumer.

12.1.2 An activity record for each consumer including the account number, name, address, date of the agreement, total indebtedness, monthly receipts including the date of receipt, any fees charged, amounts disbursed to creditors including the payment date, and the estimated term of the agreement. The record shall also include any action taken to recover unpaid fees that may be owed by a consumer who has cancelled an agreement.

12.1.3 In the case of a settlement with a creditor for less than the principal amount due, the record shall include the terms of the settlement, the amount owed at the time of an agreement, the amount of the settlement, and the calculation of a settlement fee.

12.1.4 An alphabetical index of names, addresses, account numbers, date of agreement, and total indebtedness.

12.2 Any person who is connected or associated with the licensee may be examined, under oath, as to the facts and circumstances of any matter under examination.

12.3 A licensee shall pay all reasonably incurred fees, costs, and expenses directly related to an examination including travel expenses, lodging expenses, and a per diem for examiners. Payment shall be made within 10 days after receipt of a statement from the Director.

12.4 The Director may accept the report of a responsible supervisory agency from another state in lieu of an on-site examination.

13.0 Miscellaneous

13.1 Computation of time. In computing any period of time prescribed in or allowed by these Rules, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or State legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or State legal holiday. If service is made by mail, three days shall be added to the prescribed period for response.

13.2 A list of licensees is available upon request to the Consumer Protection Unit or online at the address in Rule 3.0.

13.3 A licensee shall notify the Director of the Consumer Protection Unit within 30 days of receipt of a notice of civil litigation filed by or on behalf of an individual who was residing in Delaware at the time an agreement for services was signed or at the time the notice was served.

13.4 A licensee shall notify the Director of the Consumer Protection Unit within 10 days after a change of information specified in 6 **Del.C.** §§2405A or 2406A.

10 DE Reg. 1309 (02/01/07)

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

2500 Board of Pharmacy

Statutory Authority: 24 Delaware Code, Section 2509 (24 **Del.C.** §2509)

24 **DE Admin. Code** 2500

PUBLIC NOTICE

The Delaware Board of Pharmacy, in accordance with 24 **Del.C.** §2509, proposes amendments to its regulation section 1.0. Specifically, the proposed addition to **1.0 Pharmacist Licensure Requirements** sets the period within which a pharmacist license or pharmacy permit may be renewed after its expiration. The proposal also sets the requirements for late renewal, including mandatory audit of all late-renewed pharmacist licenses to verify compliance with the continuing education renewal requirement. Other grammatical, typographic, or stylistic changes are also included.

A public hearing is scheduled for Wednesday, January 16, 2008, at 10:00 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904.

Members of the public may offer verbal comments on the proposal at the hearing. Written comments must be submitted to the Board care of Judy Letterman at the above address. Written comments may be submitted until the public hearing begins. Anyone wishing to obtain a copy of the proposal or to make comments at the public hearing should contact Judy Letterman at the above address or by calling (302) 744-4504.

The Board will consider promulgating the proposed changes immediately following the public hearing.

2500 Board of Pharmacy

1.0 Pharmacist Licensure Requirements

1.1 Examination Requirements

1.1.1 In order to be eligible for examination for licensure, an applicant must provide proof of completion of all requirements for graduation from an approved school or college. An approved school or college of pharmacy is an institution which has established standards in its undergraduate degree program which are at least equivalent to the minimum standards for accreditation established by the American Council on Pharmaceutical Education. Provided, however, that graduates of schools or colleges of pharmacy located outside of the United States, which have not established standards in their respective undergraduate degree programs which are at least equivalent to the minimum standards for accreditation established by the American Council on Pharmaceutical Education, shall be deemed eligible for examination for licensure by providing evidence satisfactory to the Board of Pharmacy of graduation from such school or college and by successfully passing an equivalency examination recognized by the Board of Pharmacy. Certification by the National Association of Boards of Pharmacy (NABP) Foreign Pharmacy Graduate Examination Committee (FPGEC) meets the equivalency examination requirement.

1.1.2 Candidates must obtain a passing grade as determined by the National Association of Boards of Pharmacy (NABP) on the North American Pharmacist Licensure Examination (NAPLEX) and the Multistate Pharmacy Jurisprudence Examination for Delaware (MPJE) to be eligible for a license to practice. A candidate must take an examination within 365 days of the determination of eligibility by the Board. The Secretary will supply the grades obtained to the candidate upon receipt of a written request from that person.

1.1.3 The Board will re-confirm the eligibility of an applicant who fails the NAPLEX. The applicant shall be entitled to take a re-examination at least ninety-one (91) days following the date of the failure. If an applicant has failed the examination three times, he/she shall be eligible to re-take the NAPLEX, provided that he/she produces evidence of working full-time as an intern for a period of six months or has attended an accredited college of pharmacy as a registered student for a minimum of one semester consisting of 12 credits during the interim. A certification of satisfactory completion of such work shall be furnished by the Dean of the College or the preceptor as the case may be.

1.1.4 The Board will re-confirm the eligibility of an applicant who fails the MPJE. The applicant shall be entitled to re-take the MJPE at least thirty-one (31) days following the date of the failure. If an applicant has failed the examination three times, he or she shall be eligible to re-take the examination, provided that he or she produces evidence of working full-time as an intern for a period of three months or has completed a one semester college course on jurisprudence.

1.2 Practical Experience Requirements

1.2.1 An applicant for registration as an intern must submit an application for registration of Internship after entering the first professional year of college of pharmacy which includes an "Affidavit of Class Standing" and "Affidavit of Preceptor." This application must be obtained from the Board of Pharmacy. If the applicant is a graduate of a foreign pharmacy school, he/she must produce evidence that he/she has passed an equivalency examination by the Board.

1.2.2 Persons who register as interns in the State of Delaware shall, in accordance with the requirements of 24 **Del.C.** §2515, complete not less than 1500 hours of Board approved practical experience under the supervision of a licensed pharmacist. A minimum of 1000 hours shall be obtained in the community or hospital settings. The remaining 500 hours may be obtained in other recognized fields of practice, e.g.: Industrial Pharmacist, Drug Information Pharmacist, Military Pharmacist, Mail Order Pharmacist, HMO Pharmacist, Consultant Pharmacist (Nursing Home, Infusion, Medicaid DUR, Etc.), Home Health Care Pharmacist (may include Durable Medical Equipment, etc.), Nuclear Pharmacist, Compliance Pharmacist, Government Pharmacist, Clinical Pharmacist, Contracted Pharmacy Services.

1.2.3 Practical experience must be acquired under the supervision of a licensed pharmacist known as a Preceptor. The Preceptor must be a pharmacist licensed in this State or any other State and must have a minimum of two years of pharmacy practice. A pharmacist affiliated with a College of Pharmacy shall serve as the preceptor for a student participating in the coordinated practical experience program. The Preceptor must certify that the intern has successfully completed all the requirements outlined in the Responsibilities of the Intern professional assessment form.

1.2.4 Practical experience acquired in another State is acceptable if the State Board in which the applicant acquired the hours submits a letter of certification, or if the applicant's preceptor completes the Delaware State Board of Pharmacy's Affidavit of Intern Experience form. Applicants who have not completed all the practical experience requirements, but who have graduated from an accredited college or have been certified by the NABP Foreign Pharmacy Graduate Examination Committee are eligible to take the examination. However, applicants will not be fully licensed until all the requirements of the Statutes and Regulations are completed.

PROPOSED REGULATIONS

1.2.5 The hours accrued during the College of Pharmacy Practical Experience Program may be applied to the 1500 hours total. These hours shall be recorded on the College Practical Experience Affidavit supplied by the Board. Registration as an intern in this State is not required for school experience.

1.2.6 An intern must notify the Board of Pharmacy in writing within ten (10) days of a change or preceptor. A change of preceptor affidavit must be completed and filed with the Board.

1.3 Continuing Education Requirements

1.3.1 A pharmacist must acquire 3.0 C.E.U.'s (30 hours) per biennial licensure period. No carry over of credit from one registration period to another period is permitted.

1.3.2 Hardship - Hardship exemptions may be granted by the Board of Pharmacy upon receipt of evidence that the individual was unable to complete the requirements due to circumstances beyond his control.

1.3.3 Criteria for Hardship Exemption as Recommended by the Board of Pharmacy:

1.3.3.1 Applicant must notify the Board in writing concerning the nature of the hardship and the time needed for an extension. In case of medical disability, a letter from the physician with supporting documentation to corroborate the condition and the length of time of extension needed.

1.3.3.2 The Board of Pharmacy will review requests.

1.3.3.3 The Board will notify the registrant of its decision.

1.3.4 Persons who are newly licensed after the registration period begins, must complete continuing education units proportional to the total number of continuing education units required for the biennial licensure renewal. (1.25 hours/per month).

1.4 Continuing Professional Educational Programs

1.4.1 Topics of Study

Topics of study shall be subject matter designed to maintain and enhance the contemporary practice of pharmacy.

1.4.2 Approved Provider

1.4.2.1 Any provider approved by ACPE.

1.4.2.2 In-state organization which meets criteria approved by the Board.

1.4.3 Application for Delaware State Provider

1.4.3.1 Any in-state organization may apply to the Board on forms provided by the Board for initial qualification as an approved provider. The Board shall accept or reject any such application by written notice to such organization within 60 days after receipt of its application. If an organization is approved, the Board will issue a certificate or other notification of qualification to it, which approval shall be effective for a period of two years and shall be renewable upon the fulfillment of all requirements for renewal as set forth by the Board.

1.4.3.2 The Board may revoke or suspend an approval of a provider or refuse to renew such approval if the provider fails to maintain the standards and specifications required. The Board shall serve written notice on the provider by mail or personal delivery at its address as shown on its most current application specifying the reason for suspension, revocation, or failure to renew. The provider so affected shall, upon written request to the Board within ten days after service of the notice, be granted a prompt hearing before the Board at which time it will be permitted to introduce matters in person, or by its counsel, to defend itself against such revocation, suspension, or failure to renew, in accordance with the provisions set forth in the State's Administrative Procedures Act.

1.4.4 Criteria for Approval of Delaware State Providers. Only applicants who are located within the State of Delaware are eligible. Such Continuing Education providers shall provide evidence of ability to meet the following criteria or approval as a Continuing Pharmaceutical Education Provider. Other persons must apply through ACPE for approval or be acceptable to other Boards of Pharmacy that certify continuing education for relicensure.

1.4.4.1 Administration and Organization

1.4.4.1.1 The person who is in charge of making sure that the program meets the quality standards must have a background in the administration of education programs.

1.4.4.1.2 There shall be an identifiable person or persons charged with the responsibility of administering the continuing pharmaceutical education program.

1.4.4.1.3 Such personnel shall be qualified for such responsibilities by virtue of experience and background.

1.4.4.1.4 If an approved provider presents programs in co-sponsorship with other non-approved provider(s), the approved provider has the total responsibility for assurance of quality of

that program. If more than one approved provider co-sponsors a program, they have the joint responsibility for assuring quality.

1.4.4.1.5 Administrative Requirements include:

1.4.4.1.5.1 The development of promotional materials which state:

- 1.4.4.1.5.1.1 Educational objectives.
- 1.4.4.1.5.1.2 The target audience.
- 1.4.4.1.5.1.3 The time schedule of the activities.
- 1.4.4.1.5.1.4 Cost to the participant/covered items.
- 1.4.4.1.5.1.5 Amount of C.E. credit which will be awarded.
- 1.4.4.1.5.1.6 Credentials of the faculty, presenters, and

speakers.

1.4.4.1.5.1.7 Self-evaluation instruments.

1.4.4.1.5.2 Compliance with a quantitative measure for C.E. credit.

1.4.4.1.5.2.1 The number of C.E.U.'s to be awarded for

successful completion shall be determined by the provider and reported in the promotional materials.

1.4.4.1.5.2.2 In cases where the participants' physical

presence is required, C.E. credit will only be awarded for that portion of the program which concerns itself with the lecture(s), evaluation and question and answer segments.

1.4.4.1.5.2.3 The measure of credit shall be a fifty-minute

contact hour. In the case of other programs such as home study courses, the amount of credit awarded shall be determined by assessing the amount of time the activity would require for completion by the participant if delivered in a more formal and structured format.

1.4.4.1.5.2.4 The provider must provide the Board upon

request with appropriate records of successful participation in previous continuing education activities.

1.4.4.1.5.2.5 The provider must present to the participant a

form or certificate as documentation of the completion of the program. The form must be at least 4" x 6" and no larger than 8 1/2" x 11". That certificate must show the name, address, and license number of the participant, the name of the provider, the title and date of the program, the number of credits earned, and an authorized signature from the provider.

1.4.4.2 Program Faculty. The selection of program faculty must be based upon proved competency in the subject matter and an ability to communicate in order to achieve a learning experience.

1.4.4.3 Program Content Development

1.4.4.3.1 Such programs shall involve effective advance planning. A statement of educational goals and/or behaviors must be included in promotional materials. Such objectives and goals must be measurable and accessible to evaluation. In determining program content, providers shall involve appropriate members of the intended audience in order to satisfy the educational needs of the participants. All programs of approved providers should pertain to the general areas of professional pharmacy practices which should include, but not be limited to:

1.4.4.3.1.1 The social, economic, behavioral, and legal aspects of

health care,

1.4.4.3.1.2 the properties and actions of drugs and drug dosage

forms,

1.4.4.3.1.3 the etiology, characteristics, therapeutics and prevention

of the disease state,

1.4.4.3.1.4 pharmaceutical monitoring and management of patients.

1.4.4.3.2 All ancillary teaching tools shall be suitable and appropriate to the topic.

1.4.4.3.3 All materials shall be updated periodically to include up-to-date-practice setting.

1.4.4.3.4 It is the responsibility of the provider to be sure that the programs are continuously upgraded to meet educational objectives of the Practice of Pharmacy. The needs of the pharmacist participant must be considered in choosing the method of delivery. Innovation in presentations is encouraged within the limits of budget resources and facilities. Whatever method of delivery is used, it must include the participation of the pharmacist as much as possible within the program, i.e. questions and answers, workshops,

etc.

1.4.4.4 Facilities. The facilities shall be adequate for the size of the audience, properly equipped (all appropriate audio/-visual media materials), well lighted and ventilated to induce a proper learning experience.

1.4.4.5 Evaluation. Effective evaluation of programs is essential and is the responsibility of both the provider and participant.

1.4.4.5.1 Participant - Some evaluation mechanisms must be developed by the provider to allow the participant to assess his/her own achievement per the program.

1.4.4.5.2 Provider evaluation - a provider shall also develop an instrument for the use of the participant in evaluating the effectiveness of the program including the level of fulfillment of stated objectives.

1.4.5 Criteria for Awarding Continuing Education Credits. Individual programs must meet the criteria for provider approval in order to be considered. In those cases where the provider is not an ACPE provider, nor a Board of Pharmacy approved provider, a registrant may complete an application provided by the Board for approval of individual programs.

1.4.5.1 In order to receive full credit for non-ACPE approved programs of one-to-two hour lengths, evidence of a post test must be presented. An automatic 25% deduction if no post test presented.

1.4.5.2 In order to receive full credit for non ACPE approved programs of three or more hours in length, evidence of a pre and post test must be presented. Automatic 25% deduction if no pre and post test presented.

1.4.5.3 Credit will be assigned only for the core content of the program which explicitly relates to the contemporary practice of Pharmacy.

1.4.5.4 A maximum of 2 credit hours will be awarded for First Aid, attendance at a Board of Pharmacy meeting and CPR/BCLS courses one time only per registration period.

1.4.5.5 Credit for Instructors of Continuing Education

1.4.5.5.1 Any pharmacist whose primary responsibility is not the education of health professionals, who leads, instructs or lectures to groups of nurses, physicians, pharmacists or others on pharmacy related topics in organized continuing education or inservice programs, shall be granted continuing education credit for such time expended during actual presentation, upon adequate documentation to the Delaware Board of Pharmacy.

1.4.5.5.2 Any pharmacist whose primary responsibility is the education of health professionals shall be granted continuing education credit only for time expended in leading, instructing, or lecturing to groups of physicians, pharmacists, nurses or others on pharmacy related topics outside his/her formal course responsibilities (that is, lectures or instructions must be prepared specifically for each program) in a learning institution.

1.4.5.5.3 Credit for presentations of in-service training programs or other lectures shall be granted only for topics meeting the criteria for continuing pharmacy education, and shall be granted only once for any given program or lecture. (Any topic completely revised would be eligible for consideration.)

1.4.5.5.4 A maximum of 6 hours (0.6 C.E.U.'s) in this category may be applied toward fulfilling the total biennial continuing education requirements.

1.4.5.6 Credit for On the Job Training:

1.4.5.6.1 The Board of Pharmacy does not as a general rule encourage the submission of "on the job training" for fulfilling the continuing education requirements. All programs meeting this definition shall be reviewed on an individual basis.

1.4.5.6.2 All programs that are submitted for credit must meet the criteria for continuing pharmacy education.

1.4.5.6.3 No credit shall be awarded for programs required by an employer for continued employment of the employee. (Examples OSHA training, Infection Control Education required by JCAHO.)

1.4.5.6.4 A maximum of 4 hours (0.4 C.E.U.'s) in this category may be applied toward fulfilling the total biennial continuing education requirements.

1.5 The Verification of Continuing Education - A pharmacist shall retain the supporting documentation,

such as certification of completion for a minimum of six years. The Board will randomly audit the documentation of at least 10% of licensed pharmacists every biennial term. Supporting documentation may be requested for up to six years. Pharmacists who were not selected for audit do not send supporting documentation to the Board. Submitting a false documentation may constitute grounds for discipline under 24 **Del.C.** §2518 (a)(1).

1.6 Reciprocal Requirements

1.6.1 An applicant for licensure by reciprocity shall be of good moral character and shall:

1.6.1.1 submit proof that he or she was qualified for licensure in Delaware at the time of initial licensure by examination;

1.6.1.2 submit proof of licensure in good standing from each state where he or she is or has been licensed; and

1.6.1.3 obtain a passing score on the MPJE on the laws applicable in this State as provided in Regulation 1.1.

1.6.2 Reciprocity applicants who took examinations after June 1, 1979, must have passed the NAPLEX or an examination deemed equivalent by the Board and obtained scores required for applicants for licensure by examination.

1.6.3 Applicants who are licensed by reciprocity must begin accruing continuing education units at a rate of 1.25 hours/per month beginning with the month of licensure.

1.7 Late Renewal - If a pharmacist license or pharmacy permit expire for failure to renew before the deadline, the license or permit may be renewed at any time within the 60 days immediately following expiration upon application and payment of the renewal fee and a late fee. In accordance with 24 **Del.C.** §§2507 and 2526, it is unlawful for a licensee or permittee to practice or operate while their license or permit is expired. All late pharmacist license renewals will be audited for compliance with the CE renewal requirement.

1 DE Reg. 1965 (6/1/98)

2 DE Reg. 683 (10/1/98)

4 DE Reg. 163 (7/1/00)

4 DE Reg. 1501 (3/1/01)

6 DE Reg. 488 (10/1/02)

7 DE Reg. 309 (9/1/03)

9 DE Reg. 85 (7/1/05)

***Please Note:** As the rest of the sections were not amended, they are not being published here. A copy of the regulation is available at:

[2500 Board of Pharmacy](#)

DIVISION OF PROFESSIONAL REGULATION

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

Statutory Authority: 24 Delaware Code, Section 3006(a)(1) (24 **Del.C.** §3006(a)(1))

24 DE Admin. Code 3000

PUBLIC NOTICE

The Delaware Board of Mental Health and Chemical Dependency Professionals, in accordance with 24 **Del.C.** §3006(a)(1), proposes amendments to its regulations in section **4.0 Licensure for Chemical Dependency Professionals**. By these amendments, the Board establishes the regulations governing the licensure of Chemical Dependency Professionals.

Other minor changes are also included that affect various sections of the regulations. As well, grammatical, typographic, and stylistic changes are included throughout the regulations.

A public hearing is scheduled for Wednesday, January 23, 2008, at 12:00 p.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904.

Members of the public may offer verbal comments on the proposal at the hearing. Written comments must

be submitted to the Board care of Timothy E. Oswell at the above address. Written comments may be submitted until the public hearing begins. Anyone wishing to obtain a copy of the proposal or to make comments at the public hearing should contact Timothy E. Oswell at the above address or by calling (302) 744-4530.

The Board will consider promulgating the proposed changes immediately following the public hearing.

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

1.0 ~~Elections of Officers~~ General

1.1 Elections – The Board shall elect officers annually at the regular January meeting. The office of President must rotate among the professions regulated and the public members.

1.2 Governing Statute – Chapter 30 of Title 24 of the **Delaware Code** governs the Board and the professions under its purview. Licensees should look to the statute first for requirements, then to these regulations for clarification or elaboration. There are critical requirements in the statute that do not appear in these regulations.

1.3 Licensee Contact Information – It shall be the responsibility of all licensees to keep the Division of Professional Regulation (Division) informed of any change of address. Renewal notices will be sent to the last address on file with the Division.

10 DE Reg. 872 (11/01/06)

11 DE Reg. 225 (08/01/07)

2.0 Licensure for Professional Counselors of Mental Health (LPCMH)

2.1 Licensure by Certification Requirements

2.1.1 Certification - The applicant for licensure by certification shall be certified by the National Board for Certified Counselors, Inc. (NBCC) as a National Certified Counselor (NCC), by the Academy of Clinical Mental Health Counselors (ACMHC) as a Certified Clinical Mental Health Counselor (CCMHC), or by another certifying organization acceptable to the Board. This certification shall be verified by the "NBCC Certification Form," the "ACMHC Certification Form" or the "Certifying Organization Certification Form," submitted directly to the Board by the certifying organization.

2.1.1.1 Certifying organizations acceptable to the Board shall include NBCC, ACMHC, ~~and~~ or other certifying organizations that meet all of the following criteria:

2.1.1.1.1 The organization shall be a national professional mental health organization recognized as setting national standards of clinical competency.

2.1.1.1.2 The organization shall require the applicant to take a standardized examination designed to test his/her understanding of the principles involved in the mental health specialty for which he/she is being certified. Certification shall be based upon the applicant's attaining the minimum passing score set by the organization.

2.1.1.1.3 The organization shall prescribe a code of ethics substantially equivalent to that of the NBCC.

2.1.1.1.4 The organization shall require the minimum of a master's degree in a counseling or behavioral science field.

2.1.1.2 Individuals licensed prior to the effective date of this ~~Rule~~ requirement must maintain certification or membership in the certifying organization, acceptable to the board at the time of their initial licensure in order to qualify for renewal of their license notwithstanding that such certifying organization is no longer deemed acceptable to the board.

2.1.2 Graduate Transcript - The applicant's master's degree in a counseling or behavioral science field, required by his/her certifying organization for certification, shall be documented by an official transcript submitted directly to the Board by the accredited educational institution granting the degree.

2.1.3 Professional Counseling Experience - Professional Counseling experience shall be defined as the accumulation of hours spent providing mental health counseling services in a professional mental health clinical counseling setting, including face-to-face interaction with clients and other matters directly related to the treatment of clients.

2.1.3.1 Designated Objective Agent - For purposes of professional counseling experience obtained through self-employment, a designated objective agent shall be a professional colleague, supervisor or other individual with personal knowledge of the extent of the professional practice of the applicant, who certifies or attests to such professional practice. Under no circumstances shall a spouse, former spouse,

parent, stepparent, grand-parent, child, step-child, sibling, aunt, uncle, cousin or in-law of the applicant be acceptable as a designated objective agent.

2.1.3.2 ~~Thirty (30)~~ graduate semester hours or more attained beyond the master's degree, may be substituted for up to 1,600 hours of the required clinical experience, provided that hours are clearly related to the field of counseling and are acceptable to the Board. Graduate credit hours shall be verified by an official transcript submitted directly to the Board by the accredited educational institution at which the course work was done.

2.1.3.3 Supervised clinical experience or post-master's degree alternative shall be verified by the "Professional Experience Reference Form" ~~and/or~~ the "Verification of Self Employment" form.

2.1.4 Supervised Professional Counseling Experience - Supervised professional counseling experience shall be the accumulation of hours spent providing mental health counseling services while under the supervision of an approved clinical supervisor. Supervised professional counseling experience acceptable to the Board shall be defined as follows:

2.1.4.1 Supervised professional counseling experience shall consist of 1,600 hours of clinical experience, directly supervised by a LPCMH. Where direct supervision by a LPCMH is not available, a licensed clinical social worker, licensed psychologist or licensed physician specializing in psychiatry may supervise the applicant.

2.1.4.2 Direct Supervision - 1,600 hours of direct supervision acceptable to the Board, ~~for purposes of §3008(a)(2)~~ shall mean supervision overseeing the supervisee's application of clinical counseling principles, methods or procedures to assist individuals in achieving more effective personal and social adjustment. At least 100 of the 1,600 hours of supervision shall consist of face-to-face consultation between the supervisor and the supervisee. Direct supervision may take place in individual and/or group settings, defined as follows:

2.1.4.2.1 Individual Supervision - Individual supervision shall consist of one-to-one, face-to-face meetings between supervisor and supervisee.

2.1.4.2.2 Group Supervision - Group supervision shall consist of face-to-face meetings between supervisor and no more than six (6) supervisees.

2.1.4.2.3 Supervisory Setting - No more than ~~forty (40)~~ hours of group supervision shall be acceptable toward the 100-hour requirement. The entire 100-hour requirement may be fulfilled by individual supervision.

2.1.4.3 Supervision shall be verified by the "Direct Supervision Reference Form," which must be submitted directly to the Board by the approved clinical supervisor.

2.2 Licensure by Reciprocity Requirements

2.2.1 Proof of Licensure Status - The applicant shall hold an active professional counseling license in good standing from another state. Verification of licensure status shall be submitted directly to the Board by that state on the "Verification of Licensure or Certification from Another State" form.

2.2.2 Notarized Statement of Prior Licensing Jurisdictions - The applicant shall submit a notarized statement listing all licensing jurisdictions in which he/she formerly practiced and a signed "Release of Information" granting the Board permission to contact said jurisdictions for verification of disciplinary history and current status.

2.2.3 Determination of Substantial Similarity of Licensing Standards - The applicant shall submit a copy of the statute and rules of licensure from the state issuing his/her license. The burden of proof is upon the applicant to demonstrate that the statute and rules of the licensing state are at least equivalent to the educational, experience and supervision requirements ~~set forth in Title 24, Delaware Code, Chapter 30 of this State~~. Based upon the information presented, the Board shall make a determination regarding whether the licensing requirements of the applicant's licensing state are substantially similar to those of Delaware.

2.2.4 LACMH Option - If the Board determines that the requirements of the applicant's licensing state are not equivalent substantially similar to those of Delaware with regard only to the experience requirements of ~~§3008(a)(2)~~, the applicant shall be eligible for licensure as an LACMH, in which case he/she shall have four (4) years to complete the supervision requirements of ~~§3008(a)(2)~~. The applicant shall be given full credit for such properly documented experience and/or supervised experience as was required for licensure in his/her licensing state.

2.3 License Renewal ~~of Licensure~~

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2.3.1 Renewal Date - The LPCMH license shall be renewable biennially on September 30th of even-numbered years. License renewal may be accomplished online at <http://dpr.delaware.gov> the Division of Professional Regulation's (Division) website. Alternatively, licensees may submit paper renewal documents. Requests for paper renewal forms must be directed to the Division.

2.3.2 Requirements for Renewal are as follows:

2.3.2.1 Certification - The candidate for renewal shall hold current certification in good standing as of the date of licensure renewal in NBCC, ACMHC, or other certifying organization acceptable to the ~~Board~~. This certification shall be verified by attestation. Attestation shall be completed electronically if the renewal is accomplished online. Alternatively, the attestation of certification may be submitted by paper renewal forms. Requests for paper renewal forms must be directed to the Division.

2.3.2.2 Continuing Education (CE)

2.3.2.2.1 Requirement - The candidate for renewal shall have completed no less than 40 clock hours of acceptable ~~continuing education~~ CE per two (2) year licensure renewal period. CE~~continuing education~~ requirements for initial licensure periods of less than two (2) years shall be prorated.

2.3.2.2.2 ~~Acceptable Continuing Education~~ Acceptable continuing education CE shall include the following:

2.3.2.2.2.1 ~~CE~~continuing education hours approved by a national mental health organization (such as NBCC, ACMHC, or APA), shall be acceptable. Other training programs may apply for ~~continuing education~~ Board approval. CE should be oriented towards enhancement of the knowledge and practice of counseling. Hours are to be documented by a certificate signed by the presenter or by a designated official of the sponsoring organization.

2.3.2.2.2.2 Academic course work, ~~and~~ presentation of original papers providing training and clinical supervision may be applied for up to 20 clock hours of the continuing education requirement. These hours are to be documented by an official transcript, syllabus, or a copy of the published paper presented.

Under no circumstances may there be less than 20 hours of face-to-face participation in ~~continuing education~~ CE as outlined above.

2.3.2.2.3 Make-Up of Disallowed Hours - In the event that the board disallows certain ~~continuing education~~ CE clock hours, the candidate for renewal shall have three (3) months after the licensure renewal date to complete the balance of acceptable ~~continuing education~~ CE hours required.

2.3.2.3 Hardship - The ~~Board~~ shall have the authority to make exceptions to the ~~continuing education~~ CE requirements, in its discretion, upon a showing of good cause. "Good Cause" may include, but is not necessarily limited to: disability, illness, military service, extended absence from the jurisdiction, ~~and or~~ exceptional family responsibilities. Request 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. A license shall be renewed upon approval of the hardship extension by the ~~Board~~, but the license shall be subject to revocation if the licensee does not comply with the terms of the hardship exception established by the ~~Board~~.

2.3.2.4 Verification of continuing education CE hours shall be by attestation. Attestation shall be completed electronically if the renewal is accomplished online. Alternatively, the attestation of completion may be submitted by paper renewal forms. Requests for paper renewal forms must be directed to the Division.

2.3.2.4.1 ~~All licensees shall maintain documentation of continuing education during the licensure period to be submitted if their renewal application is selected for audit. Random audits will be performed by the Board to ensure compliance with the continuing education requirement. Licensees selected for the random audit shall submit attendance verification~~

2.3.2.5 ~~Fees~~ - The candidate for renewal shall make payment of a renewal fee in an amount prescribed by the Division for that licensure renewal period. ~~A 50% late charge shall be imposed upon any fee paid after the renewal date.~~

2.3.2.6 ~~It shall be the responsibility of all licensees to keep the Division informed of any change of address. Renewal notices will be sent to the last address on file with the Division.~~

2.3.3 Post-Renewal Audit - The Board will conduct random audits of renewal applications to ensure the veracity of attestations and compliance with the CE requirements. Licensees selected for the random audit shall submit CE course attendance verification in the form of a certificate signed by the course presenter or by a designated official of the sponsoring organization. Licensees shall retain their CE course attendance

documentation for each licensure period. Licensees shall retain their CE course attendance documentation for at least one (1) year after renewal. Licensees found to be deficient or found to have falsely attested may be subject to disciplinary proceedings and may have their license suspended or revoked. Licensees renewing during the late renewal period shall be audited.

~~2.4 Return to Active Status~~ ~~Return to active status from inactive status shall be granted upon fulfillment of the following requirements:~~

~~2.4.1 Written Request~~ ~~Written request to the Board requesting return to active status.~~

~~2.4.2 Certification~~ ~~Current certification in good standing, as of the date of the request for return to active status, in NBCC, ACMHC or other certifying organization.~~

~~2.4.3 Continuing Education~~ ~~Completion of forty (40) hours of acceptable continuing education, obtained within the two (2) year period prior to the request for return to active status.~~

~~2.4.4 Fee~~ ~~Payment of the current fee for licensure renewal. No late fee shall be assessed for return to active status.~~

2.4 Inactive Status

2.4.1 A written request must be submitted to have a license placed on inactive status. Inactive status is effective immediately upon Board approval. The inactive status may continue through the then current licensure period and the following two-year licensure period. An inactive license shall expire at the end of the two-year licensure period unless either (1) the Board grants an extension before the end of the licensure period or (2) the license is returned to active status before the end of the licensure period.

2.4.2 Extension – The Board shall extend the inactive status for an additional two-year licensure period upon timely written request. Inactive licenses expire at the end of the licensure period, so written requests for extension must be received well in advance of the end of the licensure period to avoid expiration.

2.4.3 Return to Active Status – Before the end of the then current two-year licensure period, a license shall be returned to active status upon fulfillment of the following requirements by the licensee:

2.4.3.1 Written Request – Submit a written request to have the license returned to active status.

2.4.3.2 Certification – Provide proof of certification in good standing by NBCC, ACMHC, or another certifying organization acceptable to the Board pursuant to regulation 2.1.1.1.

2.4.3.3 Continuing Education – Provide proof of completion of 40 hours of acceptable CE, obtained within the two (2) year period immediately preceding the request for return to active status.

2.4.3.4 Fee – Pay the licensure renewal fee. No late fee shall be assessed for return to active status.

~~2.5 Ethics~~ - ~~The Board hereby adopts the current version of National Board for Certified Counselors Code of Ethics (“Code”). The practice of all persons licensed as an LPCMH or LAMCH shall conform to the principles of the National Board for Certified Counselors’ Code of Ethics (Code). Violation of the Code shall constitute grounds for discipline.~~

~~4 DE Reg. 970 (12/1/00)~~

~~5 DE Reg. 2109 (5/1/02)~~

~~10 DE Reg. 872 (11/01/06)~~

~~11 DE Reg. 225 (08/01/07)~~

3.0 Licensure of for Associate Counselors of Mental Health (LACMH)

3.1 Written Plan – The applicant shall submit a written plan for supervised professional experience, on the “Written Plan for Professional Counseling Experience and Supervision” form, supplied by the Board, and signed by the approved professional supervisor.

3.2 Ethics – The practice of all persons licensed as an LAMCH shall conform to the principles of the National Board for Certified Counselors’ Code of Ethics (Code). Violation of the Code shall be grounds for discipline.

~~4 DE Reg. 970 (12/1/00)~~

~~10 DE Reg. 872 (11/01/06)~~

4.0 Licensure of for Chemical Dependency Professionals (LCDP)

4.1 Licensure by Certification Requirements

4.1.1 Education – The applicant's master's degree shall be documented by an official transcript

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submitted directly to the Board by the degree-granting institution.

4.1.2 Experience – Counseling experience shall be defined as the accumulation of 3,200 hours spent providing chemical dependency services in a professional clinical setting, including face-to-face interaction with clients and other matters directly related to the treatment of clients. Supervision shall be verified by the "Supervision Reference Form," which shall be submitted directly to the Board by the approved clinical supervisor.

4.1.3 Certification – To be licensed by certification an applicant must be certified by the National Association for Addictions Professionals (NAADAC) as a National Certified Addictions Counselor (NCAC) or Master Addictions Counselor (MAC), by the Delaware Certification Board (DCB Inc.) as a Certified Alcohol and Drug Counselor (CADC), or by another certifying organization acceptable to the Board.

4.1.3.1 Another certifying organization must meet all of the following criteria to be acceptable to the Board:

4.1.1.3.1 The organization shall be a national professional chemical dependency organization recognized as setting national standards of clinical competency;

4.1.1.3.2 The organization shall require the applicant to take and pass a standardized examination designed to test his understanding of the principles involved in the chemical dependency specialty for which he is being certified; and

4.1.1.3.3 The organization shall prescribe a code of ethics substantially equivalent to NAADAC's.

4.1.3.2 At the time of initial licensure, licensees must provide evidence of active certification in good standing by an organization acceptable to the Board. If a licensee is certified by an organization that thereafter is deemed not acceptable by the Board, the licensee must obtain certification from an acceptable organization to qualify for licensure renewal.

4.2 Licensure by Reciprocity Requirements

4.2.1 Licensure Status – Verification of an applicant's possession of a current LCDP in good standing from another state, the District of Columbia, or U.S. territory must be submitted directly to the Board by that state, the District of Columbia, or U.S. territory.

4.2.2 Prior Licensing Jurisdictions – The applicant must submit a notarized statement listing all licensing jurisdictions in which he previously practiced and must submit a signed "Release of Information" granting the Board permission to contact those jurisdictions for verification of disciplinary history and current status.

4.2.3 Substantial Similarity of Licensing Standards – Applicants must submit the statute, rules, and regulations governing chemical dependency licensure requirements for the state in which they are currently licensed and through which they are seeking reciprocity. The burden of proof is on the applicant to demonstrate that the licensing standards of that state are substantially similar to Delaware's standards. The Board will make a determination of substantial similarity based on the information presented. If applicants are actively licensed in multiple states, only one state's licensure requirements need to be substantially similar for the applicant to obtain Delaware licensure by reciprocity.

4.2.4 No Substantial Similarity of Licensing Standards – Applicants from states whose licensing standards are not substantially similar to Delaware's standards may receive reciprocal licensure if they have held their license in good standing for at least five (5) years and are certified pursuant to regulation 4.1.3.

4.3 License Renewal

4.3.1 Renewal Date – The LCDP shall be renewable biennially on or before September 30th of even-numbered years. License renewal may be accomplished online at the Division of Professional Regulation's (Division) website. Alternatively, licensees may submit paper renewal documents. Requests for paper renewal forms must be directed to the Division.

4.3.2 Requirements for Renewal are as follows:

4.3.2.1 Certification – As of the renewal date, licensees must be certified by and in good standing with DCB Inc., NAADAC, or by another certifying organization acceptable to the Board pursuant to regulation 4.1.3. Certification shall be verified by attestation. Attestation shall be completed electronically if the renewal is accomplished online. Alternatively, the attestation of certification may be submitted by paper renewal forms. Requests for paper renewal forms must be directed to the Division.

4.3.2.2 Continuing Education (CE) – Licensees must complete at least 40 acceptable CE hours during the previous licensure period in order to renew their license. LCDP CE hours approved by a chemical dependency organization, including but not limited to DCB Inc. and NAADAC, shall be acceptable. Other training

programs may apply for Board approval. Acceptable CE's are oriented towards enhancement, knowledge, and practice of chemical dependency counseling. CE requirements for initial licensure periods of less than two (2) years shall be prorated.

4.3.2.2.1 Verification – Verification of CE hours shall be by attestation. Attestation shall be completed electronically if the renewal is accomplished online. Alternatively, the attestation of completion may be submitted by paper renewal forms. Requests for paper renewal forms must be directed to the Division.

4.3.2.2.2 Hardship – The Board shall have the authority to make exceptions to the CE requirements, in its discretion, upon a showing of good cause. "Good Cause" may include, but is not limited to: disability, illness, military service, extended absence from the jurisdiction, or 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. A license shall be renewed upon approval of the hardship extension by the Board, but the license shall be subject to revocation if the licensee does not comply with the Board's terms for the hardship exception.

4.3.3 Post-Renewal Audit – The Board will conduct random audits of renewal applications to ensure the veracity of attestations and compliance with the renewal requirements. Licensees selected for the random audit shall submit CE course attendance verification in the form of a certificate signed by the course presenter or by a designated official of the sponsoring organization. Licensees shall retain their CE course attendance documentation for each licensure period and for at least one (1) year after renewal. Licensees found to be deficient or found to have falsely attested may be subject to disciplinary proceedings and may have their license suspended or revoked. Licensees renewing during the late renewal period shall be audited.

4.4 Inactive Status

4.4.1 A written request must be submitted to have a license placed on inactive status. Inactive status is effective immediately upon Board approval. The inactive status may continue through the then current licensure period and the following two-year licensure period. An inactive license shall expire at the end of the two-year licensure period unless either (1) the Board grants an extension before the end of the licensure period or (2) the license is returned to active status before the end of the licensure period.

4.4.2 Extension – The Board shall extend the inactive status for an additional two-year licensure period upon timely written request. Inactive licenses expire at the end of the licensure period, so written requests for extension must be received well in advance of the end of the licensure period to avoid expiration.

4.4.3 Return to Active Status – Before the end of the then current two-year licensure period, a license shall be returned to active status upon fulfillment of the following requirements by the licensee:

4.4.3.1 Written Request – Submit a written request to have the license returned to active status.

4.4.3.2 Certification – Provide proof of certification in good standing by DCB Inc., NAADAC, or another certifying organization acceptable to the Board pursuant to regulation 4.1.3.

4.4.3.3 Continuing Education – Provide proof of completion of 40 hours of acceptable CE, obtained within the two (2) year period immediately preceding the request for return to active status.

4.4.3.4 Fee – Pay the licensure renewal fee. No late fee shall be assessed for return to active status.

4.6 Ethics – The Board hereby adopts the current version of the National Association for Addictions Professionals (NAADAC) Code of Ethics (Code). The practice of all persons possessing an LCDP shall conform to the principles of the Code. Violation of the Code shall constitute grounds for discipline.

5.0 Licensure for Marriage and Family Therapists (LMFT)

5.1 Licensure by Examination Requirements

5.1.1 LAMFT Required - Successful LMFT applicants must hold an active License for Associate Marriage and Family Therapists (LAMFT).

Limited Exception - Individuals who have completed the experience requirements of regulation 5.1.2 and hold an acceptable degree under regulation 6.2, may apply for an LMFT without first obtaining an LAMFT. LMFT applicants under this exception must submit documentation of their experience pursuant to the requirements of regulation 5.1.2 and their educational background pursuant to regulation 6.2. If the submitted documentation is acceptable to the Board, the applicant will receive permission to take the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) exam. If approved to take the exam, an applicant under this

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exception will receive an LMFT once the Board receives proof that the applicant has passed the exam. A score of 70% or greater is required to pass the exam.

5.1.2 Experience - Applicants must provide documentation of completion of 3,200 hours of marriage and family therapy services, as defined in 24 Del.C. §3051(d), over a period of no less than two (2) but no more than four (4) consecutive years.

5.1.2.1 Of the required 3,200 hours total experience, 1,600 hours must have been completed under the supervision of an individual who meets the requirements of regulation 6.3.1. The 1,600 hours of supervised experience must be fulfilled as follows:

5.1.2.1.1 500 hours of couple and family therapy,

5.1.2.1.2 500 hours of individual therapy,

5.1.2.1.3 500 hours of couple and family or individual therapy or some

combination of the two, and

5.1.2.1.4 100 hours of face-to-face clinical supervision with the applicant's

supervisor.

5.1.2.2 Hours completed under the supervision of an individual who does not meet the requirements of 6.3.1 will not count toward fulfillment of the required 1,600 hours of supervised experience but may count toward fulfillment of the 1,600 hours of experience not required to be supervised.

5.2 Licensure by Reciprocity Requirements

5.2.1 Licensure Status - Verification of an applicant's possession of a current MFT marriage and family therapy license in good standing from another state, the District of Columbia, or U.S. territory must be submitted directly to the Board by that state, the District of Columbia, or U.S. territory.

5.2.2 Prior Licensing Jurisdictions - The applicant must submit a notarized statement listing all licensing jurisdictions in which he previously practiced and a signed "Release of Information" granting the Board permission to contact those jurisdictions for verification of disciplinary history and current status.

5.2.3 Substantial Similarity of Licensing Standards - Applicants must submit the statute, rules, and regulations governing MFT marriage and family therapy licensure for the state in which they are currently licensed and through which they are seeking reciprocity. The burden of proof is on the applicant to demonstrate that the licensing standards of that state are substantially similar to Delaware's standards. The Board will make a determination of substantially similarity based on the information presented.

5.2.4 No Substantial Similarity of Licensing Standards - Applicants from states whose licensing standards are not substantially similar to Delaware's standards may receive reciprocal licensure if they have held their license in good standing for at least five (5) years and have passed the AMFTRB exam.

5.3 License Renewal of Licensure

5.3.1 Renewal Date - ~~The LMFT licensees must renew their license~~ shall be renewable biennially on or before September 30th of even-numbered years. License renewal may be accomplished online at the Division of Professional Regulation's (Division) website. Alternatively, licensees may submit paper renewal documents. Requests for paper renewal forms must be directed to the Division of ~~Professional Regulation~~.

5.3.2 Continuing Education (CE) Requirements

5.3.2.1 Purpose - The CE requirement is intended to maintain licensees' professional competence in the practice of MFT marriage and family therapy.

5.3.2.2 Licensees must complete at least 40 acceptable CE hours during the previous licensure period in order to renew their license. CE requirements for initial licensure periods of less than two (2) years shall be prorated.

5.3.2.3 Acceptable CE includes:

5.3.2.3.1 CE courses approved by a national mental health or substance abuse treatment organization or their local affiliates, such as the American Association for Marriage and Family Therapy (AAMFT), the International Family Therapy Association (IFTA), the National Board for Certified Counselors, Inc. (NBCC), Academy of Clinical Mental Health Counselors (ACMHC), or the American Psychological Association (APA) are acceptable, regardless of course content, and do not need to be approved by the Board.

5.3.2.3.2 Any course that would achieve the purpose of the CE requirement, explained in regulation 5.3.2.1 above, is acceptable and does not require Board review and approval. Courses that do not clearly achieve the purpose of CE require Board approval. Licensees should request Board approval in advance of attendance. Requests for approval may be submitted afterward, but there is no guarantee of approval. These hours must be documented by a course agenda, syllabus, or other brief documentation that

would allow the Board to assess the appropriateness of the course content. Only licensees may request course approvals. Sponsoring organizations may not request course approvals.

5.3.2.3.3 Teaching academic or CE courses, presentation of original papers, or the writing of a peer-reviewed article may account for up to 20 CE hours. An official transcript, agenda, or syllabus must be provided to document course hours and content. A copy of the published paper presented must be provided to document hours and content. Only the hours worked in preparation and delivery of the items contained in 5.3.2.3.2 will be counted.

5.3.2.3.4 CE obtained through independent or home study, including online CE, may only account for a maximum of 50% of the CE requirement.

5.3.3 Hardship – The Board shall have the authority to make exceptions to the CE requirements, in its discretion, upon a showing of good cause. "Good Cause" may include, but is not limited to: disability, illness, military service, extended absence from the jurisdiction, or 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. A license shall be renewed upon approval of the hardship extension by the Board, but the license shall be subject to revocation if the licensee does not comply with the terms of the hardship exception established by the Board.

5.3.4 Verification – Verification of CE hours shall be by attestation. Attestation shall be completed electronically if the renewal is accomplished online. Alternatively, the attestation of completion may be submitted by paper renewal documents. Requests for paper renewal forms must be directed to the Division of Professional Regulation.

5.3.5 Post-Renewal Audit – The Board will conduct random audits of renewal applications to ensure the veracity of attestations and compliance with the CE requirements. Licensees selected for the random audit shall submit CE course attendance verification in the form of a certificate signed by the course presenter or by a designated official of the sponsoring organization. Licensees shall retain their CE course attendance documentation for each licensure period. Licensees shall retain their CE course attendance documentation for at least one (1) year after renewal. Licensees found to be deficient or found to have falsely attested may be subject to disciplinary proceedings and may have their license suspended or revoked. Licensees renewing during the late renewal period shall be audited.

5.4 Inactive Status – Licensees may be placed in inactive status upon written request to the Board.

5.4.1 A written request must be submitted to have a license placed on inactive status. Inactive status is effective immediately upon Board approval. The inactive status may continue through the then current licensure period and the following two-year licensure period. An inactive license shall expire at the end of the two-year licensure period unless either (1) the Board grants an extension before the end of the licensure period or (2) the license is returned to active status before the end of the licensure period.

5.4.2 Extension – The Board shall extend the inactive status for an additional two-year licensure period upon timely written request. Inactive licenses expire at the end of the licensure period, so written requests for extension must be received well in advance of the end of the licensure period to avoid expiration.

5.4.3 Return to Active Status – Before the end of the then current two-year licensure period, a license shall be returned to active status upon fulfillment of the following requirements by the licensee:

5.4.3.1 Written Request – Submit a written request to have the license returned to active status.

5.4.3.2 Continuing Education – Provide proof of completion of 40 hours of acceptable CE, obtained within the two (2) year period immediately preceding the request for return to active status.

5.4.3.3 Fee – Pay the licensure renewal fee. No late fee shall be assessed for return to active status.

~~5.5 Return to Active Status – Return to active status from inactive status shall be granted upon fulfillment of the following requirements:~~

~~5.5.1 Written Request – Written request to the Board to be returned to active status.~~

~~5.5.2 Continuing Education – Completion of 40 hours of acceptable continuing education, obtained within the two (2) year period prior to the request for return to active status.~~

~~5.5.3 Fee – Payment of the fee for licensure renewal. No late fee shall be assessed for return to active status.~~

5.65 Ethics - The Board hereby adopts the current version of the American Association for Marriage and Family Therapy (AAMFT) Code of Ethics ("Code"). The practice of all persons possessing an LMFT or LAMFT

shall conform to the principles of the Code. Violation of the Code shall constitute grounds for discipline.

11 DE Reg. 225 (08/01/07)

6.0 Licensure for Associate Marriage and Family Therapists (LAMFT)

6.1 Examination - Successful LAMFT applicants must pass the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) exam. No LAMFT applicant may take the exam without prior approval of the Board. Board approval is based on fulfillment of the requirements in regulation 6.2 (proof of acceptable education) and regulation 6.3 (submission of a plan to acquire the requisite experience). LAMFT applicants must fulfill those requirements to receive permission to take the exam. If approved to take the exam, an applicant will receive an LAMFT once the Board receives proof that the applicant has passed the exam. A score of 70% or greater is required to pass the exam.

6.2 Education - An applicant's education must be documented by an official transcript submitted directly to the Board by the degree-granting institution.

6.2.1 All successful applicants must possess either:

6.2.1.1 A graduate degree in marriage and family therapy (~~MFT~~) from a graduate program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE),

6.2.1.2 A graduate degree in ~~MFT~~ marriage and family therapy from a non-COAMFTE accredited graduate program acceptable to the Board, or

6.2.1.3 A graduate degree from a nationally accredited college or university in an allied field which is acceptable to the Board. Acceptable allied fields are limited to: counseling, social work, psychology, and psychiatry.

6.2.2 To be acceptable to the Board, a graduate degree under regulations 6.2.1.2 or 6.2.1.3 above must be based on at least 45 credit hours which must include the following:

6.2.2.1 Three (3) credit hours in each of the 10 core content areas for a total of 30 credit hours. The 10 core content areas are:

- 6.2.2.1.1 Marriage and Family Therapy Models and Theories
 - 6.2.2.1.2 Diagnosis and Treatment of Mental and Emotional Disorder
 - 6.2.2.1.3 Psychopathology
 - 6.2.2.1.4 Gender, Culture, and Ethnic Diversity in ~~MFT~~ marriage and family
- therapy
- 6.2.2.1.5 Sexual Issues In Marriage and Family Therapy
 - 6.2.2.1.6 Family Therapy Theory & Techniques
 - 6.2.2.1.7 Couple Therapy Theory and Techniques
 - 6.2.2.1.8 Ethical, Legal and Professional Issues in ~~MFT~~ marriage and
- family therapy
- 6.2.2.1.9 Research Methods and Evaluation
 - 6.2.2.1.10 Clinical Supervised Experience in ~~MFT~~ marriage and family
- therapy

6.2.2.2 Nine (9) credit hours earned by serving an internship. The internship must have included at least 300 hours of direct client counseling, 150 hours of which must have been spent on couples and family therapy.

6.2.2.3 Six (6) credit hours in electives.

6.3 Experience - LAMFT applicants must provide a written plan for acquiring the LMFT experience requirements contained in regulation 5.1.2 above. The plan must be signed by the applicant's proposed supervisor. Supervisors must be acceptable to the Board.

6.3.1 To be acceptable to the Board, a supervisor must be either:

6.3.1.1 a Delaware-licensed marriage and family therapist,

6.3.1.2 an individual holding the "approved supervisor" designation from the American Association for Marriage and Family Therapy (AAMFT),

6.3.1.3 a candidate for the AAMFT "approved supervisor" designation who is acceptable to the Board,

6.3.1.4 a licensed marriage and family therapist from another state who has held a license in good standing for a minimum of five (5) years in that state and has passed the AMFTRB exam, or

6.3.1.5 only if one of the above is not available, an individual with the following

license from any state: clinical social worker, psychologist, professional counselor of mental health, or physician specializing in psychiatry with training in ~~MFT~~ marriage and family therapy supervision.

6.3.2 Licensees must notify the Board in writing, on the Board-approved form, within 30 days if their supervisor changes. Any supervisor must meet the requirements in 6.3.1. All changes are subject to Board approval. Contact the Board office or website for the proper form.

11 DE Reg. 225 (08/01/07)

7.0 Application ~~and~~ Fee, Affidavit, and Time Limit

7.1 ~~Application and Fees - The a~~Applicants for initial licensure shall submit a completed "Application for Licensure," accompanied by a non-refundable application fee. Applicants for licensure renewal must pay a non-refundable renewal fee. Applicants for late licensure renewal (within one year after expiration) must pay a non-refundable late-renewal fee. All fees are set by the Division of Professional Regulation.

7.2 Affidavit - ~~The a~~Applicants shall submit a signed, notarized "Affidavit," affirming that the applicant:

7.2.1 has not violated any rule or regulation set forth by the Delaware Board of Mental Health and Chemical Dependency Professionals;

7.2.2 has not been the recipient of any administrative penalties from any jurisdiction in connection with licensure, registration or certification as a professional mental health provider,

7.2.3 does not have any impairment related to drugs, alcohol, or a finding of mental incompetence by a physician that would limit the applicant's ability to safely act as an LPCMH, LACMH, LCDP, LMFT, or LAMFT, respectively;

7.2.4 that he/she has not been convicted of and has no pending criminal charge or charges relating to any crime that is substantially related to the provision of professional mental health counseling, chemical dependency counseling or marriage and family therapy; and

7.2.5 has not been penalized for any willful violation of any code of ethics or professional mental health counseling standard.

7.3 Time Limit for Completion of Application - Any application not completed within one (1) year shall be considered null and void.

4 DE Reg. 970 (12/01/00)

9 DE Reg. 1106 (01/01/06)

10 DE Reg. 872 (11/01/06)

11 DE Reg. 225 (08/01/07)

***Please Note: As the rest of the sections were not amended, they are not being published here. A copy of the regulation is available at:**

[3000 Board of Professional Counselors of Mental Health](#)

Symbol Key

Arial 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 EDUCATION**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 385

Regulatory Implementing Order**385 Permits Substitute Teachers****I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to repeal 14 **DE Admin. Code** 385 Permits - Substitute Teachers because House Bill No. 250 of the 144th General Assembly Epilogue section 345 amends 14 **DE Admin. Code** Chapter 12 by deleting the subchapter related to substitute teacher.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on Monday, August 27, 2007, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities related to a request the Department maintain certification or the permitting of substitutes. In the response, the Department explained that it is no longer the agency vested with the authority to regulate licensure and certification; this authority is vested with the Professional Standards Board. In addition, **Delaware Code** expressly excludes "substitute teachers" from the definition of "educator."

II. Findings of Facts

The Secretary finds that it is appropriate to repeal 14 **DE Admin. Code** 385 Permits - Substitute Teachers in order to comply with House Bill No. 250 of the 144th General Assembly Epilogue. Section 345 of House bill No. 250 of the 144th General Assembly Epilogue section amends 14 **DE Admin. Code** Chapter 12 by deleting the subchapter related to substitute teachers.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 **DE Admin. Code** 385 Permits - Substitute Teachers. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 385 Permits - Substitute Teachers attached hereto as *Exhibit "B"* is hereby repealed. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 385 Permits - Substitute Teachers hereby repealed 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 14 **DE Admin. Code** 385 Permits - Substitute Teachers repealed hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 385 Permits - Substitute Teachers REPEALED in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on October 15, 2007. 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 the 15th day of October 2007.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 15th day of October 2007

~~385 Permits Substitute Teachers~~

~~Effective July 1, 1993~~

~~1.0 Permits shall be issued according to the following four categories~~

~~1.1 Class A, A Class A certificate may be issued to an applicant who holds or is eligible to hold a valid Standard Delaware teacher's certificate or such a certificate that has expired. In the case of a certificate that has expired, the applicant for the substitute certificate shall not be required to present refresher courses for issuance of the substitute's certificate.~~

~~1.2 Class B, A Class B certificate may be issued to an applicant with or without a Bachelor's degree who meets at least the requirements for a temporary emergency certificate as set forth in Types of Certificates, Section IV.~~

~~1.3 Class C, A Class C certificate may be issued to an applicant who is not eligible for either Class A or Class B certification but who is recommended to the Secretary of Education by the local district superintendent of a Delaware public school district.~~

~~1.3.1 A student currently enrolled in a four year degree granting institution who desires to serve as a substitute teacher may be employed as a Class C substitute without the formality of submitting a transcript or health certificate. (State Board of Education, November 12, 1970).~~

~~1.4 Class D, A Class D certificate may be issued to an applicant who is eligible for or holds a Class A, B, or C certificate, but who prefers on a given date to perform substitute teaching assignments as a volunteer worker, or at a wage rate to be determined by the Board of Education of the employing school district.~~

~~NOTE: Your attention is called to the fact that there must be local board action to implement this classification. (Class D Substitute, Approved by the State Board of Education, December 16, 1971 in compliance with 14 **Del.C.** §1230).~~

FINAL REGULATIONS

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 804

Regulatory Implementing Order

804 Immunizations

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 804 Immunizations in order to correct an error with the effective date for the requirement of two doses of the Varicella vaccine for new school enterers.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on Monday, August 27, 2007, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities that endorses the 2-dose standard and 1-year deferral of implementation given the short notice available to parents.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 804 Immunizations in order to correct an error with the effective date for the requirement of two doses of the Varicella vaccine for new school enterers. The current date in the regulation "Beginning in the 2007-2008 school year" does not give districts and schools adequate notice to parents. The amendment reflects the change of the effective date to the 2008-2009 school year.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 804 Immunizations. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 804 Immunizations attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 804 Immunizations hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 804 Immunizations amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 804 Immunizations in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on October 15, 2007. 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 the 15th day of October 2007.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

* Please note that no changes were made to the regulation as originally proposed and published in the September 2007 issue of the *Register* at page 250 (11 DE Reg. 250). Therefore, the regulation is not being republished. A copy of the final regulation is available at

[http://regulations.delaware.gov/register/november2007/final/11 DE Reg 666 11-01-07.htm](http://regulations.delaware.gov/register/november2007/final/11%20DE%20Reg%20666%2011-01-07.htm)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1520

Regulatory Implementing Order

1520 Early Childhood Teacher

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1520 Early Childhood Teacher. It is necessary to amend this regulation given that the existing regulation reverted to **DE Admin. Code** 1505 Standard Certificate in June of 2006. This regulation sets forth the requirements for a teacher of Early Childhood.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on Saturday, September 1, 2007 in the form hereto attached as Exhibit "A". The notice invited written comments. Written comments were received from the State Council for Persons with Disabilities and the Governor's Advisory Council for Exceptional Citizens.

The Professional Standards Board appreciated the comments and agrees that the current Early Childhood teacher regulation is expired. The suggestion regarding extending certification to pre-kindergarten programs will be considered in future discussions and regulations. The Professional Standards Board recognizes the concern that section 3.1.5 requires oversight by an employing district, however, the regulation does not require that an applicant be employed, in that there are multiple other avenues open to the applicant that do not require employment. Section 3.1.5 provides an additional avenue to applicants that are currently teaching with an emergency certificate.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1520 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 4TH DAY OF OCTOBER, 2007

Kathleen Thomas, Chair

Cathy Cathcart

Joanne Christian
Sandra Falatek
Barbara Grogg
Lori Hudson
Mary Mirabeau
Gretchen Pikus
Michael Thomas

Marilyn Dollard
Karen Gordon
Leslie Holden
Dorothy McQuaid
Wendy Murray
Karen Schilling-Ross
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:
Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 18TH DAY OF OCTOBER, 2007

STATE BOARD OF EDUCATION

Jean W. Allen, President
Mary B. Graham, Esquire
Barbara Rutt
Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President
Jorge L. Melendez
Dennis J. Savage

* Please note that no changes were made to the regulation as originally proposed and published in the September 2007 issue of the *Register* at page 255 (11 DE Reg. 255). Therefore, the regulation is not being republished. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/november2007/final/11 DE Reg 667 11-01-07.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1539

Regulatory Implementing Order

1539 Middle Level / Secondary Health Education Teacher

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 DE Admin. Code 1541 Secondary Health Education Teacher. It is necessary to amend this regulation given that the existing regulation reverted to DE Admin. Code 1505 Standard Certificate in June of 2006. This regulation sets forth the requirements for a teacher of Middle Level / Secondary Health Education.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on Saturday, September 1, 2007 in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1539 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 4TH DAY OF OCTOBER, 2007

Kathleen Thomas, Chair
Joanne Christian
Sandra Falatek
Barbara Grogg
Lori Hudson
Mary Mirabeau
Gretchen Pikus
Michael Thomas

Cathy Cathcart
Marilyn Dollard
Karen Gordon
Leslie Holden
Dorothy McQuaid
Wendy Murray
Karen Schilling-Ross
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:
Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 18TH DAY OF OCTOBER, 2007

STATE BOARD OF EDUCATION

Jean W. Allen, President
Mary B. Graham, Esquire
Barbara Rutt
Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President
Jorge L. Melendez
Dennis J. Savage

~~1541 Secondary Health Education Teacher~~**1-0 Content**

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Health Education Teacher (required in grades 9 to 12 and valid in grades 5 to 8 in a middle level school).
7-DE Reg. 775 (12/1/03)

2-0 Definitions

2.1 The following words and terms, when used in this regulation, shall have the following

meaning unless the context clearly indicates otherwise:

“Department” means the Delaware Department of Education.

“License” means a credential which authorizes the holder to engage in the practice for which the license is issued.

“Standard Certificate” means a credential issued to certify that an educator has the prescribed knowledge, skill, or education to practice in a particular area, teach a particular subject, or teach a category of students.

7-DE-Reg. 775 (12/1/03)

3.0 Standard Certificate

In accordance with ~~14 Del.C. §1220(a)~~, the Department shall issue a Standard Certificate as a Health Education Teacher to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 Bachelor's degree from an regionally accredited college or university and,

3.2 Professional Education

3.2.1 Completion of an approved teacher preparation program in the area of Health Education

or,

3.2.2 Minimum of 24 semester hours to include Methods of Teaching Health, Human Development, Clinical or Field Experience including Effective Teaching Strategies, Identifying and Treatment of Exceptionalities, Multicultural Education, and,

3.3 Specific Teaching Field

3.3.1 Major in Health Education or,

3.3.2 Completion of program in teacher education in the area of Health Education or,

3.3.3 Minimum of 30 semester hours in health education including a course in each of the

following areas: Current Health Issues (minimum of six semester hours), Public and Community Health Resources, Developmental Behavior and Attitudes, Materials and Strategies of Teaching Health Education including training in skills in facilitation.

7-DE-Reg. 775 (12/1/03)

4.0 Effective Date

This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a Health Education Teacher after that date must comply with the requirements set forth in ~~14 DE Admin. Code 1505~~.

7-DE-Reg. 775 (12/1/03)

Renumbered effective 6/1/07 see Conversion Table

1539 Middle Level / Secondary Health Education Teacher

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to ~~14 Del.C. §1220(a)~~, for Middle Level / Secondary Health Education Teacher. This certification is required for grades 9 to 12 and ~~in for~~ for grades 5 to 8 in a Middle Level school.

1.2 Except as otherwise provided, the requirements set forth in ~~14 DE Admin. Code 1505 Standard Certificate~~, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

2.1 The definitions set forth in ~~14 DE Admin. Code 1505 Standard Certificate~~, including any subsequent amendment or revision thereto, are incorporated herein by reference.

3.0 Standard Certificate

3.1 In accordance with ~~14 Del.C. §1220(a)~~, the Department shall issue a Standard Certificate as a Middle Level / Secondary Health Education Teacher to an educator who has met the following:

3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard.

Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,

3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and,

3.1.3 Has satisfied the additional requirements in this regulation.

4.0 Additional Requirements

If an examination of content knowledge such as Praxis II is not applicable and available, in the area the Standard Certificate is requested, an educator must also meet the following:

4.1 If the educator is applying for their second Standard Certificate pursuant to 14 DE Admin. Code 1505 Standard Certificate 3.1.5, the satisfactory completion of fifteen (15) credits or their equivalent in professional development related to Health Education, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1571

Regulatory Implementing Order

1571 Exceptional Children Special Education Teacher

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 DE Admin. Code 1571 Secondary Exceptional Children Special Education Teacher. It is necessary to amend this regulation to align it with changes in statute. The passage of PRAXIS' II, a test of content knowledge, is now required, where applicable and available, in addition to academic preparation, for the issuance of a Standard Certificate. The grade configuration of the certificate is being changed from 7 to 12 to K to 12 to align it with the required PRAXIS' II test. This regulation sets forth the requirements for a teacher of Exceptional Children Special Education.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on Saturday, September 1, 2007 in the form hereto attached as Exhibit "A". The notice invited written comments. Written comments were received from the State Council for Persons with Disabilities and the Governor's Advisory Council for Exceptional Citizens.

The Professional Standards Board recognizes the concern that it may appear that 14 Del. Admin Code 1507 *Alternative Routes to Teacher Licensure and Certification Program* Section 3.1 could be read to allow certification to an individual without a bachelors degree and could be seen as 'watering down' the standards for a certificate. However, when the regulation is read in context with the definition section and the law (14 Del.C. §1260(a)(1)), it is the PSB's interpretation that it is clear that a bachelors degree is required. Additionally, 14 Del.C. §1210 requires a bachelor degree for an initial license and adds that the alternative routes program can be substituted for a student teaching program. The Standard Board interpretation is consistent with the principles of statutory interpretation that in the event that the regulation could be interpreted otherwise, the statutory provision will control in that the Standards Board could not by regulation require less than the bachelors degree required by the statute. The PSB appreciates the comments and will consider the concerns raised as any changes are made to the existing regulations.

The Professional Standards Board recognizes the concern that a national test is driving the decision to amend the regulation, however, at this time the PSB believes the best course is to combine the two regulations at this time. The Professional Standards Board recognizes the differences between an elementary and a secondary special education student, but also acknowledges that there are indeed teaching strategies, techniques and best practices which encompass all age groups. Under the current circumstances, if the regulations were to be split, an educator who passed the one Praxis II examination would qualify for both certificates. In the event that the Praxis II

examinations change in the future, the PSB can review the regulation.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1571 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 4TH DAY OF OCTOBER, 2007

Kathleen Thomas, Chair
Joanne Christian
Sandra Falatek
Barbara Grogg
Lori Hudson
Mary Mirabeau
Gretchen Pikus
Michael Thomas

Cathy Cathcart
Marilyn Dollard
Karen Gordon
Leslie Holden
Dorothy McQuaid
Wendy Murray
Karen Schilling-Ross
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:
Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 18TH DAY OF OCTOBER, 2007
STATE BOARD OF EDUCATION

Jean W. Allen, President
Mary B. Graham, Esquire
Barbara Rutt
Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President
Jorge L. Melendez
Dennis J. Savage

* Please note that no changes were made to the regulation as originally proposed and published in the September 2007 issue of the *Register* at page 266 (11 DE Reg. 266). Therefore, the regulation is not being republished. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/november2007/final/11 DE Reg 671 11-01-07.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1576

1576 Elementary Exceptional Children Special Education Teacher

Order Repealing Rules and Regulations

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to repeal 14 **DE Admin. Code** 1576 Elementary Exceptional Children Special Education Teacher. It is necessary to repeal this regulation as the content of the regulation has been subsumed into amended regulation 1571 Exceptional Children Special Education Teacher.

Notice of the proposed repeal of the regulation was published in the News Journal and Delaware State News on September 1, 2007, in the form hereto attached as Exhibit "A". The notice invited written comments. Written comments were received from the State Council for Persons with Disabilities and the Governor's Advisory Council for Exceptional Citizens.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to repeal the regulation as the subject is regulated by 14 **DE Admin. Code** 1571 and 1573.

III. Decision to Repeal the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude the identified regulation should be repealed. Therefore, pursuant to 14 **Del.C.** §1203 and §1205(b), the regulation attached hereto as Exhibit "B" is hereby repealed.

IV. Text and Citation

The text of the **DE Admin. Code** 1576 Elementary Exceptional Children Special Education Teacher attached hereto as Exhibit "B" is repealed, and said regulation shall be deleted from the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 4TH DAY OF OCTOBER, 2007

Kathleen Thomas, Chair
Joanne Christian
Sandra Falatek
Barbara Grogg
Lori Hudson
Mary Mirabeau
Gretchen Pikus
Michael Thomas

Cathy Cathcart
Marilyn Dollard
Karen Gordon
Leslie Holden
Dorothy McQuaid
Wendy Murray
Karen Schilling-Ross
Carol Vukelich

FINAL REGULATIONS

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:
Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 18TH DAY OF OCTOBER, 2007

STATE BOARD OF EDUCATION

Jean W. Allen, President
Mary B. Graham, Esquire
Barbara Rutt
Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President
Jorge L. Melendez
Dennis J. Savage

* Please note that no changes were made to the regulation as originally proposed and published in the September 2007 issue of the *Register* at page 269 (11 DE Reg. 269). Therefore, the regulation is not being republished. A copy of the final regulation is available at <http://regulations.delaware.gov/register/november2007/final/11 DE Reg 673 11-01-07.htm>

DEPARTMENT OF FINANCE DIVISION OF REVENUE

Statutory Authority: 30 Delaware Code, Sections 563 and 1151 (30 Del.C. §§563 and 1151)

ORDER

Regulation 1151-1 Personal Income Tax Withholding Exemption Certificates

AND NOW, this 3rd day of October, 2007, Patrick T. Carter, as Director (the "Director") of the Division of Revenue in the Department of Finance in accordance with 30 **Delaware Code** §§563 and 1151 and 29 **Delaware Code** §10118(b), for the reasons stated below enters this ORDER adopting and promulgating the amendments to its existing regulation, captioned "Personal Income Tax Withholding Exemption Certificates," as set forth in the Division of Revenue's Tax Ruling 83-3 (February 9, 1983), which modified Tax Ruling 80-4 (December 15, 1980). The final regulation will be captioned "Regulation 1151-1 Personal Income Tax Withholding Exemption Certificates".

Nature of Proceedings; Synopsis of the Subject and Substance of the Proposed Amendments to the Regulation

In accordance with procedures set forth in 29 **Del.C.** Ch. 11, Subch. III and 29 **Del.C.** Ch. 101, the Director proposed to adopt amendments to the existing regulation, which provides generally that employers must submit copies of withholding exemption certificates (currently submitted to employers by employees on Internal Revenue Service Form W-4 or an approved substitute form) that either (i) claim more than 14 withholding exemptions for purposes of the Delaware personal income tax, or (ii) claim exemption from withholding of Delaware personal income tax where the employer reasonably expects that the employee's wages will exceed \$100 per week. In such circumstances, under the existing regulation, pending receipt of a notice from the Division of Revenue with respect to a copy of any withholding exemption certificate, the employer must withhold on the basis of the number of exemptions claimed in the certificate. If the Division of Revenue finds that the certificate submitted contains materially incorrect statements, or, after seeking verification from the employee, determines that it lacks sufficient information to find that the withholding exemption certificate is correct, and if the Division notifies the employer of these findings, the employer must thereafter withhold from the employee's wages as if the employee were a single person claiming no withholding exemptions. The employer is required to notify the employee of the action taken by the Division of Revenue and request that the employee file another withholding exemption certificate. The Director of Revenue has proposed to supersede the existing regulation, which was originally published in Tax Ruling 83-3

and Tax Ruling 80-4, on and after the effective date of the regulation being promulgated here. The purpose of the amendment of the existing regulation is to conform the Division of Revenue's procedures with respect to withholding exemption certificates to the procedures used by the Internal Revenue Service.

The Director published the proposed amendments to the existing regulation in the September 1, 2007 issue of the *Delaware Register of Regulations*, 11 DE Reg. 271-274 (September 1, 2007). This is the order of the Director adopting the proposed amendments to the existing regulation.

Summary of Evidence and Information Submitted

The Director received no written comments in response to the publication of the proposed amendments to the existing regulation.

Findings of Fact and Conclusions

1. The new regulation conforms the administrative practice of the Division of Revenue with respect to withholding exemption certificates to the current administrative practice of the Internal Revenue Service, as set forth in Temporary Treasury Regulation §31.3402(f)(2)-1T, 26 CFR §31.3402(f)(2)-1T. The new regulation relieves employers of the burden of automatically having to submit for review by the Division of Revenue copies of an employee's withholding exemption certificate, if an employee (i) claims more than 14 withholding exemptions, or (ii) claims exemption from withholding of Delaware personal income tax where the employer reasonably expects that the employee's wages will exceed \$100 per week. Instead, under the new regulation, an employer must submit copies of the employee's withholding exemption certificate only when directed to do so in a written notice from the Division of Revenue or as directed in general published guidance issued by the Division of Revenue.

2. The new regulation also enables the Division of Revenue to notify the employer in writing that an employee is not entitled to claim either (i) a complete exemption from withholding, or (ii) more than the maximum number of withholding exemptions specified in the notice to the employer. The Division of Revenue may issue such a notice to an employer even if the employer has not previously submitted to the Division of Revenue a copy of the withholding exemption certificate of the employee in question. After receipt of this notice and after the effective date of the notice, the employer must generally withhold from the employee's wages based on the number of withholding exemptions specified in the notice. The new regulation provides that the Division of Revenue may issue a notice to an employer only if it has determined that (i) the employee's current withholding exemption certificate contains a materially incorrect statement or (ii) after requesting the employee to verify the statements on the withholding exemption certificate, the Division of Revenue lacks sufficient information to determine if the certificate is correct. The new regulation also sets forth actions that the employer and the Division of Revenue must take to notify the employee of the proposed action and actions that the employee may take to avoid the effect of the notice.

3. The Director has determined that the needs of the State of Delaware and of the employers withholding Delaware personal income tax will be better served by conforming the practice of the Division of Revenue to that of the Internal Revenue Service in connection with withholding exemption certificates.

4. The Director has statutory authority to promulgate regulations pursuant to 30 **Del.C.** §§563 and 1151.

DECISION AND ORDER CONCERNING AMENDMENTS TO THE REGULATION

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director **ORDERS** that the amendments to the existing regulation be, and that they hereby are, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Patrick T. Carter, Director, Division of Revenue, Department of Finance

* **Please note that no changes were made to the regulation as originally proposed and published in the September 2007 issue of the *Register* at page 271 (11 DE Reg. 271). Therefore, the regulation is not being republished. A copy of the final regulation is available at**

[http://regulations.delaware.gov/register/november2007/final/11 DE Reg 674 11-01-07.htm](http://regulations.delaware.gov/register/november2007/final/11%20DE%20Reg%20674%2011-01-07.htm)

FINAL REGULATIONS

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

ORDER

Long Term Care Medicaid 20330.4.1 Annuities

Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend existing rules used to determine eligibility for medical assistance in the Division of Social Services Manual (DSSM) regarding the treatment of annuities provisions. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of repropoed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the September 2007 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 2007 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposal

Statutory Authority

Deficit Reduction Act of 2005 (Public Law 109-171), enacted on February 8, 2006

Background

On February 8, 2006, the Deficit Reduction Act (DRA) of 2005 was signed into law. The DRA made changes to certain Medicaid eligibility provisions in Section 1917 of Social Security Act affecting Long Term Care services and supports.

Summary of ReProposal

On June 1, 2007, the Division of Medicaid and Medical Assistance (DMMA) published for public comment a proposal to amend its annuity regulation (see 10 DE Reg. 1781). This regulatory action incorporated additional guidance received from the Centers for Medicare and Medicaid Services (CMS) regarding the DRA as it applies to the treatment of annuities. Due to the following substantive policy omission in the June 2007 issue of the *Register* this notice is being published again, as intended: DMMA will no longer require that an attempt be made to sell the stream of income from an annuity.

Also, on July 23, 2007, CMS provided clarification of the July 27, 2006 State Medicaid Directors (SMD) Letter Enclosure concerning treatment of annuities under the DRA. This clarification deals specifically with the new section 1917(c)(1)(G) of the Act, added by section 6012(c) of the DRA, and discussed beginning on page 6 of the section 6012 "Changes in Medicaid Annuities Rules" enclosure to the July 27 SMD letter. The discussion beginning on page 6 states that the purchase of an annuity by or on behalf of an annuitant who has applied for medical assistance with respect to nursing facility services or other long-term care services shall be treated as a transfer of assets for less than fair market value unless the annuity meets certain criteria, which are described in detail on page 7 of the enclosure. CMS clarifies that this provision does not apply to annuities that are revocable and/or assignable.

And, finally, in response to the 10 DE Reg. 1781 request, comments were submitted that resulted in additional changes being made to the original proposal, primarily to substantially revise, renumber, reorganize and reword some policy items for greater clarity and ease of reading. DMMA intends to simplify the policy format and remove the above-referenced eligibility criteria.

Because of the substantive nature of these additional changes, DMMA is now republishing the proposal for public comment pursuant to 29 **Del.C.** §§10115 and 10118. This revision is derived from (i) comments made by the

general public during the public comment period on the original proposal; from (ii) clarifications and other improvements noted by DMMA staff during subsequent review and analysis; and, from (iii) further policy clarification noted by the above-referenced CMS memorandum.

Summary of Comments Received With Agency Response and Explanation of Changes

The Governor's Advisory Council for Exceptional Citizens (GACEC), the Delaware Developmental Disabilities Council (DDDC), and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendation summarized below. DMMA has considered each comment and responds as follows.

As background, in June 2007, DMMA published a proposed one-sentence amendment to its regulations covering treatment of annuities in the Medicaid LTC program. We endorsed the concept of the standards which ostensibly eliminated a requirement that annuities be sold by applicants for Medicaid LTC services. The Division has now published a comprehensive revision to its annuity regulation. The impetus behind the new proposal is issuance of a CMS policy letter, dated July 23, 2007; recognition that the version of the regulation published in June was incomplete; and further review by DMMA staff. We have the following observations.

First, the proposed regulation generally conforms to the CMS guidance and often incorporates language from the letters verbatim.

Second, §20330.10D1 merits amendment. It recites as follows: "The issuer of any annuity will be notified of the State's rights as a preferred remainder beneficiary". The use of the passive voice in this sentence makes it unclear if the State or the applicant provides the requisite notice to the issuer of the annuity. Compare DMMA Final LTC Promissory Note & Life Estate Reg. [11 DE Reg. 314, 315 (September 1, 2007) [substituting active for passive voice for clarity]. The July 27, 2006 CMS policy letter contemplates that the State will issue notice to the issuer of the annuity:

The State must also notify the issuer of any annuity disclosed for purposes of section 1917(c)(1)(F) of the State's rights as a preferred remainder beneficiary.

At §I.B.

Under the new section 1917(c) (see section I.B. above) the State must notify the issuer of the annuity of the State's right as the preferred remainder beneficiary.

At §II.B.

For these reasons, it would be preferable to affirmatively recite that the State will issue the requisite notice.

Agency Response: Thank you for your comments. DMMA agrees with your recommendation. §20330.10D is revised to increase clarity.

Findings of Fact:

The Department finds that the proposed changes as set forth in the September 2007 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual regarding the treatment of annuities is adopted and shall be final effective November 10, 2007.

Vincent P. Meconi, Secretary, DHSS, October 15, 2007

DMMA FINAL ORDER REGULATION #07-50

REVISIONS:

20330-4.1 Annuities

An annuity is a financial device between an individual and a commercial company that conveys a right to receive periodic payments for life or a fixed number of months or years.

20330.4.1.A

A. Treatment of annuities purchased prior to February 8, 2006:

While the annuity itself may or may not be an available resource, the stream of income generated by the annuity is a countable income. The applicant must demonstrate to DMMA that a market to purchase the annuity stream of income does not exist. If a market exists, DMMA will consider the annuity to be an available resource. See 20 CFR 416.1201 (a).

DMMA will require that the fair market value of the annuity income stream be sold at Fair Market Value counted as a resource. See DSSM 20350.1.7 Fair Market Value (FMV).

DMMA will not count the value of an annuity purchased by a third party, e.g., the applicant's employer, as a retirement benefit to the applicant. However, DMMA will count the value of the income generated from a third party annuity.

An annuity that is revocable is always a countable resource. Revocable annuities are able to be converted to cash.

Spouses that claim the income allowance is inadequate to meet the needs of the Community Spouse may request additional resources be set aside to bring their income up to the minimum maintenance needs allowance. These requests MUST go through the fair hearing process in order to retain excess resources for their protected income share. See DSSM 20970 and 42 USC 1396r 5(e). In these cases, at the death of the annuity's owner, the beneficiary of the annuity must be the estate of the Medicaid recipient.

20330.4.1.B

B. Treatment of Annuities purchased on or After February 8, 2006:

As a condition of eligibility, an applicant or his/her representative shall disclose to DMMA any interest in any revocable or irrevocable annuity that the Medicaid applicant or his/her spouse has in an annuity or similar financial instrument as defined by the Secretary of Health and Human Services. Failure to report an annuity to DMMA may result in possible civil and criminal charges, and potential recovery of benefits that were incorrectly paid. The fair market value of the annuity minus any income received to date will be counted as a resource.

20330.4.1.B.1

The State of Delaware must be named as the beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the institutionalized spouse, unless there is a community spouse, minor child or disabled child who resides in the applicant's home. In such a case, the State must be named as a beneficiary in the correct position or the purchase of the annuity shall be considered a transfer for less than fair market value.

20330.4.1.B.2

The State of Delaware shall notify the issuer of the annuity of its interest and beneficiary status. This notice shall require the issuer to notify the State of any changes in the amount of income, principal or beneficiary to the annuity. Any transactions that occur on or after 2/8/06, subject the annuity to Deficit Reduction Act rules, even if the annuity was originally purchased prior to 2/8/06. Transactions may include such things as addition of principal, elective withdrawals, requests to change the beneficiary, and elections to annuitize the contract.

20330.4.1.B.3

~~Annuities purchased where the community spouse is the annuitant will be considered as part of the community spouse resource and /or income allocation. The fair market value of the annuity shall be the value counted in the spousal resource calculation.~~

20330.4.1.B.4

~~The purchase of an annuity by or on behalf of an applicant for medical assistance for Long Term Care services shall be treated as a transfer of assets without fair consideration unless:~~

- ~~1. The annuity is
 - a. irrevocable and nonassignable; and
 - b. is actuarially sound according to the life expectancy table developed by the Social Security Administration at <http://www.ssa.gov/OACT/STATS/table4c6.html>; and,
 - c. Provides for payments in equal amounts during the term of the annuity with no deferral or balloon payments; and~~
- ~~2. The annuity is an Individual Retirement Annuity (IRA) as described in Section 408(b) of the Internal Revenue Code of 1986; or~~
- ~~3. The annuity is part of a deemed IRA under a qualified employer plan as described in Section 408(q) of the Internal Revenue Code of 1986; or~~
- ~~4. The annuity was purchased with proceeds from:
 - a. An IRA account as described in Section 408(a), 408(c), 408(p), 408(k) or 408A of the Revenue Code of 1986.~~

20330.10 Annuities**20330.10.A Defining Annuity**

For Medicaid purposes, an annuity is a financial device between an individual and a commercial company that conveys a right to receive periodic payments for life or a fixed number of months or years.

20330.10.B Disclosure of Interest in an Annuity

1. Any interest an applicant or community spouse has in a revocable or irrevocable annuity must be disclosed at the time of application.
2. Failure to disclose interest in an annuity may result in denial of payment for long term care services or denial of Medicaid eligibility.

20330.10.C Determining If Annuity Is Income And Or a Resource

1. The equity value of a revocable annuity is a countable resource.
2. An assignable annuity (the owner or payee may be changed) is a countable resource. The resource value is the amount the assignable annuity can be sold for on the secondary market.
3. An annuity purchased by a third party, e.g. applicant's employer, as a retirement benefit to the applicant will not be counted as an available resource. (DSSM 20330.4)
4. The stream of income generated by an annuity, whether a countable resource or not, is countable income.

20330.10.D State's Rights as a Preferred Remainder Beneficiary

1. The ~~issuer of any annuity DMMA~~ will ~~be notified of the State's rights as a~~ notify, in writing, the issuer of an annuity owned by an applicant that the State is the preferred remainder beneficiary. This notice will require the issuer to notify the State of any changes in the amount of income, principal or beneficiary to the annuity. This notice will require the issuer to notify the State of any changes in the amount of income, principal or beneficiary to the annuity.
2. Certain transactions that occur on or after February 8, 2006 will subject an annuity purchased prior to this date to the DRA provisions. (DSSM 20330.10.E., DSSM 20330.10.F.) These transactions include such things as an addition to the principal, elective withdrawal, requests to change beneficiary, or elections to annuitize the contract.

20330.10.E State Named Remainder Beneficiary in All Annuities Purchased On Or After February 8, 2006

1. The State of Delaware must be named as a beneficiary in the correct position.
The State must be named beneficiary in the first position for the total amount of medical assistance paid on behalf of the institutionalized spouse, unless there is a community spouse, minor child, or disabled child who resides in the applicant's home.
In such a case, the State must be named in a secondary or remainder position.
2. If the State is not named as a remainder beneficiary the purchase of the annuity will be considered a transfer for less than fair market value.
3. The full purchase value of the annuity will be considered the amount transferred.

20330.10.F Purchase of an Annuity Is Considered a Transfer of Assets

1. The transfer of assets provisions should be applied to all annuities purchased on or after February 8, 2006 unless:

- A. The annuity is considered either:
 - An individual retirement annuity (according to Sec. 408 (b) of the Internal Revenue Code of 1986); or
 - A deemed Individual Retirement Account under a qualified employer plan (according to Sec. 408 (q) of the Internal Revenue Code of 1986).

OR
- B. The annuity is purchased with proceeds from one of the following:
 - A traditional IRA (IRC Sec. 408a); or
 - Certain accounts or trusts which are treated as traditional IRAs (IRC Sec. 408 §(c));
or
 - A simplified retirement account (IRC Sec. 408 §(p)); or
 - A simplified employee pension (IRC Sec. 408 §(k)); or
 - A Roth IRA (IRC Sec. 408A).

OR
- C. The annuity meets all of the following requirements:
 - The annuity is irrevocable and non-assignable; and
 - The annuity is actuarially sound; and

The annuity provides payments in approximately equal amounts, with no deferred or balloon payments.

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 133 (16 Del.C. §133)
16 DE Admin. Code 4203

ORDER

4203 Cancer Treatment Program

Nature of the Proceedings:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt amendments to the State of Delaware Regulations Governing The Cancer Treatment Program. The DHSS proceedings to amend the regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Section 133.

On September 1, 2007 (Volume 11, Issue 3), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by October 1, 2007, or be presented at a public hearing on September 26, 2007, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

Findings of Fact:

Based on comments received, non-substantive changes were made to the proposed regulations. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing The Cancer Treatment Program are adopted and shall become effective November 10, 2007, after publication of the final regulation in the *Delaware Register of Regulations*.

Vincent P. Meconi, Secretary, October 15, 2007

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing The Cancer Treatment Program were published in the Delaware State News, the News Journal and the *Delaware Register of Regulations*. Although no verbal comments were received at the September 26 public hearing, written comments were received on the proposed regulations during the public comment period (September 1, 2007 through October 1, 2007). Entities offering written comments included:

- State Council for Persons with Disabilities (SCPD)
- Governor's Advisory Council for Exceptional Citizens (GACEC)

Public comments and the DHSS (Agency) responses are as follows:

- **Section 11.9: Part of this section refers to "(e)nrollees receiving treatment for cancer as defined in 4.1.1". Section 4.1.1 does not really define cancer treatment. In light of this, it was suggested to substitute the words, "through the CTP" for "as defined in 4.1.1".**

Agency Response: After careful review of these sections, the Agency agrees with this suggestion and has made appropriate changes to the final regulation.

In addition to non-substantive amendments mentioned above, minor grammatical corrections were made to further clarify the proposed regulations.

The public comment period was open from September 1-October 1, 2007.

Verifying documents are attached to the Hearing Officer's record. The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

(Break in Continuity of Sections)

11.0 Coverage And Benefits

11.1 Coverage is limited to the treatment of cancer as defined by DHSS.

11.2 There is no managed care enrollment.

11.3 Benefits will be paid at rates equivalent to Medicaid under a fee for service basis. If a Medicaid rate does not exist for the service provided, the CTP will determine a fair rate.

11.4 Benefits will only be paid when the provider of the cancer treatment services is a Delaware Medicaid Assistance Provider.

11.5 Benefits for patients enrolled prior to September 1, 2004 (or whatever date is established by DHSS as having an operational benefits management information system), may not be paid until after that date.

11.6 The CTP is the payer of last resort and will only provide benefits to the extent that they are not otherwise covered by another insurance plan.

11.7 Eligibility may be retroactive to the day that cancer treatment was initiated provided that the application is filed within one year of that day. In such circumstances, covered services will only be provided for the time period that the applicant is determined to have been eligible for the CTP.

11.8 In no case will eligibility be retroactive to a time period prior to July 1, 2004, except if the enrollee was receiving benefits for the treatment of colorectal cancer through the Division of Public Health's Screening for Life program on June 30, 2004. If this exception occurs, eligibility will be retroactive only to the date the enrollee was receiving benefits for colorectal cancer treatment through the Screening for Life program.

11.9 Enrollees receiving treatment for cancer [as defined in 4.1.1 through the CTP] as of July 1, 2007[-] are able to extend their initial 12 month coverage to a maximum of 24 months after the date cancer treatment is initiated for each primary cancer diagnosis, provided that the enrollee continues to meet the technical and financial eligibility requirements.

* Please note only those changes made to the regulation as originally proposed and published in the September 2007 issue of the *Register* at page 278 (11 DE Reg. 278) are being published here. Therefore, the entire final regulation is not being republished. A copy of the regulation is available at:

[http://regulations.delaware.gov/register/november2007/final/11 DE Reg 680 11-01-07.htm](http://regulations.delaware.gov/register/november2007/final/11%20DE%20Reg%20680%2011-01-07.htm)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)
7 DE Admin. Code 1132

Secretary's Order No. 2007-A-0042

Approval of Final Regulation, 7 DE Admin Code 1132-Transportation Conformity, which Amends Regulation 32 in Delaware Regulations Governing the Control of Air Pollution in Order to Reflect Changes in Federal Law

Date of Issuance: October 15, 2007

Effective Date: November 11, 2007

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 Del.C. §§8001 *et seq.* and 7 Del.C. §6010(c), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced matter.

On August 10, 2005, the federal transportation conformity requirements were amended by the Federal Safe, Accountable, Flexible, and Efficient Transportation Equity Act. One change in the law allows the States to streamline their requirements for a State Implementation Plan's ("SIP") conformity to the federal law and regulations, as required under the federal *Clean Air Act*, 42 U.S.C. §§7401 *et seq.*, and regulations promulgated by the United States Environmental Protection Agency ("EPA"). Under the amendment, the States are no longer required to address all of the federal conformity rule provisions in their SIPs. Instead, a SIP may only address the following federal regulations: 1) 40 CFR 93.105, which addresses the consultation procedures; 2) 40 CFR 93.122(a)(4)(ii), which requires that SIPs have written commitments to control measures prior to a conformity determination if the control measures are not included in an Metropolitan Planning Organization ("MPO") plan and Transportation Improvement Plan ("TIP"), and that such commitments be fulfilled; and 3) 40 CFR 93.125(c), which states that conformity SIPs must require that written commitments to mitigation measures be obtained prior to a project level conformity determination, and that project sponsors comply with such commitments.

The proposed amendment to current Regulation 32 in the *Delaware Regulations Governing the Control of Air Pollution* will first restate and reformat the regulation to current numbering and style required for Delaware regulations. Second, the proposed amendment will reflect the inclusion of the Salisbury/Wicomico MPO as a new member of the Delaware Interagency Transportation Conformity Consultation Workgroup. This change is

supported by the shift in the federal regulations that placed Delmar, Delaware into the Salisbury/Wicomico MPO. The remaining changes streamline the current state regulations consistent with the change in federal law. As a result of the proposed amendments, the current Regulation 32's approximately sixty pages of regulations will be reduced to eighteen pages. The overall implementation and practice of transportation conformity will not change as the federal conformity rule applies for any provision not addressed in this Regulation.

The Department's technical experts within the Division of Air and Waste Management, Air Quality Management Section drafted the proposed regulation and a public hearing was held on September 24, 2007. No person appeared at the hearing or submitted written comments.

Based upon the public record, the Department's Senior Hearing Officer, Robert P. Haynes, recommended in a Report dated October 12, 2007 that the Department approve the proposed regulation as a final regulation. I agree with the recommendation and the Report and hereby approve the proposed regulation 1132 as a final regulation, which amends and replaces the current Regulation 32. The final regulation is as published in the September 2007 *Delaware Register of Regulations*, and is set forth in Appendix A of the Report attached hereto.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary hereby approves proposed amendments to current Regulation 32, which will become Regulation 1132 to *Delaware Regulations Governing the Control of Air Pollution*.

2. The Department shall have this Order published in the *Delaware Register of Regulations* and in newspapers in the same manner as the notice of the proposed regulation.

John A. Hughes, Secretary

*** Please note that no changes were made to the regulation as originally proposed and published in the September 2007 issue of the *Register* at page 281 (11 DE Reg. 281). Therefore, the regulation is not being republished. A copy of the final regulation is available at**

[http://regulations.delaware.gov/register/november2007/final/11 DE Reg 682 11-01-07.htm](http://regulations.delaware.gov/register/november2007/final/11%20DE%20Reg%20682%2011-01-07.htm)

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Section 6010, (7 **Del.C.** §6010)
7 DE Admin. Code 1138

Secretary's Order No.: 2007-A-0043

RE: Regarding: Proposed Amendments to Regulation 1138: "Emission Standards for Hazardous Air Pollutants for Source Categories", Section 6.0: Chromium Electroplating and Anodizing Operations

Date of Issuance: October 15, 2007

Effective Date of the Amendment: November 11, 2007

I. Background:

A public hearing was held on Thursday, August 23, 2007, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to Subpart N of Delaware Regulation 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, *Section 6.0: Chromium Electroplating and Anodizing Operations*. Historically, Delaware adopted by reference the federal Maximum Achievable Control Technology standard (hereinafter referred to as the MACT standard) applicable to chromium electroplating facilities as Subpart N on Delaware's Regulation 38 on September 1, 1999. Delaware later amended Subpart N in October of 2000 when EPA issued a temporary extension to the Title V permitting deadline, and that extension was in effect until December 2005.

Since 2000, EPA has revised the chromium electroplating MACT standard several times. These changes included modifications to the standard's emission limitations, work practices, and other compliance provisions. In

2005, EPA permanently exempted the smaller area sources as we have here in Delaware from the obligation of obtaining a Title V permit. The Department's purpose in amending Subpart N at this time is to update Delaware's requirements, where appropriate, to be consistent with the federal requirements.

No members of the public attended this hearing on August 23, 2007, and no public comment or questions were received by the Department regarding this proposed action. Proper notice of the hearing was provided as required by law.

II. Findings:

The Department has provided a reasoned analysis and a sound conclusion with regard to the response given to each such comment, as reflected in the Hearing Officer's Report of October 12, 2007, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department considered all timely and relevant public comments in making its determination;
5. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
6. Promulgation of these proposed amendments would update Delaware's requirements, where appropriate, to be consistent with the federal requirements, thus bringing Delaware into compliance with EPA standards;
7. In cases where the updated federal requirements would adversely affect the public health, those updates were not incorporated into these proposed amendments;
8. The styling and formatting changes to this regulation will make the Department consistent with the Delaware Administrative Code System, as well as provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community;
9. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
10. The Department's proposed regulation, as published in the August 1, 2007 *Delaware Register of Regulations* and set forth within Attachment "A" hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*;
11. The Department shall submit the proposed regulation as a final regulation to the *Delaware Registrar of Regulations* for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Report dated October 12, 2007, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulation 1138: Emission Standards for Hazardous Air Pollutants for Source Categories, Section 6.0 - Chromium Electroplating and Anodizing Operations - be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the amendments to State of Delaware Regulation 1138, Section 6.0, will bring Delaware into compliance with federal MACT standards and requirements, and update Delaware's requirements, where appropriate, to be consistent with the federal requirements. Additionally, those changes being made concerning styling and formatting of this regulation will make the Department consistent with the Delaware Administrative Code System, as well as provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 Del.C., Ch. 60.

John A. Hughes, Secretary

*** Please note that no changes were made to the regulation as originally proposed and published in the August 2007 issue of the *Register* at page 152 (11 DE Reg. 152). Therefore, the regulation is not being republished. A copy of the final regulation is available at**

<http://regulations.delaware.gov/register/november2007/final/11 DE Reg 683 11-01-07.htm>

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 103, 1902, 2701, 2703 and Chapter 15
(7 Del.C. §§103, 1902, 2701, 2703 and Ch. 15)
7 DE Admin. Code 3203, 3207, 3210, 3211 and 3214

Secretary's Order No.: 2007-F-0044

RE: Proposed Amendments to Delaware's Horseshoe Crab Regulations as follows:

- 3203 – Seasons and Area Closed to Taking Horseshoe Crabs
- 3207 – Horseshoe Crab Dredging Restrictions
- 3210 – Horseshoe Crab Reporting Requirements
- 3211 – Horseshoe Crab Commercial Collecting Permit Eligibility and Renewal Requirements
- 3214 – Horseshoe Crab Annual Harvest Limit

Date of Issuance: October 15, 2007

Effective Date of the Amendment: November 11, 2007

I. Background:

A public hearing was held on Monday, September 24, 2007, in the Richardson and Robbins Auditorium of DNREC, 89 Kings Highway, to receive public comment on proposed amendments to Delaware's horseshoe crab regulations. Emergency horseshoe crab harvest and limit regulations, which were originally set to expire September 8, 2007, were extended by the adoption of new emergency regulations (Order No. 2007-F-0037) effective September 7, 2007. These emergency regulations extend the time period for the annual harvest limits of 100,000 male-only crabs for an additional 90 days, through December 5, 2007, or until regulations are implemented by the Department that eliminate the need for an emergency order. With the formal promulgation of amendments to Delaware's horseshoe crab regulations, there is no further need for any additional emergency orders to be enacted by the Secretary in order to keep Delaware in compliance with federal requirements concerning the harvesting of this species.

Numerous members of the public attended this hearing on August 23, 2007, and a voluminous amount of public comment was received by the Department during all phases of this regulatory process regarding this proposed action. Proper notice of the hearing was provided as required by law.

II. Findings:

The Department has provided appropriate reasoning, scientific analysis, and sound conclusions with regard to the drafting of these regulation amendments and consideration of the public comments received, as reflected in the Hearing Officer's Report of October 13, 2007, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a

manner required by the law and regulations;

3. The Department held a public hearing in a manner required by the law and regulations;

4. The Department considered all timely and relevant public comments in making its determination;

5. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

6. Formal promulgation of these proposed amendments would update Delaware's current regulations, so that Delaware will be in compliance with Addendum IV to the Interstate Fishery Management Plan for Horseshoe Crab, issued by ASMFC;

7. These amendments will prohibit the harvest and landing of all horseshoe crabs in Delaware from January 1 through June 7, 2008, and will also prohibit the harvest and landing of all female horseshoe crabs in Delaware for two years, as required by the ASMFC Plan;

8. Furthermore, these amendments will allow the harvest of 100,000 male-only horseshoe crabs June 8 through December 31, 2007, and again for the 2008 calendar year;

9. Beach collecting of male-only horseshoe crabs will be allowed Monday through Friday, June 8-30, 2008, from Port Mahon Road and private beaches where collecting is presently legal. This measure will allow beach collectors to harvest male horseshoe crabs under the proposed quota system more efficiently during the period when harvesting is permitted;

10. These amendments shall also require all horseshoe crab collectors to phone-in a daily report and submit a monthly log listing the dates and locations horseshoe crabs were harvested;

11. Permit renewal requirements are proposed and in line with other shellfish licenses with annual renewal by December 31 of each calendar year in order to retain eligibility;

12. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;

13. The Department's proposed regulation, as published in the September 1, 2007 *Delaware Register of Regulations* and set forth within Attachment "A" hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*;

14. The Department shall submit the proposed regulation as a final regulation to the *Delaware Register of Regulation* for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Report dated October 13, 2007, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Horseshoe Crab Regulations as follows: 3203 – Seasons and Area Closed to Taking Horseshoe Crabs; 3207 – Horseshoe Crab Dredging Restrictions; 3210 – Horseshoe Crab Reporting Requirements; 3211 – Horseshoe Crab Commercial Collecting Permit Eligibility and Renewal Requirements; and 3214 – Horseshoe Crab Annual Harvest Limit - be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the amendments to Delaware's Regulations regarding the harvesting of horseshoe crabs is a reasonable action for the Department to take at this time, as it will bring Delaware into compliance with Addendum IV to the Interstate Fishery Management Plan for Horseshoe Crabs, issued by ASMFC. Failure to amend the existing horseshoe crab harvesting regulations would result in federal sanctions being taken against Delaware, including, but not limited to, the federal government closing Delaware's horseshoe crab fishery. Such actions would result in economic detriment to Delaware's fishermen, and therefore it is reasonable to enact these regulatory amendments at this time to prevent such detriments to Delaware's economy from occurring.

Conservation measures with regard to the harvesting of the horseshoe crab began to be applied in Delaware by ASMFC starting in 1999. Over the years subsequent to those measures being implemented, there are data indicating that the horseshoe crab population has begun to stabilize. The proposed harvest of 100,000 male horseshoe crabs would result in a taking of a very small percentage of this species' overall population, and thus it

is believed to not be detrimental to the overall population of this species.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the economic interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del.C.**, Ch. 60.

John A. Hughes, Secretary

* Please note that no changes were made to the regulation as originally proposed and published in the September 2007 issue of the *Register* at page 282 (11 DE Reg. 282). Therefore, the final regulation is not being republished. A copy of the final regulation is available at
[3200 Horseshore Crab](#)

DEPARTMENT OF SAFETY AND HOMELAND SECURITY DIVISION OF STATE POLICE

Statutory Authority: 24 Delaware Code, Section 2311 (24 **Del.C.** §2311)

ORDER

2300 Pawn Brokers and Junk Dealers

Notice is hereby given that the Department of Safety and Homeland Security, Division of State Police, in accordance with 24 **Del.C.** Section 2311 intends to adopt Rules and Regulations. This adoption will allow the regulation of Pawnbrokers, Secondhand Dealers, and Scrap Metal Processors.

These Rules and Regulations are promulgated pursuant to 24 **Del.C.** Section 2311 and the Secretary of Safety and Homeland Security delegates his regulatory authority granted by Chapter 23 to the Division of State Police.

2300 Pawn Brokers and Junk Dealers

1.0 Licensing

1.1 Any individual applying for a pawnbroker, secondhand dealer or scrap metal processor license under Title 24 Chapter 23 must meet and maintain the following qualifications:

1.1.1 Must not be convicted of any felony within 5 years of application date; and

1.1.2 Must not have been convicted of any misdemeanor involving theft or fraud within 5 years of application date; and

1.1.3 Must not have been convicted of any misdemeanor involving drugs within 3 years of application date.

1.2 A license for a pawnbroker, secondhand dealer or scrap metal processor will not be issued if there is a pending charge as listed in Section 1.1.1, 1.1.2, or 1.1.3.

1.3 The individual applying for a pawnbroker, secondhand dealer or scrap metal processor under Title 24 Chapter 23 must also meet the following qualifications:

1.3.1 Must be at least 18 years of age; and

1.3.2 Must have a valid Delaware Business License; and

1.3.3 Physical location of business must be in the State of Delaware; and

1.3.4 Appropriate taxes must be filed to the State of Delaware and the United States of America;

and

1.3.5 License must be prominently displayed within the business along with the Delaware Business License.

1.4 The individual applying for licensure under Title 24 Chapter 23 must complete the following for approval:

FINAL REGULATIONS

1.4.1 Applicant must appear in person at the Delaware State Police Criminal Investigative Unit (CIU) at Troop 2, Troop 3 or Troop 4 in their respective county, to submit the initial application. Licenses will be renewed annually. Renewal applications may be submitted via mail; and

1.4.2 Any and all applications required by the Delaware State Police CIU; and

1.4.3 Submit fingerprints, if requested to confirm the status or existence of a Delaware (CHRI) criminal history. The Director of the State Bureau of Identification (SBI) determines the fee for this process.

1.5 Notification of a change of address for the business during the license year must be made to the Delaware State Police CIU at Troop 2, Troop 3 or Troop 4.

2.0 Notification of Arrest

2.1 Anyone licensed under Title 24 Chapter 23 shall notify the Delaware State Police CIU within five (5) days of being arrested for a misdemeanor or felony crime. Failure to do so may result in the suspension or revocation of any pawnbroker, secondhand dealer, or scrap metal processor.

3.0 Revocations and Emergency Suspensions

3.1 The Director of State Bureau of Identification (SBI) shall have the power to issue the revocation or emergency suspension of any individual licensed under Title 24 Chapter 23 that violates the Chapter or the promulgated Rules & Regulations.

3.2 The Director of SBI shall issue an emergency suspension due to:

3.2.1 Any conduct of the applicant deemed to be a threat to public safety; and/or

3.2.2 Any felony arrest; and/or

3.2.3 Any arrest of a misdemeanor involving the crime of theft, receiving stolen property, fraud related charges, or any crime involving drugs.

3.3 The Director of SBI shall issue the revocation of any applicant due to:

3.3.1 Any conduct of the applicant deemed to be a threat to public safety; and/or

3.3.2 Any felony conviction; and/or

3.3.3 Any conviction of a misdemeanor involving the crime of theft, receiving stolen property, fraud related charges, or any crime involving drugs.

3.4 The Director of SBI must give written notice to the applicant stating the intent of revocation or an emergency suspension and the grounds therefore.

3.4.1 Any applicant that has been revoked or suspended is entitled to a hearing before the Pawnbrokers hearing Committee.

3.4.1.1 The Pawnbrokers Hearing Committee will be comprised of a DSP Executive Staff Member and the DSP CIU Troop Commander or Designee in respective county [of business]. The Director of SBI and a representative of the Attorney General's Office may attend but not vote.

3.4.2 Anyone requesting a hearing shall notify the Director of SBI, in writing, within 30 days from the revocation or emergency suspension and the hearing shall be scheduled within 30 days of the filing of the request.

3.5 Anyone whose license has been revoked cannot be reinstated. The applicant must follow the standard licensing application process to apply for a new license.

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

500 Board of Podiatry

Statutory Authority: 24 Delaware Code, Section 506(a)(1) (24 Del.C. §506(a)(1))

24 DE Admin. Code 500

ORDER

The Board of Podiatry ("Board") was established to protect the public from unsafe practices and from occupational practices, which tend to reduce competition or fix the price of services rendered by the professions

under its purview. The Board was further established to maintain minimum standards of practitioner competency and delivery of services to the public. The Board is authorized by 24 **Del.C.** §506(a)(1) to make, adopt, amend, and repeal regulations as necessary to effectuate those objectives.

Pursuant to 24 **Del.C.** §3706(a)(1), the Board proposed amendments to its regulation sections 7.0, relating to disciplinary hearings, and 9.0, which lists crimes substantially related to the practice of podiatric medicine. Specifically, the proposed changes to section 7.0 Disciplinary Proceedings And Hearings clarify the grounds for discipline found in 24 **Del.C.** §515(a)(5) by providing examples of consumer fraud or deception; the practice of false advertising is explicitly prohibited. The changes to section 9.0 Definitions removes the crime of loitering from the Board's list of crimes substantially related to the practice of podiatric medicine. Other grammatical, typographic, or stylistic changes are also included.

Pursuant to **29 Del.C.** §10115, notice of the public hearing and a copy of the proposed regulatory changes was published in the *Delaware Register of Regulations*, Volume 11, Issue 2, at page 157 on August 1, 2007.

Summary of the Evidence and Information Submitted

No written or verbal comments were received.

Findings of Fact

The Board finds that adoption of the proposed amendments to section 7.0 is necessary to protect the public from deceptive practices. The Board finds that adoption of the proposed amendments to section 9.0 is appropriate because loitering is not substantially related to the practice of podiatric medicine.

Decision and Effective Date

The Board hereby adopts the proposed amendments to the regulations to be effective 10 days following final publication of this order in the Register of Regulations.

Text and Citation

The text of the final regulations is attached hereto as Exhibit A and is formatted to show the amendments. A non-marked up version of the regulations as amended is attached hereto as Exhibit B.

IT IS SO ORDERED this 11th day of October 2007, by the Board of Podiatry.

Jonathan Contompasis, D.P.M., President
Nathaniel Gibbs

Jeffrey Barton, D.P.M.
Roman Orsini, D.P.M.

* **Please note that no changes were made to the regulation as originally proposed and published in the August 2007 issue of the *Register* at page 157 (11 DE Reg. 157). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

[2300 Pawn Broker and Junk Dealers](#)

DIVISION OF PROFESSIONAL REGULATION

2500 Board of Pharmacy

Statutory Authority: 24 Delaware Code, Section 2509 (24 **Del.C. §2509)**

24 DE Admin. Code 2500

ORDER

The Board of Pharmacy ("Board") was established to "promote, preserve and protect the public health, safety and welfare by and through the effective control and regulation of the practice of pharmacy." 24 **Del.C.**

§2501. It is a "matter of public interest and concern that the practice of pharmacy... merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practice of pharmacy in the State." *Id.* The Board is authorized by 24 **Del.C.** §2509 to make, adopt, amend, and repeal regulations as necessary to effectuate its mandates.

Pursuant to 24 **Del.C.** §2509, the Board proposed renumbering current regulation section 16.0 to 17.0 and inserting a new section 16.0. Specifically, the current section **16.0 Crimes substantially related to the practice of pharmacy** has been renumbered as section 17.0, and new section **16.0 Automated Delivery Devices** has been inserted. The new section 16.0 allows for and regulates the use of machines that are able to store and dispense medication to patients. The proposed regulations limit use of such devices to dispensing refills of non-controlled substances/medications. Refills may only be completed by pharmacy personnel and placed in the machine for customer pick up. All such devices must be approved by the Board before they may be put into operation.

The Board further proposed amendments to its regulation section 3.0. Specifically, the proposed addition to section **3.0 Pharmacy Requirements** requires the pharmacist-in-charge at each pharmacy to develop written policies for situations in which a pharmacist's professional obligation to dispense certain pharmaceuticals may conflict with the pharmacist's personal beliefs, potentially causing the pharmacist to refuse to dispense the pharmaceutical. The regulatory changes do not specify how such situations should be handled nor do they prescribe the content of such policies. Instead, the proposed changes merely require the pharmacist-in-charge at each pharmacy to develop written policies for such situations

Minor grammatical, typographic, and stylistic changes are also included.

In compliance with 29 **Del.C.** §10115, notice of the public hearing and a copy of the proposed regulatory changes was published in the *Delaware Register of Regulations*, Volume 11, Issue 2, at page 167 on August 1, 2007.

Summary of the Evidence and Information Submitted

No verbal comments were received.

One written comment was received by the Board on September 18, 2007, from the National Association of Chain Drug Stores ("NACDS"). By letter dated September 17, 2007, NACDS expressed its support of the proposed regulation 16.0 regarding automated prescription devices but requested some changes. NACDS suggested that automated devices be permitted to deliver new prescriptions in addition to refills; non-Delaware-licensed pharmacists be permitted to provide patient counseling; pharmacies not be required to keep lists of medications approved for use in the devices or a list of patient qualifications for device usage; not require patients to sign informed consents to use the devices; and not require the devices to be attached to pharmacy departments. NACDS's letter was marked as Board Exhibit #5 and is part of the official record in this matter.

Findings of Fact

The Board finds that adoption of the proposed amendments is necessary to promote, preserve, and protect the public health, safety, and welfare.

Decision and Effective Date

The Board hereby adopts the proposed amendments to the regulations to be effective 10 days following final publication of this order in the *Register of Regulations*.

Text and Citation

The text of the final regulations is attached hereto as Exhibit A and is formatted to show the amendments. IT IS SO ORDERED this 19th day of September 2007, by the **Delaware Board of Pharmacy**.

Don Holst, R.Ph., President

Sebastian Hamilton, R.Ph.
Angelo Chiari, R.Ph., Vice President
Geoffrey Christ, R.Ph., Esq.
Sandra Robinson, R.Ph.

* Please note that no additional changes were made to the regulation as originally proposed and published in the August 2007 issue of the *Register* at page 167 (11 DE Reg. 167). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at [2500 Board of Pharmacy Regulations](#)

DIVISION OF PROFESSIONAL REGULATION

4400 Delaware Manufactured Home Installation Board

Statutory Authority: 24 Delaware Code, Section 4416(b)(1) (24 Del.C. §4416(b)(1))
24 DE Admin. Code 4400

ORDER

Pursuant to 24 Del.C. §4416(b)(1), the Delaware Manufactured Home Installation Board ("the Board") has proposed revisions to Regulation 5.0 of its Rules and Regulations. The proposed revisions address the requirements for re-taking the examination once an applicant for licensure as a manufactured home installer has failed the examination at least twice. The proposed regulatory changes were published in the *Delaware Register of Regulations*, Volume 11, Issue 2, on August 1, 2007.

A public hearing to receive comments was held on October 22, 2007 at the Board's regularly scheduled meeting.

Summary of the Evidence and Information Submitted

No written or verbal comments were received.

Findings of Fact

The Board finds that adoption of the proposed amendments to Regulation 5.0 will place additional requirements upon applicants who fail the examination two or more times and will thereby serve to maintain minimum standards of professional competence and competence in the delivery of services to the public.

Decision and Effective Date

The Board hereby adopts the proposed amendments to be effective 10 days following publication of this order in the *Register of Regulations*.

Text and Citation

The text of the revised regulations is attached hereto as Exhibit A and is formatted to show the amendments. A clean copy, without the formatting, is attached hereto as Exhibit B.

SO ORDERED this 22nd day of October 2007.

DELAWARE MANUFACTURED HOME INSTALLATION BOARD

Allan Redden, President
William Dale Hammond, Vice President
Mark Brittingham, Secretary

Estella Class, Education Officer
James W. Brockton, Complaint Officer
Charles Eggleston
Van Milligan
Jill Fuchs
Victor Kennedy

* Please note that no additional changes were made to the regulation as originally proposed and published in the August 2007 issue of the *Register* at page 177 (11 DE Reg. 177). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at [4400 Delaware Manufactured Home Installation Board](#)

DIVISION OF PROFESSIONAL REGULATION

5300 Board of Massage and Bodywork

Statutory Authority: 24 Delaware Code, Section 5306(a)(1) (24 **Del.C.** §5306)
24 **DE Admin. Code** 5300

ORDER

The Delaware Board of Massage and Bodywork, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §5306(a)(1), proposed amendments to its regulation 1.0. Specifically, the proposed amendments to **1.0 Definitions and General Definitions** clarify which practices or modalities are included in the definition of either massage or bodywork and, therefore, require licensure to practice.

Minor grammatical, typographic, and stylistic changes are also included.

In compliance with 29 **Del.C.** §10115, notice of the public hearing and a copy of the proposed regulatory changes was published in the Delaware *Register of Regulations*, Volume 11, Issue 2, at page 178 on August 1, 2007.

Summary of the Evidence and Information Submitted

One letter was received by the Board on September 20, 2007, from Linda S. Lowry. In her letter, Ms. Lowry expresses several opinions, none of which relate to the current proposal. Ms. Lowry's letter has been marked as an exhibit and retained in the Board's files in this matter.

Ms. Lora Byner addressed the Board during the public comment period to state her support for the proposal but asked the Board to continue to work to further clarify and define the scope of practice of the various modalities.

Findings of Fact

The Board finds that adoption of the proposed amendments is necessary to clarify which practices require licensure.

Decision and Effective Date

The Board hereby adopts the proposed amendments to the regulations to be effective 10 days following final publication of this order in the *Register of Regulations*.

Text and Citation

The text of the final regulations is attached hereto as Exhibit A and is formatted to show the amendments. A non-marked up version of the regulations as amended is attached hereto as Exhibit B.

IT IS SO ORDERED this 20th day of September 2007, by the **Delaware Board of Massage and**

Bodywork.

David Patterson, President
Wade Carey, Vice-President
Suzie Stehle, Secretary
Clayton Yocum

* Please note that no additional changes were made to the regulation as originally proposed and published in the August 2007 issue of the *Register* at page 178 (11 DE Reg. 178). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at [5300 Board of Massage and Bodywork](#)

OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b) (5 Del.C. §121(b))
5 DE Admin. Code §2108/2209; §2302 and §3402

Order Adopting New Regulations 2108/2209, 2302, and 3402

IT IS HEREBY ORDERED, this 2nd day of October, 2007, that new Regulations 2108/2209, 2302, and 3402 are adopted as regulations of the State Bank Commissioner. A copy of each Regulation is attached hereto and incorporated herein by reference. The effective date of each Regulation is November 11, 2007. Each Regulation is adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code.

New Regulations 2108/2209, 2302, and 3402 are adopted pursuant to the requirements of Chapter 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Notice of each proposed new Regulation and its text was published in the September 1, 2007 issue of the *Delaware Register of Regulations*. The notice also was published in The News Journal and the Delaware State News on September 10, 2007, and was mailed to all persons who had made timely written requests to the Office of the State Bank Commissioner for advance notice of its regulation-making proceedings. The notice included, among other things, a summary of each proposed new Regulation, invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before October 2, 2007, and stated that each proposed new Regulation was available for inspection at the Office of the State Bank Commissioner, that copies were available upon request, and that a public hearing would be held on October 2, 2007 at 10:00 a.m. at the Office of the State Bank Commissioner in Dover, Delaware.

2. No written comments about the proposed new regulation were received on or before October 2, 2007.

3. A public hearing was held on October 2, 2007 at 10:00 a.m. regarding each proposed new Regulation. Robert A. Glen, State Bank Commissioner; Francis S. Babiarz, Deputy Bank Commissioner for Supervisory Affairs; Frank N. Broujos, Deputy Attorney General (by telephone on speaker), and a court reporter attended the hearing. No other persons were present. Deputy Commissioner Babiarz summarized each proposed new Regulation. No other comments were made or received at the hearing.

4. After review and consideration, the State Bank Commissioner hereby adopts new Regulations 2108/2209, 2302, and 3402 as proposed.

October 2, 2007

Robert A. Glen, State Bank Commissioner

* Please note that no additional changes were made to the regulation as originally proposed and published in the September 2007 issue of the *Register* at page 298 (11 DE Reg. 298). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at [Bank Commissioner Regulations](#)

FINAL REGULATIONS

DEPARTMENT OF TRANSPORTATION DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 17 Delaware Code Sections 134, 141 and 21 Delaware Code Chapter 41
(17 Del.C. §§134,141 and 21 Del.C. Ch. 41)

ORDIER

Revisions to the Delaware Manual on Uniform Traffic Control Devices

Proposed changes to the Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD), Part 6 were previously advertised in the *State Register of Regulations*. Comments on the proposed changes were received between June 1, 2007 and June 30, 2007.

Summary of the Evidence and Information Submitted

The comments received and the Department's reactions to those comments are summarized in the accompanying table. These comments caused certain changes to be made in the proposed Manual, although the Department considers none of these changes to be substantive in nature, thus causing the need for a new comment period.

Comment	Page Number(s) & Figure Number(s)	DelDOT Response
Sand ballasts shall contain 5% by volume sodium chloride mixed with dry clean sand	Pages 6F-32, 6F-33, 6F-37 and 6F-48	Revised per comment
Delete sign R4-2 from Part 6	Page 6F-41 and Figure 6F-3	Revised per comment
Delete sign R8-3a from Part 6	Figure 6F-3	Revised per comment
Delete sign R9-8 from Part 6	Pages 6F-3, 6F-11 and Figure 6F-3	Revised per comment
Add sign M4-9-DE (Detour [Through]) to Part 6	Page 6F-6 and Sign Appendix	Revised per comment
W(DE)20-6-2 and W(DE)20-6-3 have been deleted. W4-2 is being used	Sign Appendix	Revised per comment
R4-8-DE1 should be renamed R4-8-DE	Table 6F-1 and Sign Appendix	Revised per comment
Change from one light fixture to one light plant to be dedicated to the flagger operation	Page 6E-5	Revised per comment
Size of sign R2-6-DE is incorrect in Table 6F-1	Table 6F-1	Revised per comment
Delete sign R(DE)4-8-1 from Part 6	Table 6F-1 and Sign Appendix	Revised per comment
R4-1-DE sign layout should be revised to match current size of 48" x 12" and renamed as R4-1-DE1	Table 6F-1 and Sign Appendix	Revised per comment
Delete sign W(DE)9-3a-1 from Part 6	Table 6F-1	Revised per comment
Revise sign naming format to match that of Part 2 and DE Sign Book	All Delaware-specific signs	Revised per comment

Findings of Fact

Based on the record in this docket, I make the following findings of fact:

1. The proposed changes in the Manual on Uniform Traffic Control Devices, Part 6, are useful and proper, as amended pursuant to the comment period process required under the Administrative Procedures Act.
2. The adoption of these proposed changes to the MUTCD is in the best interests of the State of Delaware.

Decision and Effective Date

Based on the provisions of Delaware law and the record in this docket, I hereby adopt the amended Delaware MUTCD, Part 6, as is more fully appear in the CD version attached hereto, to be effective on November 21, 2007.

IT IS SO ORDERED this 25th day of September, 2007.

Carolann Wicks, Secretary

Delaware Department of Transportation

An authenticated PDF version of the Manual on Uniform Traffic Control Devices is available here:

[DeIDOT MUTCD Part 6](#)

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT****EXECUTIVE ORDER
NUMBER ONE HUNDRED TWO**

RE: Creating The Delaware Information Assurance Task Force

WHEREAS, the State of Delaware has been recognized for its national leadership in providing e-Government services to citizens and businesses; and

WHEREAS, the State of Delaware has also been a leader in enacting legislation to facilitate e-Commerce; and

WHEREAS, the State of Delaware is the nation's premier incorporation domicile and the legal home to over 800,000 business entities including more than 60% of Fortune 500 businesses; and

WHEREAS, the National Association of Secretaries of State has issued national e-Notarization Standards that propose procedures and standards to facilitate the authentication of electronic documents and the use of electronic documents in the stream of commerce by domestic and overseas business entities; and

WHEREAS, hundreds of millions of documents and data files are authenticated every year and the vast majority of these are prepared and processed in paper form costing U.S. and foreign businesses billions of dollars in processing and shipping costs; and

WHEREAS, many businesses, including mortgage, legal and medical services firms have begun migrating toward paperless operations and as their business processes evolve many are calling for standardized operating environments that have been government sanctioned; and

WHEREAS, such businesses will readily migrate to electronic authentication if the private sector develops electronic notarization, information assurance, archival and storage products and services that enable citizens, businesses, legal authorities and others to trust the authenticity of data and information; and

WHEREAS, government policies, regulations and statutes will play a critical role in establishing a conducive and flexible environment for the development of information assurance products and services; and

WHEREAS, Delaware's position as a national leader in e-Government, e-Commerce and Corporate and Legal Services presents a unique opportunity for the First State to become a major U.S. center for development and delivery of information assurance products and services;

NOW, THEREFORE, I, RUTH ANN MINNER, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order that:

1. The Delaware Information Assurance Task Force (the "Task Force") is hereby created.
2. The members of the Task Force shall consist of the following:
 - a. The Lieutenant Governor or his designee;
 - b. The Secretary of State or her designee;
 - c. The Chief Information Officer of the State of Delaware or his designee;
 - d. The Director of the Office of Management and Budget or her designee;
 - e. The Director of the Delaware Economic Development Office or her designee;
 - f. A member of the Commission on Uniform State Laws designated by the Governor;
 - g. The Director of the Delaware Biotechnology Institute;
 - h. The Chair of the Delaware Technology Park;
 - i. The Chair of the Banking Committee of the Delaware State Senate;
 - j. The Chair of the Telecommunications Internet & Technology Committee of the Delaware

State House of Representatives; and

k. Four members who shall be appointed by the Governor.

All members shall serve at the pleasure of the Governor.

3. The Lieutenant Governor shall serve as Chairperson of the Task Force.

4. The Task Force shall make recommendations to promote the development of information assurance products and services in Delaware that will enable citizens, businesses, legal authorities and others to rely upon data, images and information that has been electronically authenticated. The Task Force shall recommend any policy, regulatory or legislative changes that may be necessary to establish Delaware's leadership in the field of information assurance including, but not limited to, any changes to existing laws governing notaries and electronic transactions. The Task Force may also recommend strategies for the development of partnerships with new or existing private or not-for-profit entities in order to promote the development of a national and/or international information assurance system.

5. The Task Force shall submit its recommendations to the Governor, the Speaker of the House and the President Pro Tempore of the Senate by December 15, 2007.

Approved: September 20, 2007

Ruth Ann Minner,
Governor

ATTEST:

Harriet Smith Windsor, Secretary of State

DELAWARE MANUFACTURED HOME RELOCATION AUTHORITY**NOTICE OF PUBLIC HEARING****201 Delaware Manufactured Home Relocation Trust Fund Regulations**

The Delaware Manufactured Home Relocation Authority (the "Authority") will hold a public hearing to discuss proposed amendments to the Authority's regulations relating to the administration of the Delaware Manufactured Home Relocation Trust Fund ("Trust Fund") established pursuant to 25 **Del.C.** §7012. The Authority was established by the Delaware Legislature pursuant to 25 **Del.C.** §7011. The primary purpose of the Authority is to: (a) provide financial assistance to manufactured homeowners who are tenants in a manufactured home community where the community owner changes the use of land or converts the manufactured home community to a condominium or cooperative community; and (b) to provide financial assistance to manufactured home community owners for the removal and/or disposal of non-relocatable or abandoned manufactured homes when there is a change in use or conversion.

Pursuant to its statutory authority, at the Authority's meeting on April 11, 2007, the Authority adopted a resolution proposing for adoption certain revisions to the existing regulations to be used for the administration of the Trust Fund. The proposed regulations approved at the April 11, 2007 meeting of the Authority and published herein will set the maximum payment available to a landlord for a single section home and a multi-section home that has been abandoned or that has been determined to be non-relocatable at \$500.00 and \$1,000.00 respectively.

The public hearing will be on Monday, December 10, 2007, beginning at 6:00 p.m. and ending at 7:30 p.m. in the Auditorium located at the offices of the Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, DE 19901.

Copies of the proposed regulations are available for review by contacting:

William A. Denman, Esquire
Parkowski, Guerke & Swayze, P.A.
116 W. Water Street
Dover, DE 19904
(302) 678-3262
Email: wdenman@pgslegal.com

Anyone wishing to present oral comments at this hearing should contact Mr. William A. Denman at (302) 678-3262 by Friday, December 7, 2007. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony, should submit such comments by December 31, 2007 to:

William A. Denman, Esquire
Parkowski, Guerke & Swayze, P.A.
116 W. Water Street
Dover, DE 19904
(302) 678-3262
Email: wdenman@pgslegal.com

DEPARTMENT OF AGRICULTURE**HARNESS RACING COMMISSION****NOTICE OF PUBLIC HEARING**

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rules 1, 5, 6, 7, and 8. The Commission will hold a public hearing on the proposed rule changes on December 11, 2007. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the Register of Regulations on November 1, 2007.

The proposed changes are for the purpose of updating Rules 1, 6, 7, 8 and 10 to reflect current policies, practices and procedures. Copies are published online at the Register of Regulations website: <http://>

regulations.delaware.gov/services/current_issue.shtml. A copy is also available for inspection at the Racing Commission office.

DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, November 15, 2007 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

4403 Free Standing Birthing Centers

PUBLIC NOTICE

The Department Health and Social Services is proposing regulations which establish standards for regulation of the operation of Free Standing Birthing Centers. The regulations for Free Standing Birthing Centers apply to any program that provides prenatal, intrapartum and postpartum care for individuals with uncomplicated pregnancy, labor and vaginal birth and newborns during the recovery period. Services shall be provided by a licensed physician, certified nurse midwife or certified professional midwife and a registered nurse.

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services (DHSS), will hold a public hearing to discuss the proposed Delaware Regulations for Free Standing Birthing Centers. The regulations for Free Standing Birthing Centers apply to any program that provides prenatal, intrapartum and postpartum care for individuals with uncomplicated pregnancy, labor and vaginal birth and newborns during the recovery period. Services shall be provided by a licensed physician, certified nurse midwife or certified professional midwife and a registered nurse.

The public hearing will be held on November 27, 2007 at 10:00 a.m. in the Felton-Farmington Room, located in the Delaware Department of Transportation Building, 800 Bay Road, Dover, Delaware.

Copies of the proposed regulations are available for review in the November 1, 2007, edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Facilities Licensing and Certification at (302) 995-8521.

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Deborah Harvey at (302) 744-4700 by November 21, 2007. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by November 30, 2007 to:

Deborah Harvey, Hearing Officer
Division of Public Health
417 Federal Street
Dover, DE 19901
Fax (302) 739-6659

DEPARTMENT OF INSURANCE

NOTICE OF PUBLIC HEARING

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice that a PUBLIC HEARING will be held on Tuesday December 4, 2007 at 1:30 p.m. in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to receive public comment in **Docket No. 2007-538**, proposed amendments to **Regulation 906** relating to **THE USE OF CREDIT SCORES IN IN SETTING INSURANCE PREMIUMS IN AUTOMOBILE, MOTORCYCLE, BOAT AND PERSONAL WATERCRAFT, SNOWMOBILES AND OTHER RECREATIONAL VEHICLES, HOMEOWNERS, MOBILE-HOMEOWNERS, MANUFACTURED HOMES AND NON-COMMERCIAL DWELLING FIRE INSURANCE FOR PERSONAL OR FAMILY PROTECTION.**

The purpose for proposing amendments to Regulation 906 is to comply with Delaware law and to prohibit insurance companies using consumer credit information in the setting of renewal premiums in insurance policies in areas noted above, except that consumers may request the use of credit information in renewals if such information would result in a reduction of premiums. The text of the proposed regulation is produced in the November 2007 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.state.de.us/Inscom/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The hearing will be conducted in accordance with 18 **Del.C.** §311 and the Delaware Administrative Procedures Act, 29 **Del.C.** Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 9:00 a.m., Tuesday December 4, 2007, and should be addressed to Regulatory Specialist Mitchell G. Crane, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

DEPARTMENT OF INSURANCE
PUBLIC NOTICE

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 1313 relating to arbitration of health disputes. The docket number for this proposed amendment is 539.

The purpose of the proposed regulation is to require health insurance carriers to submit to arbitration any dispute with a health care provider regarding reimbursement for an individual claim, procedure or service upon request by the health care provider. The text of the proposed amendment is reproduced in the November 2007 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.state.de.us/inscom/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday December 3, 2007, and should be addressed to Mitchell G. Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

DEPARTMENT OF JUSTICE
FRAUD AND CONSUMER PROTECTION UNIT
NOTICE OF PUBLIC HEARING
102 Debt Management Services

The Attorney General in accordance with 6 **Del.C.** §2432(h) has proposed to adopt changes in the rules and regulations implementing the Delaware Uniform Debt Management Act in 6 **Del.C.** Chapter 24A as amended by HB 164.

The rules change the insurance requirement and eliminate the need for an overdraft notification agreement. In addition, the rules clarify the exception for individuals in an attorney-client relationship in Regulation 2.2.1. Provisions regarding fees payable to providers of debt settlement services are addressed in Regulation 4.2.11.

Since the Delaware Act was based on the uniform act developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL), the Comments to the uniform act have been used to provide clarification of the Delaware law. See, for example, Regulation 11.6 that clarifies that interest on a trust account belongs to the individuals who provide the deposits and not to the provider and Regulation 6.7 that clarifies advertising. Comments to the NCCUSL uniform act that were considered in these proposals are indicated in italics

after the regulations. These are not intended to become part of the final regulations but rather to provide background. The NCCUSL final draft and Comments can be found for reference at <http://www.law.upenn.edu/bl/ archives/ulc/ucdc/2005Final.htm>

A public hearing will be held at 9:00 A.M. on Monday, December 10, 2007 in the Attorney General's conference on the 6th floor of the Carvel State Office Building, 820 N. French Street, Wilmington, De 19801, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Consumer Protection Unit of the Department of Justice at Carvel State Office Building, 5th floor, 820 N. French Street, Wilmington, DE 19801. Persons wishing to submit written comments may forward these to the Director of the Consumer Protection Unit at the above address. The final date to receive written comments will be at the public hearing.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
2500 Board of Pharmacy
NOTICE OF PUBLIC HEARING

The Delaware Board of Pharmacy, in accordance with 24 **Del.C.** §2509, proposes amendments to its regulation section 1.0. Specifically, the proposed addition to **1.0 Pharmacist Licensure Requirements** sets the period within which a pharmacist license or pharmacy permit may be renewed after its expiration. The proposal also sets the requirements for late renewal, including mandatory audit of all late-renewed pharmacist licenses to verify compliance with the continuing education renewal requirement. Other grammatical, typographic, or stylistic changes are also included.

A public hearing is scheduled for Wednesday, January 16, 2008, at 10:00 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904.

Members of the public may offer verbal comments on the proposal at the hearing. Written comments must be submitted to the Board care of Judy Letterman at the above address. Written comments may be submitted until the public hearing begins. Anyone wishing to obtain a copy of the proposal or to make comments at the public hearing should contact Judy Letterman at the above address or by calling (302) 744-4504.

The Board will consider promulgating the proposed changes immediately following the public hearing.

DIVISION OF PROFESSIONAL REGULATION
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals
NOTICE OF PUBLIC HEARING

The Delaware Board of Mental Health and Chemical Dependency Professionals, in accordance with 24 **Del.C.** §3006(a)(1), proposes amendments to its regulations in section **4.0 Licensure for Chemical Dependency Professionals**. By these amendments, the Board establishes the regulations governing the licensure of Chemical Dependency Professionals.

Other minor changes are also included that affect various sections of the regulations. As well, grammatical, typographic, and stylistic changes are included throughout the regulations.

A public hearing is scheduled for Wednesday, January 23, 2008, at 12:00 p.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904.

Members of the public may offer verbal comments on the proposal at the hearing. Written comments must be submitted to the Board care of Timothy E. Oswell at the above address. Written comments may be submitted until the public hearing begins. Anyone wishing to obtain a copy of the proposal or to make comments at the public hearing should contact Timothy E. Oswell at the above address or by calling (302) 744-4530.

The Board will consider promulgating the proposed changes immediately following the public hearing.