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L-1 507.3.11 & 507.3.17 p 88-89 Convention Committee

507.3.11 – Marketing/Publications Committee

The Marketing/Publications Committee shall define the marketing goals and objectives that are supportive of the purpose and philosophy of Masters Swimming, and shall execute the activities and produce materials necessary to accomplish these goals and objectives.

507.3.17 – Rule Book Publications Committee

The Rule Book Publications Committee shall design, edit, and produce the rule book, and other materials or media, as approved by the House of Delegates.

***Rationale:** The Marketing Committee has historically been hamstrung in its ability to fulfill its primary functions by being required to follow the entire process through, once the House approves a project. This results in a continuous and repeated struggle on the part of the committee to try to balance its desire to be a creative body with the need to also be an operational committee concurrently. By combining the operational requirement with a committee that already performs the needed function on a continuing basis, there will be a streamlined effect on the marketing efforts of the corporation. Both the Rule Book and Marketing Committee chairmen endorse this proposal.*

L-2 507.3 p 86 Legislation Committee

507.3 STANDING COMMITTEES

The president shall appoint...Whenever possible, each committee shall have representation from each zone. If the relocation of a committee member results in a committee no longer meeting zone representation requirements, the committee chair shall notify the President. With the approval of the Zone Committee, the President may choose to retain that committee member or name a replacement as the situation merits. Standing committees shall...

***Rationale:** Certain committees require a specific number of committee members from each zone, but there are no guidelines as to how to deal with the relocation of one or more members out of their initial zones. Replacement of a member who moves close to the time of convention can disrupt the work of the committee for that year. This amendment would allow the President and the committee chair to consider each situation and replace a member who relocates when and if appropriate.*

L-3 601.2 & 601.4 pp 91-2 Legislation Committee

601.2.1—Authorization

Changes to the ~~USMS Code of Regulations and Rules of Competition~~ USMS Code of Regulations and Rules of Competition may be proposed only by an LMSC ...

601.2.4—Publication of Proposed Amendments

All proposed changes to the rules or code shall be published...

601.4 ADOPTION OF PROPOSED AMENDMENTS

The ~~USMS Code of Regulations and Rules of Competition~~ USMS Code of Regulations and Rules of Competition may only be altered...

***Rationale:** Housekeeping. Change the language to make it clearer.*

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L-4 Parts 5 & 6 pp 81-92 Ohio LMSC

Series of amendment proposals to elevate the Financial Operating Guidelines (FOG) to Financial Operating Rules (FOR) and to set in place procedures to amend the FOR.

507.3.5 p 87

507.3.5-- Finance Committee

The Finance Committee shall consist of The Finance Committee shall:

A: Develop policies and rules pertaining to the financial affairs of the corporation and implement and oversee the financial operating rules of USMS.

Rationale: *The Finance Committee is charged with the obligation to oversee the financial health of USMS and with the FOG (financial operating guidelines) being elevated to the FOR (financial operating rules) and being given formal status, the Finance Committee needs to be formally charged with oversight of these rules. See additional rationale at 508.1 below.*

508 p 89

Add new 508.1 and re-number existing 508.1 et. seq. as 508.2 et. seq.

508.1. FINANCIAL OPERATING RULES

The financial operations of the corporation shall be governed by financial operating rules (FOR) which are contained in appendix (X). Oversight of the FOR shall rest with the Finance Committee (see article 507.3.5A) and the FOR shall be approved by the House of Delegates in accordance with Part 6.

Rationale: *Gives formal status to the FOR and directs how it is to be overseen and how amendments are to be offered and voted upon. If adopted, the Rule Book Committee shall assign a letter reference for the new appendix.*

601 p 91-92

Introduction: The Financial Operating Rules, which shall be approved by the House of Delegates, shall be amended in accordance with Part 6. Implementation of the following amendments to Part 6 will effect the necessary references and requirements for such amendments.

New 601.1.4, renumber existing 601.1.4 as 601.1.5:

601.1.4—Proposed changes to the financial operating rules shall be considered by the Finance Committee for report and recommendation to the House of Delegates.

Rationale: *Adds a formal process by which the FOR may be amended and places the FOR on an equal basis with USMS's other rule making operations and authority.*

601.2.3—Submission Deadline

Proposed changes by an LMSC must be submitted to the chair of the Rules, Legislation, Finance, or Long Distance Committee not later than July 10.

Rationale: *Adds FOR to the list of changes proposed by an LMSC which must be offered to the Finance Committee on a schedule which allows for appropriate review.*

601.2.4—Publication of Proposed Amendments

All proposed changes to the rules, financial operating rules, or code shall be published and mailed....

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Rationale: Add FOR to the list of changes which must be offered to the HOD before the convention in order to allow for appropriate notice, review, comment or debate.

601.3. MODIFICATION OF PROPOSED AMENDMENTS

Proposed amendments may be modified in any manner by the Rules, Legislation, Finance, or Long Distance Committee, where appropriate, while under consideration by said committee. Such modification must be germane to the subject matter and intent of the proposed change.

Rationale: Adds the FOR to those amendments which may be modified by the reviewing committee.

601.4.4 Financial Operating Rules

Add new 601.4.4 and renumber existing 601.4.4 et. seq. as 601.4.5 et. seq.

601.4.4—Financial Operating Rules

In any year, the financial operating rules may be adopted or amended by a majority vote of the House of Delegates members present and voting if amendments to them are submitted to and recommended by the Finance Committee, or by two-thirds vote of the House of Delegates members present and voting if amendments to them are submitted to and NOT recommended by the Finance Committee.

Rationale: Adds voting requirements for adoption of amendments to the FOR.

Summary of Amendment Procedures, following article 601.5 (Left out of 2001 Rule Book in error. May be found on p 88 of 2000 Rule Book).

| Summary of Amendment Procedures | Even Years | Odd Years |
|---|------------|-----------|
| ... | | |
| Legislation (Preamble, Goals and Objectives, Glossary, Part 2, Part 4, Part 5, Part 6, and Appendix D) | | |
| If recommended by committee | * | Majority |
| If NOT recommended by committee | | 2/3 |
| Financial Operating Rules (Appendix X) | | |
| If recommended by committee | Majority | Majority |
| If NOT recommended by committee | | 2/3 2/3 |

Rationale: adds a summary of FOR voting requirements to the summary box.

L-5 508.3 p 89 Ohio LMSC

508.3 INTERNAL AUDITOR

The internal auditor shall be appointed by and serve at the pleasure of the Zone Committee president and shall report to the House of Delegates through the Finance Committee. The report of the internal auditor shall be simultaneously delivered to the Zone, Finance, and Executive Committees. The internal auditor shall:...

508.3.4 Present the financial statements listed in article 508.3.3 to the Finance, Executive, and Zone Committees as soon as practical...

Rationale: The executive side of USMS is organized to operate the corporation and is responsible for collecting funds and spending them in accordance with the instructions of the HOD. The internal auditor is to review the financial operations of USMS to ensure that the

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requirements of the HOD are carried out and that funds flowing into and out of the corporation are levied and used in accord with that mandate. As such, the auditor must be appointed by and

report to someone other than the authority they are responsible for overseeing. It is suggested that the Zone Committee can best serve this function as the other elected body representing the members of USMS and as the body independent from the jurisdiction of the Executive Committee.

The internal auditor's budget shall be increased to cover travel to the controller's place of business for the purpose of reviewing the originals of all USMS financial records, internal and external.

Article 507.2.5 foresees using the Zone Committee in the fashion suggested in this amendment. "The (Zone) committee shall carry out the responsibilities assigned to it by the policies of the House of Delegates, the president, the USMS Code of Regulations, and the stated need of the LMSCs." The broad range of potential tasks envisioned in this charge contemplates the Zone Committee filling in wherever it is needed. Presiding over the audit function via the charge contained in 507.2.5 seems a perfect opportunity to meld the Zone Committee's independence and the necessity of removing the audit responsibility from the executive chain of command.

L-6 505.1.D p 84 Ohio LMSC

505.4. DUTIES OF OFFICERS

The duties of the officers shall be as follows:

505.4.1—The president shall:....

D. Appoint legal counsel who shall serve at the pleasure of the president. The legal counsel shall be an ex-officio member of the Board of directors and all committees, and shall have voice but no vote.

Rationale: A reclassification of the role of the legal counsel is suggested as part of this series of amendments to the rule book. The first action is to make the legal counsel an ex-officio member of the Board of directors and all committees to allow that person to oversee all USMS activities in order to ensure compliance with both USMS and external legal requirements. The president of USMS currently serves as an ex officio member of all committees (Article 505.4.1 C), it is suggested that the legal counsel have the same status. Ex officio status does not require attendance at the meetings or participation in the operations of any committee or the board, it only ensures a right of access and participation in all meetings of the body in which one serves as an ex officio member. See further rationale stated after proposed amendment of 507.1.1.

L-7 505.4.1.E p 84 Ohio LMSC

505.4. DUTIES OF OFFICERS

The duties of the officers shall be as follows:

505.4.1—The president shall:....

E. Serve as president of the board of directors.

Rationale: Currently there is no designated or elected president or chair of the board of directors. The president of USMS is an elected officer, and a member of the board of directors, but no one is designated as chair or president of the board and the board, acting on its own, has never elected a chair or president. This provision will fill that void. It is noted that the secretary of the corporation is designated to act as secretary for the board of directors. The failure of the bylaws

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to state that the president of the corporation shall also be the president of the board of directors appears to be an oversight.

L-8 506.1 p 85 Ohio LMSC

506.1. MEMBERSHIP

The Board of Directors of this corporation shall consist of:

506.1.1—Each elected member of the Executive Committee.

506.1.2-- Each zone representative

506.1.3-- Past presidents, who shall serve as ex officio members, with voice but no vote.

~~506.1.4—The chairs of all standing committees~~

~~506.1.45—The liaison from USA Swimming, who shall serve as an ex officio member, with voice but no vote.~~

Rationale: Recognizes that there shall be voting and non-voting members of the Executive Committee. The voting members shall be those officers who are elected, as opposed to those who are appointed or serve because of their status. See further rationale on this point stated after proposed amendment of 507.1.1. Currently there are approximately 45 members of the board of directors, roughly half of whom are appointed by the president. (The reason there is not an exact number of members on the board is that several people are on the board in more than one capacity, i.e., past president and committee chair or zone representative, etc.) Past presidents hold a position on the board of directors by virtue of their status, and not by appointment or election. It is suggested that a 45 member board of directors is too large to be effective for the purpose for which it was designed, which is to act on behalf of the House of Delegates when it is not in session (Article 506.4)

By reconstituting the board of directors as those officers and zone representatives who are currently elected we use the pool of elected officials we already have. It is possible that we could create a third elected body, the board of directors, but so far no good reason to create this additional class of elected members seems to have arisen. Although committee chairs would no longer be members of the board, this action would not appear to affect their status as chairs. Past presidents would be ex officio members of the board for the obvious knowledge, experience and judgment they bring to that body. It is not proposed to give them an ex officio vote, as the number of past presidents, currently 6, which will be 7 in September, could eventually comprise the largest single element on the board, somewhat defeating the elected nature of the board. Additionally, continuing to add past presidents would again make the board unwieldy in size, doing the opposite of what this legislation is proposing to do. Finally, having our officers and zone representatives who are elected in alternate years by separate constituencies, comprise the board of directors creates an internal check and balance in USMS operations and brings to the executive level all concerns of the organization through the varied officials who represent each USMS constituency.

The USA Swimming liaison is on the board of directors in an ex officio status because of past cross agreements between the two organizations as to such representation and the close relationship of the goals and operations of USMS and USA Swimming.

L-9 506.2 p 85 Ohio LMSC

~~506.2 TERM OF OFFICE~~

~~Directors shall be elected or appointed for a 2-year term.~~

Rationale: If the amendments to 506.1 pass then 506.2 becomes irrelevant as members of the board of directors would serve for their elected terms on the schedule covered in other sections of the rule book. Additionally, it is gratuitously noted that 506.2 is not fully accurate as currently past presidents are deemed members of the board of directors and as such they are neither elected

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nor appointed nor do they serve for 2 years. Because of their never-ending status as past presidents they would serve until they die. If 506.1 does not pass, 506.2 should be rewritten so it is accurate. The Legislation Committee has been given the authority regarding this proposal from the Ohio LMSC, which is proposing these amendments, to take this action.

L-10 507 p 86 Ohio LMSC

Amend 507.1.1 and add new 507.1.2 and renumber

507.1 EXECUTIVE COMMITTEE

507.1.1—The voting members of the Executive Committee of this corporation shall consist of:

- A. The president, the vice president, the secretary, and the treasurer
- B. The Zone Committee chair.
- ~~C. The legal counsel.~~
- ~~D. The immediate past president.~~

New 507.1.2—The non-voting members of the Executive Committee shall consist of:

- A. The legal counsel.
- B. The immediate past president.

Rationale: *Remove the vote on the Executive Committee of the legal counsel and the immediate past president. The legal counsel, as an appointee of the president, is in place to ensure that USMS, at all levels and in all activities, operates in accord with our own rules and regulations, and the laws of those venues wherever we are present. The counsel's views and advice should be independent of the politics and policies of USMS activities and operations and certainly independent of the politics of the Executive Committee. It is inappropriate to ask a lawyer to act as an independent counselor and reviewer as to the legalities or even propriety, ethics, and appearance of the corporation or its officers and then ask that person to vote on those very same actions and decisions. The legal counselor's presence on the committee is necessary; to give this person a vote is a conflict of interest between their duties to the law and our rules, and their potential involvement in the politics of USMS, at any level.*

In conjunction with the action of making the legal counsel a non-voting member of the Executive Committee, this person is also, by the reclassification of this position in articles 507.1.1 and 506.1, removed from membership on the board of directors. However, the legal counsel, as legal advisor to the corporation, would have a right of access to all meetings at all levels of USMS as an ex-officio member by virtue of position in order to allow them access to perform their function. This right of access is codified in the proposed amendment of article 505.4.1 D.

The immediate past president will remain on the Executive Committee as an ex officio member by virtue of article 507.1.2, and the board of directors by virtue of article 506.1.3. Currently there is no mechanism to remove past presidents from any position, and they are answerable to no one.

They represent the results of previous elections and their constituency is now expired, both legally and actually. Their experience, insight, and knowledge are valuable to the currently elected officers, and the presence of the immediate past president on the Executive Committee is both useful and wise; however, to give any of the past presidents a vote in current USMS matters through either the Executive Committee or board of directors is both unnecessary, because the currently elected representatives are to guide USMS, and inappropriate, because the past president no longer represents the will of the House of Delegates. This latter point would be especially true were a president to be turned out of office after a first term. The past presidents, like the legal counsel, should be removed from the current politics of the Executive Committee and board of directors and act as a senior counselor rather than an operational partner.

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L-11 **New Article 509** (renumber existing 509 to be 510)

p 89 Ohio LMSC

ARTICLE 509: OPERATING AND MEETING POLICIES

509.1 OPEN MEETINGS

Meetings of United States Masters Swimming shall be open, except as noted in article 509.2. "Open" means that the business of the meeting shall be open to all, but participation may be limited to members of the entity holding the meeting. Others may attend but shall have no voice without the permission of the chair or a majority of the committee. A meeting shall be defined as any gathering (in person or by electronic means) formally called for the purpose of conducting official business.

509.1.1—Notice of all meetings of the House of Delegates, Board of Directors or USMS Committees shall be placed on the USMS website 21 days prior to the date and time for the meeting, or when the meeting date and time are set, whichever is later.

509.1.2—Minutes of all meetings of the House of Delegates, Board of Directors or USMS Committees shall be published on the USMS website as soon as practical. Minutes shall also be made available by mail through the executive secretary.

509.2. CLOSED MEETINGS

Meetings of USMS may be closed for the following reasons:

509.2.1—Personnel matters, including hiring, dismissal, discipline, promotion or demotion, compensation, or to investigate charges or complaints by or against employees, volunteers, or independent contractors. Such meetings shall be open at the request of the affected person(s).

509.2.2—Conferences with an attorney, either the USMS legal counsel or outside counsel, for the purpose of discussing USMS legal matters.

509.2.3—To prepare for, conduct, or review contractual negotiations.

509.2.4--To protect medical confidentiality.

509.2.5--To conduct an investigatory process before or a deliberative process after a hearing, at any level of USMS, but not to conduct a hearing.

509.3. EXECUTIVE SESSION

An executive session may be held during a regular meeting but only for the purposes listed in article 509.2. The purpose of the executive session shall be stated in the minutes, and no other matters may be discussed during the session.

***Rationale:** USMS has no meeting or minutes policy. This article establishes the ground rules for conducting USMS business in the open. Because USMS is a 501(c)3 non-profit organization, there would appear to be no need for secrecy in its everyday operations except as noted within the proposed article. In addition, the Internal Revenue Service and the State of Ohio (USMS is an Ohio corporation) have certain regulatory and statutory requirements, which this section is designed to satisfy.*

L-12 **New Article 509.4 (see L-11)**

p 90 Ohio LMSC

509.4. RULES OF ORDER

Unless otherwise specified, and subject to all standing rules, the current *Robert's Rules of Order* shall govern all USMS meetings and proceedings, at all levels.

***Rationale:** Currently, USMS has adopted no rules of order. It is necessary for the membership to know, in advance, what rules govern meetings. Robert's is a standard text with regard to such*

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matters. Robert's, or any other regulations regarding rules of order, can be modified, suspended, or amended at any time by the body using them. By using Robert's to govern meetings, USMS is not committing to using or operating under Robert's in all facets at all times, and informally run meetings may still occur, but by being formally recognized, Robert's can be called upon at any point to standardize proceedings and procedure.

L-13 504 p 83 Ohio LMSC

Add a new Article 504.4

504.4 VOTING

504.4.1—Votes may be conducted by voice, show of voting cards, or secret ballot. For the election of officers, voting shall be conducted by secret ballot. Voting by secret ballot may be conducted in other instances by a majority vote of the House of Delegates.

A. If there are two or fewer choices to be voted on, the choice receiving a majority of the vote shall be elected.

B. If there are three or more choices to be voted on, and no choice receives a majority of the ballots cast, the choice receiving the least votes shall be eliminated from the next round of balloting. Balloting shall then continue between the remaining choices until one choice receives a majority of the votes cast. On each successive ballot the choice receiving the least votes shall be eliminated and the next round of balloting shall proceed until a choice receives a majority of the ballots cast.

***Rationale:** Currently there is no prescribed method of voting in the House of Delegates. These provisions establish minimum voting requirements and procedures, especially for the two types of elections now conducted by ballot. Where there are more than two candidates for one office, or more than two sites competing for national championship venue selection, we will now have a formal requirement of a majority vote for election.*

L-14 601.3 p 91 Ohio LMSC

601.3 MODIFICATION OF PROPOSED AMENDMENTS

Proposed amendments may be modified ~~in any manner~~ by the Rules, Legislation, Finance or Long Distance Committee, where appropriate, while under consideration by said committee, in any manner that retains the primary subject matter and intent of the proposed change. ~~Such modification must be germane to the subject matter and intent of the proposed change.~~

***Rationale:** Allows the reviewing committee to modify proposed changes, but only in a manner that retains the intent of the originally offered amendment. The language has been re-worked for clarity.*

L-15 507.3.7 p 87 Pacific LMSC

Add History and Archives as a standing committee and renumber.

507.3.7 – History and Archives Committee

The History and Archives Committee shall record, collect and preserve documents, stories, photos, exhibits, oral histories and other memorabilia in an appropriate repository to ensure that the achievements of USMS and Masters swimmers will be maintained for posterity.

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Rationale: *An ad hoc committee is usually established for a limited duration and for a specific purpose. This is an active ad hoc committee that takes its work very seriously. The task of documenting and preserving the history and records of the organization is a worthy (and ambitious) endeavor, that will continue for as long as USMS exists.*

L-16 201.1.1 p 59 Pacific LMSC

201.1.1-Eligibility

Swimmers age ~~49~~ 18 and over are eligible for membership in USMS. If an individual who has not achieved the age of ~~49~~ 18 applies for USMS membership, the registration date shall be the individual's ~~49th~~ 18th birthday.

Rationale: *This proposal enables certain swimmers who might otherwise be excluded from the benefits of swimming to be part of our swimming community (excluding competition per current USMS rules). For example, some Masters programs utilizing the facilities at colleges and universities are restricted from allowing 18 year-old students from membership in USMS. The prospects of swimming with an age group team may be remote and/or undesirable. Refusing such perspective members the opportunity to participate in USMS is a disservice to that community and for Masters swimming.*

Other articles which may change as a result of this amendment:

102.1.1 p 18: To be eligible for competition, swimmers must be ~~49 years of age or over as determined by article 402.2~~ registered with USMS or their nation's recognized Masters Swimming governing organization.

102.3.2A p18

102.3.2B p18

Appendix A p93

Appendix B p129

L-17 507.3.7 p 87 Rule Book Committee, Florida Gold Coast LMSC, Long Distance Committee, Pacific Northwest LMSC, Connecticut LMSC, Records and Tabulation Committee, Connecticut LMSC, Kentucky LMSC.

Insert new article 507.3.7 and renumber

507.3.7—History and Archives Committee

The History and Archives Committee shall construct and maintain a permanent recorded history of USMS, In both paper and electronic formats. The committee shall make as much of the archived information as possible available on the web.

Rationale: *This is currently an ad hoc committee. “Ad hoc” means “formed or used for specific or immediate problems or needs.” Thus, an ad hoc committee would be formed to deal with a specific issue, and then once its mission was completed it would disband. Because this committee’s function is actually permanent and ongoing, it should be a standing committee.*

L-18 201 p 59 Minnesota LMSC

201.1. MEMBERSHIP OF ATHLETES

201.1.2 - Annual Registration

Athlete registration is for the period January 1 through December 31 of each year. Swimmers applying for registration on or after November 1 shall be issued a registration card valid through December 31 of the following year. Swimmers may register unattached or may affiliate with a club that is already registered for the same year for which the swimmer is registering.

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201.1 REPRESENTATION

201.2.2 – In order for a swimmer to compete as a representative of a club, that club must be a member in good standing of an LMSC and USMS for the year a swimmer is registering.

Rationale: *To clarify that a club must register annually before the swimmers may start to register for that club.*

L-19 Appendix B p 130 Kentucky LMSC

USMS AND WORLD RECORD APPLICATIONS

Documentation requirements for USMS records:

- ~~Completed~~ Complete the “Application for USMS and/or World Record.”
- Compile the following supporting data: copy of the tape from the electronic timing device bearing the signature of the meet referee *and/or* the time card bearing the times from three stopwatches, the signature of each timer, and the signature of the meet referee.
- Forward the supporting data to the LMSC records and tabulation chair, who shall then forward the supporting data to the chair of the USMS Records and Tabulation Committee for verification.
- Upon verification, the chair of the USMS Records and Tabulation Committee shall immediately publish the new record on the USMS website.

Documentation requirements for USMS long distance records:

- ~~Completed~~ Complete the “Application for USMS and/or World Record.”
- ~~Completed~~ Complete the “Application for USMS Long Distance Record.”
- Provide proof of achieved time or distance swum.
- For postal events, provide a lap-count check-off sheet listing all split times and bearing the signature, name, address, and phone number of the lap counter/timer.
- For cable swims, provide the technique used to measure the course, and the signature, name, address, and phone number of the person who measured the course.
- Forward the above to the USMS Long Distance Committee chair for verification.
- Upon verification, the USMS Long Distance Committee chair shall immediately publish the new record on the USMS website.

Rationale: *With the availability of the Internet, USMS membership should be informed, in a timely manner, of any new USMS record once it has been verified by the USMS Records and Tabulations chair or Long Distance chair. At the 2001 Short Course Nationals, there were five national records in the 19-24 age group that had been bettered 10 weeks before the start of the Nationals. All of the supporting data was in the hands of the USMS Records and Tabulations chair within 2 weeks of the swims, yet the published records at the Nationals did not reflect these records being bettered.*

If the above legislation is passed, the following changes will need to be passed in parts 1 and 3 for conformity:

Part 1, p. 48

105.3.10—When a record is claimed, an official record application form shall be filled out, signed by the designated officials, and transmitted immediately following performance with all supporting data, including official meet results, the primary printout tape, and/or copy of the entry card with timers’ signatures, to the LMSC records and tabulation chair for the LMSC in which the event was sanctioned or recognized. Responsibility for this lies with either the LMSC records chair or the official scorer of the meet. The LMSC records and tabulation chair shall send the supporting data to the chair of the USMS Records and Tabulation Committee for verification. Upon verification,

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the chair of the USMS Records and Tabulation Committee shall immediately publish the new record on the USMS website.

Part 3, p. 74

306.1.2—Record times shall be swum in a sanctioned meet and shall be routed through the meet host to the Long Distance Committee chair. Upon verification of a new record, the Long Distance Committee chair shall immediately publish the new record on the USMS website.

L-20 **202.1** p 60 Metropolitan LMSC

202.1. SANCTIONS

Times achieved at sanctioned events are considered for USMS national records, ~~and~~ Top Ten times, and world records.

***Rationale:** This is to clarify that a world record must be achieved at a sanctioned meet and not at a recognized event.*

L-21 **Part IV** p76-79 Metropolitan LMSC

Add new article 402.3

402.3—Power of Review

USMS, through the Executive Committee shall have the authority to affirm, vacate, modify, stay, reverse, or extend any decision taken by an LMSC acting pursuant to article 406

Add new article 406

ARTICLE 406: JURISDICTION AND AUTHORITY OF LMSCs

406.1. LMSC JURISDICTION

An LMSC receiving a report pursuant to article 403.1. has the authority to:

406.1.1-Determine the eligibility of any athlete to participate.

406.1.2-Impose and enforce penalties, including censure, suspension, or expulsion from membership, for any violation of the rules and regulations of USMS or the LMSC for actions that bring disrepute upon USMS, the LMSC, or the sport of swimming.

406.1.3-Affirm, vacate, modify, stay, or reverse any decision or order properly submitted for review, or remand the matter for further action.

406.1.4-Issue such interim orders as may be necessary pending a final decision.

406.1.5-Review any exercise of powers by an LMSC committee.

406.1.6-Require the production of any available evidence bearing on an alleged violation.

406.1.7-Transcribe all testimony in any hearing.

406.1.8-Assess costs and fees of the investigation of a reported violation against the losing party.

406.1.9-Consult with USMS, USMS officers, or USMS committees for advice or interpretations.

406.1.10-Refer the problem to USMS.

406.2. LMSC LIMITATIONS

LMSC jurisdiction is limited to:

406.2.1-Individuals members and club members registered through its LMSC.

406.2.2-Events sanctioned/recognized by the LMSC.

406.3. LMSC RESPONSIBILITIES

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- 406.3.1-Each LMSC shall comply with the procedures and requirements outlined in article 403.
- 406.3.2-All appeals shall be referred to USMS.
- 406.3.3-A report including a copy of all physical evidence and written decisions pertaining to any matter reviewed by an LMSC shall be filed with the executive secretary of USMS.

***Rationale:** Part 4 does not give an LMSC adequate guidance on the procedures to be followed when notice is given to an LMSC chair about a violation of rights in 403.1.*

L-22 505.2.3 p84 Zone Committee

~~505.2.3—The Zone Committee shall act as the Election Nominating Committee. The committee shall canvass qualified and interested persons and present one or more candidates for each office to the national office by August 1 of the year in which elections are held. Additional candidates may be nominated at the annual meeting by two members of the House of Delegates, provided the nominee(s) gives written consent.~~

- A Develop Election Operating Guidelines pertaining to running of USMS National Elections.
- B Accept nominations, qualify candidates, and present one or more candidates for each office to the national office by August 1 of the year in which elections are held.
- C Accept and qualify additional candidates nominated from the floor of the House of Delegates during the annual meeting.
- D Conduct election activities and voting during the annual meeting.

***Rationale:** The current legislation states that the Zone Committee is the Nominating Committee and specifications of the committee's responsibility end after the slate is announced. The Zone Committee, by tradition, has also run the election at convention. These changes recognize that tradition.*

The requirement for developing election guidelines will make our elections run more smoothly and consistently from election to election. In addition, all people involved (candidates, evaluators, and voters) will know what to expect before the election process begins.

L-23 PART 4 p 75 Legislation Committee

PART 4: ATHLETE'S RIGHTS, HEARINGS, AND APPEALS

***Rationale:** Part IV applies to all participants in USMS activities, not simply athletes.*

Article 401 p 75

ARTICLE 401

ATHLETE'S BILL OR RIGHTS RIGHT TO PARTICIPATE

***Rationale:** This article is not a 'bill of rights' but offers rules with respect to a specific right, the right to participate.*

401.1 & 401.2 p 75

Delete existing 401.2. and replace with the existing 501.3. Delete 501.3 and renumber.

401.1 PROTECTION PARTICIPATION

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USMS and its LMSCs shall respect and protect the right of every individual person or entity who is eligible and qualified to participate in all USMS administrative activities and sanctioned/recognized events for which they are eligible and qualified. No member of USMS, nor any organization affiliated with USMS, may deny or threaten to deny any person or entity the opportunity to participate in USMS activities. It is not a violation of this article to restrict an individual's participation in competition only based on one or more of the following:

401.1.1--The swimmer's age.

401.1.2--Membership in the organization that is conducting the event.

401.1.3--Qualifying times.

401.2 RIGHT TO PARTICIPATE EQUAL OPPORTUNITY

No member of USMS, nor any organization affiliated with USMS, may deny or threaten to deny any eligible individual the opportunity to participate in USMS administrative activities and sanctioned/recognized events. It is not a violation of this article to restrict an individual's eligibility based on one or more of the following:

A. The swimmer's age.

B. Membership in the organization that is conducting the event.

C. Qualifying times.

Membership in the corporation, and participation in all of the corporation's activities, shall not be denied by virtue of race, creed, gender, religion, political affiliation, disability, sexual orientation or national origin.

501.3 EQUAL OPPORTUNITY

Membership in the corporation shall not be denied by virtue of race, creed, gender, religion, political affiliation, disability, sexual orientation, or national origin.

Rationale: Article 501.3 is our statement of non-discrimination. Article 401 deals with the right to participate. Subsumed in that right are provisions for non-discrimination, thus these two sections belong together. The protection in the old 401.1 and the right to participate in the old 401.2 are the same, saying we are going to protect the right and then guaranteeing the right are identical in that once the right is guaranteed it is protected. In 401.1, changing the word 'individuals' to 'persons and entities' recognizes that we have club members as well as individual members and also recognizes we have non-members who participate in USMS activities. Using the word 'person or entity' covers (hopefully) everyone and every entity. Removing the words 'sanctioned/recognized events' and 'administrative activities' and using the generic 'activities' (hopefully) broadens the scope of the right to participate to everything USMS, or its affiliates, offers, even swim practices, social events, charitable activities, etc.

L-24 402.1.6 p 75 Legislation Committee

402.1.6 Issue such interim orders as may be necessary, in the interest of fairness and justice, pending a final decision of any entity granted and exercising jurisdiction within USMS.

Rationale: *Creates a standard by which the Executive Committee may intervene in an ongoing process of investigation and decision making. The current standard "as may be necessary" is subjective, i.e., what is necessary, in whose judgment, etc. With a parameter of 'fairness and justice' it is clear the Executive Committee shall only step in during an ongoing investigation when something is awry and not whenever they feel like it, such as when things are proceeding in a fashion with which they simply do not agree.*

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L-25 402.1.7 p 75 Legislation Committee

Delete and renumber

~~402.1.7 Review any exercise of powers by a USMS committee.~~

Rationale: *The bylaws of USMS give the Executive Committee no authority or jurisdiction to 'review' the exercise of powers by a USMS committee as all committees (unless created by the Executive Committee and specifically constituted to report back to the committee) report directly to the House of Delegates. Additionally, the word 'review' has no meaningful purpose if the committee cannot also take some action pursuant to a 'review' authority, and, there is no authority for the Executive Committee to take action in lieu of a committee's own authority.*

L-26 402.1.10 p76 Legislation Committee

~~402.1.10 In cases of frivolous or meritless allegations or appeals, Assess the costs and fees of the investigation of a reported violation a hearing against the losing party.~~

Rationale: *To be able to assess the costs of an investigation against a losing party without notice of whose costs and what costs are included and what standards shall apply as to when these costs may be assessed is a denial of the guarantee of both equal protection and due*

process. These undefined costs (or defined, apparently, at the will of the Executive Committee, and, most importantly, AFTER the fact, i.e., after the decision) could total thousands, if not ten thousand dollars or more for a single hearing. To have such a grievous potential penalty, without standards as to when it can be imposed, is so intimidating that few would risk the burden no matter how sure they were of victory or vindication. By setting a standard of allowing the costs of a hearing, not the entire investigation, to be assessed against a losing party, and only when that party has engaged in a frivolous or meritless allegation or appeal is a reasonable and justified approach to discouraging such actions while not subverting or undermining anyone's rights because of financial considerations.

L-27 402.2.3 p76 Legislation Committee

Add new section.

402.2.3--Grievance Committee

A Any matter arising within an LMSC that is not resolved at the LMSC level, pursuant to article 403.1, shall be heard by the Executive Committee or its designees, who shall function as a grievance committee, in accordance with article 403. The composition of said grievance committee shall be at the discretion of the Executive Committee.

B Any matter arising within a zone or at the national level, or involving an employee or independent contractor, shall be delegated to a grievance committee constituted as follows:

(1) At the zone level, the grievance committee shall consist of the Executive Committee, less the Zone Committee chair.

(2) At the national level, the grievance committee shall consist of the full Executive Committee, including the Zone Committee chair, unless the matter being considered involves the Executive Committee or any member of the Executive Committee.

(3) If the matter being considered involves the Executive Committee or any member of the Executive Committee, the grievance committee shall consist of the Zone Committee, less the Zone Committee chair.

Rationale: *Currently there is no specific venue where grievances or complaints against a zone rep., a national committee chair or member, an independent contractor or employee, a national*

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non-elected officer, former national officer, etc., or a member of the Executive Committee itself can be heard. This section remedies this venue vacuum.

403.5.3 p 77

403.5.3--An investigative officer or committee, known as the grievance officer or grievance committee, may be appointed to consider the reports and.... The ~~investigative grievance committee~~ may consist of....The legal counsel may be...(hereinafter, "investigative committee/officer").

403.6 p 77

403.6 WRITTEN DECISION

The USMS Secretary shall...the written decision of the investigative grievance committee/officer...

404.2 p 78

404.2 FINAL APPEAL

An appeal may be made...the judgment of the investigative grievance committee/officer.

404.4 p 79

404.4 APPELLATE PROCESS

The appeals board shall...only the evidence presented to the investigative grievance officer/committee...

Rationale: *As the grievance procedure now contains rules allowing a complaint to be filed against any and all individuals or entities at any and all levels within USMS, and as 402.3 now allows for the constitution of various hearing authorities depending on against whom a grievance is filed, all further references to the committee should be to the "grievance committee" so that these rules apply to whichever entity judges the grievance.*

405 p 79

405 DOCUMENTATION

405.4 The executive secretary shall maintain a permanent file of all physical evidence and written decisions pertaining to any matter that is reviewed by the Executive Committee or its designee, or the grievance committee, pursuant to Part 4.

Rationale: *Adds a requirement that the USMS maintain records of the grievance committee as well as the Executive Committee with regard to matters involving Part 4.*

L-28 403.1 p76 Legislation Committee

403.1 REPORTING

Any ~~individual~~ person or entity, or the estate of any individual person (hereinafter, "grievant") that alleges that a violation of rights (~~including, but not limited to, those rights enumerated in article 404 or any of the matters enumerated in article 402~~) or of the administrative rules or regulations of USMS, or its constituent parts, has occurred, or is about to occur, as a result of inaction or actions taken by any person or organization within USMS or affiliated with USMS, shall notify either the chair of the LMSC in which the violation occurred or is about to occur, or the president and/or executive secretary of USMS by filing a written notice of complaint. The LMSC chair or the president or the president's designee shall use whatever means deemed appropriate to resolve the matter. If all attempts to resolve the problem by the LMSC or the president or the

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president's designee have failed, the grievant may then file a written report of the alleged violation with the executive secretary file a formal request that the notice of complaint be acted on by a grievance committee, pursuant to article 403. Any such report notice of complaint shall include the following:....

Rationale: *There needs to be one place where people can go to find out what to do if something isn't right within USMS. This language tells everyone how to begin to remedy, at either the local or national level, whatever it is that they feel has gone wrong. A written report is required, for a verbal report is no report at all. The option of filing a complaint, and where the complaint is to be filed, is left with the grievant. If they file a complaint at the national level regarding something which is a purely local matter the president of USMS may refer the matter back to the appropriate local entity. In theory all LMSCs should have their own grievance or arbitration rules in their bylaws to handle such local matters.*

- L-29 403.1.4 p 76 Legislation Committee
403.1.4 Documentation of any correspondence between the grievant and the LMSC concerning the alleged violation.

Rationale: *In order to proceed the investigatory or hearing officer(s), need to see all correspondence, not just that between the grievant and the LMSC.*

- L-30 403.4.1 p 77 Legislation Committee
403.4.1 A concise statement describing responding to the alleged violation.....

Rationale: *The description of the alleged violation would be contained in the grievant's statement, we are looking for a response to that charge. This is obviously a technical point but precision is of value in these circumstances.*

- L-31 403.4.2 p 77 Legislation Committee
403.4.2 Any documents and/or names, addresses, and phone numbers of any witnesses, as well as the substance of what they will offer in evidence say and prove, which would verify the appropriateness of the reported action.

Rationale: *The current wording asks for argument, at this point the investigators or hearing officers are looking for evidence, not argument. Again, this is a technical point.*