
Delaware Register of Regulations

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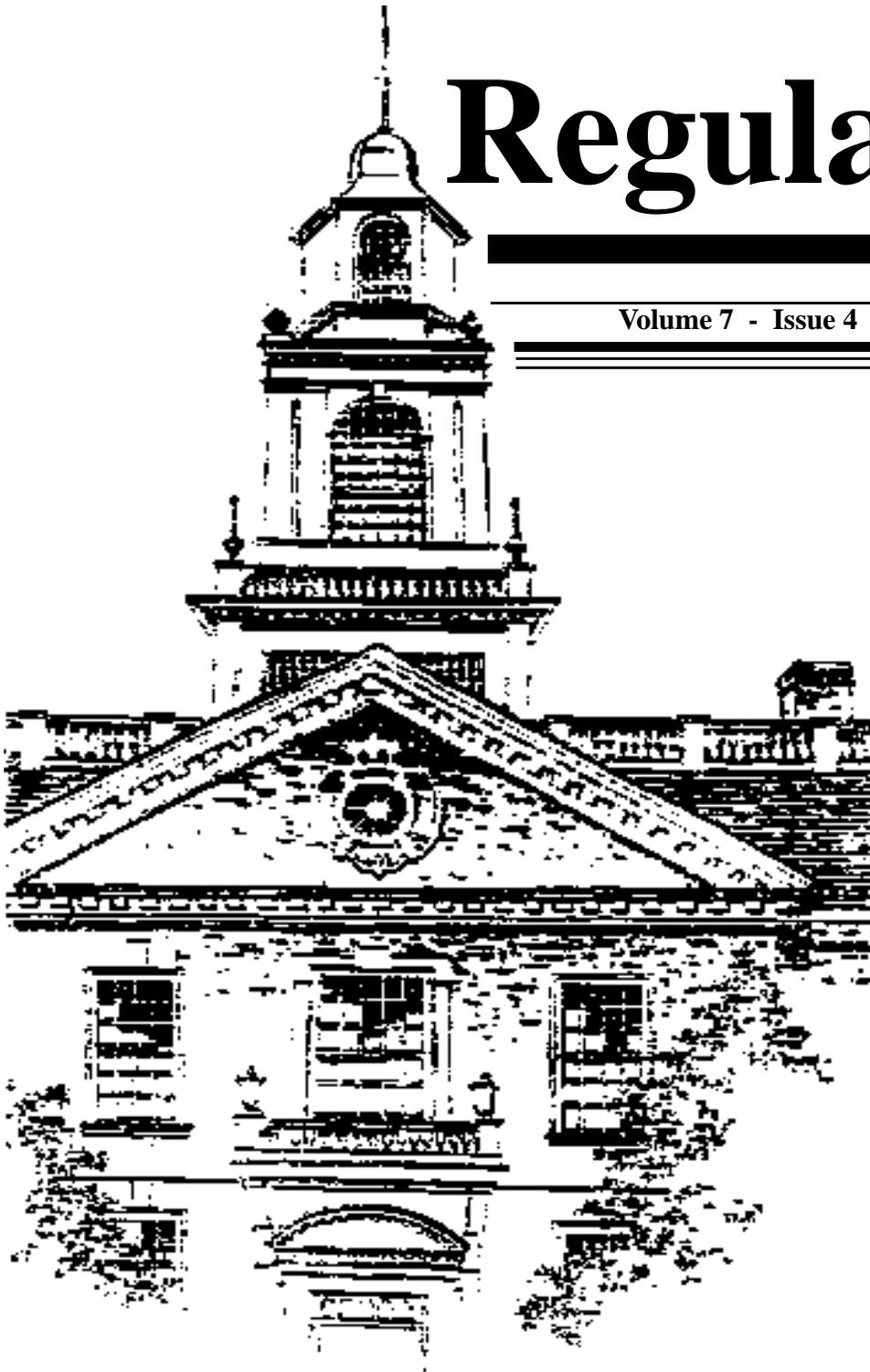
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Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before September 15, 2003.

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DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

6 DE Reg. 1541-1542 (06/01/03)

Refers to Volume 6, pages 1541-1542 of the Delaware Register issued on June 1, 2003.

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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

Except as provided in the preceding section,

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
NOVEMBER 1	OCTOBER 15	4:30 P.M.
DECEMBER 1	NOVEMBER 15	4:30 P.M.
JANUARY 1	DECEMBER 15	4:40 P.M.
FEBRUARY 1	JANUARY 15	4:30 P.M.
MARCH 1	FEBRUARY 15	4:30 P.M.

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Symbol Key

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

Proposed Regulations

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

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF MEDICAL PRACTICE
RESPIRATORY CARE PRACTICE
ADVISORY COUNCIL**

24 DE Admin. Code 1770
Statutory Authority: 24 Delaware Code,
Section 1770B(e) (24 **Del.C.** §1770B(e))

PUBLIC NOTICE

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Sections 1770B(e)(5), the Respiratory Care Practice Advisory Council of the Delaware Board of Medical Practice proposes to revise its Rules and Regulations. The proposed revision adds a new section to the Rules and Regulation to address and regulate the administration of sedation and analgesia by Respiratory Care Practitioners.

A public hearing will be held on the proposed Rules and Regulations on October 21, 2003 at 1:00 p.m., in the Second Floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Gayle Franzolino at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the

public hearing should notify Gayle Franzolino at the above address or by calling her at (302) 744-4520.

Add Rule 12.0 as follows:

12.0 Sedation and analgesia regulations:

12.1 Certain recognized and accepted Respiratory Care procedures may require the administration of controlled substances and may involve the administration of sedative and analgesia medications by Respiratory Care Practitioners. Such procedures include, but are not limited to:

12.1.1 Bronchoscopy

12.1.2 Endoscopy

12.1.3 Nebulization of controlled substances for palliative care

12.1.4 Cardiac catheterization and related procedures

12.1.5 Patient Transport - adult and neonatal

12.1.6 Intubation

12.1.7 Administration of anesthetic agents during mechanical ventilation.

12.2 In the process of providing respiratory care, Respiratory Care Practitioners may, where appropriate safeguards are in effect, administer controlled substances and sedative and analgesia medications pursuant to the order of a licensed healthcare provider who is licensed to prescribe and administer the particular medication(s). The route of administration shall be appropriate to the procedure.

12.3 Any administration by a Respiratory Care Practitioner of a sedative or analgesic which may induce conscious sedation must be:

12.3.1 In accordance with the current version of the "Practice Guidelines for Sedation and Analgesia by Non-Anesthesiologist" published by the American Society of

Anesthesiologists as the same may from time to time be amended, AND.

12.3.2 Undertaken only by Respiratory Care Practitioners who have successfully completed a formal educational experience and annual competency assessment in the administration of sedatives, and analgesics. Such training and education shall be expressly approved by the facility (accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO)) in which the procedure is being performed. Such training shall include:

12.3.2.1 Recommendations for competency assessment for licensed Respiratory Care Practitioners administering sedation and analgesia:

12.3.2.1.1 Successfully complete a formal dysrhythmia or EKG module or course, or the institution's approved dysrhythmia competency course, on an annual basis.

12.3.2.1.2 Successfully complete a medication pharmacology competency specific to sedation and analgesia.

12.3.2.1.3 Current Basic Cardiac Life Support certification.

12.3.2.1.4 Completion of a department specific competency related to sedation and analgesia provided by an JCAHO-approved healthcare facility in Delaware.

12.3.3 These annual competencies require approval in writing by the department medical director or by a physician who is in a position to assess the individual's qualifications, either of whom must be a Delaware licensed physician. The Respiratory Care Practitioner must maintain his or her records of completion of the formal education and annual competence certification for a period of three (3) years.

12.4 In patient transfer situations, the Respiratory Care Practitioner shall not administer sedatives or analgesics or any other controlled substance except by direct physician order and except in settings where at least one qualified individual trained in basic life support skills is physically present during light sedation. Additionally, in transport situations involving moderate sedation, a person with advanced life support skills, duly equipped, shall be present or immediately available (1-5 minutes away) and, where deep sedation is involved, an individual, duly equipped and trained in advanced life support skills, shall be physically present during the transportation.

12.5 Respiratory Care Practitioners shall not administer sedative/analgesic controlled substances in the home care environment.

*** PLEASE NOTE: AS THE REST OF THE SECTIONS WERE NOT AMENDED THEY ARE NOT BEING PUBLISHED. A COMPLETE SET OF THE RESPIRATORY CARE PRACTICE ADVISORY COUNCIL REGULATIONS ARE AVAILABLE AT:
<http://www.state.de.us/research/profreg/Frame.htm>**

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF PROFESSIONAL LAND SURVEYORS**

24 DE Admin. Code 2700

Statutory Authority: 24 Delaware Code,
Section 2706 (24 Del.C. §2706)

PUBLIC NOTICE

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 24 Del.C. Section 2706, the Delaware Board of Professional Land Surveyors proposes to revise its Rules and Regulations. The proposed revision adds a new section to the Rules and Regulation to clarify the Minimum Standards issues relating to Mortgage Inspection Plans.

A public hearing will be held on the proposed Rules and Regulations on November 20, 2003 at 1:00 p.m., in the Second Floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Celine Walton at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Celine Walton at the above address or by calling her at (302) 744-4520.

12.0 Minimum Technical Standards for Licences

12.1 The Board is required under Sections 2701 and 2112(a)(9) to establish minimum technical standards for licensees. The purpose of these standards is to establish minimum technical criteria to govern the performance of surveys when more stringent specifications are not required by other agencies or by contract. Further, the purpose is to protect the inhabitants of this state and generally to promote the public welfare. The Board also established minimum standards for Mortgage Inspection Plans (MIPs), and other types of work, frequently performed by licensees in portions of the state.

12.2 Procedure and Standards. Whenever a surveyor conducts a boundary survey or an improvement location survey of properties, a plat showing the results shall be prepared and a copy furnished to the client unless deemed unnecessary by the client. The plat shall conform to the

following requirements and shall include the following information:

12.2.1 The plat shall be drawn on any reasonably stable and durable drawing paper, vellum or film of reproducible quality. No plat or map shall have dimensions of less than 8 ½ x 11 inches.

12.2.2 The plat shall show the written scale, area and classifications of the survey. These classifications (suburban, urban, rural, and marshland) are based upon both the purposes for which the property is being used at the time the survey is performed and any proposed developments, which are disclosed by the client, in writing. This classification must be based on the criteria in Section 12.4 and the survey must meet the minimum specifications set forth in Attachment A. The scale shall be sufficient to show detail for the appropriate classification.

12.2.3 The horizontal direction of all boundary lines shall be shown in relationship to grid north, magnetic, or in lieu thereof, to true north or to such other established line or lines to which the survey is referenced. The horizontal direction of the boundary lines shall be by direct angles or bearings. A prominent north arrow shall be drawn on every sheet. The description of the bearing reference system shall be stated on the plat.

12.2.4 All monuments, natural and artificial (man-made), found or set, used in the survey, shall be shown and described on the survey plat. The monuments shall be noted as found or set. All monuments set shall be ferrous metal, or contain ferrous metal, not less than ½ inch in diameter and not less than 18 inches in length, except however, a corner which falls upon solid rock, concrete, or other like materials shall be marked in a permanent manner and clearly identified on the plat. Monuments shall be set at all corners of all surveys as required by these standards, with the exception of meanders such as meanders of streams, tidelands, wetlands, lakes, swamps and prescriptive road rights-of-way. Witness monuments shall be set or referenced whenever a corner monument cannot be set or is likely to be disturbed. Such witness monument shall be set as close as practical to the true corner. If only one (1) witness monument is set, it must be set on the actual boundary line or prolongation thereof. Otherwise, at least two (2) witness monuments shall be set and so noted on the plat of the survey. Monuments shall be identified, where possible, with a durable marker bearing the surveyor's registration number and/or name.

12.2.5 The plat of a metes and boundary survey must clearly describe the commencing point and label the point of beginning for the survey.

12.2.6 Notable discrepancies between the survey and the recorded description, and the source of information used in making the survey, shall be indicated. When an inconsistency is found, including a gap or overlap, excess or deficiency, erroneously located boundary lines or

monuments, the nature of the inconsistency shall be indicated on the drawing.

12.2.7 In the judgment of the surveyor, the description and location of any physical evidence found along a boundary line, including but not limited to fences, walls, buildings or monuments, shall be shown on the drawing.

12.2.8 The horizontal length (distance) and direction (bearing) of each line as determined in an actual survey process shall be shown on the drawing.

12.2.9 At least three (3) elements (including radius, arc and chord bearing and distance) of all circular curves, shall be shown.

12.2.10 Information used by the surveyor in the property description shall be clearly shown on the plat, including but not limited to, the point of beginning, course bearing, distance, monuments, etc.

12.2.11 The lot and block or tract numbers or other designations, including those of adjoining lots, if the survey is within a recorded subdivision. If the property is not within a recorded subdivision, then the name and deed record of all adjoining owners shall be shown.

12.2.12 Recorded public and private rights-of-way or easements which are discovered during the title search performed by others and supplied to the surveyor or graphically shown on the recorded plat, which includes the property, or which are known or observed adjoining or crossing the land surveyed, shall be shown.

12.2.13 Location of all permanent improvements pertinent to the survey, referenced radially and perpendicular to the nearest boundary, shall be shown.

12.2.14 Visible or suspected encroachments onto or from adjoining property or abutting streets, with the extent of such encroachments, shall be shown.

12.2.15 A plat or survey shall bear the Company and individual name, address, and date of survey and original signature and board-approved seal of the licensed surveyor in responsible charge. This signature and seal is certification that the survey meets minimum requirements of the Standards for Land Surveyors as adopted by the Delaware Board.

12.2.16 The following information shown on the plat must be included in a written description, if one is provided:

- 12.2.16.1 The commencing point and point of beginning.
- 12.2.16.2 Sufficient caption to connect the plat and description.
- 12.2.16.3 Length and direction of all lines.
- 12.2.16.4 Curve information as described in paragraph 12.2.9.
- 12.2.16.5 Type of monuments noted as found or set.
- 12.2.16.6 The area of the parcel.

12.2.16.7 Adjoining owners, subdivision name, etc.

12.3 Standards for Horizontal Control.

12.3.1 Definitions for specific types of horizontal control surveys, along with standards and procedures, may be found in National Geodetic Survey (NGS) or successor publications. All geodetic surveys, including determination and publication of horizontal and vertical values utilizing Global Positioning Systems, Ground Control Systems or any other system which relates to the practice and profession of Land Surveying, shall be performed under the direct control and personal supervision of a licensed Professional Land Surveyor licensed in the State of Delaware.

12.3.2 Control Surveys that are used to determine boundary lines, including developing coordinates for existing boundary corners, shall meet the Standards contained herein.

12.3.3 Land Information Systems/Geographic Information Systems (LIS/GIS) maps should be built on a foundation of coordinates obtained by an accurate survey. Creation of LIS/GIS maps and services should include a Professional Land Surveyor licensed in the State of Delaware for coordination and input of their knowledge in these fields.

12.4 Classification of Surveys.

12.4.1 Urban Surveys - Surveys of land lying within or adjoining a city or town. This would also include the surveys of commercial and industrial properties, condominiums, townhouses, apartments and other high-density developments regardless of geographic location.

12.4.2 Suburban Surveys - Surveys of land lying outside urban areas. This land is used almost exclusively for single family residential use or residential subdivisions.

12.4.3 Rural Surveys - Surveys of land such as farms and other undeveloped land outside the suburban areas which may have a potential for future development.

12.4.4 Marshland Surveys - Surveys of land which normally lie in remote areas with difficult terrain and usually have limited potential for development and cannot be classified as urban, suburban or rural surveys. This includes, but is not limited to, surveys of farmlands and rural areas.

12.5 ALTA/ACSM Land Title Survey. The current published standard as amended from time to time.

12.6 Mortgage Inspection Plans (MIP)

12.6.1 Purpose. The purpose of an MIP is to locate, describe and represent the positions of buildings or other visible improvements, or both, affecting the property being inspected.

12.6.2 Product. The results of the MIP shall be stated on a plat showing the property inspected and the location of the buildings or other visible improvements affecting the inspected property.

12.7 The Approval by the Consumer and

Disclosures.

12.7.1 The surveyor shall not begin work for compensation pursuant to this regulation until the surveyor receives a signed approval form more particularly described below.

12.7.2 The approval form or its equivalent shall be sufficient if signed by one consumer, whether or not there are multiple consumers, or, if a consumer is not an individual, the consumer's duly authorized agent, with respect to the property for which services pursuant to this regulation are sought. The approval form shall at a minimum contain:

12.7.2.1 An approval by the signer of the requested services; and

12.7.2.2 An explanation of the differences between an MIP and a boundary survey which includes an improvement location drawing.

12.7.2.3 The following approval form or its equivalent shall suffice for the purpose of complying with this regulation: "Approval Form (on company letterhead, with name, address and telephone number)

In connection with the purchase or refinancing of the property located at _____, we have been requested to prepare an MIP.

Since an MIP is not a boundary survey and does not identify property boundary lines, State regulations require us to have your approval. Therefore, please sign and return the original of this form promptly, by fax or mail, so that there will be no delay in settlement.

If you wish, we can perform a boundary survey, which includes an Improvement Location Drawing (ILD). This survey will identify property boundary lines and will mark property boundary corners. An MIP will cost approximately \$_____. A boundary survey which includes an ILD will cost (approximately \$_____) (between \$_____ and \$_____).

Very truly yours,

Check appropriate lines:

_____ We approve the preparation of an MIP. We have read and understand that, in the absence of any problem revealed by or during the preparation of this drawing, it may be all that is required of the land surveyor.

_____ We request a boundary survey that will include an ILD, and will identify property boundary lines and mark property boundary corners.

_____(Signature)

_____(Signature)

12.7.3 Upon receipt of an approval form, which complies with this section, the surveyor shall perform the services approved by the consumer. If the consumer requests a boundary survey which includes an ILD, then the survey shall be consistent with the provisions set forth in The Minimum Model Standards adopted by the Board.

12.8 Minimum Procedures. If the consumer approves the preparation of an MIP, the surveyor shall perform at least the following procedures:

12.8.1 Examine the current deed and/or plat for the subject parcel and review the most current tax assessment map for inconsistencies with deed or plat.

12.8.2 Take sufficient on-site measurements to enable the surveyor to perform the tasks called for by this regulation with regard to the:

12.8.2.1 Locations of buildings and those other improvements pertinent to the MIP;

12.8.2.2 Locations of possible encroachments reasonably determined based on a visual inspection;

12.8.2.3 Easements; and

12.8.2.4 Rights-of-way.

12.8.3 If the consumer has approved an MIP, then the following elements shall be shown:

12.8.3.1 Significant buildings, structures and other improvements, and their relationship to the apparent property lines referenced radially and/or perpendicular to the nearest boundary, based on the field measurements taken by the surveyor, and any other evidence considered by the surveyor;

12.8.3.2 Statement with regard to the level of accuracy and accuracy of apparent setback distances; (REFER TO ATTACHMENT A)

12.8.3.3 Possible encroachments to the extent reasonably determined by a visual inspection of the property either way across property lines; and

12.8.3.4 Minimum setback lines, as shown on plats,

12.8.3.5 A minimum of two control points and their relationship to each other and the subject property.

12.8.3.6 Easements or rights-of-way as shown on plats or current deed of record for subject property.

12.8.4 If, in connection with the preparation of an MIP, a surveyor finds evidence to warrant, in the surveyor's professional opinion, the performance of a boundary survey, the surveyor shall so notify, in writing, the consumer or the consumer's representative.

12.8.5 If the consumer has approved the preparation of an MIP, then:

12.8.5.1 The MIP prepared by the surveyor shall prominently display, at a minimum, advice to

the effect that:

12.8.5.1.1 The MIP is of benefit to a consumer only insofar as it is required by a lender, a title insurance company or its agent in connection with the contemplated transfer, financing, or refinancing; and

12.8.5.1.2 The MIP is not to be relied upon for the establishment or location of fences, garages, buildings or other existing or future improvements.

12.9 Plats.

12.9.1 The original plat of an MIP shall be a reproducible drawing at a scale which clearly shows the results of the field work, computations, research and record information as compiled and checked.

12.9.2 The plat shall be prepared in accordance with the following procedures:

12.9.2.1 A reasonably stable and durable drawing paper, linen or film is considered a suitable material;

12.9.2.2 Plats may not be smaller than 8 ½ x 11 inches;

12.9.2.3 The plat shall show the following:

12.9.2.3.1 Caption or title and address or lot number of the property,

12.9.2.3.2 Scale,

12.9.2.3.3 Date,

12.9.2.3.4 Name and address of the firm or surveyor; and

12.9.2.3.5 Original signature and board-approved seal of the licensed surveyor in responsible charge,

12.9.2.3.6 Consumer's name,

12.9.2.3.7 Statement with regard to the level of accuracy and accuracy of apparent setback distances; (REFER TO ATTACHMENT A)

12.10 Maintenance of Records.

12.10.1 The surveyor shall make a reasonable effort to maintain records, including names or initials of all personnel, date of performance, reference to field data, such as book number, loose leaf pages and other relevant data.

12.11 Local Standards.

12.11.1 All work shall be performed according to the minimum standards for the community in which the service is provided, as long as said standards meet or exceed the standards herein. (1) Current local standards shall take precedence over the MIP as to the manner in which mortgage or deed-related surveys or plans are prepared and as to the manner of field work and staking related to these surveys or plans, if those standards require more detailed or more accurate work to meet those local standards.

12.11.2 Based on current information, the MIP shall be accepted as a minimum standard only in New Castle County. In Kent and Sussex counties, MIP's shall not be considered to meet the minimum local standards for the work required for mortgage or deed-related surveys or plans.

See 6 DE Reg. 271 (9/1/02)

*** PLEASE NOTE: AS THE REST OF THE SECTIONS WERE NOT AMENDED THEY ARE NOT BEING PUBLISHED. A COMPLETE SET OF THE BOARD OF PROFESSIONAL LAND SURVEYORS REGULATIONS ARE AVAILABLE AT:**

<http://www.state.de.us/research/profreg/Frame.htm>

DEPARTMENT OF AGRICULTURE THOROUGHBRED RACING COMMISSION

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

The Commission issues the proposed rule amendments pursuant to 3 Del.C. §10103 and 29 Del.C. §10115. The Commission will accept written comments from October 1, 2003 through October 30, 2003. The Commission will hold a public hearing on the proposed rule amendments on October 22, 2003 at 10:15 a.m. at Delaware Park, Horsemen's Office, 777 Delaware Park Boulevard, Wilmington, DE. Written comments should be submitted to John Wayne, Administrator of Racing, 2320 S. DuPont Highway, Dover, DE 19901.

The Commission proposes to amend Rule 6.02 to enact a new subsection (e) providing that all owners must first secure the services of a licensed trainer before entering a horse, and to amend Rule 15.12 to enact a new subsection c. prohibiting Intermittent Hypoxic Treatment by External Device.

PART 6 -- OWNERS

6.01 Registration Required:

No horse may be entered or raced in Delaware unless the Owner or each of the part Owners has been granted a current Owner's registration by the Commission, except that for good cause shown, a temporary registration may be issued which will be valid for entering and racing pending administrative processing and final action by the Licensee or its Registrar on such Owner's registration application, but in no event shall such temporary registration be considered valid longer than two weeks subsequent to the date such registration application was submitted.

See 4 DE Reg. 179 (7/1/00)

6.02 Requirements for Owner's Registration:

In addition to satisfying the requirements applicable to Permittee, et al., imposed by Part 2 of these Rules, in order to be eligible for registration as an Owner, a person also:

- (a) Must be an individual 18 years of age or older.
- (b) All Owners and Trainers shall carry workmen's

compensation insurance covering all their employees. This paragraph is intended to include all individuals employed by Owners and Trainers in the training and racing of horses.

(c) Must own or have under lease a horse eligible to race and be prepared to prove such upon call of the Stewards.

(d) Must not engage in any activity directly or indirectly involving the racing performance of horses on Licensee's grounds owned and trained by others.

1. The Commission or its designee, may deny, suspend or revoke an Owner's registration for the spouse, or any member of the immediate family or household, of a person ineligible to be registered as an Owner, unless there is a showing by the applicant or registered Owner, and the Commission so finds, that his participation in racing as an Owner will in no way circumvent the intent of this Rule by permitting a person, under the control or direction of a person ineligible for an Owner's registration, to serve in effect as the alter ego of such ineligible person.

2. A registered Owner or Trainer may personally serve as a Farrier or Jockey for horses he owns or are registered in his care, provided he has received from the Stewards a certification of his fitness as a competent Farrier or Jockey.

See 4 DE Reg. 179 (7/1/00)

(e) All owners must first secure the services of a Trainer licensed by the Commission before any horse owned by the individual or a partnership may be entered to race at a meet licensed by the Commission.

6.03 Ownership Disclosure:

Registered Owners and Trainers shall be held jointly responsible for making a full disclosure of the entire ownership of each horse in their care.

(a) Such disclosure shall identify in writing all individual persons who directly, or indirectly, through a lien, lease, partnership, corporate stockholding, syndication or other joint venture, hold any present or reversionary right, title or interest in and to such horse, and those individual persons who by virtue of any form of interest might exercise control over such horse or can benefit from the racing of such horse; the degree and type of such ownership held by each individual person shall be designated.

(b) Such disclosure shall be made when registering each horse with the Racing Secretary upon arrival on Licensee's grounds, or at time of entry, whichever event occurs first, and shall be revised immediately upon any subsequent change in such ownership.

(c) Such disclosure together with all written agreements and affidavits setting out oral agreements pertaining to the ownership of or rights in and to a horse shall be attached to the registration certificate for such horse and filed with the Racing Secretary who shall be responsible for the care and security of such papers while such horse is located on Licensee's grounds.

(d) Such disclosure is made for the benefit of the public and all documents pertaining to the ownership or lease of a horse filed with the Racing Secretary shall be available for public inspection.

(e) The Stewards shall review the ownership of each horse entered to race and insure that each registration certificate is properly endorsed by the transferor to the present Owner. For racing purposes, the Stewards may determine the validity of all leases, transfers, and agreements pertaining to the ownership of a horse and may call for adequate evidence of ownership at any time. The Stewards may declare any horse ineligible to race if the ownership or control of such horse is in question.

6.04 Joint Ownership:

No more than four individual persons may be registered as Owners of a single horse.

(a) In the event more than four individual persons own interests in a single horse, through a partnership, corporation, syndication or other joint venture, then such individual persons may designate in writing a member of the partnership, corporation, syndicate or joint venture to represent the entire ownership of and be responsible for such horse as the registered Owner thereof.

(b) Such agreement or lease shall accompany the application for an Owner's registration. Each person designated as representing the entire ownership of a horse must be registered.

(c) The Commission may deny, suspend or revoke the registration of any Owner whose ownership of a horse is qualified or limited in part by rights or interests in or to such horse held or controlled by any other individual person or persons ineligible to be registered as an Owner thereof.

See 4 DE Reg. 179 (7/1/00)

6.05 Leases:

Horses may be raced under lease provided the lease agreement is annexed to the horse's registration certificate and is approved by the Stewards. The validity of a lease for the purposes of racing a horse in Delaware may be suspended temporarily or voided by the Stewards at any time. No lease may be approved by the Stewards for racing purposes unless:

(a) Lessee is registered as an Owner;

(b) Each of the signatures of the lessors and lessees on the lease agreement is subscribed and sworn to before a notary public;

(c) Term of the lease is for no less than one year, unless sooner terminated by claim or retirement of the subject horse;

(d) Conditions of the lease specify, as to parties to the lease, whether the subject horse can be entered in a race to be claimed. If agreeable to lessor that the subject horse may be entered to be claimed, conditions of the lease must specify

the minimum price for which the subject horse can be entered and identify the name of the recipient of the claiming price;

(e) Conditions of the lease specify that, upon a claim of the subject horse, the lease shall terminate and all rights in and to such horse shall pass to claimant as a bona fide purchaser;

(f) After reviewing the full ownership of such leased horses, the interests of all persons involved in such lease, and the terms and conditions of such lease, the Stewards in their discretion find that such lease:

1. Completely divests lessors or sublessors of further control or direction of the racing performance of such horse while under lease; and

2. The resultant program listing of lessee would not mislead the betting public by reason of the absence in the program listing of the name of a person or persons possessing a beneficial interest in such leased horse.

6.06 Racing Colors:

Owners shall be responsible for designing and providing individual racing colors, consisting of jackets and caps of distinctive color and pattern to be worn by Jockeys during a race, such racing colors to be registered with the Licensee or its Registrar.

(a) Racing colors must be registered annually, the application therefor to accompany application for an Owner's registration.

(b) Registration of racing colors shall be at the discretion of Licensee. Disputes as to rights to particular racing colors shall be determined by the Commission. Licensee or its Registrar may refuse to accept for registration racing colors which:

1. Are not readily distinguishable by color and pattern from racing colors currently registered with Licensee or with the Jockey Club; and

2. Include advertising, promotional, or cartoon symbols or words or which, in the opinion of Licensee, are not in keeping with the traditions of the Turf.

(c) No horse may be raced in racing colors other than those registered in the name of the horse's Owner without special permission of the Stewards. If an Owner races two or more horses in the same race, jackets shall be identical while caps shall be varied in color or design. Any deviation from registered colors granted by the Stewards shall be immediately announced.

(d) Owners and Trainers shall be jointly responsible for the condition of racing colors, insuring that they are neat, clean and in good repair and that an adequate number of sets of racing colors are placed in the care of the Clerk of Scales.

(e) The Clerk of Scales and the Valet serving a Jockey shall be jointly responsible for having the correct jacket and cap on each rider when leaving the Jockey room for the paddock.

(f) Racing colors are not assignable and registration thereof may be cancelled upon the death of an Owner or upon the revocation or suspension of his Owner's registration.

6.07 Unauthorized Employees:

No Owner or Trainer may employ or contract with a person who holds no permit or authorization to perform an activity on Licensee's grounds for which a permit or authorization is required. An Owner shall immediately notify the Racing Secretary upon change of Trainer during a race meeting.

6.08 Authorized Agent:

A registered Owner may, as a principal, authorize any person, as an agent, to act in such Owner's behalf in all matters pertaining to racing in this State and ownership of horses on Licensee's grounds, as provided by these Rules, infra. A registered Owner, as a principal, shall be jointly liable and responsible with his Authorized Agent for all acts and omissions of such Authorized Agent, serving in such Owner's behalf in a racing matter, until written notification from such Owner revoking such agency is received by Licensee or its Registrar.

6.09 Suspension:

In the event the registration of an Owner is suspended or revoked, all horses owned wholly or in part by such Owner shall not be permitted to race during such suspension unless such horses are irrevocably transferred to a registered Owner and such transfer is approved by the Stewards as completely and permanently divesting such suspended former Owner of control of or benefit from the subsequent racing of such horses.

6.10 Partnerships:

Partnerships must be registered with Licensee or its Registrar. Partnership papers shall set forth the following:

- (a) The name and address of every person having an interest in the horse or horses involved;
- (b) The relative proportion of such interests;
- (c) To whom the winnings are payable;
- (d) In whose name the horse or horses shall run;
- (e) With whom the power of entry and declaration rests;
- (f) The terms of any contingency, lease or any other arrangement; and
- (g) The names of the horse or horses involved. Any partner transacting business on behalf of a partnership must own an interest therein at least equal to that owned by any other partner. All partnership registrations must be signed by all of the partners or by their authorized agent.

Any alteration in a recorded partnership must be reported in writing to Licensee or its Registrar and signed by

all the partners or their authorized agent. All the parties in a partnership and each of them shall be jointly and severally liable for all stakes, fees and other obligations.

6.11 Duty to Pay Accounts:

Owners having unpaid jockey or other fees at the close of a race meeting shall be billed by Licensee within twenty (20) days of the close of the race meet with a duplicate copy of the bill to the Trainer. Such accounts shall be paid within thirty (30) days from billing date. At the expiration of the thirty (30) day period, it shall be the duty of Licensee to notify the Racing Commission or the Stewards, in writing, of all delinquent accounts, at which time all Owners with outstanding accounts will be suspended until such fees are paid. (Also, see Rule 11.12).

PART 15 -- MEDICATION, TESTING PROCEDURES

15.01 Prohibition and Control of Medication:

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

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

(b) No foreign substance shall be administered to a horse (entered to race) by injection, oral administration, rectal infusion or suppository, or by inhalation within twenty-four (24) hours prior to the scheduled post time for the first race, except as hereinafter provided.

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

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

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

administered by such device and has obtained written permission for possession and use from the Stewards.

15.01.1 Definitions:

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

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

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

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

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

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

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

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

15.01.2 Foreign Substances:

No horse participating in a race shall carry in its body any foreign substance except as provided in Rule 15.01.2(c):

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

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

(c) A foreign substance of accepted therapeutic value may be administered as prescribed by a Veterinarian when test levels and guidelines for its use have been established by the Veterinary-Chemist Advisory Committee of the National Association of State Racing Commissioners and approved by the Commission. Aminocaproic acid may be present in a horse's body while it is participating in a race,

subject to all the provisions of these Rules.

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

Revised: 1/6/92.

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

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

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

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

(g) No bleeder medication otherwise permissible under this Rule may be administered to a horse within one hour of the scheduled post time of the horse's race. The administration of salix to a horse on race day will be governed by Rule 15.02.

(h) If a horse is to receive one or more bleeder medications, aminocaproic acid and/or salix, the trainer shall declare said use at the time of entry.

(i) A veterinarian administering bleeder medications

shall report the administration of such medications on the same form that is used to report the administration of salix.

(j) The race program shall denote what medication(s) have been administered to a horse in the race and the past performance lines in the program, if any, shall denote any medications administered to said horse in those races.

(k) Any horse running on permissible bleeder medication under these Rules shall remain on the medication for a period of not less than sixty (60) days before being permitted to race without the permissible bleeder medication.

(l) The detection of permissible bleeder medications (salix and/or aminocaproic acid) in a horse following the running of a race which was not declared or reported to the Stewards, may result in the disqualification of the horse and other disciplinary action imposed upon the trainer and administering veterinarian. Conversely, the absence of bleeder medication following the running of a race in which was declared and reported by a trainer and/or veterinarian, may result in the disqualification of the horse and other disciplinary action imposed upon the trainer and administering veterinarian.

See 4 DE Reg. 1131 (1/1/01)

See 6 DE Reg. 641 (11/1/02)

15.02 Bleeder Medication:

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

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

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

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

(d) A horse in the Bleeder Program shall be required to be brought to an area designated by the Licensee and approved by the Commission not later than three and one-

half (3 ½) hours before post time for the race in which it is entered. During the 3 ½ hour period, the horse shall be under the care and custody of a groom or caretaker appointed by the Trainer. The approved Furosemide medication may be administered by a licensed practicing veterinarian in the detention barn within three (3) hours before post time. The practicing veterinarian shall make a report to the Stewards of the treatment on forms provided by the Stewards on the same day of treatment.

(e) (Deleted.)

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

Revised: 6/19/92.

(g) Dosage. Furosemide (Lasix) shall be administered intravenously, or intramuscularly as permitted under subsection (h) of this Rule, to horses in the Bleeder Program by a licensed practicing veterinarian, who will administer not more than 500 milligrams nor less than 100 milligrams, subject to the following conditions:

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

(h) Restrictions. No one except a licensed practicing veterinarian shall possess equipment or any substance for injectable administration on the race track complex, and no horse is to receive furosemide (lasix) in oral or intramuscular form, except that the stewards may approve intramuscular administration for a horse based on written documentation from the Commission veterinarian and the trainer's veterinarian.

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

If post-race analysis indicates that the specific gravity of a horse's urine is less than 1.010 and the concentration of furosemide in the blood plasma is greater than 100 nanograms per milliliter, the stewards shall take the

following action (for each horse):

A. If such overage is the first violation of this rule for this horse, the trainer and/or attending veterinarian shall be issued a warning and be required to participate in a review of all pertinent Commission rules and subsequent penalties at a time scheduled by the stewards. If the trainer wishes to contest the overage, the trainer shall follow a specific procedure under which all of the following conditions must be met:

- i) the horse in question must report to the detention barn four hours prior to post time.
- ii) the same handler/room must stay with the horse at all times.
- iii) a blood sample shall be taken by the Commission veterinarian before the administration of furosemide.
- iv) the trainer's veterinarian must administer furosemide at a dosage not to exceed 500 milligrams.
- v) the Commission veterinarian must witness the administration of furosemide.
- vi) the horse must return to the detention barn after the race for the taking of post-race blood and urine testing by the Commission veterinarian or assistant, no matter how the horse finishes in the race.

If, after all of the above conditions are met, the post race tests reveal that the specific gravity of the horse's urine is again below 1.010 and the concentration of furosemide in the blood plasma is greater than 100 nanograms per milliliter of plasma, and the blood sample taken in the detention barn before the administration of furosemide tests negative for furosemide, the horse will be placed on an "exempt" list and the first offense will be removed, provided further that any horse on the "exempt" list will be required to have all future prerace lasix treatments administered pursuant to the procedure set forth in items i) through vi) set forth above. Any horse that is placed on the "exempt" list and later fails to follow the prerace procedure for lasix administration set forth in items i) through vi) above will be removed from the "exempt" list, disqualified from the race, and subject to the penalties in items B-D of this Rule for subsequent offenses.

B. If such overage is the second violation of this rule for the same horse, the trainer and/or attending veterinarian shall be fined a minimum of \$100.00 and a maximum of \$500.00.

C. If such overage is the third violation of this rule for the same horse, the trainer and/or attending veterinarian shall be issued a minimum suspension of seven (7) days and a maximum suspension of fifteen (15) days and shall be fined a minimum of \$100.00 and a maximum of \$1,000.00, and the stewards in their discretion may order loss of purse as an additional penalty.

D. If such overage is the fourth violation for

the same horse, the trainer and/or attending veterinarian shall be issued a suspension of fifteen (15) days to thirty (30) days, and shall be fined \$250.00 to \$1,000.00, and the stewards will order loss of purse as a mandatory penalty.

1 DE Reg. 1184 (2/1/98)

3 DE Reg. 754 (12/1/99)

4 DE Reg. 179 (7/1/00)

4 DE Reg. 1131 (1/1/01)

4 DE Reg. 1821 (5/1/01)

15.03 Responsibility for Prohibited Administration:

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

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

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

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

15.04 Reports of Administration:

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

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

(a) Any Veterinarian practicing at any Delaware race track shall file a daily report with the Stewards and the Track Veterinarian as to any medication prescribed or administered

or professional service performed. This report shall be filed in person or postmarked within a period of forty-eight (48) hours from the time of treatment. Detection of any unreported medication, drug or substance by the Commission's Chemist in a pre-race or post-race test may be grounds for disciplinary action against such Veterinarian.

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

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

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

See 4 DE Reg. 179 (7/1/00)

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

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

Violation of this Rule will constitute grounds for disciplinary action.

See 4 DE Reg. 179 (7/1/00)

15.06 Bettors' Safeguard:

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

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

4 DE Reg. 179 (7/1/00)

15.07 Commission List:

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

15.08 Detention Area:

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

4 DE Reg. 179 (7/1/00)

15.09 Horses to be Tested:

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

15.10 Procedure for Taking Specimens:

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

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

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

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

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

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

(a) The owner;

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

(c) A stable representative designated by such

owner or trainer.

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

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

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

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

(b) The Commission veterinarian shall:

1. Identify the horse from which the specimen was taken.
2. Document the race and day, verified by the witness; and
3. Place the detached portions of the identification tags in sealed envelope for delivery only to the stewards.

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

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

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

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

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

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

(i) Two (2) blood samples shall be collected in

twenty (20) milliliters vacutainers, one for the "primary" and one for the "secondary" sample.

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

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

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

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

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

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

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

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

(m) If an Act of God, power failure, accident, strike or other action beyond the control of the Commission

occurs, the results of the primary official test shall be accepted as prima facie evidence.

1 DE Reg. 508 (11/1/97)

4 DE Reg. 179 (7/1/00)

15.11 Commission Chemist:

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

15.12 Prohibited Practices

The following conduct shall be prohibited for all licensees:

(a) The possession and/or use of a drug, substance, or medication, specified below, on the premises of a licensed race track under the jurisdiction of the Commission for which a recognized analytical method has not 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 rider; or the use of which may adversely affect the integrity of racing.

(b) The possession and/or use of a drug, substance, or medication on the premises of a facility under the jurisdiction of the regulatory body that has not been approved by the United States Food and Drug Administration (FDA) for use in the United States.

See 6 DE Reg. 641 (11/1/02)

(c) The practice, administration, or application of Intermittent Hypoxic Treatment by External Device which is performed on the premises of a facility under the jurisdiction of the Commission, and which may endanger the health, safety, and welfare of the horse or endanger the safety of the jockey, or the use of which may adversely affect the integrity of racing. Intermittent Hypoxic Treatment is the administration of hypoxic gas to a horse for the purpose of enhancing aerobic metabolism by simulating training at a high altitude.

PUBLIC EMPLOYMENT RELATIONS BOARD

Statutory Authority: 14 Delaware Code, Section 4006(h)(1) (14 Del.C. §4006(h)(1))

PUBLIC NOTICE

Please take notice, pursuant to 29 Del.C. Ch. 101 and 14

Del.C. Ch. 40, the Delaware Public Employment Relations Board proposes the following amendments to the Delaware Public Employment Relations Board's Rules and Regulations.

A public hearing will be held on these proposed amendments to the Board's Rules and Regulations on Wednesday, November 12, 2003 at 9:00 a.m. in the Public Employment Relations Board Library, 4th Floor, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware.

The purpose of this hearing will be to receive public comments on these proposed amendments to the Board's Rules and Regulations in order that the Board may vote to adopt, amend or reject said amendments at its November 12, 2003 meeting.

The Board will receive and consider input in writing from any person regarding the proposed amendments to the Board's Rules and Regulations. Written comments should be submitted to the Board up through and including Thursday, October 30, 2003 by 4:30 p.m. to Deborah Murray-Sheppard, Principal Assistant, at the Public Employment Relations Board, 4th Floor, Carvel State Office Building, 820 N. French St., Wilmington, DE 19801. For copies of the proposed amendments to the Board's Rules and Regulations, please contact Ms. Murray-Sheppard at the above address or at (302) 577-5070.

12.0 Binding Grievance Arbitration

PERB Arbitration Policy: Administration of Panel

12.1 Scope and Authority

This rule is issued by the Delaware Public Employment Relations Board ("PERB") under Title 14, Public Education, of the Delaware Code, as amended. It applies to all arbitrators listed on the PERB Panel of Arbitrators, to all applicants for listing on the Panel, and to all persons or parties seeking selection of an arbitrator by PERB in connection with disputes which are to be submitted to grievance arbitration.

12.2 Policy

a. For those terms and conditions that are negotiated pursuant to Public School Employment Relations Act (14 Del.C. Chapter 40, as amended 2003), public school employers and the exclusive bargaining representative of public school employees shall negotiate written grievance procedures ending in binding arbitration by means of which bargaining unit employees, through their collective bargaining representatives, may appeal the interpretation or application of any term or terms of an existing collective bargaining agreement. The written grievance procedures shall be included in any agreement entered into between the

public school employer and the exclusive bargaining representative, and shall include:

(1) a provision to limit binding arbitration to claims that the terms of the collective bargaining agreement have been violated, misinterpreted, or misapplied;

(2) a provision to prohibit claims relating to the following matters from being processed through binding arbitration:

(i) dismissal or nonrenewal of employees covered by Chapter 14 of Title 14;

(ii) dismissal or nonrenewal of employees not covered by Chapter 14 of Title 14 unless the controlling collective bargaining agreement provides that such matters are subject to binding arbitration;

(iii) Delaware law;

(iv) rules and regulations of the Delaware Department of Education or State Board of Education;

(v) the content of or conclusions reached in employee observations and evaluations unless the controlling collective bargaining agreement for employees not covered by Chapter 14 of Title 14 provides that such matters are subject to binding arbitration;

(vi) federal law;

(vii) rules and regulations of the United States Department of Education;

(viii) policies of the local school board; and

(ix) matters beyond the scope of the public school employer's authority;

(3) a provision to select arbitrators by lottery from a panel of qualified arbitrators designated by the Public Employment Relations Board. In designating the panel, the Public Employment Relations Board shall prefer former judges who served on a Delaware constitutional court or on the United States District Court for the District of Delaware, and shall supplement the panel by adding qualified labor arbitrators;

(4) a provision to empower the Public Employment Relations Board to administer arbitration pursuant to regulations adopted by the Public Employment Relations Board;

(5) a provision to require that disputes relating to whether a matter is arbitrable be ruled upon by the arbitrator prior to hearing the merits of the dispute, and, if the arbitrator determines that the dispute is arbitrable, a provision to require that the same arbitrator schedule a second day of hearing to hear the merits of the dispute;

(6) a provision to assess against the losing party the arbitrator's fees and expenses incurred in determining whether a dispute is arbitrable;

(7) a provision to require that the arbitrator's fees and expenses incurred in deciding the merits of a dispute be evenly divided between the parties.

12.3 Administrative Responsibilities

a. The Public Employment Relations Board is the final agency authority on all questions concerning the Panel and PERB arbitration procedures.

b. The Executive Director shall maintain a Panel of Arbitrators (the Panel); administer the procedures for binding grievance arbitration under the PSERA and select arbitrators by lottery from the Panel for requesting parties.

c. The Executive Director shall:

(1) Review the qualifications of all applicants for listing on the Panel, interpreting and applying the criteria set forth herein.

(2) Review the status of all persons whose continued eligibility for listing on the Panel has been questioned.

(3) Recommend to the PERB the acceptance or rejection of applicants for listing on the Panel, or the withdrawal of listing on the Panel for any of the reasons set forth in Rule 12.4;

(4) At the request of the PERB, review grievance arbitration policies and procedures and make recommendations regarding such policies and procedures to the PERB.

Panel of Arbitrators: Admission and Retention

12.4 Panel and Status of Members

a. PERB shall designate a Panel of arbitrators consisting of persons who meet the criteria for listing contained in 12.5 and who remain in good standing. The Panel shall include not less than ten arbitrators and may be increased as necessary.

b. *Adherence of Standards and Requirements.* Persons listed on the Panel shall comply with PERB rules and regulations pertaining to arbitration and with such guidelines and procedures as may be issued by the Executive Director. Arbitrators shall conform to the ethical standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor Management Disputes ("Code of Professional Responsibility"), as approved by the National Academy of Arbitrators, Federal Mediation and Conciliation Service, and the American Arbitration Association.

c. *Status of Arbitrators.* Persons who are listed on the Panel and are selected to hear arbitration matters do not become employees of PERB and/or the State of Delaware by virtue of their selection. Following selection, the arbitrator's relationship is solely with the parties to the dispute, except that arbitrators are subject to certain reporting requirements and to standards of conduct as set forth herein.

d. *Role of PERB:* PERB has no power to:

1. Influence, alter, or set aside decisions of arbitrators on the Panel;

2. Compel, deny, or modify payment of

compensation to an arbitrator.

e. *Nominations and Panels.* Upon receipt of a written request to arbitrate from parties to a collective bargaining agreement, the Executive Director will select an arbitrator, by lottery, pursuant to Rule 12.10 or 12.16. The selection of an arbitrator does not constitute a determination by PERB that an agreement to arbitrate exists; nor does such action constitute a ruling that the matter in controversy is arbitrable under any agreement.

f. *Rights of Persons Listed on the Panel.* No person shall have any right to be listed or to remain listed on the Panel. PERB retains exclusive authority and responsibility to assure that the needs of the parties using its services are served. To accomplish this purpose, PERB may establish procedures for the selection of Panel arbitrators which include consideration of such factors as background and experience, availability, acceptability, and geographical location. PERB may also establish procedures for the removal from the Panel of those arbitrators who fail to adhere to provisions contained in these rules.

12.5 Listing on the Panel; Criteria for Listing and Retention

Persons seeking to be listed on the Panel must complete and submit an application form which may be obtained from the Executive Director. Upon receipt of an executed application, the Executive Director will review the application, assure that it is complete and make such inquiries as are necessary. The Executive Director will review the completed application under the criteria in this section, and will forward to the PERB his or her recommendation as to whether or not the applicant meets the criteria for listing on the Panel. The PERB shall make all final decisions as to whether an applicant may be listed on the Panel. Each applicant shall be notified in writing of the PERB's decision and the reasons therefore.

a. *General Criteria.* Applicants for the Panel will be listed on the Panel upon a determination that they are experienced, competent, and acceptable in decision-making roles in the resolution of labor relations disputes.

b. *Proof of Qualification.* Qualifications for listing on the Panel may be demonstrated by submission of five (5) arbitration awards prepared by the applicant while serving as an impartial arbitrator of record chosen by the parties to labor disputes arising under collective bargaining agreements. Experience as a former judge who served on a Delaware constitutional court or on the U.S. District Court for the District of Delaware, or experience in relevant positions in collective bargaining, or as a hearing examiner in labor relations controversies will be considered in lieu of the required awards.

c. *Advocacy.* Any person who at the time of application is an advocate as defined in paragraph (c)(1) of this section, must agree to cease such activity before being

recommended for listing on the PERB Panel. Any person who does not divulge his or her advocacy at the time of listing or who becomes an advocate while listed on the Panel, shall be recommended for removal by the Executive Director after the fact of advocacy is revealed.

(1) *Definition of Advocacy.* An advocate is a person who represents employers, labor organizations, or individuals as an agent, employee, attorney, or consultant, in matters of labor relations, including but not limited to the subjects of union representation and recognition matters, collective bargaining, arbitration, unfair labor practices, equal employment opportunity, and other areas generally recognized as constituting labor relations. The definition includes representatives of employers or employees in individual cases or controversies involving worker's compensation, occupational health or safety, minimum wage, or other labor standards matters. This definition of advocate also includes a person who is directly associated with an advocate in a business or professional relationship as, for example, partners or employees of a law firm. Consultants engaged only in joint education or training or other non-adversarial activities will not be deemed as advocates.

d. *Duration of Listing, Retention.* Listing on the Panel shall be by decision of the PERB based upon the recommendations of the Executive Director. The Executive Director may recommend, and the PERB may remove, any person listed on the Panel, for violation of this rule and/or the Code of Professional Responsibility. Notice of cancellation or suspension shall be given to a person listed on the Panel whenever a Panel member:

(1) No longer meets the criteria for admission; (2) Has become an advocate as defined in paragraph (c)(1) of this section;

(3) Has been repeatedly or flagrantly delinquent in submitting awards;

(4) Has refused to make reasonable and periodic reports in a timely manner to PERB, as required in these rules, concerning activities pertaining to arbitration;

(5) Has been the subject of complaints by parties who use PERB services, and the Executive Director after appropriate inquiry, concludes that just cause for cancellation has been shown;

e. The Executive Director may, at his or her discretion, conduct an inquiry into the facts of any proposed removal from the Panel. An arbitrator listed on the Panel may only be removed after 60-day notice and an opportunity to submit a response or information showing why the listing should not be canceled. The Executive Director may recommend to the PERB whether to remove an arbitrator from the Panel. All determinations to remove an arbitrator from the Panel shall be made by the PERB. Removals may be for a period of up to two (2) years, after which the arbitrator may seek reinstatement.

f. The Executive Director may suspend for a period not to exceed 180 days any person listed on the Panel who has violated any of the criteria in paragraph (d) of this section. Arbitrators shall receive written notice of a suspension. They may appeal a suspension to the PERB. The decision of the PERB shall constitute the final action of the agency.

12.6 Inactive Status

A member of the Panel may request that he or she be put in an inactive status on a temporary basis because of ill health, vacation, schedule, or other reasons.

Procedures for Arbitration Services

12.7 Freedom of Choice

Nothing contained in this part should be construed to limit the rights of parties who use PERB arbitration services to jointly select an arbitrator acceptable to them. Once a request is made to PERB, all parties are subject to the procedures contained in this part.

12.8 Procedures for Requesting an Arbitrator

a. The Office of the Executive Director has been delegated the responsibility for administering all requests for arbitration services. Requests should be addressed to the Delaware Public Employment Relations Board, Arbitration Services, 4th Floor, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware, 19801.

b. Upon receipt of a Request for Arbitration, the Executive Director will select an arbitrator by lottery from the Panel and notify the parties. The parties may request selection of an arbitrator either jointly or unilaterally. Selection of an arbitrator is nothing more than a response to a request. It does not signify the adoption of any position by the PERB regarding the arbitrability of any dispute or the terms of the parties' contract.

c. PERB reserves the right to decline to service any requests from parties with a demonstrated history of non-payment of arbitrator fees or other behavior which constrains the spirit or operation of the arbitration process.

d. The parties are required to use the Request for Arbitrator Form which is included as Attachment M to these Delaware PERB Rules and Regulations and is also available from Delaware PERB, 4th Floor, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware, 19801, or by calling (302) 577-5070. Requests for Arbitration that do not contain all required information requested on the form may be rejected.

12.9 Arbitrability

a. Disputes relating to whether a matter is arbitrable will be ruled upon by the arbitrator prior to hearing the

merits of the dispute. If the arbitrator determines that the dispute is arbitrable, the same arbitrator shall schedule a second day of hearing to hear the merits of the dispute.

b. The losing party shall be responsible for paying the arbitrator's fees and expenses incurred in deciding issues of arbitrability.

12.10 Selection of Arbitrators

a. Upon receipt of a Request for Arbitration, the Executive Director will select an arbitrator from the PERB Panel, by lottery, as required by 14 Del.C. §4013 (c)(3). The Executive Director will contact the randomly selected arbitrator to confirm that the arbitrator has available hearing dates within sixty (60) days. In the event that the arbitrator is not available for hearing within sixty (60) days, the Executive Director shall continue to make random selections by lottery, until an arbitrator is identified with hearing availability within sixty (60) days.

b. Upon confirming the availability of the selected arbitrator, the Executive Director shall make a formal written appointment of the arbitrator, which shall include contact information for the parties. The arbitrator, upon notification of appointment, shall communicate with the parties within 14 days to arrange for preliminary matters, such as the date and place of hearing. If the parties settle a case prior to the hearing, the parties must inform the arbitrator as well as the Executive Director. Consistent failure to follow these procedures may lead to a denial of future PERB arbitration service.

c. All letters issued by the Executive Director appointing an arbitrator will have an assigned PERB case number. All future communications between the parties, the arbitrator and the PERB should refer to this case number. Copies of any correspondence confirming a scheduled hearing should be provided to PERB.

d. The appointment of an arbitrator in no way signifies a determination on arbitrability or an interpretation of the terms and conditions of the collective bargaining agreement. The resolution of such disputes rests solely with the arbitrator.

12.11 Conduct of Hearings

a. The conduct of the arbitration proceeding is under the arbitrator's jurisdiction and control, and the arbitrator's decision shall be based upon the evidence and testimony presented at the hearing or otherwise incorporated in the record of the proceeding.

b. Representation: Any party may be represented in a grievance arbitration proceeding by counsel or other authorized representative.

c. Stenographic Record: Any party wishing a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of such arrangement in advance of the hearing. The requesting party

or parties shall pay the cost of the record. Whenever a stenographic record is made of a hearing, a copy of the transcript shall be provided to the arbitrator.

d. *Interpreters:* Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

e. *Attendance at Hearings:* The arbitrator shall have the power to require the sequestration of any witness or witnesses during the testimony of other witnesses. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

f. *Witness Expenses:* The expenses of witnesses for either side shall be paid by the party producing such witnesses.

g. *Postponements:* The arbitrator may, for good cause, postpone the hearing upon the request of a party or upon his or her own initiative and shall postpone when all of the parties agree thereto.

h. *Oaths:* The arbitrator may require witnesses to testify under oath administered by any duly qualified person, and, if required by law or requested by either party, shall do so.

i. *Order of proceedings:* A hearing shall be opened by the recording of the date, time, and place of the hearing and the presence of the arbitrator, the parties and counsel, if any; and by the receipt by the arbitrator of the demand and answer, if any, or the submission. Exhibits may, when offered by either party, be received in evidence by the arbitrator. The names of all witnesses and exhibits in the order received shall be made part of the record. The arbitrator may vary the normal procedure under which the initiating party first presents its claim, but in any case shall afford full and equal opportunity to all parties for the presentation of relevant proofs.

j. *Arbitration in the Absence of a Party or Representative:* An arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party present to submit such evidence as may be required for the making of an award.

k. *Evidence:* The parties may offer such evidence as is relevant and material to the dispute, and shall produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. An arbitrator may subpoena witnesses and documents independently or upon the request of any party. The arbitrator shall be the judge of the relevance and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of the arbitrator and all of the parties, except where any of the parties is absent in default or has waived the right to be present.

l. *Evidence by Affidavit and Filing of Documents:*

The arbitrator may receive and consider the evidence of witnesses by affidavit, giving it only such weight as he or she determines to be proper after consideration of any objection to its admission. All documents that are not filed with the arbitrator at the hearing, but arranged at the hearing or subsequently by agreement of the parties, shall be provided to all parties. All parties shall be afforded opportunity to examine such documents.

m. *Inspection:* Whenever the arbitrator deems it necessary, he or she may make an inspection in connection with the subject matter of the dispute after written notice to the parties, who may, if they so desire, be present at the inspection.

n. *Closing of Hearing:* The arbitrator shall inquire of all parties whether they have any further proof to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearings closed. If briefs or other documents are to be filed, the hearing shall be declared closed as of the final date upon which such documents are received by the arbitrator.

o. *Reopening of Hearing:* The hearing may be reopened for good cause by the arbitrator or on the motion of either party at any time before the award is made. The arbitrator may reopen the hearing and shall have forty-five (45) days from the closing of the reopened hearing record to issue an award.

12.12 Decision and Award

a. Arbitrators shall issue awards no later than forty five (45) days from the date of the closing of the record as determined by the arbitrator, unless otherwise agreed upon by the parties or specified by the collective bargaining agreement or law. However, failure to meet the forty-five (45) day deadline will not invalidate the process or award. Failure to render timely awards reflects upon the performance of an arbitrator and may lead to removal from the PERB Panel.

b. *Form of award:* The award shall be in writing, signed by the arbitrator, and shall be accompanied by an opinion, unless the parties have advised the arbitrator that a written opinion is not necessary.

c. *Award upon Settlement:* If the parties settle their dispute during the course of the arbitration, the arbitrator may, upon request, set forth the terms of the agreed settlement in the form of an award.

d. *Delivery of the Award:* Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail by the arbitrator, addressed to the party at its last known address or to its representative; personal service of the award; or the filing of the award in any other manner that is permitted by law.

e. *Expenses:* Arbitration expenses incurred in deciding the merits of a dispute, other than the cost of the

stenographic record, but including required travelling and other expenses of the arbitrator, as well as the expenses of any witness or the cost of any proof produced at the direct request of the arbitrator, shall be evenly divided between the parties. Arbitration expenses incurred in determining whether a dispute is arbitrable shall be paid by the losing party in accord with section 12.9 (b) herein.

f. The parties should inform the Executive Director whenever an award is unduly delayed. The arbitrator shall notify the Executive Director if and when the arbitrator (1) cannot schedule, hear, and/or render decisions promptly, or (2) learns a dispute has been settled by the parties prior to the decision.

g. Within fifteen (15) days after an award has been issued to the parties, the arbitrator shall advise the Executive Director that the case has been processed to completion.

h. While PERB encourages the publication of arbitration awards, arbitrators should not publicize awards if objected to by one of the parties.

12.13 Fees and Charges of Arbitrators

a. All arbitrators listed on the Panel may charge a per diem and other predetermined fees for services, if the amount of such fees have been provided in advance to PERB. Each arbitrator's maximum per diem and other fees will be sent to the parties when an arbitrator is appointed. The arbitrator shall not change any fee or add charges without giving at least 30 days advance written notice to PERB. Arbitrators with dual business addresses must bill the parties for expenses from the least expensive business address to the hearing site.

b. Arbitrators shall divulge all charges to the parties immediately upon appointment.

c. PERB requests that parties notify the Executive Director of any arbitrator's deviation from the policies expressed in these rules. While PERB does not resolve individual fee disputes, repeated complaints concerning the fees charged by an arbitrator will be brought to the attention of the Executive Director for consideration. Similarly, repeated complaints by arbitrators concerning non-payment of fees by the parties may lead to the denial of services or other actions by the PERB.

12.14 Reports and Biographical Sketches

a. Arbitrators listed on the Panel shall execute and return all documents, forms and reports required by PERB. They shall also keep PERB informed of changes of address, telephone number, availability, and of any business or relationship which involves labor-management relations or which creates or gives the appearance of advocacy as defined in Section 12.5 (c) (1).

b. PERB will provide, upon request, biographical sketches on each person admitted to the Panel from information supplied by applicants. Arbitrators may request

revision of biographical information at later dates to reflect changes in fees, the existence of additional charges, or other relevant data. PERB reserves the right to decide and approve the format and content of biographical sketches.

Expedited Arbitration

12.15 Policy.

In an effort to reduce the time and expense of some grievance arbitrations, PERB is offering expedited procedures that may be appropriate in certain cases that do not involve complex or unique issues. Expedited Arbitration is a mutually agreed upon process whereby arbitrator appointments, hearings and awards are acted upon quickly by the parties, PERB, and the arbitrators. The process is streamlined by mandating short deadlines and eliminating requirements for transcripts, briefs and lengthy opinions.

12.16 Procedures for Requesting Expedited Arbitration.

a. With the exception of the specific changes noted in this section, all PERB rules and regulations governing arbitration services shall apply to Expedited Arbitration.

b. Upon receipt of a joint Request for Appointment of an Arbitrator indicating that expedited services are desired by both parties, the Executive Director will appoint an arbitrator using the process defined by section 12.10 above, except that the Executive Director shall establish that the selected arbitrator is available to conduct the arbitration within 30 days.

12.17 Arbitration Process.

a. Once notified of the expedited case appointment by the Executive Director, the arbitrator shall contact the parties within seven (7) calendar days.

b. The parties and the arbitrator must schedule a hearing within 30 days of the appointment date.

c. Absent mutual agreement, all hearings will be concluded within one day. No transcripts of the proceedings will be made and the filing of post-hearing briefs will not be allowed.

d. All awards must be completed within seven (7) working days after the hearing. These awards are to be brief, concise, and will not require extensive written opinion or research time.

12.18 Proper Use of Expedited Arbitration.

a. PERB reserves the right to cease honoring requests for Expedited Arbitration if a pattern of misuse of this process becomes apparent. Misuse may be indicated by the parties' frequent delaying of the process or referral of inappropriate cases.

b. Arbitrators who exhibit a pattern of unavailability for appointments or who are repeatedly unable to schedule

hearings or render awards within established deadlines will, after written warning, be considered ineligible for appointment for this service.

*** PLEASE NOTE: AS THE REST OF THE SECTIONS WERE NOT AMENDED THEY ARE NOT BEING PUBLISHED.**

DEPARTMENT OF EDUCATION

14 DE Admin. Code 255

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

**EDUCATION IMPACT ANALYSIS PURSUANT TO
14 Del.C. Section 122(d)**

876 Possession, Use or Distribution of Drugs and Alcohol

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend regulation 876 Possession, Use or Distribution of Drugs and Alcohol. The number of the regulation has been changed to 612 from 876 which will place the regulation in the Discipline (600) Section of the regulations instead of in the Health and Safety (800) Section.

The amendment removes the reference to an unauthorized beeper or communication devise from 1.3 and from 3.10 as it relates to searching a student's motor vehicle. The words "caffeine pills" were changed to "diet pills" for clarity of intention in the definition of Drug-Like Substances. The section about a program of intervention and assistance, 3.6 has been shortened to require the existence of such a program but not to mandate the specific elements of the program. In 3.2, the statement concerning children with disabilities has been updated and in all of 3.0 the term "Relative Caregiver" has been added to the references to parents and guardians. In 3.7.1 and 3.7.3, the words "alternative school setting" has been changed to the words "alternative setting" and a change has been made in the penalty for a second offence in 3.7.2.

In the new 3.12 (was 3.11), auto-injectable epinephrine has been added to the asthmatic quick relief inhaler as a medication (drug) that students may possess in school under very controlled conditions Section 4.0 has been deleted.

C. Impact Criteria

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

standards? The amended regulation continues to prohibit the possession, use and distribution of drugs and alcohol in the public schools the presence of which could interfere with students' academic achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation prohibits the possession, use and distribution of drugs and alcohol in the public schools for all students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation continues to prohibit the possession, use and distribution of drugs and alcohol in the public schools which helps to ensure that all students' health and safety are protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to prohibit the possession, use and distribution of drugs and alcohol in the public schools which helps to ensure that all students' legal rights are protected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation continues to preserve the necessary authority and flexibility of decision making at the local board and school level.

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

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

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? The regulation is necessary to make it clear what the schools' responsibilities are concerning drug and alcohol use by students.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The cost of implementing this regulation is augmented by federal grants.

876 612 Possession, Use or Distribution of Drugs and Alcohol

1.0 The following policy on the possession, use, or distribution of drugs and alcohol shall apply to all public school districts.

1.1 The possession, use and/or distribution of alcohol, a drug, a drug-like substance, a look-alike substance and/or drug paraphernalia are wrong and harmful to students and are prohibited within the school environment.

1.2 Student lockers are the property of the school and may be subjected to search at any time with or without reasonable suspicion.

1.3 Student motor vehicle use to and in the school environment is a privilege which may be extended by school districts to students in exchange for their cooperation in the maintenance of a safe school atmosphere. Reasonable suspicion of a student's use, possession or distribution of alcohol, a drug, a drug-like substance, a look-alike substance or drug paraphernalia, ~~or of a student's possession of an unauthorized electronic beeper or other communication device~~ in the school environment, may result in the student being asked to open an automobile in the school environment to permit school authorities to look for such items. Failure to open any part of the motor vehicle on the request of school authorities may result in the police being called to conduct a search, and will result in loss of the privilege to bring the vehicle on campus.

1.4 All alcohol, drugs, drug-like substances, look-alike substances and/or drug paraphernalia found in a student's possession shall be turned over to the principal or designee, and be made available, in the case of a medical emergency, for identification. All substances shall be sealed and documented, and, in the case of substances covered by 16 Del.C. Ch. 47, turned over to police as potential evidence.

2.0 The following definitions shall apply to this policy and will be used in all district policies.

"**Alcohol**" shall mean alcohol or any alcoholic liquor capable of being consumed by a human being, as defined in 4 Del.C. §101 including alcohol, spirits, wine and beer.

"**Distribute,**" "**distributing**" or "**distribution**" shall mean the transfer or attempted transfer of alcohol, a drug, a look-alike substance, a drug-like substance, or drug paraphernalia to any other person with or without the exchange of money or other valuable consideration.

"**Drug**" shall mean any controlled substance or counterfeit substance as defined in 16 Del.C. §4701 including, for example, narcotic drugs such as heroin or cocaine, amphetamines, anabolic steroids, and marijuana, and shall include any prescription substance which has been given to or prescribed for a person other than the student in whose possession it is found.

"**Drug-like substance**" shall mean any noncontrolled

and/or nonprescription substance capable of producing a change in behavior or altering a state of mind or feeling, including, for example, some over-the-counter cough medicines, certain types of glue, caffeine pills.

"**Drug paraphernalia**" shall mean all equipment, products and materials as defined in 16 Del.C. §4701 including, for example, roach clips, miniature cocaine spoons and containers for packaging drugs.

"**Expulsion**" shall mean exclusion from school for a period determined by the local district not to exceed the total number of student days. The process for readmission shall be determined by the local district.

"**Look-alike substance**" shall mean any noncontrolled substance which is packaged so as to appear to be, or about which a student makes an express or implied representation that the substance is, a drug or a noncontrolled substance capable of producing a change in behavior or altering a state of mind or feeling. See 16 Del.C. §4752A.

"**Nonprescription medication**" shall mean any over-the-counter medication; some of these medications may be a "drug-like substance."

"**Possess,**" "**possessing,**" or "**possession**" shall mean that a student has on the student's person, in the student's belongings, or under the student's reasonable control by placement of and knowledge of the whereabouts of, alcohol, a drug, a look-alike substance, a drug-like substance or drug paraphernalia.

"**Prescription drugs**" shall mean any substance obtained directly from or pursuant to a valid prescription or order of a practitioner, as defined in 16 Del.C. §4701(24), while acting in the course of his or her professional practice, and which is specifically intended for the student in whose possession it is found.

"**School environment**" shall mean within or on school property, and/or at school sanctioned or supervised activities, including, for example, on school grounds, on school buses, at functions held on school grounds, at extra-curricular activities held on and off school grounds, on field trips and at functions held at the school in the evening.

"**Use**" shall mean that a student is reasonably known to have ingested, smoked or otherwise assimilated alcohol, a drug or a drug-like substance, or is reasonably found to be under the influence of such a substance.

3.0 Each school district shall have a policy on file and update it periodically. The policy shall include, as a minimum the following:

3.1 A system of notification of each student and of his/her parent/guardian or Relative Caregiver at the beginning of the school year, and whenever a student ~~enters or re-enters~~ enrolls or re-enrolls the school during the school year, of the state and district policies and regulations.

3.2 ~~A statement that it is anticipated that the state and district policies shall apply to all students, except that with~~

~~respect to handicapped students, the federal law will be followed, and a determination of whether the violation of the alcohol and drug policy was due to the student's handicapping condition will be made prior to any discipline or change or placement in connection with the policy. A statement that state and district or charter school policies shall apply to all students, except that with respect to children with disabilities, applicable federal and state laws will be followed.~~

3.3 A written policy which sets out procedures for reporting incidents to police authorities, parents/guardians or Relative Caregivers and to the Department of Education, how authorities and/or parents are to be contacted, and how confidentiality is to be maintained while maintaining confidentiality.

3.4 A written policy on how evidence is to be kept, stored and documented, so that the chain of custody is clearly established prior to giving such evidence over to the police.

3.5 A written policy on search and seizure.

3.6 ~~A program of intervention and assistance, which includes:~~

~~3.6.1 Having in each school building at least one person to whom staff can refer students to receive initial counseling and to obtain information on counseling/treatment services available to the student, on the student's rights, if any, to those services, and on the confidentiality which the student can expect~~

~~3.6.2 A written statement, available to be given to students or their parents, on what resources are available in the school environment and in the community for counseling and for drug and/or alcohol treatment~~

~~3.6.3 A system which ensures that all staff members are aware of resources in and referral procedures within the school environment, and encourage students to seek support and assistance~~

~~3.6.4 A system which encourages or requires that a student with alcohol or drug problems be assessed to determine the extent of alcohol or drug involvement and that the student receive the appropriate level of counseling or treatment needed~~

~~3.6.5 A policy of notification of the conditions under which the district will provide or pay for alcohol and/or drug counseling/treatment and/or testing, and the extent to which the cost of such services must be borne by the student~~
A program of assistance for students with counseling and referral to services as needed.

3.7 A discipline policy which contains, at a minimum, the following penalties for infractions of state and district drug policies.

3.7.1 Use/Impairment: For a first offense, if a student is found to be only impaired and not in violation of any other policies, he/she will be suspended for up to 10 days, or placed in an alternative ~~school~~ setting for up to 10

days, depending upon the degree of impairment, the nature of the substance used, and other aggravating or mitigating factors. For a second or subsequent offense, a student may be expelled or placed in an alternative ~~school~~ setting for the rest of the school year.

3.7.2 Possession of alcohol, a drug, a drug-like substance, and/or a look-alike substance, in an amount typical for personal use, and/or drug paraphernalia: For a first offense, the student ~~will~~ shall be suspended for 5-10 days. For a second or subsequent offense, a student may be expelled for the rest of the school year or placed in an alternative setting for the rest of the school year.

3.7.3 Possession of a quantity of alcohol, a drug, a drug-like substance, a look-alike substance and/or drug paraphernalia in an amount which exceeds an amount typical for personal use, and/or distribution of the above named substances or paraphernalia: the student will be suspended for 10 days, or placed in an alternative ~~school~~ setting for 10 days. Depending on the nature of the substance, the quantity of the substance and/or other aggravating or mitigating factors, the student also may be expelled.

3.8 A policy in cases involving a drug-like substance or a look-alike substance for establishing that the student intended to use, possess or distribute the substance as a drug.

3.9 A policy which establishes how prescription and non-prescription drugs shall be handled in the school environment and when they will be considered unauthorized and subject to these state and local policies.

~~3.10 A policy which sets penalties for the unauthorized possession of communication devices.~~

~~3.11 10~~ A policy which sets out the conditions for return after expulsion for alcohol or drug infractions.

~~3.12 11~~ Notwithstanding any of the foregoing to the contrary, all policies adopted by public school districts relating to the possession or use of drugs shall permit a student's discretionary use and possession of an asthmatic quick relief inhaler ("Inhaler") and/or autoinjectable epinephrine with individual prescription label; provided, nevertheless, that the student uses the inhaler and/or autoinjectable epinephrine pursuant to prescription or written direction from a state licensed health care practitioner; a copy of which shall be provided to the school district; and further provided that the parent(s) or legal custodian(s) of such student provide the school district with written authorization for the student to possess and use the inhaler and/or autoinjectable epinephrine at such student's discretion, together with a form of release satisfactory to the school district releasing the school district and its employees from any and all liability resulting or arising from the student's discretionary use and possession of the inhaler and/or autoinjectable epinephrine; and further provided that the school nurse may impose reasonable limitations or restrictions upon the student's use and possession of the inhaler based upon the student's age, level of maturity,

behavior, or other relevant considerations.

(For students who use prescribed asthmatic quick relief inhalers and/or autoinjectable epinephrine, see regulation 826 Administration of Prescription Medications 817 Administration of Medications and Treatments)

~~4.0 The policy shall include the designation of a district committee composed of teachers, parents, school nurses, and community leaders. Any revisions in the local school district policy will be submitted to the Department of Education for review and approval.~~

See 2 DE Reg. 2043 (5/1/99)

EDUCATION IMPACT ANALYSIS PURSUANT TO 14 Del.C. Section 122(d)

1051 DIAA Senior High School Interscholastic Athletics

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend Section 1.0 of regulation 1051 DIAA Senior High School Interscholastic Athletics. The amendment is necessary in order to add parts 1.2.4 and 1.2.4.1 that address sports participation of students attending the Sterck School both full time and part time. The amendment identifies the schools at which the full time and the part time students will participate in sports. This issue was addressed previously as an interpretation of the regulations. This amendment places the participation in sports by Sterck students in parts 1.2.4 and 1.2.4.1 of the regulations.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses participation in sports not academic achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses participation in sports not equity issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses participation in sports not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses sports participation not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? The **Del. C** Title 14 Chapter 3 requires the Department of Education to have regulations for the DIAA.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no additional cost to the State and to the local school boards of compliance with the regulation.

1051 DIAA Senior High School Interscholastic Athletics

1.0 Eligibility

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

1.1 Age

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

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

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

1.2 Enrollment and Attendance

1.2.1 A student must be legally enrolled in the high school which he/she represents in order to participate in a practice, scrimmage or contest.

1.2.2 A student must be in regular attendance prior to the 11th school day of the academic year.

1.2.2.1 A student who enters school on or after the 11th school day of the academic year shall not be eligible to participate for ninety (90) school days.

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

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

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

1.2.4 A student who attends the Sterck School shall participate in interscholastic athletics at the Sterck School. If the Sterck School does not sponsor a particular sport, Sterck students shall be eligible to participate in interscholastic athletics at the Christiana High School, the high school in closest proximity to the Sterck School.

1.2.4.1 Notwithstanding 1.2.3 and 1.2.4 above, a shared time student who attends the Sterck School and a mainstream high school during the regular school day shall participate in interscholastic athletics at the Sterck School. If the Sterck School does not sponsor a particular sport, the shared-time student shall be eligible to participate in interscholastic athletics only at the mainstream high school.

1.2.4.5 A student who is participating in the Delaware School Choice Program, as authorized by 14 Del. C. Ch. 4, is obligated to attend the choice school for a minimum of two (2) years unless the student's custodial parent(s) or legal guardian(s) relocate to a different school district or the student fails to meet the academic requirements of the choice school. If a student attends a choice school for less than two (2) years and subsequently returns to his/her home school, the student must receive a release from the "choice district" in order to legally enroll at his/her home school. Without a release, the student would not be eligible to participate in interscholastic athletics (see 1.4.8).

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

1.2.6.7 A student must be legally in attendance at

school in order to participate in a practice, scrimmage, or contest except when excused by proper school authorities.

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

1.2.7.8 Failure to complete a semester or absence for one or more semesters for reasons other than personal illness or injury shall render a student ineligible for ninety (90) school days from the date of his/her reentry to school.

1.2.8.9 An ineligible student who practices in violation of 1.2.1 or 1.2.6 shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

1.3 Residence

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

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

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

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

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

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

1.3.1.5 A student may be residing outside of the attendance zone of the school which he/she attends if the

student is participating in the Delaware School Choice Program as authorized by 14 **Del.C.**, Ch. 4.

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

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

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

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

1.4 Transfer

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

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

1.4.2.1 The transfer is within a school district and is approved by the district's superintendent pursuant to established school board policy or administrative procedure. This provision shall not apply to a student who transfers to his/her home school from a "choice school" within the district and who has not completed the two-year attendance

requirement unless he/she satisfies the conditions stipulated in 1.4.2.5.1 through 1.4.2.5.4. This provision shall also not apply to a student who transfers from a "choice school" to another "choice school" within the district (see 1.4.7.1).

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

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

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

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

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

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

1.4.2.5 The transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year provided:

1.4.2.5.1 The student has completed the registration process at the receiving school prior to the first official student day of the academic year. The first

official student day shall be defined as the first day on which students in any grade in that school are required to be in attendance.

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

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

1.4.2.5.4 All other DIAA eligibility requirements have been met.

1.4.3 Promotion or administrative assignment to the ninth grade from a school whose terminal point is the eighth grade, or to the tenth grade from a junior high school whose terminal point is the ninth grade, shall not constitute a transfer. Students so promoted or administratively assigned shall be eligible.

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

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

1.4.4.1.1 Student schedule card.

1.4.4.1.2 Student transcript.

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

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

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

1.4.4.2 Financial hardship

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

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

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

1.4.6 A change of custody or guardianship for athletic advantage shall render a student ineligible under the ninety (90) school day ineligibility clause if the primary

reason for his/her transfer is one of the following:

1.4.6.1 To seek a superior team.

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

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

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

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

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

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

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

1.5 Amateur

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

1.5.1.1 Knowingly plays on or against a professional team.

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

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

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

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

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

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

1.5.1.6 Sells or pawns awards received.

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

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

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

*** PLEASE NOTE: AS THE REST OF THE SECTIONS WERE NOT AMENDED THEY ARE NOT BEING PUBLISHED.**

PROFESSIONAL STANDARDS BOARD

EDUCATION IMPACT ANALYSIS PURSUANT TO 14 Del.C. Section 122(d)

363 Certification Exceptional Children Teacher Gifted/Talented

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, in cooperation and collaboration with the Department of Education, seeks the approval of the State Board of Education to amend regulation 363 Certification Exceptional Children Teacher Gifted/Talented. It is necessary to amend this regulation to comply with changes in statute regarding the licensure and certification of educators. The amended regulation will be renumbered 1563 to reflect its movement to the Professional Standards Board section of the Department of Education regulations.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for teachers of gifted and talented students..

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers of gifted and talented students employed by school districts meet high standards of performance.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses the certification requirements for teachers of gifted and talented students, not students' health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses the certification requirements for teachers of gifted and talented students, not students' legal rights.

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

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

makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 Del. C. requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with the new regulation? There is no additional cost to local school boards for compliance with the regulation.

363 Certification Exceptional Children Teacher Gifted/ Talented (Effective July 1, 1993)

~~1.0 The following shall be required for the Standard License:~~

~~1.1 Bachelor's degree from an accredited college and,~~

~~1.2 Professional Education~~

~~1.2.1 Completion of an approved teacher education program in the area of endorsement and two years of successful, full-time teaching experience or,~~

~~1.2.2 Specific Requirements for Gifted and Talented Elementary~~

~~1.2.2.1 A current Standard or Professional Status Delaware License in Elementary Education~~

~~1.2.2.2 One semester course, Introduction/ Education of Exceptional Children~~

~~1.2.3 Specific Requirements for Gifted and Talented Secondary~~

~~1.2.3.1 A current Standard or Professional Status Delaware License in a secondary content area~~

~~1.2.3.2 One semester course, Introduction/ Education of Exceptional Children and,~~

~~1.2.4 Fifteen semester hours in Gifted Education as specified below:~~

~~1.2.4.1 Nine semester hours as follows:~~

~~1.2.4.1.1 Research/Nature and Needs of Gifted/Talented Students~~

~~1.2.4.1.2 Methods/Curriculum for Gifted/Talented~~

~~1.2.4.1.3 Identification, Diagnosis and Assessment of Gifted/Talented Students.~~

~~1.2.4.2 Six semester hours Gifted/Talented Electives from the following: Counseling of the Gifted/Talented, Creative Studies, Psychology and Education of the Gifted/Talented, Learning Theory, Social and Psychological Development, Adolescent/Child Psychology, Computer Education/Programming, Advanced Curriculum Design, Tests and Measurements and,~~

~~1.2.4.3 A minimum of two years of successful, full-time experience as a fully certified elementary or secondary teacher.~~

~~2.0 The following shall be required for the Limited Standard License:~~

~~2.1 The Limited Standard License may be issued for a period of three years at the request of a Delaware Public School District to a person who meets the requirements listed below and who is employed as a teacher of gifted/talented, to allow for the completion of the requirements for the Standard License as listed in 1.0:~~

~~2.2 Requirements of 1.1, 1.2 and 1.3.~~

~~2.3 Standard Elementary or Secondary Teaching License and,~~

~~2.3.1 Specialized preparation~~

~~2.3.1.1 Six semester hours selected from the following areas: Survey/Introduction to Exceptional Children, Methods/Curriculum in the Specific Area of Endorsement, Identification, Diagnosis, and Assessment of Exceptional Children in the Specific Area of Endorsement, Review and Research of Survey course in the specific area of endorsement.~~

~~3.0 Present Gifted/Talented Teachers Protected~~

~~3.1 Those teachers authorized prior to date of State Board of Education adoption (8/18/83) to teach classes for Gifted/Talented children on the basis of a standard elementary or secondary teaching License and who have the recommendation of the school district superintendent shall be authorized to continue in such a teaching assignment in the district where the assignment was authorized. Authorization to teach in this circumstance does not constitute a License transferable to any other school district.~~

~~4.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

1563 Standard Certificate - Teacher of Gifted and Talented Students

1.0 Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 Del.C., § 1220 (a),

for a teacher of gifted and talented students in programs that are identified as specific to students who have been identified as gifted and talented through assessments and other criteria set forth by local school districts.

2.0 Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 Del.C. §1220(a), the Department shall issue a standard certificate as a Teacher of Gifted and Talented Students to an applicant who holds a valid Delaware initial, continuing, or advanced license; or limited standard, 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 in education or a content area from a regionally accredited college/university; and,

3.2 A minimum of three years of teaching experience at any pK-12 level; and,

3.3 Completion of course work in the following areas:

3.2.1 Foundations of giftedness, including cultural and socioeconomic equity;

3.2.2 Curriculum design and instructional strategies for gifted students;

3.2.3 Psychology of gifted students; and

3.2.4 Creative and critical thinking skills.

PROFESSIONAL STANDARDS BOARD

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

REPEAL OF REGULATIONS 333 JOURNALISM TEACHER 339 SPEECH TEACHER 377 HUMAN RELATIONS SPECIALIST 378 INTERN 392 MIDDLE LEVEL CERTIFICATION

A. TYPE OF REGULATORY ACTION REQUESTED

Repeal

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board in cooperation and collaboration with the Department of Education seeks the approval of the State Board of Education to repeal regulations 333, Journalism Teacher; 339, Speech Teacher; 377, Human Relations Specialist; 378, Intern; and 392, Middle Level Certification. As part of a continuing effort to reduce the number of regulations which govern virtually every aspect of State government, it is recommended that the above-referenced regulations be repealed. The incidence of issuance of these regulations is extremely low, and all individuals are eligible to hold other certificates. One teacher holds a certificate as a teacher of journalism. Six individuals hold certificates or endorsements as teachers of speech. This certificate covers teachers of public speaking and does not apply to speech pathologists. Two individuals hold certificates as human relations specialists. No individuals hold certificates as an intern. All areas are incorporated into other standard certificates. Regulation 392, Middle Level Certification, was effectively eliminated by the passage of HB 88. There remains certification for middle level teacher (grades 5-8) and middle level (grades 7-8) teachers of science and mathematics.

C. IMPACT CRITERIA

1. Will the repeal of the regulations help improve student achievement as measured against state achievement standards? The repealed regulations concern certification for educators, not student achievement.

2. Will the repeal of the regulations help ensure that all students receive an equitable education? The repealed regulations concern certification regulations for educators, not equitable education for students.

3. Will the repeal of the regulations help to ensure that all students' health and safety are adequately protected? The repealed regulations concern of educators, not students' health and safety.

4. Will the repeal of the regulations help to ensure that all students' legal rights are respected? The repealed regulations address educator certification, not students' legal rights.

5. Will the repealed regulations preserve the necessary authority and flexibility of decision makers at the local board and school level? The repeal of the regulations were enhance the authority and flexibility of decision makers at the local board and school level.

6. Will the repealed regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The repeal of regulations will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability

for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the regulations to be repealed rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.

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

9. Is there a less burdensome method for addressing the purpose of the repeal of regulations? The repeal of regulations is designed to reduce the burden placed on school districts.

10. What is the cost to the state and to the local school boards of compliance with the repeal of regulations? There will be no cost to the state or to local school boards resulting from the repeal of the regulations..

333 Certification Journalism Teacher

Effective July 1, 1993

1.0 ~~The following shall be required for the Standard License in grades 9-12 and is valid in grades 5-8 in a middle level school:~~

~~1.1 Bachelor's degree from an accredited college and;~~

~~1.2 Completion of an approved program as a teacher of Journalism.~~

2.0 ~~The following shall be required for the Standard Endorsement for teachers with 3 or fewer classes of Journalism:~~

~~2.1 A Standard Delaware License in a secondary content area and;~~

~~2.2 A minimum of 15 semester hours from the following areas of Journalism: Fundamentals of Journalism, Advanced Written Composition, News Writing/Editing, Technical and Scientific Writing/Editing, Media Technology, Reporting for Publications, Feature/Magazine Writing, Copy Editing and Layout, History and Ethics of Journalism, and/or Methods of Teaching Writing or Composition.~~

3.0 ~~Licenses that may be issued for this position include Standard and Standard/Endorsement.~~

3.1 ~~The Limited Standard license may be issued upon request of a Delaware public school district for a teacher employed for this position who meets the standards set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.~~

339 Certification Speech Teacher

Effective July 1, 1993

~~1.0 The following shall be required for the standard license in grades 9-12 and is valid grades 5-8 in a middle school:~~

~~1.1 Bachelor's degree from an accredited college and;~~

~~1.2 Completion of an approved program as a Teacher of Speech.~~

2.0 ~~The following shall be required for the Standard Endorsement (for teachers with 3 or fewer classes of speech)~~

~~2.1 A Standard Delaware License in a secondary content area; and~~

~~2.2 A minimum of 15 semester hours from the following areas of Speech: Fundamentals of Speech, Discussion, Argumentation and Debate, Oral Interpretation, Speech Correction, Voice and Speech, Public Speaking, Rhetoric, and/or Methods of Teaching Speech.~~

3.0 ~~Licenses that may be issued for this position include Standard, Standard Endorsement and Limited Standard.~~

3.1 ~~The Limited Standard license may be issued upon request of a Delaware public school district for a teacher employed for this position who meets the standards set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.~~

377 Certification Human Relations Specialist

Effective July 1, 1993

1.0 ~~The following shall be required for the Standard License~~

~~1.1 Bachelor's degree from a regionally accredited college and;~~

~~1.2 Three years of appropriate experience in education, social work, community education, or human relations and;~~

~~1.3 Specialized Professional Preparation~~

~~1.3.1 Completion of a program in the educational specialty of Human Relations or;~~

~~1.3.2 Completion of a degree program in Teacher Education, or other appropriate area such as Community Education, Social and/or Behavioral Science, and coursework/workshops totaling fifteen (15) semester hours to include:~~

~~1.3.2.1 Human Relations Training (Workshops/Coursework for Human Relations Trainers that include experiential design, facilitative skills, and workshop implementation) and at least three other areas from those below: Group Dynamics or Group Process Skills, Multicultural Education/Race Relations; Sex Equity and Disability Issues, Interpersonal Communications/Cross-Cultural Communication Skills, Community or Public~~

Relations Affective Education, Humanizing the Curriculum or School Climate and Self-Concept Development

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years at the request of a Delaware public school district to a person who meets the requirements listed below and who is employed as a Human Relations Specialist to allow for the completion of the requirements for the Standard License as listed in 1.0.

2.1.1 Bachelor's degree from an accredited college and;

2.1.2 Three years of appropriate experience in education, social work, community education, or human relations and;

2.1.3 Completion of a degree program in teacher education, or other appropriate area such as community education, social and/or behavioral science and;

2.1.4 Workshops/Coursework for Human Relations Trainers that include experiential design, facilitative skills, and workshop implementation.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

378 Certification Intern

Effective July 1, 1993

1.0 The following shall be required for a Standard License

1.1 The appropriate Intern License (Teacher Intern, Guidance Intern, Administrative Intern, etc.) shall be required for all persons employed in the schools and working under an internship program from an accredited college or university, or arranged by the Department of Education. This License also may be issued at the request of a local school district Superintendent for an individual who will serve a supervised internship in lieu of student teaching or under a program approved by the Department of Education.

1.2 The License shall be issued to the applicant for the period of time designated by the supervising institution or the Department of Education, and agreed upon by the local school district. The maximum length of the License, without re-evaluation, shall be one year.

1.3 The qualifications and prerequisites will be those determined by the supervising college/university or by the Department of Education, when they are the supervising institution.

1.4 The License shall be issued only after the sponsoring institution or local district has filed the appropriate credentials with the Office of Certification. These credentials shall include the same as are required for any other applicant for certification. In addition, a description of the intern program, including the proposed college supervisory program shall be submitted when the

Department of Education is not the supervising institution. The Office of Certification must approve the outlined intern program and the supervision provided, before the License will be granted.

392 Middle Level Certification

1.0 By September 1998, all beginning and newly employed teachers, administrators and counselors who work in middle level programs shall hold either a middle level endorsement or certificate. This endorsement and/or certificate intends that the middle level educator has knowledge of the middle level curriculum and instructional strategies as well as an understanding of the nature and needs of young adolescent students.

PROFESSIONAL STANDARDS BOARD

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

321 CERTIFICATION AGRICULTURE TEACHER

322 CERTIFICATION BUSINESS EDUCATION
TEACHER

325 CERTIFICATION ENGLISH TEACHER

328 CERTIFICATION FOREIGN LANGUAGE
TEACHER COMPREHENSIVE

329 CERTIFICATION FOREIGN LANGUAGE
SECONDARY

330 CERTIFICATION FOREIGN LANGUAGE
TEACHER ELEMENTARY

335 CERTIFICATION MATHEMATICS TEACHER

337 CERTIFICATION BILINGUAL TEACHER
(SPANISH) SECONDARY

338 CERTIFICATION SOCIAL STUDIES TEACHER

343 CERTIFICATION ART TEACHER
COMPREHENSIVE

344 CERTIFICATION ART TEACHER
ELEMENTARY

345 CERTIFICATION ART TEACHER SECONDARY

346 CERTIFICATION HEALTH EDUCATION
TEACHER

348 MUSIC TEACHER COMPREHENSIVE

349 MUSIC TEACHER ELEMENTARY

350 CERTIFICATION MUSIC TEACHER
SECONDARY

351 CERTIFICATION PHYSICAL EDUCATION
TEACHER COMPREHENSIVE

352 CERTIFICATION PHYSICAL EDUCATION
TEACHER ELEMENTARY

353 CERTIFICATION PHYSICAL EDUCATION
TEACHER SECONDARY

354 CERTIFICATION READING SPECIALIST

355 CERTIFICATION EARLY CARE AND EDUCATION TEACHER
356 CERTIFICATION PRIMARY TEACHER (GRADES K-4)
357 CERTIFICATION MIDDLE LEVEL TEACHER (GRADES 5-8)
358 CERTIFICATION BILINGUAL TEACHER (SPANISH) PRIMARY/MIDDLE LEVEL
361 CERTIFICATION TEACHER EXCEPTIONAL CHILDREN SPECIAL EDUCATION/ELEMENTARY
362 CERTIFICATION TEACHER EXCEPTIONAL CHILDREN SPECIAL EDUCATION/SECONDARY
375 CERTIFICATION COUNSELOR – ELEMENTARY SCHOOL
376 CERTIFICATION COUNSELOR – SECONDARY SCHOOL
1526 CERTIFICATION ENGLISH TO SPEAKERS OF OTHER LANGUAGES
1540 CERTIFICATE SCIENCE TEACHER
1541 STANDARD CERTIFICATE MATHEMATICS TEACHER MIDDLE LEVEL
1542 STANDARD CERTIFICATE SCIENCE TEACHER MIDDLE LEVEL

352 Certification Physical Education Teacher Elementary
353 Certification Physical Education Teacher Secondary
354 Certification Reading Specialist
355 Certification Early Care and Education Teacher
356 Certification Primary Teacher (Grades K-4)
357 Certification Middle Level Teacher (Grades 5-8)
358 Certification Bilingual Teacher (Spanish) Primary/middle Level
361 Certification Teacher Exceptional Children Special Education/elementary
362 Certification Teacher Exceptional Children Special Education/secondary
375 Certification Counselor – Elementary School
376 Certification Counselor – Secondary School
1526 Certification English to Speakers of Other Languages
1540 Certificate Science Teacher
1541 Standard Certificate – Mathematics Teacher – Middle Level
1542 Standard Certificate – Science Teacher – Middle Level

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulations listed below:

321 Certification Agriculture Teacher
322 Certification Business Education Teacher
325 Certification English Teacher
328 Certification Foreign Language Teacher Comprehensive
329 Certification Foreign Language Secondary
330 Certification Foreign Language Teacher Elementary
335 Certification Mathematics Teacher
337 Certification Bilingual Teacher (Spanish) Secondary
338 Certification Social Studies Teacher
343 Certification Art Teacher Comprehensive
344 Certification Art Teacher Elementary
345 Certification Art Teacher Secondary
346 Certification Health Education Teacher
348 Music Teacher Comprehensive
349 Music Teacher Elementary
350 Certification Music Teacher Secondary
351 Certification Physical Education Teacher Comprehensive

The regulations concerns the requirements for standard certificates for educational personnel. It is necessary to amend these regulations due to changes in statute regarding licensure and certification of educators.

Changes in statute in 2000 and again in 2003 necessitated major changes in the licensure and certification system for educators. All educators must have an initial, continuing, or advanced license, as well as a standard certificate, which delineates the area in which an educator may practice. A standard certificate is issued to an educator who holds a license and who has acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students. Educators who have graduated from an educator preparation program offered by a Delaware higher education institution approved by the Department, who have achieved a passing score on a PRAXIS II examination, who have obtained National Board for Professional Teaching Standards certification, or who hold a current and valid certificate from another state in the area in which the standard certificate is sought are granted a standard certificate. It is necessary to amend existing requirements for standard certificates to reflect these changes and to provide an interim set of requirements for individuals who are in the process of acquiring the necessary content knowledge or pedagogy under the regulations that are currently in place. Individuals currently working toward a standard certificate in a given area must have ample opportunity to complete the requirements and notice that

such requirements will change effective June 30, 2006.

C. IMPACT CRITERIA

1. Will the amended regulations help improve student achievement as measured against state achievement standards? The amended regulation address student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulations help ensure that all students receive an equitable education? The amended regulations help to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulations help to ensure that all students' health and safety are adequately protected? The amended regulations address educator certification, not students' health and safety.

4. Will the amended regulations help to ensure that all students' legal rights are respected? The amended regulations address educator certification, not students' legal rights.

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subjects to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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

studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulations? 14 Del. C. requires that we promulgate these regulations.

10. What is the cost to the state and to the local school boards of compliance with the amended regulation? There is no additional cost to local school boards for compliance with the regulations.

321 1521 Standard Certificate for Agriculture Teacher Effective July 1, 1993

1.0 ~~The following shall be required for the Standard License for grades 9-12, and is valid in grades 5-8 in a middle level school.~~ Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 Del.C. § 1220(a), for Agriculture Teacher.

2.0 Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 Del.C. § 1220(a), the Department shall issue a standard certificate as an Agriculture 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 1-1 License I—~~ Comprehensive Vocational Agriculture (required for grades 9-12, and valid in grades 5-8 in a middle level school).

~~3.1.1 1-1.1~~ Bachelor's degree from an regionally accredited college or university and,

~~3.1.2 1-1.2~~ Professional Education

~~3.1.2.1 1-1.2.1~~ Completion of an approved teacher education program in Agriculture/Comprehensive or,

~~3.1.2.2 1-1.2.2~~ A minimum of 24 semester hours to include Human Development, Methods of Teaching Agriculture, Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and student teaching at the secondary (7-12) level and,

~~3.1.3 1-1.3~~ Specific Teaching Field

~~3.1.3.1 1-1.3.1~~ Major in Agriculture (with courses from at least four areas of agriculture as listed in 1-1.3.2 3.1.3.2) or,

~~3.1.3.2 1-1.3.2~~ A minimum of 30 semester hours in Agriculture to include at least one course in each of

the following areas: Agricultural Economics, Animal Science, Entomology, Agricultural Engineering, Agronomy, Plant Science, and Computer Science.

~~3.2~~ ~~1-2~~ ~~License II~~— Agricultural Specialist shall be required for any person engaged as an instructor in a program of specialized agricultural education such as Agricultural Mechanics, Horticulture, Agri-Business.

~~3.2.1~~ ~~1-2.1~~ Bachelor's degree from an regionally accredited college or university and,

~~3.2.2~~ ~~1-2.2~~ Professional Education

~~3.2.2.1~~ ~~1-2.2.1~~ A minimum of 24 semester hours to include Human Development, Methods of Teaching Agriculture, Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, ~~and student teaching at the secondary (7-12) level~~ and,

~~3.2.3~~ ~~1-2.3~~ Technical Agriculture

~~3.2.3.1~~ ~~1-2.3.1~~ A minimum of 15 semester hours of technical agriculture in the specialty area for which the applicant is being employed or,

~~3.2.3.2~~ ~~1-2.3.2~~ Two years of successful, full-time employment in an occupation directly related to the specialty area for which the applicant is being employed.

~~3.0 Licenses that may be issued for positions in this area include Standard and Limited Standard.~~

~~3.1 The Limited Standard license may be issued upon request of a Delaware public school district for a teacher employed for this position who meets the standards set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.~~

~~4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as an agriculture teacher after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.~~

~~322~~ ~~1522~~ Standard Certificate on Business Education Teacher

Effective July 1, 1993

~~1.0 The following shall be required for the Standard License for grades 9-1 and is valid in grades 5-8 in a middle level school. Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 Del.C. § 1220(a), for Business Education Teacher (required for grades 9-12, and valid in grades 5-8 in a middle level school).~~

~~2.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

~~2.1 The Limited Standard license may be issued upon request of a Delaware public school district for a teacher employed in this position who meets the standards set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.~~

Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 Del.C. §1220(a), the Department shall issue a standard certificate as a Business 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 ~~1-2~~ Professional Education

3.1.1 ~~1-2.1~~ Completion of an approved teacher preparation program in the area of Business Education or,

3.1.2 ~~1-2.2~~ A minimum of 27 semester hours to include Human Development, Methods of Teaching Basic Business Subjects, Methods of Teaching Business Information Systems, Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, ~~and student teaching at the secondary (7-12) level~~ and,

3.2 ~~1-3~~ Specific Teaching Field

3.2.1 ~~1-3.1~~ Completion of a teacher education program in the area of Business Education or,

3.2.2 ~~1-3.2~~ A minimum of 42 semester hours as specified below:

3.2.2.1 ~~1-3.2.1~~ Accounting 6 semester hours

3.2.2.2 ~~1-3.2.2~~ Document Formatting 3 semester hours

3.2.2.3 ~~1-3.2.3~~ Business Information Systems 3 semester hours

3.2.2.4 ~~1-3.2.4~~ Business Computer Software Applications 6 semester hours

3.2.2.5 ~~1-3.2.5~~ Electronic Office Procedures 3 semester hours

3.2.2.6 ~~1-3.2.6~~ Business Communications 3 semester hours

3.2.2.7 ~~1-3.2.7~~ Business Mathematics 3 semester hours

3.2.2.8 ~~1-3.2.8~~ Business Economics 3 semester hours

3.2.2.9 ~~1-3.2.9~~ Electives in Business 12 semester hours

3.2.3 ~~1-3.3~~ Alternative Certification of individuals with Business experience as a substitute for coursework in ~~1-3.2~~ 3.2.2.

3.2.3.1 ~~1-3.3.1~~ For each 4000 hours of business experience in a field appropriate to the course areas

listed above, credit for 3 semester hours of that coursework can be approved by the Department of Education for the purpose of certification.

3.2.3.2 ~~1-3-3-2~~ At a minimum, an individual in this situation will have to complete or verify completion of the 12 semester hours of elective coursework in Business (as well as the coursework in Professional Education) to obtain the Standard License Certificate.

3.3 ~~1-4~~ Endorsement for Teaching Information Systems and Services Business Education Courses in Vocational-Technical Schools shall be required of teachers in vocational-technical schools teaching information systems and services courses in business education programs.

3.3.1 ~~1-4-1~~—Standard License Certificate in Business Education and nine semester hours of elective coursework selected from the following:

3.3.1.1 ~~1-4-1-1~~ Principles of Business Data Processing

3.3.1.2 ~~1-4-1-2~~ COBOL Programming

3.3.1.3 ~~1-4-1-3~~ Data Base Systems

3.3.1.4 ~~1-4-1-4~~ Systems Analysis and Design

3.3.1.5 ~~1-4-1-5~~ Programming Language Principles

3.3.1.6 ~~1-4-1-6~~ RPG Programming.

3.3.2 ~~1-4-2~~ This elective coursework can satisfy part of the elective requirements specified in ~~1-4-1~~ 3.3.1.

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a business education teacher after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.

325 1525 Standard Certificate in English Teacher

Effective July 1, 1993

1.0 ~~The following shall be required for the Standard License in grades 9-12, and is valid in grades 7-8 in a middle level school. Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 Del.C. § 1220(a), for English Teacher (required for grades 9-12, and valid in grades 7-8 in a middle level school).~~

2.0 ~~Licenses that may be issued for this position include Standard and Limited Standard.~~

2.1 ~~The Limited Standard license may be issued upon request of a Delaware public school district for a teacher employed for this position who meets the standards set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.~~

Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 Del.C. §1220(a), the Department shall issue a standard certificate as an English 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 ~~1-1~~ Bachelor's degree from a regionally accredited college or university and,

3.2 ~~1-2~~ Professional Education

3.2.1 ~~1-2-1~~ Completion of an approved teacher education program in English or,

3.2.2 ~~1-2-2~~ A minimum of 27 semester hours to include Human Development, Methods of Teaching

3.2.3 ~~1-2-3~~ Secondary English (to include written composition and oral communication), Teaching of Reading, Identifying/Treating Exceptionalities, Effective Teaching Strategies,

3.2.4 ~~1-2-4~~ Multicultural Education, ~~and clinical experience/student teaching at the secondary (7-12) level and,~~

3.3 ~~1-3~~ Specific Teaching Field

3.3.1 ~~1-3-1~~ Completion of a major in English or,

3.3.2 ~~1-3-2~~ Completion of an approved teacher education program in English or,

3.3.3 ~~1-3-3~~ A minimum of 36 semester hours in English with at least one course in each of the following areas: Fundamentals of Speech, Advanced Written Composition, Linguistics, History of the English Language, Adolescent Literature, American Literature, English Literature, World Literature (other than American or English), Contemporary Literature.

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as an English teacher after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.

328 1528 Standard Certificate in Foreign Language Teacher Comprehensive

Effective July 1, 1996

1.0 ~~The following shall be required for the Standard License in grades K-12. Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 Del.C. §1220(a), for Foreign Language Teacher Comprehensive (Grades K-12).~~

~~2.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

~~2.1 The Limited Standard License may be issued upon the request of a Delaware public school district for a teacher employed for this position who meets the standards set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.~~

Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 Del. C. § 1220 (a), the Department shall issue a standard certificate as an foreign language teacher comprehensive 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 ~~4-1~~ Bachelor's degree from a regionally-accredited college or university and,

3.2 ~~4-2~~ Professional Education

3.2.1 ~~4-2-1~~ Completion of an approved teacher education program in Elementary and Secondary Foreign Language Teaching in the language to be taught or,

3.2.2 ~~4-2-2~~ A minimum of 27 semester hours to include Human Development, Methods of Teaching Foreign Language at the Elementary School Level, Methods of Teaching Foreign Language at the Secondary School Level (methods courses to include second language acquisition), Identifying and Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and student teaching at the appropriate levels (K-6 and 7-12) and,

3.3 ~~4-3~~ Specific Teaching Field

3.3.1 ~~4-3-1~~ Major in the language to be taught, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively* or,

3.3.2 ~~4-3-2~~ Completion of an approved teacher education program in the language to be taught, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively* or,

3.3.3 ~~4-3-3~~ A minimum of 30 semester hours above the intermediate level in the language to be taught, or 24 semester hours above the intermediate level in the

language to be taught if the teacher has earned 30 semester hours in another language, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively* or,

3.3.4 ~~4-3-4~~ Demonstrated fluency in the language to be taught as determined by passing scores on the PRAXIS II tests in that language (when validated) and an advanced plus score on the ACTFL Oral Proficiency Interview and verification of study (at least as extensive as that noted above) in a country or community in which the foreign language is spoken natively.*

* Persons not meeting the requirement for study abroad upon employment shall fulfill the requirement within three years. Through ~~4-3-4~~ 3.3.4 an individual can meet the requirement for study abroad by demonstrating that he/she grew up and was educated in a community (such as a China Town or Spanish Harlem) where the target language is the dominant language.

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a foreign language teacher - comprehensive after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.

329 1529 Standard Certificate on Foreign Language Teacher - Secondary

Effective July 1, 1993

~~1.0 The following shall be required for the Standard License in grades 9-12, and is valid in grades 5-8 in a middle level school. Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 Del. C. § 1220 (a), for Foreign Language Teacher - Secondary (required in grades 9-12, and valid in grades 5-8 in a middle level school).~~

~~2.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

~~2.1 The Limited Standard license may be issued upon the request of a Delaware public school district for a teacher employed for this position who meets the standards set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.~~

Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of

students.

3.0 In accordance with 14 Del. C. § 1220 (a), the Department shall issue a standard certificate as a foreign language teacher – secondary 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 ~~1-1~~ Bachelor's degree from a regionally accredited college or university and,

3.2 ~~1-2~~ Professional Education

3.2.1 ~~1-2.1~~ Completion of an approved teacher education program in the language to be taught or,

3.2.2 ~~1-2.2~~ A minimum of 24 semester hours to include Human Development, Methods of Teaching Foreign Language, Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and student teaching at the appropriate level (7-12) and,

3.3 ~~1-3~~ Specific Teaching Field

3.3.1 ~~1-3.1~~ Major in the language to be taught, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively* or,

3.3.2 ~~1-3.2~~ Completion of an approved teacher education program in the language to be taught, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively* or,

3.3.3 ~~1-3.3~~ Minimum of up to 30 semester hours above the intermediate level for the language to be taught, or 24 semester hours above the intermediate level in the language to be taught if the teacher holds 30 semester hours in another language, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively* or,

3.3.4 ~~1-3.4~~ Demonstrated fluency in the language to be taught as determined by passing scores on the PRAXIS II tests in that language (when validated) and, an advanced plus score on the ACTFL Oral Proficiency Interview and verification of study (at least as extensive as that noted above) in a country or community in which the foreign language is spoken natively.*

* Persons not meeting the requirement for study abroad upon employment shall fulfill the requirement within three years. Through ~~1-3.4~~ 3.3.4, an individual can meet the requirement for study abroad by demonstrating that he/she grew up and was educated in a community (such as a China Town or Spanish Harlem) where the target language is the dominant language.

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a foreign language teacher - secondary after that date must comply with the requirements set forth in 14 DE Admin.

Code 1516.

330 1533 Standard Certificate on Foreign Language Teacher - Elementary

Effective July 1, 1996

1.0 ~~The following shall be required for the Standard License in grades K-6, and is valid in grades 7-8 in a middle level school. Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 Del. C. § 1220 (a), for Foreign Language Teacher – Elementary (required in grades K-6, and valid in grades 7-8 in a middle level school).~~

2.0 ~~Licenses that may be issued for this position include Standard and Limited Standard.~~

2.1 ~~The Limited Standard license may be issued upon request of a Delaware public school district for a teacher employed for this position and certifiable as an elementary teacher or as a secondary teacher in the language to be taught as in 1.2.2 and 1.2.3 and,~~

2.1.1 ~~Within 12 semester hours of meeting all course requirements in 1.2 and 1.3 and/or needing the student teaching or one year of teaching in elementary foreign languages.~~

2.2 ~~The Limited Standard license may be issued upon request of a Delaware public school district for a teacher employed for this position and not otherwise certifiable as an elementary teacher or as a secondary teacher in the language to be taught as in 1.2.4 and,~~

2.2.1 ~~Within 12 semester hours of meeting all course requirements in 1.2 and 1.3 or needing only the student teaching or one year of teaching in elementary foreign languages.~~

Definitions: 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 used.

“Standard certificate” means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 Del.C. § 1220 (a), the Department shall issue a standard certificate as a foreign language teacher – elementary 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 ~~1-1~~ Bachelor's degree from a regionally-

accredited college or university and,

3.2 ~~4-2~~ Professional Education

3.2.1 ~~4-2-1~~ Completion of an approved teacher education program in Elementary Education/Foreign Language in the language to be taught or,

3.2.2 ~~4-2-2~~ Completion of an approved teacher education program in elementary education and,

3.2.2.1 ~~4-2-2-1~~ A minimum of 6 semester hours in foreign language education to include Methods of Teaching Foreign Language at the Elementary School Level and Second Language Acquisition and,

3.2.2.2 ~~4-2-2-2~~ Demonstrated knowledge of the culture in which the language is spoken natively including significant personal connection with that culture through life or work experience or appropriate coursework in the culture and,

4-2-2-3 ~~Student teaching or one year of verified, successful, full-time experience teaching foreign language at the K-6 level or,~~

3.2.3 ~~4-2-3~~ Completion of an approved secondary teacher education program in the language to be taught and,

3.2.3.1 ~~4-2-3-1~~ A minimum of 6 semester hours in foreign language education to include Methods of Teaching Foreign Language at the Elementary School Level and Second Language acquisition and,

4-2-3-2 ~~Student teaching or one year of verified, successful, full-time experience teaching foreign language at the K-6 level or,~~

3.2.3.2 ~~4-2-3-2~~ A minimum of 24 semester hours to include Child/Human Development, Methods of Teaching Foreign Language at the Elementary School Level including Second Language Acquisition, Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and ~~student teaching foreign language at the K-6 level and,~~

3.3 ~~4-3~~ Specific Teaching Field

3.3.1 ~~4-3-1~~ Major in the language to be taught, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively* or,

3.3.2 ~~4-3-2~~ Completion of an approved teacher education program in the language to be taught, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively* or,

3.3.3 ~~4-3-3~~ A minimum of 30 semester hours above the intermediate level in the language to be taught, or 24 semester hours above the intermediate level in the language to be taught if the teacher has earned 30 semester hours in another language, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively* or,

3.3.4 ~~4-3-4~~ Demonstrated fluency in the

language to be taught as determined by passing scores on the PRAXIS II tests in that language (when validated) and an advanced plus score on the ACTFL Oral Proficiency Interview and verification of study (at least as extensive as that noted above) in a country or community in which the foreign language is spoken natively*.

* Persons not meeting the requirement for study abroad upon employment shall fulfill the requirement within three years. Through ~~4-3-4~~ 3.3.4, an individual can meet the requirement for study abroad by demonstrating that he/she grew up and was educated in a community (such as a China Town or Spanish Harlem) where the target language is the dominant language.

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a foreign language teacher - elementary after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.

335 1534 Standard Certificate in Mathematics Teacher - Secondary

Effective July 1, 1993

1.0 ~~The following shall be required for the Standard License. Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 Del. C. § 1220 (a), for Mathematics Teacher -- Secondary (required for grades 7-12, and valid in grades 5-6 in a middle level school.~~

2.0 ~~Licenses that may be issued for this position include Standard and Limited Standard.~~

2.1 ~~The Limited Standard license may be issued upon the request of a Delaware school district for a teacher employed in one of these positions who meets the standards set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.~~

Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 Del. C. § 1220 (a), the Department shall issue a standard certificate as a mathematics teacher -- secondary 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 ~~4.1~~ Bachelor's degree from an regionally accredited college or university and,

3.2 ~~4.2~~ Professional Education

3.2.1 ~~4.2.1~~ Completion of an approved teacher education program in Mathematics or,

3.2.2 ~~4.2.2~~ Minimum of 24 semester hours including Human Development, Methods of Teaching Secondary Mathematics (including the use of technology in the classroom), Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and student teaching at the appropriate level (7-12) and,

3.3 ~~4.3~~ Specific Teaching Field

1.3.1 ~~Comprehensive Mathematics is required in grades 9-12, and is valid to teach math in a middle level school.~~

3.3.1 ~~4.3.1.1~~ Major in Mathematics or,

3.3.2 ~~4.3.1.2~~ Completion of an approved teacher education program in Mathematics or,

3.3.3 ~~4.3.1.3~~ Minimum of 36 semester hours in mathematics to include: Calculus, with analytical geometry (2 courses), Advanced Geometry, Linear Algebra, Abstract Algebra, Discrete Math, Statistics and Probability, Computer Science, Mathematical Models and Applications and History of Math and/or Science.

1.3.2 ~~Middle-Level Mathematics is required in grades 7 and 8 and recommended in grades 5 and 6~~

1.3.2.1 ~~Major in mathematics or,~~

1.3.2.2 ~~Completion of an approved teacher education program in Mathematics or,~~

1.3.2.3 ~~Minimum of 24 semester hours in mathematics to include: Calculus (two courses), Geometry, Finite or Discrete Math, Statistics and Probability and Mathematical Models and Applications.~~

4.0 ~~This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a mathematics teacher -- secondary after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.~~

337 1537 Standard Certificate on Bilingual Teacher (Spanish) Secondary

Effective November 11, 2000

1.0 ~~The following shall be required for a Standard License for teachers in Secondary Bilingual Education Programs. Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 Del. C. § 1220 (a), for Bilingual Teacher (Spanish) - Secondary.~~

2.0 ~~Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 ~~In accordance with 14 Del. C. § 1220 (a), the Department shall issue a standard certificate as a bilingual teacher (Spanish) - Secondary 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 ~~4.1~~ A Bachelor's degree from a regionally accredited college or university and completion of a teacher education program in Bilingual Education at the Secondary Level (grades 7-12) in the Language area of Spanish.

4.0 ~~2.0~~ If the candidate does not meet the requirements in ~~4.0~~ 3.0 the following shall apply:

4.1 ~~2.1~~ Complete the required coursework in a teacher education program at the secondary level (grades 7-12) in a content area such as Biology, English or Special Education plus the following:

4.1.1 ~~2.1.1~~ Verification of language proficiency in Spanish as demonstrated by one of the two options below:

4.1.1.1 ~~2.1.1.1~~ Completion of a minimum of 15 semester hours from a regionally accredited college in the language area of Spanish. This coursework shall be at or above the intermediate level; and Demonstration of oral proficiency in the language area of Spanish by scoring 165 on the PRAXIS II Test Module: Productive Language (0192); or

4.1.1.2 ~~2.1.1.2~~ Demonstration of content knowledge and oral proficiency in the language area of Spanish by meeting the appropriate qualifying scores on the PRAXIS II Test Modules as follows: 159 on Spanish: Content and Knowledge (0191) and 165 on Spanish: Productive Language (0192); and

4.1.2 ~~2.1.2~~ Demonstration of English speaking ability, when English is not the first language, by scoring 50 on the TOEFL: Test of Spoken English (TSE) and

4.1.3 ~~2.1.3~~ In addition to ~~2.1.1~~ 4.1.1 and ~~2.1.2~~ 4.1.2 all candidates must meet the following requirements:

4.1.3.1 ~~2.1.3.1~~ Completion of coursework as indicated:

4.1.3.1.1 ~~2.1.3.1.1~~ 3 semester hours Methods of Teaching English as a Second Language;

4.1.3.1.2 ~~2.1.3.1.2~~ 3 semester hours Second Language Testing;

4.1.3.1.3 ~~2.1.3.1.3~~ 3 semester hours

Remedial Reading (English); or 3 semester hours Remedial Reading (Spanish); and

4.1.3.2 2.1.3.2 Verification of knowledge of the Spanish culture as demonstrated by:

4.1.3.2.1 2.1.3.2.1—A three (3) semester hour course in Spanish culture; or Documentation of personal interaction with the target community via study abroad, work experience, formative experience, etc.; and

2.1.3.3 Completion of a clinical experience in a bilingual setting in grades 7-12; or Upon the completion of all requirements in 2.0, verification of one year of prior approved, full-time, successful, experience teaching in a secondary level bilingual Spanish program, "in lieu of student teaching."

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

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

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

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

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a bilingual teacher (Spanish) - Secondary after that date must comply with the requirements set forth in 14 **DE Admin. Code** 1516.

338 1539 Standard Certificate in Social Studies Teacher

Effective July 1, 1993

1.0 The following shall be required for the Standard license in grades 9-12 and is valid in grades 5-8 in a middle school: Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 Del. C. § 1220 (a), for Social Studies Teacher (required for grades 9-12, and valid in grades 5-8 in a middle level school).

2.0 Licenses that may be issued for this position include Standard and Limited Standard.

2.1 The Limited Standard license may be issued upon the request of a public school district for a teacher employed for this position who meets the standards set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.

Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 **Del.C.** § 1220 (a), the Department shall issue a standard certificate as a social studies 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 1-1 Bachelor's degree from an regionally accredited college or university and,

3.2 1-2 Professional Education

3.2.1 1-2.1 Completion of an approved teacher education program in the areas of Social Studies or History or,

3.2.2 1-2.2 A minimum of 24 semester hours to include Human Development, Methods of Teaching Secondary Social Studies, Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and student teaching at the secondary (7-12) level and,

3.3 1-3 Specific Teaching Field

3.3.1 1-3.1 A major in one of the following content areas: History, Geography, Political Science, or Economics and a minimum of 9 semester hours in each of the other 3 content areas or,

3.3.2 1-3.2 A major in Social Studies with a concentration of at least 21 semester hours in History, Geography, Political Science, or Economics and a minimum of 9 semester hours in each of the other 3 content areas or,

3.3.3 1-3.3 A total of 57 semester hours to include courses in at least 5 of the 7 areas listed below, with a concentration of 48 semester hours in areas 1 through 4 which includes a minimum of 6 semester hours in each of areas 1-4. Area 1: History - coursework must include at least a one semester course (basic survey) in United States History

and a one semester course in World History (basic survey). Area 2: Geography - coursework must include at least a one semester course in world regional geography. Area 3: Political Science - must include a one semester course in United States Government. Area 4: Economics Area 5: Anthropology Area 6: Sociology Area 7: Psychology

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a social studies teacher after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.

~~343~~ 1543 Standard Certification Art Teacher Comprehensive

Effective July 1, 1993

1.0 The following is required for the Standard License and is valid for grades K-12. Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 Del. C. § 1220 (a), for Art Teacher Comprehensive (grades K-12).

2.0 Licenses that may be issued for this position include Standard and Limited Standard

2.1 The limited Standard license may be issued upon the request of a Delaware school district for a teacher employed in this position who meets the standards set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.

Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 Del. C. § 1220 (a), the Department shall issue a standard certificate as a art teacher comprehensive 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 ~~4-1~~ Bachelor's degree from an regionally accredited college or university and,

3.2 ~~4-2~~ Professional Education

3.2.1 ~~4-2-1~~ Completion of an approved teacher education program in Elementary and Secondary Art or,

3.2.2 ~~4-2-2~~ Minimum of 27 semester hours to include Human Development, Methods of Teaching Art/

Elementary Level, Methods of Teaching Art/Secondary Level, Art for Special Education, Effective Teaching Strategies, Multicultural Education, and ~~student teaching at the elementary (1-6) and secondary (7-12) levels and,~~

3.3 ~~4-3~~ Specific Teaching Field

3.3.1 ~~4-3-1~~ Major in Art or,

3.3.2 ~~4-3-2~~ Completion of an approved teacher education program in elementary and secondary art or,

3.3.3 ~~4-3-3~~ Minimum of 36 semester hours including a minimum of two courses in each of the following areas: Drawing, Painting, Design and Art History-Aesthetics, Graphics, Printmaking, and Related Processes and Three Dimensional Arts and Crafts including 1 course in Ceramics.

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as an art teacher comprehensive after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.

~~344~~ 1544 Standard Certification Art Teacher - Elementary

Effective July 1, 1993

1.0 The following shall be required for the Standard License in grades K-6 in an elementary school and is valid in grades 5-8 in a middle-level school. Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 Del. C. § 1220 (a), for Art Teacher - Elementary (required in grades K-6 in an elementary school and valid in grades 5-8 in a middle level school).

2.0 Licenses that may be issued for this position include Standard and Limited Standard

2.1 The limited Standard license may be issued upon the request of a Delaware school district for a teacher employed in this position who meets the standards set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.

Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 Del. C. § 1220 (a), the Department shall issue a standard certificate as a art teacher elementary 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 ~~4-1~~ Bachelor's degree from an regionally accredited college or university and,

3.2 ~~4-2~~ Professional Education

3.2.1 ~~4-2-1~~ Completion of an approved teacher education program in Elementary Art or,

3.2.2 ~~4-2-2~~ Minimum of 24 semester hours to include Human Development, Methods of Teaching Art/Elementary Level, Art for Special Education, Effective Teaching Strategies, Multicultural Education, and ~~student teaching at the elementary (1-8) level and,~~

3.3 ~~4-3~~ Specific Teaching Field

3.3.1 ~~4-3-1~~ Major in Art or,

3.3.2 ~~4-3-2~~ Completion of an approved teacher education program in Elementary Art or,

3.3.3 ~~4-3-3~~ Minimum of 36 semester hours including a minimum of two courses in each of the following areas: Drawing, Painting, Design, Art History Aesthetics, Graphics, Printmaking, and Related Processes, Three Dimensional Arts and Crafts including 1 course in Ceramics.

4.0 ~~This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as an art teacher – elementary after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.~~

~~345~~ 1545 Standard Certificate on Art Teacher - Secondary

Effective July 1, 1993

1.0 ~~The following shall be required for the Standard License in grades 9-12 and is valid in grades 5-8 in a middle level school. Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 Del. C. § 1220 (a), for Art Teacher –Secondary (required in grades 9-12 and valid in grades 5-8 in a middle level school).~~

2.0 ~~Licenses that may be issued for this position include Standard and Limited Standard~~

2.1 ~~The limited Standard license may be issued upon the request of a Delaware school district for a teacher employed in this position who meets the standards set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.~~

Definitions: 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 used.

"**Standard certificate**" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 ~~In accordance with 14 Del. C. § 1220 (a), the Department shall issue a standard certificate as a art teacher secondary 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 ~~4-1~~ Bachelor's degree from an regionally accredited college or university and,

3.2 ~~4-2~~ Professional Education

3.2.1 ~~4-2-1~~ Completion of an approved teacher education program in Secondary Art or,

3.2.2 ~~4-2-2~~ Minimum of 24 semester hours to include Human Development, Methods of Teaching Art/Secondary Level, Art for Special Education, Effective Teaching Strategies, Multicultural Education, and ~~student teaching at the secondary (7-12) level and,~~

3.3 ~~4-3~~ Specific Teaching Field

3.3.1 ~~4-3-1~~ Major in Art or,

3.3.2 ~~4-3-2~~ Completion of an approved teacher education program in Secondary Art or,

3.3.3 ~~4-3-3~~ Minimum of 36 semester hours including a minimum of two courses in each of the following areas: Drawing, Painting, Design, Art History Aesthetics, Graphics, Printmaking, and Related Processes, and Three Dimensional Arts and Crafts, including 1 course in Ceramics.

4.0 ~~This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as an art teacher secondary after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.~~

~~346~~ 1546 Standard Certificate on Health Education Teacher

Effective July 1, 1993

1.0 ~~The following shall be required for the Standard License in grades 9-12 and is valid in grades 5-8 in a middle level school. 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 9-12 and valid in grades 5-8 in a middle level school).~~

2.0 ~~Licenses that may be issued for this position include Standard and Limited Standard~~

2.1 ~~The limited Standard license may be issued upon the request of a Delaware school district for a teacher employed in this position who meets the standards set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.~~

Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 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 ~~1-1~~ Bachelor's degree from a regionally accredited college or university and,

3.2 ~~1-2~~ Professional Education

3.2.1 ~~1-2-1~~ Completion of an approved teacher preparation program in the area of Health Education or,

3.2.2 ~~1-2-2~~ Minimum of 24 semester hours to include Methods of Teaching Health, Human Development, Clinical and/or Field Experience including Effective Teaching Strategies, Identifying/Treatment of Exceptionalities, Multicultural Education, and ~~Student Teaching at the appropriate level: middle (5-8) and/or secondary (9-12) and,~~

3.3 ~~1-3~~ Specific Teaching Field

3.3.1 ~~1-3-1~~ Major in Health Education or,

3.3.2 ~~1-3-2~~ Completion of program in teacher education in the area of Health Education or,

3.3.3 ~~1-3-3~~ 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.

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate an a health education teacher after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.

348 1548 Standard Certificate -- Music Teacher - Comprehensive

Effective July 1, 1993

1.0 The following shall be required for the Standard License for grades K-12. Content: This regulation shall

apply to the requirements for a standard certificate, pursuant to 14 Del. C. § 1220 (a), for Music Teacher - Comprehensive (grades K-12).

2.0 Licenses that may be issued for this position include Standard and Limited Standard

2.1 The limited Standard license may be issued upon the request of a Delaware school district for a teacher employed in this position who meets the standards set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.

Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 Del.C. §1220 (a), the Department shall issue a standard certificate as a music teacher -- comprehensive 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 ~~1-1~~ Bachelor's degree from a regionally accredited college or university; and

3.2 ~~1-2~~ Professional Education

3.2.1 ~~1-2-1~~ Completion of an approved comprehensive teacher education program in Music or,

3.2.2 ~~1-2-2~~ Minimum of 27 semester hours to include Human Development, Methods of Teaching Music/Elementary Level, Methods of Teaching Music/Secondary Level, Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and ~~student teaching at the elementary (1-6) and secondary (7-12) levels and,~~

3.3 ~~1-3~~ Specific Teaching Field

3.3.1 ~~1-3-1~~ Major in Music or,

3.3.2 ~~1-3-2~~ Completion of an approved teacher education program in Elementary and Secondary Music or,

3.3.3 ~~1-3-3~~ Minimum of 36 semester hours including coursework in Music Theory, Music Literature, and Musical Performance.

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a music teacher-comprehensive after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.

349 1549 Standard Certificate Music Teacher - Elementary

Effective July 1, 1993

1.0 ~~The following shall be required for the Standard License Requirements for the Standard License in grades K-6 in an elementary school and is valid in grades 5-8 in a middle level school.~~ Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 **Del. C. § 1220** (a), for Music Teacher - Elementary (Required for grades K-6 and valid in grades 5-8 in a middle level school).

2.0 Licenses that may be issued for this position include Standard and Limited Standard

2.1 The limited Standard license may be issued upon the request of a Delaware school district for a teacher employed in this position who meets the standards set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.

Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 **Del. C. § 1220** (a), the Department shall issue a standard certificate as a music teacher -- elementary 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 ~~4-1~~ Bachelor's degree from a regionally accredited college or university and,

3.2 ~~4-2~~ Professional Education

3.2.1 ~~4-2-1~~ Completion of an approved teacher education program in Elementary Music or,

3.2.2 ~~4-2-2~~ Minimum of 24 semester hours to include Human Development, Methods of Teaching Music/Elementary Level, Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and student teaching at the elementary (1-8) level and,

3.3 ~~4-3~~ Specific Teaching Field

3.3.1 ~~4-3-1~~ Major in Music or,

3.3.2 ~~4-3-2~~ Completion of an approved teacher education program in Elementary Music or,

3.3.3 ~~4-3-3~~ Minimum of 36 semester hours

including coursework in Music Theory, Music Literature, and Musical Performance.

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a music teacher-elementary after that date must comply with the requirements set forth in 14 **DE Admin. Code 1516**.

350 1545 Standard Certificate Music Teacher - Secondary

Effective July 1, 1993

1.0 The following shall be required for a Standard License in grades 9-12 and is valid in grades 5-8 in a middle level school. Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 **Del. C. § 1220** (a), for Music Teacher - Secondary (Required for grades 9-12 and valid in grades 5-8 in a middle level school).

2.0 Licenses that may be issued for this position include Standard and Limited Standard

2.1 The limited Standard license may be issued upon the request of a Delaware school district for a teacher employed in this position who meets the standards set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.

Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 **Del. C. § 1220** (a), the Department shall issue a standard certificate as a music teacher -- secondary 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 ~~4-1~~ Bachelor's degree from a regionally accredited college or university and,

3.2 ~~4-2~~ Professional Education

3.2.1 ~~4-2-1~~ Completion of an approved teacher education program in Secondary Music or,

3.2.2 ~~4-2-2~~ Minimum of 24 semester hours to include Human Development, Methods of Teaching Music/Secondary Level, Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and

~~student teaching at the secondary (7-12) level and,~~
~~3.2.3 4-2-3 Specific Teaching Field~~
~~3.2.3.1 4-2-3.1 Major in Music or,~~
~~3.2.3.2 4-2-3.2 Completion of an approved~~
~~teacher education program in Secondary Music or,~~
~~3.2.3.3 4-2-3.3 Minimum of 36 semester~~
~~hours including coursework in Music Theory, Music~~
~~Literature, and Musical Performance.~~

~~4.0 This regulation shall be effective through June 30,~~
~~2006 only. Applicants who apply for a standard certificate~~
~~as a music teacher-secondary after that date must comply~~
~~with the requirements set forth in 14 DE Admin. Code~~
~~1516.~~

351 1551 Standard Certificate in Physical Education
Teacher –Comprehensive
 Effective July 1, 1993

~~1.0 The following shall be required for the Standard~~
~~License for grades K-12. Content: This regulation shall~~
~~apply to the requirements for a standard certificate, pursuant~~
~~to 14 Del. C. § 1220 (a), for Physical Education Teacher~~
~~Comprehensive (Grades K-12).~~

~~2.0 Licenses that may be issued for this position~~
~~include Standard and Limited Standard~~

~~2.1 The limited Standard license may be issued upon the~~
~~request of a Delaware school district for a teacher employed~~
~~in this position who meets the standards set forth in 2.3 of~~
~~regulation 301 General Regulations for Certification of~~
~~Professional Public School Personnel.~~

~~Definitions: 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~~
~~used.~~

~~"Standard certificate" means a credential~~
~~issued to certify that an educator has the prescribed~~
~~knowledge, skill, and/or education to practice in a particular~~
~~area, teach a particular subject, or teach a category of~~
~~students.~~

~~3.0 In accordance with 14 Del. C. § 1220 (a), the~~
~~Department shall issue a standard certificate as a physical~~
~~education teacher comprehensive 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 4-1 Bachelor's degree from an regionally~~
~~accredited college or university and,~~

~~3.2 4-2 Professional Education~~

~~3.2.1 4-2.1 Completion of an approved teacher~~

~~preparation program in Physical Education (must include K-~~
~~12) or,~~

~~3.2.2 4-2.2 Minimum of 27 semester hours to~~
~~include Human Development, Methods of Teaching Physical~~
~~Education in two of the following three areas: K-4, 5-8, 9-~~
~~12, Special/Adapted Physical Education, Effective Teaching~~
~~Strategies, Multicultural Education, and student teaching at~~
~~both the K-4 and 9-12 levels and,~~

~~3.3 4-3 Specific Teaching Field~~

~~3.3.1 4-3.1 Major in Physical Education or,~~

~~3.3.2 4-3.2 Completion of an approved teacher~~
~~preparation program in Physical Education, K-12 or,~~

~~3.3.3 4-3.3 Minimum of 45 semester hours~~
~~including coursework in the following areas of Physical~~
~~Education:~~

~~3.3.3.1 4-3.3.1 Foundations and Theory~~
~~(15 semester hours): History, Philosophy, Administration,~~
~~Program Planning, Concepts of Play, Coaching Strategy and~~
~~Techniques, Evaluation~~

~~3.3.3.2 4-3.3.2 Movement Experience*~~
~~(18 semester hours): Individual Sports, Dual Sports, Team~~
~~Sports, Rhythms, Aquatics, Low Organization or~~
~~Cooperation Games, Gymnastics, Recreation and Leisure~~
~~Activities, Outdoor Education, Adventure Activity, Physical~~
~~Conditioning~~

~~(*Must include two courses in Elementary~~
~~School Physical Education Activities)~~

~~3.3.3.3 4-3.3.3 Science (12 semester~~
~~hours): Anatomical, Physiological, Biomechanical,~~
~~Kinesiological, Exercise Performance, Technical~~
~~Applications (including computers)~~

~~4.0 This regulation shall be effective through June 30,~~
~~2006 only. Applicants who apply for a standard certificate~~
~~as a physical education teacher – comprehensive after that~~
~~date must comply with the requirements set forth in 14 DE~~
~~Admin. Code 1516.~~

352 1552 Standard Certificate in Physical Education
Teacher Elementary
 Effective July 1, 1993

~~1.0 The following shall be required for a Standard~~
~~License in grades K-6 in an elementary school, and is valid~~
~~in grades 7-8 in a middle level school. Content: This~~
~~regulation shall apply to the requirements for a standard~~
~~certificate, pursuant to 14 Del. C. § 1220 (a), for Physical~~
~~Education Teacher Elementary (Required for grades K-6 in~~
~~an elementary school and valid in grades 7-8 in a middle~~
~~level school).~~

~~2.0 Licenses that may be issued for this position~~
~~include Standard and Limited Standard~~

~~2.1 The limited Standard license may be issued upon the~~
~~request of a Delaware school district for a teacher employed~~
~~in this position who meets the standards set forth in 2.3 of~~

~~regulation 301 General Regulations for Certification of Professional Public School Personnel.~~

Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 **Del. C.** § 1220 (a), the Department shall issue a standard certificate as a physical education teacher elementary 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 ~~1-1~~ Bachelor's degree from an regionally accredited college or university and,

3.2 ~~1-2~~ Professional Education

3.2.1 ~~1-2-1~~ Completion of a program in teacher education in Physical Education (must include K-4) or,

3.2.2 ~~1-2-2~~ Minimum of 24 semester hours to include Human Development, Methods of Teaching Physical Education/Elementary Level, and Methods of Teaching Physical Education at one of the following levels: 5-8 or 9-12; Special/Adapted Physical Education, Effective Teaching Strategies, Multicultural Education, and ~~student teaching at the elementary level (K-4 and 5-8) and,~~

3.3 ~~1-3~~ Specific Teaching Field

3.3.1 ~~1-3-1~~ Major in Physical Education or,

3.3.2 ~~1-3-2~~ Completion of an approved teacher preparation program in Physical Education, K-4 or,

3.3.3 ~~1-3-3~~ Minimum of 45 semester hours including coursework in the following areas of Physical Education:

3.3.3.1 ~~1-3-3-1~~ Foundations and Theory (15 semester hours): History, Philosophy, Administration, Program Planning, Concepts of Play, Coaching Strategy and Techniques, Evaluation

3.3.3.2 ~~1-3-3-2~~ Movement Experience* (18 semester hours) Individual Sports, Dual Sports, Team Sports, Elementary Rhythms/Dance, Aquatics, Low Organization or Cooperation Games, Movement/Tumbling, Gymnastics Apparatus, Recreation and Leisure Activities, Health-related Fitness (*Must include two courses in Elementary School Physical Education Activities)

3.3.3.3 ~~1-3-3-3~~ Science (12 semester hours): Anatomical, Physiological, Biomechanical,

Kinesiological, Exercise Performance, Technical Applications (including computers)

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a physical education teacher elementary after that date must comply with the requirements set forth in 14 **DE Admin. Code** 1516.

353 1553 Standard Certificate on Physical Education Teacher Secondary

Effective July 1, 1993

1.0 The following shall be the required for the Standard License in grades 9-12, and valid in grades 5-8 in a middle level school. Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 **Del. C.** § 1220 (a), for Physical Education Teacher Secondary (Required in grades 9-12 and valid in grades 5-8 in a middle level school).

2.0 Licenses that may be issued for this position include Standard and Limited Standard

2.1 The limited Standard license may be issued upon the request of a Delaware school district for a teacher employed in this position who meets the standards set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.

Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 **Del. C.** § 1220 (a), the Department shall issue a standard certificate as a physical education teacher secondary 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 ~~1-1~~ Bachelor's degree from an regionally accredited college or university and,

3.2 ~~1-2~~ Professional Education

3.2.1 ~~1-2-1~~ Completion of a teacher preparation program in Physical Education (must include 7-12) or,

3.2.2 ~~1-2-2~~ Minimum of 24 semester hours to include Human Development, Methods of Teaching Physical Education/Secondary Level, Special/Adapted Physical

Education, Effective Teaching Strategies, Multicultural Education, and student teaching at the secondary level (5-8 and 9-12) and;

3.3 ~~4-3~~ Specific Teaching Field

3.3.1 ~~4-3.1~~ Major in Physical Education or,

3.3.2 ~~4-3.2~~ Completion of an approved teacher preparation program in Physical Education, 9-12 or,

3.3.3 ~~4-3.3~~ Minimum of 45 semester hours including coursework in the following areas of Physical Education:

3.3.3.1 ~~4-3.3.1~~ Foundations and Theory (15 semester hours): History, Philosophy, Administration, Program Planning, Concepts of Play, Coaching Strategy and Techniques, Evaluation.

3.3.3.2 ~~4-3.3.2~~ Movement Experience* (18 semester hours): Individual Sports, Dual Sports, Team Sports, Elementary Rhythms/Dance, Aquatics, Low Organization or Cooperation Games, Basic Movement/Tumbling, Gymnastics Apparatus, Recreation and Leisure Activities, Health-related Fitness. (Must include two courses in Elementary School Physical Education Activities)

3.3.3.3 ~~4-3.3.3~~ Science (12 semester hours): Anatomical, Physiological, Biomechanical, Kinesiological, Exercise Performance, Technical Applications (including computers).

4.0 ~~This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a physical education teacher secondary after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.~~

354 1554 Standard Certificate on Reading Specialist

Effective July 1, 1993

1.0 ~~The following shall be required for a Standard License for assignment of a Chapter I reading teacher or reading resource teacher, or as a building coordinator working with teachers in reading and communication skills. Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 Del. C. § 1220 (a), for Reading Specialist.~~

2.0 ~~The following shall be required for the Limited Standard License (non renewable)~~

2.1 ~~The Limited Standard License may be issued for a period of one year (however, may be extended up to three years contingent upon satisfactory annual progress towards completion of the certification requirements) at the request of a Delaware public school district to a person who meets the requirements listed below, and who is employed as a Reading Specialist to allow for the completion of the requirements for the Standard License as listed in 1.0.~~

2.1.1 ~~Bachelor's degree from an accredited college and,~~

2.1.2 ~~Base Standard teaching license and,~~

2.1.3 ~~minimum of three years of successful teaching experience with at least two years in the K-12 classroom and,~~

2.1.4 ~~Nine semester hours of graduate level courses in reading, including~~

2.1.4.1 ~~Methods in Process Writing/ 3 semester hours Language Arts~~

2.1.4.2 ~~Assessment and Correction of 3 semester hours Reading Difficulties~~

2.1.4.3 ~~Practicum in Reading 3 semester hours~~

Definitions: ~~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 used.~~

"Standard certificate" ~~means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.~~

3.0 ~~Licenses that may be issued for this position include Standard and Limited Standard. In accordance with 14 Del.C. §1220 (a), the Department shall issue a standard certificate as a reading specialist 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 ~~4-1 Degree~~

3.1.1 ~~4-1.1 Master's degree (or a Bachelor's degree plus 30 graduate credits) from an regionally accredited college or university and,~~

3.2 ~~4-2 Experience~~

3.2.1 ~~4-2.1 Minimum of three years of successful teaching experience with at least two years in the K-12 classroom and,~~

3.3 ~~4-3 Specialized Professional Preparation~~

3.3.1 ~~4-3.1 Minimum of 21 semester hour credits in graduate level reading courses unless otherwise specified:~~

3.3.1.1 ~~4-3.1.1 Language Development, graduate or undergraduate, 3 semester hours~~

3.3.1.2 ~~4-3.1.2 Methods in Process Writing/Language Arts, 3 semester hours~~

3.3.1.3 ~~4-3.1.3 Assessment and Correction of Reading Difficulties, 6 semester hours.~~

3.3.1.4 ~~4-3.1.4 Practicum in Reading to include application of assessment and correction strategies, parent involvement strategies, and experience in working as a reading resource person with staff, 3 semester hours.~~

~~3.3.1.5~~ ~~1-3-1-5~~ Reading in the Content Areas, graduate or undergraduate, 3 semester hours.

~~3.3.1.6~~ ~~1-3-1-6~~ Children's or Adolescent Literature Across the Curriculum, 3 semester hours.

~~3.3.2~~ ~~1-3-2~~ Minimum of three graduate semester hours from among the following: Seminar in Reading Research, Emergent Literacy, Teaching English as a Second Language or Children's or Adolescent Literature.

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a reading specialist after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.

~~355~~ ~~1555~~ Standard Certificate in Early Care And Education Teacher (Ages 0 - K)

Effective July 1, 1994

~~1.0 The following shall be required for the Standard License and is not valid for any assignment other than kindergarten in the public school setting. Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 Del. C. § 1220 (a), for Early Care and Education Teacher (ages 0-K).~~

~~2.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

~~2.1 The Limited Standard License may be issued upon the request of a Delaware public school district for a teacher employed for this position who meets the standards as set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.~~

Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 Del.C. §1220(a), the Department shall issue a standard certificate as an early care and 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 ~~1-1~~ Degree Requirement

3.1.1 ~~1-1-1~~ Bachelor's degree from a regionally accredited college or university in any field and 45 semester hours of general content courses. These courses may be part

of the Bachelor's degree, but if not, then the courses shall be taken in addition to the degree.

3.1.1.1 ~~1-1-1-1~~ Nine semester hours of English including an upper level composition course and a literature course

3.1.1.2 ~~1-1-1-2~~ Twelve semester hours of science including one course each in Life/Environmental, Earth/Space and Physical Sciences

3.1.1.3 ~~1-1-1-3~~ Nine semester hours of social sciences including World History, American History and Geography.

3.1.1.4 ~~1-1-1-4~~ Nine semester hours of Mathematics

3.1.1.6 ~~1-1-1-5~~ Six semester hours of Fine Arts

3.1.2 ~~1-1-2~~ Or, a Bachelor's degree from a regionally accredited college in the field of Education and,

3.2 ~~1-2~~ Professional Education

3.2.1 ~~1-2-1~~ An approved program in Early Care and Education, Birth to Kindergarten or,

3.2.2 ~~1-2-2~~ An approved program in Primary Education which includes 15 semester hours of coursework, or the equivalent thereof, specific to the birth to kindergarten child and including instruction in each of the following areas:

3.2.2.1 ~~1-2-2-1~~ Children's Growth, Development and Learning (ages 0-3 years);

3.2.2.2 ~~1-2-2-2~~ Assessment of Young Children;

3.2.2.3 ~~1-2-2-3~~ Language Development and Early Literacy in Young children;

3.2.2.4 ~~1-2-2-4~~ Family Development and Service Systems for Children and Families;

3.2.2.5 ~~1-2-2-5~~ Three additional semester hours taken in one of the four areas above or in another area specifically related to care giving for children ages 0-3 or,

3.2.3 ~~1-2-3~~ A minimum of 60 semester hours of coursework to include a total of 45 semester hours of specific courses to be taken in addition to the degree if not a part of the degree program and to include the following courses as specified.

3.2.3.1 ~~1-2-3-1~~ Children's Growth, Development, and Learning (6 semester hours);

3.2.3.2 ~~1-2-3-2~~ Identifying and Teaching Children with Exceptional Needs (6 semester hours);

3.2.3.3 ~~1-2-3-3~~ Parent, Family Community Interactions (3 semester hours);

3.2.3.4 ~~1-2-3-4~~ Early Childhood Curriculum Development, Content, and Implementation (15 semester hours);

3.2.3.5 ~~1-2-3-5~~ Professional Issues in Early Childhood Education (3 semester hours);

~~1-2-3-6 Over the course of the teacher education core of study and prior to student teaching, a~~

minimum of 100 clock hours of clinical experience shall be required.

~~1.2.3.7~~ Student teaching and clinical experiences (12 semester hours). The student teaching shall be at least one semester that is not less than 12 weeks and this student teaching experience shall be conducted with an age appropriate group. If student teaching includes placements with two age appropriate groups, then each placement shall be for a minimum of nine weeks per placement and,

~~3.2.3.7~~ ~~1.2.3.8~~ Fifteen semester hours to include 3 semester hours in each of the following areas dealing with children from birth to kindergarten: Children's Growth, Development and learning (ages 0-3 years), Assessment of Young Children, Language Development and Early Literacy in Young Children, and Family Development and Service Systems for Children and Families. Three additional semester hours taken in one of the four areas above or in another area specifically related to care-giving for children ages 0-3.

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as an early care and education teacher after that date must comply with the requirements set forth in 14 **DE Admin. Code** 1516.

356 1556 Standard Certificate Primary Teacher (Grades K- 4)

Effective July 1, 1994

1.0 The following shall be the requirements for the Standard License for all teachers assigned to teach grades K-4 with the exception of those teachers holding a Birth to K License. Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 **Del. C.** § 1220 (a), for Primary Teacher (Grades K - 4).

2.0 Licenses that may be issued for this position include Standard and Limited Standard.

2.1 The Limited Standard license may be issued upon the request of a Delaware public school district for a teacher employed in this position who meets one of the following conditions:

2.1.1 As stated in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.

2.1.2 To any person holding a valid Standard License in Elementary Education, while either verifying or completing the 18 semester hours specified in 1.2.2.

2.1.3 To any person holding a valid Standard License in Early Care and Education while either verifying or completing the 15 semester hours specified in 1.2.3.

2.1.4 To any person holding a valid

Standard License in Middle Level Education while either verifying or completing the 15 semester hours specified in 1.2.4.

Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a standard certificate as an primary 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 ~~1.1~~ Degree Requirement

3.1.1 ~~1.1.1~~ Bachelor's degree from a regionally accredited college or university in any field and 45 semester hours of general content courses. These courses may be part of the Bachelor's degree, but if not, then the courses shall be taken in addition to the degree.

3.1.1.1 ~~1.1.1.1~~ Nine semester hours of English including an upper level composition course and a literature course

3.1.1.2 ~~1.1.1.2~~ Twelve semester hours of science including one course each in Life/Environmental, Earth/Space and Physical Sciences

3.1.1.3 ~~1.1.1.3~~ Nine semester hours of social sciences including World History, American History and Geography.

3.1.1.4 ~~1.1.1.4~~ Nine semester hours of Mathematics

3.1.1.5 ~~1.1.1.5~~ Six semester hours of Fine Arts or,

3.1.2 ~~1.1.2~~ A Bachelor's degree from a regionally accredited college in the field of Education and,

3.2 ~~1.2~~ Professional Education

3.2.1 ~~1.2.1~~ An approved program in Primary Education or,

3.2.2 ~~1.2.2~~ An approved program in Elementary Education to include 18 semester hours of coursework or the equivalent thereof in each of the following areas, as specified:

3.2.2.1 ~~1.2.2.1~~ Children's Growth, Development, and Learning (6 semester hours);

3.2.2.2 ~~1.2.2.2~~ Parent, Family Community Interactions (3 semester hours);

~~3.2.2.3~~ ~~1.2.2.3~~ Early Childhood Curriculum Development, Content, and Implementation - (6 semester hours);

~~3.2.2.4~~ ~~1.2.2.4~~ Professional Issues in Early Childhood Education (3 semester hours) or,

~~3.2.3~~ ~~1.2.3~~—An approved program in Early Childhood Education, Birth through age 8, to include an additional 15 semester hours of coursework as indicated:

~~3.2.3.1~~ ~~1.2.3.1~~ Nine semester hours in curriculum and methods in the following areas: Science, Social Studies and Mathematics.

~~3.2.3.2~~ ~~1.2.3.2~~ Six semester hours in Literacy including reading, writing, and children's literature.

~~3.2.3.3~~ ~~1.2.3.3~~ All coursework indicated in ~~1.2.3.1~~ ~~3.2.3.1~~ and ~~1.2.3.2~~ ~~3.2.3.2~~ shall focus on: integrated curriculum approaches, use of technology as an instructional tool, appropriate assessment strategies for the young child, culturally responsive curriculum and instruction, principles of developing and organizing curriculum for classroom organization and management techniques for children in K-4 or,

~~3.2.4~~ ~~1.2.4~~ An approved program in Middle Level Education and, an additional 15 semester hours of coursework related to K-4, to include 3 semester hours in each of the following areas:

~~3.2.4.1~~ ~~1.2.4.1~~ Children's Growth, Development, and Learning

~~3.2.4.2~~ ~~1.2.4.2~~ Parent, Family Community

~~3.2.4.3~~ ~~1.2.4.3~~ Early Childhood Curriculum Development, Content, and Implementation - (6 semester hours);

~~3.2.4.4~~ ~~1.2.4.4~~ Professional Issues in Early Childhood Education or,

~~3.2.5~~ ~~1.2.5~~ A minimum of 60 semester hours of coursework to include a total of 45 semester hours of specific courses to be taken in addition to requirements stated in ~~1.1.1~~ ~~3.1.1~~ and to include the following courses as specified:

~~3.2.5.1~~ ~~1.2.5.1~~ A total of 45 semester hours of specific courses to be taken in addition to requirements stated in 1.1.1 and to include the following courses as specified:

~~3.2.5.1.1~~ ~~1.2.5.1.1~~ Child Development (3 semester hours);

~~3.2.5.1.2~~ ~~1.2.5.1.2~~ Identifying and Teaching Exceptionalities (3 semester hours);

~~3.2.5.1.3~~ ~~1.2.5.1.3~~ Effective Teaching Strategies (3 semester hours);

~~3.2.5.1.4~~ ~~1.2.5.1.4~~ Curriculum and Methods (21 semester hours) to include: 3 semester hours in each of the following areas: science, social studies, math and 12 semester hours of literacy reading/language arts, including 3 hours of children's literature);

~~3.2.5.1.5~~ ~~1.2.5.1.5~~ Exploring

Contemporary Cultural and Social Issues (3 semester hours);

~~1.2.5.1.6~~ Over the course of the Teacher Education Core of Study and prior to student teaching, a minimum of 100 clock hours of clinical experience will be required;

~~1.2.5.1.7~~ Student Teaching and Clinical Experiences (semester hours);

The above shall be at least one semester of student teaching, that is not less than 12 weeks and this student teaching experience shall be conducted with an age appropriate group. If student teaching includes placements with two age appropriate groups, then each placement shall be for a minimum of nine weeks per placement. Electives related to K-4 and,

~~3.2.5.2~~ ~~1.2.5.2~~ An additional 15 semester hours of coursework related to K-4, to include 3 semester hours in each of the following areas: Children's Growth, Development, and Learning, Parent, Family Community Interactions, Early Childhood Curriculum Development, Content, and Implementation, Professional Issues in Early Childhood Education and an elective related to the above areas or any area that deals with teaching K-4 students.

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a primary teacher after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.

~~357~~ ~~1557~~ Standard Certification in Middle Level Teacher (Grades 5 - 8)

~~July 1, 1994~~

1.0 ~~The following shall be required for the Standard License for all teachers assigned to teach grades 5-8 except those certified with Middle School Content Area Licenses* or Secondary Subject Area Licenses*.~~ Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 Del. C. § 1220 (a), for Middle Level Teacher (Grades 5-8), except for mathematics and science in grades 7-8 (See 14 DE Admin. Code §§ 1541 and 1542.

2.0 Licenses that may be issued for this position include Standard and Limited Standard.

2.1 ~~The Limited Standard license may be issued upon the request of a Delaware public school district for a teacher employed in this position who meets one of the following conditions:~~

2.1.1 ~~As stated in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.~~

2.1.2 ~~to any person holding a valid Standard License in Elementary Education, while either verifying or completing the 15 semester hours specified in 1.2.2.~~

2.1.3 ~~To any person holding a valid Standard License in Primary Education while either~~

verifying or completing the 15 semester hours specified in 1.2.4.

~~2.1.4~~ to any person holding a valid Standard License in Secondary Education or a Middle School Subject Area License while either verifying or completing the 15 semester hours specified in 1.2.5. (* These exceptions are required to take a 15 semester hour Middle School Endorsement)

Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 Del. C. § 1220 (a), the Department shall issue a standard certificate as an middle level 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 ~~1-1~~ Degree Requirement

3.1.1 ~~1-1-1~~ Bachelor's degree from a regionally accredited college or university in any field and 45 semester hours of general content courses. These courses may be part of the Bachelor's degree, but if not, then the courses shall be taken in addition to the degree.

3.1.1.1 ~~1-1-1-1~~ Nine semester hours of English including an upper level course and a literature course

3.1.1.2 ~~1-1-1-2~~ Twelve semester hours of science including one course each in Life/Environmental, Earth/Space and Physical

3.1.1.3 ~~1-1-1-3~~ Nine semester hours of Social Sciences including World History, American History and Geography.

3.1.1.4 ~~1-1-1-4~~ Nine semester hours of Mathematics

3.1.1.5 ~~1-1-1-5~~ Six semester hours Fine Arts

3.1.2 ~~1-1-2~~ Or, Bachelor's degree from a regionally accredited college in the field of Education and,

3.2 ~~1-2~~ Professional Education

3.2.1 ~~1-2-1~~ An approved program in Middle Level Education or,

3.2.2 ~~1-2-2~~ An approved program or a Standard License in Elementary Education and an additional 15

semester hours of coursework or the equivalent thereof, including instruction in: Adolescent Development and Behavior, Curriculum and Instruction Strategies for Middle Grades, Classroom Management Techniques, Student Advising, Mentoring and Counseling Techniques and Reading in the Content Area, or,

3.2.3 ~~1-2-3~~ An approved program or Standard License Certificate encompassing any segment of Birth through age eight and,

3.2.3.1 ~~1-2-3-1~~ An additional 15 semester hours of coursework to include courses in each of the following areas related to the adolescent child: Adolescent Development and Behavior, Curriculum and Instruction Strategies for Middle Grades, Classroom Management Techniques, Student Advising, Mentoring and Counseling Techniques, and Reading in the Content Area.

3.2.3.2 ~~1-2-3-2~~ And, an additional 15 semester hours of coursework as indicated:

3.2.3.2.1 ~~1-2-3-2-1~~ Nine semester hours in Curriculum and Methods in areas of Science, Social Studies and Mathematics.

3.2.3.2.2 ~~1-2-3-2-2~~ Six semester hours in Literacy including reading, writing, and children's literature.

3.2.3.2.3 ~~1-2-3-2-3~~ All coursework indicated above, shall include an instructional focus which includes the following: Integrated Curriculum Approaches, Use of Technology as an Instructional Tool, Appropriate Assessment Strategies for the Young Child, Culturally Responsive Curriculum and Instruction, Principles of Developing and Organizing Curriculum for Children ~~in K-4~~ and Classroom Organization and Techniques for Children ~~in K-4~~ or,

3.2.4 ~~1-2-4~~ An approved program or Standard License certificate in Primary Education and an additional 15 semester hours of course work, to include each of the following areas related to the adolescent child:

3.2.4.1 ~~1-2-4-1~~ Adolescent Development and Behavior, Curriculum and Instruction Strategies for Middle Grades, Classroom Management Techniques, Student Advising, Mentoring and Counseling Techniques and Reading in the Content Area or,

3.2.5 ~~1-2-5~~ For the Middle Level Endorsement, an approved program or Standard License in Secondary Education and an additional 15 semester hours of coursework, to include each of the following areas related to the adolescent child:

3.2.5.1 ~~1-2-5-1~~ Adolescent Development and Behavior, Curriculum and Instruction Strategies for Middle Grades, Classroom Management Techniques, Student Advising, Mentoring and Counseling Techniques, and Reading in the Content Area, or

3.2.6 ~~1-2-6~~ A minimum of 60 semester hours of coursework to include 45 semester hours of specific courses

to be taken in addition to requirements stated in ~~4.1.1-3.1.1~~ and to include the following:

~~3.2.6.1 4.2.6.1~~ Child Development (3 semester hours);

~~3.2.6.2 4.2.6.2~~ Identifying and Teaching Exceptionalities (3 semester hours);

~~3.2.6.3 4.2.6.3~~ Effective Teaching Strategies (3 semester hours);

~~3.2.6.4 4.2.6.4~~ Curriculum and Methods (21 semester hours) to include: 3 semester hours in each area of Science, in Social Studies and in Mathematics and 12 semester hours of Literacy (reading/language arts, including 3 semester hours of children's literature)

~~3.2.6.5 4.2.6.5~~ Exploring Contemporary Cultural and Social Issues (3 semester hours);

~~4.2.6.6~~ ~~Over the course of the teacher education core of study and prior to student teaching, a minimum of 100 clock hours of clinical experience will be required.~~

~~4.2.6.7~~ ~~Student teaching and clinical experiences (12 semester hours). The student teaching shall be at least one semester that is not less than 12 weeks with the age appropriate group. If student teaching includes placements with two age appropriate groups, then each placement shall be for a minimum of nine weeks per placement and,~~

~~3.2.6.6 4.2.6.8~~ An additional 15 semester hours of course work in middle level education, to include 3 semester hours in each of the following areas related to the adolescent child: Adolescent Development and Behavior, Curriculum and Instruction Strategies for Middle Grades, Classroom Management Techniques, Student Advising, Mentoring and Counseling Techniques and Reading in the Content Area.

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a middle level teacher after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.

~~358~~ 1558 Standard Certificate on Bilingual Teacher (Spanish) Primary/Middle Level

Effective November 11, 2000

1.0 The following shall be required for a Standard License for teachers in a K-8 Bilingual Education Programs. Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 Del. C. § 1220 (a), for Bilingual Teacher (Spanish) Primary/Middle Level (K-8).

2.0 Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 Del. C. § 1220 (a), the Department shall issue a standard certificate as a bilingual teacher (Spanish) Primary/Middle 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 ~~4.1~~ A Bachelor's degree from a regionally accredited college or university and completion of a teacher education program in Elementary, Primary or Middle Level (grade configurations K-8) Bilingual Education in the Language Area of Spanish.

4.0 ~~2.0~~ If the candidate does not meet the requirements in 1.0 the following shall apply:

4.1 ~~2.1~~ Complete the required coursework in a teacher education program in Elementary, Primary or Middle Level (grade configurations K-8) Regular Education plus provide the following:

4.1.1 ~~2.1.1~~ Verification of language proficiency in Spanish as demonstrated by one of the two options below:

4.1.1.1 ~~2.1.1.1~~ Completion of a minimum of 15 semester hours from a regionally accredited college in the language area of Spanish. This coursework shall be at or above the intermediate level; and Demonstration of oral proficiency in the language area of Spanish by scoring 165 on the PRAXIS II Test Module: Productive Language (0192); or

4.1.1.2 ~~2.1.1.2~~ Demonstration of content knowledge and oral proficiency in the language area of Spanish by meeting the appropriate qualifying scores on the PRAXIS II Test Modules as follows:

4.1.1.2.1 ~~2.1.1.2.1~~ 159 on Spanish: Content and Knowledge (0191) and

4.1.1.2.2 ~~2.1.1.2.2~~ 165 on Spanish: Productive Language (0192); and

4.1.2 ~~2.1.2~~ Demonstration of English speaking ability, when English is not the first language, by scoring 50 on the TOEFL: Test of Spoken English (TSE) and

4.1.3 ~~2.1.3~~ In addition to ~~2.1.1~~ 4.1.1 and ~~2.1.2~~ 4.1.2 all candidates must meet the following requirements:

4.1.3.1 ~~2.1.3.1~~ Completion of coursework as indicated:

4.1.3.1.1 ~~2.1.3.1.1~~ 3 semester hours Methods of Teaching English as a Second Language;

4.1.3.1.2 ~~2.1.3.1.2~~ 3 semester hours Second Language Testing;

4.1.3.1.3 ~~2.1.3.1.3~~ 3 semester hours

Remedial Reading (English);or

4.1.3.1.4 2-1.3.1.4-3 semester hours

Remedial Reading (Spanish);and

4.1.3.2 2-1.3.2 Verification of knowledge

of the Spanish culture as demonstrated by:

4.1.3.2.1 2-1.3.2.1 A three (3)

semester hour course in Spanish culture; or

4.1.3.2.2 2-1.3.2.2 Documentation of

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

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

2.1.3.4 Upon the completion of all

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

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

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

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

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

5.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a bilingual teacher (Spanish) primary/middle level after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.

361 1561 Standard Certificate on Teacher Exceptional Children Special Education/Elementary

August 1, 1994

1.0 The following shall be required for the Standard License for teachers of students who are mildly and moderately disabled and physically and visually impaired and are in grades 1-8: Content: This regulation shall apply

to the requirements for a standard certificate, pursuant to 14 Del. C. § 1220 (a), for Teacher Exceptional Children Special Education/Elementary (Grades 1-8).

2.0 The following shall be required for the Limited Standard License:

2.1 The Limited Standard License may be issued for up to three (3) years at the request of a Delaware public school district to a person who meets the requirements listed below and who is employed as an Elementary (Grade 1-8) Teacher of Mildly and Moderately Disabled, Physically Impaired, and/or Visually Impaired. The License is issued to allow the individual to complete the requirements for the Standard License as listed in 1.0.

2.1.1 Requirements as listed in 1.1 and,

2.1.2 Within 12 semester hours of completion of coursework requirements specified in 1.2.2.1, 1.2.2.2 and 1.2.2.3 and having completed (1) student teaching/1-8 and (2) courses in Methods/Curriculum for Exceptional Children (Elementary) and Applied Behavior Analysis or With all coursework completed and only the Student Teaching requirement remaining for the Standard License or,

2.1.3 A Standard Delaware License in K-8 Education (formerly Early Childhood/K-3 and Elementary/1-8, or currently Primary/K-4 and Middle Level/5-8); and

2.1.4 For Mildly and Moderately Disabled and Physically Impaired: A minimum of nine semester hours of college-level coursework in Special Education to include Introduction/Education of Exceptional Children, Methods/Curriculum for Exceptional Children (Elementary), and Applied Behavior Analysis.

2.1.5 For Visually Impaired: A minimum of twelve semester hours of college-level coursework in Special/Visually Impaired Education to include a course in Braille.

Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 Licenses that may be issued for this position include Standard and Limited Standard. In accordance with 14 Del. C. § 1220 (a), the Department shall issue a standard certificate as a teacher exceptional children special education/elementary 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 ~~1.1~~ A Bachelor's degree from a regionally-accredited college or university and,

3.2 ~~1.2~~ Professional Education

3.2.1 ~~1.2.1~~ Completion of a teacher education program in the area of ~~endorsement~~ standard certificate sought or,

3.2.2 ~~1.2.2~~ A minimum of 42 semester hours as follows:

3.2.2.1 ~~1.2.2.1~~ Twenty four semester hours required core courses for all Exceptional Teaching Licenses

3.2.2.1.1 ~~1.2.2.1.1~~ Methods in Elementary Reading

3.2.2.1.2 ~~1.2.2.1.2~~ Methods in Elementary Mathematics

3.2.2.1.3 ~~1.2.2.1.3~~ Classroom Management

3.2.2.1.4 ~~1.2.2.1.4~~ Introduction/Education of Exceptional Children

3.2.2.1.5 ~~1.2.2.1.5~~ Child Growth/Development

3.2.2.1.6 ~~1.2.2.1.6~~ Applied Behavior Analysis

3.2.2.1.7 ~~1.2.2.1.7~~ Student Teaching with Exceptional Children/Grades 1-8 (6 semester hours) and,

3.2.2.2 ~~1.2.2.2~~ Eighteen semester hours for Mildly and Moderately Disabled and Physically Impaired (PI):

3.2.2.2.1 ~~1.2.2.2.1~~ Language Development

3.2.2.2.2 ~~1.2.2.2.2~~ Methods/Curriculum in area(s) of endorsement (elementary based)

3.2.2.2.3 ~~1.2.2.2.3~~ Diagnosis/Assessment/IEP Development for Exceptionalities

3.2.2.2.4 ~~1.2.2.2.4~~ Assistive Technology (Mildly and Moderately Disabled) Assistive Technology for Physically Impaired (PI)

3.2.2.2.5 ~~1.2.2.2.5~~ Diagnosis and Correction of Reading Disabilities

3.2.2.2.6 ~~1.2.2.2.6~~ One three semester hour elective from the following: Consultation, Social Skills Training, Counseling Techniques, Research/Theories of Exceptional Children, Current Issues in Special Education and Multicultural Issues/Education.

3.2.2.3 ~~1.2.2.3~~ Eighteen semester hours for Visually Impaired

3.2.2.3.1 ~~1.2.2.3.1~~ Anatomy/Physiology of the Eye

3.2.2.3.2 ~~1.2.2.3.2~~ Braille and Nemeth Code (preferably including instruction in Braille)

3.2.2.3.3 ~~1.2.2.3.3~~ Orientation/Mobility for the Teacher of the Visually Impaired

3.2.2.3.4 ~~1.2.2.3.4~~ Education for the Visually Impaired (Adapting Materials/Methods)

3.2.2.3.5 ~~1.2.2.3.5~~ Assistive Technology

3.2.2.3.6 ~~1.2.2.3.6~~ Diagnosis/Assessment/IEP Development

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a teacher exceptional children special education/elementary after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.

362 1562 Standard Certificate on Teacher Exceptional Children Special Education/Secondary
Effective August 1, 1994

~~1.0 The following shall be required for the Standard License for teachers of students who are mildly and moderately disabled and physically and visually impaired and are in grades 7-12. Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 Del. C. § 1220 (a), for Teacher Exceptional Children Special Education/Secondary (Grades 7-12).~~

~~2.0 The following shall be required for the Limited Standard License:~~

~~2.1 The Limited Standard License may be issued for up to three (3) years at the request of a Delaware public school district to a person who meets the requirements listed below and who is employed as a Secondary (Grade 7-12) Teacher of Mildly and Moderately Disabled, Physically Impaired, and/or Visually Impaired. The License is issued to allow the individual to complete the requirements for the Standard License as listed in 1.0.~~

~~2.1.1 Requirements as listed in 1.1 and,~~

~~2.1.2 Within 12 semester hours of completion of coursework requirements specified in 1.2.2.1, 1.2.2.2 and 1.2.2.3 and having completed (1) student teaching/7-12 and (2) courses in Methods/Curriculum for Exceptional Children (Secondary) and Applied Behavior Analysis or, With all coursework completed and only the student teaching requirement remaining for the Standard License or,~~

~~2.1.3 A Standard Delaware License in a secondary content area and,~~

~~2.1.4 For Mildly and Moderately Disabled and Physically Impaired: A minimum of nine semester hours of college-level coursework in Special Education to include Introduction/Education of Exceptional Children, Methods/Curriculum for Exceptional Children (Secondary), and Applied Behavior Analysis.~~

~~2.1.5 For Visually Impaired: A minimum of twelve semester hours of college-level coursework in Special/Visually Impaired Education to include a course in Braille.~~

Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 Licenses that may be issued for this position include Standard and Limited Standard. In accordance with 14 Del. C. § 1220 (a), the Department shall issue a standard certificate as a teacher exceptional children special education/secondary 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 ~~1-1~~ A Bachelor's degree from a regionally-accredited college or university and,

3.2 ~~1-2~~ Professional Education

3.2.1 ~~1-2-1~~ Completion of a teacher education program in the area of ~~endorsement~~ the standard certificate sought or,

3.2.2 ~~1-2-2~~ A minimum of 42 semester hours as follows:

3.2.2.1 ~~1-2-2-1~~ Twenty four semester hours required core courses for all Exceptional Teaching Licenses

3.2.2.1.1 ~~1-2-2-1-1~~ Methods in Reading

3.2.2.1.2 ~~1-2-2-1-2~~ Methods in Mathematics

3.2.2.1.3 ~~1-2-2-1-3~~ Classroom Management

3.2.2.1.4 ~~1-2-2-1-4~~ Introduction/ Education of Exceptional Children

3.2.2.1.5 ~~1-2-2-1-5~~ Adolescent Psychology/Development

3.2.2.1.6 ~~1-2-2-1-6~~ Applied Behavior Analysis

~~1-2-2-1-7~~ Student Teaching with Exceptional Children/Grades 7-12 (6 semester hours) and,

3.2.2.2 ~~1-2-2-2~~ Eighteen semester hours for Mildly and Moderately Disabled and Physically Impaired (PI):

3.2.2.2.1 ~~1-2-2-2-1~~ Issues in Secondary Transition and Vocational Education

3.2.2.2.2 ~~1-2-2-2-2~~ Methods/ Curriculum in area(s) of endorsement (secondary based)

3.2.2.2.3 ~~1-2-2-2-3~~ Diagnosis/

Assessment/IEP Development for Exceptionalities

3.2.2.2.4 ~~1-2-2-2-4~~ Assistive Technology (Mildly and Moderately Disabled) Assistive Technology for Physically Impaired (PI)

3.2.2.2.5 ~~1-2-2-2-5~~ Six semester hours from the following: Consultation, Social Skills Training, Diagnosis and Correction of Reading Disabilities, Counseling Techniques, Research/Theories of Exceptional Children, Current Issues in Special Education and Multicultural Issues/Education.

3.2.2.3 ~~1-2-2-3~~ Eighteen semester hours for Visually Impaired

3.2.2.3.1 ~~1-2-2-3-1~~ Anatomy/ Physiology of the Eye

3.2.2.3.2 ~~1-2-2-3-2~~ Braille and Nemeth Code (preferably including instruction in Braille)

3.2.2.3.3 ~~1-2-2-3-3~~ Orientation/ Mobility for the Teacher of the Visually Impaired

3.2.2.3.4 ~~1-2-2-3-4~~ Education for the Visually Impaired (Adapting Materials/Methods)

3.2.2.3.5 ~~1-2-2-3-5~~ Assistive Technology

3.2.2.3.6 ~~1-2-2-3-6~~ Diagnosis/ Assessment/IEP Development

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a teacher exceptional children special education/secondary after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.

375 1575 Standard Certificate on Counselor - Elementary School
Effective July 1, 1993

1.0 The following shall be required for the Standard License for all counselors in grades 1-6 and is valid for counselors in a middle level school, grades 5-8. Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 Del. C. § 1220 (a), for Counselor - Elementary School (Required in grades 1-6 and valid in a middle level school, grades 5-8).

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License shall be issued for a period of three years at the request of a Delaware public school district to allow for the completion of the requirements for the Standard License as described in

Definitions: 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

used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 **Del. C.** § 1220 (a), the Department shall issue a standard certificate as a counselor – elementary school 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 ~~1-1~~ Master's degree from a regionally accredited college or university in an approved program in Elementary School Counseling and,

3.2 ~~1-2~~ A minimum of three years' professional experience in an elementary school setting; or three years of appropriate experience as approved by the Department of Education; or a supervised school counseling internship of one full year in an elementary school setting which is part of a graduate degree program in elementary school counseling, or arranged by the Department of Education. The internship may be completed over a two year period on a half time basis or,

3.3 ~~1-3~~ A Master's degree from a regionally accredited college in any field and,

3.4 ~~1-4~~ A minimum of 27 semester hours of graduate coursework in the areas of: Principles and Practices of the Guidance Program, Individual Counseling Skills, Group Counseling Skills, Human Development, Developmental Group Guidance, Individual and Group Testing for Counselors, Supervised Practicum in Elementary School Counseling, Counseling Theory, Consultation, and

3.5 ~~1-5~~ Experience as in ~~1-2~~ 3.2.

3.0 The Limited Standard is issued only when a person is counseling under the supervision of a fully certified counselor. The minimum requirements for the Limited Standard License are:

3.1 Bachelor's degree from an accredited college and;

3.2 Minimum of three years successful professional experience at the elementary level; or three years of appropriate experience as approved by the Department of Education; or one full year of supervised internship as part of a graduate degree program in counseling and;

3.3 Specialized Professional Preparation

3.3.1 Minimum of one graduate level course in each of the following areas:

3.3.1.1 Principles and Practices of Guidance

3.3.1.2 Individual Counseling Skills

3.3.1.3 Group Counseling Skills

3.3.1.4 Human Development

3.3.1.5 Developmental Group Guidance

3.4 Or, the Limited Standard License may be granted for one year if all required coursework is completed and the applicant is attempting to complete the experience as described in 1.2.

4.0 Licenses that may be issued for this position include Standard and Limited Standard.

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a counselor – elementary school after that date must comply with the requirements set forth in 14 **DE Admin. Code** 1516.

376 1576 Standard Certificate in Counselor - Secondary School

Effective July 1, 1993

1.0 The following shall be required for the Standard License for all counselors in grades 9-12 and is valid for counselors in a middle level school grades 5-8. Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 **Del. C.** § 1220 (a), for Counselor – Secondary School (Required in grades 9-12 and valid in a middle level school, grades 5-8).

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License shall be issued for a period of three years at the request of a Delaware public school district to allow for the completion of the requirements for the Standard License as described in 1.0. The Limited Standard is issued only when a person is counseling under the supervision of a fully certified counselor. The minimum requirements for the Limited Standard License are:

2.1.1 Bachelor's degree from an accredited college and;

2.1.2 Minimum of three years successful professional experience at the secondary level; or three years of appropriate experience as approved by the Department of Education; or one full year of supervised internship as part of a graduate degree program in counseling and;

2.1.3 Specialized Professional Preparation

2.1.3.1 Minimum of one graduate level course in each of the following areas:

2.1.3.1.1 Principles and Practices of Guidance

2.1.3.1.2 Individual Counseling Skills

2.1.3.1.3 Group Counseling Skills

2.1.3.1.4 Career Development

2.1.3.1.5 Individual and Group Testing for Counselors

2.1.4 Or, the Limited Standard License may

be granted for one year if all required coursework is completed and the applicant is attempting to complete the experience as described in 1.2.

Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

~~3.0 Licenses that may be issued for this position include Standard and Limited Standard. In accordance with 14 Del. C. § 1220 (a), the Department shall issue a standard certificate as a counselor – secondary school 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 1-1 Master's degree from a regionally accredited college or university in an approved program in Secondary School Counseling and,~~

~~3.2 1-2 A minimum of three years' professional experience in a secondary school setting; or three years of appropriate experience as approved by the Department of Education; or a supervised school counseling internship of one full year in a secondary school setting which is part of a graduate degree program in secondary school counseling, or arranged by the Department of Education. The internship may be completed over a two year period on a half time basis or,~~

~~3.3 1-3 A Master's degree from a regionally accredited college in any field and,~~

~~3.4 1-4 A minimum of 27 semester hours of graduate coursework in the areas of: Principles and Practices of the Guidance Program, Individual Counseling Skills, Group Counseling Skills, Career Development, Individual and Group Testing for Counselors, Human Development, Supervised Practicum in Secondary School Counseling, Counseling Theory, Consultation and,~~

~~3.5 1-5 Experience as in 1-2 3.2.~~

~~4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a counselor – secondary after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.~~

1526 Standard Certificate in English To Speakers Of Other Languages (ESOL) Teachers

Effective April 11, 2002

~~1.0 The following shall be required for the Standard License in grades K-12. Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 Del. C. § 1220 (a), for English to speakers of other languages teachers (required for grades K-12).~~

~~2.0 The following shall be required for the Limited Standard License (not renewable)~~

~~2.1 This License may be issued for a period of three years at the request of a Delaware public school district to a person who meets the requirements listed below and who is employed as an English to Speakers of Other Languages (ESOL) teacher to allow for the completion of the requirements for the Standard License in 1.0.~~

~~2.1.1 Completion of an approved teacher education program in English, Foreign Language, or Elementary Education and;~~

~~2.1.2 Specialized preparation required:~~

~~2.1.2.1 Three semester hours Methods of Teaching English as a Second Language or English as a second dialect and;~~

~~2.1.2.2 Cross-cultural experience gained through either college credits (which include field work) or by work experience.~~

~~2.2 Licenses that may be issued for this position include Standard and Limited Standard.~~

Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

~~3.0 In accordance with 14 Del. C. § 1220 (a), the Department shall issue a standard certificate as an English to speakers of other languages 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 1-1 Bachelor's degree from a regionally accredited college or university and,~~

~~3.2 1-2 Professional Education~~

~~3.2.1 1-2.1 Completion of an approved teacher education program in English to Speakers of Other~~

Languages (ESOL) or,

~~3.2.2 4-2-2~~ A minimum of 24 semester hours to include Human Development; Methods of Teaching Elementary Language Arts, or English, or Foreign Language; Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and student teaching and,

~~3.3 4-3~~ Specific Teaching Field

~~3.3.1 4-3-1~~ Major in English to Speakers of Other Languages (ESOL) or,

~~3.3.2 4-3-2~~ Completion of an approved teacher education program in English to Speakers of Other Languages (ESOL) or,

~~3.3.3 4-3-3~~ Completion of an approved teacher education program in English, Foreign Language, or Elementary Education, with specific courses in: Second Language Acquisition/Psycholinguistics, 3 semester hours, Methods of Teaching English as a Second, Language, or English as a Second Dialect, 3 semester hours, Structure of the English Language, 3 semester hours, Second Language Testing, 3 semester hours, Ethnic Studies/Multicultural Education, 3 semester hours and

~~3.3.4 4-3-4~~ Successful completion of the intermediate level of a foreign language. This requirement may be satisfied by a Department of Education approved proficiency test.

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a teacher of English to speakers of other languages after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.

See 5 DE Reg. 1904 (4/1/02)

1540 Standard Certificate in Science Teacher

Effective July 1, 1993

Amended July 1, 1998

Amended July 1, 2000

Amended July 1, 2002

~~All secondary science certificates are valid in middle level science, Grades 5-8.~~

~~(Policy effective 7/1/02 – 6/30/04 only)~~

~~1.0 The following shall be required for the Standard License. Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 Del. C. § 1220 (a), for science teacher (required for grades 9-12, and valid in a middle level school, grades 5-8). Certificates issued include chemistry, physics, earth science, biology, general science, and physical science.~~

~~2.0 Licenses that may be issued for positions in these areas include Standard and Limited Standard.~~

~~2.1 The Limited Standard license may be issued upon request of a Delaware public school district for a teacher employed for this position who meets the standards~~

~~set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.~~

Definitions: 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 used.

“Standard certificate” means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 Del. C. § 1220 (a), the Department shall issue a standard certificate as a science 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 4-1 Bachelor's degree from a regionally accredited college or university and,

3.2 4-2 Professional Education

3.2.1 4-2-1 Completion of an approved teacher education program in Science or a minimum of 24 semester hours to include Human Development, Methods of Teaching Secondary Science, Teaching of Reading in Science or Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and clinical experience/student teaching at the secondary (7-12) level and,

3.3 4-3 Specific Teaching Field

3.3.1 4-3-1 Major in the field of endorsement area of the certificate sought; or,

3.3.2 4-3-2 Completion of an approved teacher education program in the field of endorsement area of the certificate sought; or,

3.3.3 4-3-3 Completion of (at least) the semester hours indicated below for the field of endorsement area of the certificate sought:

3.3.3.1 4-3-3-1 Chemistry:

3.3.3.1.1 45 semester hours (Required 9-12, valid Chemistry only) Courses should include at least two 24 semester hours semesters of Inorganic Chemistry and one course chosen from each of the following pairs: Advanced Inorganic or Physical Chemistry, Organic Chemistry or Biochemistry, Quantitative Analysis or Instrumental Analysis; Laboratory Safety 3 semester hours; Biology 3 semester hours; Physics 3 semester hours; Mathematics [≥] 6 semester hours of college algebra or above; Earth Sciences 3 semester hours; Environmental Education 3 semester hours

3.3.3.2 4-3-3-2 Physics:

3.3.3.2.1 45 semester hours (Required

9-12, valid Physics only) Courses should include at least ~~one~~ 24 semester hours with at least 3 semester hours in each of the following areas: Classical Thermodynamics, Electronics, Atomic Physics, and Nuclear Physics; Laboratory Safety 3 semester hours; Biology 3 semester hours; Chemistry 3 semester hours; Mathematics* 6 semester hours of college algebra or above; Earth Sciences 3 semester hours; Environmental Education 3 semester hours.

3.3.3.3 ~~4-3.3.3~~ Earth Science:

3.3.3.3.1 42 semester hours (Required

7-12, valid Earth Science only) Courses should include at least ~~one~~ 24 semester hours with at least 3 semester hours in each of the following areas: Geology, Geography, Climatology, Meteorology, Oceanography, and Astronomy; Laboratory Safety 3 semester hours; Biology 3 semester hours; Chemistry 3 semester hours; Mathematics* 3 semester hours of college algebra or above; Physics/Physical Science 3 semester hours; Environmental Education 3 semester hours.

3.3.3.4 ~~4-3.3.4~~ Biology:

3.3.3.4.1 42 semester hours (Required

9-12, valid Biology and Life Science only) Courses should include at least ~~one~~ 24 semester hours with at least 3 semester hours in each of the following areas: Botany and Zoology, Ecology, Genetics, Biochemistry, and Physiology and, Laboratory Safety 3 semester hours; Chemistry 3 semester hours; Physics/Physical Science 3 semester hours; Mathematics * 3 semester hours of college algebra or above; Earth Sciences 3 semester hours; Environmental Education 3 semester hours.

~~1.3.3.5 General Science 39 semester hours (Required 7-8 General Science, valid 7-8 Life Science, and recommended 5-6 in a middle school) and, Laboratory Safety 3 semester hours Biology 12 semester hours Chemistry/Physics/Physical Science 12 semester hours Mathematics * 3 semester hours Earth Science 6 semester hours Environmental Education 3 semester hours.~~

3.3.3.5 ~~4-3.3.6~~ Physical Science:

3.3.3.5.1 42 semester hours (Required

9-12, Physical Science only, not Physics) Chemistry - coursework to include 12 semester hours including content in structure of matter, bonding acids and bases, chemical reactions, equations, periodicity metals, non-metals and thermodynamics; Physics - coursework to include 12 semester hours content in heat, light, waves electricity, mechanics, sound, and simple machines; Laboratory Safety 3 semester hours; Biology 3 semester hours; Mathematics * 6 semester hours of college algebra or above; Earth Science 3 semester hours; Environmental Education 3 semester hours. * College Algebra or above.

~~1.3.3.7 Earth Science: Teachers in all science areas shall be required to complete at least one Earth Science course. The rationale for this requirement is the fact that Earth Science is generally required in middle-level~~

~~schools for Delaware students. A background in this area will allow a teacher to relate topics in Physical Science, Chemistry, etc. to Earth Science concepts. Either Geology or Climatology provides the best teacher foundation in Earth Science, but Physical Geography and Physical Oceanography are adequate for doing so.~~

~~1.3.3.8 Environmental Education:~~

~~Teachers in science areas shall be required to complete appropriate coursework in the area of Environmental Education. This can include the following: History/Philosophy of the Conservation Movement Appreciative Understanding of Natural Resources Relationship of Natural Resources to Economic Structure Importance of Conservation in National/International Setting Natural Resource Management: Techniques, Need for, and Types of Controls Role and Importance of Resource use in Planning for the Future.~~

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a science teacher after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.

See 6 DE Reg. 319 (9/1/02)

~~1541 Limited Standard Certificate for Middle Level Mathematics and Science and Secondary Science Certificate for Middle Level Science~~

~~1.0 Limited Standard Certificate for middle level mathematics and science and Secondary Science Certificate for middle level science.~~

~~1.1 Limited Standard Certificates for Middle Level Math/Science shall be issued for 1 year to a teacher holding a Standard or Professional Status Certificate in either Elementary (grades 1-8) or Middle Level (grades 5-8) who is assigned to teach grade 7 and/or 8 math and/or science, regardless of the number of credits needed for full certification. During the term of the Limited Standard Certificate, the teacher shall work to complete the requirements for the Standard Certificate in the area(s) of the assignment. These conditions will be effective 7/1/02 through 6/30/04.~~

~~1.2 All secondary science certificates shall be valid in middle level science, grades 5-8 from 7/1/02 through 6/30/04 only.~~

1541 Standard Certificate Mathematics Teacher -- Middle Level

1.0 Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 Del. C. § 1220 (a), for Mathematics Teacher - Middle Level (required for grades 7-8, and valid in grades 5-6 in a middle level school.

2.0 Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a standard certificate as a mathematics teacher – middle level 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 a regionally accredited college or university and,

3.2 Professional Education.

3.2.1 Major in mathematics; or

3.2.2 Completion of an approved teacher education program in mathematics; or

3.2.3 Minimum of 24 semester hours in mathematics to include calculus (2 courses), geometry, finite or discrete math, statistics and probability, and mathematical models and applications and history of math and/or science.

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a mathematics teacher – middle level after that date must comply with the requirements set forth in 14 **DE Admin. Code** 1516.

1542 Standard Certificate – Science Teacher – Middle Level

1.0 Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 **Del. C.** § 1220 (a), for science teacher – middle level (required for grades 7-8, and valid in a middle level school, grades 5-6).

2.0 Definitions: 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 used.

"Standard certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill, and/or education to practice in a particular area, teach a particular subject, or teach a category of students.

3.0 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a standard certificate as a science 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 a regionally accredited college or university; and

3.2 Professional Education

3.2.1 Completion of an approved teacher education program in science; or

3.2.2 a minimum of 24 semester hours to include human development, methods of teaching middle school or secondary science, teaching of reaching in science or identifying/treating exceptionalities, effective teaching strategies, multicultural education; and

3.3 Specific Teaching Field

3.3.1 Major in the area of the certificate sought; or

3.3.2 Completion of an approved teacher education program in the area of the certificate sought; or

3.3.3 Completion of at least the semester hours indicated below:

3.3.3.1 Earth science:

3.3.3.1.1 Courses should include at least 42 semester hours, with at least 3 semester hours in each of the following: geology, geography, climatology, meteorology, oceanography, astronomy, laboratory safety, biology, chemistry, and mathematics.

3.3.3.2 General science:

3.3.3.2.1 Courses should include at least 39 semester hours, with at least 3 semester hours in each of the following, except where noted: laboratory safety, mathematics, environmental education, earth science (6 semester hours), and 12 semester hours in biology and 12 semester hours in chemistry, physics, and physical science.

3.3.3.3 Physical science:

3.3.3.3.1 Courses should include at least 42 semester hours, with at least 3 semester hours in each of the following, except where noted: chemistry (12 semester hours); physics (12 semester hours); laboratory safety, biology, mathematics (6 semester hours); and earth science.

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a science teacher – middle school after that date must comply with the requirements set forth in 14 **DE Admin. Code** 1516.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code,
Sections 311, 1111, 1113, 2929
(18 **Del.C.** §§311, 1111, 1113, 2929)

NOTICE OF PUBLIC HEARING

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Thursday, October 30, 2003, at 10:00 a.m. in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to consider Proposed Regulation 1213 relating to the **RECOGNITION OF THE 2001 CSO MORTALITY TABLE FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES AND NONFORFEITURE BENEFITS.**

The purpose for promulgating Regulation 1213 is to utilize newly revised mortality tables that apply to the surrender values of life insurance policies for both men and women and taking into account the effect of smoking on mortality subsequent to January 1, 2004. The regulation updates tables that have been in use since 1984. Notice is also given that the proposed regulation contains certain statutory and regulatory references. Certain technical corrections may need to be considered to assure the accuracy of those references between the date of this notice and the date upon which the final regulation is adopted.

The hearing will be conducted in accordance with 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 must be received by the Department of Insurance no later than 4:30 p.m., Friday, October 31, 2003, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, telephone 302.739.4251.

REGULATION 1213

RECOGNITION OF THE 2001 CSO MORTALITY TABLE FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES AND NONFORFEITURE BENEFITS

- 1.0 Authority
- 2.0 Purpose
- 3.0 Definitions
- 4.0 2001 CSO Mortality Table
- 5.0 Conditions
- 6.0 Applicability of the 2001 CSO Mortality Table to Regulation 1212

7.0 Gender-Blended Tables

8.0 Separability

9.0 Effective Date

1.0 Authority

1.1 This regulation is promulgated by the Commissioner of Insurance pursuant to 18 **Del.C.** §§311, 1111, 1113, 2929 and 29 **Del.C.** Chapter 101.

2.0 Purpose

2.1 The purpose of this Regulation is to recognize, permit and prescribe the use of the 2001 Commissioners Standard Ordinary (CSO) Mortality Table in accordance with 18 **Del.C.** §§ 1111, 1113 and 2929.

3 Definitions

3.1 "2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the *Proceedings of the NAIC (2nd Quarter 2002)*. Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

3.2 "2001 CSO Mortality Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

3.3 "2001 CSO Mortality Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

3.4 "Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

3.5 "Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

4.0 2001 CSO Mortality Table

4.1 At the election of the company for any one or more specified plans of insurance and subject to the conditions stated in this regulation, the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after January 1, 2004 and before the date specified in section 4.2 to which 18 **Del.C.** §§ 1111, 1113(b)(1)a.3, and 2929(g)(8)f and Regulation 1212 sections 5.1 and 5.2 are applicable. If the company elects to use the 2001 CSO Mortality Table, it shall do so for both valuation and

nonforfeiture purposes.

4.2 Subject to the conditions stated in this regulation, the 2001 CSO Mortality Table shall be used in determining minimum standards for policies issued on and after January 1, 2009, to which 18 **Del.C.** §§ 1111,113(b)(1)a.3 and 2929(g)(8)f and Regulation 1212 sections 5.1 and 5.2 are applicable.

5.0 Conditions

5.1 For each plan of insurance with separate rates for smokers and nonsmokers an insurer may use:

5.1.1 Composite mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits;

5.1.2 Smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by 18 **Del.C.** §§1111 and 1113 and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values and amounts of paid-up nonforfeiture benefits; or

5.1.3 Smoker and nonsmoker mortality to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

5.2 For plans of insurance without separate rates for smokers and nonsmokers the composite mortality tables shall be used.

5.3 For the purpose of determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits, the 2001 CSO Mortality Table may, at the option of the company for each plan of insurance, be used in its ultimate or select and ultimate form, subject to the restrictions of section 6 hereof and Regulation 1212 relative to use of the select and ultimate form.

5.4 When the 2001 CSO Mortality Table is the minimum reserve standard for any plan for a company, the actuarial opinion in the annual statement filed with the commissioner shall be based on an asset adequacy analysis as specified in 18 **Del.C.** §1111(c). A commissioner may exempt a company from this requirement if it only does business in this state and in no other state.

6.0 Applicability of the 2001 CSO Mortality Table to Regulation 1212

6.1 The 2001 CSO Mortality Table may be used in applying Regulation 1212 in the following manner, subject to the transition dates for use of the 2001 CSO Mortality Table in section 4 of this regulation (unless otherwise noted, the references in this section are to Regulation 1212):

6.1.1 Section 3.2.2.2: The net level reserve premium is based on the ultimate mortality rates in the 2001 CSO Mortality Table.

6.1.2 Section 4.1.2: All calculations are made using the 2001 CSO Mortality Rate, and, if elected, the

optional minimum mortality standard for deficiency reserves stipulated in section 6.1.4 of this regulation. The value of " $q_{x+k+t-1}$ " is the valuation mortality rate for deficiency reserves in policy year $k+t$, but using the unmodified select mortality rates if modified select mortality rates are used in the computation of deficiency reserves.

6.1.3 Section 5.1: The 2001 CSO Mortality Table is the minimum standard for basic reserves.

6.1.4 Section 5.2: The 2001 CSO Mortality Table is the minimum standard for deficiency reserves. If select mortality rates are used, they may be multiplied by X percent for durations in the first segment, subject to the conditions specified in sections 5.2.3.1 through 5.2.3.9. In demonstrating compliance with those conditions, the demonstrations may not combine the results of tests that utilize the 1980 CSO Mortality Table with those tests that utilize the 2001 CSO Mortality Table, unless the combination is explicitly required by regulation or necessary to be in compliance with relevant Actuarial Standards of Practice.

6.1.5 Section 4.1.9: The valuation mortality table used in determining the tabular cost of insurance shall be the ultimate mortality rates in the 2001 CSO Mortality Table.

6.1.6 Section 6.5.4: The calculations specified in section 6.5 shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

6.1.7 Section 6.6.4: The calculations specified in section 6.6 shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

6.1.8 Section 6.7.2: The calculations specified in section 6.7 shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

6.1.9 Section 7.1.1.2: The one-year valuation premium shall be calculated using the ultimate mortality rates in the 2001 CSO Mortality Table.

6.2 Nothing in this section shall be construed to expand the applicability of Regulation 1212 to include life insurance policies exempted under section 3.2 of Regulation 1212.

7.0 Gender-Blended Tables

7.1 For any ordinary life insurance policy delivered or issued for delivery in this state on and after January 1, 2004, that utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a mortality table that is a blend of the 2001 CSO Mortality Table (M) and the 2001 CSO Mortality Table (F) may, at the option of the company for each plan of insurance, be substituted for the 2001 CSO Mortality Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits. No change in minimum valuation standards is implied by this subsection of the regulation.

7.2 The company may choose from among the blended tables developed by the American Academy of Actuaries CSO Task Force and adopted by the NAIC in December 2002.

7.3 It shall not, in and of itself, be a violation of 18 Del C. Chapter 23 for an insurer to issue the same kind of policy of life insurance on both a sex-distinct and sex-neutral basis.

8.0 Separability

If any provision of this regulation or its application to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of the provision to other persons or circumstances shall not be affected.

9.0 Effective Date

The effective date of this regulation is January 1, 2004.

Dated: _____

Donna Lee H. Williams
Insurance Commissioner

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION**
Statutory Authority: 7 Delaware Code,
Chapter 60 (7 Del.C. Ch. 60)

PUBLIC NOTICE SAN # 2003-11

1.0 TITLE OF THE REGULATION:

Regulation No. 30, Section 2, "Definitions"

2.0 BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Department proposes to revise Regulation No. 30, Section 2, to amend the definition of "Major Source" by removing the phrase "but only with respect to those air pollutants that have been regulated for that category." This will require all fugitive emissions to be included in major source determinations for sources subject to federal New Source Performance Standards (NSPSs) or the National Emission Standards for Hazardous Air Pollutants (NESHAPs), not just the pollutants regulated by the particular NSPS or NESHAP. This action is necessary because the current definition is less stringent than the corresponding provisions of 40 CFR Part 70 which went into

effect on November 27, 2001.

3.0 POSSIBLE TERMS OF THE AGENCY ACTION:

None

4.0 STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60

5.0 OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6.0 NOTICE OF PUBLIC COMMENT:

The public comment period for this proposed regulation will extend through Tuesday, October 28, 2003. Interested parties may submit comments in writing during this period to: Deanna Morozowich, Air Quality Management Section, 156 South State Street, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held Thursday, October 23, 2003 beginning at 6:00 pm in the Priscilla Building Conference Room, 156 State Street, Dover, Delaware.

7.0 PREPARED BY:

Deanna Morozowich (302)739-4791, August 25, 2003

**REGULATION NO. 30
TITLE V
STATE OPERATING PERMIT PROGRAM**

Section 2. DEFINITIONS

xx/xx/03

* * *

Major source - means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraph (1), (2), or (3) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(1) A *major source* under section 112 (Hazardous Air Pollutants) of the Act, defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located

within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year ("tpy") or more of any hazardous air pollutant which has been listed pursuant to section 112(b) (Hazardous Air Pollutants - List of Pollutants) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule.

Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

(2) A major stationary source of air pollutants, as defined in section 302 (Title III - General Definitions) of the Act, that directly emits or has the potential to emit, 100 tpy or more of any air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) (Title III - General Definitions) of the Act, unless the source belongs to one of the following categories of stationary sources:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers (or combination

thereof) totaling more than 250 million British thermal units per hour heat input;

- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(xxvii) All other stationary source categories regulated by a standard promulgated under section 111 (Standards of Performance for New Stationary Sources) or section 112 (Hazardous Air Pollutants) of the Act, ~~but only with respect to those air pollutants that have been regulated for that category.~~

(3) A major stationary source as defined in Part D (Plan Requirements for Nonattainment Areas) of Title I (Air Pollution Prevention and Control) of the Act, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f) (1) (2) (Plan Submissions and Requirements -NO x Requirements) of the Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 (Control of Interstate Ozone Air Pollution) of the Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas:
(A) that are classified as "serious", and
(B) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide; and

(iv) For particulate matter (PM 10) nonattainment areas classified as "serious", sources with the potential to emit 70 tpy or more of PM 10.

(4) For purposes of this regulation, a research and development operation may be treated as a separate source from other stationary sources that are located on a contiguous or adjacent property and under common control only if that operation belongs to a different major group as described in the Standard Industrial Classification Manual, 1987.

* * *

DIVISION OF WATER RESOURCES

Statutory Authority: 7 Delaware Code,
Section 6010 (7 Del.C. 6010)

REGISTER NOTICE

1. Brief Synopsis of the Subject, Substance and Issues:

The amended Surface Water Quality Standards presented here are the result of a comprehensive review of the Standards that started with SAN #99-12 in 1999. A hearing seeking public comment was held September 1, 1999. Department staff started a review of the comments received and based on those comments, a review of factors affecting human health criteria, EPA documents and staff recommendations, a draft markup of proposed amended Water Quality Standards was prepared in advance of a workshop held August 14th, 2003 at the DNREC auditorium. Department staff kept interested parties abreast of developments and the workshop using a combination of e-mail notices, internet postings of documents and relevant links, public notices in two newspapers of general circulation and a press release. Preceding and during the workshop, additional written comments were requested, received and considered for inclusion in the proposed Standards presented here. To ensure compliance with the Clean Water Act and satisfy EPA requirements, the State of Delaware, in accordance with 7 Del.C. §6010, will amend the State of Delaware Surface Water Quality Standards (as amended August 11, 1999).

2. Possible Terms of the Agency Action:

N/A

3. Statutory Basis or Legal Authority to Act:

7 Del.C. Section 6010

4. List of Other Regulations That May be Impacted or Affected by the Proposal:

Regulations Governing the Control of Water Pollution

5. Notice Of Public Comment:

The Department of Natural Resources and Environmental Control, Division of Water Resources, will conduct a public hearing on November 13, 2003 beginning at 3 p.m., in the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware, to hear testimony and receive comments on the proposed amendments to the **State of Delaware Surface Water Quality Standards**, (as amended August 11, 1999).

Additional information, copies of the regulation and supporting documents are available on the internet at this URL: <http://www.dnrec.state.de.us/DNREC2000/Divisions/Water/WaterQuality/Standards.htm>. To request a copy of the

proposed revisions to the regulations please contact David Wolanski at the Watershed Assessment Section at (302) 739-4590.

The procedures for public hearings are established in 7 Del.C. §6006 and 29 Del.C. §10117. Inquiries regarding the public hearing should be directed to R. Robert Thompson at (302) 739-4403. Statements and testimony may be presented orally or in written form at the hearing. It is requested that those interested in presenting statements register in advance by mail. The deadline for inclusion of written comments in the hearing record will be announced at the time of the hearing. Written statements may be presented prior to the hearing and should be addressed to: R. Robert Thompson, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901.

SURFACE WATER QUALITY STANDARDS

Section 1: Intent

~~1.1 It is the policy of the Department to maintain within its jurisdiction surface waters of the State of satisfactory quality consistent with public health and public recreation purposes, the propagation and protection of fish and aquatic life, and other beneficial uses of the water.~~

~~1.2 Where conflicts develop between stated surface water uses, stream criteria, or discharge criteria, designated uses for each segment shall be paramount in determining the required stream criteria, which, in turn, shall be the basis of specific discharge limits or other necessary controls.~~

~~1.3 Where existing facilities operating under a permit from this Department are required to reduce pollution concentrations or loadings due to the implementation of these surface water quality standards, a reasonable schedule for compliance may be granted in accordance with standards or requirements established in applicable statutes and regulations.~~

~~1.4 The Department intends to develop an agency wide program to assess, manage, and communicate human health cancer risks from the major categories of environmental pollution under its jurisdiction. As a result of this activity, it may be necessary to adjust the upper bound worst case risk management level stated in Section 9.3(b)(i).~~

Section 2: Definitions

~~Acute: Involving a stimulus severe enough to rapidly induce an adverse response; in toxicity tests, an adverse response observed in 96 hours or less is typically considered acute. An acute effect is not always measured in terms of lethality; it can measure a variety of short term adverse effects.~~

~~Additive effect: The total effect of a mixture of pollutants which is equal to the arithmetic sum of the effects of the individual pollutants in the mixture.~~

~~Agriculture: The use of land and water in the~~

production of food, fiber and timber products.

Antagonistic effect: The total effect of a mixture of pollutants which is less than the arithmetic sum of the effects of the individual pollutants in the mixture.

Average: Unless otherwise noted, the arithmetic mean of a representative group of samples for a specified parameter. Representativeness shall be determined through application of appropriate statistical techniques to data collected at times of critical ambient conditions, as determined on a parameter-by-parameter basis.

Best Management Practice (BMP): BMPs are methods, measures or practices that are determined by the Department to be reasonable and cost-effective means for a person to meet certain, generally nonpoint source, pollution control needs. BMPs include but are not limited to structural and nonstructural controls and operation and maintenance procedures. BMPs can be applied before, during or after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters.

Best scientific judgement: Findings, conclusions, or recommended actions which result from the application of logical reasoning and appropriate scientific principles and practices to available and relevant information on a particular situation.

Bioavailability: A measure of the physicochemical access of a pollutant to an organism.

Biodegradation: The biological decomposition of natural or synthetic organic materials by microorganisms.

Carcinogen: A substance that increases the risk of benign or malignant neoplasms (tumors) in humans or other animals. Carcinogens regulated through these Standards include but may not be limited to those toxic substances classified as Group A or Group B carcinogens as defined in 51 FR 185 (9/24/86).

Chronic: Involving a stimulus that produces an adverse response that lingers or continues for a relatively long period of time, often one-tenth of the life span or more. Chronic should be considered a relative term depending on the life span of the organism. A chronic effect can be lethality, growth or reproductive impairment, or other longer term adverse effect.

Clean Water Act: 33 U.S.C. 1251 et. seq., as amended.

Cold water fish use: Protection of fish species (such as from the family Salmonidae) and other flora and fauna indigenous to a cold water habitat.

Complete mix: The concentration of a discharged pollutant varies by no more than 5% over the cross-sectional area of the receiving water at the point of discharge.

Conservation plan: A conservation plan is a record of land user decisions affecting land use and conservation treatment of natural resources including soil, water, air, plant, and animal resources. It is comprised of resource management systems which are groups of interrelated

conservation practices (BMPs) and management measures formulated to protect, restore, or improve the resource base. Conservation plans are usually developed with the assistance of conservation districts using district BMP standards (ref: Field Office Technical Guide, USDA Soil Conservation Service).

Control structure: A dam, weir or other structure placed by man to regulate stream flow and/or create an impoundment.

Critical flow: A statistically determined minimum flow, which has a defined duration and recurrence interval.

Degradation: Any adverse change in water quality or existing uses.

Department: Delaware Department of Natural Resources and Environmental Control.

Designated uses: Categories of surface water utilization as defined in Section 10.

Diadromous: Describes fish which migrate to and from marine water and freshwater for the purpose of spawning.

Discharge length scale: The square root of the cross-sectional area of any discharge outlet.

Dispersion: A physical mixing process which results in the scattering of particles or dissolved materials in the water column.

Early life stages: Life stages for fish which include all embryonic and larval stages, and all juvenile forms to 30 days following hatching.

Ephemeral: Describes a stream which contains flowing water only for short periods following precipitation events.

Excavated waters: Waters of the State which are wholly human-created. Such waters shall include but not be limited to upland basins with surface outlets, drainage and tax ditches which are ephemeral, and dug ponds.

Existing use: Any use of any waters of the State which has, or likely has, occurred, or the water quality at any time has been satisfactory to support, on or after November 28, 1975.

Fish, aquatic life and wildlife: All animal and plant life found in Delaware, either indigenous or migratory, regardless of life stage or economic importance.

Foam: Frothy, generally stable, whitish mass of bubbles formed on or in the water upon agitation of the water.

Fresh water: Waters of the State which contain natural levels of salinity of 5 parts per thousand or less.

Fresh water flow: That flow which represents the amount of water passing a measurement point in a non-tidal system.

Hydrolysis: A reaction of a chemical with water which results in the cleavage of a chemical bond.

Indigenous: Native, or naturally growing, existing, or produced.

Industrial Water Supply: Any water that is protected for use for industrial purposes, including non-contact cooling water.

Intake water: Water used by a facility from surface water, groundwater, commercial, or other sources.

Intermittent: Describes a stream which contains flowing water for extended periods during a year, but does not carry flow at all times.

Lethal concentration (LC): The point estimate of the toxicant concentration that would be lethal to a given percentage of test organisms during a specific period.

Marine water: Waters of the State which contain natural levels of salinity in excess of 5 parts per thousand.

Minimum Analytical Level: The lowest concentration of a substance that can be quantified within specified limits of interlaboratory precision and accuracy under routine laboratory operating conditions in the matrix of concern.

NPDES: National Pollutant Discharge Elimination System as provided in the Clean Water Act.

Natural conditions: Water quality characteristics found or expected in the absence of human-induced pollution due to point or nonpoint sources.

Net advective flow: That flow which represents the difference between the amount of water passing a point in a tidal system on a flood tide and the subsequent ebb tide. It is approximately equal to the freshwater input to the system upstream of that point.

Normal Corrosion: An electrochemical reaction that results in the dissolution or removal of metal from a solid metal surface. For specific applications considered by the Department, normal corrosion rates shall be as published by the National Association of Corrosion Engineers (Reference: Corrosion Data Survey — Metals Section, National Association of Corrosion Engineers, 1985, as updated from time to time) or, for applications not specifically addressed in the above reference, such other reliable data.

Normal Erosion: The progressive loss of original material from a solid surface due to mechanical interaction between that surface and a fluid, a multi-component fluid or an impinging liquid or solid particle. (Reference: Standard Practice for Liquid Impingement Erosion Testing, ASTM Designation G73-82, 1987; or other authoritative source for materials or conditions not covered by the referenced standard).

Nuisance condition: Any condition that, as a result of pollutant addition to a stream, causes unreasonable interference with the designated uses of the waters or the uses of the adjoining land areas.

Nuisance species: Any species of fish, other animal, or plant living in or near the water, the presence of which causes unreasonable interference with the designated uses of the waters or the uses of adjoining land areas. Nuisance species include but are not limited to filamentous and blue-

green algae.

Nutrient: Any element or compound essential as a raw material for organism growth and development, including but not limited to nitrogen and phosphorus.

One-hour average: The arithmetic average of the samples collected during a continuous one-hour period.

Overenrichment: Excessive addition of nutrients to a water body, resulting in deterioration of designated uses of the waters.

Perennial: Describes a freshwater stream which contains flowing water at all times.

Person: Any individual, trust, firm, joint stock company, federal agency, partnership, corporation (including a government corporation), association, state, municipality, commission, political subdivision of a state, or any interstate body.

Photolysis: A light-catalyzed degradation reaction that occurs when light strikes certain chemicals.

Pollutant: Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, hydrocarbons, oil and product chemicals, and industrial, municipal, and agricultural waste discharged into water.

Practicable: Available and capable of being done after taking into consideration cost and existing technology, as well as logistics in light of overall facility operations or project purposes.

Primary contact recreation: Any water-based form of recreation, the practice of which has a high probability for total body immersion or ingestion of water (examples include but are not limited to swimming and water skiing).

Propagation: Reproduction of fish, aquatic life and wildlife within their natural environment.

Public water supply: Any waters of the State designated as public water supply in Section 10.

Regulatory mixing zone: A designated, mathematically defined portion of a receiving water body, in close proximity to a discharge, in which initial dilution, dispersion, and reaction of discharged pollutants occur. See Section 6 for details on use of term.

Risk management level: That level above which an assessed risk is unacceptable from a public health perspective.

Scientifically Reasonable Request: Any request that is based upon material, substantial, and relevant information and would be accepted as reasonable by most persons trained and competent in the subject of the request.

Scum: A thin layer of impurities which forms on the surface of waters of the State.

Secondary contact recreation: A water-based form of recreation, the practice of which has a low probability for total body immersion or ingestion of water (examples include but are not limited to wading, boating, and fishing).

Sedimentation: The movement of solid particles and adsorbed chemicals toward the bottom of the water column under the influence of gravity.

Shellfish: Any species of fresh, brackish or salt water mollusk that is commonly considered to be edible. Typical edible mollusks include but are not limited to clams, mussels, oysters, scallops, and whelks.

Stream basin: A specified drainage area from which (in most cases) all waters exit through a single outlet.

Surface water: Water occurring generally on the surface of the earth.

Synergistic effect: The total effect of a mixture of pollutants which is greater than the arithmetic sum of the effects of the individual pollutants in the mixture.

Systemic toxicant: A toxic substance that has the ability to cause health effects within the body at sites distant from the entry point due to its absorption and distribution. Systemic toxicants are believed to have threshold concentrations or levels below which no health effects occur.

Tidal: Surface waters characterized by periodic rise and fall due to gravitational interactions between the sun, moon, and earth.

Toxic substance: Any substance or combination of substances including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, may cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformities in such organisms or their offspring.

Toxicity: The ability to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformities in organisms or their offspring.

Toxicity test: The means to determine the toxicity of a chemical or effluent using living organisms. A toxicity test measures the degree of response of an exposed test organism to a specific chemical or effluent.

True daily mean: The mean value for a parameter which accurately accounts for diurnal variations over one 24-hour period.

Volatilization: The loss of a chemical from the water column due to mass exchange across the air-water interface.

Water distribution piping and appurtenances: Pipes and piping systems, along with integral components thereof, which are used to convey water from one point to another.

Water pollution: Man-made or human-induced alteration of the chemical, physical, biological or radiological integrity of surface waters of the State.

Waters of the State:

(1) All surface waters of the State including but not limited to:

(a) Waters which are subject to the ebb and flow of the tide, including but not limited to estuaries, bays, and the Atlantic Ocean;

(b) All interstate waters, including interstate wetlands;

(c) All other waters of the State, such as lakes, rivers, streams (including intermittent and ephemeral streams), drainage ditches, tax ditches, creeks, mudflats, sandflats, wetlands, sloughs, or natural or impounded ponds;

(d) All impoundments of waters otherwise defined as waters of the State under this definition;

(e) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in (a)-(d);

(2) Waste and stormwater treatment systems, including but not limited to treatment ponds or lagoons designed to meet the requirements of the Clean Water Act (other than cooling ponds which otherwise meet the requirements of subsection (1) of this definition) are not waters of the State.

Waters of exceptional recreational or ecological significance (ERES): Waters which are important, unique, or sensitive from a recreational and/or ecological perspective, but which may or may not have excellent water quality. Such waters shall normally have regional significance with respect to recreational use (fishing, swimming and boating), or have significant or widespread riverine, riparian, or wetland natural areas.

Water quality: The physical, chemical, and biological characteristics of water with respect to its suitability for a particular use. For the purposes of these Standards, water quality shall be assessed in terms of chemical composition, biological integrity, and physical habitat.

Water-Quality-Based: Generally refers to requirements for pollution control that are in excess of technology-based minimum requirements, including but not limited to those listed in Sections 301(b) and 306 of the Clean Water Act. Such controls are designed to reduce pollutants to a level that will allow water quality standards to be attained where said standards would not be attained through application of the technology-based controls.

Water quality criterion: An element of water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular designated use.

Water quality standard: A rule or limit defined herein which consists of a designated use or uses for waters of the State and water quality criteria for such waters based upon such designated uses.

Wetlands: Wetlands are those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and

similar areas.

Section 3: Antidegradation Policy

3.1 Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. Degradation of water quality in such a manner that results in reduced number, quality, or river or stream mileage of existing uses shall be prohibited. Degradation shall be defined for the purposes of this section as a statistically significant reduction, accounting for natural variations, in biological, chemical, or habitat quality as measured or predicted using appropriate assessment protocols.

3.2 Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected. In the case of waters of exceptional recreational or ecological significance, existing quality shall be maintained or enhanced. Limited degradation may be allowed if the Department finds, after full satisfaction of public participation provisions of 7 Del. Code Sections 6004 and 6006 and the intergovernmental coordination provisions of the State's continuing planning process as required in 40 CFR Part 130, that allowing lower water quality is necessary to accommodate important social or economic development, or would result in a substantial net environmental or public health benefit, in the area in which the waters are located. In allowing such degradation or lower water quality, the Department shall assure maintenance of water quality adequate for full protection of existing uses. Further, the Department shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

3.3 Where high quality waters constitute an outstanding National resource, such as waters of National parks and wildlife refuges, existing quality shall be maintained and protected.

3.4 In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with Section 316 of the Water Quality Act of 1987.

3.5 The hearing requirement imposed by Subsections 3.2 above shall not be construed to impose a requirement for an additional public hearing where such a hearing is otherwise held pursuant to law, provided the requirements of this section are hereby met.

Section 4: General Stream Criteria

4.1 All surface waters of the State (except as detailed in Sections 8 and 12) shall meet the following minimum criteria:

(a) Waters shall be free from substances that are attributable to wastes of industrial, municipal, agricultural or other human-induced origin. Examples include but are not limited to the following:

(i) Floating debris, oil, grease, scum, foam, or other materials on the water surface that may create a nuisance condition, or that may in any way interfere with attainment and maintenance of designated uses of the water,

(ii) Settleable solids, sediments, sludge deposits, or suspended particles that may coat or cover submerged surfaces and create a nuisance condition, or that may in any way interfere with attainment and maintenance of designated uses of the water,

(iii) Any pollutants, including those of a thermal, toxic, corrosive, bacteriological, radiological, or other nature, that may interfere with attainment and maintenance of designated uses of the water, may impart undesirable odors, tastes, or colors to the water or to aquatic life found therein, may endanger public health, or may result in dominance of nuisance species.

4.2 Certain waters of the State are subject to natural variations in salinity such that those waters meet the definition of fresh at some times and marine at other times. For such waters, the more stringent of fresh or marine water quality criteria or standards as detailed throughout this document shall apply at all times unless otherwise specified by the Department.

Section 5: Exceptions, Modifications and Conditions

A. Exceptions and Modifications

5.1 Request for Removal of Designated Uses:—The Department shall consider scientifically reasonable requests for removal of designated uses that are not existing uses for all or part of specific waters of the State. A request for removal of designated uses shall be deemed a scientifically reasonable request if it demonstrates that it is based upon a sound scientific rationale, supported by substantial scientific and technical evidence and analysis, as to the existence of one or more of the factors listed below. If the Department finds any request for removal to be frivolous or to be flawed as to the methods used to obtain evidence or perform analysis to such an extent that the validity of the conclusions would be challenged by most persons trained and competent in the use and interpretation of the technical or scientific methods employed, it may dismiss such request for removal without further action. If the Department determines that a scientifically reasonable request has been made, it shall make a preliminary determination as to the proposed change and hold a public hearing in accordance with 7 Del. Code Section 6006. Removals of designated use completed under this Section are deemed to be duly adopted components of the State of Delaware Surface Water Quality Standards. The Department shall consider the following factors relative to requests for removal of designated uses that are not existing

uses:

(a) Where concentrations of substances existing under natural conditions prevent the attainment of the designated use;

(b) Where lack of water from natural, ephemeral, intermittent or low flow conditions or water levels, inclusive of existing or proposed discharge flows, prevents the attainment of the designated use;

(c) Human-caused conditions or sources of pollution prevent the attainment of the designated use and cannot be remedied or would cause more net environmental damage to correct than to leave in place. Evaluations conducted pursuant to this factor shall take account of both short-term and long-term effects on the environment;

(d) Dams, diversions or other types of permitted or otherwise legal hydrologic modifications prevent the attainment of the designated use;

(e) Physical conditions related to the natural features of the water body, and related to water quality, that prevent attainment of the fish and aquatic life propagation designated use;

(f) Controls more stringent than those required by Sections 301 (b) and 306 of the Clean Water Act would result in substantial and widespread adverse economic and social impact.

5.2 Request for Modification of Water Quality Criteria: The Department shall consider scientifically reasonable requests for modification of water quality criteria contained herein for portions of specific waters of the State. A request for modification shall be deemed to be a scientifically reasonable request if it is based upon a sound rationale, and supported by substantial scientific evidence and analysis. This evidence and analysis must demonstrate the existence of site-specific differences in the chemical, physical, or biological characteristics of the surface water, and must propose alternate site-specific water quality criteria. Scientific studies for the development of these alternate criteria shall be designed and conducted in accordance with the guidelines set forth in the Water Quality Standards Handbook, (U.S. EPA, 1983) or other scientifically defensible methodologies approved by the Department. If the Department finds any request for modification to be frivolous, to be flawed as to the methods used to obtain evidence and to perform analysis to such an extent that the validity of the conclusions would be challenged by most persons trained and competent in the use and interpretation of the technical and scientific methods employed, or to contain reasonable evidence that a reduction in the number, quality, or river or stream mileage of designated uses would occur, it may dismiss such request for modification without further action. If the Department determines that a scientifically reasonable request has been made, the Department shall make a preliminary determination as to the proposed change and shall hold a

public hearing in accordance with 7 Del. Code Section 6006. If the Department determines that a scientifically reasonable request has been made pursuant to this Section and such request could result in a change in discharge limits, then the public hearings for the discharge limitation change and the criteria modification shall be held concurrently. In such case, the Department shall provide separate public notices for the discharge limitation change and the criteria modification. Criteria modification completed under this Section are deemed to be duly adopted components of the State of Delaware Surface Water Quality Standards.

5.3 Reserved

5.4 Variance for Pollutants Corroded and Eroded from Water Distribution Piping and Appurtenances: For the purpose of establishing discharge limitations, a facility may be granted a variance from water quality criteria for pollutants contributed by normal corrosion and erosion associated with the facility's piping and appurtenances in situations where this corrosion and erosion causes or would be expected to cause exceedances in the receiving water, provided that the discharger demonstrates, based upon sound rationale and supported by substantial scientific and technical evidence and analysis, all of the following:

(a) In the absence of pollutants corroded and eroded from the facility's water distribution piping and appurtenances, there would be no violation of the surface water quality criteria in the receiving water; and

(b) The normal corrosion and erosion associated with the intake water used by the facility is sufficient to be the sole cause of the violation. For purposes of this determination, intake water characteristics shall be used in assessing normal corrosion and erosion; and

(c) No other activity, condition or method of operation, or materials used or produced at the facility, which results in the addition to erosion and corrosion based pollutants into the facility's discharge, significantly contributes to the violations of surface water quality criteria in the receiving waters. Such activities, conditions or methods of operation, or materials used or produced at the facility include entrainment of pollutants previously discharged or disposed by the facility; and

(d) No practicable alternative water supply or treatment methodology or system which would yield statistically significant lower corrosivity or erosiveness is available to the facility; and

(e) The discharger demonstrates that controls more stringent than technology-based limits and Section 306 of the Clean Water Act that would result in substantial and widespread economic and social impact. The analysis of economic impacts must demonstrate that:

(1) The discharger would face substantial financial impacts due to the costs of the necessary pollution controls or water treatment (substantial impacts of which would interfere with development), and

(2) The affected community will bear significant adverse impacts if the entity is required to meet existing or proposed water quality standards (widespread impacts of important development).

The discharger will be required to meet applicable criteria for all other constituents. An alternative criteria will be derived for the erosion/corrosion-based pollutants based on intake water characteristics and properties of the facility's piping and appurtenances. A variance granted under this Section shall be effective for three years, or the life of the NPDES permit, and at the expiration of either time period, the discharger must either meet the criteria or make a new demonstration of unattainability and financial impact. Variances considered under this Section shall be subject to all applicable public participation requirements and shall be subject to review and approval by the U.S. Environmental Protection Agency.

5.5 Reserved

B. Conditions

5.6 Reserved

5.7 Any person who shall apply for a permit to discharge to the waters of the State shall have the opportunity to submit an analysis to the Department at the time of application to demonstrate that said discharge will not cause, have the reasonable potential to cause, or contribute to an excursion of the receiving stream's water quality standards. The Department shall consider any analysis submitted by the applicant and also conduct its own analysis in making a determination whether the discharge causes, has the reasonable potential to cause, or contributes to an excursion of standards. The Department's review of analyses submitted by applicants as well as analyses the Department conducts on its own shall consider the information and factors listed in Section 5.6 of these Standards. Analyses performed under Section 5.7 shall be conducted in concert with the requirements of Section 3, as applicable. A public hearing, pursuant to 7 Del. Code, Sections 6004 and 6006, may be held to gather public comment on any analysis submitted by an applicant in conjunction with Section 5.7.

5.8 Consistency with Other State and Federal Requirements: Nothing in Section 5 relieves or reduces the obligation of any person to comply with other applicable provisions of these Standards, federal or state laws and regulations.

Section 6: Regulatory Mixing Zones

The following requirements shall apply to regulatory mixing zones:

6.1 Applicability: In instances where the Department determines, based upon engineering calculations or field studies, that complete mix (as defined herein) of effluent with its receiving water is not expected to occur, the

Department may allocate a designated portion of the receiving water to provide for mixing of the effluent and the receiving water. This area shall be defined as a regulatory mixing zone and shall be determined on a case-by-case basis taking into account critical flows, outfall configuration and receiving stream characteristics. A mixing zone will not be allocated in instances where the Department determines that complete mix of effluent and receiving water occurs at the point of discharge, in which case, the critical flows as provided in Section 8 shall be applied in determining if the applicable criteria are met.

6.2 Location: Regulatory mixing zones shall not impinge upon areas of special importance, including but not limited to drinking water supply intakes, nursery areas for aquatic life or waterfowl, approved or conditional shellfish areas, or heavily utilized primary contact recreation areas. Zones shall not be located in such a manner as to interfere with passage of fishes or other organisms. Shore-hugging plumes should be avoided to the maximum extent practicable. In areas where multiple discharges are located in proximity, overlapping discharge plumes may occur. In such instances, the size limitations derived under Section 6.4 may be reduced to preclude acute toxicity in the overlap areas, or to ensure an adequate zone of passage for fish.

6.3 Outfall Design: Outfalls shall be designed to provide maximum protection for humans, aquatic life, and wildlife. Surface discharges to shallow near-shore areas shall be discouraged in preference to submerged outfalls located in deep offshore areas or other alternative discharge configurations which achieve Water Quality Standards.

6.4 Size: Size of the zone shall be no larger than is necessary to provide for mixing of effluent and receiving water. The following are the maximum size limitations that shall apply:

(a) Mixing zones for non-thermal pollutants shall be designed as follows:

(i) Rivers: During critical stream flow, as detailed in Section 8 of these standards, the maximum distance to the edge of the mixing zone shall be described by:

$$x_m \leq (u W^2) / (6H \sqrt{g H S})$$

where x_m = maximum mixing zone length,

u = flow velocity for critical flow as detailed in Section 8.2© or Section 8.3,

W = width of river,

H = depth of river,

g = acceleration due to gravity, and

S = slope of river surface.

(ii) Lakes: Because of the shallow depth and small size of Delaware lakes, regulatory mixing zones shall

be prohibited in these waters.

(iii) Tidal waters: For mean low water slack tide conditions, the maximum horizontal distance from the edge of the outfall structure to the edge of the mixing zone shall be no greater than twenty-five percent (25%) of the width of the tidal water at the point of discharge.

(b) Mixing zones for thermal (temperature) pollutants shall be defined as those waters between the point of discharge and the point at which the receiving water temperature criteria are met as defined in Section 11, subject to criteria (i) through (v) below. For non-tidal freshwater, mixing zones shall be designed using the critical stream flow specified in Section 8.1 or 8.3.

(i) The greatest offshore extension of the mixing zone shall not exceed 50 percent of the width of the waterbody at the point of discharge.

(ii) Thermal mixing zone cross-sectional area as measured in a vertical plane perpendicular to the receiving water flow shall not occupy more than 25 percent (25%) of the cross-sectional area of the receiving water as measured from the point of discharge to the opposite shore.

(iii) In areas where multiple discharges are located in proximity, overlapping discharges may occur. In such instances, the above size limitations shall apply to the cumulative influence of the multiple discharges.

(iv) Because of the shallow depth and small size of Delaware lakes, thermal mixing zones shall be prohibited in those waters.

(v) As an alternative to (b)(i) through (b)(iv) above, the size of the thermal mixing zone may be determined on a site-specific basis. This determination must be based upon a sound rationale and be supported by substantial biological, chemical, physical, and engineering evidence and analysis. Any such determination must show to the Department's satisfaction that no adverse changes in the protection and propagation of balanced indigenous populations of fish, aquatic life, and wildlife, may reasonably be expected to occur. A satisfactory showing made in conformance with Section 316(a) of the Water Quality Act of 1987 shall be deemed as compliance with the requirements of this paragraph.

6.5 In-Zone and Boundary of Zone Water Quality Requirements:

(a) Regulatory mixing zones shall not be used for, or considered as, a substitute for minimum treatment technology required by the Clean Water Act or other applicable State and Federal laws or regulations.

(b) Regulatory mixing zones shall be free of the following:

(i) Materials which result in the accumulation of toxic substances in sediment, aquatic life, or food chains at levels that may be harmful to the health of humans or aquatic life;

(ii) Materials in concentrations that may settle

to form deposits which smother benthic organisms, may exert significant dissolved oxygen demand, or may create a nuisance condition;

(iii) Floating debris, oil, scum, foam, and other matter in concentrations that may cause a nuisance condition;

(iv) Substances in concentrations that produce color, odor, taste, or turbidity that may lead to significant disruption of public water supply treatment systems, or may cause a nuisance condition; or

(v) Substances in concentrations that may result in a dominance of nuisance species, or may affect species diversity.

(e) No acute aquatic life criterion, as detailed in Section 9 of this document, may be exceeded at any point greater than one-tenth of the distance from the edge of the outfall structure to the boundary of the regulatory mixing zone as defined above.

(d) No acute aquatic life criterion, as detailed in Section 9 of this document, may be exceeded at any point greater than fifty (50) times the discharge length scale in any horizontal direction from the edge of the outfall structure.

(e) No acute aquatic life criterion, as detailed in Section 9 of this document, may be exceeded at any point greater than five (5) times the average water depth in the regulatory mixing zone in any horizontal direction from the edge of the outfall structure.

(f) No chronic aquatic life criterion, as detailed in Section 9 of this document, may be exceeded beyond the boundary of the regulatory mixing zone as defined above.

Section 7: Nutrients

Nutrient overenrichment is recognized as a significant problem in some surface waters of the State. It shall be the policy of this Department to minimize nutrient input to surface waters from point and human induced non-point sources. The types of, and need for, nutrient controls shall be established on a site-specific basis. For lakes and ponds, controls shall be designed to eliminate overenrichment. For tidal portions of the stream basins of Indian River, Rehoboth Bay, and Little Assawoman Bay, controls needed to attain submerged aquatic vegetation growth season (approximately March 1 to October 31) average levels for dissolved inorganic nitrogen of 0.14 mg/L as N, for dissolved inorganic phosphorus of 0.01 mg/L as P, and for total suspended solids of 20 mg/L shall be instituted. The specific measures to be employed by existing NPDES facilities to meet the aforementioned criteria shall be as specified in Section 11.5 (d) of these standards. Nutrient controls may include, but shall not be limited to, discharge limitations or institution of best management practices.

Section 8: Critical Flows

8.1 For all waters of the State, all water quality standards and criteria, except those for toxic substances,

shall not apply at those times when the freshwater flow or net advective flow falls below that value that is equal to the flow of 7-day duration with recurrence interval of 10 years (generally known as the 7Q10 or the Q7-10). However, at all times all waters shall be free of materials and substances as listed in Section 6.5(b).

8.2. For all waters of the state, water quality criteria for toxic substances as specified in Section 9 shall not apply at those times when the freshwater or net advective flow falls below the following values:

(a) The harmonic mean flow for compounds which bear the abbreviation "CA" for human carcinogen;

(b) The flow of 30-day duration with recurrence interval of 5 years (generally known as the 30Q5 or Q30-5), for compounds which bear the abbreviation "ST" for human systemic toxicant;

(c) The flow of 7-day duration with recurrence interval of 10 years (generally known as the 7Q10 or the Q7-10), for compounds having a chronic toxicity criterion; and

(d) The flow of 1-day duration with recurrence interval of 10 years (generally known as the 1Q10 or the Q1-10), for compounds having an acute toxicity criterion.

8.3. These critical flows shall also be used as design flows for developing water quality-based discharge limitations for the referenced groups of parameters. The Department shall consider scientifically reasonable requests for seasonally adjusted flows or the use of dynamic modeling techniques for this purpose on a case-by-case basis.

8.4. Nothing in Section 8 shall be construed as allowing any reduction in efficiency of, or suspension of, required pollution control practices, whether applied to point or nonpoint sources, during periods when flows are less than those specified for suspension of standards applicability in Sections 8.1-8.3.

Section 9: Toxic Substances

9.1 Applicability: Criteria set forth in this section apply to all surface waters of the State, except as provided in Section 6, Regulatory Mixing Zones, Section 8, Critical Flows, and Section 12, Criteria for Low Flow Waters.

9.2 General Provisions:

(a) Waters of the State shall not exhibit acute toxicity to fish, aquatic life, and wildlife, except in special cases applying to regulatory mixing zones as provided in Section 6.

(b) Waters of the State shall not exhibit chronic toxicity to fish, aquatic life, and wildlife, except in regulatory mixing zones as provided in Section 6, at flows less than critical flows as provided in Section 8, or in low flow waters as provided in Section 12.

(c) Waters of the State shall be maintained to prevent adverse toxic effects on human health resulting from ingestion of chemically contaminated aquatic organisms and

drinking water.

(d) The Department may consider synergistic, antagonistic, and additive impacts of combinations of toxicants to fish, aquatic life, and wildlife, and human health in assessing aggregate environmental impacts and mandating point and nonpoint source controls.

9.3 Specific Numerical Criteria:

(a) Aquatic Life Criteria:

(i) Numerical criteria for the protection of aquatic life are established in Table 1 for all toxic substances for which adequate aquatic life toxicity information is available. All criteria for metals in Table 1 are in the total recoverable form, except as specifically footnoted for cyanide. For toxic substances where the relationship of toxicity is defined as a function of pH or hardness, numerical criteria are presented as an equation based on this relationship. Appropriate pH or hardness values for such criteria shall be determined on a case-by-case basis by the Department.

(ii) For toxic substances for which specific numerical criteria are not listed in Table 1, concentrations shall not exceed those which are chronically toxic (as determined from appropriate chronic toxicity data or calculated as 0.1 of LC₅₀ values) to representative, sensitive aquatic organisms, except as provided in Section 6, Regulatory Mixing Zones, Section 8, Critical Flows, or Section 12, Criteria for Low Flow Waters. Concentrations so determined shall be applied as four-day average concentrations not to be exceeded more than once in any three-year period.

(b) Human Health Criteria

(i) Numerical criteria for the protection of human health are established in Table 2 for all toxic substances for which adequate toxicity information is available. Water quality criteria appearing in Table 2 for pollutants identified as carcinogens have been established at an upper bound worst case risk management level of one excess cancer in a population of one million (1×10^{-6}) over a 70-year lifetime. Criteria listed under the column header "Fish and Water Ingestion" apply only to surface waters of the State designated as Public Water Supply Sources in Section 10 of these Standards. Criteria listed under the column header "Fish/Shellfish Ingestion" apply only to marine surface waters of the State. Criteria listed under the column header "Fish Ingestion Only" apply to all fresh surface waters of the State not designated as Public Water Supply sources in Section 10 of these Standards.

(ii) For compounds in Table 2 which are considered as both systemic toxicants and human carcinogens, criteria based on both human health concerns are presented. In determining pollution control requirements, the more stringent criterion, after consideration of critical (design) flows in Section 8, shall be

utilized.

~~* TABLES 1 & 2 ARE AT THE END OF THE PROPOSED REGULATION.~~

~~Section 10: Stream Basins & Designated Uses~~

~~The designated uses applicable to the various stream basins represent the categories of beneficial use of waters of the state which must be maintained and protected through application of appropriate criteria.~~

~~* THE CHART DESIGNATING STREAM BASINS & DESIGNATED USES AND FIGURE 1 ARE AT THE END OF THE PROPOSED REGULATION.~~

~~Section 11: Surface Water Quality Criteria~~

~~11.1 General Criteria for Fresh Waters~~

~~The following criteria shall apply outside approved regulatory mixing zones unless otherwise specified:~~

<u>INDICATOR</u>	<u>UNITS OF MEASURE</u>	<u>CRITERIA</u>
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Temperature	Fahrenheit Degrees	(a) Maximum increase above natural conditions shall be 5°F.
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(b) No human induced increase of the true daily mean temperature above 82°F shall be allowed.

(c) No human induced increase of the daily maximum temperature above 86°F shall be allowed.

(d) The Department may mandate additional limitations on a site-specific or seasonal basis in order to provide incremental protection for early life stages of fish

Dissolved Oxygen	mg/L	(a) Average for the June-September period shall not be less than 5.5 mg/L
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(b) Minimum shall not be less than 4.0 mg/L

(c) In cases where natural

pH Standard Units

conditions prevent attainment of these criteria, allowable reduction in dissolved oxygen levels as a result of human activities shall be determined through application of the requirements of Sections 3- and 5 of these Standards.

(d) The Department may mandate additional limitations on a site-specific or seasonal basis in order to provide incremental protection for early life stages of fish.

(a) Shall be between 6.5 and 8.5 unless outside this range due solely to natural conditions. Where within this range, maximum human induced change from background shall be 0.5 Standard Units; pH which results from human induced change must remain within this range.

(b) Where pH is below 6.5 or above 8.5 due solely to natural conditions, it shall not be lowered (where below 6.5) or raised (where above 8.5) more than 0.3 Standard Units due to human induced changes.

Alkalinity mg/L as CaCO₃

Shall not be less than 20 mg/L unless due solely to natural conditions. If less than 20 mg/L due solely to natural conditions, no reduction due to human induced changes is allowed.

Phenol mg/L

Shall not exceed 0.3 mg/L.

4-chloro, 3-methylpheno- 1mg/L

Shall not exceed 3.0 mg/L

2-chlorophenol ug/L

Shall not exceed 0.1 ug/L

2,4-dichlorophenol ug/L

Shall not exceed 0.3 ug/L

2,4-dimethylphenol mg/L

Shall not exceed 0.4 mg/L

Penta-chloro-phenol mg/L

Shall not exceed 0.03 mg/L

Turbidity Nephelometric or Formazin

Shall not exceed natural levels by more than

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~~Turbidity Units 10 units.~~

11.2 ~~Additional Criteria for Other Fresh Water Designated Uses~~

(a) ~~Public Water Supply~~

~~Streams with a designated use of public water supply shall provide waters of acceptable quality for use for drinking, culinary or food processing purposes after application of approved treatment equivalent to coagulation, filtration, and disinfection (with additional treatment as necessary to remove naturally occurring impurities). The untreated waters are subject to the following limitations:~~

~~(i) Waters shall be free from substances (except natural impurities) that, alone or in combination with other substances, result in:~~

~~(A) Unacceptable levels of taste or odor in the treated water;~~

~~(B) Significant disruption of the treatment processes at the treatment facility; or~~

~~(C) Concentrations of toxic substances in the treated water that may be harmful to human health. The requirements of Section 9 shall apply.~~

(b) ~~Cold Water Fisheries (put and take)~~

~~The criteria given in this section shall apply only during that period of the year designated for put and take trout fishing for each stream (see Section 10). The following criteria shall apply outside approved regulatory mixing zones unless otherwise specified.~~

~~induced change is allowed.~~

11.3 ~~General Criteria for Marine Waters~~

~~The following criteria shall apply outside approved regulatory mixing zones unless otherwise specified:~~

Temperature	Fahrenheit Degrees	(a) Maximum increase above natural conditions shall be 4°F from October through May. Temperature rise during June through September shall be limited by the following conditions:
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~~(i) No human induced increase of the true daily mean temperature above 84°F shall be allowed; and~~

~~(ii) No human induced increase of the daily maximum temperature above 87°F shall be allowed.~~

~~(b) The Department may mandate additional limitations on a site specific or seasonal basis in order to provide incremental protection for early life stages of fish.~~

<u>INDICATOR</u>	<u>UNITS OF MEASURE</u>	<u>CRITERIA</u>
Temperature	Fahrenheit Degrees	<p>(a) Maximum increase above natural conditions shall be 5°F.</p> <p>(b) No human induced increase of the true daily mean temperature above 75°F, shall be allowed.</p>
Dissolved Oxygen	mg/L	<p>(a) Average shall not be less than 6.5 mg/L unless below this value due solely to natural conditions. When the average is below 6.5 mg/L due to natural conditions, no reduction due to human induced change is allowed.</p> <p>(b) Minimum shall not be less than 5.0 mg/L unless below this value due solely to natural conditions. When the minimum is below 5.0 mg/L due to natural conditions, no reduction due to human</p>

Dissolved Oxygen	mg/L	<p>(a) Average for the June-September period shall not be less than 5.0 mg/L unless below this value due solely to natural conditions. When the average is below 5.0 mg/L due to natural conditions, the average shall not be lowered more than 0.5 mg/L due to human induced changes.</p> <p>(b) Minimum shall not be less than 4.0 mg/L unless below this value due solely to natural conditions. When the minimum is below 4.0 mg/L due to natural conditions, the average shall not be lowered more than 0.5 mg/L due to human induced changes.</p> <p>(c) In cases where natural conditions prevent attainment of these criteria, allowable reduction in dissolved oxygen levels as a result of human activities shall be determined</p>
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through application of the requirements of Sections 3 and 5 of these Standards.

(d) The Department may mandate additional limitations on a site-specific or seasonal basis in order to provide incremental protection for early life stages of fish.

pH Standard Units

(a) Shall be between 6.5 and 8.5 unless outside this range due solely to natural conditions. Where within this range, maximum human-induced change from background shall be 0.5 Standard Units; pH which results from human-induced change must remain within this range.

(b) Where pH is below 6.5 or above 8.5 due solely to natural conditions, it shall not be lowered (where below 6.5) or raised (where above 8.5) more than 0.3 Standard Units due to human-induced changes.

Alkalinity mg/L as CaCO₃

Shall not be less than 20 mg/L unless due solely to natural conditions. If less than 20 mg/L due solely to natural conditions, no reduction due to human-induced changes is allowed.

Phenol mg/L
4-chloro, mg/L
3-methylphenol

Shall not exceed 0.3 mg/L.
Shall not exceed 3.0 mg/L²

2-chlorophenol ug/L

Shall not exceed 0.1 ug/L

2,4-dichlorophenol ug/L

Shall not exceed 0.3 ug/L

2,4-dimethylphenol mg/L

Shall not exceed 0.4 mg/L

Pentachlorophenol mg/L

Shall not exceed 0.03 mg/L

Turbidity Nephelometric or Formazin Units

Shall not exceed natural levels by more than 10 units.

11.4 Additional Criteria for Other Marine Water Designated Uses

(a) Harvestable shellfish waters (refer to Section 10)

Harvestable shellfish waters are waters from which shellfish may be taken and consumed; such waters are approved for shellfish harvesting by the State Board of Health. The following criteria shall apply:

<u>INDICATOR</u>	<u>UNITS OF MEASURE</u>	<u>CRITERIA</u>
Total coliform	MPN/100 mL	The coliform median MPN of the water shall not exceed 70/100 mL; nor shall more than 10% of the samples have an MPN in excess of 330/100 mL for a 3 decimal dilution test (or 230/100 mL where the 5 tube decimal test is used). These criteria shall be verified through sampling of those portions of the shellfish area most probably exposed to fecal contamination for those tidal and climatic conditions most likely to result in contamination of the shellfish area.

(b) Delaware River/Bay (PA-DE line, RM 78.8 to Cape Henlopen, RM 0.0)

The following criteria shall apply outside approved regulatory mixing zones unless otherwise specified.

Enterococcus Bacteria	Colonies/100mL	The geometric average of a representative group of samples shall not exceed 10/100mL.
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Dissolved Oxygen	mg/L	(a) Minimum true daily mean shall not be less than 6.0 mg/L. This criterion shall apply from RM 59.5 to RM 0.0 only.
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(b) Minimum shall not be less than 5.0 mg/L

(c) In cases where natural

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conditions prevent attainment of these criteria, allowable reduction in dissolved-oxygen levels as a result of human activities shall be determined through application of the requirements of Sections 3 and 5 of these Standards.

(d) The Department may mandate additional limitations on a site-specific or seasonal basis in order to provide incremental protection for early life stages of fish.

Temperature Fahrenheit Degrees

(a) Maximum increase above natural conditions shall be 4°F from October through May. Temperature rise during June through September shall be limited by the following conditions:

(i) No human-induced increase of the true daily mean temperature above 84°F shall be allowed; and

(ii) No human-induced increase of the daily maximum temperature above 86°F shall be allowed.

(b) The Department may mandate additional limitations on a site-specific or seasonal basis in order to provide incremental protection for early life stages of fish.

(e) Lewes-Rehoboth Canal

Dissolved Oxygen mg/L

(a) Average for the June-September period shall not be less than 3.0 mg/L

(b) Minimum shall not be

less than 2.0 mg/L

11.5 Criteria for Waters of Exceptional Recreational or Ecological Significance (ERES Waters)

(a) General Policy

(i) Designated ERES waters shall be accorded a level of protection and monitoring in excess of that provided most other waters of the State. These waters are recognized as special natural assets of the State, and must be protected and enhanced for the benefit of present and future generations of Delawareans.

(ii) ERES waters shall be restored, to the maximum extent practicable, to their natural condition. To this end, the Department shall, through adoption of a pollution control strategy for each ERES stream basin, take appropriate action to cause the systematic control, reduction, or removal of existing pollution sources, and the diversion of new pollution sources, away from ERES waters.

(iii) Discharges to ERES waters shall be avoided to the maximum extent practicable. In order to be permitted, a discharge must be the least environmentally damaging practicable alternative.

(iv) Prior to any public notice for a discharge permit required pursuant to 7 Del. Code Chapter 60, the Department shall make a determination that potential impacts have been avoided to the maximum extent practicable, and that remaining unavoidable impacts will be minimized to the extent appropriate and practicable. Findings shall be based upon appropriate factual determinations, evaluations, and tests with special emphasis on the persistence and permanence of the impacts. Under this provision impacts considered individually or collectively include:

(A) Impacts of pollutants on human health and welfare;

(B) Impacts of pollutants on life stages of aquatic life and other wildlife dependent on aquatic ecosystems including, but not limited to, the transfer, concentration, and spread of pollutants or their by-products through biological, physical, and chemical processes;

(C) Impacts of pollutants on aquatic ecosystem diversity, productivity, and stability. Such impacts may include, but are not limited to, loss of fish and wildlife habitat or loss of the capacity of a wetland to assimilate nutrients, purify water, or reduce wave energy; or

(D) Impacts on recreational, aesthetic, and economic values.

(v) Any applicant for a discharge permit required pursuant to 7 Del. Code Chapter 60 shall provide to the Department, as part of a complete application, a resource assessment tailored to the site performed by qualified professionals. Such assessments shall fully consider ecological functions and values in light of the policies set forth in these standards. Consideration shall be given to:

(A) Potential impacts on physical and

chemical characteristics of the aquatic ecosystems which shall include, but not be limited to, substrates, substrate particulates/turbidity, water, current patterns, water circulation, normal water fluctuations, and salinity gradients;

(B) Potential impacts on biological characteristics of the aquatic ecosystem which shall include, but not be limited to, fish, crustaceans, mollusks and other organisms in the food web, other wildlife, and threatened or endangered species; and

(C) Potential effects on human use characteristics which shall include, but not be limited to, water supplies, recreational and commercial fisheries, water related recreation, aesthetics, parks, research sites, wildlife areas or public access areas.

(b) General Provisions—

(i) In cases where natural conditions prevent attainment of applicable fresh or marine dissolved oxygen criteria, reduction in dissolved oxygen levels as a result of human activities shall be prohibited.

(ii) All point, and human induced nonpoint sources subject to control through use of best management practices or otherwise, shall be required to remove nutrients to the extent necessary to prevent excessive growth of photosynthetic organisms.—

(iii) All point, and human induced nonpoint sources subject to control through use of best management practices or otherwise, shall be required to remove particulate matter to the extent necessary to minimize turbidity.—

(iv) ERES waters shall not exhibit toxicity within aquatic habitats commonly used by native or migratory aquatic, terrestrial, and avian species. Such habitats include, but may not be limited to, spawning sites, nursery areas, forage areas, and migratory pathways.—

(v) ERES standards shall not apply in excavated waters. All other appropriate criteria shall remain in force for these waters.

(vi) The ERES criteria set forth in Section 11.5 supplement all other applicable requirements of these standards for ERES waters. Nothing in Section 11.5 relieves or reduces the obligation of any person to comply with other requirements of these Standards, federal or state laws and regulations.—

(c) Pollution Prevention

(i) Existing Sources: For the purposes of this Section 11.5, an existing source shall be defined as a discharge for which a permit has been issued by the Department pursuant to 7 Del. Code Chapter 60 prior to January 1, 1991. In the case of a water body designated as ERES waters pursuant to Section 10 of the Standards, the Department shall not issue or reissue a permit for an existing source unless the applicant demonstrates a utilization of all economically feasible and reasonably available waste minimization practices and technologies, and the lack of

feasible alternative production processes and disposal options.

The provisions of Subsections 11.5 (a)(iv), 11.5(a)(v), and 11.5 (c)(i) shall apply to existing sources on January 1, 1996, or upon adoption of a Pollution Control Strategy as provided in Section 11.5(d), whichever occurs first. In either event, the provisions of Section 11.5, including all requirements of the Pollution Control Strategy shall apply to existing sources.

(ii) Increased or New Sources: For the purposes of Section 11.5, new sources are those discharges for which a permit has not been issued pursuant to 7 Del. Code Chapter 60 prior to January 1, 1991, and increased sources are those discharges for which there is an increase in the pollutant of concern from any existing source. For the purposes of Section 11.5, pollutants of concern are the following: oxygen-demanding substances (as may be measured by BOD and COD), nitrogen, phosphorous, bacteria, heat, and total suspended solids. In the case of any waterbody designated as ERES waters pursuant to Section 10 of the Standards, the Department shall not issue or reissue a permit pursuant to 7 Del. Code Chapter 60 that allows an increase in or new source of pollutant loadings of pollutants of concern unless the applicant demonstrates:

(A) A need to discharge based upon a showing of the full utilization of measures, processes, methods, systems or techniques to eliminate the discharge altogether or minimize waste loadings through process changes, substitution of materials, enclosure of systems or other modifications. This can be demonstrated through the full utilization of available waste minimization practices and technologies and the lack of feasible alternative production processes and disposal options; and—

(B) That a proposed new discharge or any increase in loading of pollutants of concern of an existing discharge is consistent with the Pollution Control Strategy for the basin. Prior to adoption of a Pollution Control Strategy for a stream basin no increase in loadings of pollutants of concern shall be allowed to the stream basin from a surface water discharger unless the Secretary determines that:

(1) Such discharger offsets the increased surface water discharge of pollutants of concern within the stream basin to the maximum extent practicable in an acceptable manner;

(2) The increased loadings of pollutants of concern are necessary to prevent a substantial adverse economic or social impact at the community or regional level, and

(3) Water quality will be maintained to fully protect existing uses.

(d) Pollution Control Strategy

(i) For each stream basin designated as ERES waters pursuant to Section 10 of these standards, the

Department shall develop a pollution control strategy. The strategy shall provide for the implementation of best management practices established pursuant to Subsection 11.5(e) of this section and shall include such additional requirements, measures, and practices as are necessary to:

(A) Prevent the violation of water quality standards;

(B) Protect all resources in the stream basin in a manner that allows for natural conditions to be maintained or restored; and

(C) Assure the protection and propagation of a balanced, indigenous population of fish, shellfish, aquatic vegetation, and wildlife, and provide for recreational activities in and on the water.

(ii) The strategy pursuant to this subsection shall, at a minimum:

(A) Provide an assessment of the nature, degree, and extent of pollution to waters within such stream basin, in terms of point source and non-point source contribution;

(B) Identify the aspects of the stream basin which are important, unique, or sensitive from a recreational or ecological perspective;

(C) Establish such additional indicators and criteria that satisfy the general policy and provisions established for such stream basins;

(D) Identify the means by which ERES standards will be achieved;

(E) Delineate, where appropriate, the specific point source effluent limits, best management practices, and other controls that will be used to achieve water quality standards; and

(F) Indicate changes to be made to state plans for control of water pollution or resource management to assure implementation of the strategy.

(iii) The Department shall assure the opportunity for public participation in the development of the strategy required pursuant to this subsection and shall provide for public review and comment on the strategy in accordance with 7 Del. Code 6010.

(iv) The Department may, to the extent it deems appropriate, provide technical assistance to local governments in developing and implementing the strategy required pursuant to this subsection.

(v) The Department shall, to the extent it deems appropriate, pursue and coordinate implementation of any strategy developed pursuant to this subsection through priority application of its resources to ERES waters through its regulatory and non-regulatory programs.

(vi) The Department may, in accordance with 7 Del. Code 6010, adopt and require the use of specific combinations of methods, practices, and technologies which it deems to be most effective for controlling, reducing, or removing waste loadings to ERES waters. Such

requirements shall be based upon the application of good engineering and environmental science practices and principles, achieve a high degree of reliability, and be appropriate for the categories of activity.

(e) Best Management Practices

The Department may adopt, pursuant to 7 Del. Code 6010, best management practices for selected sources of pollution to ERES waters. Best management practices identified by the Department pursuant to this subsection shall provide a standard for the control of the addition of pollutants which reflects the greatest degree of pollutant reduction achievable including, where practicable, a standard requiring no discharge of pollutants.

11.6 Criteria Governing Primary Contact Recreation

The criteria specified below are calculated using EPA's "Ambient Water Quality Criteria for Bacteria, 1986" (EPA 440/5-84-002, January, 1986). A statistically derived risk of highly credible swimming-associated gastroenteritis illness of 12.5 per 1000 swimmers (1.25%) has been utilized to calculate these criteria. The purpose of these criteria is to provide the Department with a basis to assess water quality trends and pollution control needs with regard to primary contact recreation in waters of the state. The criteria apply to enterococcus bacteria determined by the Department to be of human origin based on best scientific judgment using available information. Swimming in waters affected by runoff during runoff periods may present a risk of highly credible gastroenteritis illness in excess of 12.5 per 1000 swimmers, and is not recommended. The following criteria shall apply:

Enterococcus Bacteria Colonies/100mL

For all fresh waters of the state, the geometric average of a representative group of samples shall not exceed 100/100 mL.

Enterococcus Bacteria Colonies/100mL

For all marine waters of the state, the geometric average of a representative group of samples shall not exceed 10/100 mL.

Section 12: Criteria for Low Flow Waters

12.1 A low flow water is one in which the 7Q10 freshwater inflow is less than 0.1 cfs. The following criteria shall apply to discharges into low flow waters:

(a) Where information is available for the receiving water which indicates that, because of low flow, it would not support designated uses, then numeric criteria shall not apply. The numeric criteria shall then apply at the closest downstream point where uses could reasonably be expected to occur.

(b) The discharge shall not add:

(i) Materials which result in the accumulation of toxic substances in sediment, aquatic life or food chains at

levels that may be harmful to the health of humans or aquatic life;

(ii) Materials in concentrations that may settle to form deposits which smother benthic organisms, may exert significant dissolved oxygen demand, or may create a nuisance condition;

(iii) Floating debris, oil, scum, foam, and other matter in concentrations that may cause a nuisance condition;

(iv) Substances in concentrations that produce color, odor, taste or turbidity that may lead to significant disruption of a public water supply treatment systems, or may cause a nuisance condition; or

(v) Substances in concentrations that may result in a dominance of nuisance species, or may affect species diversity.

12.2 The applicant for discharge shall bear the burden of showing, to the satisfaction of the Department, that the provisions of 12.1 (a) and 12.1 (b) above are met.

12.3 Any application for new or increased discharge to a low flow water must include a thorough evaluation of alternate discharge configurations, including but not limited

to water conservation, relocating the outfall to a more suitable location, conveying the wastewater to other available treatment facilities, or utilizing land treatment. Alternatives which do not include discharge must be used wherever technologically feasible and cost-effective (notwithstanding other requirements of these or other applicable regulations).

Section 13: Separability

Should any section, paragraph, or other part of this document be declared invalid for any reason, the remainder shall not be affected.

TABLE 1

WATER QUALITY CRITERIA FOR PROTECTION OF AQUATIC LIFE
(All Values Are Listed or Calculated in Micrograms Per Liter)

Parameter	Fresh Acute Criterion	Fresh Chronic Criterion	Marine Acute Criterion	Marine Chronic Criterion
Aldrin	3.0	—	1.3	—
Aluminum	750.	87.	—	—
Arsenic (III)	360.	190.	69.	36.
Cadmium	$e^{(1.128[\ln(Hd)]-3.828)}$	$e^{(0.7852[\ln(Hd)]-3.490)}$	43.	9.3
Chlordane	2.4	0.0043	0.09	0.004
Chlorine	19	11.	13	7.5
Chlorpyrifos (Dursban)	0.083	0.041	0.011	0.0056
Chromium (III)	$e^{(0.8190[\ln(Hd)]+3.688)}$	$e^{(0.8190[\ln(Hd)]+1.561)}$	—	—
Chromium (VI)	16.	11.	1,100.	50.
Copper	$e^{(0.9422[\ln(Hd)]-1.464)}$	$e^{(0.8545[\ln(Hd)]-1.465)}$	2.9	—
Cyanide [†]	22.	5.2	1.0	—
DDT and Metabolites	1.1	0.0010	0.13	0.0010
Demeton	—	0.10	—	0.10
Dieldrin	2.5	0.0019	0.71	0.0019
Endosulfan	0.22	0.056	0.034	0.0087
Endrin	0.18	0.0023	0.037	0.0023
Guthion	—	0.01	—	0.01
Heptachlor	0.52	0.0038	0.053	0.0036
Hexachlorocyclohexane	2.0	0.08	0.16	—
Iron	—	1000.	—	—
Lead	$e^{(1.273[\ln(Hd)]-1.460)}$	$e^{(1.273[\ln(Hd)]-4.705)}$	140.	5.6
Malathion	—	0.1	—	0.1

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Mercury (II)	2.4	0.012	2.1	0.025
Methoxychlor	—	0.03	—	0.03
Mirex	—	0.001	—	0.001
Nickel	$e^{(0.8460[\ln(\text{Hd})]+3.3612)}$	$e^{(0.8460[\ln(\text{Hd})]+1.1645)}$	75.	8.3
Total PCBs	2.0	0.014	10	0.03
Parathion	0.065	0.013	—	—
Pentachlorophenol	$e^{[1.005(\text{pH})-4.830]}$	$e^{[1.005(\text{pH})-5.290]}$	13.	7.9
Selenium	20	5.0	300.	71.
Silver	$e^{(1.72[\ln(\text{Hd})]-6.52)}$	0.12	2.3	—
Toxaphene	0.78	0.0002	0.21	0.0002
Zinc	$e^{(0.8473[\ln(\text{Hd})]+0.8604)}$	$e^{(0.8473[\ln(\text{Hd})]+0.7614)}$	95.	86.

pH is expressed as Standard Units

Example calculation: Fresh acute criterion for silver at hardness of 50 mg/L. Criterion in ug/L = e raised to the [1.72 ln(50) - 6.52] power. This is equal to e to the 0.21 power, or 1.23 ug/L.

Notes:

[†] Cyanide measured as free cyanide at the lowest pH occurring in the receiving water, or cyanide amenable to chlorination.

Specific numerical acute criteria as presented in this table are applied as one-hour average concentrations not to be exceeded more than once in any three-year period. Specific numerical chronic criteria as presented in this table are applied as four-day average concentrations not to be exceeded more than once in any three-year period.

ln = natural log base e

e = 2.71828

Hd = hardness is expressed as mg/L as CaCO₃

TABLE 2

WATER QUALITY CRITERIA FOR PROTECTION OF HUMAN HEALTH

(All Values Are Listed in Micrograms Per Liter Unless Noted Otherwise)

	Freshwater		Marine/Estuarine	Human Health
	Fish Ingestion Only	Fish and Water Ingestion	Fish/Shellfish Ingestion	
Acrolein	1.0 mg/L	360.	140.	ST
Acrylonitrile	0.83	0.06	0.12	CA
Aldrin	0.17 ng/L	0.16 ng/L	0.02 ng/L	CA
Aldrin	0.086	0.080	0.012	ST
Antimony	5.4 mg/L	14.	760.	ST
Arsenic**		50. (MCL)		CA
Barium**		1.0 mg/L (MCL)		ST
Benzene	89.	1.2	12.5	CA
Benzidine	0.67 ng/L	0.12 ng/L	0.09 ng/L	CA
Benzidine	460.	85.	64.	ST
Benzo (A) Pyrene (3,4-Benzopyrene)	0.037	0.0027	0.0053	CA
Beryllium	0.08	0.0038	0.011	CA
Beryllium	3.5 mg/L	170.	500.	ST
Bromoform (Tribromomethane)	266	5.6	37.4	CA
Bromoform (Tribromomethane)	34. mg/L	690.	4.7 mg/L	ST
Cadmium**		10.(MCL)		ST

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Carbon Tetrachloride (Tetrachloromethane)	5.5	0.26	0.78	CA
Carbon Tetrachloride (Tetrachloromethane)	500.	23.	70.	ST
Chlordane	0.73 ng/L	0.72 ng/L	0.13 ng/L	CA
Chlordane	0.057	0.056	0.008	ST
Chlorobenzene	26.1 mg/L	680.	3.7 mg/L	ST
Chloroethyl Ether (Bis-2-Chloroalkyl Ether)	1.77	0.031	0.25	CA
Chloroform (Trichloromethane)	368.	5.7	52.	CA
Chloroform (Trichloromethane)	22. mg/L	340.	3.2 mg/L	ST
Chromium**		50. (MCL)		ST
Chromium (Hexavalent)	4.2 mg/L	170.	590.	ST
Chromium (Trivalent)	840. mg/L	34. mg/L	120. mg/L	ST
Cyanide	270. mg/L	700.	38. mg/L	ST
DDT and Metabolites	0.74 ng/L	0.73 ng/L	0.10 ng/L	CA
DDT and Metabolites	0.13	0.12	0.018	ST
Dibenzo (A,H) Anthracene Anthracene-	0.037	0.0027	0.0053	CA
1,2-Dichlorobenzene	21.8 mg/L	2.8 mg/L	3.1 mg/L	ST
1,3-Dichlorobenzene	4.3 mg/L	410.	600.	ST
1,4-Dichlorobenzene**	24. mg/L	75. (MCL)	3.4 mg/L	ST
3,3-Dichlorobenzidine	0.025	0.011	0.0036	CA
1,2-Dichloroethane	123.	0.38	17.	CA
1,1-Dichloroethylene	4.	0.058	0.56	CA
1,1-Dichloroethylene	20. mg/L	310.	2.8 mg/L	ST
1,2-Trans-dichloroethylene	130. mg/L	700.	19. mg/L	ST
Dichloromethane	2.0	4.7	277.	CA
Dichloromethane	810. mg/L	2.1 mg/L	110 mg/L	ST
2,4-Dichlorophenoxyacetic acid (2,4-D)**		100. (MCL)		ST
1,3-Dichloropropene	392.	0.19	5.5	CA
1,3-Dichloropropene	2.0 mg/L	10.0	280.	ST
Dieldrin	0.18 ng/L	0.17 ng/L	0.025 ng/L	CA
Dieldrin	0.14	0.13	0.02	ST
Diethylphthalate	148. mg/L* mg/L*	24.0 mg/L	21.0 mg/L	ST
Dimethylphthalate	3,700. mg/L	320. mg/L	530. mg/L	ST
2,4-Dinitrotoluene	96.	0.94	13.	CA
2,4-Dinitrophenol	13.0 mg/L	70.	1.9 mg/L	ST
Dioxin (2,3,7,8-TCDD)	0.000017 ng/L	0.000016 ng/L	0.000024 ng/L	CA
1,2-Diphenylhydrazine	0.68	0.041	0.095	CA
Endosulfan	2.5	1.0	0.35	ST
Endrin**	1.0	0.2 (MCL)	0.14	ST
Ethylbenzene	35. mg/L	3.2 mg/L	5.0 mg/L	ST
Fluoranthene	67.	50.	9.4	ST
Fluoride**		1.8 mg/L (MCL)		ST
Heptachlor	0.27 ng/L	0.26 ng/L	0.037 ng/L	CA
Heptachlor	0.60	0.58	0.084	ST
Hexachloroethane-	11.	2.	1.6	CA

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Hexachloroethane	150.	29.	22.	ST
Hexachlorobenzene	0.88 ng/L	0.85 ng/L	0.12 ng/L	CA
Hexachlorobenzene	1.2	1.2	0.17	ST
Hexachlorobutadiene	62.1	0.44	8.7	CA
Hexachlorobutadiene	2.0 mg/L*	69.	1.3 mg/L	ST
Hexachlorocyclohexane (Gamma-Lindane)	0.08	0.02	0.011	CA
Hexachlorocyclohexane (Gamma-Lindane)**	31.	4.0 (MCL)	4.4	ST
Hexachlorocyclohexane (Alpha)	0.016	0.0041	0.0023	CA
Hexachlorocyclohexane (Beta)	0.058	0.014	0.0081	CA
Hexachlorocyclopentadiene	1.8 mg/L*	240.	1.8 mg/L*	ST
Isophorone	500. mg/L	5.2 mg/L	71. mg/L	ST
Lead**		50.(MCL)		CA
Mercury** (Inorganic)	7.1	2.0 (MCL)	1.5	ST
Methoxychlor**		100.(MCL)		CA
Nickel	5.7 mg/L	620.	810.	ST
Nitrate-Nitrogen**		10. mg/L (MCL)		ST
Nitrobenzene	2.2 mg/L	17.0	320.	ST
Nitrosodimethylamine-N	10.	0.68 ng/L	1.4	CA
Nitrosodiphenylamine-N	20.	5.3	2.8	CA
Nitrosodipropylamine-N	35.	0.005	4.9	CA
PCBs (1242,1254,1221, 1232, 1248, 1260, 1016)	0.056 ng/L	0.055 ng/L	0.0079 ng/L	CA
(Bis-2) Ethyl Hexyl Phthalate	7.4	1.9	1.	CA
(Bis-2) Ethyl Hexyl Phthalate	400.*	400.*	290.	ST
Di-N-Butyl Phthalate	13. mg/L*	2.8 mg/L	2.1 mg/L	ST
Selenium**	1.1 mg/L	10. (MCL)	160.	ST
Silver**	0. mg/L	50. (MCL)	5.7 mg/L	ST
1,1,2,2 Tetrachloroethane	13.5	0.17	1.9	CA
Tetrachloroethylene	4.3 mg/L	320.	610.	ST
Thallium	60.	14.	8.4	ST
Toluene	370. mg/L	10. mg/L	52. mg/L	ST
Total Trihalomethanes**		100.(MCL)		CA
Toxaphene	0.93 ng/L	0.91 ng/L	0.13 ng/L	CA
1,2,4 Trichlorobenzene	19. mg/L	680.	2.7 mg/L	ST
1,1,1 Trichloroethane**	200. mg/L	200. (MCL)	28. mg/L	ST
1,1,2 Trichloroethane	52.5	0.61	7.4	CA
1,1,2 Trichloroethane	11. mg/L	140.	1.5 mg/L	ST
Trichloroethylene	115.	3.1	16.	CA
2,4,6 Trichlorophenol	4.5	1.3	0.63	CA
2,4,5 Trichlorophenoxypropionic acid (2,4,5-TP-Silvex)**		10. (MCL)		ST
Vinyl Chloride	677.	2.1	95.	CA

CA = carcinogen

ST = systemic toxicant

NOTES: mg/L = milligrams per liter
ng/L = nanograms per liter

The columns labeled "Fish and Water Ingestion" shall apply only to waters of the State designated Public Water Supply sources in these standards.

The column labeled "Fish Ingestion Only" shall apply to all fresh waters of the State not designated Public Water Supply sources in this document.

The column labeled "Fish/Shellfish Ingestion" shall apply only to marine waters of the State.

* Calculated solubility of compound in water is less than criterion; therefore, solubility limit calculated at 25^o C and 1 atm is substituted.

** Values shown under header "Fish and Water Ingestion" are Primary Maximum Contaminant Levels (MCLs) as given in the State of Delaware Regulations Governing Public Drinking Water Systems as amended May 19, 1989.

Section 10. Stream Basins and Designated Areas

The designated uses applicable to the various stream basins represent the categories of beneficial use of waters of the state which must be maintained and protected through application of appropriate criteria.

(a) Designated use for freshwater segments only (b) Designated use from March 15 to June 30 on:

1. Beaver Run from PA/DE line to Brandywine.
2. Wilson Run Route 92 through Brandywine Creek State Park.

(c) Designated use from March 15 to June 30 on: Christina River from MD/DE line through Rittenhouse Park.

(d) Designated use for marine water segments only.

(e) Designated use year round on: Red Clay Creek from PA/DE line to the concrete bridge above Yorklyn

(f) Designated use year round on:

1. White Clay Creek from the PA/DE line to the dam at Curtis Paper.
Designated use from March 15 to June 30 on:
2. Mill Creek from Brackenville Road to Route 7.
3. Pike Creek from Route 72 to Henderson Road.

(g) Designated use from PA/DE line to the dam at Curtis Paper.

(h) Designated use from PA/DE line to Wilmington city line.

(i) Goal use not currently attained.

(j) Parts of these waters are APPROVED shellfish harvesting areas. Information on areas where shellfish may be taken should be obtained from the Shellfish & Recreational Waters Branch, Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control

(k) Includes Primehook Creek watershed.

(l) Includes assorted minor watersheds not explicitly associated with any other designated stream basin.

(m) The specific portions of the Atlantic Ocean and the Delaware Bay for which the ERES designation shall apply shall be delineated in the Pollution Control Strategy developed for each of those waterbodies. The ERES designation for the Atlantic Ocean and the Delaware Bay does not include water explicitly associated with any other designated stream basin (e.g., Delaware Bay does not include St. Jones River).

(n) The Delaware Bay extends from River Mile 0.0 to 48.2 as shown on Figure 1.

(o) The Delaware River extends from River Mile 48.2 to 78.8 as shown in Figure 1.

* this designated water use to be protected throughout entire stream basin

- water uses not designated in the stream basin

* waters of exceptional recreational or ecological significance

** includes shellfish propagation

Section 1: Intent

1.1 It is the policy of the Department to maintain within its jurisdiction surface waters of the State of satisfactory quality consistent with public health and public recreation purposes, the propagation and protection of fish and aquatic life, and other beneficial uses of the water.

1.2 Where conflicts develop between stated surface water uses, stream criteria, or discharge criteria, designated uses for each segment shall be paramount in determining the required stream criteria, which, in turn, shall be the basis of specific discharge limits or other necessary controls.

1.3 Where existing facilities operating under a permit from this Department are required to reduce pollution

concentrations or loadings due to the implementation of these surface water quality standards, a reasonable schedule for compliance may be granted in accordance with standards or requirements established in applicable statutes and regulations.

1.4 The Department intends to develop an agency-wide program to assess, manage, and communicate human health cancer risks from the major categories of environmental pollution under its jurisdiction. As a result of this activity, it may be necessary to adjust the upper bound worst case risk management level stated in Section 4.5.9.3.2.1.

Section 2: Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

Acute: Involving a stimulus severe enough to rapidly induce an adverse response; in toxicity tests, an adverse response observed in 96 hours or less is typically considered acute. An acute effect is not always measured in terms of lethality; it can measure a variety of short term adverse effects.

Additive effect:The total effect of a mixture of pollutants which is equal to the arithmetic sum of the effects of the individual pollutants in the mixture.

Agriculture:The use of land and water in the production of food, fiber and timber products.

Antagonistic effect:The total effect of a mixture of pollutants which is less than the arithmetic sum of the effects of the individual pollutants in the mixture.

Average: Unless otherwise noted, the arithmetic mean of a representative group of samples for a specified parameter. Representativeness shall be determined through application of appropriate statistical techniques to data collected at times of critical ambient conditions, as determined on a parameter-by-parameter basis.

Best Management Practice (BMP):BMPs are methods, measures or practices that are determined by the Department to be reasonable and cost-effective means for a person to meet certain, generally nonpoint source, pollution control needs. BMPs include but are not limited to structural and nonstructural controls and operation and maintenance procedures. BMPs can be applied before, during or after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters.

Best scientific judgment:Findings, conclusions, or recommended actions which result from the application of logical reasoning and appropriate scientific principles and practices to available and relevant information on a particular situation.

Bioavailability:A measure of the physicochemical access of a pollutant to an organism.

Biodegradation: The biological decomposition of natural or synthetic organic materials by microorganisms.

Carcinogen: A substance that increases the risk of benign or malignant neoplasms (tumors) in humans or other animals. Carcinogens regulated through these Standards include but may not be limited to those toxic substances classified as Group A or Group B carcinogens as defined in 51 FR 185 (9/24/86).

Chronic: Involving a stimulus that produces an adverse response that lingers or continues for a relatively long period of time, often one-tenth of the life span or more. Chronic should be considered a relative term depending on the life span of the organism. A chronic effect can be lethality, growth or reproductive impairment, or other longer term adverse effect.

Clean Water Act: 33 U.S.C. 1251 et. seq., as amended.

Cold water fish use:Protection of fish species (such as from the family Salmonidae) and other flora and fauna indigenous to a cold water habitat.

Complete mix: The concentration of a discharged pollutant varies by no more than 5% over the cross-sectional area of the receiving water at the point of discharge.

Conservation plan:A conservation plan is a record of land user decisions affecting land use and conservation treatment of natural resources including soil, water, air, plant, and animal resources. It is comprised of resource management systems which are groups of interrelated conservation practices (BMPs) and management measures formulated to protect, restore, or improve the resource base. Conservation plans are usually developed with the assistance of conservation districts using district BMP standards (ref: Field Office Technical Guide, USDA Soil Conservation Service).

Control structure:A dam, weir or other structure placed by man to regulate stream flow and/or create an impoundment.

Critical flow:A statistically determined minimum flow, which has a defined duration and recurrence interval.

Degradation:Any adverse change in water quality or existing uses.

Department: Delaware Department of Natural Resources and Environmental Control.

Designated uses:Those uses specified in water quality standards for each water body or segment whether or not they are being attained.

Diadromous:Describes fish which migrate to and from marine water and freshwater for the purpose of spawning.

Discharge length scale:The square root of the cross-sectional area of any discharge outlet.

Dispersion:A physical mixing process which results in the scattering of particles or dissolved materials in the water column.

Early life stages:Life stages for fish which include all embryonic and larval stages, and all juvenile forms to 30 days following hatching.

Ephemeral:Describes a stream which contains flowing

water only for short periods following precipitation events.

Excavated waters: Waters of the State which are wholly human-created. Such waters shall include but not be limited to upland basins with surface outlets, drainage and tax ditches which are ephemeral, and dug ponds.

Existing use: Those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.

Fish, aquatic life and wildlife: All animal and plant life found in Delaware, either indigenous or migratory, regardless of life stage or economic importance.

Foam: Frothy, generally stable, whitish mass of bubbles formed on or in the water upon agitation of the water.

Fresh water: Waters of the State which contain natural levels of salinity of 5 parts per thousand or less.

Fresh water flow: That flow which represents the amount of water passing a measurement point in a non-tidal system.

Harvestable shellfish waters: Waters from which shellfish may be taken and consumed; such waters are approved for shellfish harvesting by the State Board of Health.

Hydrolysis: A reaction of a chemical with water which results in the cleavage of a chemical bond.

Indigenous: Native, or naturally growing, existing, or produced.

Industrial Water Supply: Any water that is protected for use for industrial purposes, including non-contact cooling water.

Intake water: Water used by a facility from surface water, groundwater, commercial, or other sources.

Intermittent: Describes a stream which contains flowing water for extended periods during a year, but does not carry flow at all times.

Lethal concentration (LC): The point estimate of the toxicant concentration that would be lethal to a given percentage of test organisms during a specific period.

Marine water: Waters of the State which contain natural levels of salinity in excess of 5 parts per thousand.

Migratory Fish Spawning and Nursery Designated Use: In the Nanticoke River from the upstream-most limits of the City of Seaford to the Maryland State Line and the Broad Creek from the upstream-most limits of the Town of Laurel to the confluence with the Nanticoke River, the survival, growth and propagation of balanced indigenous populations of ecologically, recreationally and commercially important anadromous, semi-anadromous and tidal-fresh resident fish inhabiting spawning and nursery grounds from February 1 through May 31

Minimum Analytical Level: The lowest concentration of a substance that can be quantified within specified limits of interlaboratory precision and accuracy under routine laboratory operating conditions in the matrix of concern.

NPDES: National Pollutant Discharge Elimination

System as provided in the Clean Water Act.

Natural conditions: Water quality characteristics found or expected in the absence of human-induced pollution due to point or nonpoint sources.

Net advective flow: That flow which represents the difference between the amount of water passing a point in a tidal system on a flood tide and the subsequent ebb tide. It is approximately equal to the freshwater input to the system upstream of that point.

Normal Corrosion: An electrochemical reaction that results in the dissolution or removal of metal from a solid metal surface. For specific applications considered by the Department, normal corrosion rates shall be as published by the National Association of Corrosion Engineers (Reference: Corrosion Data Survey - Metals Section, National Association of Corrosion Engineers, 1985, as updated from time to time) or, for applications not specifically addressed in the above reference, such other reliable data.

Normal Erosion: The progressive loss of original material from a solid surface due to mechanical interaction between that surface and a fluid, a multi-component fluid or an impinging liquid or solid particle. (Reference: Standard Practice for Liquid Impingement Erosion Testing, ASTM Designation G73-82, 1987; or other authoritative source for materials or conditions not covered by the referenced standard).

Nuisance condition: Any condition that, as a result of pollutant addition to a stream, causes unreasonable interference with the designated uses of the waters or the uses of the adjoining land areas.

Nuisance species: Any species of fish, other animal, or plant living in or near the water, the presence of which causes unreasonable interference with the designated uses of the waters or the uses of adjoining land areas. Nuisance species include but are not limited to filamentous and blue-green algae.

Nutrient: Any element or compound essential as a raw material for organism growth and development, including but not limited to nitrogen and phosphorus.

One-hour average: The arithmetic average of the samples collected during a continuous one-hour period.

Open-water fish and shellfish designated use: In the Nanticoke River from the upstream-most limits of the City of Seaford to the Maryland State Line and the Broad Creek from the upstream-most limits of the Town of Laurel to the confluence with the Nanticoke River, the survival, growth and propagation of balanced indigenous populations of ecologically, recreationally and commercially important fish and shellfish inhabiting open water habitats year round

Overenrichment: Excessive addition of nutrients to a water body, resulting in deterioration of designated uses of the waters.

Perennial: Describes a freshwater stream which contains

flowing water at all times.

Person: Any individual, trust, firm, joint stock company, federal agency, partnership, corporation (including a government corporation), association, state, municipality, commission, political subdivision of a state, or any interstate body.

Photolysis: A light-catalyzed degradation reaction that occurs when light strikes certain chemicals.

Pollutant: Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, hydrocarbons, oil and product chemicals, and industrial, municipal, and agricultural waste discharged into water.

Practicable: Available and capable of being done after taking into consideration cost and existing technology, as well as logistics in light of overall facility operations or project purposes.

Primary contact recreation: Any water-based form of recreation, the practice of which has a high probability for total body immersion or ingestion of water (examples include but are not limited to swimming and water skiing).

Propagation: Reproduction of fish, aquatic life and wildlife within their natural environment.

Public water supply: Any waters of the State designated as public water supply in Section 10.

Regulatory mixing zone: A designated, mathematically defined portion of a receiving water body, in close proximity to a discharge, in which initial dilution, dispersion, and reaction of discharged pollutants occur. See Section 6 for details on use of term.

Risk management level: That level above which an assessed risk is unacceptable from a public health perspective.

Scientifically Reasonable Request: Any request that is based upon material, substantial, and relevant information and would be accepted as reasonable by most persons trained and competent in the subject of the request.

Scum: A thin layer of impurities which forms on the surface of waters of the State.

Secondary contact recreation: A water-based form of recreation, the practice of which has a low probability for total body immersion or ingestion of water (examples include but are not limited to wading, boating, and fishing).

Sedimentation: The movement of solid particles and adsorbed chemicals toward the bottom of the water column under the influence of gravity.

Shallow-water bay grass designated use: In the Nanticoke River from the upstream-most limits of the City of Seaford to the Maryland State Line and the Broad Creek from the upstream-most limits of the Town of Laurel to the confluence with the Nanticoke River, the survival, growth and propagation of rooted, underwater bay grasses necessary for the propagation and growth of balanced indigenous

populations of ecologically, recreationally and commercially important fish and shellfish inhabiting vegetated shallow-water habitats April 1 through October 31

Shellfish: Any species of fresh, brackish or salt water mollusk that is commonly considered to be edible. Typical edible mollusks include but are not limited to clams, mussels, oysters, scallops, and whelks.

Stream basin: A specified drainage area from which (in most cases) all waters exit through a single outlet.

Surface water: Water occurring generally on the surface of the earth.

Synergistic effect: The total effect of a mixture of pollutants which is greater than the arithmetic sum of the effects of the individual pollutants in the mixture.

Systemic toxicant: A toxic substance that has the ability to cause health effects within the body at sites distant from the entry point due to its absorption and distribution. Systemic toxicants are believed to have threshold concentrations or levels below which no health effects occur.

Tidal: Surface waters characterized by periodic rise and fall due to gravitational interactions between the sun, moon, and earth.

Toxic substance: Any substance or combination of substances including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, may cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformities in such organisms or their offspring.

Toxicity: The ability to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformities in organisms or their offspring.

Toxicity test: The means to determine the toxicity of a chemical or effluent using living organisms. A toxicity test measures the degree of response of an exposed test organism to a specific chemical or effluent.

True daily mean: The mean value for a parameter which accurately accounts for diurnal variations over one 24-hour period.

Use attainability analysis: A structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors as described in Sections 9.1.1.1 through 9.1.1.8).

Volatilization: The loss of a chemical from the water column due to mass exchange across the air-water interface.

Water distribution piping and appurtenances: Pipes and piping systems, along with integral components thereof, which are used to convey water from one point to another.

Water pollution: Man-made or human-induced alteration of the chemical, physical, biological or radiological integrity

of surface waters of the State.

Waters of the State:

(1) All surface waters of the State including but not limited to:

(a) Waters which are subject to the ebb and flow of the tide, including but not limited to estuaries, bays, and the Atlantic Ocean;

(b) All interstate waters, including interstate wetlands;

(c) All other waters of the State, such as lakes, rivers, streams (including intermittent and ephemeral streams), drainage ditches, tax ditches, creeks, mudflats, sandflats, wetlands, sloughs, or natural or impounded ponds;

(d) All impoundments of waters otherwise defined as waters of the State under this definition;

(e) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in (a)-(d);

(2) Waste and stormwater treatment systems, including but not limited to treatment ponds or lagoons designed to meet the requirements of the Clean Water Act (other than cooling ponds which otherwise meet the requirements of subsection (1) of this definition) are not waters of the State.

Waters of exceptional recreational or ecological significance (ERES): Waters which are important, unique, or sensitive from a recreational and/or ecological perspective, but which may or may not have excellent water quality. Such waters shall normally have regional significance with respect to recreational use (fishing, swimming and boating), or have significant or widespread riverine, riparian, or wetland natural areas.

Water quality: The physical, chemical, and biological characteristics of water with respect to its suitability for a particular use. For the purposes of these

Standards, water quality shall be assessed in terms of chemical composition, biological integrity, and physical habitat.

Water-Quality Based: Generally refers to requirements for pollution control that are in excess of technology-based minimum requirements, including but not limited to those listed in Sections 301(b) and 306 of the Clean Water Act. Such controls are designed to reduce pollutants to a level that will allow water quality standards to be attained where said standards would not be attained through application of the technology-based controls.

Water quality criterion: An element of water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular designated use.

Water quality standard: A rule or limit defined herein which consists of a designated use or uses for waters of the State and water quality criteria for such waters based upon such designated uses.

Wetlands: Wetlands are those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Section 3: Stream Basins & Designated Uses

The designated uses applicable to the various stream basins represent the categories of beneficial use of waters of the state which must be maintained and protected through application of appropriate criteria.

<u>Basins and waterbodies as illustrated in Figure 1</u>		<u>Public Water Supply Source</u>	<u>Industrial Water Supply</u>	<u>Primary Contact Recreation</u>	<u>Secondary Contact Recreation</u>	<u>Fish, Aquatic Life & Wildlife**</u>	<u>Cold Water Fish (Put-and-Take)</u>	<u>Agricultural Water Supply</u>	<u>ERES Waters*</u>	<u>Harvestable Shellfish Waters</u>
<u>#</u>	<u>Name</u>									
1	<u>Naamans Creek</u>	-	X	X	X	X	-	(a)	-	-
2	<u>Shellpot Creek</u>	-	X	X	X	X	-	(a)	-	-
3	<u>Brandywine Creek</u>	(a)	X	X	X	X	(b)	(a)	(h)	-
4	<u>Red Clay Creek</u>	X	X	X	X	X	(e)	X	(g)	-
5	<u>White Clay Creek</u>	(a)	X	X	X	X	(f)	(a)	(g)	-
6	<u>Christina River</u>	(a)	X	X	X	X	(c)	(a)	-	-
7	<u>Delaware River</u>	-	-	X	X	X	-	(a)	-	-
8	<u>Army Creek</u>	-	-	X	X	X	-	(a)	-	-
9	<u>Red Lion Creek</u>	(a)(i)	X	X	X	X	-	(a)	-	-
10	<u>Dragon Run Creek</u>	(a)	X	X	X	X	-	(a)	-	-

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11	<u>Chesapeake & Delaware Canal East</u>	-	X	X	X	X	-	-	-	-
12	<u>Appoquinimink River</u>	-	X	X	X	X	-	(a)	-	-
13	<u>Blackbird Creek</u>	-	X	X	X	X	-	(a)	-	-
14	<u>Delaware Bay</u>	-	X	X	X	X	-	(a)		
15	<u>Smyrna River</u>	-	X	X	X	X	-	(a)	-	-
16	<u>Leipsic River</u>	-	X	X	X	X	-	(a)	-	-
17	<u>Little Creek</u>	-	X	X	X	X	-	(a)	-	-
18	<u>St. Jones River</u>	-	X	X	X	X	-	(a)	-	-
19	<u>Murderkill River</u>	-	X	X	X	X	-	(a)	-	-
20	<u>Mispillion River</u>	-	X	X	X	X		(a)		
21	<u>Cedar Creek</u>	-	X	X	X	X	-	(a)	(d)	-
22	<u>Broadkill River (k)</u>	-	X	X	X	X	-	(a)	-	-
23	<u>Elk Creek</u>	-	X	X	X	X	-	X	-	-
24	<u>Perch Creek</u>	-	X	X	X	X	-	X	-	-
25	<u>Chesapeake & Delaware Canal West</u>	-	X	X	X	X	-	-	-	-
26	<u>Bohemia Creek</u>	-	X	X	X	X	-	X	-	-
27	<u>Sassafras River</u>	-	X	X	X	X	-	X	-	-
28	<u>Chester River</u>	-	X	X	X	X	-	X	-	-
29	<u>Choptank River</u>	-	X	X	X	X		X	-	
30	<u>Marshyhope Creek</u>	-	X	X	X	X	-	X	X	-
31	<u>Nanticoke River</u>	-	X	X	X	X (p)	-	(a)	X	-
32	<u>Gum Branch</u>	-	X	X	X	X	-	(a)	X	-
33	<u>Gravelly Branch</u>	-	X	X	X	X	-	(a)	X	-
34	<u>Deep Creek</u>	-	X	X	X	X	-	(a)	X	-
35	<u>Broad Creek</u>	-	X	X	X	X (p)	-	(a)	X	-
36	<u>Wicomico</u>	-	X	X	X	X	-	(a)	X	-
37	<u>Pocomoke River</u>	-	X	X	X	X	-	X	-	-
38	<u>Lewes & Rehoboth Canal</u>	-	X	X	X	X	-	-	-	-
39	<u>Rehoboth Bay</u>	-	X	X	X	X	-	(a)	X	(j)
40	<u>Indian River</u>	-	X	X	X	X	-	(a)	(d)	-
41	<u>Iron Branch</u>	-	X	X	X	X	-	(a)	(d)	-
42	<u>Indian River Bay</u>	-	X	X	X	X	-	(a)	X	(j)
43	<u>Buntings Branch</u>	-	-	X	X	X	-	X	-	-
44	<u>Assawoman</u>	-	-	X	X	X	-	X	-	-
45	<u>Little Assawoman Bay</u>	-	X	X	X	X	-	(a)	X	-
	<u>Delaware Bay (waterbody) (l), (n)</u>	-	X	X	X	X	-	-	(m)	(j)
	<u>Delaware River (Waterbody) (l) ,(o)</u>	-	X	X	X	X	-	-	-	-
	<u>Atlantic Ocean (waterbody)</u>	-	X	X	X	X	-	-	(m)	

Creek State Park.

(a) Designated use for freshwater segments only.

(b) Designated use from March 15 to June 30 on:

1. Beaver Run from PA/DE line to Brandywine.
2. Wilson Run Route 92 through Brandywine

(c) Designated use from March 15 to June 30 on:

Christina River from MD/DE line through Rittenhouse Park.

(d) Designated use for marine water segments only.

(e) Designated use year round on:

Red Clay Creek from PA/DE line to the concrete bridge above Yorklyn

(f) Designated use year round on:

1. White Clay Creek from the PA/DE line to the dam at Curtis Paper.

Designated use from March 15 to June 30 on:

2. Mill Creek from Brackenville Road to Route 7.

3. Pike Creek from Route 72 to Henderson Road.

(g) Designated use from PA/DE line to the dam at Curtis Paper.

(h) Designated use from PA/DE line to Wilmington city line.

(i) Goal use - not currently attained.

(j) Parts of these waters are APPROVED shellfish harvesting areas. Information on areas where shellfish may be taken should be obtained from the Shellfish & Recreational Waters Branch, Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control.

(k) Includes Primehook Creek watershed.

(l) Includes assorted minor watersheds not explicitly associated with any other designated stream basin.

(m) The specific portions of the Atlantic Ocean and the Delaware Bay for which the ERES designation shall apply shall be delineated in the Pollution Control Strategy developed for each of those waterbodies. The ERES designation for the Atlantic Ocean and the Delaware Bay does not include water explicitly associated with any other designated stream basis (e.g., Delaware Bay does not include St. Jones River).

(n) The Delaware Bay extends from River Mile 0.0 to 48.2 as shown on Figure 1.

(o) The Delaware River extends from River Mile 48.2 to 78.8 as shown in Figure 1.

(p) The Nanticoke River from the upstream-most limits of the City of Seaford to the Maryland State Line and the Broad Creek from the upstream-most limits of the Town of Laurel to the confluence with the Nanticoke River have special criteria in Section 4.5 that are protective of open water fish and shellfish, shallow-water bay grass and migratory fish spawning and nursery designated uses consistent with the Maryland portion of the tidal Nanticoke River and as described in the U.S. Environmental Protection Agency document Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and its Tidal Tributaries (EPA 903-R-03-002). Attainment of the water quality criteria that apply to these waters will be determined following the guidelines documented within the same document and any future published addendums or modifications to that original publication.

(q) ERES designation is for Burrows Run from the Pennsylvania Line to the confluence with Red Clay Creek

(r) this designated water use to be protected throughout

entire stream basin

- water uses not designated in the stream basin

* waters of exceptional recreational or ecological significance

** includes shellfish propagation

Figure 1 Delaware Watersheds and Waterbodies (Has been moved to the end of the Regulation)

Basin Boundaries to be used in determination of standards applicability are on file with the DNREC Division of Water Resources.

Section 4: Criteria To Protect Designated Uses

4.1 All surface waters of the State (except as detailed in Sections 7 and 8) shall meet the following minimum criteria:

4.1.1 Waters shall be free from substances that are attributable to wastes of industrial, municipal, agricultural or other human-induced origin. Examples include but are not limited to the following:

4.1.1.1 Floating debris, oil, grease, scum, foam, or other materials on the water surface that may create a nuisance condition, or that may in any way interfere with attainment and maintenance of designated uses of the water.

4.1.1.2 Settleable solids, sediments, sludge deposits, or suspended particles that may coat or cover submerged surfaces and create a nuisance condition, or that may in any way interfere with attainment and maintenance of designated uses of the water.

4.1.1.3 Any pollutants, including those of a thermal, toxic, corrosive, bacteriological, radiological, or other nature, that may interfere with attainment and maintenance of designated uses of the water, may impart undesirable odors, tastes, or colors to the water or to aquatic life found therein, may endanger public health, or may result in dominance of nuisance species.

4.2 Narrative Criteria for Waters With the Public Water Supply Designated Use

4.2.1 Streams with a designated use of public water supply shall provide waters of acceptable quality for use for drinking, culinary or food processing purposes after application of approved treatment equivalent to coagulation, filtration, and disinfection (with additional treatment as necessary to remove naturally occurring impurities). The untreated waters are subject to the following limitations:

4.2.1.1 Waters shall be free from substances (except natural impurities) that, alone or in combination with other substances, result in:

4.2.1.1.1 Unacceptable levels of taste or odor in the treated water;

4.2.1.1.2 Significant disruption of the treatment processes at the treatment facility; or

4.2.1.1.3 Concentrations of toxic substances in the treated water that may be harmful to human

health. The requirements of Section 4.5.10 shall apply.

4.3 Certain waters of the State are subject to natural variations in salinity such that those waters meet the definition of fresh at some times and marine at other times. For such waters, the more stringent of fresh or marine water quality criteria or standards as detailed throughout this document shall apply at all times unless otherwise specified by the Department.

4.4 Coordination with Delaware River Basin Commission:

For waters of the Delaware River and Delaware Bay, duly adopted Delaware River Basin Commission (DRBC) Water Quality Regulations shall be the applicable criteria. If the DRBC has not developed an applicable regulatory standard or criteria for these waters, and Delaware has, Delaware's criteria shall be applicable.

4.5 The following criteria shall apply outside approved regulatory mixing zones unless otherwise specified:

4.5.1 Temperature, measured as Fahrenheit Degrees

4.5.1.1 Fresh Waters

4.5.1.1.1 Maximum increase above natural conditions shall be 5°F.

4.5.1.1.2 No human-induced increase of the true daily mean temperature above 82°F shall be allowed.

4.5.1.1.3 No human-induced increase of the daily maximum temperature above 86°F shall be allowed.

4.5.1.2 Marine Waters

4.5.1.2.1 Maximum increase above natural conditions shall be 4°F from October through May. Temperature rise during June through September shall be limited by the following conditions:

4.5.1.2.2 No human-induced increase of the true daily mean temperature above 84°F shall be allowed; and

4.5.1.2.3 No human-induced increase of the daily maximum temperature above 87°F shall be allowed.

4.5.1.3 Cold Water Fisheries (Put and Take)

4.5.1.3.1 Maximum increase above natural conditions shall be 5°F.

4.5.1.3.2 No human-induced increase of the true daily mean temperature above 75°F, shall be allowed

4.5.1.4 In all waters of the state, the Department may mandate additional limitations on a site-specific or seasonal basis in order to provide incremental protection for early life stages of fish.

4.5.2 Dissolved Oxygen, measured as milligrams per liter (mg/L)

4.5.2.1 Fresh Waters

4.5.2.1.1 Daily average shall not be less than 5.5 mg/L.

4.5.2.1.2 Instantaneous minimum shall not be less than 4.0 mg/L.

4.5.2.2 Marine Waters

4.5.2.2.1 Daily average shall not be less than 5.0 mg/L.

4.5.2.2.2 Instantaneous Minimum shall not be less than 4.0 mg/L.

4.5.2.3 Cold Water Fisheries (Put and Take)

4.5.2.3.1 Daily average shall not be less than 6.5 mg/L during the applicable period.

4.5.2.3.2 Instantaneous Minimum shall not be less than 5.0 mg/L during the applicable period.

4.5.2.4 The Nanticoke River from the upstream-most limits of the City of Seaford to the Maryland State Line and Broad Creek from the upstream-most limits of the Town of Laurel to the confluence with the Nanticoke River

At water temperatures greater than 84 degrees Fahrenheit, instantaneous minimum shall not be less than 4.3 mg/L

4.5.2.4.1 For the period February 1-May 31:

4.5.2.4.1.1 7-Day mean shall not be less than 6.0 mg/L

4.5.2.4.1.2 Instantaneous minimum shall not be less than 5.0 mg/L

4.5.2.4.2 For June 1- January 31

4.5.2.4.2.1 30 Day mean shall not be less than 5.5 mg/L

4.5.2.4.2.2 7-Day mean shall not be less than 4.0 mg/L

4.5.2.4.2.3 Instantaneous minimum shall not be less than 3.2 mg/L

4.5.2.5 All Waters

4.5.2.5.1 In cases where natural conditions prevent attainment of these criteria, allowable reduction in dissolved oxygen levels as a result of human activities shall be determined through application of the requirements of Sections 5 and 9 of these Standards.

4.5.2.5.2 The Department may mandate additional limitations on a site-specific or seasonal basis in order to provide incremental protection for early life stages of fish.

4.5.3 pH, measured in standard units, in all waters of the state

4.5.3.1 Shall be between 6.5 and 8.5 unless outside this range due solely to natural conditions. Where within this range, maximum human-induced change from background shall be 0.5 Standard Units; pH which results from human-induced change must remain within this range.

4.5.3.2 Where pH is below 6.5 or above 8.5

due solely to natural conditions, it shall not be lowered (where below 6.5) or raised (where above 8.5) more than 0.3 Standard Units due to human-induced changes.

4.5.4 Alkalinity, measured as mg/L as CaCO₃, in all waters of the State shall not be less than 20 mg/L unless due solely to natural conditions. If less than 20 mg/L due solely to natural conditions, no reduction due to human-induced changes is allowed.

4.5.5 Turbidity Measured as Nephelometric or Formazin Turbidity Units, in all waters of the State shall not exceed natural levels by more than 10 units.

4.5.6 Water Clarity in the The Nanticoke River from the upstream-most limits of the City of Seaford to the Maryland State Line and Broad Creek from the upstream-most limits of the Town of Laurel to the confluence with the Nanticoke River

During the period of April 1 to October 31 the minimum seasonal averaged secchi depth shall be 1.0 m.

4.5.6.1 Chlorophyll-*a* criteria for the Nanticoke River from the upstream-most limits of the City of Seaford to the Maryland State Line and Broad Creek from the upstream-most limits of the Town of Laurel to the confluence with the Nanticoke River:

Concentrations of chlorophyll-*a* in free-floating microscopic aquatic plants (algae) shall not exceed levels that result in ecologically undesirable consequences - such as reduced water clarity, low dissolved oxygen, food supply imbalances, proliferation of species deemed potentially harmful to aquatic life or humans or aesthetically objectionable conditions or otherwise render tidal waters unsuitable for designated uses.

4.5.7 Bacterial Water Quality Criteria

4.5.7.1 Primary and Secondary Contact Recreation Waters:

The following criteria shall apply:

<u>Waterbody Type</u>	<u>Single-Sample Value (Enterococcus Colonies/100ml)</u>	<u>Geometric Mean (Enterococcus Colonies/100ml)</u>
<u>Primary Contact Recreation Fresh Waters</u>	<u>185</u>	<u>100</u>
<u>Primary Contact Recreation Marine Waters</u>	<u>104</u>	<u>35</u>
<u>Secondary Contact Recreation Fresh Waters</u>	<u>925</u>	<u>500</u>
<u>Secondary Contact Recreation Marine Waters</u>	<u>520</u>	<u>175</u>

The purpose of these criteria is to provide the Department with a basis to assess water quality

trends and pollution control needs with regard to primary and secondary contact recreation in waters of the State and to meet Federal BEACH Act Requirements. The criteria apply to enterococcus bacteria determined by the Department to be of non-wildlife origin based on best scientific judgment using available information. Swimming in waters affected by runoff during runoff periods may present an elevated risk of gastrointestinal illness and is not recommended.

4.5.7.2 Harvestable Shellfish waters:

The total coliform median MPN of the water shall not exceed 70/100 mL, nor shall more than 10% of the samples have an MPN in excess of 330/100 mL for a 3 decimal dilution test (or 230/100 mL where the 5 tube decimal test is used). These criteria shall be verified through sampling of those portions of the shellfish area most probably exposed to fecal contamination for those tidal and climatic conditions most likely to result in contamination of the shellfish area.

4.5.8 Nutrients

Nutrient overenrichment is recognized as a significant problem in some surface waters of the State.

4.5.8.1 It shall be the policy of this Department to minimize nutrient input to surface waters from point and human induced non-point sources.

4.5.8.2 The types of, and need for, nutrient controls shall be established on a site-specific basis. Nutrient controls may include, but shall not be limited to, discharge limitations or institution of best management practices.

4.5.8.3 For lakes and ponds, controls shall be designed to eliminate overenrichment.

4.5.8.4 For tidal portions of the stream basins of Indian River, Rehoboth Bay, and Little Assawoman Bay, controls needed to attain submerged aquatic vegetation growth season (approximately March 1 to October 31) average levels for dissolved inorganic nitrogen of 0.14 mg/L as N, for dissolved inorganic phosphorus of 0.01 mg/L as P, and for total suspended solids of 20 mg/L shall be instituted.

4.5.8.5 The specific measures to be employed by existing NPDES facilities to meet the aforementioned criteria shall be as specified in Section 5.6.3.4 of these standards.

4.5.9 Toxic Substances

4.5.9.1 Applicability: Criteria set forth in this section apply to all surface waters of the State, except as provided in Section 6, Regulatory Mixing Zones, Section 7, Critical Flows, and Section 8, Criteria for Low Flow Waters.

4.5.9.2 General Provisions:

4.5.9.2.1 Waters of the State shall not exhibit acute toxicity to fish, aquatic life, and wildlife, except in special cases applying to regulatory mixing zones as provided in Section 6.

4.5.9.2.2 Waters of the State shall not exhibit chronic toxicity to fish, aquatic life, and wildlife.

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except in regulatory mixing zones as provided in Section 6, at flows less than critical flows as provided in Section 7, or in low flow waters as provided in Section 8.

4.5.9.2.3 Waters of the State shall be maintained to prevent adverse toxic effects on human health resulting from ingestion of chemically contaminated aquatic organisms and drinking water.

4.5.9.2.4 The Department may consider synergistic, antagonistic, and additive impacts of combinations of toxicants to fish, aquatic life, and wildlife, and human health in assessing aggregate environmental impacts and mandating point and nonpoint source controls.

4.5.9.3 Specific Numerical Criteria:

4.5.9.3.1 Aquatic Life Criteria:

4.5.9.3.1.1 Aquatic Life Criteria for Aluminum, Iron, and Selenium in Table 1 are expressed on a total recoverable basis. Criteria for Cyanide in Table 1 are expressed as free cyanide at the lowest pH occurring in the receiving water, or cyanide amenable to chlorination. Criteria for all other metals in Table 1 are expressed on a total dissolved basis. For toxic substances where the relationship of toxicity is defined as a function of pH or hardness, numerical criteria are presented as an equation based on this relationship. Appropriate pH or hardness values for such criteria shall be determined on a case-by-case basis by the Department.

4.5.9.3.1.2 Specific numerical acute criteria as presented in Table 1 are applied as one-hour average concentrations not to be exceeded more than once in any three-year period. Specific numerical chronic criteria as presented Table 1 are applied as four-day average concentrations not to be exceeded more than once in any three-year period.

4.5.9.3.1.3 For toxic substances for which specific numerical criteria are not listed in Table 1, concentrations shall not exceed those which are chronically

toxic (as determined from appropriate chronic toxicity data or calculated as 0.1 of LC50 values) to representative, sensitive aquatic organisms, except as provided in Section 6, Regulatory Mixing Zones, Section 7, Critical Flows, or Section 8, Criteria for Low Flow Waters. Concentrations so determined shall be applied as four-day average concentrations not to be exceeded more than once in any three-year period.

4.5.9.3.2 Human Health Criteria

4.5.9.3.2.1 Water quality criteria appearing in Table 2 for pollutants identified as carcinogens have been established at an upper bound worst case risk management level of one excess cancer in a population of one million (1×10^{-6}) over a 70 year lifetime. Criteria listed under the columns header "Fish and Water Ingestion" apply only to surface waters of the State designated as Public Water Supply Sources in Section 3 of these Standards. Criteria listed under columns headed "Fish Ingestion Only" apply to all surface waters of the State not designated as Public Water Supply Sources in Section 3 of these Standards.

4.5.9.3.2.2 For compounds in Table 2 which are considered as both systemic toxicants and human carcinogens, criteria based on both human health concerns are presented. In determining pollution control requirements, the more stringent criterion, after consideration of critical (design) flows in Section 7, shall be utilized.

TABLE 1
WATER QUALITY CRITERIA FOR PROTECTION
OF AQUATIC LIFE

(All Values Are Listed or Calculated in Micrograms Per Liter)

<u>Parameter</u>	<u>Fresh Acute Criterion</u>	<u>Fresh Chronic Criterion</u>	<u>Marine Acute Criterion</u>	<u>Marine Chronic Criterion</u>
<u>Aldrin</u>	<u>3.0</u>	<u>--</u>	<u>1.3</u>	<u>--</u>
<u>Aluminum pH6.5-9.0</u>	<u>750.</u>	<u>87.</u>	<u>--</u>	<u>--</u>
<u>Ammonia</u>	<u>Temperature and pH dependent, see formula after this table</u>	<u>Temperature and pH dependent, see formula after this table</u>		
<u>Arsenic (III)*</u>	<u>340.</u>	<u>150</u>	<u>69.</u>	<u>36.</u>
<u>Cadmium*</u>	<u>(1.136672- LN(hardness)*0.041838)* EXP(1.0166*LN(hardness)-3.924)</u>	<u>(1.101672- LN(hardness)*0.041838)* EXP(0.7409*LN(hardness)-4.719)</u>	<u>40.</u>	<u>8.8</u>
<u>Chlordane</u>	<u>2.4</u>	<u>0.0043</u>	<u>0.09</u>	<u>0.004</u>
<u>Chlorine</u>	<u>19</u>	<u>11.</u>	<u>13</u>	<u>7.5</u>

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<u>Chlorpyrifos (Dursban)</u>	<u>0.083</u>	<u>0.041</u>	<u>0.011</u>	<u>0.0056</u>
<u>Chromium (III)*</u>	<u>$0.316 * \text{EXP}^{(0.819 * \text{LN}(\text{hardness}))}$</u>	<u>$0.86 * \text{EXP}^{(0.819 * \text{LN}(\text{hardness}) + 0.6848)}$</u>	=	=
<u>Chromium (VI)*</u>	<u>16.</u>	<u>11.</u>	<u>1,100.</u>	<u>50.</u>
<u>Copper*</u>	<u>$0.96 * \text{EXP}^{(0.9422 * \text{LN}(\text{hardness}))}$</u>	<u>$0.96 * \text{EXP}^{(0.8545 * \text{LN}(\text{hardness}) - 1.702)}$</u>	<u>4.8</u>	<u>3.1</u>
<u>Cyanide¹</u>	<u>22.</u>	<u>5.2</u>	<u>1.0</u>	=
<u>DDT and Metabolites (DDD and DDE)</u>	<u>1.1</u>	<u>0.0010</u>	<u>0.13</u>	<u>0.0010</u>
<u>Demeton</u>	=	<u>0.10</u>	=	<u>0.10</u>
<u>Dieldrin</u>	<u>0.24</u>	<u>.056</u>	<u>0.71</u>	<u>0.0019</u>
<u>Endosulfan</u>	<u>0.22</u>	<u>0.056</u>	<u>0.034</u>	<u>0.0087</u>
<u>Endrin</u>	<u>.086</u>	<u>.036</u>	<u>0.037</u>	<u>0.0023</u>
<u>Guthion</u>	=	<u>0.01</u>	=	<u>0.01</u>
<u>Heptachlor</u>	<u>0.52</u>	<u>0.0038</u>	<u>0.053</u>	<u>0.0036</u>
<u>Hexachloro-cyclohexane</u>	<u>.095</u>	<u>0.08</u>	<u>0.16</u>	=
<u>Iron</u>	=	<u>1000.</u>	=	=
<u>Lead*</u>	<u>$(1.46203 - \text{LN}(\text{hardness}) * 0.145712) * \text{EXP}^{(1.273 * \text{LN}(\text{hardness}) - 1.460)}$</u>	<u>$(1.46203 - \text{LN}(\text{hardness}) * 0.145712) * \text{EXP}^{(1.273 * \text{LN}(\text{hardness}) - 4.705)}$</u>	<u>210.</u>	<u>8.1</u>
<u>Malathion</u>	=	<u>0.1</u>	=	<u>0.1</u>
<u>Mercury (II)*</u>	<u>1.4</u>	<u>.077</u>	<u>1.8</u>	<u>0.94</u>
<u>Methoxychlor</u>	=	<u>0.03</u>	=	<u>0.03</u>
<u>Mirex</u>	=	<u>0.001</u>	=	<u>0.001</u>
<u>Nickel*</u>	<u>$0.998 * \text{EXP}^{(0.8460 * \text{LN}(\text{hardness}))}$</u>	<u>$0.997 * \text{EXP}^{(0.8460 * \text{LN}(\text{hardness}) + 0.05)}$</u>	<u>74.</u>	<u>8.2</u>
<u>Total PCBs</u>		<u>0.014</u>		<u>0.03</u>
<u>Parathion</u>	<u>0.065</u>	<u>0.013</u>	=	=
<u>Pentachlorophenol</u>	<u>$\text{EXP}^{(1.005 * \text{pH} - 4.869)}$</u>	<u>$\text{EXP}^{(1.005 * \text{pH} - 5.134)}$</u>	<u>13.</u>	<u>7.9</u>
<u>Selenium</u>	<u>20</u>	<u>5.0</u>	<u>290</u>	<u>71.</u>
<u>Silver*</u>	<u>$0.85 * \text{EXP}^{(1.72 * \text{LN}(\text{hardness}) -)}$</u>	=	<u>1.9</u>	=
<u>Toxaphene</u>	<u>0.73</u>	<u>0.0002</u>	<u>0.21</u>	<u>0.0002</u>
<u>Zinc*</u>	<u>$0.978 * \text{EXP}^{(0.8473 * \text{LN}(\text{hardness}))}$</u>	<u>$0.986 * \text{EXP}^{(0.8473 * \text{LN}(\text{hardness}) + 0.88)}$</u>	<u>90</u>	<u>81</u>

Notes:

¹Cyanide measured as free cyanide at the lowest pH

occurring in the receiving water, or cyanide amenable to chlorination.

Formulas in the table have been formatted so that they can be copied directly into spreadsheets to calculate criteria.

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Criteria are calculated to two significant figures.

LN = natural log base e

EXP = e = 2.71828

Hardness is expressed as mg/L as CaCO₃

pH is expressed as Standard Units

* Criteria is for total dissolved form

Calculation of Freshwater Acute Ammonia Criterion:

Where salmonid fish are present:

$$\text{Criterion} = \frac{0.275}{1 + 10^{7.204 - \text{pH}}} + \frac{39.0}{1 + 10^{\text{pH} - 7.204}}$$

Or where salmonid fish are not present:

$$\text{Criterion} = \frac{0.411}{1 + 10^{7.204 - \text{pH}}} + \frac{58.4}{1 + 10^{\text{pH} - 7.204}}$$

Calculation of Freshwater Chronic Ammonia Criterion:

The thirty-day average concentration of total ammonia nitrogen (in mg N/L) does not exceed, more than once every three years on the average, the chronic criterion calculated using the following equations.

When fish early life stages are present:

$$\text{Criterion} = \frac{0.0577}{1 + 10^{7.688 - \text{pH}}} + \frac{2.487}{1 + 10^{\text{pH} - 7.688}} * \text{MIN} (2.85, 1.45 * 10^{0.028 * (25 - T)})$$

When fish early life stages are absent:

$$\text{Criterion} = \frac{0.0577}{1 + 10^{7.688 - \text{pH}}} + \frac{2.487}{1 + 10^{\text{pH} - 7.688}} * [1.45 * 10^{0.028 * (25 - \text{MAX}(T, 7))}]$$

Additional Freshwater Chronic Ammonia Criterion:

The highest four-day average within the 30-day period shall not exceed 2.5 times the chronic criterion.

**TABLE 2
WATER QUALITY CRITERIA FOR PROTECTION
OF HUMAN HEALTH**

(All Values Are Listed in Micrograms per Liter)

Chemical	Systemic Toxicants		Human Carcinogens	
	Fish Ingestion	Fish and Water Ingestion	Fish Ingestion	Fish and Water Ingestion
Acenaphthene	990	670		
Acrolein	300	190		
Acrylonitrile			0.25	0.051
Aldrin	0.025	0.025	0.00005	0.000049

Anthracene	40000	8300		
Antimony	1600	6 (MCL)		
Arsenic (inorganic)		10 (MCL)		
Asbestos		7 million fibers/L (MCL)		
barium		2000 (MCL)		
Benzene	3100	5 (MCL)	14	0.61
Benzidine	140	59	0.00019	0.000086
Benzo(a)Anthracene			0.18	0.038
Benzo(a)Pyrene		0.2 (MCL)	0.018	0.0038
Benzo(b)Fluoranthene			0.18	0.038
Beryllium	420	4 (MCL)	0.024	0.0034
Bis(2-Chloroethyl)Ether			0.53	0.03
Bis(2-Chloroisopropyl)Ether	65000	1400		
Bis(2-Ethylhexyl)Phthalate	620	6 (MCL)	2.2	1.2
Bromoform	9600	650	61	4.1
Butylbenzyl Phthalate	1900	1500		
Cadmium	31	5 (MCL)		
Carbon Tetrachloride	150	5 (MCL)	1.6	0.23
Chlordane	0.14	0.14	0.00081	0.0008
Chlorobenzene	7800	100 (MCL)		
Chlorodibromomethane	21000	680	13	0.4
Chloroform	11000	340		
2-Chloronaphthalene	1600	1000		
2-Chlorophenol	150	81		
Chromium (III)	380000	100 (MCL)		
Chromium (VI)	750	92		
Chromium		100 (MCL)		
Chrysene			0.18	0.038

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Copper		<u>1300</u> (MCL)		
Cyanide	<u>80000</u>	<u>200</u>		
DDT and Metabolites (DDD and DDE)	<u>0.037</u>	<u>0.037</u>	<u>0.00022</u>	<u>0.00022</u>
Dibenzo(a,h)A nthracene			<u>0.018</u>	<u>0.0038</u>
1,2- Dichlorobenze ne	<u>6500</u>	<u>600 (MCL)</u>		
1,3- Dichlorobenze ne	<u>1300</u>	<u>350</u>		
1,4- Dichlorobenze ne	<u>1400</u>	<u>75 (MCL)</u>		
3,3'- Dichlorobenzi dine			<u>0.028</u>	<u>0.021</u>
Dichlorobromo methane		<u>680</u>	<u>17</u>	<u>0.55</u>
1,2- Dichloroethane		<u>5 (MCL)</u>	<u>37</u>	<u>0.38</u>
1,1- Dichloroethyle ne	<u>36000</u>	<u>7 (MCL)</u>	<u>1.2</u>	<u>0.056</u>
Dichlorometha ne	<u>260000</u>	<u>5 (MCL)</u>	<u>590</u>	<u>4.6</u>
2,4- Dichloropheno l	<u>290</u>	<u>77</u>		
2,4 Dichloropheno xyacetic acid (2,4-D)		<u>70 (MCL)</u>		
1,2 Dichloropropa ne			<u>15</u>	<u>0.5</u>
1,3- Dichloropropo ne	<u>63000</u>	<u>1000</u>	<u>42</u>	<u>0.69</u>
Dieldrin	<u>0.043</u>	<u>0.041</u>	<u>0.000054</u>	<u>0.000052</u>
Diethyl Phthalate	<u>44000</u>	<u>17000</u>		
Dimethyl Phthalate	<u>1100000</u>	<u>270000</u>		

2,4- Dimethylphen ol	<u>850</u>	<u>380</u>		
Di-n-Butyl Phthalate	<u>4500</u>	<u>2000</u>		
2,4- Dinitrophenol	<u>5300</u>	<u>69</u>		
2,4- Dinitrotoluene	<u>2100</u>	<u>68</u>	<u>28</u>	<u>0.92</u>
2,3,7,8-TCDD (Dioxin)		<u>0.00003</u> (MCL)	<u>5.1E-09</u>	<u>5.0 E-09</u>
1,2- Diphenylhydra zine			<u>0.2</u>	<u>0.036</u>
Endosulfan	<u>89</u>	<u>62</u>		
Endrin	<u>0.3</u>	<u>0.29</u>		
Endrin Aldehyde	<u>0.3</u>	<u>0.29</u>		
Ethylbenzene	<u>11000</u>	<u>700 (MCL)</u>		
Fluoranthene	<u>140</u>	<u>130</u>		
Fluorene	<u>5300</u>	<u>1108</u>		
Fluoride		<u>4000</u> (MCL)		
Heptachlor	<u>0.18</u>	<u>0.18</u>	<u>0.000079</u>	<u>0.000079</u>
Heptachlor Epoxide	<u>0.0046</u>	<u>0.0046</u>	<u>0.000039</u>	<u>0.000039</u>
Hexachloroben zene	<u>0.36</u>	<u>0.35</u>	<u>0.00028</u>	<u>0.00028</u>
Hexachlorobut adiene	<u>2900</u>	<u>68</u>	<u>18</u>	<u>0.44</u>
Hexachlorocyc lohexane			<u>0.017</u>	<u>0.0091</u>
Hexachlorocyc lopentadiene	<u>5500</u>	<u>50 (MCL)</u>		
Hexachloroeth ane	<u>46</u>	<u>20</u>	<u>3.3</u>	<u>1.4</u>
Ideno(1,2,3- cd)pyrene			<u>0.18</u>	<u>0.038</u>
Isophorone	<u>180000</u>	<u>6700</u>	<u>960</u>	<u>35</u>
Lead		<u>15 (MCL)</u>		
alpha-BHC		<u>0.2 (MCL)</u>	<u>0.0048</u>	<u>0.0026</u>
beta-BHC		<u>0.2 (MCL)</u>	<u>0.017</u>	<u>0.0091</u>
gamma-BHC (Lindane)	<u>9.2</u>	<u>0.2 (MCL)</u>	<u>0.23</u>	<u>0.12</u>
Methyl Mercury	<u>0.3mg/kg</u> fish tissue	<u>0.3mg/kg</u> fish tissue		
Methoxychlor		<u>40 (MCL)</u>		

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<u>Methyl Bromide</u>	<u>1500</u>	<u>47</u>		
<u>3-Methyl-4-Chlorophenol</u>				
<u>Nickel (soluble salts)</u>	<u>1700</u>	<u>100 (MCL)</u>		
<u>Nitrate</u>		<u>10000 (MCL)</u>		
<u>Nitrobenzene</u>	<u>690</u>	<u>17</u>		
<u>N-Nitrosodimethylamine</u>			<u>3</u>	<u>0.00069</u>
<u>N-Nitrosodi-n-Propylamine</u>			<u>0.51</u>	<u>0.005</u>
<u>N-Nitrosodiphenylamine</u>			<u>6</u>	<u>3.3</u>
<u>Pentachlorophenol</u>	<u>11000</u>	<u>1 (MCL)</u>	<u>3</u>	<u>0.27</u>
<u>Phenol</u>	<u>860000</u>	<u>10000</u>		
<u>Polychlorinated Biphenyls PCBs:</u>		<u>0.5 (MCL)</u>	<u>0.000064</u>	<u>0.000064</u>
<u>Pyrene</u>	<u>4000</u>	<u>830</u>		
<u>Selenium</u>	<u>4200</u>	<u>50 (MCL)</u>		
<u>Silver</u>	<u>40000</u>	<u>170</u>		
<u>1,1,2,2-Tetrachloroethane</u>			<u>4</u>	<u>0.17</u>
<u>Tetrachloroethylene</u>	<u>1300</u>	<u>5 (MCL)</u>	<u>3.3</u>	<u>0.69</u>
<u>Thallium</u>	<u>18</u>	<u>2 (MCL)</u>		
<u>Toluene</u>	<u>75000</u>	<u>1000 (MCL)</u>		
<u>Total Trihalomethanes (TTHM)</u>		<u>80 (MCL)</u>		<u>80</u>
<u>Toxaphene</u>		<u>3 (MCL)</u>	<u>0.00028</u>	<u>0.00028</u>
<u>1,2-Trans-Dichloroethylene</u>	<u>51000</u>	<u>100 (MCL)</u>		
<u>1,2,4-Trichlorobenzene</u>	<u>350</u>	<u>70 (MCL)</u>		
<u>1,1,1-Trichloroethane</u>		<u>200 (MCL)</u>		
<u>1,1,2-Trichloroethane</u>	<u>3600</u>	<u>5 (MCL)</u>	<u>16</u>	<u>0.59</u>

<u>Trichloroethylene</u>		<u>5 (MCL)</u>	<u>30</u>	<u>2.5</u>
<u>2,4,6-Trichlorophenol</u>			<u>2.4</u>	<u>1.4</u>
<u>2,4,5-Trichlorophenoxypropionic acid (2,4,5-TP-Silvex)</u>		<u>50 (MCL)</u>		
<u>Vinyl Chloride</u>	<u>10000</u>	<u>2 (MCL)</u>	<u>2.4</u>	<u>0.025</u>
<u>Zinc</u>	<u>26000</u>	<u>7400</u>		

The columns labeled "Fish and Water Ingestion" shall apply only to waters of the State designated Public Water Supply sources in these standards.

The column labeled "Fish Ingestion Only" shall apply to all-waters of the State not designated Public Water Supply sources in this document.

**Values shown with "(MCL)" under header "Fish and Water Ingestion" are Primary Maximum Contaminant Levels (MCLs) as given in the State of Delaware Regulations Governing Public Drinking Water Systems that became effective September 10, 2001

Section 5: Antidegradation and ERES Waters Policies

5.1 Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. Degradation of water quality in such a manner that results in reduced number, quality, or river or stream mileage of existing uses shall be prohibited. Degradation shall be defined for the purposes of this section as a statistically significant reduction, accounting for natural variations, in biological, chemical, or habitat quality as measured or predicted using appropriate assessment protocols.

5.2 Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected. In the case of waters of exceptional recreational or ecological significance, existing quality shall be maintained or enhanced. Limited degradation may be allowed if the Department finds, after full satisfaction of public participation provisions of 7 Del. Code Sections 6004 and 6006 and the intergovernmental coordination provisions of the State's continuing planning process as required in 40 CFR Part 130, that allowing lower water quality is necessary to accommodate important social or economic development, or would result in a substantial net environmental or public health benefit, in the area in which the waters are located. In allowing such degradation or lower water quality, the Department shall assure maintenance of water quality adequate for full protection of

existing uses. Further, the Department shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

5.3 Where high quality waters constitute an outstanding National resource, such as waters of National parks and wildlife refuges, existing quality shall be maintained and protected.

5.4 In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with Section 316 of the Water Quality Act of 1987.

5.5 The hearing requirement imposed by Subsections 5.2 above shall not be construed to impose a requirement for an additional public hearing where such a hearing is otherwise held pursuant to law, provided the requirements of this section are hereby met.

5.6 Criteria for Waters of Exceptional Recreational or Ecological Significance (ERES Waters)

5.6.1 General Policy

5.6.1.1 Designated ERES waters shall be accorded a level of protection and monitoring in excess of that provided most other waters of the State. These waters are recognized as special natural assets of the State, and must be protected and enhanced for the benefit of present and future generations of Delawareans.

5.6.1.2 ERES waters shall be restored, to the maximum extent practicable, to their natural condition. To this end, the Department shall, through adoption of a pollution control strategy for each ERES stream basin, take appropriate action to cause the systematic control, reduction, or removal of existing pollution sources, and the diversion of new pollution sources, away from ERES waters.

5.6.1.3 Discharges to ERES waters shall be avoided to the maximum extent practicable. In order to be permitted, a discharge must be the least environmentally damaging practicable alternative.

5.6.1.4 Prior to any public notice for a discharge permit required pursuant to 7 Del. Code Chapter 60, the Department shall make a determination that potential impacts have been avoided to the maximum extent practicable, and that remaining unavoidable impacts will be minimized to the extent appropriate and practicable. Findings shall be based upon appropriate factual determinations, evaluations, and tests with special emphasis on the persistence and permanence of the impacts. Under this provision impacts considered individually or collectively include:

5.6.1.4.1 Impacts of pollutants on human health and welfare;

5.6.1.4.2 Impacts of pollutants on life stages of aquatic life and other wildlife dependent on aquatic

ecosystems including, but not limited to, the transfer, concentration, and spread of pollutants or their by-products through biological, physical, and chemical processes;

5.6.1.4.3 Impacts of pollutants on aquatic ecosystem diversity, productivity, and stability. Such impacts may include, but are not limited to, loss of fish and wildlife habitat or loss of the capacity of a wetland to assimilate nutrients, purify water, or reduce wave energy; or

5.6.1.4.4 Impacts on recreational, aesthetic, and economic values.

5.6.1.5 Any applicant for a discharge permit required pursuant to 7 Del. Code Chapter 60 shall provide to the Department, as part of a complete application, a resource assessment tailored to the site performed by qualified professionals. Such assessments shall fully consider ecological functions and values in light of the policies set forth in these standards. Consideration shall be given to:

5.6.1.5.1 Potential impacts on physical and chemical characteristics of the aquatic ecosystems which shall include, but not be limited to, substrates, substrate particulates/turbidity, water, current patterns, water circulation, normal water fluctuations, and salinity gradients;

5.6.1.5.2 Potential impacts on biological characteristics of the aquatic ecosystem which shall include, but not be limited to, fish, crustaceans, mollusks and other organisms in the food web, other wildlife, and threatened or endangered species; and

5.6.1.5.3 Potential effects on human use characteristics which shall include, but not be limited to, water supplies, recreational and commercial fisheries, water related recreation, aesthetics, parks, research sites, wildlife areas or public access areas.

5.6.2 General Provisions

5.6.2.1 In cases where natural conditions prevent attainment of applicable fresh or marine dissolved oxygen criteria, reduction in dissolved oxygen levels as a result of human activities shall be prohibited.

5.6.2.2 All point, and human induced nonpoint sources subject to control through use of best management practices or otherwise, shall be required to remove nutrients to the extent necessary to prevent excessive growth of photosynthetic organisms.

5.6.2.3 All point, and human induced nonpoint sources subject to control through use of best management practices or otherwise, shall be required to remove particulate matter to the extent necessary to minimize turbidity.

5.6.2.4 ERES waters shall not exhibit toxicity within aquatic habitats commonly used by native or migratory aquatic, terrestrial, and avian species. Such habitats include, but may not be limited to, spawning sites, nursery areas, forage areas, and migratory pathways.

5.6.2.5 ERES standards shall not apply in excavated waters. All other appropriate criteria shall remain

in force for these waters.

5.6.2.6 The ERES criteria set forth in Section 5.6 supplement all other applicable requirements of these standards for ERES waters. Nothing in Section 5.6 relieves or reduces the obligation of any person to comply with other requirements of these Standards, federal or state laws and regulations.

5.6.3 Pollution Prevention

5.6.3.1 Existing Sources: For the purposes of this Section, an existing source shall be defined as a discharge for which a permit has been issued by the Department pursuant to 7 Del. Code Chapter 60 prior to January 1, 1991. In the case of a water body designated as ERES waters pursuant to Section 3 of the Standards, the Department shall not issue or reissue a permit for an existing source unless the applicant demonstrates a utilization of all economically feasible and reasonably available waste minimization practices and technologies, and the lack of feasible alternative production processes and disposal options.

5.6.3.2 The provisions of Subsections 5.6.1.4, 5.6.1.5, and 5.6.3.1 shall apply to existing sources on January 1, 1996, or upon adoption of a Pollution Control Strategy as provided in Section 5.6.3.5, whichever occurs first. In either event, the provisions of Section 5.6, including all requirements of the Pollution Control Strategy shall apply to existing sources.

5.6.3.3 Increased or New Sources: For the purposes of Section 5.6, new sources are those discharges for which a permit has not been issued pursuant to 7 Del. Code Chapter 60 prior to January 1, 1991, and increased sources are those discharges for which there is an increase in the mass loading of any pollutant of concern from any existing source. For the purposes of Section 5.6, pollutants of concern are the following: oxygen demanding substances (as may be measured by BOD and COD), nitrogen, phosphorous, bacteria, heat, and total suspended solids. In the case of any waterbody designated as ERES waters pursuant to Section 3 of the Standards, the Department shall not issue or reissue a permit pursuant to 7 Del. Code Chapter 60 that allows an increase in or new source of pollutant loadings of pollutants of concern unless the applicant demonstrates:

5.6.3.3.1 A need to discharge based upon a showing of the full utilization of measures, processes, methods, systems or techniques to eliminate the discharge altogether or minimize waste loadings through process changes, substitution of materials, enclosure of systems or other modifications. This can be demonstrated through the full utilization of available waste minimization practices and technologies and the lack of feasible alternative production processes and disposal options; and

5.6.3.3.2 That a proposed new discharge or any increase in loading of pollutants of concern

of an existing discharge is consistent with the Pollution Control Strategy for the basin. Prior to adoption of a Pollution Control Strategy for a stream basin no increase in loadings of pollutants of concern shall be allowed to the stream basin from a surface water discharger unless the Secretary determines that:

5.6.3.3.2.1 Such discharger offsets the increased surface water discharge of pollutants of concern within the stream basin to the maximum extent practicable in an acceptable manner;

5.6.3.3.2.2 The increased loadings of pollutants of concern are necessary to prevent a substantial adverse economic or social impact at the community or regional level, and

5.6.3.2.2.3 Water quality will be maintained to fully protect existing uses.

5.6.3.4 Pollution Control Strategy

5.6.3.4.1 For each stream basin designated as ERES waters pursuant to Section 10 of these standards, the Department shall develop a pollution control strategy. The strategy shall provide for the implementation of best management practices established pursuant to Subsection 5.6.3.6 of this section and shall include such additional requirements, measures, and practices as are necessary to:

5.6.3.4.1.1 Prevent the violation of water quality standards;

5.6.3.4.1.2 Protect all resources in the stream basin in a manner that allows for natural conditions to be maintained or restored; and

5.6.3.4.1.3 Assure the protection and propagation of a balanced, indigenous population of fish, shellfish, aquatic vegetation, and wildlife, and provide for recreational activities in and on the water.

5.6.3.4.2 The strategy pursuant to this subsection shall, at a minimum:

5.6.3.4.2.1 Provide an assessment of the nature, degree, and extent of pollution to waters within such stream basin, in terms of point source and non-point source contribution;

5.6.3.4.2.2 Identify the aspects of the stream basin which are important, unique, or sensitive from a recreational or ecological perspective;

5.6.3.4.2.3 Establish _____ such additional indicators and criteria that satisfy the general policy and provisions established for such stream basins;

5.6.3.4.2.4 Identify the means by which ERES standards will be achieved;

5.6.3.4.2.5 Delineate, _____ where appropriate, the specific point source effluent limits, best management practices, and other controls that will be used to achieve water quality standards; and

5.6.3.4.2.6 Indicate changes to be made to state plans for control of water pollution or resource

management to assure implementation of the strategy.

5.6.3.4.3 The Department shall assure the opportunity for public participation in the development of the strategy required pursuant to this subsection and shall provide for public review and comment on the strategy in accordance with 7 Del. Code 6010.

5.6.3.4.4 The Department may, to the extent it deems appropriate, provide technical assistance to local governments in developing and implementing the strategy required pursuant to this subsection.

5.6.3.4.5 The Department shall, to the extent it deems appropriate, pursue and coordinate implementation of any strategy developed pursuant to this subsection through priority application of its resources to ERES waters through its regulatory and non-regulatory programs.

5.6.3.4.6 The Department may, in accordance with 7 Del. Code 6010, adopt and require the use of specific combinations of methods, practices, and technologies which it deems to be most effective for controlling, reducing, or removing waste loadings to ERES waters. Such requirements shall be based upon the application of good engineering and environmental science practices and principles, achieve a high degree of reliability, and be appropriate for the categories of activity.

5.6.3.5 Best Management Practices

The Department may adopt, pursuant to 7 Del. Code 6010, best management practices for selected sources of pollution to ERES waters. Best management practices identified by the Department pursuant to this subsection shall provide a standard for the control of the addition of pollutants which reflects the greatest degree of pollutant reduction achievable including, where practicable, a standard requiring no discharge of pollutants.

Section 6: Regulatory Mixing Zones

The following requirements shall apply to regulatory mixing zones:

6.1 Applicability: In instances where the Department determines, based upon engineering calculations or field studies, that complete mix (as defined herein) of effluent with its receiving water is not expected to occur, the Department may allocate a designated portion of the receiving water to provide for mixing of the effluent and the receiving water. This area shall be defined as a regulatory mixing zone and shall be determined on a case-by-case basis taking into account critical flows, outfall configuration and receiving stream characteristics. A mixing zone will not be allocated in instances where the Department determines that complete mix of effluent and receiving water occurs at the point of discharge, in which case, the critical flows as provided in Section 7 shall be applied in determining if the applicable criteria are met.

6.2 Location: Regulatory mixing zones shall not

impinge upon areas of special importance, including but not limited to drinking water supply intakes, nursery areas for aquatic life or waterfowl, approved or conditional shellfish areas, or heavily utilized primary contact recreation areas. Zones shall not be located in such a manner as to interfere with passage of fishes or other organisms. Shore-hugging plumes should be avoided to the maximum extent practicable. In areas where multiple discharges are located in proximity, overlapping discharge plumes may occur. In such instances, the size limitations derived under Section 6.4 may be reduced to preclude acute toxicity in the overlap areas, or to ensure an adequate zone of passage for fish.

6.3 Outfall Design: Outfalls shall be designed to provide maximum protection for humans, aquatic life, and wildlife. Surface discharges to shallow near-shore areas shall be discouraged in preference to submerged outfalls located in deep offshore areas or other alternative discharge configurations which achieve Water Quality Standards.

6.4 Size: Size of the zone shall be no larger than is necessary to provide for mixing of effluent and receiving water. The following are the maximum size limitations that shall apply unless the discharger can demonstrate to the satisfaction of the Department that a larger mixing zone would not have an adverse impact in the receiving water:

6.4.1 Mixing zones for non-thermal pollutants shall be designed as follows:

6.4.1.1 Rivers: During critical stream flow, as detailed in Section 8 of these standards, the maximum distance to the edge of the mixing zone shall be described by:

$$x_m \leq (u \bullet W^2) / (6H\sqrt{gHS})$$

- where x_m = maximum mixing zone length,
- u = flow velocity for critical flow as detailed in Section 7.2.3 or Section 7.3,
- W = width of river,
- H = depth of river,
- g = acceleration due to gravity, and
- S = slope of river surface.

6.4.1.2 Lakes: Because of the shallow depth and small size of Delaware lakes, regulatory mixing zones shall be prohibited in these waters.

6.4.1.3 Tidal waters: For mean low water slack tide conditions, the maximum horizontal distance from the edge of the outfall structure to the edge of the mixing zone shall be no greater than twenty-five percent (25%) of the width of the tidal water at the point of discharge.

6.4.2 Mixing zones for thermal (temperature) pollutants shall be defined as those waters between the point of discharge and the point at which the receiving water temperature criteria are met as defined in Section 11, subject

to criteria 6.4.2.1 through 6.4.2.5 below. For non-tidal freshwater, mixing zones shall be designed using the critical stream flow specified in Section 7.1 or 7.3.

6.4.2.1 The greatest offshore extension of the mixing zone shall not exceed 50 percent of the width of the waterbody at the point of discharge.

6.4.2.2 Thermal mixing zone cross-sectional area as measured in a vertical plane perpendicular to the receiving water flow shall not occupy more than 25 percent (25%) of the cross-sectional area of the receiving water as measured from the point of discharge to the opposite shore.

6.4.2.3 In areas where multiple discharges are located in proximity, overlapping discharges may occur. In such instances, the above size limitations shall apply to the cumulative influence of the multiple discharges.

6.4.2.4 Because of the shallow depth and small size of Delaware lakes, thermal mixing zones shall be prohibited in those waters.

6.4.2.5 As an alternative to 6.4.2.1 through 6.4.2.4 above, the size of the thermal mixing zone may be determined on a site-specific basis. This determination must be based upon a sound rationale and be supported by substantial biological, chemical, physical, and engineering evidence and analysis. Any such determination must show to the Department's satisfaction that no adverse changes in the protection and propagation of balanced indigenous populations of fish, aquatic life, and wildlife, may reasonably be expected to occur. A satisfactory showing made in conformance with Section 316(a) of the Water Quality Act of 1987 shall be deemed as compliance with the requirements of this paragraph.

6.5 In-Zone and Boundary of Zone Water Quality Requirements:

6.5.1 Regulatory mixing zones shall not be used for, or considered as, a substitute for minimum treatment technology required by the Clean Water Act or other applicable State and Federal laws or regulations.

6.5.2 Regulatory mixing zones shall be free of the following:

6.5.2.1 Materials which result in the accumulation of toxic substances in sediment, aquatic life, or food chains at levels that may be harmful to the health of humans or aquatic life;

6.5.2.2 Materials in concentrations that may settle to form deposits which smother benthic organisms, may exert significant dissolved oxygen demand, or may create a nuisance condition;

6.5.2.3 Floating debris, oil, scum, foam, and other matter in concentrations that may cause a nuisance condition;

6.5.2.4 Substances in concentrations that produce color, odor, taste, or turbidity that may lead to significant disruption of public water supply treatment systems, or may cause a nuisance condition; or

6.5.2.5 Substances in concentrations that may result in a dominance of nuisance species, or may affect species diversity.

6.5.3 No acute aquatic life criterion, as detailed in Section 4.5.9 of this document, may be exceeded at any point greater than one-tenth of the distance from the edge of the outfall structure to the boundary of the regulatory mixing zone as defined above. Substances in concentrations that may result in a dominance of nuisance species, or may affect species diversity.

6.5.4 No acute aquatic life criterion, as detailed in Section 4.5.9 of this document, may be exceeded at any point greater than fifty (50) times the discharge length scale in any horizontal direction from the edge of the outfall structure.

6.5.5 No acute aquatic life criterion, as detailed in Section 4.5.9 of this document, may be exceeded at any point greater than five (5) times the average water depth in the regulatory mixing zone in any horizontal direction from the edge of the outfall structure.

6.5.6 No chronic aquatic life criterion, as detailed in Section 4.5.9 of this document, may be exceeded beyond the boundary of the regulatory mixing zone as defined above.

Section 7: Critical Flows

7.1 For all waters of the State, all water quality standards and criteria, except those for toxic substances, shall not apply at those times when the freshwater flow or net advective flow falls below that value that is equal to the flow of 7-day duration with recurrence interval of 10 years (generally known as the 7Q10 or the Q7-10). However, at all times all waters shall be free of materials and substances as listed in Section 6.5.2.

7.2 For all waters of the state, water quality criteria for toxic substances as specified in Section 4.5.9 shall not apply at those times when the freshwater or net advective flow falls below the following values:

7.2.1 The harmonic mean flow, for human carcinogens;

7.2.2 The flow of 30-day duration with recurrence interval of 5 years (generally known as the 30Q5 or Q30-5), for human systemic toxicants and for ammonia fresh water aquatic life chronic toxicity criteria;

7.2.3 The flow of 7-day duration with recurrence interval of 10 years (generally known as the 7Q10 or the Q7-10), for compounds having a chronic toxicity criterion; and

7.2.4 The flow of 1-day duration with recurrence interval of 10 years (generally known as the 1Q10 or the Q1-10), for compounds having an acute toxicity criterion.

7.3 These critical flows shall also be used as design flows for developing water quality-based discharge

limitations for the referenced groups of parameters. The Department shall consider scientifically reasonable requests for seasonally adjusted flows or the use of dynamic modeling techniques for this purpose on a case-by-case basis.

7.4 Nothing in Section 7 shall be construed as allowing any reduction in efficiency of, or suspension of, required pollution control practices, whether applied to point or nonpoint sources, during periods when flows are less than those specified for suspension of standards applicability in Sections 7.1-7.3.

Section 8: Criteria for Low Flow Waters

8.1 A low flow water is one in which the 7Q10 freshwater inflow is less than 0.1 cfs. The following criteria shall apply to discharges into low flow waters:

8.1.1 Where information is available for the receiving water which indicates that, because of low flow, it would not support designated uses, then numeric criteria shall not apply. The numeric criteria shall then apply at the closest downstream point where uses could reasonably be expected to occur.

8.1.2 The discharge shall not add:

8.1.2.1 Materials which result in the accumulation of toxic substances in sediment, aquatic life or food chains at levels that may be harmful to the health of humans or aquatic life;

8.1.2.2 Materials in concentrations that may settle to form deposits which smother benthic organisms, may exert significant dissolved oxygen demand, or may create a nuisance condition;

8.1.2.3 Floating debris, oil, scum, foam, and other matter in concentrations that may cause a nuisance condition;

8.1.2.4 Substances in concentrations that produce color, odor, taste or turbidity that may lead to significant disruption of a public water supply treatment systems, or may cause a nuisance condition; or

8.1.2.5 Substances in concentrations that may result in a dominance of nuisance species, or may affect species diversity.

8.2 The applicant for discharge shall bear the burden of showing, to the satisfaction of the Department, that the provisions of 8.1.1 and 8.1.2 above are met.

8.3 Any application for new or increased discharge to a low flow water must include a thorough evaluation of alternate discharge configurations, including but not limited to water conservation, relocating the outfall to a more suitable location, conveying the wastewater to other available treatment facilities, or utilizing land treatment. Alternatives which do not include discharge must be used wherever technologically feasible and cost-effective (notwithstanding other requirements of these or other applicable regulations).

Section 9: Exceptions, Modifications and Conditions

9.1 Exceptions and Modifications

9.1.1 Request for Removal of Designated Uses:

The Department shall consider scientifically reasonable requests for the removal of a designated use which is not an existing use, or the establishment of sub-categories of a use for a water body or segment of specific waters of the State based upon the demonstration by means of a Use Attainability Analysis that attainment of the designated use is not feasible because:

9.1.1.1 Naturally occurring pollutant concentrations prevent the attainment of the use; or

9.1.1.2 Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or

9.1.1.3 Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

9.1.1.4 Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use; or

9.1.1.5 Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or

9.1.1.6 Controls more stringent than those required by sections 301(b) and 306 of the Clean Water Act would result in substantial and widespread economic and social impact.

A request for removal of designated uses shall be deemed a scientifically reasonable request if it is demonstrated that the Use Attainability Analysis prepared and submitted by the requestor is based upon sound scientific rationale and is supported by substantial scientific and technical evidence and analysis as to the existence of one or more of the factors listed above. If the Department finds any request for removal to be frivolous or to be flawed as to the methods used to obtain evidence or perform analysis to such an extent that the validity of the conclusions would be challenged by most persons trained and competent in the use and interpretation of the technical or scientific methods employed, it may dismiss such request for removal without further action. If the Department determines that a scientifically reasonable request has been made, it shall make a preliminary determination as to the proposed change and hold a public hearing in accordance with 7 Del. Code Section 6006. The removal or establishment of sub-

categories of a designated use completed under this Section are deemed to be duly adopted components of the State of Delaware Surface Water Quality Standards.

The Department will not consider requests for the removal of a designated use, for a water body or segment of specific waters of the State if:

9.1.1.7 They are existing uses unless a use requiring more stringent criteria is added; or

9.1.1.8 The designated use will be attained by implementing effluent limits required under sections 301(b) and 306 of the Clean Water Act and by implementing cost-effective and reasonable best management practices for nonpoint source control.

9.1.2 Request for Modification of Water Quality Criteria: The Department shall consider scientifically reasonable requests for modification of water quality criteria contained herein for portions of specific waters of the State. A request for modification shall be deemed to be a scientifically reasonable request if it is based upon a sound rationale, and supported by substantial scientific evidence and analysis. This evidence and analysis must demonstrate the existence of site-specific differences in the chemical, physical, or biological characteristics of the surface water, and must propose alternate site-specific water quality criteria. Scientific studies for the development of these alternate criteria shall be designed and conducted in accordance with the guidelines set forth in the Water Quality Standards Handbook Second Edition, EPA 823/B-94-005 or other scientifically defensible methodologies approved by the Department. If the Department finds any request for modification to be frivolous, to be flawed as to the methods used to obtain evidence and to perform analysis to such an extent that the validity of the conclusions would be challenged by most persons trained and competent in the use and interpretation of the technical and scientific methods employed, or to contain reasonable evidence that a reduction in the number, quality, or river or stream mileage of designated uses would occur, it may dismiss such request for modification without further action. If the Department determines that a scientifically reasonable request has been made, the Department shall make a preliminary determination as to the proposed change and shall hold a public hearing in accordance with 7 Del. Code Section 6006. If the Department determines that a scientifically reasonable request has been made pursuant to this Section and such request could result in a change in discharge limits, then the public hearings for the discharge limitation change and the criteria modification shall be held concurrently. In such case, the Department shall provide separate public notices for the discharge limitation change and the criteria modification. Criteria modification completed under this Section are deemed to be duly adopted components of the State of Delaware Surface Water Quality Standards.

9.1.3 Variance for Pollutants Corroded and

Eroded from Water Distribution Piping and Appurtenances: For the purpose of establishing discharge limitations, a facility may be granted a variance from water quality criteria for pollutants contributed by normal corrosion and erosion associated with the facility's piping and appurtenances in situations where this corrosion and erosion causes or would be expected to cause exceedances in the receiving water, provided that the discharger demonstrates, based upon sound rationale and supported by substantial scientific and technical evidence and analysis, all of the following:

9.1.3.1 In the absence of pollutants corroded and eroded from the facility's water distribution piping and appurtenances, there would be no violation of the surface water quality criteria in the receiving water; and

9.1.3.2 The normal corrosion and erosion associated with the intake water used by the facility is sufficient to be the sole cause of the violation. For purposes of this determination, intake water characteristics shall be used in assessing normal corrosion and erosion; and

9.1.3.3 No other activity, condition or method of operation, or materials used or produced at the facility, which results in the addition to erosion and corrosion based pollutants into the facility's discharge, significantly contributes to the violations of surface water quality criteria in the receiving waters. Such activities, conditions or methods of operation, or materials used or produced at the facility include entrainment of pollutants previously discharged or disposed by the facility; and

9.1.3.4 No practicable alternative water supply or treatment methodology or system which would yield statistically significant lower corrosivity or erosiveness is available to the facility; and

9.1.3.5 The discharger demonstrates that controls more stringent than technology-based limits and Section 306 of the Clean Water Act that would result in substantial and widespread economic and social impact. The analysis of economic impacts must demonstrate that:

9.1.3.5.1 The discharger would face substantial financial impacts due to the costs of the necessary pollution controls or water treatment (substantial impacts of which would interfere with development), and

9.1.3.5.2 The affected community will bear significant adverse impacts if the entity is required to meet existing or proposed water quality standards (widespread impacts of important development).

9.1.3.6 The discharger will be required to meet applicable criteria for all other constituents. An alternative criteria will be derived for the erosion/corrosion-based pollutants based on intake water characteristics and properties of the facility's piping and appurtenances. A variance granted under this Section shall be effective for three years, or the life of the NPDES permit, and at the expiration of either time period, the discharger must either meet the criteria or make a new demonstration of

unattainability and financial impact. Variances considered under this Section shall be subject to all applicable public participation requirements and shall be subject to review and approval by the U.S. Environmental Protection Agency.

9.2 Conditions

9.2.1 Any person who shall apply for a permit to discharge to the waters of the State shall have the opportunity to submit an analysis to the Department at the time of application to demonstrate that said discharge will not cause, have the reasonable potential to cause, or contribute to an excursion of the receiving stream's water quality standards. The Department shall consider any analysis submitted by the applicant and also conduct its own analysis in making a determination whether the discharge causes, has the reasonable potential to cause, or contributes to an excursion of standards. Analyses performed under

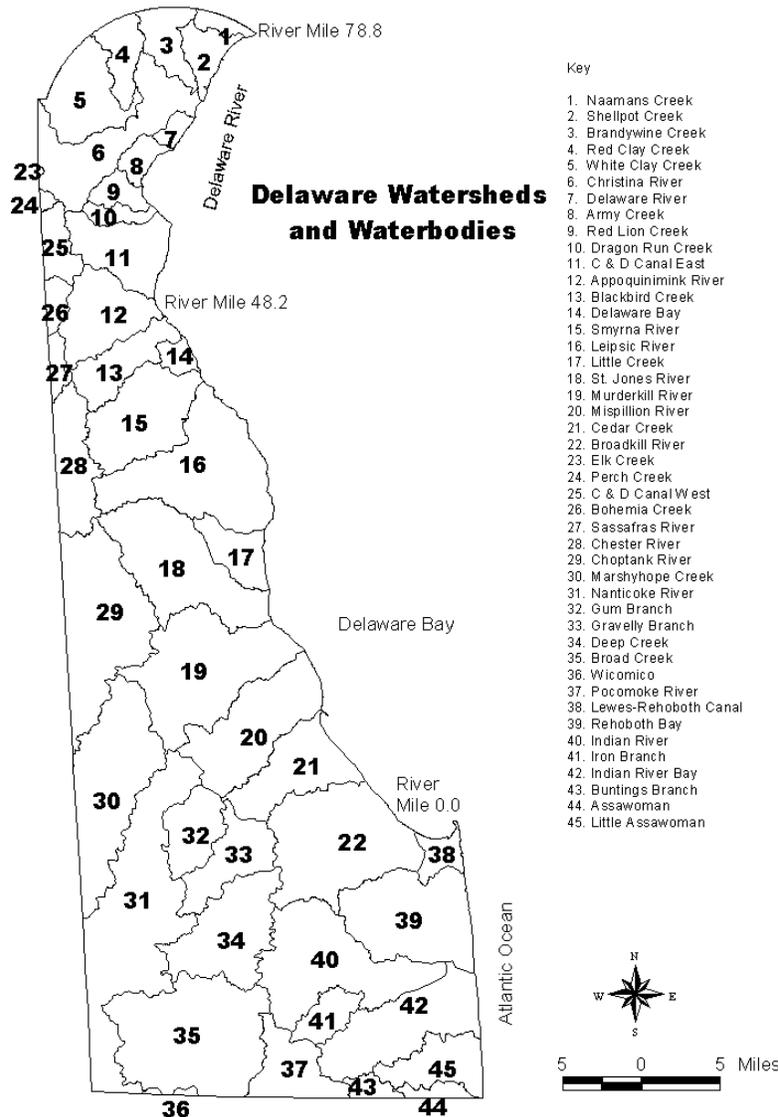
Section 9.2.1 shall be conducted in concert with the requirements of Section 3, as applicable. A public hearing, pursuant to 7 Del. Code, Sections 6004 and 6006, may be held to gather public comment on any analysis submitted by an applicant in conjunction with Section 9.2.1.

9.2.2 Consistency with Other State and Federal Requirements: Nothing in Section 9 relieves or reduces the obligation of any person to comply with other applicable provisions of these Standards, federal or state laws and regulations.

Section 10: Separability

Should any section, paragraph, or other part of this document be declared invalid for any reason, the remainder shall not be affected.

Figure 1 Delaware Watersheds and Waterbodies



**DEPARTMENT OF SERVICES FOR
CHILDREN, YOUTH AND THEIR
FAMILIES**

DIVISION OF FAMILY SERVICES

Statutory Authority: 16 Delaware Code,
Chapter 9 (16 Del.C. Ch. 9)

PUBLIC NOTICE

The Delaware Department of Services for Children, Youth and Their Families, Division of Family Services is requesting public comment on revisions to the "Regulations Pursuant to 16 Del.C. Ch. 9 for Designation of Substantiated Acts of Abuse or Neglect to Child Protection Levels and for Classifying Unsubstantiated Cases of Abuse or Neglect in the Division of Family Services' Internal Information System." Anyone wishing to submit written comments should submit such comments by October 31, 2003 to: Linda M. Shannon, Program Manager, Intake & Investigation, Division of Family Services, 1825 Faulkland Road, Wilmington, DE 19805. Fax comments to: (302) 633-2652.

Legislation regarding the Child Protection Registry was signed into law by Governor Ruth Ann Minner on July 22, 2002. The registry is a database of information about persons the Division of Family Services (DFS) has substantiated to have committed child abuse or neglect. The statute assigns individuals who are substantiated for child abuse or neglect to one of four levels for a specific number of years. The levels also address who may be reported out to health care, child care, and public school employers for employment purposes. The statute requires the DFS to give notice of its intention to substantiate a person for abuse or neglect and enter the person on the Child Protection Registry. If the person timely responds to the notice and requests a hearing in Family Court, DFS must file a Petition for Substantiation in the Family Court, which holds a hearing and makes the final decision on whether the person abused or neglected a child, and, if so, the designated Child Protection Level for the incident of abuse or neglect. Finally, the Division of Family Services classifies unsubstantiated cases on its internal system utilizing two categories: Unsubstantiated – No Evidence and Unsubstantiated with Concern. The proposed revisions are intended to clarify the current definitions of acts of abuse and neglect. In addition, new definitions have been added to provide a broader differentiation between the levels.

Regulations Pursuant To 16 Del.C. Ch. 9 For Designation Of Substantiated Acts Of Abuse Or Neglect To Child Protection Levels And For Classifying Unsubstantiated Cases Of Abuse Or Neglect In The Division Of Family Services' Internal Information System.

1.0 Legal Authorization

The legal authority for these regulations is found in the Delaware Code: Title 16, Chapter 9.

2.0 Purpose

The purpose of these regulations is (1) to develop regulations that assess the risk of future harm to children from acts of abuse or neglect and to designate each such act of abuse or neglect to a Child Protection Level, pursuant to 16 Del.C. §923; and (2) to develop regulations for classifying unsubstantiated cases of abuse or neglect within the Division of Family Services' internal information system, pursuant to 16 Del.C. §924.

3.0 Date of Implementation

These regulations become effective no less than ten days after publication.

4.0 Applicability

These regulations apply to acts of abuse or neglect that are alleged to have occurred on or after February 1, 2003; and to the designation to Child Protection Levels of each case substantiated for abuse or neglect that was placed on the Central Registry (also known as the Central Child Abuse Registry, the Child Abuse Registry, and the Central Abuse Registry) between August 1, 1994 and February 1, 2003.

5.0 Definition

"Parent/caretaker" means those responsible for the care, custody, and control of the child as that term is defined in §902 of Title 16 of the Delaware Code.

6.0 Assessment of the Risk of Future Harm and Designation of Child Protection Levels

6.1 During an investigation of an incident of abuse or neglect, the Division of Family Services shall be guided by 16 Del.C. §906 (b).

6.2 A person who has been substantiated for abuse or neglect must be entered on the Child Protection Registry at one of four designated Child Protection Levels related to the risk of future harm to children arising from the incident under investigation or for which a person has been substantiated.

7.0 Child Protection Level I

7.1 The following incidents of abuse or neglect shall be deemed to present a low risk of future harm to children and shall be designated to Child Protection Level I:

7.1.1 **“Educational Neglect”** means failure by a parent/caretaker to follow through with Court-ordered activity for the child after conviction in Court for “Failure to Send Child to School.”

7.1.2 **“Mild to Moderate Emotional Abuse”** includes, but is not limited to, behaviors by a parent/caretaker toward a child such as isolated incidents of ridiculing, demeaning, making derogatory remarks, cursing, or threatening to inflict physical or emotional harm.

7.1.3 **“Mild to Moderate Emotional Neglect”** means mild to moderate and/or isolated incidents of isolating/shunning, rejecting, or ignoring a child. This category includes inaction by a parent/caretaker or a failure to protect the child that results in little to no harm to the child’s sense of well-being and safety. Child witnessing of misdemeanor domestic violence is also at this level.

7.1.4 **“Mild Physical Neglect”** means failure by a parent/caretaker of a child to provide for the basic needs (e.g., food, clothing, shelter) of the child, for no apparent financial reason, and although this failure decreases the child’s general well-being, it does not present a threat to the child’s safety. The child’s general well-being may also be decreased by inaction by a parent/caretaker or a failure to protect the child. This category includes an infant who tests positive for alcohol or other drugs at birth as a result of maternal usage of substances during pregnancy that were not medically prescribed and the infant does not have apparent medical or physical problems directly attributed by a doctor to the alcohol/drug usage.

7.2 Conviction of any of the following crimes when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate shall be deemed to present a low risk of future harm to children and shall be designated Child Protection Level I:

7.2.1 violation of compulsory school attendance requirements or truancy

7.3 An incident of abuse or neglect containing the elements of any crime or offense listed or described in 7.2.1 without regard to the institution or result of criminal or delinquency proceedings based on such incident.

8.0 Child Protection Level II

8.1 The following incidents of abuse or neglect shall be deemed to present a moderate risk of future harm to children and shall be designated Child Protection Level II:

8.1.1 **“Bruises, cuts and lacerations not requiring intervention by a medical professional”** means injury caused by a parent/caretaker to the body tissue of a child causing discoloration, but without breaking the skin (bruise) or an injury which causes an open wound (cut/laceration) of a child over the age of six months. The injuries did not require medical treatment beyond medical examination and/or were not extensive (size, quantity, and location) on the child’s body.

8.1.2 **“Child Left Alone, Ages 12-17/Disabled Child with Minimal Care Needs”** means a parent/caretaker left the child alone or without a substitute caretaker for an extended period of time (minimally 24 hours) and appropriate plans for an emergency have not been made. This category includes a disabled child of any age who requires on-site supervision and protection, but minimal assistance with activities of daily living (e.g., eating, hygiene, toiletry).

8.1.3 **“Lack of Supervision, ages 7 – 11”** means the parent/caretaker of a child ~~is not providing immediate care, thereby ensuring~~ fails to provide immediate care to ensure the well-being and safety for of the child, who is unable to care for him/herself or respond appropriately to an emergency. These are incidents in which the parent/caretaker is physically present, but is not attending to the child due to behaviors such as sleeping or intoxication substance abuse.

8.1.4 **“Lock In/Out, ages 12 – 17”** occurs when a parent/caretaker deliberately locks a child in a confined area such as a bedroom, closet, and car or locks the child out of the home.

8.1.5 **“Moderate Physical Neglect”** means failure by a parent/caretaker of a child to provide for the basic needs (e.g., food, clothing, shelter) of the child, for no apparent financial reason, and although this failure decreases the child’s safety or general well-being, it does not present a threat to the child’s safety. The child’s general well-being may also be decreased by inaction by a parent/caretaker or a failure to protect the child. This category includes an infant who tests positive for alcohol or other drugs at birth as a result of maternal usage of substances during pregnancy that were not medically prescribed and the infant does not have apparent medical or physical problems directly attributed by a medical professional to the alcohol/drug usage.

8.1.6 **“Other Physical Abuse”** means actions prohibited by **Delaware Code** such as ~~punching, kicking, biting, pulling hair, pushing/shoving, choking, and use of a deadly weapon by a parent/caretaker of a child striking with~~ a closed fist and kicking or other actions such as biting and pulling hair by a parent/caretaker of a child that which have not resulted in observable injury to the child.

8.1.2 7 **“Severe Emotional Abuse”** includes, but is not limited to, behaviors by a parent/caretaker toward a child such as chronically ridiculing, demeaning, making derogatory remarks, cursing, or threatening to inflict physical or emotional harm.

8.1.7 8 **“Severe Emotional Neglect”** includes behaviors by a parent/caretaker such as chronically isolating/shunning, rejecting, or ignoring a child. This category includes inaction by a parent/caretaker or a failure to protect the child that results in substantial harm to the child’s sense of well-being and safety. Child witnessing of felony domestic violence is also included at this level.

8.1.8 **“Verbal Innuendo”** means inappropriate sexualized statements to a child by a parent/caretaker intended to entice or alarm.

8.2 Conviction of any of the following crimes when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate shall be deemed to present a moderate risk of future harm to children and shall be designated Child Protection Level II:

8.2.1 interference with custody or

8.2.2 indecent exposure in the second degree.

8.3 An incident of abuse or neglect containing the elements of any crime or offense listed or described in 8.2.1 or 8.2.2 without regard to the institution or result of criminal or delinquency proceedings based on such incident.

9.0 Child Protection Level III

9.1 The following incidents of abuse or neglect shall be deemed to present a high risk of future harm to children and shall be designated Child Protection Level III:

9.1.1 **“Abandonment, A ges 13 – 17”** means the parent/caretaker fails to assume or refuses to assume responsibility or to provide basic care for a child on a daily basis. The basic care consists of food, clothing, shelter, medical care, reasonable and consistent financial support, and the maintenance of regular communication/contact between the parent/caretaker and child.

9.1.2 **“Bizarre Treatment”** means behavior toward a child by a parent/caretaker that is odd, extreme, or significantly disproportionate to the precipitating event initiated by the child, or would not be perceived as a logical consequence by a reasonable person such as use of or threatened use of a deadly weapon.

9.1.3 **“Bruises, cuts, lacerations requiring intervention by a medical professional”** means injury caused by a parent/caretaker to the body tissue of a child causing discoloration, but without breaking the skin (bruise) or an injury which causes open wound (cut/laceration). The injury required necessitating medical treatment beyond medical examination and/or was extensive (size, quantity, and locations) on the child’s body. All children under the age of six months are included at this level, regardless of the need for medical treatment beyond medical examination or the extensiveness of the injury. Current evidence of historical injuries (perhaps appearing on an x-ray) that would have required medical treatment at the time of the injuries, but which do not necessitate current treatment, also require a finding at this level.

9.1.4 **“Child, Ages 7 – 11, Left Alone/Disabled Child with Moderate Care Needs”** means a child who is unable to care for him/herself, or to respond to an emergency, has not been left in the care of anyone by the parent/caretaker. parent/caretaker left the child alone or without a substitute caretaker. This category includes a disabled child of any age who requires on-site supervision

and protection, as well as routine assistance with activities of daily living (e.g., eating, hygiene, toiletry).

9.1.5 **“Dislocation/Sprain”** means a medically diagnosed displacement of a bone or injury to a ligament or muscle caused by a parent/caretaker.

9.1.6 **“Lack of Supervision, Age 6 and Younger”** means the parent/caretaker is not providing immediate care, ensuring well-being and safety, for a child who is unable to care for him/herself of a child fails to provide immediate care to ensure the well-being and safety for of the child, who is unable to care for him/herself or respond appropriately to an emergency. These are incidents in which the parent/caretaker is physically present, but is not attending to the child due to behaviors such as sleeping or intoxication; substance abuse.

9.1.7 **“Lock In/Out, Ages 0 – 11”** occurs when a parent/caretaker deliberately locks a child in a confined area such as the bedroom, closet, and car or locks the child out of the home.

9.1.8 **“Malnutrition”** means a medically diagnosed condition of poor nourishment of a child resulting from insufficient food or an improper diet caused by a parent/caretaker.

9.1.9 **“Non-Organic Failure to Thrive”** means medically diagnosed Failure to Thrive that is documented as life-threatening a lack of appropriate physical and emotional development that threatens the well-being of the child. It can be permanently damaging to the child without being life threatening.

9.1.10 **“Other Medical Neglect”** means failure by a parent/caretaker to obtain proper or necessary medical care, but the medical care is not life-threatening. This finding does not include cases governed by 16 Del. C. §913.

9.1.11 **“Serious Severe Physical Neglect”** means failure by the parent/caretaker of a child to provide for the basic needs (e.g., food, clothing, shelter) of the child, for no apparent financial reason, and this failure could result in bodily harm or death. This category includes inaction by a parent/caretaker or a failure to protect the child that results in severe physical or sexual abuse of the child. This category includes: (1) infants who were born pre term (born at or before 36 weeks) and the pre-maturity is directly attributed by a medical professional to maternal usage of alcohol or drugs that were not prescribed during pregnancy and/or (2) infants who have medical or physical problems which significantly impact vital life functions or physical or intellectual development that is directly attributed by a doctor to maternal usage of alcohol or drugs that were not prescribed during pregnancy. The infants may require special equipment or medical procedures to sustain life.

9.1.12 **“Verbal Innuendo”** means inappropriate sexualized statements to a child by a parent/caretaker intended to entice or alarm.

9.2 Conviction of any of the following crimes when

based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate shall be deemed to present a high risk of future harm to children and shall be designated Child Protection Level III:

- 9.2.1 abandonment of a child,
- 9.2.2 assault in the third degree,
- 9.2.3 indecent exposure in the first degree,
- 9.2.4 menacing,
- 9.2.5 misdemeanor endangering the welfare of a child or an incompetent person.
- 9.2.6 offensive touching,
- 9.2.7 reckless endangering,
- 9.2.8 sexual harassment,
- 9.2.9 terroristic threatening,
- 9.2.10 unlawful administration of drugs or controlled substances, or
- 9.2.11 unlawful imprisonment,

9.3 An incident of abuse or neglect containing the elements of any crime or offense listed or described in 9.2.1 - 9.2.11 without regard to the institution or result of criminal or delinquency proceedings based on such incident.

10.0 Child Protection Level IV

10.1 The following incidents of abuse or neglect shall be deemed to present the highest risk of future harm to children and shall be designated Child Protection Level IV:

10.1.1 **“Abandonment 0 – 12”** means the parent/caretaker fails to assume or refuses to assume responsibility or to provide basic care for a child on a daily basis. The basic care consists of food, clothing, shelter, medical care, reasonable and consistent financial support, and the maintenance of regular communication/contact between the parent/caretaker and child. This finding does not include the voluntary surrender of a baby pursuant to the Safe Arms for Baby Act.

~~10.1.2 **“Anal Intercourse”** means penetration of the anus of a child by parent/caretaker for reasons other than appropriate medical diagnosis/treatment such as using a rectal thermometer or giving a child an enema or suppository. The penetrating object could be the parent/caretaker’s tongue, penis or fingers, or might involve inanimate objects such as crayons or pencils.~~

10.1.3 **“Blunt Force Trauma”** means serious or life-threatening bruises, cuts, lacerations caused by a parent/caretaker that require medical treatment beyond medical examination.

10.1.4 **“Bone Fracture”** means a medically diagnosed break or crack in a bone or cartilage caused by a parent/caretaker.

10.1.5 **“Burn/Scald”** means a medically diagnosed injury intentionally or recklessly inflicted by the parent/caretaker to a child by contacting the child’s skin/hair to a flame, hot object, hot liquid, electrical source, or a chemical source.

10.1.6 **“Child, Aged 6 or Younger, Left Alone/Disabled Child with Significant Care Needs”** means a child who is unable to care for him/herself, or to respond to an emergency, has not been left in the care of anyone by the parent/caretaker. parent/caretaker left the child alone or without a substitute caretaker. This category includes a disabled child of any age who requires on-site supervision and protection and whose activities of daily living (e.g., feeding, hygiene, toiletry) must be performed by the parent/caretaker.

10.1.7 **“Death”** means a child’s loss of life due to abuse or neglect by parent/caretaker.

10.1.8 **“Driving Under the Influence (DUI)”** means incidents documented by law enforcement of a parent/caretaker driving a vehicle under the influence of alcohol or drugs with a child present.

10.1.9 **“Exploitation”** occurs when a parent/caretaker behaves unethically toward a child, using the parent’s/caretaker’s position of power to solicit sexual acts in an attempt to obtain some type of sexual gratification. This category includes situations in which a parent/caretaker prostitutes a child or knowingly permits a child to be “used” by another party, regardless of whether the parent/caretaker receives sexual gratification or other compensation (money, drugs) or no compensation at all. Additionally, this category includes situations in which a parent/caretaker teaches, encourages, or instructs a child to engage in illegal behaviors (e.g., shoplifting, burglary, drug dealing, driving without a license).

10.1.10 **“Head Trauma”** means a medically diagnosed serious or life-threatening injury inflicted by a parent/caretaker to a child’s face or head.

~~10.1.11 **“Inappropriate Touching”** means intentional touching of the breasts, abdomen, genital area, inner thighs or buttocks by a parent/caretaker for the sexual gratification of the parent/caretaker. The parent/caretaker and child may be clothed or unclothed and this finding is also appropriate in cases in which the parent/caretaker has asked the child to touch them. This category does not include touching by the parent/caretaker necessary to provide routine hygienic care such as bathing or to administer medications such as a menthol rub for a chest cold.~~

10.1.12 **“Internal Injury”** means a medically diagnosed serious injury within the abdominal or chest area inflicted by a parent/caretaker.

10.1.13 **“Life-Threatening Medical Neglect”** means a parent’s/caretaker’s failure to obtain medical care for a child has resulted in permanent functional impairment attributable to neglect. Medical diagnosis is necessary to support this finding. This category also includes failure by a parent/caretaker to use equipment such as an apnea monitor or respirator, to provide medications for health problems such as diabetes or asthma, or to practice

therapies in the home for a child such as suctioning of the airway as directed by a physician for the purpose of preventing death and sustaining life. This finding does not include cases governed by 16 Del. C. §913.

10.1.12 **“Lock In/Out, Ages 0-6”** occurs when a parent/caretaker deliberately locks a child in a confined area such as the bedroom, closet, and car or locks the child out of the home.

10.1.14 **13 “Operating a Vessel or Boat Under the Influence (BUI)”** means incidents documented by law enforcement of a parent/caretaker driving a vessel or boat under the influence of alcohol or drugs with a child present.

10.1.15 **“Oral Intercourse”** means oral (mouth) genital (penis, vagina) contact between a parent/caretaker and a child.

10.1.16 **“Other Sexual Abuse”** means sexually inappropriate behavior between a parent/caretaker and a child which is not included in 10.1.2, 10.1.9, 10.1.11, 10.1.15, 10.1.18 and 10.1.22.

10.1.17 **14 “Poisoning”** means a parent/caretaker ~~non accidentally~~ intentionally or recklessly over-medicates or causes a child to ingest alcohol, drugs (legal/illegal) not prescribed for that child, or other toxic substances, resulting in significant and/or enduring functional impairment.

10.1.18 **15 “Pornography”** means production or possession of visual material (e.g., pictures, films, video) by a parent/caretaker depicting a child engaged in a sexual act or a simulation of such an act. The visual material involves sexualized content, as opposed to “naked baby” pictures.

10.1.19 **16 “Puncture/Stab”** means a parent/caretaker inflicts injury, piercing the child’s body with a pointed object, which requires medical treatment beyond medical examination.

10.1.17 **“Sexual Abuse”** means any sexual contact, sexual intercourse, or sexual penetration, as those terms are defined in the Delaware Criminal Code, between a parent/caretaker and a child.

10.1.20 **18 “Shaken Baby”** means a medically diagnosed condition in which violent shaking of an infant by a parent/caretaker has resulted in subdural hematomas (blood clots on the surface of the brain), and/or retinal hemorrhages (bleeding behind the eyes), causing serious and permanent brain damage. there has been a inflicted head injury which includes shaken baby and an impact injury. It involves some degree of intracranial injury. The most common manifestation is subdural hematoma, but it may include other types of intracranial injuries. There is a risk of serious and permanent brain damage and there may be a significant risk of death. This injury typically involves infants.

10.1.21 **19 “Suffocation”** means a parent/caretaker deliberately interferes with child’s ability to breathe, by strangling/choking, smothering or otherwise depriving the child of oxygen.

10.1.22 **“Vaginal Intercourse”** occurs when a parent/caretaker of a female child penetrates the child’s vagina with a penis, fingers, or with an inanimate object; or when a parent/caretaker manipulates a child of either sex to penetrate the parent’s/caretaker’s vagina.

10.2 Conviction of any of the following crimes when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate shall be deemed to present the highest risk of future harm to children and shall be designated Child Protection Level 4:

- 10.2.1 assault in the first degree,
- 10.2.2 assault in the second degree,
- 10.2.3 bestiality,
- 10.2.4 coercion,
- 10.2.5 continuous sexual abuse of a child,
- 10.2.6 criminally negligent homicide,
- 10.2.7 dangerous crime against a child,
- 10.2.8 dealing in children,
- 10.2.9 felony endangering the welfare of a child or an incompetent person,
- 10.2.10 incest,
- 10.2.11 kidnapping,
- 10.2.12 manslaughter,
- 10.2.13 murder,
- 10.2.14 murder by abuse or neglect,
- 10.2.15 possession of child pornography,
- 10.2.16 promoting suicide.
- 10.2.17 rape,
- 10.2.18 sexual exploitation of a child,
- 10.2.19 sexual extortion,
- 10.2.20 sexual solicitation of a child,
- 10.2.21 unlawful dealing with a child,
- 10.2.22 unlawfully dealing in child pornography,
- 10.2.23 unlawful sexual contact,
- 10.2.24 vehicular assault, or
- 10.2.25 vehicular homicide,

10.3 An incident of abuse or neglect containing the elements of any crime or offense listed or described in 10.2.1 - 10.2.25 without regard to the institution or result of criminal or delinquency proceedings based on such incident.

11.0 Unsubstantiated Investigations

11.1 If the Division determines from its investigation ~~there is not a preponderance of evidence~~ not to substantiate the person for abuse or neglect, the person may not be entered on the Child Protection Registry for that reported incident. The Division shall indicate in its internal information system that the incident is unsubstantiated, and so notify the person in writing.

11.2 If the Division determines from its investigation that there is no credible evidence to substantiate the person for abuse or neglect for that incident, the internal information system will indicate that the finding

is “Unsubstantiated – No Evidence.”

11.3 If the Division determines from its investigation that substantiation proceedings for that incident of abuse or neglect are not warranted or justified, but that there are reasons for concern, the internal information system will indicate that the finding is “Unsubstantiated with Concern.”

MERIT EMPLOYEE RELATIONS BOARD

PUBLIC NOTICE

PROPOSED CHANGES TO STATE OF DELAWARE MERIT RULES

PLEASE TAKE NOTICE that on May 28, 2003, pursuant to 29 **Del.C.** §5914 and 29 **Del.C.** ch 101, extensive proposed changes to the Merit Rules of the State of Delaware have been transmitted to the Merit Employee Relations Board (“MERB”) from the Director of the Office of State Personnel (“Director”).

The proposed changes, which the Director indicates have been approved by both the Director and by the Statewide Labor-Management Committee, will significantly repeal many existing Merit Rules and substitute in their place new and revised Merit Rules.

This is a significant revision and restatement of the Merit Rules of the State of Delaware. Copies of the proposed deletions and new Merit Rules are available for public inspection by appointment in the MERB office. The proposed deletions and additions may also be viewed on the Internet by visiting the Delaware State Personnel Web Site. The direct link is: http://www.delawarepersonnel.com/employee/documents/mrules_merb1.pdf

On October 22, 2003, the MERB will conduct a Public Hearing concerning the proposed Merit Rule changes (both the proposed repeal and the new Rules) submitted by the Director. The hearing will begin at 9:00 a.m. in the 2nd Floor Conference Room of the Margaret M. O’Neill building, 410 Federal Street, Dover, Delaware.

The MERB also requests and will consider timely filed written submissions from interested individuals and groups concerning these proposed Merit Rule changes. The final date for any such written submission is 30 days following publication of the proposed changes. Any such submissions should be mailed or delivered to the MERB at the following address:

Merit Employee Relations Board
Margaret M. O’Neill Building, Suite 213
410 Federal Street, Box 4
Dover, DE 19901

PLEASE TAKE NOTE, pursuant to **Del.C.** §5914, the changes **as proposed by the Director** will/shall become final after the completion of the public hearing, unless rejected by a majority of the members appointed to the Board.

Anyone wishing to review the Director’s written filing with MERB or to present oral comments at the hearing should call Ms. Jean Lee Turner in the Merit Employee Relations Board office at (302) 739-6772.

*** PLEASE NOTE: DUE TO THE LENGTH OF THE PROPOSED REGULATION IT IS NOT BEING PUBLISHED IN THE REGISTER. COPIES ARE AVAILABLE ONLINE AT THE WEBSITE LISTED ABOVE, OR BY CONTACTING THE MERIT EMPLOYEE RELATIONS BOARD OR THE REGISTRAR.**

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

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

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF ACCOUNTANCY
24 DE Admin. Code 100
Statutory Authority: 24 Delaware Code
Section 105 (1), (24 Del.C. §105 (1))**

ORDER

Pursuant to 29 Del.C. §10113(b) and 24 Del.C. §105(1), the Delaware Board of Accountancy ("the Board") hereby issues this Order adopting proposed Rule amendments to Rules 5.2 and 11.8. Following notice and a public hearing held on July 23, 2003, the Board makes the following findings and conclusions:

**SUMMARY OF EVIDENCE AND INFORMATION
SUBMITTED**

1. The Board posted public notice of the proposed rule amendments in the July 1, 2003 Register of Regulations and in two newspapers of general circulation. The proposed rule amendments would amend Rule 5.2 to delete the provision that currently permits a person to take the CPA examination if the applicant expects to meet the Board's education requirements within 120 days of taking the examination. The Board also proposed a new Rule 11.8, Computer Based

Examinations, to provide the rules governing the administration of the computer-based examination for the Uniform CPA examination including the period within which an applicant may sit for the examination and the provisions for conditional credit for persons previously taking the paper-and-pencil examination.

2. The Board received no written public comments during the written comment period from July 1, 2003 through July 30, 2003. At the public hearing, Laurretta Cooper of the Accounting Department of Delaware Technical and Community College stated that the new computer based examination is favorable for the CPA applicants.

FINDINGS OF FACT AND CONCLUSIONS

3. The public was given notice and an opportunity to provide the Board with comments in writing and at a public hearing. The Board received one public comment that was in favor of the new computer based exam. No comments were received from the public.

4. The Board finds that the proposed amendment to Rule 5.2 and the new proposed Rule 11.8 are necessary for the Board to comply with the new computerized Uniform Certified Public Accountant Examination.

5. The Board concludes that the proposed rule changes are necessary in order to update the Board rules pertaining to the CPA examination. Under Delaware law, 24 Del.C. §107(a)(3), applicants for a CPA certificate must successfully pass the CPA exam. Pursuant to 24 Del.C.

§113, the Board must issue regulations for the terms and conditions for granting credit to applicants who satisfactorily complete the CPA exam. The Board concludes that the proposed amendments to Rules 5.2 and 11.8 are necessary for the Board to fully implement its duties under §113 and, therefore, the Board adopts the amendments to Rules 5.2 and 11.8 as proposed.

6. The Board will submit this Order to the Register of Regulations for publication in the October 1, 2003 issue and the proposed rules will be effective October 11, 2003.

IT IS SO ORDERED this 20th day of August, 2003.

John McManus, PA, President
 Norma Rohleder, CPA Member
 Sandra S. Gullledge, CPA Member
 James R. Zdimal, CPA, Member
 Cathel R. Tanner, PA Member

7. The Board's rules as adopted will provide as follows:

5.0 Examination and Certificate Requirements

5.1 Each applicant for a certificate must provide the Board with the following:

5.1.1 A statement under oath or other verification satisfactory to the Board that the applicant is of good character as that term is defined in 24 Del.C. §107(a)(1).

5.1.2 Evidence in a form satisfactory to the Board that the applicant has successfully passed the Uniform Certified Public Accountant Examination or its successor examination.

5.1.3 Evidence in a form satisfactory to the Board that the applicant has successfully completed the AICPA self-study program "Professional Ethics for CPAs," or its successor course, with a grade of not less than 90%.

5.1.4 Evidence in a form satisfactory to the Board that the applicant holds a Master's Degree, a Baccalaureate Degree or an Associate Degree, with a concentration in accounting.

5.1.4.1 The applicant also must, upon request, submit proof that the college or university granting the degree was, at the time of the applicant's graduation, accredited by the Middle States Association of Colleges and Secondary Schools or by another comparable regional accrediting association. A degree granted by a college or university not so accredited at the time of applicant's graduation will not be accepted. Graduates of non-United States (U.S.) degree programs will be required to have their credentials evaluated by a credential evaluation service acceptable to the Board, to determine equivalency to U.S. regional accreditation.

5.1.4.2 The concentration in accounting must be completed at an accredited college or university and consist of at least 21 semester hours of accounting, auditing, and federal taxation, either as part of applicant's Associate,

Baccalaureate or Master's Degree program or subsequent to the completion of the program. Each applicant must have completed courses in accounting (including introductory, intermediate, advanced, and cost accounting), auditing, and federal taxation as components of the 21 hour concentration in accounting. Courses must have been completed in all three areas (i.e. accounting, auditing, and federal taxation). Courses in other business subjects, such as banking, business law, computer science, economics, finance, insurance, management and marketing will not be accepted as accounting courses for this purpose.

5.1.4.3 Except for applicants applying under Section 5.2 of these Rules and Regulations, the educational qualification required by this subsection contemplates satisfactory completion of all required courses of study by the final date for accepting applications for the examination at which the applicant intends to sit.

5.2 Applicants requesting to sit for the the Uniform Certified Public Accountant Examination or its successor examination must demonstrate that they meet the good character and education requirements of Sections 5.1.1 and 5.1.4 of these Rules and Regulations. ~~An applicant who expects to meet the education requirements of Section 5.1.4 within 120 days following the examination is eligible to take the examination provided he or she:~~

~~5.2.1 meets the character requirements of Section 5.1.1; and~~

~~5.2.2 provides evidence satisfactory to the Board that he or she is expected to complete the education requirements within 120 days of the examination.~~

11.0 Additional Provisions Concerning Examinations

11.1 All examinations required under 24 Del.C. Ch. 1 and these Rules and Regulations shall be graded by the applicable grading service of the organization offering the examination.

11.2 Applications to sit for the May or November Uniform Certified Public Accountant examination ("CPA examination") shall be submitted in completed form to the Board's designated agent by the dates determined by the Board's designated agent.

11.3 The CPA examination shall be in the subjects of accounting and reporting, financial accounting and reporting, auditing, and business law, and in such other or additional subjects that may be covered in successor examinations as may be required to qualify for a certificate.

11.4 Rules for Examination.

11.4.1 Examinations shall be in writing.

11.4.2 Applicants are permitted to use pencil and eraser. Calculators provided at the exam site are the only mechanical devices allowed.

11.4.3 At any examination, an applicant must prepare and submit to the Board papers on all required subjects for which he or she does not have current credit for

certification or permit, whichever is applicable.

11.4.4 An applicant who commits an act of dishonesty or otherwise engages in any other form of misconduct, will be expelled from the examination room and may be denied the right to sit for future examinations.

11.4.5 Applicants will be informed in writing of the results achieved in each examination.

11.5 Passing Grade on the Uniform CPA Examination

11.5.1 An applicant for a certificate who receives a grade of 75 or higher in all four subjects at one examination shall be deemed to have passed the Uniform Certified Public Accountant Examination.

11.5.2 An applicant who is taking only the Accounting and Reporting (ARE) and Financial Accounting and Reporting (FARE) sections of the CPA examination in order to apply for a permit to practice public accounting, who receives a grade of 75 or higher in both required subjects, shall be deemed to have passed the applicable parts of the CPA examination.

11.6 Conditional Status for Subjects passed in this State

11.6.1 An applicant who sits for all required parts of either examination and who receives a grade of 75 or higher in one or more, but less than all subjects passed may attain conditional status under the following circumstances:

11.6.1.1 To attain conditional status, the applicant must obtain a grade of 75 or higher in two subjects and obtain a grade of at least 50 in all subjects not passed. This minimum grade requirement is waived if three subjects are passed at a single examination.

11.6.1.2 To add to conditional status, the applicant must obtain a grade of at least 50 in all subjects not passed. Although a grade of less than 50 prevents the applicant from adding to his or her conditional status, it alone does not remove or cancel conditional status previously attained.

11.6.1.3 To pass the examination via conditional status, an applicant must pass the remaining subjects within 5 consecutive examinations following the attainment of conditional status. The conditional period may be extended at the discretion of the Board, if an applicant is unable to sit for a given examination because of health, military service or other circumstances generally beyond the applicant's control.

11.6.1.4 An applicant who fails to pass all subjects required during the 5 consecutive examinations following the attainment of conditional status, shall forfeit all credits and shall, upon application as a new applicant, be examined again in all subjects.

11.7 Transfer of Credit for Subjects Passed in Another Jurisdiction

11.7.1 An applicant who has passed one or more subjects of either examination in another jurisdiction will be

permitted to transfer to this jurisdiction credit for the parts so passed under the following conditions, and provided the requirements of Section 11.6 of these Rules and Regulations have been met:

11.7.1.1 At the time he or she sat for the examination in the other jurisdiction, he or she met all the requirements of the statute and regulations to sit for the examination in Delaware; and

11.7.1.2 At the time he or she makes application to sit for the examination in Delaware, he or she meets all the requirements of the Delaware statute and regulations; and

11.7.1.3 Credit for any subject of the examination which is transferred from some other jurisdiction to Delaware will be treated as if that credit had been earned in Delaware on the same date such credit was earned in the other jurisdiction, and all time requirements of Delaware conditional status will be applied to it.

11.7.2 The Board will require satisfactory evidence from the transferring jurisdiction as to the validity of the credit.

11.7.3 If an applicant has passed all subjects of either examination in one or more other jurisdictions, but does not possess a certificate or permit from one of the jurisdictions in which a subject was passed, transfer of credit will only be permitted if a satisfactory explanation of such lack of a certificate or permit is furnished to the Board in writing. The Board may require a written explanation of why no certificate or permit was issued from the jurisdiction in which the final subject was successfully completed.

11.8 Computer-Based Examination

11.8.1 Effective with the implementation of the computer-based examination, a candidate may take the required test sections individually and in any order. Except as provided in sections 11.8.2 and 11.8.3 of these rules, credit for any test section(s) passed shall be valid for eighteen months from the actual date the candidate took the test section, without having to attain a minimum score on any failed test section(s) and without regard to whether the candidate has taken other test sections. The candidate shall also be subject to the following:

11.8.1.1 Candidates must pass all four test sections of the Uniform CPA Examination within a rolling eighteen-month period, that begins on the date that the first test section is passed.

11.8.1.2 Candidates cannot retake a failed test section(s) in the same examination window. An examination window refers to a three-month period in which candidates have an opportunity to take the examination (comprised of two months in which the examination is available to be taken and one month in which the examination will not be offered while routine maintenance is performed and the item bank is refreshed). Thus, candidates will be able to test two out of three months within an examination window.

11.8.1.3 In the event all four test sections of the examination are not passed within the rolling eighteen month period, credit for any test section(s) passed outside the eighteen-month period will expire and that test section(s) must be retaken.

11.8.2 Effective with the implementation of the computer-based examination, candidates having earned conditional credits on the paper-and-pencil examination will retain conditional credits for the corresponding test sections of the computer-based examination as follows:

<u>Paper-and-Pencil Examination</u>	<u>Computer-Based Examination</u>
<u>Auditing</u>	<u>Auditing and Attestation</u>
<u>Financial Accounting and Reporting (FARE)</u>	<u>Financial Accounting and Reporting (FARE)</u>
<u>Accounting and Reporting (ARE)</u>	<u>Regulation</u>
<u>Business Law and Professional Responsibilities (LPR)</u>	<u>Business Environment and Concepts</u>

Such candidates will be allowed until October 31, 2005, or eighteen months from the administration of the last paper-and-pencil examination, whichever is longer, to complete any of the remaining test sections of the examination before the credits earned under the paper-and-pencil examination expire and the candidate loses credit.

11.8.3 The Board may extend the term of conditional credit validity in cases of substantial hardship as determined by the Board in its discretion.

11.8.4 A candidate shall be deemed to have passed the examination once the candidate holds, at the same time, valid credit for passing each of the four test sections of the examination. For purposes of this Regulation, credit for passing a test section of the computer-based examination is valid from the actual date of the testing event for that test section, regardless of the date the candidate actually received notice of the passing grade.

*** PLEASE NOTE: AS THE REST OF THE SECTIONS WERE NOT AMENDED THEY ARE NOT BEING PUBLISHED. A COMPLETE SET OF THE BOARD OF ACCOUNTANCY REGULATIONS ARE AVAILABLE AT:**

<http://www.state.de.us/research/profreg/Frame.htm>

DEPARTMENT OF AGRICULTURE

Statutory Authority: 29 Delaware Code,
Sections 4815(b)(3)b.2.D & 8103(8)
(29 Del.C. §§ 4815(b)(3)b.2.D & 8103 (8))

Standardbred Breeder's Fund Regulations Order Adopting And Promulgating Regulations

I. Nature Of Proceedings

Pursuant to its authority under 29 Del.C. §§4815(b)(3)b.2.D and 8103(8), the Department of Agriculture proposed to amend its regulations concerning the Standardbred Breeder's Fund. The Department of Agriculture's purpose in proposing these amendments was to comply with Delaware Harness Racing Commission rules, to make the program language more specific under certain racing conditions, to promote fairness, and to allow the races to be contested within the normal racing card at Harrington Raceway and Dover Downs, and, beginning in 2004, to increase the size of purses for the races.

Notice of the public hearing on the Department's proposed amendments was published in the Delaware **Register of Regulations** for August 1, 2003 as well as in two Delaware newspapers in general circulation in accordance with 29 Del. C. § 10 115. Thereafter, the public hearing was held as noticed on Friday, September 5, 2003 before the Department's Secretary, Michael T. Scuse. This is the Department's Decision and Order adopting the proposed amended regulations.

II. Evidence Submitted At Public Hearing

The Department received no written comments in response to the notice of intention to adopt the proposed amended regulations. No public comments were received at the September 5, 2003 public hearing.

III. Findings And Conclusions

The public was given the required notice of the Department's intention to adopt the proposed amended regulations and was given ample opportunity to provide the Department with comments opposing the Department's plan. Thus, the Department concludes that its consideration of the proposed amended regulations was entirely within its prerogatives and statutory authority and, having received no comments opposed to adoption, is now free to adopt them.

IV. Order

NOW THEREFORE, it is hereby ordered that:

1. The proposed amendments to the Department's

Standardbred Breeder's Fund regulations are adopted;

2. The text of the regulations shall be in the form attached hereto as Exhibit A;

3. 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. § 10 118(e); and

4. The Department reserves unto itself the authority to issue such other and further orders in this matter as may be just and proper.

Michael T. Scuse, Secretary

Delaware Department of Agriculture

9/10/03

1.0 Introduction

1.1 These regulations are authorized pursuant to §4815(b)(3)b.2.D of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") for:

1.1.1 Standardbred horses;

1.1.2 bred in a manner prescribed in Section 2.0 herein;

1.1.3 the product of a registered Delaware stallion;

1.1.4 who are registered and whose sire and mare are registered with the Delaware Harness Racing Commission (herein "the Commission") and the Administrator of the Breeder's Program (herein "the Administrator") as such; and,

1.1.5 listed in their registry books.

1.2 Those horses eligible to race under said Delaware Standardbred Breeder's Program shall be any foal of any registered Delaware stallion standing at a Delaware breeding farm and either owned by a resident of the State of Delaware or owned by a non-resident who holds a lease for a period of the breeding season and will stand the stallion for that full season on a Delaware breeding farm. A copy of any such lease shall be filed with the United States Trotting Association, the Administrator of the Breeder's Program, and the Delaware Harness Racing Commission.

1.3 The Board of the Delaware Standardbred Breeder's Program (herein "the Board") is authorized to do all that is reasonable and necessary for the proper administration of the Program and shall prepare, issue and promulgate rules and regulations providing for:

1.3.1 Classes and divisions of races, eligibility of horses and owners therefor and purses and bonuses to be awarded;

1.3.2 Nominating, sustaining and entry fees on horses and races;

1.3.3 Such temporary programs including eligibility of horses, breeding, and other matters as may be necessary to make the Program operable as soon as possible;

1.3.4 Registration and certification of Delaware stallions, mares bred to such stallions and foals produced

thereby; and,

1.3.5 Such other matters as the board determines to be necessary and appropriate for the proper administration and implementation of the Program.

1.4 The funds for the Delaware Standardbred Breeder's Program pursuant to §4815(b)(3) of Title 29 of the Delaware Code and any nominating, sustaining and entry fees provided for herein shall be administered by the Delaware Department of Agriculture by deposit in a trust account entitled Delaware Standardbred Breeders' Fund. The Board of the Delaware Standardbred Breeder's Program shall approve an annual budget including the payment of purses and awards, cost of administration, reimbursement of expenses of members of the Board, promotional expenses, and any other appropriate expenses. The budget shall be administered by the Secretary of Agriculture or his designee in consultation with the Board and in a manner consistent with the state laws and procedures. A report shall be prepared and filed annually by the secretary with the Delaware Harness Racing Commission and the Board of the Breeder's Program Fund setting forth an itemization of all deposits to and expenditures from said fund.

1.5 Races for the Program shall be run at each licensed harness track in the State of Delaware. Said races and purses and awards awarded therefore shall be pursuant to the rules and regulations of the Board of the Delaware Standardbred Breeder's Program hereunder, and the Delaware Harness Racing Commission.

1.6 The Board of the Delaware Standardbred Breeder's Program can amend these regulations through a vote of 2/3 majority of the entire board. Changes to the rules of eligibility for the Delaware Standardbred Breeder's Program will be effective at the beginning of the next breeding season and the corresponding racing season.

2.0 Definitions. The following words and terms, when used in this part for the purposes of the Delaware Standardbred Breeder's Fund Program, have the following meanings, unless the context clearly indicates otherwise:

"**Bred**" shall refer to any form of insemination inside the State of Delaware by a Delaware sire, including insemination using semen transported within the State of Delaware, provided that such semen is not frozen or desiccated in any way or at any time. Bred shall also refer to foals of mares bred outside the State of Delaware by a Delaware sire through interstate semen transportation when such semen is not frozen or desiccated in any way or at any time, provided that owners of mares that produce foals from Delaware sires eligible for this program that are bred through interstate semen transportation shall not be eligible for bonuses paid to owners of mares under the Delaware Standardbred Breeder's Program set forth in Section 4 herein. A foal conceived through embryo transplantation is not eligible for nomination to the Delaware Standardbred

Breeder's Program under any circumstances.

"Breeder" is the owner of the dam at the time of breeding through foaling.

"Breeding Season" season runs from February 15th to December 31st of the calendar year.

"Delaware-bred horse" is a standardbred by a Delaware sire and registered with the Harness Racing Commission and Administrator of the Breeder's Program, provided that for the purposes of determining eligibility for race years 2002 and 2003 Delaware-bred horses shall also include any foal of a 100% wholly owned mare at the time of breeding through foaling by a Delaware resident registered with the Harness Racing Commission and Administrator of the Breeder's Program by August 15th of the yearling year.

"Delaware resident" is as defined in §10032 of Title 3 of the Delaware Code.

"Delaware sire" is a standardbred stallion that regularly stands for a breeding season in Delaware, does not compete for purses, and is registered with the Harness Racing Commission and Administrator of the Breeder's Program. A Delaware sire may be: a) owned by a resident of the State of Delaware and standing the entire breeding season in the State of Delaware; or b) owned by a resident of a state other than Delaware, but standing the entire breeding season in Delaware, verified by a copy of a the lease filed with the Administrator of the Program and the Harness Racing Commission at the time of registration for the Program, as provided in section 1.1 above; or c) owned jointly by a resident (or residents) and non-resident (or non-residents) of Delaware and standing the entire breeding season in Delaware with the same lease requirements as in b) above.

"Private Treaty" No stallion participating in the Delaware Standardbred Breeder's Program may be offered under private treaty. Each stallion registered in the Delaware Standardbred Breeder's Program must make public the maximum possible breeding fee.

2.1 Such definitions shall not affect the use of that term by the Delaware Harness Racing Commission for purposes other than for the Breeder's Fund Program.

3.0 Eligibility for Delaware-bred races.

3.1 To be eligible for races under the Program for race years 2002 and 2003, a horse, which shall be registered with the Administrator and Commission by August 15th of its yearling year, shall be: 1) the product of a 100% wholly owned mare at the time of breeding through foaling by a Delaware resident, which mare shall be registered with the Administrator and Commission by August 15, 2000 for the breeding seasons of 1999 and 2000 and by August 15, 2001 for the breeding season of 2001; and/or, 2) the product of a Delaware-sire, which sire shall be registered with the Administrator and Commission by March 1, 2000 for the breeding seasons of 1999 and 2000 and by August 15, 2001 for the breeding season of 2001.

3.2 To be eligible for races under the Program for race year 2004, the horse shall be a Delaware sired 2 year old registered with the Administrator and Commission by August 15th of its yearling year or a 3 year old product of a 100% wholly owned mare at the time of breeding through foaling by a Delaware resident, which mare shall have been registered with the Administrator and Commission by August 15, 2000 for the breeding seasons of 1999 and 2000 and by August 15, 2001 for the breeding season of 2001 or a 3 year old product of a Delaware-sire, which sire shall have been registered with the Administrator and Commission by March 1, 2000 for the breeding seasons of 1999 and 2000 and by August 15, 2001 for the breeding season of 2001.

3.3 To be eligible for races under the Program for race year 2005 and thereafter, the horse shall be a Delaware sired 2 or 3 year old registered with the Administrator and Commission by August 15th of its yearling year.

4.0 Eligibility of breeders for bonus payments.

Bonus payments of eight percent (8%) of money earned in the Program by the foals shall be paid to the owner of the mare at the time of breeding that is bred to Delaware sires to produce that foal. Bonus payments of two percent (2%) of money earned in the Program by the foals shall be paid to owners of stallions standing in Delaware. In order for a Delaware-bred horse to be eligible to earn an award for its breeder, in a race conducted by a licensed harness race track in Delaware, the foals, mares, and stallions shall be registered in accordance with these regulations with the Harness Racing Commission and Administrator of the Breeder's Program prior to entry for the race. In race year 2002, bonus payments shall be restricted to 2-year-olds. For race years 2003 and thereafter, bonus payments shall not exceed \$70,000. In the event such payments would exceed these limits, owners eligible for bonus payments shall receive a prorated share of those monies allocated toward the payment of bonus payments.

5.0 Eligibility of owners of Delaware sires for awards.

In order for a Delaware sire to be eligible to earn an award for its owner, the sire shall have been registered as a sire of Delaware with the Harness Racing Commission and Administrator of the Breeder's Program during each breeding season when the sire inseminated the dams that, as a result of that insemination, produced Delaware-breds. To be eligible for a sire award, it is necessary that the foal entitling the sire owner to the award be itself registered in accordance with these regulations.

6.0 Records of registration.

Foals and sires eligible for registration shall be registered on official registration forms approved by the Harness Racing Commission and maintained by the Administrator of the Breeder's Program. The registrar shall

certify thereon the name and address of the owner, breeder, farm where mare was inseminated, farm on which this horse was foaled, owner of stallion at time the mare was inseminated, owner of the mare at the time of breeding, notice of semen transfer, stallion by which the mare was inseminated following the birth of the standardbred to be registered, breeder social security or tax identification number, United States Trotting Association registration number, name of foal, color and sex of foal, date of foaling, sire, dam, sire of the dam, signature of the owner, or breeder or authorized representative and the date of application. The registration record shall be maintained at the Administrator of the Breeder's Program and be open to public inspection during normal business days and hours at the State Department of Agriculture. Immediately upon completion and filing of the form, the Administrator of the Breeder's Program shall cause a correct copy of it to be filed with the offices of the State Department of Agriculture.

7.0 Appeals.

A person having an interest in a matter concerning the registration of a horse in the Breeder's Program shall have the right to file objections or exceptions to a registration and to the facts set forth therein within 30 days of the filing of the copy of the registration with the Administrator and the Delaware Harness Racing Commission. The objections or exceptions shall be filed in writing with the Administrator of the Breeder's Program and a duplicate delivered to the Harness Racing Commission within the 30-day time period. An interested party aggrieved of an action taken by the Administrator may appeal to the Commission in the manner prescribed for appeals. The Commission shall hear and determine an appeal de novo. In the absence of objections or exceptions timely made, a registration shall be deemed final and binding and an official record of the Commission at the expiration of the 30th day of the delivery to the Commission. The Commission shall thereafter have the right on its own motion to correct an error or inaccuracy that it may find within the records.

8.0 Records of expenses.

The Administrator of the Breeder's Program shall maintain a complete record of reasonable and necessary expenses and will submit quarterly estimates to the Board and the Secretary of Agriculture, on the basis of which the Secretary may disburse advances. The quarterly estimated statements of expenses and advances shall be reconciled annually with a certified statement of expenses to be prepared by an auditor approved in advance by the Board. The Board may thereafter review them and after approval of allowable items shall then reimburse the Administrator of the Breeder's Program for expenses the Board finds reasonable and appropriate to this program. If advances on account of expenses exceed actual expenses as approved at

the end of a given year, the excess shall be deemed disbursed on account of the ensuing year's expenses.

9.0 Purses and Bonus Awards

9.1 A purse or bonus awarded under this section shall be in accordance with the standards for purses at each racing meet as approved by order of the Commission. The racing association shall maintain a separate ledger of such purses and bonuses and shall transmit a certified copy of allowances, bonus payments, and purses made no later than the 10th day of each month of the meet to the Commission. After the Commission has reviewed and approved them, it shall reimburse the racing association for the advances made which the Commission finds proper.

9.2 Administrator of the Breeder's Program shall compile awards earned by breeders and owners of Delaware sires and maintain a separate ledger of them. A certified report of awards earned shall be forwarded to the Commission on a monthly basis during the racing season. The list of awards will be forwarded to Administrator of the Breeder's Program who shall ensure payment to the awardees, subject to approval by the Commission.

9.3 A person interested in the awards, allowances, prizes and purses and objecting to calculations or determinations thereof as shown on the records of the Administrator of the Breeder's Program and the Harness Racing Commission shall be responsible for taking written appeals to the Commission in the manner provided for appeals from decisions of the Administrator pertaining to registrations.

9.4 The Board will have the right to review and approve fees and charges imposed by the Administrator of the Breeder's Program. The charge or fee may not be imposed without prior approval by the Board.

9.5 Records, funds and accounts of funds, prizes, purses, allowances and awards under this program shall be maintained separate from other records, funds and accounts and may not become co-mingled with other matters. The records, funds and accounts shall be kept continuously open for inspection by the Administrator of the Breeder's Program.

10.0 Responsibilities-Owners or lessees of standardbred stallions and mares

10.1 An owner or lessee of a standardbred stallion who desires to use him for breeding purposes and to have him qualify for the Delaware Standardbred Breeders' Fund Program, shall register the stallion by December 1st of the approaching breeding season with the Delaware Harness Racing Commission and the Administrator of the Breeder's Program or by January 1st of the approaching breeding season with an additional supplemental fee equal to the standard registration fee. For breeding season 1999 and 2000, an owner or lessee of a standardbred stallion who

desires to use him for breeding purposes and to have him qualify for the Delaware Standardbred Breeders' Fund Program, shall register the stallion by March 1, 2000. Unless the stallion is contracted to stand at stud in the southern hemisphere, the stallion shall stand in the State of Delaware for the remainder of the breeding season. If a stallion is contracted to stand at stud in the southern hemisphere, a copy of said contract must be provided to the Administrator of the Program and the Harness Racing Commission at the time of application for eligibility in the Program or, in the event the contract is entered into at a subsequent date, within ten days of entering into the contract. A virgin standardbred stallion entering stud for the first time shall be registered prior to his first breeding and shall stand in the State of Delaware the remainder of the breeding season, unless he is contracted to stand at stud in the southern hemisphere. A stallion shall be registered on an application for standardbred stallion certificate for eligibility established by the Administrator of the Breeder's Program in consultation with the Harness Racing Commission.

10.2 An owner or lessee of a stallion eligible for the Delaware Standardbred Breeders' Fund Program shall designate a resident of Delaware as the authorized agent who shall be responsible for the registrations and records of the farm; and complying with the requirements of the Delaware Standardbred Breeders' Fund Program. The "Authorized Agent" form shall be filed with the stallion registration.

10.3 In order for foals of 100% wholly owned mares at the time of breeding through foaling by a Delaware resident to be eligible for races under the Program for race years 2002 and 2003, said mares shall be registered with the Administrator and Commission by August 15, 2000 for the breeding seasons of 1999 and 2000. No fee shall be charged for registering said mare.

11.0 Sire Registration Fees

11.1 Sires shall initially register for the Delaware Standardbred Breeder's Program no later than December 1st of the approaching breeding season, or no later than January 1st with an additional supplemental registration fee equal to the regular registration fee. For sires registering in breeding season 2000, sires shall initially register for the Delaware Standardbred Breeder's Program no later than March 1, 2000.

11.2 All fees must accompany this registration and must be submitted by registered or certified mail.

11.3 Registration fees for the Delaware Standardbred Breeder's Program are non-refundable.

11.4 Sire registration fee for a stallion shall be \$500.00. Sire registration for those sires standing in the State of Delaware and registering for breeding seasons prior to 2001 in accordance with these regulations shall be charged a single fee of \$250.00.

11.5 The annual stallion registration fee may be

used to offset reasonable expenses related to administering and promoting the Delaware Standardbred Breeder's Program. Any fees beyond reasonable expenses shall be invested in the endowment account of the Delaware Standardbred Breeder's Program.

11.6 The annual stallion registration fee may be used to offset reasonable expenses related to administering and promoting the Delaware Standardbred Breeder's Program. Any fees beyond reasonable expenses shall be invested in the endowment account of the Delaware Standardbred Breeder's Program. An owner of a standardbred stallion registered with the Administrator and Commission shall submit by December 1st of each year the stallion registration fee, or January 1st with the supplemental fee provided in section 10 above and a report for each stallion that states each mare bred by said stallion during the preceding twelve (12) months. For breeding seasons prior to breeding season 2001, an owner of a standardbred stallion registered with the Administrator and Commission shall submit by March 1, 2000 the stallion registration fee of \$250 and any other documentation required by the Administrator and Commission to verify where the stallion stood during the period for which the stallion or its progeny seek to register.

12.0 Sire Renewal Fees

12.1 The registration of a stallion that remains in the state for more than one (1) breeding season shall be renewed annually.

12.2 The annual renewal fee for registration of stallions to the Delaware Standardbred Breeders' Fund Program shall be \$500.

12.3 The annual stallion registration fee may be used to offset reasonable expenses related to administering and promoting the Delaware Standardbred Breeder's Program. Any fees beyond reasonable expenses shall be invested in the endowment account of the Delaware Standardbred Breeder's Program. An owner of a standardbred stallion registered with the Administrator and Commission shall submit by December 1st of each year the stallion registration fee and a report for each stallion that states each mare bred by said stallion during the preceding twelve (12) months.

13.0 Penalties and Suspension from the Program

13.1 If an owner or a lessee of a registered stallion fails to furnish information the Administrator of the Breeder's Program has requested relating to the registration or renewal of registration of a horse, the Administrator of the Breeder's Program shall:

13.1.1 Suspend or deny the registration of the stallion; and

13.1.2 Schedule a hearing within thirty days of the denial or suspension.

13.1.2.1 After the hearing, the

Administrator of the Breeder's Program shall determine within ten working days whether the failure to furnish information was willful; and:

- 13.1.2.1.1 Suspend the registration; or
- 13.1.2.1.2 Rescind its suspension of the registration; or
- 13.1.2.1.3 Deny or revoke the registration; or
- 13.1.2.1.4 Deny or revoke the registration and bar from further registration, horses owned by the person who executed the application containing false or misleading information.

13.1.2.2 If the Administrator of the Breeder's Program determines that a registration is incorrect, or an application for registration, renewal of registration, or transfer of a registered stallion contains false or misleading information, the Administrator shall:

- 13.1.2.2.1 Suspend or deny the registration of the stallion; and
- 13.1.2.2.2 Summon the person who executed the application, and any person who has knowledge relating to the application, to appear before the Administrator at a hearing;

13.1.2.3 After the hearing, the Administrator of the Breeder's Program shall determine within ten working days whether the person knew or had reason to know that the information was false or misleading, and:

- 13.1.2.3.1 Rescind its suspension or denial of the registration; or
- 13.1.2.3.2 Suspend, deny, or revoke the registration; or
- 13.1.2.3.3 Deny or revoke the registration and bar from further registration, horses owned by the person who executed the application containing false or misleading information.

13.1.2.4 If a person summoned by the Administrator of the Breeder's Program fails to respond to the summons within ten working days, the Administrator of the Breeder's Program shall

- 13.1.2.4.1 suspend or deny the registration of the stallion;
- 13.1.2.4.2 notify the person in writing of the action taken by the Commission; and
- 13.1.2.4.3 may deny or revoke the registration and bar from further registration, horses owned by the person who executed the application containing false or misleading information.

13.2 Appeals of decisions to deny or suspend registrations by the Administrator of the Breeder's Program may be appealed to the Delaware Harness Racing Commission within thirty days of the action by the Administrator of the Breeder's Program, subject to the same rules and procedures for handling appeals established for the

Delaware Harness Racing Commission.

14.0 Races

14.1 The purses for all races, including walkovers, under this Breeder's Program shall be distributed on the following percentage basis: 50-25-12-8-5. Points to qualify for the finals shall be distributed on the same percentage basis. In fields with more than five horses, places six through nine shall receive 4-3-2-1 points, respectively.

14.2 In the case of dead heats, points for the two positions shall be divided equally among those horses finishing in a dead heat. For example, if two horses finish in a dead heat for second, those horses would divide 25 plus 12 points to receive 18.5 percent of the purse or 18.5 qualifying points each. In the case of a tie in points, the fastest time in either elimination shall determine the horse eligible to enter the final. In the case of horses tied in points that have recorded identical times, the amount of the horses' lifetime earnings will decide the horse eligible to enter the final. In the case where points, times, and lifetime earnings are equal, the eligible horse shall be drawn by lot. All horses must start in one elimination in order to start in the final.

14.3 The percentage basis established by subsection (1) of this section shall apply at each of the associations licensed by the Delaware Harness Racing Commission.

14.4 If circumstances prevent the racing of an event, and the race is not drawn, all stake payments shall be refunded to the purse account of the Delaware Standardbred Breeder's Fund Program.

14.5 The monies provided for purses and bonus payments shall be distributed evenly between the races of each:

- 14.5.1 Age;
- 14.5.2 Sex; and
- 14.5.3 Gait.

14.6 The minimum purses for elimination races for both pacers and trotters shall be \$5,000. The minimum purses for finals shall be \$30,000. The Board of the Delaware Standardbred Breeder's Program, pursuant to a recommendation from the Administrator of the Program, may agree to increase purses should funds and other conditions permit.

14.7 No horse is eligible to declare unless it has at least one charted satisfactory performance line within 30 days of declaration and must meet the following qualifying standards:

2 Year Olds	3 Year Olds
Pacers Trotters	Pacers Trotter
2:10 2:14	2:06 2:12

14.8 Horses that meet the qualifying standards for a preliminary leg at each racetrack are qualified for all subsequent legs and the final at that racetrack.

14.9 The Administrator of the Delaware Standardbred Breeder's Fund Program shall be responsible

for races conducted under the Delaware Standardbred Breeder's Fund Program and shall ensure that:

14.9.1 each track declares the time specified for races under this program by proper notice and racing dates are issued for sires stakes after the track's race dates are set.

14.9.2 entry for races run under the Delaware Standardbred Breeder's Fund Program is required to be received by the Racing Office by noon three days in advance of the scheduled race date in a box designated for this purpose.

14.9.3 The Eligibility and class of all horses running in races is carefully screened.

14.9.4 The Administrator, or his/her designee, is present for the judges' draw for all races conducted under the Delaware Standardbred Breeder's Fund Program

14.10 Beginning in 2004, the minimum purse for elimination races for 2-year old trotters and pacers shall be \$7,500.00 and the minimum purse for finals shall be \$75,000.00.

14.11 Beginning in 2005, the minimum purse for elimination races for 2 and 3-year old trotters and pacers shall be \$7,500.00 and the minimum purse for finals shall be \$75,000.00

15.0 Nominations and Sustaining Payments.

15.1 Nomination and sustaining payments shall be made to the Delaware Standardbred Breeder's Fund in U.S. funds.

15.2 A fee payment required by this section shall be postmarked no later than the due date that is specified for the fee by this section.

15.3 Beginning with the yearlings of 2001, the yearling nomination fee shall be:

15.3.1 Forty (40) dollars each; and

15.3.2 Due by May 15 of the yearling year.

15.4 A nomination shall be accompanied by a photocopy of the United States Trotting Association registration certificate. Supplemental fees of \$25 shall be assessed if the USTA registration certificate does not accompany the nomination. No nomination shall be accepted where a USTA registration certificate is not obtained and submitted within 60 days of nomination to the Delaware Standardbred Breeder's Program.

15.5 If the May 15 deadline to nominate a yearling is missed, a late supplemental payment of \$350 shall be required. The late supplemental payment shall be accepted if a) it is received by April 1 of the two (2) year old year; and b) the two (2) year old March 15th payment has been made.

15.6 Sustaining payments shall be as follows:

15.6.1 Two (2) Year Old payments.

March 15th \$100.00 (must be made to ensure eligibility as a three (3) year old);

May 15th \$200.00;

Declaration Fee (for each track) \$500.00

15.6.2 Three (3) year old payments.

March 15th \$300.00

Declaration fee (for each track) \$500.00

16.0 Investment Plan and Use of Fees

16.1 All proceeds received pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") and any interest earned on these monies shall be invested in an endowment account until race year 2002.

16.2 For race year 2002, five hundred thousand dollars (\$500,000) of the proceeds received pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") and any interest earned on that money in the preceding twelve (12) months shall be deposited in a separate purse account for purses and bonus for that race year. For race year 2002, one million five hundred thousand dollars (\$1,500,000) of the proceeds received pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") shall be deposited in the endowment account.

16.3 For race year 2003 and each race year thereafter, one million dollars (\$1,000,000) of the proceeds received pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") and any interest earned on that money in the preceding twelve (12) months shall be deposited in a separate purse account for purses and bonus for that race year. Beginning January 1, 2003 and for each race year thereafter, one million dollars (\$1,000,000) of the proceeds received pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") shall be deposited in the endowment account.

16.4 Any monies from the purse account for the Delaware Standardbred Breeder's Fund Program at the end of the race year shall revert to the endowment account of the Delaware Standardbred Breeder's Fund Program.

16.5 For race year 2004 and each race year thereafter, two million dollars (\$2,000,000) of the monies received pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, and any interest earned on that money in the preceding twelve (12) months, shall be deposited in a separate purse account for purses and bonuses for race year 2004 and for each year thereafter.

See 5 DE Reg. 1274 (12/1/01)

DEPARTMENT OF EDUCATION

14 DE Admin. Code 881

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))**881 Releasing Students to Persons Other Than Their
Parents or Legal Guardians****I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to amend regulation 881 Releasing Students to Persons Other Than Their Parents or Legal Guardians in order to add the category of "Relative Caregiver" as per 14 **Del.C.** §202(e)(2) to the list of individuals who may have legal care of a child.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on July 21, 2003, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. Findings of Facts

The Secretary finds that it is appropriate to amend this regulation in order to add "Relative Caregiver" to the categories of parent and guardian.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §122, 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 hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** §881 in the **Regulations of the Department of Education**.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on September 18, 2003. 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 18th day of September 2003.

Department of Education

Valerie A. Woodruff, Secretary of Education

**881 Releasing Students to Persons Other Than Their
Parents or Legal Guardians ~~Parents/Guardians~~ or
Relative Caregiver**

1.0 Each local school district shall have a policy which outlines the procedures for releasing students from schools to persons other than ~~parents or legal guardians~~ their parents/guardians or Relative Caregiver.

See 2 DE Reg. 778 (11/1/98)

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES
DIVISION OF LONG TERM CARE RESIDENTS
PROTECTION**Statutory Authority: 16 Delaware Code,
Section 1101 (16 **Del. C.** §1101)**ORDER****Neighborhood Homes for Persons
with Developmental Disabilities****Nature of the Proceedings:**

The Department of Health and Social Services, Division of Long Term Care Residents Protection (DLTCRP) initiated proceedings in accordance with 29 Delaware Code, Chapter 101 to adopt regulations pertaining to Neighborhood Homes for Persons with Developmental Disabilities. These regulations replace regulations pertaining to Neighborhood Homes which are currently enforced by DLTCRP, and also incorporate into the regulations Certification Standards enforced by the Division of Developmental Disabilities Services which were not previously promulgated as regulations.

On June 1, 2003, the Division of Long Term Care Residents Protection published proposed regulations in the Register of Regulations and received comments at public hearings on July 1 and July 2, 2003. Upon review of the comments received, DLTCRP made revisions to the regulations and republished the proposed regulations in the Register of Regulations on August 1, 2003. A second set of public hearings took place on September 3 and September 4, 2003. Comments received at the July and September public hearings which did not result in revisions to the final regulations are discussed in the accompanying Summary of Evidence.

Findings of Fact:

The Department of Health and Social Services finds that the proposed regulations, as set forth in the attached copy, should be adopted as final regulations. Therefore, it is ordered that the proposed Regulations for Neighborhood Homes for Persons with Developmental Disabilities are adopted effective October 10, 2003.

Vincent P. Meconi, Secretary
Department of Health and Social Services
9/15/2003

Summary of Evidence:

Comments on the proposed regulations have been received and evaluated as follows:

One commenter was unclear as to why the Division of Developmentally Disabled Services (DDDS) is not issuing the regulations as "It is statutorily required to provide neighborhood homes and promulgate implementing regulations." The Division of Long Term Care Residents Protection (DLTCRP) is the licensing authority and issues regulations for all long term care facilities including Neighborhood Homes. Therefore, it is appropriate that, working in conjunction with the Division of Developmental Disabilities Services, the Division of Long Term Care Residents Protection is promulgating these regulations.

A comment pointed out that the regulations presume that all Neighborhood Homes will be DDDS contract facilities. The regulations do presume that Neighborhood Homes either will be DDDS contract facilities or, if they are not DDDS contract facilities, will be required to abide by these regulations in order to be licensed.

A commenter asked what standards would be applicable to the Delaware Autism Program group homes. The Department of Health and Social Services does not license group homes for autistic children. The Delaware Autism Program is under the jurisdiction of the Department of Education, and the standards applicable to those group homes are those of the Department of Education.

One comment stated that the regulations do not specifically address children. While nothing in these regulations specifically bars children from Neighborhood Homes, it has and will remain the practice of DDDS to provide services to children in the most appropriate setting, which would offer a greater level of supervision than is available in a Neighborhood Home.

A commenter believed that some commas were left out in the proposed section 55.108. This section was reviewed and found to be appropriate as it stands.

A comment pointed out that the Ombudsman appears to have been overlooked in these regulations, and the comment listed responsibilities of the Ombudsman. Those

responsibilities are set out in statute and do not need to be repeated, summarized or paraphrased in regulations.

A commenter said that the requirement found in section 55.814 that all over-the-counter medications (e.g. Chapstick; skin moisturizers) be physician-ordered is somewhat broad. This regulation is intended to conform to the requirements of the Board of Nursing's AWSAM Program. It should be noted that over-the-counter medications do not include items such as Chapstick, skin moisturizers, or other items used for personal comfort or hygiene.

A commenter found that the term "means of communication" in section 55.1002 is "obtuse and uninformative." This comment was not adopted as the referenced term is sufficiently clear as it stands.

It was proposed that the word "significant" be deleted from section 55.304 with respect to injuries of persons served. The word "significant" is retained because the focus of the regulation is on abuse, neglect and mistreatment, and not on minor bumps, bruises, and skin tears.

A commenter did not understand the second sentence in section 55.321 and asked for clarification. This sentence applies to appropriate management of residents' funds and to safeguarding those funds by not allowing access to those records by outside parties.

One commenter said that the definition of the word "intrusive" is broad and difficult to interpret. The definition is intended to be comprehensive and to be applicable to a variety of situations; therefore, it is appropriate as it stands.

It was suggested that a copy of written procedures to handle appeals of decisions made by the provider be given to the consumer, family and/or guardian. This is already covered in section 55.306 of the regulations.

A commenter said that an issue must be resolved for providers to comply with the criminal background check requirement and further stated that CBC information is only provided to the first provider agency that requests the check for a prospective employee. That is incorrect. If a criminal background check has already been done, a new prospective provider need only have a new consent form signed by the applicant sent to the Division of Long Term Care Residents Protection. DLTCRP will provide whatever information is on the record.

A commenter called for written guidelines to define "monthly reviews." The current DDDS interpretive guidelines will remain in effect after promulgation of these regulations. The guidelines address the issue of monthly reviews.

In relation to section 55.418, one commenter said that the services of a DDDS behavior analyst are not always available on a timely basis and that the provider can't control this resource. If a provider requests the services of a DDDS behavior analyst or any other service and it is not available, this information should be documented.

One commenter said that not all residents want three

balanced meals per day and asked how client choice can be supported in this regard. The importance of this regulation is that a balanced diet must be provided; therefore, the regulation stands as written. It does not imply that any resident would be coerced to eat unwanted food.

A comment stated that delays in meeting requirements for annual physical and dental examinations can occur due to DDDS funding limitations. In the case of a delay, a provider must document the attempts made to comply with the regulation and would not be held responsible for delays beyond the provider's control.

In reference to sections 55.901 and 55.902, a commenter stated that DDDS needs to make sure that records are readily accessible to providers. DDDS would not take any action to hinder compliance with these regulations.

A commenter suggested that the word "substantial" as it relates to hand-grip bars and slip-resistant floors should be defined in section 55.1309 as compliance may require extensive and costly renovations in several homes. Since this requirement for licensure is already in place, compliance should not prove to be a problem.

Another commenter said that there should not be an arbitrary requirement to use varying exits in fire drills. Since the location of a fire can hinder egress through any particular exit, every effort should be made to comply with this regulation.

A comment objected to the waiver provisions in the proposed regulations published in June and also objected to the revised waiver provisions published in August, each time maintaining that the regulation provided for inadequate input of residents. The regulation was rewritten specifically to address this issue, and the revision stands as written.

In comments received after the proposed regulations were published in June, an objection was raised that the requirement that plans for "physical" alterations must be approved by DLTCRP was too broad. The revised regulation requires that "structural" alterations must be approved by DLTCRP. In the most recent submission of comments, the revision is criticized as weakening the standard. After consideration of both views, the regulation stands as rewritten.

A comment claimed that section 55.431 addressing behavioral interventions omitted a preface to subparts. That section does not have subparts; and no other section related to that topic has omitted a preface.

Finally, a comment categorized the requirement for "ongoing reevaluation" of the need for psychotropic medication as weaker than a requirement for a quarterly reevaluation. The intent of "ongoing" should be interpreted as more frequent, not less frequent.

SECTION 55.0 - PURPOSE

The following regulations are designed specifically for

Neighborhood Homes, for five or fewer persons with developmental disabilities, which are licensed by the Division of Long Term Care Residents Protection. These homes are distinct from Rest (Family care) Homes where three or fewer persons live in a home with care and supervision provided by persons who also reside on the premises.

These regulations address the minimum acceptable level of living conditions and supports for persons in Neighborhood Homes. The purpose of these regulations is to provide a sequence of expectations for services rendered by the Neighborhood Home provider and a system for Neighborhood Home providers to be accountable to the Division of Long Term Care Residents Protection (DLTRCP) and the Division of Developmental Disabilities Services (DDDS).

SECTION 55.1 - DEFINITIONS

55.101 Action Plan - The portion of the Essential Lifestyle Plan (ELP) that lists, and is used to track, those desired outcomes which are important to a person.

55.102 Annual Conference - The yearly interdisciplinary team meeting held with the person served and his/her family to develop or update the ELP after a review of the various assessments done on the person and discussion with the individual as to his/her aspirations and desires. The annual conference must be held within 30 days of the initiation of DDDS funded residential services and be held no more than 365 days from the previous annual conference.

55.103 Assessment - The process of gathering information to describe what has been learned about a person, and what others need to know or to do to support the person in attaining a healthy, safe and meaningful life.

55.104 Behavior Support Plan or Mental Health Plan - A multi-dimensional, systematic, assessment-based plan that details how staff should implement the identified behavior and/or mental health supports.

55.105 Behavior Support Review Committee - A committee assigned to review behavior intervention strategies and behavior support plans containing support procedures.

55.106 Choice - The process by which people make selections from an array of options which are within the context of Division of Developmental Disabilities Services (DDDS) policies and all applicable state and federal laws and regulations intended to safeguard the person and the rights of others.

55.107 Emergency Behavior Interventions - A set of DDDS sanctioned procedures available to manage an unanticipated event such as severe aggression or severe property destruction that places the individual or others in imminent danger of physical harm.

55.108 Essential Lifestyle Plan (ELP) - The type of individualized support plan used by the Division of Developmental Disabilities Services. A result of a system of person-centered planning, the ELP outlines how a person wants to live, service-related issues which need to be addressed as well as a plan of action for achieving expressed lifestyle choices and adequately addressing service-related issues.

55.109 Evaluation - An assessment process performed by professionals, according to standardized procedures, that incorporates the use, when possible, of standardized tests and measures in addition to informal and observational measures.

55.110 Goals - Desired outcomes that provide the framework upon which service and support actions are based.

55.111 Human Rights Committee (HRC) - A body of individuals composed of impartial members with no direct affiliation with the Division of Developmental Disabilities Services (DDDS), and whose role is to serve as a monitoring agent to safeguard the rights and personal dignity of persons served by DDDS.

55.112 Incident - An occurrence or event, a record of which must be maintained in provider's files, that results or might result in harm to a resident. Incident includes alleged abuse, neglect, mistreatment and financial exploitation; incidents of unknown source which might be attributable to abuse, neglect or mistreatment; all deaths; falls; and errors and omissions in medication/treatment. (Also see Reportable Incident, 55.123.)

55.113 Individual Records - Those records pertaining to a person served which are essential for effective individual planning, plan implementation, establishing and maintaining a personal history of the person, and for protecting legal rights of the person, the agency and the agency staff.

55.114 Interdisciplinary Team - Also known as "Treatment Team" or "Team," this is a group consisting of those who are knowledgeable about the person served, whose participation is required to identify the supports the person wants and/or needs so as to help him/her achieve a healthy, safe and meaningful life.

55.115 Intrusive - The unwanted or uninvited introduction of procedures or other people/staff into the lives or daily routines of persons served which is found bothersome by the person and which causes a perceived interference with the life and/or daily routines of the person.

55.116 Least Restrictive - Descriptive of services and treatments that are delivered with a minimum of limitation, intrusion, disruption or departure from commonly accepted patterns of living in the community.

55.117 Neighborhood Home - A single-unit house providing residential and support services to five or fewer people and licensed pursuant to 16 Delaware Code,

§1101. This definition does not include ICF/MR programs.

55.118 Neighborhood Home Provider - An individual or organization responsible for the operation of the Neighborhood Home.

55.119 Outcomes - The major expectations and desired achievements for people's lives. The accompanying supports that are developed should reflect what people expect from the services and assistance they receive in order to reach their desired outcomes.

55.120 Person/People/Individual/Resident - Terms used throughout these regulations that identify someone receiving services and supports in a Neighborhood Home.

55.121 Physical Environment - Those locations in which the individual lives, works, recreates or receives services.

55.122 Physical Restraint - Approved manual methods that restrict the movement of the individual or the normal functioning of an individual's body or portion of the body.

55.123 Reportable Incident - An occurrence or event which must be reported at once to the Division of Developmental Disabilities Services (DDDS) and for which there is reasonable cause to believe that a resident has been abused, neglected, mistreated or subjected to financial exploitation. Reportable incident also includes an incident of unknown source which might be attributable to abuse, neglect or mistreatment; all deaths; falls with injuries; and significant errors or omissions in medication/treatment which cause the resident discomfort or jeopardize the resident's health and safety. DDDS will forward the report to the Division of Long Term Care Residents Protection (DLTCRP). (Also see Incident, 55.112.)

55.124 Rights Restriction - The limitation, disruption or constraint of a person's freedom to engage in activities generally allowed to others in society. Such is permissible only on a case-by-case basis and when there has been due process, official approval received and the need for such documented.

55.125 Safety - The absence of recognizable hazards in the design, construction and maintenance of any component of the physical environment including equipment and the establishment of procedures to evaluate and to reduce risks of physical harm.

55.126 Sanitation - The promotion of hygiene and prevention of disease by the maintenance of uncontaminated conditions.

55.127 Screening - The initial part of the assessment process which is of limited scope and intensity and is designed to determine whether further evaluation or other intervention is indicated.

55.128 Self-Limiting Behavior - Any behavior that significantly interferes with a person's ability to acquire meaningful life skills, form and maintain interpersonal relationships, and/or successfully live in his/her community. A behavior in and of itself is not self-

limiting; rather, it may be viewed contextually relative to the impact it has on the quality of life of both the person who is displaying the behavior and on others in the environment who are affected by the behavior.

55.129 Supplemental Plans - Detailed instructions or preparations needed to support an outcome or opportunity. Types of such plans include learning, motivating, achieving a personal goal and gaining a new opportunity. Supplemental plans are used to outline a course of action in an effort to accomplish an outcome or provide an opportunity which has been identified in the action plan.

55.130 Support - A broad term used to refer to those methods designed to help an individual achieve a meaningful life and to function to his/her fullest capacity.

55.131 Support Coordinator - The staff person responsible for monitoring and coordinating all activities in implementing the person's plan.

55.132 Transfer - Movement of a person from one program, service or residence to another within DDDS.

SECTION 55.2 - LICENSING AND GENERAL REQUIREMENTS

55.201 When a Neighborhood Home pursuant to these regulations plans any structural alteration, one copy of properly prepared plans and specifications for the entire home shall be submitted to the Division of Long Term Care Residents Protection (DLTCRP). The Neighborhood Home shall receive written approval of the plans before any work is begun.

55.202 Separate licenses are required for separate homes, regardless of their proximity, even though operated by the same Neighborhood Home provider.

A license shall not be transferred from one provider to another or from one location to another.

55.203 The license shall be conspicuously posted in the Neighborhood Home.

55.204 All applications for renewal of licenses shall be filed with DLTCRP at least thirty days prior to expiration. Licenses shall be issued by DLTCRP for a period not to exceed one year (12 months) from the date they are issued.

55.205 All required records maintained by the Neighborhood Home shall be open to inspection by the authorized representatives of DLTCRP and DDDS.

55.206 The term "Neighborhood Home" shall not be used as part of the name of any program in this State unless the home is licensed under these regulations.

55.207 No Neighborhood Home provider shall adopt rules that conflict with these regulations.

55.208 DLTCRP shall be notified in writing of any changes in the ownership or management of a Neighborhood Home.

55.209 Each Neighborhood Home provider shall provide with the admission agreement, to all persons or their family member/guardian, a complete statement enumerating

all charges for services, materials and equipment which shall, or may be, furnished to the person during the period of residency.

55.210 Each Neighborhood Home provider shall make known, in writing, the refund and prepayment policy at the time of admission, and in the case of third-party payment, an exact statement of responsibility in the event of retroactive denial.

SECTION 55.3 - NEIGHBORHOOD HOME PROVIDER PERFORMANCE STANDARDS

55.301 The Neighborhood Home provider shall have a written statement of its mission, values and goals which defines the agency's proactive commitment to helping people live the lifestyle they choose and fosters the least restrictive alternatives of supports and services.

55.302 The Neighborhood Home provider shall have written policies and procedures that delineate how the civil rights of the people served are to be ensured.

55.303 The Neighborhood Home provider shall have a written procedure to handle appeals of decisions made by the provider from people receiving services, their advocates, legal guardians and families. The procedures shall include the use of the Appeal to DDDS Decisions policy.

55.304 The Neighborhood Home provider shall have a written policy that defines and prohibits abuse, neglect, mistreatment, misappropriation of property and significant injury of persons served and a procedure for initiating intervention in all such cases whether the alleged incident occurred within or outside of the Neighborhood Home. The provider shall comply with the provisions of Department of Health and Social Services (DHSS) Policy Memorandum #46 by reporting all instances of abuse, neglect, mistreatment, misappropriation of property or significant injury and the requirements for other reportable incidents. (See 55.123.)

55.305 The Neighborhood Home provider shall have a written policy and procedures for protecting the financial interests of people served.

55.306 The Neighborhood Home provider shall review its written policies and procedures at least annually to ensure that they are in compliance with the requirements of the applicable laws and regulations. Copies of all relevant policies and procedures shall be made available to persons served or their families at any time and be available to any party upon request.

55.307 The Neighborhood Home provider shall maintain a current table of organization identifying its operational elements and programs and administrative personnel and illustrating lines of authority, responsibility and communication. This document shall be shared with provider staff.

55.308 The Neighborhood Home provider's chief executive officer shall designate an employee to assume

management responsibility during his or her absence. All employees shall be informed of who has such responsibility at any given time and who is to be contacted in the event of an emergency.

55.309 The Neighborhood Home provider shall comply with the policies of the Department of Health and Social Services (DHSS) Human Subjects Review Board with regard to conducting research involving people served.

55.310 In all provider activities and references, including name, language of staff, internal documents and communication to the public, the language used shall reflect the Neighborhood Home provider's program, its purposes and promote respect and a positive image of the people served and the staff who support them.

55.311 Services shall be provided to people who are otherwise eligible without regard to disability, gender, age, sexual orientation, race, religion, marital status or ability to pay.

55.312 The Neighborhood Home provider shall not employ individuals under the age of 18.

55.313 The Neighborhood Home provider shall obtain the results of each employment applicant's drug screening for the following drugs:

- a. Marijuana/cannabis
- b. Cocaine
- c. Opiates including heroin
- d. Phencyclidine (PCP)
- e. Amphetamines
- f. Barbiturates
- g. Benzodiazepene
- h. Methadone
- i. Methaqualone
- j. Propoxyphene

55.314 The Neighborhood Home provider shall complete a state and federal criminal background check for each employment applicant through DLTCRP.

55.315 The Neighborhood Home provider shall ensure that each employee is thoroughly familiar with assigned duties and responsibilities. Job descriptions with employees' individual responsibilities and duties shall be made available on site.

55.316 Orientation and training shall be provided to all employees in accordance with the training policy of DDDS and shall be documented, continuously updated and made available for review upon request.

55.317 The Neighborhood Home provider shall ensure that staff training is relevant to the support needs of the people served and shall continuously evaluate training effectiveness by assessing employees' demonstrated competencies and by modifying training programs accordingly.

55.318 The Neighborhood Home provider shall provide each person with an oral and written summary of

his/her rights and an explanation of how to exercise those rights in easily understandable language. This review shall be documented in the person's record and shall occur at least annually. The rights of a person shall not be restricted without due process; any restrictions, including the need for guardianship, shall be reviewed at least annually. All investigation into alleged violations of individuals' rights and the actions taken to intervene in such situations shall be documented.

55.319 Each Neighborhood Home provider shall have its own human right committee or shall participate in a system-wide human rights committee. Each human rights committee shall be responsible for assuring that people's rights are supported and shall be approved by the Division of Developmental Disabilities Services. Human rights committees shall comply with DDDS minimum standards of operations of such committees, and their decisions concerning persons served by DDDS shall be subject to the review and approval of the DDDS human rights committee.

55.320 Each human rights committee member shall be provided with a written explanation and training in the committee's duties and responsibilities. Any member who has been involved in the development, review or approval of a matter before the committee shall be excluded from decision-making related to that matter.

55.321 The Neighborhood Home provider shall safeguard and maintain records regarding the funds of people receiving services and support their efforts towards independence/self-management of those funds. Requests to the contrary, other than from the person's legal guardian (of property), shall require a recommendation of the Interdisciplinary Team, accompanied by substitute safeguards, with approval from the Director of the DDDS Community Services or Special Populations program. Such actions shall be documented in the person's record. The financial records shall be available on request to the person, his/her legal guardian (of property) or other individuals or entities authorized by DDDS.

55.322 Funds for one person shall not be commingled with the funds of another person. People shall have community bank accounts in their own names unless otherwise indicated by them or their legal guardian of property.

SECTION 55.4 - PERSONS' SERVICES AND SUPPORTS

55.401 The Neighborhood Home provider shall comply with the Patient's Bill of Rights set forth in 16 Del. C., Section 1121. A copy of the Patient's Bill of Rights shall be conspicuously posted within the home.

55.402 To the greatest extent possible, the person chooses where and with whom he/she shall live.

55.403 With due regard to each individual's right to privacy and safety and as agreed upon by the person served,

the person's family, guardian, advocates, spouse and friends shall be encouraged to visit the person in his/her Neighborhood Home. Visits shall occur at reasonable times and may be without prior notice.

55.404 The Neighborhood Home provider shall facilitate frequent informal visits by persons to the homes of their families and friends in accordance with each party's desire.

55.405 People shall be provided with opportunities and supports to develop and maintain social relationships, to perform different social roles and to participate in the life of their community, including attending and participating in religious activities of their choice. Wherever possible, supports shall be adapted to the cultural background, language and ethnic origin of the person.

55.406 People shall receive support and instruction as appropriate to exercise the rights and responsibilities of citizens such as voting, employment, consumer affairs, law enforcement, paying taxes or consulting an attorney.

55.407 People shall be supported in receiving advocacy and/or legal services as needed.

55.408 People shall receive support and instruction in recognizing and respecting the rights of others as reciprocal to their own.

55.409 If a person is represented by a legal guardian or a substitute decision maker (as defined in the DDDS Consent Policy), such shall be documented in the individual plan; and efforts shall be made to ensure that the person receives continued education, instruction and support to exercise his/her rights and make informed decisions.

55.410 People shall decide when and with whom they wish to share personal information. Prior to the release of information, including the person's name or photo, a written consent shall be signed by the person (unless legally adjudicated to need a guardian), a parent (if the person is a minor), or by a substitute decision maker in accordance with DDDS policy on confidentiality and release of information. The consent shall minimally include:

- a. The designation of time limit with a maximum of 365 days;
- b. The person to whom the information is to be released;
- c. The exact information to be released;
- d. The stipulation that consent may be rescinded at any time.

55.411 People shall be supported to exercise choice, including but not limited to choice in the following:

- a. Clothing and personal possessions;
- b. Telephone use with privacy available;
- c. Time, space and opportunity for privacy;
- d. Opening mail addressed to them unless other arrangements are expressly made;
- e. Deciding when and where to go unless

otherwise indicated in their plan;

f. Deciding who will assist them with personal hygiene;

g. Participation in household responsibilities.

55.412 People shall be supported to bathe with the maximum independence and privacy.

55.413 People who are incontinent shall be bathed or cleansed immediately upon voiding or soiling. All soiled items shall be changed immediately.

55.414 Each person shall have an Essential Lifestyle Plan written in terms that are understandable to all, where the person's goals, dreams and aspirations are stated and defined. The person, with the support of the team, shall determine when and how to measure success and attainment of his/her desired outcomes; and such criteria shall be defined in the Essential Lifestyle Plan, as applicable.

55.415 The person's plan shall include financial planning which takes into account the person's resources, assets and benefits in conjunction with his/her personal goals.

55.416 For each person, an interdisciplinary team including the support coordinator and specific people responsible for obtaining services and implementing the support plan, shall be clearly defined. Staff of all Neighborhood Home providers providing any component of service or support shall take an active role in assuring effective communication and overall support coordination.

55.417 The support coordinator shall monitor, review, analyze, observe the implementation and document all components of a person's plan at least monthly.

55.418 If the monthly review determines the need for any action, such action shall be taken in a timely manner by the appropriate team member.

55.419 The support coordinator shall assist the person in locating and obtaining those services and supports identified by the team and shall assist the person in assuming management of those activities for which the person has demonstrated management capacity and/or expressed an interest.

55.420 The support coordinator shall elicit the person's preferences and respect those preferences when they are consistent with the rights and well-being of the person and of others.

55.421 The support coordinator shall facilitate the transfer of the person to another service, service location or service provider when the person desires such a transfer and such is consistent with the person's plan.

55.422 The initial plan and subsequent plans are developed, at the discretion of the person and/or the guardian, with the active participation of the following:

- a. The person;
- b. Support staff who know and care about the person;
- c. Professionals and others with the expertise to

design and review elements of the plan, including those who provide supports or treatment.

d. The person's family, guardian, advocate or friends.

55.423 The person's plan shall be reviewed by his/her team as often as the person decides, but at least yearly (365 days) in conjunction with the person's annual conference or when significant changes occur, to determine the need to continue, revise or terminate services and supports. Any applicable information, including previous plans, shall be reviewed for possible inclusion in the current plan.

55.424 Plans shall be implemented within 30 days of the development of an initial plan and within 30 days of each subsequent annual conference. The initial plan shall be revised within 60 days of initiation of Neighborhood Home services.

55.425 Supplemental plans shall be in place as required by the person's action plan, and shall be based on the person's learning styles.

55.426 Reassessments for those persons receiving services, including direct or indirect clinical services, shall be completed annually in preparation for the annual conference or when there is an indication of need. Reassessments shall be available in preparation for the person's annual conference.

55.427 Meetings concerning the person shall be scheduled at a date, time and location suitable for all team members, especially the person and his/her parents, guardian and/or advocate.

55.428 The Neighborhood Home provider's policies and practices relative to behavior supports, as evidenced in writing and in ongoing activities, shall be congruent with the policies and practices of DDDS and emphasize positive approaches and behavior interventions.

55.429 The Neighborhood Home provider shall have its own, or use the DDDS behavior support committee which shall include:

a. Persons qualified to evaluate published behavior support research studies and the technical adequacy of proposed behavior support interventions;

b. Medical and other professionals qualified to evaluate proposals for the use of interventions to manage behavior.

55.430 Prior to the use of behavior intervention strategies, and absent a crisis situation or psychiatric emergency requiring an immediate response, the following activities shall take place:

a. The physical and social environments shall be analyzed to determine their role in contributing to the self-limiting behavior;

b. The necessary modifications shall be made to the environment based on that analysis;

c. Medical treatment shall be obtained for any

possible physiological cause of the behavior; and

d. The treatment team shall discuss and document the risk/benefits of the proposed procedure.

55.431 Prior to the use of behavior intervention strategies, persons who will implement behavior support procedures shall have been trained in the procedures specified in the person's plan.

a. Include a risk/benefit analysis, in non-technical terms, which identifies the risks associated with not providing the intervention, the risks associated with providing the intervention, and the benefits of the proposed intervention;

b. Include a detailed plan of action the team intends to follow to reduce or eliminate the need for the intrusive intervention/drugs;

c. Specify provisions for at least a quarterly reevaluation for the need for continuation of the intervention/drugs;

d. Include alternative supports; and

e. Be discussed with the person/guardian relative to the rationale for such treatment and the risks/benefits involved.

55.443 Each mental health plan utilizing psychotropic medications for the treatment of a diagnosed psychiatric illness shall:

a. Include a risk/benefit analysis, in non-technical terms, which identifies the risks associated with not providing the intervention, the risks associated with providing the intervention, and the benefits of the proposed intervention;

b. Specify provisions for ongoing reevaluation of the need for continuing the use of medication;

c. Include alternative supports, as appropriate; and

d. Be discussed with the person/guardian relative to the rationale for such treatment and the risks/benefits involved.

SECTION 55.5 - ENVIRONMENT

55.501 Neighborhood Home providers shall ensure a home-like environment for each licensed home. Functional arrangement of rooms, furnishings, and decor shall be compatible with the need for accessibility.

55.502 Furniture and furnishings shall be safe, comfortable, and in good repair and shall resemble those in homes in the local community, to the extent compatible with persons' choice and the physical needs of the people living in the home. To the extent possible, personal furniture shall be chosen by individuals.

55.503 Heating apparatus shall not constitute a burn, smoke or carbon monoxide hazard to persons served or their support staff.

55.504 Temperature, humidity, ventilation, and light in all living and sleeping quarters shall be maintained to

provide a comfortable atmosphere.

55.505 Homes serving persons with physical challenges shall be accessible to those persons with physical challenges according to the appropriate American National Standards Institute (ANSI) Standards and all other federal and state standards.

55.506 Protective or security features such as fences and security windows may be used only when justified on the basis of the needs of persons served and shall preserve as normal an appearance as possible.

55.507 Use of security or observational devices shall constitute a restrictive procedure and require consent and review by the human rights committee. The need for such devices shall be documented in the person's behavior support plan.

55.508 Homes shall be sanitary, free of offensive odors, insects and uncontrolled pests. Exterminator services shall be required upon evidence of any infestation.

55.509 Waste and garbage shall be stored, transferred, and disposed of in a manner that does not create a nuisance, or permit the transmission of disease. Litter shall not be permitted to accumulate on the premises.

55.510 Stairways, ramps, walkways and open-sided porches shall have adequate lighting and handrails for safety. Non-skid surfaces shall be used when slippery surfaces present a hazard.

55.511 All stairways, hallways, doorways and walkways shall be kept free and clear of obstructions at all times.

55.512 Mirrors shall be furnished in bedrooms and bathrooms, including mirrors that are accessible by persons who use wheelchairs.

55.513 Each home shall provide storage space for both in season and out of season clothing and storage space for personal items to include, minimally, closet space and four drawers in a chest of drawers.

55.514 Each home shall contain a clothes washer and dryer that are accessible to people unless people use commercial laundromats or are being supported to do so.

55.515 Basement space may be used for activities for people in the home if there is a minimum of two (2) fire exits.

55.516 If a bedroom is below grade level, it must have a window that

a. Is usable as a second means of escape by the person(s) occupying the room; and

b. Is no more than 36 inches (measured to the window sill) above the floor as required under the Health Care Occupancy Chapter of the Life Safety Code.

supervised by a registered dietitian or nutritionist or by an inexperienced person who consults a registered dietitian or nutritionist as needed. Therapeutic diet orders, meal and menu planning shall be reviewed, monitored and updated as recommended by the nutritionist/dietitian with a minimum of an annual evaluation. Therapeutic diets shall require a physician's order.

55.602 Nutritional intake of persons receiving a medically prescribed modified diet shall be followed, reviewed and monitored by a nurse, dietitian or other medical personnel as appropriate, as determined by the dietitian or physician.

55.603 Persons shall be offered opportunities for choices in food selection and are actively involved in menu planning and food preparation as part of the daily meal routine.

55.604 Menus and records of foods actually served shall be retained for a period of three months.

55.605 Foods shall be provided in sufficient amounts for meals and snacks and in sufficient variety on a daily, weekly, monthly, and seasonal basis.

55.606 The daily diet for each person shall include a minimum of three balanced meals a day with food from the four basic food groups.

55.607 Meals shall be served so that they are flavorful, attractive in appearance, at appropriate serving temperature, and have preserved their nutritional value.

55.608 Meals should be provided in locations which provide the opportunity for socialization, choice, sanitation, and also support the person's preference.

55.609 Persons shall eat in an upright position or in a position that is medically indicated.

55.610 There shall be at least one refrigerator and one freezing unit, in proper working order and capable of maintaining frozen foods in the frozen state and refrigerated foods at 41 degrees F. or below.

55.611 Dry or staple food items shall be stored at least four inches above the floor in a ventilated room that is not subject to waste water back flow or to contamination by condensation or leakage.

55.612 There shall be at least one four-burner range and one oven (or combination thereof), which is in proper working order.

55.613 There shall be a dishwasher or facilities for performing dishwashing.

55.614 There shall be at least one operable window or exhaust system for removal of smoke, odors, and fumes in the cooking area.

55.615 There shall be three days supply of food in each home at all times as posted on the menus. Opened foods that are to be stored shall immediately be dated with the date that the foods were opened.

SECTION 55.6 - MEALTIMES

55.601 The home's meal and menu planning shall be

SECTION 55.7 - MEDICAL AND HEALTH CARE

55.701 Each person shall have a primary care physician and a dentist and shall receive an annual physical and dental examination unless otherwise recommended by the appropriate professional. Routine screening and laboratory examinations shall be obtained when such are determined warranted by the physician.

55.702 Within 30 days after services are initiated by the agency, the following screenings shall be scheduled if the need for such is identified by the physician, person, advocate, guardian or team:

- a. Nutritional;
- b. Visual;
- c. Auditory;
- d. Speech and language;
- e. Occupational therapy;
- f. Physical therapy;
- g. Assistive technology;
- h. Other screenings as identified.

55.703 When requested by the person, advocate, guardian or team or when indicated by the screening results, the person shall receive a comprehensive evaluation in the area(s) within 90 days.

55.704 Each person shall have his/her own toothbrush which is used regularly and stored antiseptically.

55.705 Persons shall be supported, to the extent possible, to attend to their own health care needs by making medical and dental appointments, cooperating in receiving medical and dental treatment and in self-administering their medications.

55.706 The Neighborhood Home provider shall have policies and procedures for infection control as it pertains to persons, staff, and visitors. Upon confirmation of reportable disease, the appropriate County Health Officer of the Division of Public Health shall be notified.

55.707 The Neighborhood Home provider shall have on file results of tuberculin tests:

- a. Performed annually for all employees and volunteers, and
- b. Performed on all newly admitted persons. The tuberculin test to be used is the Mantoux test containing 5 TU-PPD stabilized with Tween, injected intradermally, using a needle and syringe, usually on the volar surface of the forearm. Persons found to have a significant reaction (defined as 10 mm of induration or greater) to tests shall be reported to the Division of Public Health and managed according to recommended medical practice. A tuberculin test as specified, done within the twelve months prior to employment or admission, or a chest x-ray showing no evidence of active tuberculosis shall satisfy this requirement.

55.708 Each person's health and immunization history shall be updated continuously.

55.709 Persons who require adaptations of the

environment or who use adaptive, corrective, mobility, orthotic, prosthetic, communication or other assistive devices or supports shall receive instruction in their proper use and shall receive professional assessments annually, or as otherwise prescribed, to ascertain the continued applicability and fitness of those devices or supports.

55.710 Adaptive, corrective, mobility, orthotic and prosthetic equipment shall be available, kept clean and in good repair and used as appropriate.

55.711 If any of the above supports are needed or used, the person's plan shall specify:

- a. the reason for each support;
 - b. the situations in which each is to be applied;
- and
- c. a schedule for the use of each support.

SECTION 55.8 - MEDICATIONS

55.801 Individuals receiving medication shall be instructed in self-administration to the limit of their understanding. The Neighborhood Home Provider shall also include instruction in the purpose, dosage and possible side effects of the prescribed medication to the limit of the person's understanding.

55.802 Individuals who administer their own medication shall:

- a. Understand the purpose of the medication, dosage times and possible side effects;
- b. Know what to do if a dosage is missed, extra medication is taken or an adverse reaction is experienced;
- c. Be educated in the maintenance of his/her own medication history and in the recording of information needed by the physician to determine medication and dosage effectiveness.

55.803 Medications shall be used only by the person for whom they were prescribed.

55.804 Injectable medication shall only be administered by licensed practical nurses, registered nurses or other licensed medical professionals.

55.805 Providers who have successfully completed a Board of Nursing approved Assistance with Self-Administration of Medication (AWSAM) training program may assist persons in the taking of medication, provided that the medication is in the original container and properly labeled. The medication shall be taken exactly as indicated on the label.

55.806 A medication record shall be maintained for each person. The record shall show the name and strength of each medication being taken by the person. Each dose administered shall be recorded by date, time and initials of person or persons assisting. Effectiveness shall be monitored by clinical support staff.

55.807 The Neighborhood Home Provider shall assist the person in reporting side effects to the physician who prescribed the medication. Suspected drug reactions shall be

noted in the medication record and documented in the active file of the person.

55.808 All medication errors and corrective actions shall be documented and reported in accordance with provider written policy.

55.809 Serious medication errors and reactions to medication shall be reported immediately to the physician and to the Neighborhood Home provider's chief executive officer or to a person designated by written policy.

55.810 A three-day supply of medication shall be available at all times. All medication shall be stored in its original container either from the pharmacy, physician or manufacturer with the proper label and specific directions for assistance.

55.811 Medications to be applied externally shall be distinguishable from medications to be taken internally by means of packaging, labeling and segregation within storage areas.

55.812 Medication shall be stored and locked under proper conditions of temperature, light, humidity and ventilation. Room temperature acceptable for medication storage is between 59 and 86 degrees Fahrenheit.

55.813 Medications requiring refrigeration shall be kept in a separate locked box within the refrigerator. A temperature monitoring device shall be used and the temperature shall be maintained between 36 and 42 degrees Fahrenheit.

55.814 A supply of over-the-counter medication shall be stocked at each home. However, the use of such medications must be authorized by the person's physician in writing, and their use documented in the medication record and in the person's active file.

55.815 Discontinued and outdated medications and containers with illegible or missing labels shall be promptly disposed of in a safe manner.

SECTION 55.9 - PERSONS' RECORDS

55.901 A cumulative record containing all information and documents related to supporting and providing services to the person shall be maintained chronologically for each person.

55.902 The record shall be readily accessible to those who require such access in order to provide services as described in the person's support plan.

55.903 All information concerning a person served, including information contained in an automated data bank, is confidential; and access shall be limited to staff who need to see the record, or to persons specifically authorized by the person or legally qualified representatives.

55.904 Entries in a person's record referring to actions with another person shall be coded in such a way as to protect the confidentiality of the persons served.

55.905 The provider shall be responsible for the safekeeping of each person's record and for securing it

against loss, destruction, or use by unauthorized persons as evidenced by policies and practices.

55.906 Incident reports, with adequate documentation, shall be completed for each incident. Adequate documentation shall consist of the name of the resident(s) involved; the date, time and place of the incident; a description of the incident; a list of other parties involved, including witnesses; the nature of any injuries; resident outcome; and follow-up action, including notification of the resident's family or guardian, attending physician and DDDS or law enforcement authorities when appropriate. Incident reports shall be kept on file by the provider. Reportable incidents shall be communicated immediately to the Division of Developmental Disabilities Services.

SECTION 55.10 - TRANSPORTATION

55.1001 The transportation system operated by, or under contract to, the home shall meet local and state licensing, inspection, insurance, and capacity requirements.

55.1002 Vehicles used to transport persons shall be equipped with a seat belt for each person and a means of communication. Vehicles used to transport persons with physical impairments shall be adapted to their needs.

55.1003 Drivers of vehicles shall have valid and appropriate driver's licenses.

55.1004 Emergency transportation shall be available on a 24-hour basis.

55.1005 The provider shall provide or arrange transportation for a person's routine medical and dental care.

SECTION 55.11 - SAFETY AND SANITATION

55.1101 The Neighborhood Home's program shall comply with all applicable provisions of federal, state and local laws, regulations and codes pertaining to health, safety, sanitation and plumbing.

55.1102 The provider shall maintain records and reports of periodic fire safety, health, sanitation, and environmental inspections required by local and state laws and regulations. The provider shall document actions taken to correct deficiencies noted in these reports.

55.1103 The provider shall prepare written policies that outline maintenance (including electrical maintenance) and cleaning procedures, storage of cleaning materials and/or pesticides and other toxic materials.

55.1104 Hot water at shower, bathing and handwashing facilities shall not exceed 115 degrees F.

55.1105 There shall be adequate, safe and separate areas of storage of:

- a. Food items;
- b. Cleaning agents, disinfectants and polishes;
- c. Poisons, chemicals and pesticides;
- d. Eating, serving and cooking utensils;
- e. Clean and dirty linen.

55.1106 Firearms shall be prohibited on the premises of the Neighborhood Home.

55.1107 Active attention shall be directed to avoiding hazards to the people supported, such as dangerous substances, sharp objects, unprotected electrical outlets, slippery floors or stairs, exposed heating devices, scalding water or broken glass. However, people shall be prepared for and progressively exposed to routine risks that are likely to be encountered in normal environments.

SECTION 55.12 - BEDROOMS

55.1201 Rooms or other areas of the Neighborhood Home that are not ordinarily sleeping rooms may not be used for sleeping purposes.

55.1202 Sleeping rooms shall have an outside window and must provide for quiet and privacy. Adequate electrical outlets shall be conveniently located in each room with at least one (1) light fixture switch at the entrance to the bedroom.

55.1203 Bedrooms shall have walls that extend from floor to ceiling, and shall accommodate no more than two persons.

55.1204 Multi-bed bedrooms shall provide at least 75 square feet per person.

55.1205 Single-bed bedrooms shall contain at least 100 square feet.

55.1206 Bedrooms shall contain space, as needed, for bedside assistance and to accommodate the use and storage of mobility devices and prosthetic equipment.

55.1207 Each person shall have a bed suitable for his or her physical stature and condition.

55.1208 Mattresses, bedding and pillows shall be clean and provide comfort and sufficient support and warmth.

55.1209 The use of hospital-type beds, plastic or other materials to keep beds and pillows dry, flat pillows or the absence of pillows or other departures from normalcy shall be justified in each case in the person's record and reviewed at least annually.

55.1210 There shall be a sturdy bedside stand, chair, a desk or table, and reading light for the person.

55.1211 Each bedroom window shall have a window treatment that closes for privacy.

55.1212 People shall be encouraged, and assisted as needed, to decorate their bedrooms as they choose.

SECTION 55.13 - BATHROOMS

55.1301 There shall be private toilet facilities with a shower or tub in good repair in each home. These facilities shall be accessible to the person according to his/her needs and shall facilitate maximum independence.

55.1302 Traffic to and from any room shall not be through a bedroom or bathroom except where a bathroom opens directly off the room it serves.

55.1303 There shall be at least one (1) window or

mechanical ventilation to the outside of the bathroom.

55.1304 Toilets, bathing and toileting appliances shall be equipped for use by physically handicapped persons, as dictated by such persons' needs.

55.1305 There shall be at least one (1) toilet of appropriate size for each four (4) persons. Each toilet shall be equipped with a toilet seat and toilet tissue.

55.1306 There shall be at least one (1) wash basin for each four (4) persons.

55.1307 There shall be at least one (1) tub or shower for each four (4) persons.

55.1308 Wash basins shall be available in or immediately adjacent to bathrooms and/or toilet rooms.

55.1309 Shower and tub areas shall be equipped with substantial hand-grip bars and slip-resistant floor surfaces.

SECTION 55.14 - EMERGENCIES AND DISASTERS

55.1401 Fire safety in Neighborhood Homes shall comply with the rules and regulations of the State Fire Prevention Commission or the appropriate local jurisdiction. All applications for a license or renewal of a license shall include a letter certifying compliance by the Fire Marshal with jurisdiction. Notification of non-compliance with the applicable rules and regulations shall be grounds for revocation of a license.

55.1402 The home shall have a minimum of two means of egress.

55.1403 The home shall have an adequate number of UL approved smoke detectors in working order.

a. In a single level home, a minimum of one smoke detector shall be placed between the bedroom area and the remainder of the home.

b. In a multi-story home, a minimum of one smoke detector shall be on each level. On levels which have bedrooms, the detector shall be placed between the bedroom area and the remainder of the home.

55.1404 There shall be at least one functional two and one-half to five pound ABC fire extinguisher on each floor of living space in the home that is readily accessible, visible and mounted on the wall. Inspections shall be completed by the service company or as regulated by the Fire Marshal. Each extinguisher shall be checked annually.

55.1405 The provider shall have written procedures for meeting all emergencies and disasters such as fire, severe weather, and missing persons; and such procedures shall be communicated to all staff.

55.1406 The procedures shall assign specific personnel to specific tasks and responsibilities.

55.1407 The procedures shall contain instructions related to the use of alarm and signal systems. Provisions shall be made to alert persons living in the home according to their abilities, and these provisions shall be included in the procedures.

55.1408 Evacuation routes and the location of fire-

fighting equipment shall be posted in areas used by the public as required by the applicable fire safety regulations. The number and placement of postings are otherwise dictated by building use and configuration and by the needs of persons and staff.

55.1409 The provider shall maintain an adequate communication system to ensure that on and off-duty personnel and local fire and safety authorities are notified promptly in the event of an emergency or disaster.

55.1410 The telephone numbers of the nearest poison control center and the nearest source of emergency medical services shall be posted.

55.1411 Provisions shall be made for emergency auxiliary heat and lighting by means of alternate sources of electric power, alternate fuels, and stand-by equipment, or arrangements with neighbors, other agencies or community resources.

SECTION 55.15 - EVACUATION DRILLS

55.1501 Drills shall be held quarterly for each shift with one drill per calendar month. Evacuation drills shall be held on different days, at different times, including times when people are asleep.

55.1502 The location of egress during these evacuation drills shall be varied, with window evacuation procedures discussed as an alternative, if not practiced.

55.1503 During drills, persons shall be evacuated with staff assistance to the designated safe area outside of the home.

55.1504 As evidenced by evacuation drill reports that are maintained by the Neighborhood Home, drills shall assure that all persons and staff are familiar with the evacuation requirements and procedures. Any problems persons have evacuating a building during a drill shall result in a written plan of specific corrective action(s) to be taken.

55.1505 Persons who are unable to achieve the exit schedule prescribed by the Life/Safety Code with available assistance shall be either relocated or provided with additional assistance.

SECTION 55.16 - WAIVERS OF STANDARDS

55.1601 Specific standards may be waived by the Division of Long Term Care Residents Protection provided that each of the following conditions is met:

a. Strict enforcement of the standard would result in unreasonable hardship on the provider.

b. The waiver is in accordance with the particular needs of the person.

c. A waiver must not adversely affect the health, safety, welfare, or rights of any person.

d. Residents may be informed of the waiver request and asked for input, as appropriate.

55.1602 The request for a waiver must be made to the Division of Long Term Care Residents Protection in writing

by the provider with substantial detail justifying the request. The Division of Long Term Care Residents Protection will inform the provider of its decision within 30 days of receipt of the written request.

55.1603 A waiver granted by the Division of Long Term Care Residents Protection is not transferable to another Neighborhood Home provider in the event of a change in ownership.

55.1604 A waiver shall be granted for a period up to the term of the license.

SECTION 55.17 - SEVERABILITY

55.1701 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 affected thereby.

Adopted 10/1/03

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 107 (31 Del.C. §107)

ORDER

Food Stamp Program

Nature Of The Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM). The proposed changes address exempt aliens and reporting changes and are effective October 1, 2003. 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 proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the August 2003 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2003 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No comments were received during the public comment period.

Summary Of Proposed Changes

DSSM 9081.3 - Exempt Aliens: new rules broaden the

exemptions from sponsor deeming, especially children under 18 years of age.

DSSM 9085 - Reporting Changes: extends simplified reporting rules to all households except for the elderly or disabled household with no earned income.

Citation

Title IV of the Farm Security and Rural Investment Act of 2002 ("Farm Bill").

Findings Of Fact:

The Department finds that the proposed changes as set forth in the August 2003 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Food Stamp Program regarding exempt aliens and reporting changes is adopted and shall be final effective October 10, 2003.

Vincent P. Meconi, Secretary, DHSS
9/15/2003

9081.3 Exempt Aliens

The deeming of sponsor income in steps 1-5 above do not apply to:

1. Children under 18 years of age regardless of when they entered the United States;

2. Immigrants whose deeming period had ended;

3. Sponsored aliens who are ineligible for food stamps because of immigration status will not have the sponsor's income deemed to other eligible members of the alien's household;

~~4.~~ 4. An alien who is a member of his or her sponsor's food stamp household;

~~5.~~ 5. An alien who is sponsored by an organization or group as opposed to an individual;

~~6.~~ 6. An alien who is not required to have a sponsor under the Immigration and Nationality Act, such as a refugee, a parolee, an asylee, or a Cuban or Haitian entrant;

~~7.~~ 7. An alien whose sponsor has not signed a legally binding affidavit of support, the INS Form I-864 or I-864-A;

~~8.~~ 8. A battered alien spouse, alien parent of a battered child, or child of a battered alien, for 12 months after a determination is made that the battering is substantially connected to the need for benefits, and the battered individual does not live with the batterer. After 12 months, do not deem the batterer's income and resources if the battery is recognized by a court or the INS had a substantial connection to the need for benefits, and the alien does not live with the batterer.

~~9.~~ 9. An indigent alien who has been determined unable to obtain food or shelter taking into account the

alien's own income plus any cash, food or housing, or other assistance provided by other individuals, including the sponsor(s).

9085 Reporting Changes

[273.12]

Certified food stamp households are required to report the following changes in circumstances:

Simplified Six Month Reporting Requirements

The following reporting requirements are for all households except those households where all members are elderly or disabled and without earned income, ~~homeless, or migrant or seasonal farmworkers:~~

- Households are required to only report income changes when the monthly income exceeds 130 percent of the poverty income guideline for the household size that existed at the time of certification or recertification.
- When a household's monthly income exceeds the 130 percent of the poverty income guideline, the household is required to report that change within ten days after the end of the month that the household determines the income is over the 130 percent amount.
- Households will not have to report any changes in the household composition, residence and resulting changes in shelter costs, acquisition of non-excluded licensed vehicles, when liquid resources exceed \$2000, and changes in the legal child support obligation.

Additional reporting requirement for ABAWD individuals:

- Adults living in a home without any minor children, who are getting food stamps because they are working over 20 hours a week, must report when they start working less than 20 hours per week.

Reporting requirements for households not eligible for the simplified six month reporting requirements above:

- Changes in the sources of or in the amount of gross unearned income of more than \$25, except changes in the public assistance grants. Since DSS has prior knowledge of all changes in the public assistance grants, action shall be taken on the DSS information. Changes reported in person or by telephone are to be acted upon in the same manner as those reported on the change report form;
- All changes in household composition, such as the addition or loss of a household member;

- Changes in residence and the resulting changes in shelter costs;
- The acquisition of a licensed vehicle not fully excludable under DSSM 9051 (for non-categorically eligible households);
- When cash on hand, stocks, bonds, and money in a bank account or savings institution reach or exceed a total of \$2,000 (for non-categorically eligible households);
- Changes in the legal obligation to pay child support; and
- Changes in work hours that bring an ABAWD individual below 20 hours per week, averaged monthly.

Certified households must report changes within ten (10) days of the date the change becomes known to the household.

An applying household must report all changes related to its food stamp eligibility and benefits at the certification interview. Changes, as provided in this Section, which occur after the interview but before the date of the notice of eligibility, must be reported by the household within ten (10) days of the date of the notice.

Only the reporting requirements in this Section and no other reporting requirements can be imposed by the Division.

DEPARTMENT OF LABOR

Statutory Authority: 29 Delaware Code,
Section 6960 (29 Del.C. §6960)

Order Adopting Amendments To Prevailing Wage Regulations

Nature of the Proceedings

1. Pursuant to notice in accordance with 29 Del.C. §10115, the Department of Labor proposed and published an amendment to the Prevailing Wage Regulations in the Delaware Register of Regulations on August 1, 2003. A copy of the published proposed Regulations and Notice of Public Hearing is attached as Exhibit "A".

2. Pursuant to the Notice referenced above, a public hearing was held at 9:00 a.m. on Thursday, August 21, 2003, in the Delaware Department of Public Safety Building, Division of Motor Vehicles 2nd Floor Conference Room, 303 Transportation Circle, Dover, Delaware.

3. As designated by the Secretary of Labor, Harold E. Stafford, Keri L. Williams, Supervisor of the Office of Labor Law Enforcement, was present to receive testimony and

evidence at the 9:00 a.m. August 21, 2003 hearing in Dover, Delaware.

Summary of the Evidence

4. The individuals testifying at the August 21, 2003 hearing in Dover, Delaware, and a summary of said testimony is as follows:

5. William McCloskey, President of the Delaware Building and Construction Trades Council, stated that, as President of the Delaware Building and Construction Trades Council and a member of the Prevailing Wage Advisory Council, he supported the proposed amendment.

Mr. McCloskey testified that, as a 39 year member of the Building Trades, "one size does not always fit all." He further stated that sometimes classifications are grouped together as an oversight. Mr. McCloskey further pointed out that this has been corrected with the Prevailing Wage Advisory Council and he was pleased to see no one was present to speak against the amendment.

6. There was no other testimony. The record was held open until the end of the day on August 31, 2003, in accordance with the Administrative Procedures Act, in order to receive further submissions.

Findings of Fact

Recommendations were given to the Secretary of Labor following the public hearing process and consideration of all oral testimony and written testimony received. The Department of Labor's findings regarding the issues raised at the hearing are as follows:

7. Based upon the oral testimony and written submissions from the hearing, the Department of Labor wished to adopt its proposal to amend the Prevailing Wage Regulations.

Conclusions of Law

8. The Department of Labor proposed the amendments to the Prevailing Wage Regulations pursuant to its authority in 29 Del. C. § 8503.

Decision to Adopt

9. It is the decision and order of the Department of Labor that the proposed amendment to the Prevailing Wage Regulations, a true and correct copy of which is attached hereto as Exhibit "B" are hereby **ADOPTED** effective date of October 13, 2003.

SO ORDERED, this 15th day of September, 2003.

Harold E. Stafford, Secretary of Labor

PREVAILING WAGE REGULATIONS

3.0 Concepts and Definitions

3.1 This section presents definitions and explanations to provide a basic understanding of elements inherent in collecting wage data and issuing wage determinations, and enforcing prevailing rates.

3.1.1 Activity Covered. 29 Del.C. §6960 applies to every contract or aggregate of contracts relating to a public works project in excess of \$100,000 for new construction (including painting or decorating) or \$15,000 for alteration, repair, renovation, rehabilitation, demolition or reconstruction (including painting and decorating of building or works) to which this State or any subdivision thereof is a party and for which the State appropriated any part of the funds and which requires or involves the employment of mechanics and/or laborers.

3.1.2 "Building" or "Work". The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment is not a "building" or "work" within the meaning of the regulations unless conducted at the site of such a building or work.

3.1.3 Laborers and Mechanics. The terms "laborer" and "mechanic" includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term "laborer" or "mechanic" includes apprentices and Supportive Service Program (SSP) trainees. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity are not deemed to be laborers or mechanics. Working foremen who devote more than twenty (20) percent of their time during a workweek to mechanic or laborer duties are deemed to be laborers and mechanics for the time so spent.

The terms "laborers" and "mechanics" do not apply to watchmen, guards, dispatchers, or weighmasters. The following classifications of workers are recognized by the Department:

- | | |
|------------------|------------------|
| Asbestos Workers | Bricklayers |
| Carpenters | Cement Finishers |

- | | |
|-----------------------------------|-------------------|
| <u>Electrical Line Worker</u> | Electricians |
| Elevator Constructors | Glaziers |
| Iron Workers | Laborers |
| Millwrights | Painters |
| <u>Pile Driver</u> | Plasterers |
| Plumbers/Pipefitters/Steamfitters | |
| Power Equipment Operators | |
| Roofer- Composition | |
| Roofer - Shingle, Slate and Tile | |
| Sheet Metal Workers | Soft Floor Layers |
| Sprinkler Fitters | |
| Terrazzo/Marble/Tile Setters | |
| Terrazzo/Marble/Tile Finishers | |
| Truck Drivers | |

Definitions for each classification are contained in a separate document entitled "Classifications of Workers Under Delaware's Prevailing Wage Law." Workers performing tasks not listed in the Department's definitions (but performed by mechanics and laborers on public projects) shall be classified by the Department. The Department will utilize the U.S. Department of Labor's Dictionary of Occupational Titles (Fourth Edition, Revised 1991) to determine the correct classifications of workers, as those definitions relate to the classifications recognized by the Department. In cases of conflicts or voids in the Dictionary of Occupational Titles, the Department may utilize additional sources including, but not limited to, the U.S. Department of Labor, employer organizations, employee organizations, or other government agencies involved in classifying workers. Classification determinations shall be recorded by the Department as they are made and shall be published annually.

Laborers and mechanics are to be paid the appropriate wage rates for the classification of work actually performed, without regard to skill.

3.1.4 Apprentices and Supportive Service Program Trainees.

3.1.4.1 Definitions. As used in this section:

3.1.4.1.1 The term "apprentice" means persons who are indentured and employed in a bona fide apprenticeship program and individually registered by the program sponsor with the Delaware Department of Labor.

3.1.4.1.2 The term "apprenticeship agreement" means a written agreement between an apprentice and either his/her employer or a joint apprenticeship committee which contains the terms and conditions of the employment and training of the apprentice.

3.1.4.1.3 The term "apprenticeship program" means a complete plan of terms and conditions for the employment and training of apprentices.

3.1.4.1.4 The term "Joint apprenticeship committee" means a local committee equally representative of employers and employees which has been

established by a group of employers with a bona fide bargaining agent or agents to direct the training of apprentices with whom it has made agreements.

3.1.4.1.5 The term "SSP Trainee" or "trainee" means a participant in the "Supportive Service Program" mandated by the Federal Highway Administration for federally aided state highway projects.

3.1.4.1.6 The term "registration" means the approval by the Department of Labor of an apprenticeship program or agreement as meeting the basic standards adopted by the Bureau of Apprenticeship and Training, United States Department of Labor. The term "registration" for SSP Trainees means the individual registration of a participant in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

3.1.4.2 Employment of Apprentices and SSP Trainees on State Projects.

3.1.4.2.1 Apprentices and SSP Trainees will be permitted to work as such on State contracts in excess of \$100,000 for new construction or \$15,000 for alteration, repair, renovation, rehabilitation, demolition or reconstruction only when they are registered with the Department of Labor or an approved SSP Training Program.

3.1.4.2.2 The mechanic's rate on all such State contracts is that rate determined by the Department of Labor. The percentage of the mechanic's rate that the registered apprentice or SSP Trainee receives will be the percentage that the apprentice or trainee qualifies for under the terms of the individual's formal Apprenticeship/Trainee agreement.

3.1.4.2.3 Any person employed at an apprentice or trainee wage rate who is not registered as above, shall be paid the wage rate determined by the Department of Labor for the classification of work (s)he actually performed.

3.1.4.2.4 The ratio of apprentices to mechanics on the site of any work covered by 29 Del.C. §6960 in any craft classification may not be greater than the ratio permitted to the contractor for the entire workforce under the registered apprenticeship program. Any apprentice performing work on the job site in excess of the ratio permitted under the registered program must be paid not less than the wage rate that the applicable wage determination specifies for the work (s)he actually performs. Entitlement to mechanic's wages shall be based upon seniority in the apprenticeship program or (in the case of equal seniority) seniority on the job site.

3.1.4.3 Records.

3.1.4.3.1 Every employer who employs an apprentice or SSP trainee under this part must keep the records required by 19 Del.C. Ch.9 and 11, including designation of apprentices or trainees on the

payroll. In addition, every employer who employs apprentices or SSP trainees shall preserve the agreements under which the individuals were employed.

3.1.4.3.2 Every joint apprenticeship committee or SSP Program sponsor shall keep a record of the cumulative amount of work experience gained by the apprentice or trainee.

3.1.4.3.3 Every joint apprenticeship committee shall keep a list of the employers to whom the apprentice was assigned and the period of time (s)he worked for each. Every SSP Program sponsor shall keep a list of the projects to which the trainee was assigned and the period of time (s)he worked on each.

3.1.4.3.4 The records required by paragraphs 3.1.4.3.1, 3.1.4.3.2, and 3.1.4.3.3 of this section shall be maintained and preserved for at least three (3) years from the termination of the apprenticeship or training period. Such records shall be kept safe and accessible at the place or places of employment or at a central location where such records are customarily maintained. All records shall be available at any time for inspection and copying by the Department of Labor.

3.1.5 Working Foremen. 29 Del.C. §6960 does not apply to (and therefore survey data are not collected for) workers whose duties are primarily administrative, executive or clerical, rather than manual. However, working foremen who devote more than twenty (20) percent of their time during a workweek to mechanic or laborer duties are laborers and mechanics for the time so spent and data will be collected for the hours spent as laborers or mechanics.

3.1.6 Helpers. Helper classifications are not recognized by the Department of Labor. All laborers and mechanics are to be paid the appropriate wage rate for the classification of work actually performed, without regard to skill.

3.1.7 Construction Projects. In the wage determination process, the term "project" refers to construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work away from the site of the work and consists of all construction necessary to complete a facility regardless of the number of contracts involved so long as all contracts awarded are closely related in the purpose, time and place. For example, demolition or site clearing work preparatory to construction is considered a part of the project.

3.1.7.1 Character Similar. 29 Del.C. §6960 requires the predetermination of wage rates which are prevailing on projects of a "character similar to the construction work." As a general rule, the Department identifies projects by end use type and classifies them into three major categories:

3.1.7.1.1 Building Construction. Building construction generally is the construction of sheltered enclosures with walk-in access for the purpose of

housing persons, machinery, equipment, or supplies. It includes all construction of such structures, the installation of utilities and the installation of equipment, both above and below grade level as well as incidental grading, utilities and paving. Additionally, such structures need not be "habitable" to be building construction. The installation of heavy machinery and/or equipment shall not change the project's character as a building. Examples: Alterations and additions to nonresidential buildings; Apartment buildings (5 stories and above); Arenas (enclosed); Auditoriums; Automobile parking garages; Banks and financial buildings; Barracks; Churches; Hospitals; Hotels; Industrial buildings; Institutional buildings; Libraries; Mausoleums; Motels; Museums; Nursing and convalescent facilities; Office buildings; outpatient clinics; Passenger and freight terminal buildings; Police stations; Post offices; City halls; civic centers; Commercial buildings; Court houses; Detention facilities; Dormitories; Farm buildings; Fire stations; Power plants; Prefabricated buildings; Remodeling buildings; Renovating buildings; Repairing buildings; Restaurants; Schools; Service stations; Shopping centers; Stores; Subway stations; Theaters; Warehouses; Water and sewage treatment plants (building only).

3.1.7.1.2 Heavy Construction. Heavy projects are those that are not properly classified as either "building" or "highway". Unlike these classifications, heavy construction is not a homogeneous classification. Examples of Heavy construction: Antenna towers; Bridges (major bridges designed for commercial navigation); Breakwaters; Caissons (other than building or highway); Canals; Channels; Channel cut-offs; Chemical complexes or facilities (other than buildings); Cofferdams; Coke ovens; Dams; Demolition (not incidental to construction); Dikes; Docks; Drainage projects; Dredging projects; Electrification projects (outdoor); Flood control projects; Industrial incinerators (other than building); Irrigation projects; Jetties; Kilns; Land drainage (not incidental to other construction); Land leveling (not incidental to other construction); Land reclamation; Levees; Locks, Waterways; oil refineries; Pipe lines; Ponds; Pumping stations (pre-fabricated drop-in units); Railroad construction; Reservoirs; Revetments; Sewage collection and disposal lines; Sewers (sanitary, storm, etc.); Shoreline maintenance; Ski tows; Storage tanks; swimming pools (outdoor); Subways (other than buildings); Tipples; Tunnels; Unsheltered piers and wharves; Viaducts (other than highway); Water mains; Waterway construction; Water supply lines (not incidental to building); Water and sewage treatment plants (other than buildings); Wells.

3.1.7.1.3 Highway Construction. Highway projects include the construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, greenway projects and other similar projects not incidental to building or heavy construction. Examples: Alleys; Base courses; Bituminous

treatments; Bridle paths; Concrete pavement; Curbs; Excavation and embankment (for road construction); Fencing (highway); Grade crossing elimination (overpasses or underpasses); Parking lots; Parkways; Resurfacing streets and highways; Roadbeds; Roadways; Shoulders; Stabilizing courses; Storm sewers incidental to road construction; Street Paving; Guard rails on highway; Highway signs; Highway bridges (overpasses; underpasses; grade separation); Medians; Surface courses; Taxiways; Trails.

3.1.7.1.4 Multiple Categories. In some cases a project includes construction items that in themselves encompass different categories of construction. Generally, a project is considered mixed and a "multiple schedule" used if the construction items are substantial in relation to project cost, i.e. more than twenty (20) percent. Only one schedule is used if construction items are "incidental" in function to the overall character of a project (e.g., paving of parking lots or an access road on a building project), and if there is not a substantial amount of construction in the second category.

3.1.7.2 Site of Work. A basic characteristic of the construction industry is the continual shift in the site of employment. 29 Del.C. §6960 provides that prevailing wages are to be paid to "...all mechanics and laborers employed directly upon the site of the work..." (emphasis added). The site of the work is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed.

3.1.8 Prevailing Wage Rates. Every contract and the specifications for every contract to which section 6960 applies are required to contain a provision stating the minimum wages to be paid various classes of laborers and mechanics. These rates are to be based upon the wages that the Department of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the county in which the work is to be performed, as reported in the Department's annual prevailing wage survey.

The prevailing wage shall be the wage paid to a majority of employees performing similar work as reported in the Department's annual prevailing wage survey or, in the absence of a majority, the weighted average wage paid to all employees reported.

3.1.9 Wages. The term "wages" means the basic hourly rate of pay plus fringe benefits as defined below.

3.1.10 Fringe Benefits. Fringe benefits may be considered in determining whether an employer has met his/her prevailing wage obligations. As a general rule, any fringe benefit may be considered as long as the employer is not legally required to provide it. Therefore, benefits such as health, welfare or retirement benefits, vacation, holiday pay or sick leave pay could be considered fringe benefits. Employer payments for unemployment insurance, workers' compensation, FICA, etc. (which are required by law) would

not be considered fringe benefits.

In order to be considered a valid fringe benefit, payments must be made either in cash, or contributed to an irrevocable escrow account at least once each month. "Irrevocable" means that the benefit may not be forfeited. However, a benefit plan can be considered by the Department provided that payments to the plan are made irrevocably by the employer, even though certain employees may forfeit their individual rights to the benefits under certain prescribed conditions. Thus, if payments are made by the employer, and no return of those payments is possible, the plan would be acceptable, even though individual employees might not receive the benefits under certain situations. Benefits forfeited by such employees remain in an escrow account for the use of the other employees.

The actual cost of the benefit to the employer is the basis for evaluating the value of the fringe benefit. Administration costs are not considered fringe benefits.

The cost of the benefits must be apportioned between employment on both public and private projects. Thus, the total value of the benefit would be divided by the total amount of time worked. This will result in benefit per unit of time which would be equally applicable to public and private employment projects. Example: an employee works two weeks (80 hours) on a public project and two weeks (80 hours) on a private project. The employer pays \$160 for the employee's health insurance for the month. The value of the benefit is \$1.00 per hour. The employer is not permitted to apply the entire premium to the public project alone.

3.1.11 Peak Week. In determining prevailing wages, the Department utilizes a "peak week" survey concept to ensure that wage and fringe benefit data obtained from employers reflects for each classification, the payroll period during which the greatest number of workers in each classification are used on a project. The survey solicits the number of employees and wages paid at each given rate during the peak week. The contractor or reporting organization selects the week (between July 1 to December 31 of the previous year) during which the greatest number of each classification of laborers and mechanics was working. Peak weeks may be different for each classification of worker.

3.1.12 Wage Determinations. A "wage determination" is the listing of wages (including fringe benefits) for each classification of laborers and mechanics, which the Administrator has determined to be prevailing in a given county and type of construction. Wage determinations are issued annually.

3.1.13 Maintenance Work. To "maintain" means to preserve or keep in an existing state or condition to prevent a decline, lapse, or cessation from that state or condition. Wages paid to workers performing maintenance

work shall not be used in determining prevailing wage rates.

3.1.14 Area. The term "area" in determining wage rates under 29 Del.C. §6960 shall mean the county of the State in which the work is to be performed. The term "area" in determining classifications of workers under 29 Del.C. §6960 shall mean the State of Delaware.

3.1.15 Secretary. "Secretary" means the Secretary of Labor for the State of Delaware.

3.1.16 Administrator. "Administrator" means the Administrator of the Office of Labor Law Enforcement for the Delaware Department of Labor, Division of Industrial Affairs.

3.1.17 Department. "Department" means the Delaware Department of Labor.

See 1 DE Reg. 519 (11/1/97)

See 4 DE Reg. 1186 (1/1/01)

See 4 DE Reg. 205 (7/1/01)

6.0 Issuing Wage Determinations.

6.1 Publication of Preliminary Determination.

On or before February 15th of each year, the Department shall publish a "Preliminary Determination of Prevailing Wage Rates." In the event that February 15th falls on a Saturday, Sunday, or legal holiday, the Department shall issue the preliminary results on the next Department business day following February 15th.

6.2 Appeals.

From February 15th to February 25th, the Administrator of the Office of Labor Law Enforcement will consider protests and inquiries relating to the preliminary results. An interested person seeking review or reconsideration of a wage determination must present a request in writing accompanied by a statement with any supporting data or other pertinent information.

Requests for reconsideration must be substantive and specific in order to be considered by the Department. For example: A request stating that, "the highway rates don't look right", would not be considered substantive or specific. However, a request stating that, "residential rates appear to have been erroneously included for carpenters in New Castle County Building Construction" would be considered substantive and specific.

From February 25th to March 1st, the Department will attempt to gather information necessary to resolve objections and requests for reconsideration. However, no appeals, objections, or requests will be considered if received by the Department after the February 25th deadline. The Department will respond in writing to all interested persons who submit a written request for review.

An appeal from the Administrator's decision must be made in writing and received by the Secretary of Labor within five calendar days from the date of the postmark on the Administrator's decision. The Secretary or his/her designee shall render a final decision in writing.

6.3 Issuance of Determination

On or before March 15th of each year, the Department shall publish its annual "Prevailing Wage Determination." The Determination shall be valid for a period of one year or until subsequent rates or amendments are issued by the Department.

Public agencies (covered by the provisions of 29 Del.C. §6960) are required to use the rates which are in effect on the date of the publication of specifications for a given project. "Date of publication" means the date on which the specifications are made available to interested persons (as specified in the published bid notice). In the event that a contract is not executed within one hundred and twenty (120) days from the earliest date the specifications were published, the rates in effect at the time of the execution of the contract shall be the applicable rates for the project.

6.4 Post Determination Actions. Wage determinations will be modified only for the purpose of correcting errors. Determinations will not be modified to include survey data received after the close of the survey period.

6.4.1 Amendment to Correct Errors of Inadvertence. Amendments may be issued to correct inadvertent errors in the written text of a wage determination. The sole purpose is to correct wage schedules so that the wage determination will accurately and fully reflect the actual rates prevailing in the locality at the time the wage determination was issued. Such amendments (which may be issued at any time) are used to correct errors due to transposition of rates and other clerical mistakes made in processing the schedule; they are not used to correct errors in judgment. Contracts which have already been awarded will not be affected by such amendments. Amendments issued more than ten (10) days prior to a bid opening must be used. Amendments issued less than ten (10) days prior to a bid opening may be disregarded.

6.4.2 Amendment to Correct Errors in Survey Data. Amendments which affect the validity of a wage determination may be issued to correct errors in rates resulting from erroneous information submitted by survey participants.

When the Department of Labor is notified in writing that a survey participant has submitted erroneous data (with regard to wages, fringe benefits, characterization of project, classification of workers, or county in which the work was performed), the Department shall determine the validity of the data. Corrections, if warranted, shall be made in the form of amended determinations at the end of each calendar quarter (beginning with the date the wage determination was issued). Contracts which have already been awarded will not be affected by such amendments. Amendments issued more than ten (10) days prior to a bid opening must be used. Amendments issued less than ten days prior to a bid opening may be disregarded.

6.4.3 Incorrect Wage Determinations: Before Contract Award.

If notification is received from the Department of Labor any time prior to the contract award that the bid documents contain the wrong wage schedule, such schedule or wage determination shall no longer be valid and may not be used - without regard to whether the bid opening has occurred.

If the bid documents contain no wage schedule, it is the contractor's (or subcontractor's) responsibility to contact the Department of Labor for the correct wage schedule. Such requests must be in writing. Responses to such requests will be in writing. Any contractor or subcontractor found using an incorrect wage schedule will be required to pay the correct wages based upon the proper classification of work as determined by the Department of Labor.

6.4.4 Lack of Valid Wage Determination: After Contract Award. If a contract is awarded without a wage determination or awarded with an incorrect wage determination, the contractor is responsible for the payment of the appropriate prevailing wage rates as determined by the Department of Labor.

6.4.5 Additional Classifications. Any class of laborers or mechanics which is not listed in the applicable wage determination but which is to be employed under the contract is to be classified by the Department of Labor in accordance with the procedures set forth in Part III, Section C, of these regulations.

6.4.6 Determination of Wages for Classifications for Which No Rates Are Published. Whenever a public project requires the services of a laborer or mechanic for which no rate has been published, the Department shall be notified in writing and shall determine the worker classification (from among the 246 classifications recognized by the Department of Labor) and the rate to be paid. The rate shall be determined as follows:

6.4.6.1 Using "Building Construction" rates as the baseline rate in each county, the Department of Labor will determine the relationship between the "Building Construction" rates and the rates of the type of construction for which the rate is sought. To determine the relationship, (which is to be expressed as a percentage), the Department will use only those rates which were determined by data received in the relevant survey.

6.4.6.2 The Department will compare only those classifications for which corresponding rates were determined.

6.4.6.3 The total of the corresponding rates will be determined for each type of construction. The Heavy or Highway total will be divided into the Building rate to find the percentage of the Heavy or Highway rate to the Building rate.

6.4.6.4 The Department of Labor will

multiply the Building rate for the requested classification of worker by the percentage determined in "c" to establish the applicable prevailing wage rate.

Hypothetical example:

A plumber's rate is needed for a New Castle County project. The Department of Labor has not published a rate for this classification.

The Department of Labor will determine the relationship between New Castle County Highway rates and Building rates, comparing only corresponding rates which were actually determined by the relevant survey (rates carried forward from previous years due to lack of sufficient data are not to be used).

N.C.C. Building	N.C.C. Highway	
Bricklayers	\$19.65	\$12.29
Carpenters	23.37	21.69
Cement Finishers	23.55	15.52
Laborers	13.62	10.60
Power Equipment Operator	22.94	15.77
Truck Drivers	15.15	13.75
	\$118.28	\$89.62
	$\$89.62 \div 118.28 = 75.77\%$	

The plumber's rate for New Castle County Building is \$26.54. $\$26.54 \times 75.77\% = \20.11

The plumber's rate for New Castle County Highway = \$20.11

The same method can be used between corresponding types of construction when the Building construction rates do not contain a rate for the requested classification of worker; i.e., Heavy construction rates in Sussex County can be compared with Heavy construction rates in New Castle.

See 1 DE Reg. 519 (11/1/97)

See 5 DE Reg. 205 (7/1/01)

* PLEASE NOTE: AS THE REST OF THE SECTIONS WERE NOT AMENDED THEY ARE NOT BEING PUBLISHED.

DEPARTMENT OF SAFETY & HOMELAND SECURITY

Statutory Authority: 21 Delaware Code,
Section 302, 2733(a)(4)
(21 Del.C. §§302, 2733(a)(4))

NOTICE

Pursuant to Section 4 of House Bill 43 as amended by Senate Amendment No. 1 (74 Del. Laws c. 90) and 29 Del.C. §10113(5) the Secretary of the Department of Safety and Homeland Security promulgates a regulation "to post

credit on the driving record of those individuals convicted of specified moving traffic violations in which all passengers of the vehicle are wearing seat belts at the time of the arrest."

Amend Policy Regulation Number 45, Part IV, paragraph 1, by adding a new section (d) to make it consistent with the changes enacted by House Bill 43:

(d) A motor vehicle licensee shall have a one point credit entered on their driving record under the Division of Motor Vehicle Point System if a driver is convicted of a violation of 21 Del. C. § 4176(a) or 21 Del. C. § 4176(b) and at the time of arrest for that conviction all passengers including the driver of the vehicle were wearing seat belts. This credit shall remain on a driving record for a 1-year period. If a motor vehicle licensee has more than one conviction of 21 Del. C. § 4176(a) or 21 Del. C. § 4176(b) during this one year period, where at the time of arrest all passengers including the driver were wearing a seatbelt, the motor vehicle licensee shall not receive an additional one point credit on their driving record for each conviction. However, the one point credit on the driving record shall be extended for one year from the date of the last conviction.

Amend Policy Regulation Number 45, Part IV, paragraph 1(c) to add the designation "and (d)" following the designation (b) in the first sentence.

POLICY REGULATION NUMBER 45 CONCERNING Driver Improvement Problem Driver Program

I. AUTHORITY

The authority to promulgate this regulation is 21 Del.C. Section 302, 21 Del.C. Section 2733(a)(4) and 29 Del.C. Section 10115.

II. PURPOSE

The Highway Safety Program Standard for Driver Licensing, as adopted by the National Highway Traffic Safety Administration, requires each state to have a Driver Improvement Program to identify problem drivers and take actions to reduce the frequency of their involvement in traffic accidents and violations. The Driver Improvement Problem Driver Program is designed to identify problem drivers, to change the problem driver's behavior by providing information and training opportunities and, if necessary, to progressively impose sanctions as more convictions/points are accumulated on the driving record. The goal of the program is crash prevention. The steps in the program are geared to the seriousness of the driving record.

The Division of Motor Vehicles' Driver Improvement staff uses these policy guidelines to initiate program requirements and impose license suspensions.

III. APPLICABILITY

This policy regulation interprets the following sections found in Title 21: Section 2722, Section 2733(b), (e), (j), Section 2755, Section 2756, Section 4166(d), (j), Section 4169, Section 4175, 4175a, Section 4172(a), (b), Section 4172A, Section 6702, and Section 8101.

IV. SUBSTANCE OF POLICY

1. Point System. The Division of Motor Vehicles shall identify problem drivers, educate and impose driver license sanctions based upon a point system. Violations will be assessed points based up the following:

Violations

Speeding 1-9 miles per hour over posted limit	2
Speeding 10-14 miles per hour over posted limit	4
Speeding 15-19 miles per hour over posted limit	5
Speeding 20 or more miles per hour over posted limit	5*
*May result in additional actions including suspension	
Passing a Stopped School Bus	6
Reckless Driving	6
Aggressive Driving	6
Disregarding Stop Sign or Red Light	3
Moving violation contained in Chapters 27, 41 or 42 of Title 21	2

Point Credits

a. A licensee who is convicted of a speeding violation from 1 – 14 miles per hour over the posted speed limit will not be assessed points for the first violation within any three (3) year period provided the ticket is paid through the voluntary assessment center.

b. Completion of the Defensive Driving Course (DDC), recognized by the Division of Motor Vehicles and approved by the Insurance Commissioner's Office will be entered on the licensee's driving record. The licensee shall have a 3-point credit entered on their driving record following satisfactory completion of the course. The licensee is responsible for enrollment scheduling and the payment of all fees associated with this course. DDC credit is effective on the date of course completion. DDC credit will not be applied retroactively once an action item is in effect.

c. The point credits listed in paragraph (b) and (d) shall not be considered when determining the eligibility of a

school bus operator. To determine the point level for a school bus operator or applicant, use full point value, not calculated points, for the previous 3-year period.

(d) A motor vehicle licensee shall have a one point credit entered on their driving record under the Division of Motor Vehicle Point System if a driver is convicted of a violation of 21 Del. C. § 4176(a) or 21 Del. C. § 4176(b) and at the time of arrest for that conviction all passengers including the driver of the vehicle were wearing seat belts. This credit shall remain on a driving record for a 1-year period. If a motor vehicle licensee has more than one conviction of 21 Del. C. § 4176(a) or 21 Del. C. § 4176(b) during this one year period, where at the time of arrest all passengers including the driver were wearing a seatbelt, the motor vehicle licensee shall not receive an additional one point credit on their driving record for each conviction. However, the one point credit on the driving record shall be extended for one year from the date of the last conviction.

2. Driver Improvement Problem Driver Program. A driver enters the Driver Improvement Problem Driver Program when they accumulate 8 calculated points based upon their driving record for the previous two years. At that time an advisory letter is sent to the driver. Studies show that early intervention with inexpensive actions reduce accidents and improve driving behavior.

Convictions received from other jurisdictions are posted to the Delaware driving record. The points will be assessed on these violations as though the offense was committed in this State in accordance with the Driver's License Compact.

"The Aggressive Driving Committee, in accordance with Policy Regulation 90, must certify all behavior modification/attitudinal driving courses. The committee has the authority to designate alternative courses to comply with the requirements of Policy Regulation 45."

The actions listed below occur as calculated points are accumulated during any 24-month period. The 24-month period is computed based upon the date of the offense and "slides" forward based upon that date. The driving record will record the actions taken. The Driver Improvement Section will conduct a record review at each step in the process and schedule interviews as necessary. The action items may be processed automatically without an interview. When the calculated points fall between the threshold limits, use the action items specified in the lower level. (Example: If the driver accumulates 9 points before any action is taken, send out an advisory letter as required when they accumulate 8 points.) If the driver accumulates 12 points before the advisory letter is sent, use the action item listed for drivers with 12 points.

Calculated Points	<u>Action Items</u>
8	Division of Motor Vehicles advisory

letter is mailed to the driver. DDC credits will not impact the issuance of an advisory letter.

- 12 Driver must complete an approved “behavior modification/attitudinal driving course” within 90 days after notification (unless extended by the Division). Failure to comply or upon preference of the driver, a mandatory 2 month suspension will be imposed in lieu of the program.
- 14 Mandatory 4 month license suspension. To become eligible for reinstatement, the driver must complete or have completed a behavior modification / attitudinal driving course” within the previous 2 years.
- 16 Mandatory 6 month license suspension. To become eligible for reinstatement, the driver must complete or have completed a “behavior modification/attitudinal driving course” within the previous 2 years.
- 18 Mandatory 8 month license suspension. To become eligible for reinstatement, the driver must complete or have completed a “behavior modification/attitudinal driving course” within the previous 2 years.
- 20 Mandatory 10 month license suspension. To become eligible for reinstatement, the driver must complete or have completed a “behavior modification/attitudinal driving course” within the previous 2 years.
- 22 Mandatory 12 month license suspension. To become eligible for reinstatement, the driver must complete or have completed a “behavior modification/attitudinal driving course” within the previous 2 years.

3. Serious Speeding Violations. The Division of Motor Vehicles considers all speeding violations 20 miles per hour (MPH) or more above the posted speed limit to be a serious speeding violation that identifies the driver as a problem driver. The following actions will be taken:

a. When a driver is convicted of a single speeding violation for driving 20-24 MPH over the posted limit and accumulated less than 12 calculated points, the Driver

Improvement staff will review their driving record and send the driver an advisory letter.

b. When convicted of driving 25 MPH over the posted limit, the driver’s license will be suspended for a mandatory period of 1 month. The suspension period will be increased by one month for each additional 5 MPH over the initial 25 MPH threshold. Note: The driver may elect to attend the “behavior modification/attitudinal driving course” in lieu of a license suspension if they were driving 25-29 MPH over the posted limit.

c. Anyone convicted of driving 50 MPH or more over the posted speed or driving 100 MPH or more shall be suspended for a period of one year. The driver is not eligible for an occupational license during the first three months of the suspension period.

4. Additional Sanctions Imposed by Statue or Policy:

a. Passing a stopped school bus in violation of 21 **Del.C.** Section 4166(d). For the first offense, one-month driver’s license suspension. For the second offense, six months suspension. For the third or more offenses, suspend the driver’s license for twelve months.

b. Driving in violation of a license restriction per 21 **Del.C.** Section 2722. For the first offense, send an advisory letter. Suspend the driver’s license for one month for subsequent offenses.

c. Speed exhibition violation per 21 **Del.C.** Section 4172(a)(d). One-month suspension for the first offense and one-year driver’s license suspension for subsequent offenses.

d. Spinning wheels violation per 21 **Del.C.** Section 4172(b). Send an advisory letter for the first offense. Suspend the driver’s license for one year for second and subsequent offenses.

e. Malicious mischief violations per 21 **Del.C.** Section 4172A. One-month driver’s license suspension for the first offense. One-year suspension for the second and subsequent offenses.

f. Knowingly permit an unlicensed person to operate a vehicle violation per 21 **Del. C.** Section 2755. Send an advisory letter for the first offense. Three-month driver’s license suspension for the second and subsequent offenses.

g. Driving without consent of the owner violation per 21 **Del.C.** Section 6702. One month driver’s license suspension for the first offense and three month’s suspension for the second and subsequent offenses.

h. Driving during suspension or revocation violations per 21 **Del.C.** Section 2756. A conviction for driving during suspension or revocation shall extend the period of the suspension or revocation for a like period. No driving authority will be permitted during the balance of the initial suspension or revocation period and the extended period. Any driving authority previously issued by the Division must be surrendered.

Note: For violations to be considered a subsequent offense, the violations must be under the same subsection and cannot be a combination of violations such as Sections 4172(a) and Section 4172(b). To be considered a second or subsequent offense, the convictions must be within the previous three years.

5. Occupational License. In the event of a suspension of a driver's license pursuant to this policy regulation, the Division may issue an occupational license during the period of suspension if the applicant stipulates the suspension has created an extreme hardship. However, no such occupational license shall be issued if the applicant has two previous suspensions under the policy regulation within the previous 3 years, or if the suspension is for physical and/or mental disability, or if the license is revoked for convictions of any crimes specified in Section 2732 of Title 21 even though it causes an extreme hardship. Any driver convicted of operating a motor vehicle in violation of the restrictions imposed by the occupational license shall immediately extend the suspension period for an additional like period and shall direct the driver to surrender their occupational license. No more than one occupational license under this policy shall be issued within any 12-month period.

Drivers suspended under this program are ineligible for an occupational license for one month. If the calculated point level reaches 15 or more points in a 24-month period, an occupational license will not be issued until the calculated points are less than 15 points.

6. Calculated Points. For the purposes of this Policy Regulation, calculated points are credited at full point value for the first twelve months from the date of the violation. After the initial 12 months have expired, the calculated points will be credited at (1/2) point value for the next 12 months. The Division will only take action based upon convictions accumulated within the 24-month period following the date of the offense.

7. Moving Violations. Those violations contained in 21 Del.C. Chapters 27, Chapter 41 and Chapter 42, excluding those violations that require mandatory suspension or revocation actions. Multiple violations occurring within a 24-hour period shall be considered individual violations for the purposes of this policy regulation.

8. Advisory Letter. The Division will send an advisory letter to those drivers who accumulate 8 calculated points or when convicted of speeding 20-24 MPH over the posted limit. The purpose of the advisory letter is to express our concern about the operator's driving habits and their impact upon highway safety. The letter will inform the driver about the Driver Improvement Problem Driver Program. An advisory letter may be sent for both point accumulations and excessive speed violations.

9. Record Review. The goal of the record review is to assess any problems the driver may have and require a

course of action. The record review may result in a driver improvement interview/counseling session, medical or vision examination, knowledge and/or skills testing, restricted license, license suspension or the surrender of a license.

10. Interviews. The Driver Improvement staff may schedule the driver to attend an interview based upon the record review. The licensee may request an interview with a Driver Improvement Officer or staff member when notified of pending action against them. The following issues are open to discussion:

The driver may request an additional 90 days to complete a mandatory attendance at the "behavior modification/attitudinal driving course" or they may request a license suspension in lieu of attending the program. Any further delays in completing the program must be approved by the Driver Improvement Manager or the Chief of Driver Services.

The driver can present evidence that the convictions on their driving record belong to another driver. If proven, the convictions will be removed.

If the violation on record is under appeal by the court, the driver must submit a copy of the appeal bond and the violation will be removed from the driving record. If applicable, the suspension action resulting from this violation be removed from the driving record.

The Driver Improvement staff may require the driver to complete a medical or vision examination, pass a knowledge or skill test or restrict their driving privileges based upon the results of the interview.

11. This policy regulation shall have no effect on the revocation actions, medical qualifications or requirements, or suspension action required by statute unrelated to this policy.

V. SEVERABILITY

If any part of this Rule is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portion shall be severed and the remaining portions of this rule shall remain in full force and effect under Delaware law.

VI. EFFECTIVE DATE

The following regulations shall be effective 10 days from the date the order is signed and it is published in its final form in the Register of Regulations in accordance with 29 Del.C. Section 10118(e).

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

**EXECUTIVE ORDER
NUMBER FORTY-SEVEN**

**RE: ESTABLISHING THE DELAWARE
P-20 COUNCIL**

WHEREAS, Delaware has benefited from many partnerships among the various components of the public education system and those benefits have served the children of Delaware well; and

WHEREAS, a P-20 Council is a means to more efficiently and effectively connect levels of public education – preschool through graduate school; and

WHEREAS, Delaware children would benefit by more closely coordinated transitions from early care programs to pre-school, from pre-school to elementary school, between the several transitions in K-12 education, and from high school to higher education; and

WHEREAS, evidence suggests that too many students enter college from high school requiring remedial course work at the college level; and

WHEREAS, Delaware data shows critical gaps exist between the academic performance of majority and minority students on the Delaware State Testing Program that must be removed in order for all students to become successful adults; and

WHEREAS, research clearly shows that teacher quality is highly correlated to student success; and
WHEREAS, critical shortages are projected for the supply of teachers and school administrators in the coming decade; and

WHEREAS, P-20 organizations in other states have proved instrumental in creating more integrated, seamless education systems that enable students to start school ready to learn, receive challenging instruction throughout their careers and graduate from high school prepared for college or work; and

WHEREAS, a P-20 Council can advance vertical integration – students, parents, teachers and administrators develop common expectations for students at successive levels of the education system through the post-secondary level; and

WHEREAS, the strengths of a P-20 system are

inclusion, alignment of effort, support for standards and assessment, logical progressions for learners, reduced need for remediation, removal of artificial barriers and opening the door to building on previously successful partnerships and furthering such partnerships on behalf of the State,

I, RUTH ANN MINNER, GOVERNOR OF THE STATE OF DELAWARE, HEREBY ORDER ON THIS 28TH DAY OF AUGUST, 2003:

1. The Delaware P-20 Council (the “Council”) is hereby established.

2. The goals of the Council are to use data to:

- a. explore the potential of expansion of early learning for children ages 3 to 5;
- b. Explore ways to improve the service and quality of service for children from birth through pre-school;
- c. Examine and make recommendations for successfully transitioning students from one level to another throughout their education, including improved readiness for college success;
- d. Recommend strategies for closing the achievement gaps that currently exist between majority and minority students as well as low- and high-income students; and
- e. Recommend upgrading educator preparation and professional development which is highly correlated to student success.

3. The Council shall have the following standing members, or their designees:

- a. The Governor;
- b. The President of the University of Delaware;
- c. The President of Delaware State University;
- d. The President of Delaware Technical and Community College;
- e. The President of Wesley College;
- f. The President of Wilmington College;
- g. The Chair of the Business Roundtable Education Committee;
- h. The Executive Director of the Delaware State Chamber of Commerce;
- i. The Chair of the Delaware Early Care and Education Council;
- j. The Chair of the House of Representatives Education Committee;
- k. The Chair of the Senate Education Committee;
- l. The President of the State Board of Education;

and

- m. The Secretary of Education.

4. The President of the State Board of Education and

the Secretary of Education shall co-chair the Council.

5. The Council shall establish subcommittees to assist it in meeting its responsibilities. Such subcommittees shall include representatives of other persons and groups with critical interests in the outcome of the Council's work, including representatives of teachers, school administrators, local school boards, and parents. The Council shall establish bylaws to determine membership on its subcommittees.

6. The Council shall report semi-annually to the Governor on the status of its work.

Ruth Ann Minner,
Governor

ATTEST:
Harriet Smith Windsor
Secretary of State

DEPARTMENT OF INSURANCE**Domestic/Foreign Insurers Bulletin No. 15****Insurance Fraud Reporting Form**

Issued: September 3, 2003

The National Association of Insurance Commissioners has adopted a Model Uniform Suspected Insurance Fraud Reporting Form. The Delaware Department of Insurance has adopted this form for reporting suspected insurance fraud in Delaware.

The purpose of this bulletin is to give notice to all licensees that from this point forward, all insurer reporting fraud or suspected fraud to the Department's Insurance Fraud Prevention Bureau as required in 18 DEL. C. §2408, Duties of Insurers, should use this form.

The Insurance Fraud Prevention Bureau will also accept referrals on line via the National Insurance Crime Bureau's electronic reporting format.

This form can be located on the Department's website with its associated link at <http://www.state.de.us/inscom/> or <http://www.state.de.us/inscom/FRAUD.htm> for direct access. This form can be completed on-line and electronically submitted or mailed to the Department of Insurance.

Donna Lee H. Williams
Insurance Commissioner

September 3, 2003

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF MEDICAL PRACTICE
RESPIRATORY CARE PRACTICE
ADVISORY COUNCIL**

PUBLIC NOTICE

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Sections 1770B(e)(5), the Respiratory Care Practice Advisory Council of the Delaware Board of Medical Practice proposes to revise its Rules and Regulations. The proposed revision adds a new section to the Rules and Regulation to address and regulate the administration of sedation and analgesia by Respiratory Care Practitioners.

A public hearing will be held on the proposed Rules and Regulations on October 21, 2003 at 1:00 p.m., in the Second Floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Gayle Franzolino at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Gayle Franzolino at the above address or by calling her at (302) 744-4520.

BOARD OF PROFESSIONAL LAND SURVEYORS

PUBLIC NOTICE

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 2706, the Delaware Board of Professional Land Surveyors proposes to revise its Rules and Regulations. The proposed revision adds a new section to the Rules and Regulation to clarify the Minimum Standards issues relating to Mortgage Inspection Plans.

A public hearing will be held on the proposed Rules and Regulations on November 20, 2003 at 1:00 p.m., in the Second Floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Celine Walton at the above address. The final date to submit written comments shall be at the above scheduled

public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Celine Walton at the above address or by calling her at (302) 744-4520.

**DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION**

The Commission issues the proposed rule amendments pursuant to 3 **Del.C.** §10103 and 29 **Del.C.** §10115. The Commission will accept written comments from October 1, 2003 through October 30, 2003. The Commission will hold a public hearing on the proposed rule amendments on October 22, 2003 at 10:15 a.m. at Delaware Park, Horsemen's Office, 777 Delaware Park Boulevard, Wilmington, DE. Written comments should be submitted to John Wayne, Administrator of Racing, 2320 S. DuPont Highway, Dover, DE 19901.

The Commission proposes to amend Rule 6.02 to enact a new subsection (e) providing that all owners must first secure the services of a licensed trainer before entering a horse, and to amend Rule 15.12 to enact a new subsection c. prohibiting Intermittent Hypoxic Treatment by External Device.

**PUBLIC EMPLOYMENT RELATIONS
BOARD**

PUBLIC NOTICE

Please take notice, pursuant to 29 **Del.C.** Ch. 101 and 14 **Del.C.** Ch. 40, the Delaware Public Employment Relations Board proposes the following amendments to the Delaware Public Employment Relations Board's Rules and Regulations.

A public hearing will be held on these proposed amendments to the Board's Rules and Regulations on Wednesday, November 12, 2003 at 9:00 a.m. in the Public Employment Relations Board Library, 4th Floor, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware.

The purpose of this hearing will be to receive public comments on these proposed amendments to the Board's Rules and Regulations in order that the Board may vote to adopt, amend or reject said amendments at its November 12, 2003 meeting.

The Board will receive and consider input in writing from any person regarding the proposed amendments to the

Board's Rules and Regulations. Written comments should be submitted to the Board up through and including Thursday, October 30, 2003 by 4:30 p.m. to Deborah Murray-Sheppard, Principal Assistant, at the Public Employment Relations Board, 4th Floor, Carvel State Office Building, 820 N. French St., Wilmington, DE 19801. For copies of the proposed amendments to the Board's Rules and Regulations, please contact Ms. Murray-Sheppard at the above address or at (302) 577-5070.

STATE BOARD OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, October 16, 2003 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF INSURANCE

NOTICE OF PUBLIC HEARING

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Thursday, October 30, 2003, at 10:00 a.m. in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to consider Proposed Regulation 1213 relating to the **RECOGNITION OF THE 2001 CSO MORTALITY TABLE FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES AND NONFORFEITURE BENEFITS.**

The purpose for promulgating Regulation 1213 is to utilize newly revised mortality tables that apply to the surrender values of life insurance policies for both men and women and taking into account the effect of smoking on mortality subsequent to January 1, 2004. The regulation updates tables that have been in use since 1984. Notice is also given that the proposed regulation contains certain statutory and regulatory references. Certain technical corrections may need to be considered to assure the accuracy of those references between the date of this notice and the date upon which the final regulation is adopted.

The hearing will be conducted in accordance with 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 must be received by the Department of Insurance no later than 4:30 p.m., Friday, October 31, 2003, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department

of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, telephone 302.739.4251.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL DIVISION OF AIR AND WASTE MANAGEMENT AIR QUALITY MANAGEMENT SECTION

PUBLIC NOTICE SAN # 2003-11

TITLE OF THE REGULATION:

Regulation No. 30, Section 2, "Definitions"

BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Department proposes to revise Regulation No. 30, Section 2, to amend the definition of "Major Source" by removing the phrase "but only with respect to those air pollutants that have been regulated for that category." This will require all fugitive emissions to be included in major source determinations for sources subject to federal New Source Performance Standards (NSPSs) or the National Emission Standards for Hazardous Air Pollutants (NESHAPs), not just the pollutants regulated by the particular NSPS or NESHAP. This action is necessary because the current definition is less stringent than the corresponding provisions of 40 CFR Part 70 which went into effect on November 27, 2001.

NOTICE OF PUBLIC COMMENT:

The public comment period for this proposed regulation will extend through Tuesday, October 28, 2003. Interested parties may submit comments in writing during this period to: Deanna Morozowich, Air Quality Management Section, 156 South State Street, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held Thursday, October 23, 2003 beginning at 6:00 pm in the Priscilla Building Conference Room, 156 State Street, Dover, Delaware.

PREPARED BY:

Deanna Morozowich (302)739-4791, August 25, 2003

DIVISION OF WATER RESOURCES

Statutory Authority: 7 Delaware Code,
Section 6010 (7 Del.C. 6010)

REGISTER NOTICE**Brief Synopsis of the Subject, Substance and Issues:**

The amended Surface Water Quality Standards presented here are the result of a comprehensive review of the Standards that started with SAN #99-12 in 1999. A hearing seeking public comment was held September 1, 1999. Department staff started a review of the comments received and based on those comments, a review of factors affecting human health criteria, EPA documents and staff recommendations, a draft markup of proposed amended Water Quality Standards was prepared in advance of a workshop held August 14th, 2003 at the DNREC auditorium. Department staff kept interested parties abreast of developments and the workshop using a combination of e-mail notices, internet postings of documents and relevant links, public notices in two newspapers of general circulation and a press release. Preceding and during the workshop, additional written comments were requested, received and considered for inclusion in the proposed Standards presented here. To ensure compliance with the Clean Water Act and satisfy EPA requirements, the State of Delaware, in accordance with 7 Del.C. §6010, will amend the State of Delaware Surface Water Quality Standards (as amended August 11, 1999).

Notice Of Public Comment:

The Department of Natural Resources and Environmental Control, Division of Water Resources, will conduct a public hearing on November 13, 2003 beginning at 3 p.m., in the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware, to hear testimony and receive comments on the proposed amendments to the **State of Delaware Surface Water Quality Standards**, (as amended August 11, 1999).

Additional information, copies of the regulation and supporting documents are available on the internet at this URL: <http://www.dnrec.state.de.us/DNREC2000/Divisions/Water/WaterQuality/Standards.htm>. To request a copy of the proposed revisions to the regulations please contact David Wolanski at the Watershed Assessment Section at (302) 739-4590.

The procedures for public hearings are established in 7 Del.C. §6006 and 29 Del.C. §10117. Inquiries regarding the public hearing should be directed to R. Robert Thompson at (302) 739-4403. Statements and testimony may be presented orally or in written form at the hearing. It is requested that those interested in presenting statements register in advance by mail. The deadline for inclusion of written comments in

the hearing record will be announced at the time of the hearing. Written statements may be presented prior to the hearing and should be addressed to: R. Robert Thompson, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901.

**DEPARTMENT OF SERVICES FOR
CHILDREN, YOUTH AND THEIR
FAMILIES****DIVISION OF FAMILY SERVICES****PUBLIC NOTICE**

The Delaware Department of Services for Children, Youth and Their Families, Division of Family Services is requesting public comment on revisions to the "Regulations Pursuant to 16 Del.C. Ch. 9 for Designation of Substantiated Acts of Abuse or Neglect to Child Protection Levels and for Classifying Unsubstantiated Cases of Abuse or Neglect in the Division of Family Services' Internal Information System." Anyone wishing to submit written comments should submit such comments by October 31, 2003 to: Linda M. Shannon, Program Manager, Intake & Investigation, Division of Family Services, 1825 Faulkland Road, Wilmington, DE 19805. Fax comments to: (302) 633-2652.

Legislation regarding the Child Protection Registry was signed into law by Governor Ruth Ann Minner on July 22, 2002. The registry is a database of information about persons the Division of Family Services (DFS) has substantiated to have committed child abuse or neglect. The statute assigns individuals who are substantiated for child abuse or neglect to one of four levels for a specific number of years. The levels also address who may be reported out to health care, child care, and public school employers for employment purposes. The statute requires the DFS to give notice of its intention to substantiate a person for abuse or neglect and enter the person on the Child Protection Registry. If the person timely responds to the notice and requests a hearing in Family Court, DFS must file a Petition for Substantiation in the Family Court, which holds a hearing and makes the final decision on whether the person abused or neglected a child, and, if so, the designated Child Protection Level for the incident of abuse or neglect. Finally, the Division of Family Services classifies unsubstantiated cases on its internal system utilizing two categories: Unsubstantiated – No Evidence and Unsubstantiated with Concern. The proposed revisions are intended to clarify the current definitions of acts of abuse and neglect. In addition, new definitions have been added to provide a broader differentiation between the levels.

**DELAWARE RIVER BASIN
COMMISSION
25 STATE POLICE DRIVE
P.O. BOX 7360
WEST TRENTON, NJ 08628-0360**

The Delaware River Basin Commission will meet on Wednesday, October 15, 2003 in West Trenton, New Jersey. For more information contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Council, at (609) 883-9500 ext. 203.

Merit Employee Relations Board
Margaret M. O'Neill Building, Suite 213
410 Federal Street, Box 4
Dover, DE 19901

PLEASE TAKE NOTE, pursuant to *Del. C.* §5914, the changes **as proposed by the Director** will/shall become final after the completion of the public hearing, unless rejected by a majority of the members appointed to the Board.

Anyone wishing to review the Director's written filing with MERB or to present oral comments at the hearing should call Ms. Jean Lee Turner in the Merit Employee Relations Board office at (302) 739-6772.

**MERIT EMPLOYEE RELATIONS
BOARD**

PUBLIC NOTICE

**PROPOSED CHANGES TO
STATE OF DELAWARE MERIT RULES**

PLEASE TAKE NOTICE that on May 28, 2003, pursuant to 29 *Del.C.* §5914 and 29 *Del.C.* ch 101, extensive proposed changes to the Merit Rules of the State of Delaware have been transmitted to the Merit Employee Relations Board ("MERB") from the Director of the Office of State Personnel ("Director").

The proposed changes, which the Director indicates have been approved by both the Director and by the Statewide Labor-Management Committee, will significantly repeal many existing Merit Rules and substitute in their place new and revised Merit Rules.

This is a significant revision and restatement of the Merit Rules of the State of Delaware. Copies of the proposed deletions and new Merit Rules are available for public inspection by appointment in the MERB office. The proposed deletions and additions may also be viewed on the Internet by visiting the Delaware State Personnel Web Site. The direct link is: http://www.delawarepersonnel.com/employee/documents/mrules_merb1.pdf

On October 22, 2003, the MERB will conduct a Public Hearing concerning the proposed Merit Rule changes (both the proposed repeal and the new Rules) submitted by the Director. The hearing will begin at 9:00 a.m. in the 2nd Floor Conference Room of the Margaret M. O'Neill building, 410 Federal Street, Dover, Delaware.

The MERB also requests and will consider timely filed written submissions from interested individuals and groups concerning these proposed Merit Rule changes. The final date for any such written submission is the date set forth above for the public hearing. Any such submissions should be mailed or delivered to the MERB at the following address:

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Delaware's lawmaking body, is comprised of a State House of Representatives, whose 41 members are elected for two-year terms, and a State Senate, whose 21 members are elected for four-year terms. Half of the Senate seats are contested in each general election.

COMMITTEE HEARINGS

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