
Delaware Register of Regulations

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IN THIS ISSUE:

Regulations:
Proposed
Final
Calendar of Events &
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before March 15, 2008.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

- Governor's Executive Orders
 - Governor's Appointments
 - Agency Hearing and Meeting Notices
 - Other documents considered to be in the public interest.
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CITATION TO THE DELAWARE REGISTER

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

11 **DE Reg.** 759-786 (12/01/07)

Refers to Volume 11, pages 759-786 of the *Delaware Register* issued on December 1, 2007.

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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF 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.

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

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken. When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
May 1	April 15	4:30 p.m.
June 1	May 15	4:30 p.m.
July 1	June 16	4:30 p.m.
August 1	July 15	4:30 p.m.
September 1	August 15	4:30 p.m.

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

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Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF AGRICULTURE**DIVISION OF ANIMAL HEALTH AND FOOD PRODUCTS INSPECTION**Statutory Authority: 3 Delaware Code, Section 8708(8) (3 **Del.C.** §8708(8))**3 DE Admin. Code 301****PUBLIC NOTICE****301 Food Products Inspection**

The Delaware Department of Agriculture Poultry and Animal Health and Food Products Inspection Section ("the Department") is proposing to amend its existing regulations concerning the inspection of meat, poultry, and egg products and for the humane slaughter of livestock so that they are equal to existing federal statutes and regulations that deal with these subject matters. By doing so the Department will bring its regulations current with modifications to 9 CFR Parts 300 through 500 since the Department last promulgated its regulations for food safety in April of 2002. The Department also proposes to incorporate by reference the U.S. Department of Agriculture's regulations dealing with the inspection of eggs and egg products and for the voluntary inspection of eggs.

Comments by the public concerning these proposed regulations should be submitted in writing to Assistant State Veterinarian, Caroline Hughes, D.V.M., whose address with the Department is 2320 South Dupont Highway, Dover, Delaware 19901. Written comments must be received by Dr. Hughes on or before May 1, 2008 to be considered prior to the adoption of these proposed regulations.

Copies of the relevant portions of the Code of Federal Regulations that are to become enforceable in this state at the conclusion of the administrative procedures process may be obtained by contacting the Superintendent of Documents, U. S. Government Printing Office, Washington, D.C. 20402-9328. For more information, contact Dr. Hughes by calling (302) 698-4561.

AUTHORITY

These proposed amendments to existing Delaware regulations as well as the adoption of new regulations governing meat, poultry, and egg products inspection and the humane slaughtering of livestock are promulgated pursuant to the Department's authority specifically set forth in Section 8708(8) of Title 3 of the **Delaware Code**.

PURPOSE

The purpose of these proposed regulations is to re-establish the standards and procedures for the meat, poultry, and egg product inspection programs of Delaware as well as Delaware's humane slaughtering of livestock procedures so that they shall be equal to those imposed by the Federal Meat Inspection Act, the Federal Poultry Inspection Act, the Federal Egg Products Inspection Act and the Federal Humane Methods of Slaughter Act with respect to operations occurring within the State of Delaware.

301 Food Products Inspection

The Delaware Department of Agriculture, Food Products Inspection Section proposed to amend its regulations concerning the rules of practice that apply to agency enforcement actions by bringing them into the conformity with federal law. The Department proposed to define each type of enforcement action that it may take, the conditions under which it likely to take each of these actions, and the procedures it will follow in doing so.

The proposed amendments are part of the Department's ongoing effort to consolidate, streamline, and clarify the meat and poultry product inspection regulations. To that end, the Department is proposed to adopt by reference, in their entirety, the federal regulations published in the Federal Register at Volume 64, Number 228, dated November 29, 1999, amending the Code of Federal Regulations at 9 CFR Sections 304, 305, 327, 335, 381 and adding a new Part 500 which became effective January 25, 2000.

1.0 Authority

1.1 These proposed amendments to regulations governing food product inspection are promulgated pursuant to the Department's authority set forth in 3 **Del.C.** §8708.

2.0 Purpose

2.1 The purpose of these proposed amendments to regulations is to consolidate, streamline, and clarify the meat and poultry product inspection regulations thereby insuring that Department enforcement actions are fair by identifying the situations that may lead to such actions.

3.0 Substantive Provisions

3.1 ~~The Department incorporates by reference herein, in its entirety, the language found at page 66545 of the Federal Register at Volume 64, Number 228, beginning with the heading "Part 304 Application for Inspection; Grant of Inspection" and ending at page 66547 at the end of Section 500.8(c).~~

The Department adopts and incorporates by reference herein the rules, regulations, definitions and standards of the U. S. Department of Agriculture governing meat and meat products inspection, poultry products inspection, voluntary inspection of poultry, egg and egg products inspection and humane methods for slaughtering animals as they are currently written and which are found at Subchapters A, E, and I of Title 9, Parts 301 through 592, excluding Parts 390 and 391, of the Code of Federal Regulations.

5 DE Reg. 1902 (4/1/02)

DIVISION OF ANIMAL HEALTH AND FOOD PRODUCTS INSPECTION

Statutory Authority: 3 Delaware Code, Section 7202 (3 **Del.C.** §7202)

3 DE Admin. Code 304

PUBLIC NOTICE

304 Exotic Animal Regulations

The Delaware Department of Agriculture proposes these regulations in accordance with the General Assembly's mandate to enforce Chapter 72 of Title 3 of the **Delaware Code** and to specify the means by which citizens of the State of Delaware may obtain a permit from the Delaware Department of Agriculture to possess, sell, or exhibit, exotic animals within the state. **It should be noted here that these regulations do not supersede**

Delaware Code Title 7 Chapter 6 regarding Endangered Species.

The Delaware Department of Agriculture solicits written comments from the public concerning these proposed regulations. Any such comments should be submitted to the State Veterinarian, Sara Busch, DVM, at Delaware Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901 on or before May 1, 2008. Copies of the proposed regulations are available on request.

304 Exotic Animal Regulations**1.0 Authority**

These regulations are promulgated pursuant to the authority of Section 7202 of Title 3 of the Delaware Code.

2.0 Purpose

These regulations govern the possession, sale, and exhibition of exotic animals, i.e., live wild mammals or hybrids of wild mammals or live reptiles not native to or generally found in the State of Delaware. The State Veterinarian or her or his designee shall have the authority to administer these regulations and shall be solely responsible for making the determinations required herein.

3.0 Definitions

"Carnivores" means flesh-eating mammals, which possess teeth and claws adapted for attacking and devouring their prey.

"Department" means the Delaware Department of Agriculture.

"Exotics" means live wild mammals or hybrids of wild mammals or live reptiles not native to or generally found in Delaware as determined by the Delaware Department of Natural Resources and Environmental Control and the Division of Fish and Wildlife.

"Herbivore" means those mammals feeding exclusively on vegetable matter.

"Hybrid of a wild mammal" means a mammal whose parents are different varieties of the same species or belong to different but closely allied species, one parent being a wild mammal not native to or generally found in Delaware and the other parent being a domestic mammal native to or generally found in Delaware.

"Omnivores" means that group of animals which eat any sort of food, both animal and vegetable in origin.

"Primates" means the highest order of mammals including monkeys and lemurs.

"Reptile" means any cold-blooded vertebrae of the class Reptilia including turtles, lizards, snakes, crocodilians and tuatara.

4.0 The State Veterinarian Powers: Duties

4.1 The State Veterinarian is responsible for administering and enforcing these regulations. The State Veterinarian has the power to grant, deny, or revoke permits to possess exotics in this state.

4.2 The State Veterinarian is also vested with the power to designate agencies to seize and where warranted to humanely destroy an exotic if necessary to protect the public health, safety, or welfare and to do so without first notifying the exotic animal's owner or custodian.

5.0 Requirements for Obtaining a Permit**5.1 Enclosure and welfare requirements**

5.1.1 There shall be two enclosures to house an exotic: a primary enclosure and a secondary enclosure. Locking devices shall be required on both primary and secondary enclosures.

5.1.1.1 The primary enclosure shall be a pen, cage or other structure where the exotic will be kept and which must be of sturdy and escape-proof construction. Enclosures/Pens must be consistent in size, structure, lighting, temperature control, and ventilation according to the welfare standards and needs described and found in scientific literature for the species under request for permitting into Delaware. The applicant is required to perform a literature review and present the current scientific literature review of enclosure and welfare standards for the species under consideration with the application. The size of both the primary and secondary enclosures/pens must be in proportion to the size and strength of the exotic animal. Completed enclosures/pens must be inspected and approved by an agent or representative of the Animal Health Section of the Delaware Department of Agriculture prior to placing any exotic animal therein. All changes to any pen used to contain an

exotic animal covered by these regulations must be inspected and approved by the Delaware Department of Agriculture.

5.1.1.2 The secondary enclosure must be sufficient to prevent the exotic from escaping from the property of the custodian should it be set free from its primary enclosure. The secondary enclosure must insure there will be no physical contact between members of the public and the exotic if it is set free from the primary enclosure.

5.1.1.3 Shared enclosures: Permitted exotic animals must be kept so as not to be allowed to reproduce while in captivity. Each enclosure is for one animal. Any shared enclosures are only for sterile, sterilized or animals otherwise unable to reproduce should they be housed together in a primary or secondary enclosure. The applicant needs to provide proof of sterility or birth control treatment to the Delaware Department of Agriculture. Only animals permitted herein by an Accredited Zoo Permit under the inspection and accreditation of the Association of Zoos and Aquariums (AZA) shall be allowed to legally reproduce under these regulations.

5.1.1.4 When the secondary enclosure is opened to facilitate activities such as cleaning, the primary enclosure cannot be used or relied on as the only means to prevent physical contact with the public.

5.1.1.5 The enclosure and welfare requirements listed in 5.1 above must be met before an application for an Individual Permit can be accepted for consideration by the Department of Agriculture.

5.2 To obtain a permit, initial applications must be filed with the Delaware Department of Agriculture within 10 days of acquiring the exotic and/or within 10 days of locating the exotic in the State of Delaware. If purchasing from an Exotic Animal Sales proprietor, the buyer must obtain an Individual Exotic Permit before the purchase. The State Veterinarian, for good cause shown, and upon written request of the applicant/possessor may grant an additional 10 day extension to such applicant/possessor if, in the State Veterinarian's sound discretion, such an extension will not endanger the public health, safety and welfare.

5.3 Renewal of all classes of permits will be on an annual basis and occur by the end of the calendar month in which the original permit was issued by the Delaware Department of Agriculture.

6.0 Transporting Exotic Animals

6.1 If the exotic is to be moved from one location to another for any reason, the exotic shall be transported in a cage or other container that will be strong enough to prevent its escape while in transport and protect the public from physical contact. A violation of this provision is a ground for revoking a previously issued permit.

7.0 Requirements for the Humane Treatment of Exotics

7.1 Exotics must receive humane treatment including annual examinations by a licensed veterinarian. The State Veterinarian may consult with a local Society for the Protection of Cruelty to Animals ("SPCA") to enforce this provision.

8.0 Prohibitions of Public Nuisances

8.1 The exotic must not become a public nuisance. A public nuisance within the meaning of this provision includes creating excessive odors, noise, or becoming an unreasonable risk of danger to the public.

8.1.1 Any permitted exotic animal that has become an immediate threat and/or an unreasonable risk of danger to the public may be subject to seizure and destruction in accordance with regulation 4.2 and without the public hearing contemplated by regulation 12.3.

9.0 Department Authority to Inspect Enclosures

9.1 Prior to granting a permit, a final inspection of the enclosures where the exotic is to be confined shall be completed by the Department to insure that the requirements of these regulations will be met by the applicant. The applicant must schedule the inspection by the Department. The Department shall be allowed access to make random, unfettered re-inspections of a permitted location to insure continued compliance with these requirements.

10.0 Classes of Permit

10.1 Individual Permit

10.1.1 When exotics are kept as pets, the owner or custodian of the exotic must apply to the Department for an Individual Permit on a form supplied by the Department. Individual Permits granted by the

Department shall be valid for one year and shall become null and void when the owner or custodian transfers ownership or possession of the exotic to another. The owner or custodian must obtain a separate Individual Permit for each exotic animal intended to be kept as a pet.

10.2 Exotic Animals Sales Permit

10.2.1 When exotics are kept for sale by an owner or custodian who has a valid Delaware business license, the owner or custodian of the exotic must apply to the Department for an Exotic Animals Sales Permit. Exotic Animals Sales Permits granted by the Department shall be valid for one year and are not transferable. The owner or custodian must apply for an Exotic Animals Sales Permit for each class of exotic animal as defined in 3.3 through 3.8 of these regulations. If an exotic can be placed in more than one class, the applicant need only apply for one class per exotic. The yearly Exotic Sales Permit must include an inventory of each specific exotic animal per class of exotic animal identified on the Permit Application. The inventory must identify every exotic animal by accurate description (e.g. age, gender, breed, markings/color, approximate weight, tattoo, microchip, etc..) stocked at the business at the time of application for the yearly Permit.

10.2.2 The enclosure and welfare requirements listed in 5.1 above must be met before an application for an Exotic Animal Sales Permit can be accepted for consideration by the Department of Agriculture.

10.2.3 When a business that is permitted by the Department of Agriculture to have exotic animals for the purpose of selling those animals, is approached by a prospective purchaser, the seller must as a precondition of sale require the purchaser to produce a valid Individual Permit from the Department of Agriculture for the specific exotic animal to be sold/purchased. If the purchaser resides outside the State of Delaware, the seller must insure as a precondition of sale that the exotic has a valid health certificate issued by a United States Department of Agriculture accredited veterinarian. A copy of the purchaser's Individual Permit must be maintained by the seller for 3 years after the sale of the exotic animal. Failure to keep a copy of the purchaser's Individual Permit is grounds for revocation of the Exotic Animals Sales Permit.

10.3 Accredited Zoo Permit

10.3.1 All zoos in Delaware accredited by the Association of Zoos and Aquariums (AZA) must apply for an Accredited Zoo Permit every year. The Accredited Zoo Permit covers every exotic animal housed or kept at the Zoo. The yearly Accredited Zoo Permit application must include a current copy of their on-going accreditation document and identify an inventory of every exotic animal by accurate description (age, gender, breed, markings/color, approximate weight, tattoo, microchip, etc.) kept at the Zoo at the time of the renewal of the annual Accredited Zoo Permit.

11.0 Escape

11.1 The owner or custodian of an exotic who learns of its escape from its enclosures must immediately notify the Department of the escape. The owner or custodian of an escaped exotic also has a duty to offer assistance to recapture the exotic.

12.0 Permit Denials and Revocations

12.1 The State Veterinarian may deny an application or renewal for a permit if the State Veterinarian or her/his designee determines that the applicant has not fulfilled the requirements of these regulations at such time of application or for any other reason the State Veterinarian deems a denial justified. The denial must be accompanied by a reason for the denial. Reasons for denials may include, but are not limited to: a zoo losing its accreditation, an exotic animal biting, maiming, or otherwise injuring a human, an exotic animal escaping from its enclosure, any zoonotic disease concerns with the exotic animal, the applicant fails to provide a current literature review of the welfare standards for the exotic animal in question, or the applicant fails to maintain the welfare standards applicable to keeping the exotic. The applicant may re-apply at anytime, but each application fee is non-refundable, and each successive application that was previously denied must indicate what corrective actions have been taken to bring the applicant's current application into compliance with current regulations.

12.2 The State Veterinarian may revoke a permit previously issued under these regulations, if the permit holder is found to be in violation of these regulations.

12.3 The applicant may appeal a revocation of a permit previously issued to the Secretary of Agriculture (or designee) and request a public hearing.

12.3.1 Public Hearing

12.3.1.1 Whenever the State Veterinarian proposes to revoke a permit previously issued for any reason other than an immediate and unreasonable risk of harm to the public (in which case the

exotic animal in question is subject to immediate seizure and possible destruction), the Department shall first give written notice to the permit holder of the State Veterinarian's determination and the reasons therefore. The written notice shall inform the permit holder that he or she has the right to challenge the determination and to request a hearing before the Secretary of the Department or his or her designee. A request for a public hearing must be in writing and must be received by the Department within ten (10) days of the date of the written notice to such permit holder. If no timely request for a hearing is received by the Department, the State Veterinarian's determination becomes final. The hearing shall be informal and the technical rules of evidence shall not apply. The public hearing shall be scheduled by the Department as soon as practicable, but in no event more than thirty (30) days after receiving the written request for a public hearing.

12.3.1.2 The issue at the public hearing will be to determine whether the permit holder has satisfied and continues to satisfy all of the requirements for obtaining or retaining a permit under these regulations. The public hearing shall be recorded. The Secretary or his or her designee shall render his or her decision in writing to all interested parties within thirty (30) days of the date of the public hearing. Appeals from the Secretary's or his or her designee's decision shall be to the Superior Court of the State of Delaware.

13.0 Possession of an Exotic Without a Permit

13.1 When the Department has reason to believe that an exotic is being possessed in the state without a proper permit granted by the State Veterinarian, the Department shall send a written notice to the possessor of the legal obligation to obtain a permit within ten (10) days from the date of the written notice. The State Veterinarian, for good cause shown, and upon written request of the possessor, may grant an additional ten (10) day extension to such possessor if, in the State Veterinarian's sound discretion such an extension will not endanger the public health, safety and welfare.

13.1.1 Public Hearing

13.1.1.1 If the possessor of an exotic notified pursuant to subsection 12.1 believes that an exotic in his or her custody is not subject to these provisions, he or she may request a public hearing before the Secretary or his or her designee. A request for a public hearing must be in writing and received by the Department within ten (10) days of the date of the notice to the possessor of such alleged violation. The hearing shall be informal and the technical rules of evidence shall not apply.

13.1.1.2 The issue at the public hearing will be to determine whether the animal possessed in the state is in fact an exotic. The public hearing shall be recorded. The Secretary or his or her designee shall render his or her decision in writing to all interested parties within thirty (30) days of the date of the public hearing. Appeals from the Secretary's or his or her designee's decision shall be to the Superior Court of the State of Delaware.

HARNESS RACING COMMISSION

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

PUBLIC NOTICE

The Delaware Harness Racing Commission, pursuant to 3 Del.C. §10005, proposes to change its Rule 10 by the addition of a proposed Rule 10.2.8.3. The Commission will hold a public hearing on the proposed rule changes on May 13, 2008. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on April 1, 2008.

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

501 Harness Racing Rules and Regulations

(Break in Continuity of Sections)

10.0 Due Process and Disciplinary Action

10.1 General Provisions

This chapter contains the rules of procedure for State Steward and judges' hearings, and for Commission proceedings.

10.2 Proceedings by State Steward or Judges

10.2.1 Rights of the Licensee

A person who is the subject of the disciplinary hearing conducted by the State Steward or judges is entitled to:

10.2.1.1 Proper notice of all charges;

10.2.1.2 Confront the evidence presented, including:

10.2.1.2.1 the right to counsel at the person's expense;

10.2.1.2.2 the right to examine all evidence to be presented against him;

10.2.1.2.3 the right to present a defense;

10.2.1.2.4 the right to call witnesses; and

10.2.1.2.5 the right to cross examine witnesses.

10.2.1.3 Waive any of the above rights.

10.2.2 Complaints

10.2.2.1 A complaint must be in writing and filed with the State Steward or judges within 30 days after the action that is the subject of the complaint.

10.2.2.2 On their own motion or on receipt of a complaint from an official or other person regarding the actions of a licensee, the State Steward or judges may conduct an inquiry and disciplinary hearing regarding a licensee's actions.

10.2.3 Summary Suspension

10.2.3.1 If the State Steward or judges determine that a licensee's actions, other than those of a licensed association, constitute an immediate danger to the public health, safety or welfare, the State Steward or judges the Commission Investigator, may summarily suspend the license pending a hearing.

10.2.3.2 A licensee whose license has been summarily suspended is entitled to a hearing on the summary suspension not later than the third racing day after the license was summarily suspended. The licensee may waive his right to a hearing on the summary suspension within the three-day limit.

10.2.3.3 The State Steward or judges shall conduct a hearing on a summary suspension in the same manner as other disciplinary hearings. At a hearing on a summary suspension, the sole issue is whether the licensee's license should remain suspended pending a final disciplinary hearing and ruling.

10.2.4 Notice

10.2.4.1 Except as provided by these rules regarding summary suspensions, the State Steward or judges shall provide written notice at least 24 hours before the hearing to a person who is the subject of a disciplinary hearing. The person may waive his right to 24-hour notice by executing a written waiver.

10.2.4.2 Notice given under this section must include:

10.2.4.2.1 a statement of the time, place and nature of the hearing;

10.2.4.2.2 a reference to the particular sections of the statutes or rules

involved; and

10.2.4.2.3 a short, plain description of the alleged conduct that has given rise to the disciplinary hearing.

10.2.4.3 If possible, the State Steward or his designee, or the judges or their designee, shall hand deliver the written notice of the disciplinary hearing to the person who is the subject of the hearing. If hand delivery is not possible, the State Steward or judges shall mail the notice to the person's last known

address, as found in the Commission's licensing files, by regular mail and by certified mail, return receipt requested. If the disciplinary hearing involves an alleged medication violation that could result in the disqualification of a horse, the State Steward shall provide written or oral notice of the hearing to the owner, managing owner or lessee of the horse. Oral notice of any hearing shall suffice upon attestation by the State Steward that such notice was given the person who is the subject of the hearing.

10.2.4.4 Nonappearance of a summoned party after adequate notice shall be construed as a waiver of the right to a hearing before the State Steward or judges. The State Steward or judges may suspend the license of a person who fails to appear at a disciplinary hearing after written or oral notice of the hearing has been sent or delivered in compliance with this subsection.

10.2.5 Continuances

10.2.5.1 Upon receipt of a notice, a person may request a continuance of the hearing.

10.2.5.2 The State Steward or judges may grant a continuance of any hearing for good cause shown.

10.2.5.3 The State Steward or judges may at any time order a continuance on their own motion.

10.2.6 Evidence

10.2.6.1 Each witness at a disciplinary hearing conducted by the State Steward or judges must be sworn by the State Steward or presiding judge.

10.2.6.2 The State Steward or judges shall allow a full presentation of evidence and are not bound by the technical rules of evidence. However, the State Steward or judges may disallow evidence that is irrelevant or unduly repetitive of other evidence. The State Steward or judges shall have the authority to determine, in their sole discretion, the weight and credibility of any evidence and/or testimony. The State Steward or judges may admit hearsay evidence if the State Steward or judges determine the evidence is of a type that is commonly relied on by reasonably prudent people. The rules of privilege recognized by Delaware law apply in hearings before the State Steward or judges.

10.2.6.3 The burden of proof is on the person bringing the complaint to show, by a preponderance of the evidence, that the licensee has violated or is responsible for a violation of the Act or a Commission rule.

10.2.6.4 The State Steward or judges shall make a tape recording of a disciplinary hearing. A copy or a transcript of the recording may be made available at the expense of the requesting person.

10.2.7 Ruling

10.2.7.1 The issues at a disciplinary hearing shall be decided by the State Steward or by a majority vote of the judges.

10.2.7.2 A ruling by the State Steward or judges must be on a form prescribed by the Commission and include:

10.2.7.2.1 the full name, social security number, date of birth, last record address, license type and license number of the person who is the subject of the hearing;

10.2.7.2.2 a statement of the charges against the person, including a reference to the specific section of the Act or rules of the Commission that the licensee is found to have violated;

10.2.7.2.3 the date of the hearing and the date the ruling was issued;

10.2.7.2.4 the penalty imposed;

10.2.7.2.5 any changes in the order of finish or purse distribution;

10.2.7.2.6 other information required by the Commission; and

10.2.7.2.7 the right to appeal to the Commission.

10.2.7.3 A ruling must be signed by the State Steward or by a majority of the judges, as the case may be.

10.2.7.4 Upon request, the State Steward or his designee, or the judges or their designee, shall hand deliver or mail a copy of the ruling to the person who is the subject of the ruling. If hand

delivery is not possible, the State Steward or judges shall mail the ruling to the person's last known address, as found in the Commission's licensing files, by regular mail and by certified mail, return receipt requested. A copy of the ruling shall be sent to the Association of Racing Commissioners International, and if the ruling includes the disqualification of a horse, the State Steward or judges shall provide a copy of the ruling to the horsemen's bookkeeper, breed registry(ies) and other regulatory agencies, and shall notify the United States Trotting Association, in the manner provided by this subsection.

10.2.7.5 At the time the State Steward or judges inform a person who is the subject of the proceeding of the ruling, the State Steward or judges shall inform the person of the person's right to appeal the ruling to the Commission.

10.2.7.6 All fines imposed by the State Steward or judges shall be paid to the Commission within ten (10) days after the ruling is issued, unless otherwise ordered.

10.2.8 Effect of Rulings

10.2.8.1 Rulings against a licensee apply to another person if continued participation in an activity by the other person would circumvent the intent of a ruling by permitting the person to serve, in essence, as a substitute for the ineligible licensee.

10.2.8.2 The transfer of a horse to avoid application of a Commission rule or ruling is prohibited.

10.2.8.3 The horses of a trainer and/or owner issued a full suspension (or under appeal of a full suspension) may not be transferred to a spouse, member of the immediate family, assistant, current or former employee/employer, or household member. All trainer and owner transfers of horses from parties under a full suspension (or parties under appeal of a full suspension) to other owners or trainers who are not spouses, members of the immediate family, assistants, current or former employees/employers, or household members must be approved by the DHRC judges or the DHRC Administrator.

***Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Harness Racing Commission is available at: <http://regulations.delaware.gov/AdminCode/title3/500/index.shtml#TopOfPage>**

THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10103; 29 Delaware Code, Section 10103 (3 **Del.C.** §10103)
3 **DE Admin. Code** 1001

PUBLIC NOTICE

The Delaware Thoroughbred Racing Commission in accordance with 3 **Del.C.** §10103(c) has proposed changes to its rules and regulations. The proposal amends Section 15 of the rules and regulations to address use of Androgenic-Anabolic Steroids by thoroughbred horses by amending existing Rule 15.1.3.1.3 and adding new Rule 15.1.17.

A public hearing will be held on March 11, 2008 at 10:00 a.m. in the second floor conference room of the Horsemen's Office at Delaware Park, 777 Delaware Park Boulevard, Wilmington, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed regulations may obtain a copy from the Delaware Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware. Copies are also published online at the Register of Regulations website: http://regulations.delaware.gov/services/current_issue.shtml. Persons wishing to submit written comments may forward these to the Commission at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulation at its regularly scheduled meeting following the public hearing.

1001 Thoroughbred Racing Rules and Regulations***(Break in Continuity of Sections)*****15.0 Medication; Testing Procedures****15.1 Prohibition and Control of Medication:**

15.1.1 Horses should not compete under the influence of drugs or therapeutic medications. However, horses, in training, like all athletes, may require the administration of therapeutic medications at times to diagnose or treat illness or injury. Certain drugs have no therapeutic use in horses in training, and these drugs should not be administered to horses in training, nor should they be permitted at any concentration in post-race samples. In this context:

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

15.1.1.2 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.

15.1.1.3 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.

15.1.1.4 Notwithstanding the provisions of Rule 15.1.1.3 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.

15.1.1.5 Notwithstanding the provisions of Rule 15.1.1.3 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.

15.1.2 Definitions:

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

15.1.2.1 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.

15.1.2.2 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.

15.1.2.3 Veterinarian shall mean a veterinary practitioner authorized to practice at the race track.

15.1.2.4 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.

15.1.2.5 Chemist shall mean the Commission's chemist.

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

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

15.1.3 Foreign Substances:

15.1.3.1 No horse participating in a race shall carry in its body any foreign substance except as provided in Rule 15.1.3.1.3:

15.1.3.1.1 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.

15.1.3.1.2 A finding by the chemist of a foreign substance or an approved substance used in violation of Rule 15.1 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.

15.1.3.1.3 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. Androgenic-Anabolic Steroids are subject to the provisions of Rule 15.17.

(Break in Continuity of Sections)

15.17 Androgenic-Anabolic Steroids

15.17.1 No Androgenic-Anabolic Steroids shall be permitted in test samples collected from racing horses except for residues of the major metabolite of stanozolol, nandrolone, and the naturally occurring substances, boldenone and testosterone, at concentrations less than the indicated thresholds:

15.17.1.1 Concentrations of these Androgenic - Anabolic Steroids shall not exceed the following urine threshold concentrations for total (i.e., free drug or metabolite and drug or metabolite liberated from its conjugates):

15.17.1.1.1 16-Hydroxystanozolol (metabolite of stanozolol (Winstrol®)) – 1ng/ml in urine for all horses regardless of sex.

15.17.1.1.2 Boldenone (Equipoise® is the undecylenate ester of boldenone) in male horses other than geldings - 15 ng/ml in urine. No boldenone shall be permitted in geldings or female horses.

15.17.1.1.3 Nandrolone (Durabolin® is the phenylpropionate ester and Deca-Durabolin® is the decanoate ester)

15.17.1.1.3.1 In geldings – 1 ng/ml in urine.

15.17.1.1.3.2 In fillies and mares – 1 ng/ml in urine.

15.17.1.1.4 Testosterone

15.17.1.1.4.1 In geldings – 20 ng/ml in urine.

15.17.1.1.4.2 In fillies and mares – 55 ng/ml in urine.

15.17.2 All other Androgenic - Anabolic Steroids are prohibited in racing horses.

15.17.3 Post-race samples collected from intact males shall be identified to the laboratory.

15.17.4 Any horse to which one of these Androgenic - Anabolic Steroids has been administered in order to assist in the recovery from an illness or injury may be placed on the veterinarian's list in order to monitor the concentration of the drug or metabolite in urine. After the concentration has fallen below the designated threshold for the administered Androgenic - Anabolic Steroids, the horse is eligible to be removed from the list.

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

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)

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

6 DE Reg. 1205 (3/1/03)

7 DE Reg. 766 (12/1/03)

7 DE Reg. 1540 (5/1/04)

8 DE Reg. 1699 (6/1/05)

10 DE Reg. 546 (09/01/06)

10 DE Reg. 1581 (04/01/07)

***Please Note:** As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Thoroughbred Racing Commission is available at: <http://regulations.delaware.gov/AdminCode/title3/1000/index.shtml#TopOfPage>

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 104

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

104 Education Profiles for Schools, Districts, and the State

A. Type of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 104 Education Profiles for Schools, Districts, and the State. The amendments provide that the print format of the school, district, and state profiles may vary from the web version because the print format is intended to summarize the detail contained on the website.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before May 5, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation defines the process for communicating the student achievement results to the public.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation defines the process for communicating the student achievement results to the public.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation defines the process for communicating the student achievement results to the public but does not specifically address health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation defines the process for communicating the student achievement results to the public but does not specifically address issues of 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 defines the specific elements that must be in the profiles on student achievement.

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 continues an existing requirement to produce school profiles and does not require local boards or schools to provide any additional requirements.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The federal and state statutes as reflected in the amended regulation are more specific as to the content of the profiles.

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The state statute requires the Department of Education to promulgate this regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The state pays for the cost of developing the profiles.

104 Education Profiles for Schools, Districts, and the State

1.0 Education Profiles

All public schools, including charter schools, reorganized or vocational-technical school districts and the State shall issue Delaware Public Education Profiles on the state of Delaware's public school system as required by 14 **Del.C.** §124A. The profiles shall be provided in a web format as well as an abbreviated print format pursuant to 2.0 of this regulation. The profiles shall be referred to as school, district, and state Profiles respectively. Each website profile shall contain, but need not be limited to, the following information, aggregated at the appropriate level (school, district or state), unless otherwise noted:

1.1 Information on student achievement at each performance level on the state reading, writing, mathematics, science, and social studies academic assessments. Such information shall be disaggregated by race, ethnicity, gender, disability status, migrant status, English proficiency, and status as economically disadvantaged except that such disaggregation shall not be required in a case in which the number of students in a category is less than fifteen (15).

1.2 The most recent 2 year trend in student achievement in each of the five content areas as assessed by the DSTP, and for each grade level the assessments are administered;

1.3 The percentage of students not tested in reading/language arts and mathematics disaggregated by the student subgroups as defined in 1.9, except that such disaggregation shall not be required in a case in which the number of students in a category is less than fifteen (15).

1.4 Information that provides a comparison between the actual achievement levels of each student subgroup meeting proficiency and those that have not met proficiency, as defined in 14 **DE Admin. Code** 103 and the state's annual measurable objectives for each such group of students in the reading and language arts and mathematics academic assessments;

1.5 Aggregate information of the percent proficient on the combined scores of the science and social studies academic assessments for elementary and middle schools, used as the other indicator to determine Annual Yearly Progress (AYP) of students in achieving the state academic standards disaggregated by student subgroups. Such disaggregation shall not be required in a case in which the number of students is less than fifteen (15).

1.6 For secondary schools only, graduation rate is defined as the number of students enrolled in the school in the ninth grade and who graduate with a diploma four years later, excluding students who earn a GED certificate, divided by the same number plus those who have dropped out during the same four year period, disaggregated by student subgroups. Such disaggregation shall not be required in a case in which the number of students is less than fifteen (15).

1.7 Information on the performance of the school, district, or state regarding making adequate yearly progress, including the number and names of each school identified as Under School Improvement.

1.8 Information regarding the professional qualifications of teachers in the school, district and state, the percentage of such teachers teaching with emergency or provisional credentials, and the percentage of classes in the state not taught by highly qualified teachers, in the aggregate and disaggregated by high-poverty compared to low poverty schools which means schools in the top quartile of poverty and the bottom quartile of poverty in the State;

1.9 Information pertaining to the AYP status and accountability ratings;

1.10 Information pertaining to school safety and discipline and student attendance;

1.11 Information pertaining to school district administrator to student ratios, school teacher to student ratios and other staffing ratios;

1.12 Information pertaining to pupil and staff demographics;

- 1.13 Information pertaining to school district revenues, expenditures, tax rates and wealth (district profile only);
- 1.14 Information pertaining to school curricular offerings (school profile only);
- 1.15 Information pertaining to parent and community involvement in the school and school district;
- 1.16 Examples of exemplary programs, successful teaching, school climate or disciplinary strategies and other developments (only in school profile); and
- 1.17 Other items from time to time that may be required by the federal Elementary and Secondary Education Act.

7 DE Reg. 65 (7/1/03)

2.0 Publishing of Profiles

~~The profiles will be published, subject to an annual appropriation in the annual state budget act, at the expense of the state. School and districts specific data shall be submitted, in the format requested, to the Department in the time frame delineated in the Data Acquisition Calendar. The State shall have the profiles available on the Department of Education website no later than August 15, 2003 and on or before August 1 of each subsequent year.~~

The State shall have the profiles available on the Department of Education website on or before August 1st of each year. In addition, subject to an annual appropriation in the annual state budget act, the profiles shall be published in a print format as determined by the Department that does not exceed four pages. The print format is intended to summarize the detail contained on the website.

7 DE Reg. 65 (7/1/03)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 DE Admin. Code 1550

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

1550 Agriculture Teacher

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 regulation **DE Admin. Code 1550 Agriculture Teacher**. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). This Career and Technical Education regulation is being amended to reflect the currently accepted certification regulation language and abbreviated format. The amended regulation title will read 1550 AgriScience Teacher. This regulation sets forth the requirements for an AgriScience Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday May 5, 2007 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

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 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 regulation help ensure that all students receive an equitable education? The amended regulation helps 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 regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, 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 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 adopted regulation? There is no additional cost to local school boards for compliance with the regulation.

1550 Agriculture Teacher

1.0 Content

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Agriculture Teacher. (Grades K to 12)

~~7-DE-Reg-775 (12/1/03)~~

~~7-DE-Reg-100 (01/01/06)~~

2.0 Definitions

2.1 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

~~“Certification” means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.~~

~~“Department” means the Delaware Department of Education.~~

~~“Educator” means a person licensed and certified by the State under 14 **Del.C.** §1202 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board approved by the State Board. The term ‘educator’ does not include substitute teachers.~~

~~“Examination of Content Knowledge” means a standardized test which measures knowledge in a specific content area, such as PRAXIS™ II.~~

~~“Fifteen (15) Credits or Their Equivalent in Professional Development” means college credits or an equivalent number of hours, with one (1) credit equating fifteen (15) hours, taken either as part of a degree program or apart from it, from a regionally accredited college or university or a professional development provided approved by the employing school district or charter school.~~

~~“Immorality” means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator’s effectiveness by reason of his or her unfitness.~~

~~“License” means a credential which authorizes the holder to engage in the practice for which the license is issued.~~

~~“Major or Its Equivalent” means a minimum of thirty (30) semester hours of course work in a particular content area.~~

~~“NASDTEC” means The National Association of State Directors of Teacher Education and Certification. The organization represents professional standards boards, commissions and departments of education in all 50 states, the District of Columbia, the Department of Defense Dependent Schools, the U.S. Territories, New Zealand, and British Columbia, which are responsible for the preparation, licensure, and discipline of educational personnel.~~

~~“NCATE” means The National Council for Accreditation of Teacher Education, a national accrediting body for schools, colleges, and departments of education authorized by the U.S. Department of Education.~~

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

~~“State Board” means the State Board of Education of the State pursuant to 14 Del.C. §104.~~

~~“Valid and Current License or Certificate from Another State” means a current full or permanent certificate or license issued by another state. It does not include temporary, emergency or expired certificates or licenses issued from another state.~~

~~7-DE Reg. 775 (12/1/03)~~

~~10-DE Reg. 100 (07/01/06)~~

3-0 Standard Certificate

The Department shall issue a Standard Certificate as an Agriculture Teacher to an educator who holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003 who has met the following requirements:

3-1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:

3-1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or

3-1.2 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in Agriculture; or

3-1.3 Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or

3-1.4 Holding a bachelor’s degree from a regionally accredited college or university in any content area and for applicants applying after June 30, 2006 for their first Standard Certificate, satisfactory completion of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) credits or their equivalent must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and

3-2 For applicants applying after December 31, 2005, where a Praxis™ II examination in the area of the Standard Certificate requested is applicable and available, achieving a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination; or

3-3 Meeting the requirements for licensure and holding a valid and current license or certificate from another state in agriculture;

3-3.1 The Department shall not act on an application for certification if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where

~~the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution; or~~

~~3.4 Meeting the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C. §1203.~~

~~7-DE-Reg-775 (12/1/03)~~

~~10-DE-Reg-97 (07/01/06)~~

4.0 Multiple Certificates

~~Educators may hold certificates in more than one area.~~

~~7-DE-Reg-775 (12/1/03)~~

~~10-DE-Reg-100 (07/01/06)~~

5.0 Application Requirements

~~An applicant for a Standard Certificate shall submit:~~

~~5.1 Official transcripts; and~~

~~5.2 Official scores on the Praxis II examination if applicable and available; or~~

~~5.3 Evidence of passage of the National Board for Professional Teaching Standards Certificate, if applicable; or~~

~~5.4 An official copy of the out of state license or certification, if applicable.~~

~~5.5 If applied for simultaneously with application for an Initial License, the applicant shall provide all required documentation for that application in addition to the documentation cited above.~~

~~10-DE-Reg-100 (07/01/06)~~

6.0 Application Procedures for License Holders

~~If an applicant holds a valid Initial, Continuing, or Advanced Delaware License; or a Limited Standard, Standard or Professional Status Certificate issued prior to August 31, 2003 and is requesting additional Standard Certificates, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill or education required for the additional Standard Certificate requested is required.~~

~~10-DE-Reg-100 (07/01/06)~~

7.0 Effect of Regulation

~~This regulation shall apply to all requests for issuance of a Standard Certificate, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate issued on or before August 31, 2003 shall be issued a Continuing License upon the expiration of their current Professional Status Certificate or Standard Certificate. The Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate shall be listed on the Continuing License or the Advanced License. The Department shall also recognize a Limited Standard Certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the prescription letter received with the Limited Standard Certificate. Requirements must be completed by the expiration date of the Limited Standard Certificate, but in no case later than December 31, 2008.~~

~~10-DE-Reg-100 (07/01/06)~~

8.0 Validity of a Standard Certificate

~~A Standard Certificate is valid regardless of the assignment or employment status of the holder of a certificate or certificates, and is not subject to renewal. It shall be revoked in the event the educator's Initial, Continuing, or Advanced License or Limited Standard, Standard, or Professional Status Certificate is revoked in accordance with 14 DE Admin. Code 1514. An educator whose license or certificate is revoked is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.~~

~~10-DE-Reg-100 (07/01/06)~~

9.0 Secretary of Education Review

~~The Secretary of Education may, upon the written request of the superintendent of a local school district or charter school administrator or other employing authority, review credentials submitted in application for a Standard~~

~~Certificate on an individual basis and grant a Standard Certificate to an applicant who otherwise does not meet the requirements for a Standard Certificate, but whose effectiveness is documented by the local school district or charter school administrator or other employing authority.~~

~~7 DE Reg. 775 (12/1/03)~~

~~10 DE Reg. 100 (07/01/06)~~

~~Renumbered effective 6/1/07 - see Conversion Table~~

1550 AgriScience Teacher

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for AgriScience Teacher. This certification is required for grades 9 to 12, and in grades 6 to 8 in a Middle Level school.

1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

2.1 The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

3.0 Standard Certificate

3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as an AgriScience Teacher to an educator who has met the following:

3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,

3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto.

~~7 DE Reg. 775 (12/1/03)~~

~~10 DE Reg. 100 (07/01/06)~~

~~Renumbered effective 6/1/07 - see Conversion Table~~

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1551

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

1551 Business Education Teacher

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 regulation DE Admin. Code 1551 Business Education Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). This Career and Technical Education regulation is being amended to reflect the currently accepted certification regulation language and abbreviated format. This regulation sets forth the requirements for a Business Education Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday May 5, 2007 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The

Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

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 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 regulation help ensure that all students receive an equitable education? The amended regulation helps 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 regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, 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 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 adopted regulation? There is no additional cost to local school boards for compliance with the regulation.

1551 Business Education Teacher

1.0 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 to 12, and valid in grades 5 to 8 in a middle level school).~~

~~7-DE-Reg-775 (12/1/03)~~

2.0 Definitions

~~2.1 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:~~

~~“Certification” means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.~~

~~“Department” means the Delaware Department of Education.~~

~~“Educator” means a person licensed and certified by the State under 14 Del.C. §1202 to engage in the practice of instruction, administration or other related professional support services in Delaware public~~

schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board. The term 'educator' does not include substitute teachers.

~~“Examination of Content Knowledge” means a standardized test which measures knowledge in a specific content area, such as PRAXIS™ II.~~

~~“Fifteen (15) Credits or Their Equivalent in Professional Development” means college credits or an equivalent number of hours, with one (1) credit equating to fifteen (15) hours, taken either as part of a degree program or apart from it, from a regionally accredited college or university or a professional development provider approved by the employing school district or charter school.~~

~~“Immorality” means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator’s effectiveness by reason of his or her unfitness.~~

~~“License” means a credential which authorizes the holder to engage in the practice for which the license is issued.~~

~~“Major in Business” means a major in business administration or management, or a related field, including, but not limited to, accounting, economics, finance or marketing.~~

~~“Major or its Equivalent” means a minimum of thirty (30) semester hours of course work in a particular content area.~~

~~“NASDTEC” means The National Association of State Directors of Teacher Education and Certification. The organization represents professional standards boards, commissions and departments of education in all 50 states, the District of Columbia, the Department of Defense Dependent Schools, the U.S. Territories, New Zealand, and British Columbia, which are responsible for the preparation, licensure, and discipline of educational personnel.~~

~~“NCATE” means The National Council for Accreditation of Teacher Education, a national accrediting body for schools, colleges, and departments of education authorized by the U.S. Department of Education.~~

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

~~“Standards Board” means the Professional Standards Board established pursuant to 14 Del.C. §1201.~~

~~“State Board” means the State Board of Education of the State pursuant to 14 Del.C. §104.~~

~~“Valid and Current License or Certificate from Another State” means a current full or permanent certificate or license issued by another state. It does not include temporary, emergency or expired certificates or licenses issued from another state.~~

~~7-DE Reg. 775 (12/1/03)~~

~~10-DE Reg. 100 (07/01/06)~~

3-0 Standard Certificate

The Department shall issue a Standard Certificate as a Business Education Teacher to an educator who holds a valid Delaware Initial, Continuing or Advanced License; or Limited Standard, Standard, or Professional Status Certificate issued prior to August 31, 2003, who has met the following requirements:

3.1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:

3.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or

3.1.2 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in business education; or

3.1.3 Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or

3.1.4 Holding a bachelor’s degree from a regionally accredited college or university in any content area and for applicants applying after June 30, 2006 for their first Standard Certificate, satisfactory

completion of fifteen (15) credits or their equivalent in professional development related to their area of certification. Of which at least six (6) credits or their equivalent must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and

~~3.2 For applicants applying after December 31, 2005, where a Praxis™ II examination in the area of the Standard Certificate requested is applicable and available, achieving a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination; or~~

~~3.3 Meeting the requirements for licensure and holding a valid and current license or certificate from another state in Business Education.~~

~~3.3.1 The Department shall not act on an application for certification if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution; or~~

~~3.4 Meeting the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C. §1203.~~

~~7-DE-Reg-775 (12/1/03)~~

~~10-DE-Reg-100 (07/01/06)~~

4.0 Multiple Certificates

Educators may hold certificates in more than one area.

~~7-DE-Reg-775 (12/1/03)~~

~~10-DE-Reg-100 (07/01/06)~~

5.0 Application Requirements

An applicant for a Standard Certificate shall submit:

~~5.1 Official transcripts; and~~

~~5.2 Official scores on the Praxis II examination if applicable and available; or~~

~~5.3 Evidence of passage of the National Board for Professional Teaching Standards Certificate, if applicable; or~~

~~5.4 An official copy of the out of state license or certification, if applicable.~~

~~5.5 If applied for simultaneously with application for an Initial License, the applicant shall provide all required documentation for that application in addition to the documentation cited above.~~

6.0 Application Procedures for License Holders

~~If an applicant holds a valid Initial, Continuing, or Advanced Delaware License; or a Limited Standard, Standard or Professional Status Certificate issued prior to August 31, 2003 and is requesting additional Standard Certificates, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill or education required for the additional Standard Certificate requested is required.~~

~~10-DE-Reg-100 (07/01/06)~~

7.0 Effect of Regulation

~~This regulation shall apply to all requests for issuance of a Standard Certificate, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate issued on or before August 31, 2003 shall be issued a Continuing License upon the expiration of their current Professional Status Certificate or Standard Certificate. The Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate shall be listed on the Continuing License or the Advanced License. The Department shall also recognize a Limited Standard Certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the prescription letter received with the Limited Standard Certificate. Requirements must be completed by the expiration date of the Limited Standard Certificate, but in no case later than December 31, 2008.~~

~~10-DE-Reg-100 (07/01/06)~~

~~8-0~~ ~~Validity of a Standard Certificate~~

~~A Standard Certificate is valid regardless of the assignment or employment status of the holder of a certificate or certificates, and is not subject to renewal. It shall be revoked in the event the educator's Initial, Continuing, or Advanced License or Limited Standard, Standard, or Professional Status Certificate is revoked in accordance with 14 DE Admin. Code 1514. An educator whose license or certificate is revoked is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.~~

~~9-0~~ ~~Secretary of Education Review~~

~~The Secretary of Education may, upon the written request of the superintendent of a local school district or charter school administrator or other employing authority, review credentials submitted in application for a Standard Certificate on an individual basis and grant a Standard Certificate to an applicant who otherwise does not meet the requirements for a Standard Certificate, but whose effectiveness is documented by the local school district or charter school administrator or other employing authority.~~

~~7 DE Reg. 775 (12/1/03)~~

~~10 DE Reg. 100 (07/01/06)~~

~~Renumbered effective 6/1/07 - see Conversion Table~~

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Business Education Teacher. This certification is required for grades 9 to 12, and in grades 6 to 8 in a Middle Level school.

1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

2.1 The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

3.0 Standard Certificate

3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Business Education Teacher to an educator who has met the following:

3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,

3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto.

~~7 DE Reg. 775 (12/1/03)~~

~~10 DE Reg. 100 (07/01/06)~~

~~Renumbered effective 6/1/07 - see Conversion Table~~

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1554

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

1554 Family and Consumer Sciences Teacher

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 regulation **DE Admin. Code 1554 Family and Consumer Sciences Teacher**. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). This Career and Technical Education regulation is being amended to reflect the currently accepted certification regulation language and abbreviated format. This regulation sets forth the requirements for a Family and Consumer Sciences Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday May 5, 2007 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

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 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 regulation help ensure that all students receive an equitable education? The amended regulation helps 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 regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, 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 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 adopted regulation? There is no additional cost to local school boards for compliance with the regulation.

1554 Family and Consumer Sciences Teacher

~~1.0~~ Content

~~1.1 This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Family and Consumer Sciences Teacher.~~

2.0 Definitions

2.1 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“**Department**” means the Delaware Department of Education.

“**License**” means a credential which authorizes the holder to engage in the practice for which the license is issued.

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

3.0 Standard Certificate

In accordance with ~~14 Del.C. §1220(a)~~, the Department shall issue a Standard Certificate as a Family and Consumer Sciences 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 Graduating from an NCATE specialty organization recognized educator preparation program offered by a regionally accredited college or university, with a major in Family and Consumer Sciences; or

3.2 Graduating from a state approved educator preparation program offered by a regionally accredited college or university, with a major in Family and Consumer Sciences, where the state approval body employed the appropriate NCATE specialty organization standards; or

3.3 A minimum of 39 semester hours with at least one course in each of the following areas:

3.3.1 Adult Development or Aging;

3.3.2 Methods of Teaching Family and Consumer Sciences;-

3.3.3 Identifying and Treating Exceptionalities;-

3.3.4 Effective Teaching Strategies;-

3.3.5 Multicultural Education;

3.3.6 Consumer Economics or Resource Management;

3.3.7 Life Span Development, Human Development, Child Development and Adult Development;-

3.3.8 Adolescent Development;-

3.3.9 Family and Human Sexuality;-

3.3.10 Nutrition and Food Principles;

3.3.11 Textiles and Clothing; and

3.3.12 Curriculum and Evaluation for Family and Consumer Sciences.

8-DE Reg. 553 (10/1/04)

Renumbered effective 6/1/07—see Conversion Table

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Family and Consumer Sciences Teacher. This certification is required for grades 9 to 12, and in grades 6 to 8 in a Middle Level school.

1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

2.1 The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

3.0 Standard Certificate

3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Family and Consumer Sciences Teacher to an educator who has met the following:

3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,

3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate,

including any subsequent amendment or revision thereto; and.

3.1.3 Has satisfied the additional requirements in this regulation.

4.0 Additional Requirements

4.1 If an examination of content knowledge such as Praxis II is not applicable and available, in the area the Standard Certificate is requested, an educator must also meet the following:

4.1.1 If the educator is applying for their second Standard Certificate pursuant to 14 DE Admin. Code 1505 Standard Certificate 3.1.5, the satisfactory completion of fifteen (15) credits or their equivalent in professional development related to Family and Consumer Sciences, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department.

8 DE Reg. 553 (10/1/04)

Renumbered effective 6/1/07 - see Conversion Table

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1555

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

1555 Marketing Education Teacher

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 regulation **DE Admin. Code 1555 Marketing Education Teacher**. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). This Career and Technical Education regulation is being amended to reflect the currently accepted certification regulation language and abbreviated format. This regulation sets forth the requirements for a Marketing Education Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday May 5, 2007 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

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 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 regulation help ensure that all students receive an equitable education? The amended regulation helps 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 regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, 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 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 adopted regulation? There is no additional cost to local school boards for compliance with the regulation.

1555 Marketing Education Teacher

1.0 Content

1.1 ~~This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Marketing Education Teacher.~~

2.0 Definitions

2.1 ~~The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:~~

~~“Department” means the Delaware Department of Education~~

~~“License” means a credential which authorizes the holder to engage in the practice for which the license is issued.~~

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

3.0 Standard Certificate

~~In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Marketing 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 A bachelor’s degree from an NCATE specialty organization recognized educator preparation program offered by a regionally accredited college or university with a major in marketing education; or~~

~~3.2 A bachelor’s degree from a state approved educator preparation program offered by a regionally accredited college or university, with a major in marketing education, where the state approval body employed the appropriate NASDTEC standards or NCATE specialty organization standards; or~~

~~3.3 A bachelor’s degree from a regionally accredited college or university with a major in marketing; and~~

~~3.3.1 A minimum of twenty four (24) semester hours of pedagogy courses from a regionally accredited college or university to include at least three (3) credits in each of the following:~~

~~3.3.1.1 Human Development;~~

~~3.3.1.2 Methods of Teaching Marketing or Business Education;~~

~~3.3.1.3 Identifying and Treating Exceptionalities;~~

- 3.3.1.4 Effective Teaching Strategies; and
- 3.3.1.5 Multicultural Education; or

3.4 A bachelor's degree in any field and completion of the semester hours indicated below from a regionally accredited college or university, taken either as part of a degree program or in addition to it, and completion of the course work set forth in 3.3.1:

3.4.1 A minimum of eighteen (18) semester hours in marketing, selected from the following areas:-

- 3.4.1.1 Visual Merchandising and Display;
- 3.4.1.2 Advertising and Promotional Strategies;
- 3.4.1.3 Economics
- 3.4.1.4 Management;
- 3.4.1.5 Retailing;
- 3.4.1.6 Business Law;
- 3.4.1.7 Fashion and Design;
- 3.4.1.8 Salesmanship;
- 3.4.1.9 Marketing;
- 3.4.1.10 E-marketing and Website Design;
- 3.4.1.11 Business Ethics;
- 3.4.1.12 Human Resource Management; or
- 3.4.1.13 Entrepreneurship.

8 DE Reg. 1611 (5/1/05)

Renumbered effective 6/1/07—see Conversion Table

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Marketing Education Teacher. This certification is required for grades 9 to 12, and in grades 6 to 8 in a Middle Level school.

1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

2.1 The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

3.0 Standard Certificate

3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Marketing Education Teacher to an educator who has met the following:

3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,

3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and,

3.1.3 Has satisfied the additional requirements in this regulation.

4.0 Additional Requirements

4.1 If an examination of content knowledge such as Praxis II is not applicable and available, in the area the Standard Certificate is requested, an educator must also meet the following:

4.1.1 If the educator is applying for their second Standard Certificate pursuant to 14 DE Admin. Code 1505 Standard Certificate 3.1.5, the satisfactory completion of fifteen (15) credits or their equivalent in professional development related to Marketing Education, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department.

8 DE Reg. 1611 (5/1/05)

Renumbered effective 6/1/07 - see Conversion Table

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1557

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

1557 Technology Education Teacher

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 regulation **DE Admin. Code 1557** Technology Education Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). This Career and Technical Education regulation is being amended to reflect the currently accepted certification regulation language and abbreviated format. This regulation sets forth the requirements for a Technology Education Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday May 5, 2007 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

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 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 regulation help ensure that all students receive an equitable education? The amended regulation helps 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 regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, 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 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 adopted regulation? There is no additional cost to local school boards for compliance with the regulation.

1557 Technology Education Teacher

1.0 Content

1.1 This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Technology Education Teacher (Grades K to 12).

2.0 Definitions

2.1 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“**Department**” means the Delaware Department of Education.

“**License**” means a credential which authorizes the holder to engage in the practice for which the license is issued.

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

“**Standards Board**” means the Professional Standards Board established pursuant to 14 **Del.C.** §1201.

“**State Board**” means the State Board of Education of the State pursuant to 14 **Del.C.** §104.

3.0 Standard Certificate

In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Technology 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 A bachelor’s degree from an NCATE specialty organization recognized educator preparation program offered by a regionally accredited college or university with a major in technology education; or

3.2 A bachelor’s degree from a state approved educator preparation program offered by a regionally accredited college or university, with a major in technology education, where the state approval body employed the appropriate NASDTEC standards or NCATE specialty organization standards with a major in technology education; or

3.3 Passage of the appropriate PRAXIS™ II test approved by the Standards Board and the State Board in Technology Education; or

3.4 A bachelor’s degree in any field from a regionally accredited college or university and completion of the semester hours indicated below from a regionally accredited college or university, taken either as part of a degree program or in addition to it:

3.4.1 A minimum of twenty four (24) semester hours in technology systems or equivalent areas, with a minimum of six (6) semester hours in each of the three areas listed below and an additional six (6) semester hours in any one of the areas listed below:

3.4.1.1 Communications (a minimum of six (6) semester hours):

3.4.1.1.1 Courses which contain the applications of communication technologies which compose, store, send, receive, and understand ideas and information.

3.4.1.2 Physical Technology Systems (a minimum of six (6) semester hours):

3.4.1.2.1 Production: Courses which contain the analysis of goals, inputs, processes, outputs, and feedback of manufacturing and construction systems.

3.4.1.2.2 Energy: Courses which contain the principles and applications of radiant and potential energy, fluid and mechanical power.

3.4.1.2.3 Transportation: Courses which contain concepts and applications of land, air, space, and sea transportation.

3.4.1.3 Bio-related (a minimum of six (6) semester hours):

~~3.4.1.3.1 Courses which contain techniques and methods for managing and retrofitting bio-related systems in existing and futuristic residential, commercial, and industrial environments; and~~

~~3.4.2 A minimum of twenty one (21) semester hours of pedagogy from a regionally accredited college or university, or equivalent in service courses approved by the Department, to include:~~

- ~~3.4.2.1 Human Development;~~
- ~~3.4.2.2 Methods and Strategies for Teaching Technology Education;~~
- ~~3.4.2.3 Identifying and Treating Exceptionalities;~~
- ~~3.4.2.4 Effective Teaching Strategies;~~
- ~~3.4.2.5 Multicultural Education;~~
- ~~3.4.2.6 Standards Based Technology Education in Delaware; and~~
- ~~3.4.2.7 Student Organizations.~~

~~9 DE Reg. 547 (10/1/05)~~

~~Renumbered effective 6/1/07 — see Conversion Table~~

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Technology Education Teacher. This certification is required for grades 9 to 12, and in grades 6 to 8 in a Middle Level school.

1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

2.1 The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.2 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Technology Education” means a study of technology, which provides an opportunity for students to learn about the processes and knowledge related to technology that are needed to solve problems and extend human capabilities. This study includes the application of the Design Process, the Systems Model, technological resources, engineering design and Design Briefs.

3.0 Standard Certificate

3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Technology Education Teacher to an educator who has met the following:

3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,

3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and,

3.1.3 Has satisfied the additional requirements in this regulation.

4.0 Additional Requirements

4.1 If an examination of content knowledge such as Praxis II is not applicable and available, in the area the Standard Certificate is requested, an educator must also meet the following:

4.1.1 If the educator is applying for their second Standard Certificate pursuant to 14 DE Admin. Code 1505 Standard Certificate 3.1.5, the satisfactory completion of fifteen (15) credits or their equivalent in professional development related to Technology Education, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department.

~~9 DE Reg. 547 (10/1/05)~~

~~Renumbered effective 6/1/07 - see Conversion Table~~

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCEStatutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)**PUBLIC NOTICE****Medicaid for Workers with Disabilities**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) related to the implementation of the Medicaid Buy-In program for the working disabled.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by April 30, 2008.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSED AMENDMENT

The proposed amends the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to implement a Medicaid Buy-In (MBI) program and to comply with federal law to ensure federal financial participation as it relates to the MBI Program for working individuals with disabilities. This program will allow disabled individuals receiving Medicaid to return to the workplace without losing their Medicaid coverage, by paying a monthly premium, if applicable.

Statutory Authority

- 1902(a)(10)(A)(ii)(XIII) of the Social Security Act, *Working disabled individuals who buy into Medicaid*;
- 1902(a)(10)(A)(ii)(XV) of the Social Security Act, *Working disabled individuals who buy into Medicaid under TWWIIA (Ticket to Work and Work Incentives Improvement Act of 1999) Basic Coverage Group*;
- 1916(g) of the Social Security Act, *Premiums - Working Disabled Individuals*; and,
- Balanced Budget Act (BBA) of 1997, Section 4733, *State Option To Permit Workers With Disabilities To Buy Into Medicaid*.

Background**BBA Eligibility Group**

Section 4733 of the Balanced Budget Act of 1997 (BBA) allows States to provide Medicaid coverage to working individuals with disabilities who, because of their earnings, cannot qualify for Medicaid under other Statutory provisions. Section 4733 allows States to provide Medicaid coverage to these individuals by creating a new optional categorically needy eligibility group.

Summary of Proposed Amendment

Congress enacted the Medicaid Buy-In option for states in the Balanced Budget Act of 1997 (§4733) and enhanced the option in the Ticket to Work and Work Incentive Improvement Act of 1999 (P.L. 106-170, 42 USC 1396 et seq.). The purpose of this amendment is to adopt rules for Delaware's MBI program, as in effect on June 1, 2008. The Division of Medicaid and Medical Assistance (DMMA) proposes to amend *Attachment 2.2-A, Page 23e* and *Attachment 2.6-A, Pages 12c through 12o* of the State Medicaid Plan; amend section DSSM 14900; and, propose new *Section 17900* of the DSSM to add a new Medicaid categorically needy eligibility group: Medicaid Buy-In Basic Coverage Group. All references in the rules to **Medicaid for Workers with Disabilities (MWD)** mean the Medicaid Buy-In Program.

Section-by-Section Summary:

Section 17900 provides a general description of the Medicaid for Workers with Disabilities (MWD) program and the eligibility effective date. The requirements for applying and providing information are provided in §17901, *General Eligibility Requirements*. The eligibility requirement related to citizenship is contained in §17902, *Alien Status*. An individual must meet the age requirement under 17903, *Age Requirement*. The disability requirement for clients is described in §17904, *Disability Requirement* and the employment requirement the individual must meet is found in §17905, *Employment Requirement*. Sections 17905 through 17908, *Income*, explains what income is considered as well as what is excluded. The deeming policy for income is explained in §17909, *Deeming of Income*. §17910, *Financial Eligibility Determination*, describe the income tests used to determine financial eligibility. *Retroactive Eligibility* provisions are contained in Section 17911 and, finally, §17912 implements the monthly cost-sharing requirements for all months of eligibility.

The provisions of the proposed amendments to establish Medicaid for Workers with Disabilities (MWD) eligibility requirements, including the monthly cost-sharing requirements, are subject to approval by the Centers for Medicare & Medicaid Services (CMS).

**DMMA PROPOSED REGULATION #08-11
REVISIONS:**

Revision:

**ATTACHMENT 2.2-A
PAGE 23d
OMB NO.:**

State/Territory:

Citation

Groups Covered

B. Optional Groups Other Than the Medically Needy
(Continued)

1902(a)(10)(A) (ii) (XIII) of the Act	[]	23.	BBA Work Incentives Eligibility Group Individuals with a disability whose net family income is below 250 percent of the Federal poverty level for a family of the size involved and who, except for earned income, meet all criteria for receiving benefits under the SSI program. See page 12c of Attachment 2.6-A.
1902(a)(10)(A) (ii) (XV) of the Act	[X]	24.	TWWIIA Basic Coverage Group - Individuals with a disability at least 16 but less than 65 years of age whose income and resources do not exceed a standard established by the State. See page 12d of Attachment 2.6-A
1902(a)(10)(A) (ii) (XVI) of the Act	[]	25.	TWWIIA Medical Improvement Group Employed individuals at least 16 but less than 65 years of age with a medically improved disability whose income and resources do not exceed a standard established by the State. See page 12h of Attachment 2.6-A.

NOTE: If the State elects to cover this group, it MUST also cover the Basic Coverage Group described in no. 24 above.

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Page 12c

OMB No.:

State/Territory:

Citation

Condition or Requirement

1902(a)(10)(A)
(ii) (XIII) of the Act

(i)

Working Individuals with Disabilities - BBA

In determining countable income and resources for working individuals with disabilities under the BBA, the following methodologies are applied:

___ The methodologies of the SSI program.

___ The agency uses methodologies for treatment of income and resources more restrictive than the SSI program. These more restrictive methodologies are described in Supplement 4 (income) and/or Supplement 5 (resources) to Attachment 2.6-A.

___ The agency uses more liberal income and/or resource methodologies than the SSI program. More liberal methodologies are described in Supplement 8a to Attachment 2.6-A. More liberal resource methodologies are described in Supplement 8b to Attachment 2.6-A.

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OMB No.:

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Citation

Condition or Requirement

1902(a)(10)(A)
(ii) (XV) of the Act

(ii)

Working Individuals with Disabilities - Basic Coverage Group - TWWIIA

In determining financial eligibility for working individuals with disabilities under this provision, the following standards and methodologies are applied:

___ The agency does not apply any income or resource standard.

NOTE: If the above option is chosen, no further eligibility-related options should be elected.

The agency applies the following income and/or

resource standard(s):

1. **Income Standard:** 275% of the federal poverty level (FPL).
2. **Resource Standard:** No resource or other asset eligibility criteria for Basic Coverage Group – TWWIIA.

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ATTACHMENT 2.6-A
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OMB No.:

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Citation

Condition or Requirement

1902(a)(10)(A)
(ii) (XV) of the Act (cont.)

Income Methodologies

In determining whether an individual meets the income standard described above, the agency uses the following methodologies.

The income methodologies of the SSI program.

The agency uses methodologies for treatment of income that are more restrictive than the SSI program. These more restrictive methodologies are described in Supplement 4 to Attachment 2.6-A.

The agency uses more liberal income methodologies than the SSI program. More liberal income methodologies are described in Supplement 8a to Attachment 2.6-A.

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Citation

Condition or Requirement

1902(a)(10)(A)
(ii) (XV) of the Act (cont.)

Resource Methodologies

In determining whether the individual meets the resource standard described above, the agency uses the following methodologies.

Unless one of the following items is checked the agency,

under the authority of section 1902(r)(2) of the Act, disregards all funds held in retirement funds and accounts, including private retirement accounts such as IRAs and other individual accounts, and employer-sponsored retirement plans such as 401(k) plans, Keogh plans, and employer pension plans. Any disregard involving retirement accounts is separately described in Supplement 8b to Attachment 2.6-A.

_____ The agency disregards funds held in employer-sponsored retirement plans, but not private retirement plans.

_____ The agency disregards funds in retirement accounts in a manner other than those described above. The agency's disregards are specified in Supplement 8b to Attachment 2.6-A.

There will be no resource or other asset eligibility criteria for the Basic Coverage Group – TWWIA.

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Citation

Condition or Requirement

1902(a)(10)(A)
(ii) (XV) of the Act (cont.)

_____ The agency does not disregard funds in retirement accounts.

_____ The agency uses resource methodologies in addition to any indicated above that are more liberal than those used by the SSI program. More liberal resource methodologies are described in Supplement 8b to Attachment 2.6-A.

_____ The agency uses the resource methodologies of the SSI program.

_____ The agency uses methodologies for treatment of resources that are more restrictive than the SSI program. These more restrictive methodologies are described in Supplement 5 to Attachment 2.6-A.

There will be no resource or other asset eligibility criteria for the Basic Coverage Group – TWWIA.

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Citation	State/Territory:	Condition or Requirement
1902(a)(10)(A) (ii) (XVI) of the Act		(iii) <u>Working Individuals with Disabilities</u> <u>Employed Medically Improved Individuals -TWWIIA</u> In determining financial eligibility for employed medically improved individuals under this provision, the following standards and methodologies are applied: _____ The agency does not apply any income or resource standard. NOTE: If the above option is chosen, no further eligibility-related options should be elected. _____ The agency applies the following income and/or resource standard(s): _____ % FPL – Income Standard

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Citation	State/Territory:	Condition or Requirement
1902(a)(10)(A) (ii) (XVI) of the Act (cont.)		<u>Income Methodologies</u> In determining whether an individual meets the income standard described above, the agency uses the following methodologies. _____ The income methodologies of the SSI program. _____ The agency uses methodologies for treatment of income that are more restrictive than the SSI program. These more restrictive methodologies are described in Supplement 4 to Attachment 2.6-A. _____ The agency uses more liberal income methodologies than the SSI program. More liberal methodologies are described in Supplement 8a to Attachment 2.6-A.

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Citation

Condition or Requirement

1902(a)(10)(A)
(ii) (XVI) of the Act (cont.)

Resource Methodologies

In determining whether the individual meets the resource standard described above, the agency uses the following methodologies.

Unless one of the following items is checked the agency, under the authority of section 1902(r)(2) of the Act, disregards all funds held in retirement funds and accounts, including private retirement accounts such as IRAs and other individual accounts, and employer-sponsored retirement plans such as 401(k) plans, Keogh plans, and employer pension plans. Any disregard involving retirement accounts is separately described in Supplement 8b to Attachment 2.6-A.

_____ The agency disregards funds held in employer-sponsored retirement plans, but not private retirement plans.

_____ The agency disregards funds in retirement accounts in a manner other than those listed above. The agency's disregards are specified in Supplement 8b to Attachment 2.6-A.

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Condition or Requirement

1902(a)(10)(A)

_____ The agency does not disregard funds in (ii)(XVI) of the Act (cont.) retirement accounts.

_____ The agency uses resource methodologies in addition to any indicated above that are more liberal than those used by the SSI program. More liberal resource methodologies are described in Supplement 8b to Attachment 2.6-A.

_____ The agency uses the resource

methodologies of the SSI program.

_____ The agency uses methodologies for treatment of resources that are more restrictive than the SSI program. These more restrictive methodologies are described in Supplement 5 to Attachment 2.6-A.

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OMB No.:

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Citation

Condition or Requirement

1902(a)(10)(A)
(ii) (XVI) and 1905(v)(2)
of the Act

Definition of Employed - Employed Medically
Improved Individuals – TWWIIA

_____ The agency uses the statutory definition of “employed”, i.e., earning at least the minimum wage, and working at least 40 hours per month.

_____ The agency uses an alternative definition of “employed” that provides for substantial and reasonable threshold criteria for hours of work, wages, or other measures. The agency’s threshold criteria are described below:

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Citation

Condition or Requirement

1902(a)(10)(A) (ii) (XIII),
(XV), (XVI), and 1916(g)
of the Act

Payment of Premiums or Other Cost Sharing Charges

For individuals eligible under the BBA eligibility group described in No. 23 on page 23d of Attachment 2.2-A:

X The agency requires payment of premiums or other cost-sharing charges on a sliding scale based on income. The premiums or other cost-sharing charges, and how they are applied, are described below:

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Citation

Condition or Requirement

1902(a)(10) (A) (ii) (XIII),
(XV), (XVI), and 1916(g)
of the Act (cont.)

For individuals eligible under the Basic Coverage Group described in No. 24 on page 23d of Attachment 2.2-A, and the Medical Improvement Group described in No. 25 on page 23d of Attachment 2.2-A:

NOTE: Regardless of the option selected below, the agency MUST require that individuals whose annual adjusted gross income, as defined under IRS statute, exceeds \$75,000 pay 100 percent of premiums.

The agency requires individuals to pay premiums or other cost-sharing charges on a sliding scale based on income. For individuals with net annual income below 450 percent of the Federal poverty level for a family of the size involved, the amount of premiums cannot exceed 7.5 percent of the individual's income.

The premiums or other cost-sharing charges, and how they are applied, are described on page 12o.

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Citation

Condition or Requirement

Sections 1902(a) (10) (A)
(ii) (XV), (XVI), and 1916(g)
of the Act (cont.)

Premiums and Other Cost-Sharing Charges

For the Basic Coverage Group and the Medical Improvement Group, the agency's premium or other cost-sharing charges, and how they are applied, are described below.

Individuals eligible for Medicaid under this section must pay a monthly premium subject to the following premium structure:

Cost Sharing Schedule	
Percentage of FPL	Monthly Premium Amount
101% - 125%	\$25
126% - 150%	\$35
151% - 175%	\$45
176% - 200%	\$60
201% - 225%	\$75
226% - 250%	\$90
251% - 275%	\$105

**DMMA PROPOSED REGULATIONS #08-11b
REVISIONS:**

14900 Enrollment In Managed Care

On May 17, 1995, Delaware received approval from the Health Care Financing Administration (HCFA) (~~in 2000 on June 14, 2001, HCFA was~~ renamed Centers for Medicare and Medicaid Services [CMS]) for a Section 1115 Demonstration Waiver that is known as the *Diamond State Health Plan*. The basic idea behind this initiative is to use managed care principles and a strong quality assurance program to revamp the way health care is delivered to Delaware's most vulnerable populations. The *Diamond State Health Plan* is designed to provide a basic set of health care benefits to current Medicaid beneficiaries as well as uninsured individuals in Delaware who have income at or below 100% of the Federal Poverty Level (FPL). The demonstration waiver will mainstream certain Medicaid recipients into managed care to increase and improve access to medical service while improving cost effectiveness and slowing the rate of growth in health care costs.

Effective July 1, 2002, a Medicaid only managed care organization, *Diamond State Partners*, is implemented. Individuals may enroll in either the *Diamond State Health Plan* or *Diamond State Partners*

The majority of the Medicaid population receiving non institutional services will be enrolled into the *Diamond State Health Plan* or *Diamond State Partners*. Recipients in the cash assistance programs (TANF/AFDC, SSI, and GA) as well as the TANF/AFDC-related groups, SSI-related groups, and poverty level groups will be included in the managed care program. The following individuals cannot enroll in *Diamond State Health Plan* or *Diamond State Partners*:

- a. Individuals entitled to or eligible to enroll in Medicare
- b. Individuals residing in a nursing facility or intermediate care facility for the mentally retarded (ICF/MR)
- c. individuals covered under the home and community based waivers
- d. non lawful and non qualified non citizens (aliens)
- ~~d.~~ e. individuals who have Military Health Insurance For Active Duty, Retired Military, and their dependents
- ~~e.~~ f. individuals eligible under the Breast and Cervical Cancer Group.
- ~~f.~~ g. presumptively eligible pregnant women
- h. individuals eligible under Medicaid for Workers with Disabilities

(Break in Continuity of Sections)

17900 Medicaid for Workers with Disabilities

The Ticket to Work and Work Incentives Improvement Act of 1999 established an optional categorically needy eligibility group under Section 1902(a)(10)(A)(ii)(XV) of the Social Security Act. This eligibility group provides

Medicaid coverage to certain employed individuals with disabilities. The rules in this section set forth the eligibility requirements under this group entitled Medicaid for Workers with Disabilities (MWD). The implementation date for MWD is June 1, 2008.

17901 General Eligibility Requirements

The Medicaid rules at Section 14000 of the Division of Social Services Manual (DSSM) also apply to MWD except as provided in this section.

17902 Alien Status

MWD does not provide state-funded benefits to qualified aliens subject to the 5-year bar under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-193) or to legally residing nonqualified aliens.

17903 Age Requirement

The individual must be at least 16 but less than 65 years old.

17904 Disability Requirement

The individual must be disabled as defined under the Supplemental Security Income (SSI) program except that being engaged in substantial gainful activity will not preclude a determination of disability. The disability requirement is met if there is currently in effect a decision by the Social Security Administration (SSA) that the individual is disabled. If there is no SSA decision currently in effect, a contractor who is competent to perform a disability determination will be used.

17905 Employment Requirement

The individual must be engaged in paid employment and document Federal Insurance Contributions Act (FICA) withholding from income.

17906 Income

The definition of income is the same definition used by the SSI program. Refer to DSSM 20200-20200.9 and 20210-20210.15 for a detailed description of income.

17907 Unearned Income Exclusion

Unearned income is excluded up to \$800.00 per month for the individual. There is no \$800.00 per month unearned income exclusion for a spouse who is not applying for MWD. This unearned income exclusion will be increased annually by the Cost of Living Adjustment (COLA) announced by the SSA in the Federal Register.

17908 Earned Income Exclusions

Monthly earned income exclusions are applied in the following order:

1. Earned income of disabled student children (under age 18) up to the student earned income exclusion monthly limit, but not more than the student earned income exclusion yearly limit. These limits are updated annually by the Social Security Administration.
2. \$20.00 general income exclusion
3. \$65.00 of earned income
4. Earned income of disabled individuals used to pay impairment-related work expenses. Expenses must be directly related to the individual's impairment. These are the costs paid by the individual for certain items and services that he or she needs in order to work even though such items and services are also needed for

normal daily activities. Examples include but are not limited to the cost of certain attendant care services, dog guide, modified audio/visual equipment, specialized keyboards, and vehicle modification. The expense cannot be one that a similar worker without a disability would have, such as uniforms. The expenses are subject to reasonable limits. The amount paid will be considered reasonable if it does not exceed the standard or normal cost for the same item or service in the individual's community.

5. One-half of remaining earned income

17909 Deeming of Income

The term deeming identifies the process of considering another person's income for the eligibility determination. Deeming provisions recognize some measure of family responsibility as they apply from spouse-to-spouse or parent-to-child. The deeming provisions of the SSI program at 20 CFR Part 416, Subpart K, Deeming of Income, are used for the eligibility determination. The Federal Benefit Rate is used in the SSI program for the deeming calculation. The income standard of 275% of the Federal Poverty Level (FPL) will be substituted for the Federal Benefit Rate in the MWD deeming calculation.

17910 Financial Eligibility Determination

There are two income tests used to determine financial eligibility:

1. If the monthly unearned income of the individual exceeds \$800.00, the individual is ineligible. This unearned income limit will be increased annually by the Cost of Living Adjustment (COLA) announced by the SSA in the Federal Register.

2. Countable income must be at or below 275% of the Federal Poverty Level for the appropriate family size (individual or couple).

17911 Retroactive Eligibility

The individual may be found eligible for up to three months prior to the month of application as described at DSSM 14920-14920.6 provided the premium requirements under MWD are met. Eligibility cannot be retroactive prior to June 1, 2008.

17912 Premium Requirements

Individuals with countable income over 100% FPL are required to pay a monthly premium to receive coverage. Countable income is the same amount that is used to determine eligibility. When a husband and wife are both MWD eligible, a monthly premium is assessed on each spouse.

The monthly premium will be based on a sliding scale as follows:

<u>Percentage of FPL</u>	<u>Monthly Premium</u>
<u>101-125%</u>	<u>\$25</u>
<u>126-150%</u>	<u>\$35</u>
<u>151-175%</u>	<u>\$45</u>
<u>176-200%</u>	<u>\$60</u>
<u>201-225%</u>	<u>\$75</u>
<u>226-250%</u>	<u>\$90</u>
<u>251-275%</u>	<u>\$105</u>

Exception to sliding scale: An individual or couple whose adjusted gross annual income (as determined under the IRS statute) exceeds \$90,008 must pay the highest premium amount listed on the sliding scale. This adjusted

gross annual income amount will increase each year by the COLA.

A premium is assessed the month an individual is added for coverage including any months of retroactive eligibility. Eligibility for a month is contingent upon the payment of the premium. Payments that are less than one month's premium will not be accepted.

A monthly premium notice for ongoing coverage will be sent to the individual. The premium is due by the 20th of the month for the next month's coverage. When the premium is not received by the date due, action will be taken to terminate eligibility under MWD. If the premium is received by the last day of the month, eligibility under MWD will be reinstated.

Coverage continues pending a fair hearing decision if the fair hearing request is filed within the timely notice period, even if the individual is not paying premiums that are due.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

PUBLIC NOTICE

Child Care Subsidy Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by April 30, 2008.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The purpose of this regulatory action is to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program – Necessity of Child Care requirements.

DSSM 11003.8, *Necessity of Child Care*: This rule revision removes the language (and related text) that negates the need for child care if there is another responsible and capable adult in the household who could care for the child. Only parents are legally obligated to care for their child.

11003.8 Necessity of Child Care

For parent/caretakers to receive child care services, DSS will need to consider whether child care is necessary. Child care will be considered necessary when:

- A. the child is not in school during the hours of the parent/caretaker's employment; or
- B. the child is not in school during the hours of the parent/caretaker's participation in a training or education component of a DSS Food Stamp or TANF Employment and Training program; or
- C. **both** parents in a two parent household have a need for child care. For example:

1. in two parent households both parents work; or
2. one works and the other has another need (such as education or training), is incapacitated (a parent who needs to participate in in-patient rehabilitation is included in the meaning of incapacitated) or is unavailable (such as one parent works the late shift and needs to sleep during the day while the other parent works); ~~or~~
 - D. ~~there is no other responsible and capable adult in the household (such as another family member).~~

~~DSS will make an exception in the last case if the other adult household member is incapacitated, the child is at risk of abuse, or the age or disposition of the other adult makes it unlikely to expect him/her to provide care (such as grandparents are not required to provide care if they are not inclined to do so on their own).~~

10 DE Reg. 1007 (12/01/06)

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Section 314 and 2741 (18 Del.C. §§314 and 2741)
18 DE Admin. Code 302

PUBLIC NOTICE

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 302 relating to financial and reporting requirements of captive insurance companies. The docket number for this proposed amendment is 681.

The purpose of the proposed amendment to regulation 302 is to update the existing regulation with respect to statutory law. The text of the proposed amendment is reproduced in the April 2008 edition of the Delaware *Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday May 5, 2008, and should be addressed to Mitchell G. Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

302 Captive Insurance Financial Regulation [Formerly Regulation 51]

1-0 Purpose and Authority.

1.1 ~~The purpose of this regulation is to set forth the financial and reporting requirements which the Commissioner deems necessary to the regulation of captive insurance companies, as authorized by the Captive Insurance Companies Act, 18 Del.C. Ch. 69. Reference hereinunder to "company" shall mean captive insurance company or companies, unless otherwise specified.~~

2-0 Annual Reporting Requirements.

2.1 ~~A captive insurance company doing business in this State shall annually prior to March 1, submit to the Commissioner a report of its financial condition, verified by oath of two of its executive officers. The report shall be that required by 18 Del.C. §6907.~~

3-0 Annual Audit.

3.1 ~~All captive insurance companies shall have an annual audit by an Independent Certified Public Accountant, authorized by the Commissioner, and shall file such audited financial report with the Commissioner on or before June 30 for the year ending December 31 immediately preceding. The management letter must also be submitted to the Commissioner.~~

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~~3.2 The annual audit report shall be considered part of the company's annual report of financial condition except with respect to the date by which it must be filed with the Commissioner.~~

~~3.3 The annual audit shall consist of the following:~~

~~3.3.1 Opinion of Independent Certified Public Accountant~~

~~3.3.1.1 Financial statements furnished pursuant to this section shall be examined by independent certified public accountants in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants.~~

~~3.3.1.2 The opinion of the independent certified public accountant shall cover all years presented.~~

~~3.3.1.3 The opinion shall be addressed to the company on stationery of the accountant showing the address of issuance, shall bear the original manual signatures and shall be dated.~~

~~3.3.1.4 The opinion shall contain an evaluation of management experience, ability and control.~~

~~3.3.2 Report of Evaluation of Internal Controls~~

~~3.3.2.1 This report shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to such controls as the system of authorization and approval and the separation of duties.~~

~~3.3.2.2 The review shall be conducted in accordance with generally accepted auditing standards and the report filed with the Commissioner.~~

~~3.3.3 Accountant's Letter~~

~~3.3.3.1 The accountant shall furnish the company, for inclusion in the filing of the audited annual report, a letter stating:~~

~~3.3.3.1.1 That he is independent with respect to the company and conforms to the standards of his profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and pronouncements of the Financial Accounting Standards Board.~~

~~3.3.3.1.2 The general background and experience of the staff engaged in audit including the experience in auditing captives and other insurance companies.~~

~~3.3.3.1.3 That the accountant understands that the audited annual report and his opinions thereon will be filed in compliance with this regulation with the Department of Insurance.~~

~~3.3.3.1.4 That the accountant consents to the requirements of Section 6.0 of this regulation and that the accountant consents and agrees to make available for review by the Commissioner, his designee or his appointed agent, the work papers as defined in Section 6.0.~~

~~3.3.3.1.5 That the accountant is properly licensed by the State of Delaware and that he is a member in good standing in the American Institute of Certified Public Accountants.~~

~~3.3.4 Financial Statements~~

~~3.3.4.1 Statements required shall be as follows:~~

~~3.3.4.1.1 Balance sheet~~

~~3.3.4.1.2 Statement of gain or loss from operations~~

~~3.3.4.1.3 Statement of changes in financial position~~

~~3.3.4.1.4 Statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds (surplus)~~

~~3.3.4.1.5 Notes to financial statements~~

~~3.3.4.1.6 The notes to financial statements shall be those required by generally accepted accounting principles, and shall include:~~

~~3.3.4.1.6.1 A reconciliation of differences, if any, between the audited financial report and the statement or form filed with the Commissioner.~~

~~3.3.4.1.6.2 A summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive.~~

~~3.3.4.1.6.3 A narrative explanation of all material transactions and balances with the company.~~

~~3.3.5 Certification of Loss Reserves and Loss Expense Reserves~~

~~3.3.5.1 The annual audit shall include an opinion as to the adequacy of the company's loss reserves and loss expense reserves.~~

~~3.3.5.2 The individual who certifies as to the adequacy of reserves shall be approved by the Commissioner and shall be a Fellow of the Casualty Actuarial Society, a member in good standing of the American Academy of Actuaries, or an individual who has demonstrated his competence in loss reserve evaluation to the Commissioner.~~

~~3.3.5.3 Certification shall be in such form as the Commissioner deems appropriate.~~

4.0 Designation of Independent Certified Public Accountant.

~~4.1 Companies, after becoming subject to this regulation, shall within ninety days report to the Commissioner in writing, the name and address of the independent certified public accountant retained to conduct the annual audit set forth in this regulation.~~

5.0 Notification of Adverse Financial Condition.

~~5.1 A company shall require the certified public accountant to immediately notify in writing an officer and all members of the Board of Directors of the company of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the Commissioner. The company shall furnish such notification to the Commissioner within five working days of receipt thereof.~~

6.0 Availability and Maintenance of Working Papers of the Independent Certified Public Accountant.

~~6.1 Each company shall require the independent certified public accountant to make available for review by the Commissioner of his appointed agent the work papers prepared in the conduct of the audit of the company. The company shall require that the accountant retain the audit work papers for a period of not less than six years after the period reported upon.~~

~~6.2 The aforementioned review by the Commissioner shall be considered investigations and all working papers obtained during the course of such investigations shall be confidential. The company shall require that the independent certified public accountant provide photocopies of any of the working papers which the Department of Insurance considers relevant. Such working papers may be retained by the Department.~~

~~6.3 "Working Papers" as referred to in this section include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and his employees in the conduct of their examination of the company.~~

7.0 Deposit Requirement.

~~7.1 Whenever the Commissioner deems that the financial condition of the company warrants additional security, he may require a company to deposit with the Department or an escrow agent approved by the Commissioner of this State cash or securities approved by the Commissioner or, alternatively, to furnish the Commissioner a clean irrevocable letter of credit issued by a bank chartered by the State of Delaware or a member bank of the Federal Reserve System and approved by the Commissioner.~~

~~7.2 The company may receive interest or dividends from said deposit or exchange the deposits for others of equal value with the approval of the Commissioner.~~

~~7.3 If such company discontinues business, the Commissioner shall return such deposit only after being satisfied that all obligations of the company have been discharged.~~

8.0 Organizational Examination.

~~8.1 In addition to the processing of the application, an organizational investigation or examination shall be performed before an applicant is licensed. Such investigation or examination shall consist of a general survey of the company's corporate records, including charter, bylaws and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; and a review of such other factors as the Commissioner deems necessary.~~

9.0 Reinsurance.

~~9.1 Any captive insurance company authorized to do business in this State may take credit for reserves on risks ceded to a reinsurer subject to the following limitations:~~

~~9.1.1 No credit shall be allowed for reinsurance where the reinsurance contract does not result in the complete transfer of the risk or liability to the reinsurer.~~

~~9.1.2 No credit shall be allowed, as an asset or a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer.~~

~~9.1.3 No credit shall be allowed for reinsurance ceded unless the reinsurer and amount of reinsurance has been approved by the Commissioner annually.~~

~~9.1.4 Reinsurance under this section shall be effected through a written agreement of reinsurance setting forth the terms, provisions and conditions governing such reinsurance.~~

~~9.1.5 The Commissioner in his discretion shall require that complete copies of all reinsurance treaties and contracts be filed and/or approved by him.~~

10.0 Insurance Managers and Intermediaries.

~~10.1 No person shall, in or from within this State, act as an insurance manager, broker, agent, salesman, or reinsurance intermediary for captive business without the authorization of the Commissioner. Application for such authorization must be on a form prescribed by the Commissioner.~~

11.0 Directors.

~~11.1 Every company shall report to the Commissioner within thirty days after any change in its executive officers or directors, including in its report a statement of the business and professional affiliations of any new executive officer or director.~~

~~11.2 No director, officer, or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company but such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity.~~

~~11.3 Any profit or gain received by or on behalf of any person in violation of this section shall inure to and be recoverable by the company.~~

12.0 Conflict of Interest.

~~12.1 In addition to the investment of funds limitation in Section 11.0 of this regulation, each company chartered in this State is required to adopt a conflict of interest statement for officers, directors and key employees. Such statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert him from his duty to further the interests of the company he represents but this shall not preclude such person from being a director or officer in more than one insurance company.~~

~~Each officer, director, and key employee shall file such disclosure with the Board of Directors yearly.~~

13.0 Rescission of Captive License.

~~13.1 The Commissioner may, subject to the provisions of this section, by order rescind the license of the company:~~

~~13.1.1 if the company has not commenced business according to its plan of operation within two years of being licensed; or~~

~~13.1.2 if the company ceases to carry on insurance business in or from within Delaware;~~

~~or~~

~~13.1.3 at the request of the company; or~~

~~13.1.4 for any reason provided in 18 Del.C. §6909.~~

~~13.2 Before the Commissioner rescinds the license of a company under 13.1.1 or 13.1.2, the Commissioner shall give the company notice in writing of the grounds on which he proposes to cancel the license, and shall afford the company an opportunity to make objection in writing within the period of ten days after receipt~~

of notice. The Commissioner shall take into consideration any objection received by him within that period and, if he decides to cancel the license, cause the order of cancellation to be served on the company.

14.0 Acquisition of Control of or Merger with Domestic Company.

~~14.1 No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire in the open market or otherwise, any voting security of a domestic if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such company; and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic company without the prior written approval of the Commissioner. In considering any application for acquisition of control or merger with a domestic company, the Commissioner shall consider all of the facts and circumstances surrounding the application as well as the criteria for establishment of a company set out in this chapter.~~

15.0 Change of Business.

~~15.1 Any change in the nature of the captive business from that stated in the company's plan of operation filed with the Commissioner upon application requires prior approval from the Commissioner.~~

~~15.2 Any change in any other information filed with the application must be filed with the Commissioner but does not require prior approval.~~

1.0 Purpose and Authority.

1.1 The purpose of this regulation is to set forth the financial, reporting and other requirements which the Commissioner deems necessary to the regulation of captive insurance companies, as authorized by the Delaware Revised Captive Insurance Company Act, 18 Del.C. Ch. 69. Reference hereinunder to "company" shall mean captive insurance company or companies, unless otherwise specified.

1.2 The provisions of this regulation shall apply unless the Commissioner directs otherwise.

2.0 Annual Reporting Requirements.

2.1 Except as provided in 18 Del.C. §6907(c), a company doing business in this State shall annually prior to March 1, submit to the Commissioner a report of its financial condition, verified by oath of two of its executive officers or other authorized persons. The annual report shall comply with the requirements of 18 Del.C. §6907 and the provisions of this regulation.

2.2 A company that elects to file its annual report on a fiscal year basis pursuant to 18 Del.C. §6907(c), shall file such report no later than 60 days following the close of such fiscal year.

2.3 A company that elects to file its annual report on a fiscal year basis pursuant to 18 Del.C. §6907(c) shall submit, concurrently with each premium tax return required in connection with premium taxes due under 18 Del.C. §6914, a schedule detailing the net direct written and assumed premium for the fiscal year in question.

2.4 In order to verify results reported in the company's annual report, each company shall cause its books and records to be audited annually by an independent certified public accounting firm approved in accordance with section 4.0 hereof.

2.5 In order to further verify results reported in the company's annual report, in accordance with Section 8.0 hereof each company shall cause to be prepared an opinion certifying the accuracy of the company's life, health, or annuity insurance reserves, or its loss reserves and loss expense reserves, as reported in the annual report.

3.0 Annual Audit.

3.1 Each company shall have an annual audit by an Independent Certified Public Accounting Firm and shall file such audited financial report with the Commissioner on or before June 30 for the year ending December 31 immediately preceding.

3.1.1 A company that elects to file its annual report on a fiscal year basis pursuant to 18 Del.C. §6907(c), shall submit its annual audit report to the Commissioner no later than 180 days following the close of its fiscal year.

3.1.2 A company shall not file an annual audit in which a partner or other person responsible for rendering such annual audit has acted in that capacity for more than seven (7) consecutive years. Each company filing an annual audit shall disqualify such person from acting in that or a similar capacity for the same company or

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its insurance subsidiaries or affiliates for a period of two (2) years. A company may make application to the Commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The Commissioner may consider the following factors in determining if the relief should be granted:

3.1.2.1 Number of partners, expertise of the partners or the number of insurance clients in the company's current independent certified public accounting firm.

3.1.2.2 Premium volume of the company; or

3.1.2.3 Any other factor.

3.2 The annual audit shall consist of the following:

3.2.1 Report of independent certified public accounting firm.

3.2.2 Balance sheet reporting assets (including, as applicable, admitted assets), liabilities, capital and surplus.

3.2.3 Statement of operations.

3.2.4 Statement of cash flows.

3.2.5 Statement of changes in capital and surplus.

3.2.6 Notes to financial statements. These notes shall be those required under generally accepted accounting principles, statutory accounting principles or international financial reporting standards, as applicable, and shall include:

3.2.6.1 A reconciliation of differences, if any, between the audited financial statements and the annual report required hereunder with a written description of the nature of these differences.

3.2.6.2 A summary of ownership and relationships of the company and all affiliated companies.

3.2.7 The financial statements included in the annual audit shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual report of the company filed with the Commissioner, and the financial statement shall be comparative, presenting the amounts as of the end of the current fiscal year and the amounts as of the end of the immediately preceding fiscal year. However, in the first year in which a company is required to file an annual audit, the comparative data may be omitted.

3.3 Report on Significant Deficiencies and Material Weaknesses in Internal Controls

3.3.1 In addition to the annual audit, each company shall furnish the Commissioner with a written report, prepared in accordance with SAS No. 112, or any successor thereto, by the independent certified public accounting firm describing significant deficiencies and material weaknesses in the company's internal control structure noted by the independent certified public accounting firm during the audit. SAS No. 112, Communication of Internal Control Related Matters Identified in an Audit (AU Section 325 of the Professional Standards of the American Institute of Certified Public Accountants), requires an independent certified public accounting firm to communicate significant deficiencies and material weaknesses noted during a financial statement audit to the appropriate parties within an entity.

3.3.2 The company is required to provide a description of remedial actions taken or proposed to correct material weaknesses and, at the Commissioner's discretion, significant deficiencies, if such actions are not described in the independent certified public accounting firm's report.

3.4 Accountant's Letter

3.4.1 The independent certified public accounting firm shall furnish the company, for inclusion in the filing of the annual audit, a letter stating:

3.4.1.1 That he is independent with respect to the company and conforms to the standards of his profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants or applicable standards of the International Federation of Accountants or its member organizations.

3.4.1.2 The general background and experience of the staff engaged in the audit, and the length of time the person responsible for preparing the annual audit has served in that capacity.

3.4.1.3 That the independent certified public accounting firm understands that the audited annual report and its opinions thereon will be filed, in compliance with this regulation, with the Commissioner, and that the Commissioner will be relying on this information in the monitoring and regulation of the financial position of the company.

3.4.1.4 That the independent certified public accounting firm consents to the requirements of Section 7.0 of this regulation and that the independent certified public accounting firm consents and agrees to make available for review by the Commissioner, his designee or his appointed agent, the work

papers as defined in Section 7.0.

3.4.1.5 That the partner or person in charge of the annual audit is properly licensed by an appropriate licensing authority and that he is a member in good standing in the American Institute of Certified Public Accountants or other member organization of the International Federation of Accountants.

4.0 Designation of Independent Certified Public Accounting Firm.

4.1 Each company shall provide to the Commissioner the name and address of the independent certified public accounting firm retained to conduct the annual audit required under this regulation not less than six months before the date on which the first annual audit conducted by such firm is to be filed with the Commissioner in accordance with Section 3.1 hereof.

4.2 For the purposes of conducting the annual audit required under this regulation, a company shall retain only those independent certified public accounting firms approved for such purpose by the Commissioner.

4.3 A company seeking approval to extend the Commissioner's examination cycle from three years to five years in accordance with 18 Del.C. §6908 shall retain, for its annual audit, an independent certified public accounting firm approved by the Commissioner specifically for the purpose of such extension.

5.0 Consolidated or Combined Audits

5.1 A company may make written application to the Commissioner for approval to submit a consolidated annual audit in lieu of separate annual audits if the company is part of a group of entities that consolidates its annual audit. In such cases, a consolidating or combining worksheet shall be prepared with the annual audit as follows:

5.1.1 Amounts for each company subject to this section shall be stated separately.

5.1.2 Noninsurance operations may be shown on the worksheet on a combined or individual basis.

5.1.3 Explanations of consolidating and eliminating entries shall be included.

5.1.4 A reconciliation shall be included of any differences between the amounts shown in the individual company columns of the worksheet and comparable amounts shown on the annual reports of such companies.

6.0 Notification of Adverse Financial Condition.

6.1 A company shall require the independent certified public accounting firm to immediately notify in writing an executive officer and the governing body of the company of any determination by the independent certified public accounting firm that the company has materially misstated its financial condition in its annual report to the Commissioner. The company shall furnish such notification to the Commissioner within five working days of receipt thereof.

7.0 Availability and Maintenance of Working Papers of the Independent Certified Public Accounting Firm.

7.1 Each company shall require the independent certified public accounting firm to make available for review by the Commissioner the work papers prepared in the conduct of the annual audit of the company. The company shall require that the independent certified public accounting firm retain the audit work papers for a period of not less than seven years after the period reported upon.

7.2 The Commissioner's review, and all working papers obtained during the course of such review, shall be confidential pursuant to 18 Del.C. §6920. The company shall require that the independent certified public accounting firm provide copies of any of the working papers which the Commissioner requests. Such working papers may be retained by the Commissioner.

7.3 "Working Papers" shall mean the records kept by the independent certified public accounting firm of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to its audit of the financial statements of a company. Working papers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accounting firm in the course of the audit of the financial statements of a company and which support its opinion.

8.0 Certification of Life, Health and Annuity Insurance Reserves, Loss Reserves and Loss Expense Reserves.

8.1 The annual report shall include an opinion certifying as to the adequacy of the company's life, health, or annuity insurance reserves, or its loss reserves and loss expense reserves.

8.2 The individual who certifies as to the adequacy of reserves shall be approved by the Commissioner and shall be a Fellow of the Casualty Actuarial Society, a Fellow of the Society of Actuaries, a member in good standing of the American Academy of Actuaries, a member of any other member organization of the International Actuarial Association, or an individual who has demonstrated to the Commissioner his competence in loss reserve evaluation.

8.3 Certification shall be in such form as the Commissioner deems appropriate.

9.0 Organizational Review.

9.1 In connection with the issuance of a certificate of authority to a company, the Commissioner shall conduct an organizational review of such company. This review shall consist of a review of such factors as the Commissioner deems necessary. Such factors may include a general survey of the company's organizational documents and records, verification of capital and surplus, and a verification of the company's principal place of business.

10.0 Reinsurance.

10.1 Any company may take credit for reinsurance ceded subject to the following limitations:

10.1.1 No credit for reinsurance shall be allowed where the reinsurance contract does not result in an actual transfer of risk or liability to the reinsurer.

10.1.2 No credit for reinsurance shall be allowed unless the assuming insurer is obligated as to such reinsurance without diminution because of the insolvency of the ceding insurer.

10.1.3 No credit for reinsurance shall be allowed unless the reinsurance complies with the requirements of 18 Del.C. §§911 through 914, or the reinsurer and amount of reinsurance has otherwise been approved by the Commissioner.

10.1.4 Reinsurance under this section shall be effected through a written agreement of reinsurance setting forth the terms, provisions and conditions governing such reinsurance.

10.1.5 The Commissioner in his discretion may require that complete copies of all reinsurance treaties and contracts be filed with and/or approved by him.

11.0 Members of Governing Body and Executive Management.

11.1 Every company shall report to the Commissioner within thirty days after any change in its executive officers, directors, trustees, members, partners, executive managers, or other persons comprising the governing body of the company (hereinafter "Executive Persons"), including in its report a statement of the business and professional affiliations of any new Executive Person.

11.2 Except as otherwise permitted under the company's plan of operation, no Executive Person, officer or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company.

11.3 Any amounts received by or on behalf of any person in violation of this section shall inure to and be recoverable by the company.

12.0 Conflict of Interest.

12.1 Each company shall adopt a conflict of interest policy for its Executive Persons and key employees. Such policy shall require that each Executive Person and key employee disclose to the company's governing body, at least annually, any outside commitments that have the potential to create a conflict of interest with respect to the duty of such person to further the interests of the company.

13.0 Suspension or revocation of Certificate of Authority.

13.1 Subject to the provisions of this section, the Commissioner may suspend or revoke the certificate of authority issued to a company in the following circumstances:

13.1.1 if the company has not commenced business within two years of receiving a certificate of

authority, unless specifically provided for in the company's plan of operation:

13.1.2 if the company ceases to carry on insurance business, unless specifically provided for in its plan of operation:

13.1.3 at the request of the company; or

13.1.4 for any reason provided in 18 Del.C. §6909.

13.2 Suspension or revocation of a certificate of authority shall be subject to relevant provisions of the Administrative Procedures Act, 29 Del.C. §10101, et seq.

14.0 Acquisition of Control of or Merger with a Company.

14.1 No person shall make a tender offer for, or enter into any agreement to exchange securities for, or seek to acquire, or acquire in the open market or otherwise, any interest in a company if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such company as defined under 18 Del.C. §5001(3), and no person shall enter into an agreement to merge with or otherwise to acquire control of a company, without the prior written approval of the Commissioner. In considering any application for acquisition of control or merger with a company, the Commissioner shall consider all of the facts and circumstances surrounding the application as well as the criteria for establishment of a company set out in Chapter 69 of Title 18.

15.0 Variable Contracts

15.1 Any company that issues variable life or annuity contracts shall establish separate accounts subject to the requirements of 18 Del.C. §2932.

DEPARTMENT OF LABOR DIVISION OF INDUSTRIAL AFFAIRS

OFFICE OF WORKERS' COMPENSATION

Statutory Authority: 19 Delaware Code, Section 2322B (19 Del.C. §2322B)

PUBLIC NOTICE

The Secretary of Labor in accordance with 19 Del.C. §§ 2322B and § 2322F(j) has proposed rules and regulations relating to workers' compensation. These proposals set forth health care payment system with coordinated instructions and guidelines developed by the Health Care Advisory Panel to assist in the health care treatment in workers' compensation ("Practice Guidelines") and also set forth the utilization review program developed by the Health Care Advisory Panel and associated utilization request form to assist in the health care treatment in workers' compensation ("Utilization Review" and "Utilization Review Form").

A public hearing will be held before the Health Care Advisory Panel ("Panel") at 4:00 p.m. on May 12, 2008, in the Department of Labor Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802 where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from John Kirk, Administrator, Workers' Compensation, Division of Industrial Affairs, Department of Labor, P.O. Box 9828, 4425 N. Market Street, Wilmington, Delaware 19809-0828. Persons wishing to submit written comments may forward these to the Panel at the above address. The final date to receive written comments will be at the public hearing.

The Panel will consider making a recommendation to the Secretary at the regularly scheduled meeting following the public hearing.

Workers' Compensation Regulations

***Please Note: Due to the size of the proposed regulation, the Workers' Compensation Regulation is not being published here. A copy of the entire regulation is available at:**

<http://regulations.delaware.gov/register/april2008/proposed/11 DE Reg 1337 04-01-08.htm>

PROPOSED REGULATIONS

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Section 903(e)(2)(a) (7 Del.C. §903(e)(2)(a))
7 DE Admin. Code 3507 and 3758

**REGISTER NOTICE
SAN# 2008-03****3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas
3758 Possession of V-notched Lobsters Prohibited****1. Title of the Regulations:**

Tidal Finfish Regulation and Shellfish Regulation

2. Brief Synopsis of the Subject, Substance and Issues:

The commercial black sea bass fishery in Delaware is managed by an individual quota system (ITQ) that is distributed to those fishermen meeting specific qualifying criteria for participation in either the fish pot or commercial hook and line fisheries. The current regulations do not allow the transfer of quota between individuals. However, declining quotas due to slower than anticipated stock recovery rates and a lack of participation by some individuals that are assigned quotas has created a situation where it would be advantageous to the fishermen to transfer quota in order to fully utilize Delaware's annual commercial black sea bass quota. This amendment to the regulation would permit eligible participants in the commercial sea bass fishery to make a one-time per season transfer of their quota, either in part or in total, to another eligible participant in either the commercial sea bass pot fishery or the commercial sea bass hook and line fishery respectively on forms to be supplied by the Department.

The purpose of the proposed lobster regulatory change is to bring Delaware in to compliance with Addendum XI to Amendment 3 of the Atlantic States Marine Fisheries Commission lobster management plan for federal waters off Delaware in what is known as Lobster Conservation Management Area 5. Delaware is required to re-define marking requirements for female lobsters. The mark used, called a V-notch, is presently defined in Delaware regulations as a straight-sided triangular cut without setal hairs at least ¼ inch in depth in the right of center tail flipper. The proposed change will re-define a V-notch as being at least 1/8 inch deep with or without setal hairs.

3. Possible Terms of the Agency Action:

Changes to regulation Tidal Finfish Regulation 3507 and Shellfish Regulation 3758 would go into effect immediately upon promulgation. These regulations revisions would remain in effect indefinitely or until changed.

4. Statutory Basis Or Legal Authority To Act:

7 Del.C. §903, (e)(2)(a) and 7 Del.C. §1902, §2502

5. Other Regulations That May Be Affected By The Proposal:

N/A

6. Notice of Public Comment:

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, (302) 739 3441. A public hearing on these proposed regulations will be held in the Department of Natural Resources and Environmental Control Auditorium, at 89 Kings Highway, Dover, DE at 7:00 PM on April 24, 2008. Individuals may present their opinion and evidence either at the hearing or in writing to Lisa Vest, Hearing Officer, Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, DE 19901 or via e-mail to Lisa.Vest@state.de.us. The hearing record will remain open for written or e-mail comments until 4:30 PM April 30, 2008.

7. Prepared By:

Richard Cole, 302-739-4782, February 19, 2008

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas (Formerly Tidal Finfish Reg. 23)

(Penalty Section 7 Del.C. §936(b)(2))

1.0 It shall be unlawful for any commercial person to have in possession any black sea bass (*Centropristis striata*) that measures less than eleven (11) inches, total length excluding any caudal filament.

2.0 It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than twelve (12) inches total length excluding any caudal filament.

6 DE Reg. 1230 (3/1/03)

6 DE Reg. 1360 (4/1/03)

3.0 It shall be unlawful for any commercial fisherman to land, to sell, trade and or barter any black sea bass in Delaware unless authorized by a black sea bass landing permit issued by the Department. The black sea bass landing permit shall be presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

4.0 The black sea bass pot fishery and the black sea bass commercial hook and line fishery shall be considered separate black sea bass fisheries. The total pounds allocated to each fishery by the Department shall be as follows: 96 percent of the State's commercial quota, as determined by the ASMFC, for the pot fishery; 4 percent for the commercial hook and line fishery.

5.0 The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 CFR §§ 648.4 and who had applied for and secured from the Department a commercial food fishing license and has a reported landing history in either the federal or state reporting systems of landing by pot at least 10,000 pounds of black sea bass during the period 1994 through 2001. Those individuals that have landing history only in the federal data base must have possessed a state commercial food fishing license for at least one year during the time from 1994 through 2001.

6.0 The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has applied for and secured from the Department a commercial food fishing license and a fishing equipment permit for hook and line and submitted landings reports in either the federal or state landing report systems for black sea bass harvested by hook and line during at least one year between 1994 and 2001.

1 DE Reg. 1767 (5/1/98)

2 DE Reg 1900 (4/1/99)

3 DE Reg 1088 (2/1/00)

4 DE Reg 1665 (4/1/01)

4 DE Reg 1859 (5/1/01)

5 DE Reg 2142 (5/1/02)

6 DE Reg. 348 (9/1/02)

6 DE Reg. 1230 (3/1/03)

7.0 Any overage of the State's commercial quota will be subtracted by the Atlantic States Marine Fisheries Commission from the next year's commercial quota.

Any overage of an individual's allocation will be subtracted from that individual's allocation the next year and distributed to those individuals in the appropriate fishery that did not exceed their quota.

8.0 Each participant in a black sea bass fishery shall be assigned a equal share of the total pounds of black sea bass allotted by the Department for that particular fishery. A share shall be determined by dividing the number of pre-registered participants in one of the two recognized fisheries into the total pounds of black sea bass allotted to the fishery by the Department. In order to pre-register an individual must indicate their intent in writing to participate in this fishery.

9.0 ~~It shall be unlawful for a commercial food fisherman to transfer quota allocation shares of black sea bass to another commercial food fishermen. Individual shares of the pot fishery quota may be transferred to another participant in the pot fishery. Any transfer of black sea bass individual pot quota shall be limited by the following conditions:~~

9.1 A maximum of one transfer per year per person.

9.2 No transfer of shares of the black sea bass pot fishery quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the actual transfer.

10.0 Individual shares of the commercial hook and line fishery quota may be transferred to another participant in the commercial hook and line fishery. Any transfer of black sea bass individual commercial hook and line quota shall be limited by the following conditions:

10.1 A maximum of one transfer per year per person.

10.2 No transfer of shares of the black sea bass commercial hook and line quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the transfer.

~~40~~11.0 Each commercial food fishermen participating in a black sea bass fishery shall report to the Department, via the interactive voice phone reporting system operated by the Department, each days landings in pounds at least one hour after packing out their harvest.

~~41~~12.0 It shall be unlawful for any recreational fisherman to have in possession more than 25 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

7 DE Reg. 1575 (5/1/04)

6 DE Reg. 1230 (3/1/03)

8 DE Reg. 1488 (4/1/05)

9 DE Reg. 1759 (5/1/06)

3758 Possession of V-notched Lobsters Prohibited (Formerly S-26)

(Penalty Section 7 **Del.C.** §1912)

1.0 It shall be unlawful for any person to possess a V-notched female lobster. V-notched female lobster means any female lobster bearing a V-notch, a straight-sided triangular cut with or without setal hairs at least ~~1/4~~ 1/8 inch in depth and tapering to a sharp point, in the flipper next to the right of center flipper as viewed from the rear of the female lobster. V-notched female lobster also means any female lobster which is mutilated in a manner which could hide, obscure or obliterate such a mark. The right flipper will be examined when the underside of the lobster is down and its tail is toward the person making the determination.

2 DE Reg 1898 (4/1/99)

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

300 Board of Architecture

Statutory Authority: 24 Delaware Code, Section 306(a)(1) (24 **Del.C.** §306(a)(1))

24 DE Admin. Code 300

PUBLIC NOTICE

The Delaware Board of Architects in accordance with 24 **Del.C.** §306(a)(1) has proposed changes to its rules and regulations. The proposal amends multiple sections of the rules and regulations to address notice requirements for out of state architects intending to offer services or participate in a design competition in Delaware, conforming Architect Registration Examination timing and retake requirements to the rules of the National Conference of Architectural Registration Board, Continuing Education (CE) requirements for previously licensed architects, increasing the biennial CE requirement from 16 to 24 unit hours, and signature and seal requirements for technical submissions. The proposed changes to the rules and regulations also contain provisions for online renewal and attestation of having fulfilled CE requirements.

Members of the public can offer comments on the proposed changes by submitting their comments in writing to the Board of Architects, Attn: Margaret Foreit, 861 Silver Lake Boulevard, Suite 203, Dover, Delaware 19904. The final date to receive written comments will be April 30, 2008. Anyone wishing to receive a copy of the proposed regulations may obtain a copy from the Board of Architects at the above address. The Board will consider promulgating the proposed regulation at its regularly scheduled meeting following the written comment period.

300 Board of Architects

1.0 Scope: Definitions

Purpose: Regulations of the Delaware Board of Architects are set forth for the purpose of clarifying and implementing 24 Del.C. Ch. 3 which establishes the Board and confers upon it responsibility for registration of architects and the regulation of the practice of architecture.

Invalidity: Any provision found to be invalid shall not affect any other provision and the remaining provisions shall remain in full force and effect.

Terms Defined by Statute: Terms defined in 24 Del.C. Ch. 3 shall have the same meanings when used in these regulations, except where the context clearly indicates a different meaning.

Terms Defined Herein: As used in these regulations, the following terms shall have the following meanings except where the context clearly indicates a different meaning.

“**AIA**” American Institute of Architects

“**Administration of Construction Contracts**” Shall comprise at least the following services: (i) visiting the construction site on a regular basis as is necessary to determine that the work is proceeding generally in accordance with the technical submissions submitted to the building official at the time the building permit was issued; (ii) processing shop drawings, samples, and other submittals required of the contractor by the terms of the construction contract documents; and (iii) notifying an owner and the appropriate building official of any code violations, changes that affect code compliance, the use of any materials, assemblies, components, or equipment prohibited by a code, major or substantial changes between such technical submissions and the work in progress, or any deviation from the technical submissions that he or she identifies as constituting a hazard to the public, that he or she observes in the course of performing his or her duties.

“**Applicant**” An individual who has submitted an application for registration to the Board.

“**Architect**” Any person who is authorized to practice architecture as defined in Title 24, Chapter 3 and who holds a current Certificate of Registration.

“**A.R.E.**” The current Architect Registration Examination, prepared by NCARB.

“**Board**” Delaware Board of Architects, 861 Silver Lake Blvd. Cannon Building, Suite 203, Dover, De 19903.

“**CACB**” Canadian Architectural Certification Board.

“**Direct Supervision**” That degree of supervision by a person overseeing the work of another, whereby the supervisor has both control over and detailed professional knowledge of the work prepared under the person's supervision. Direct supervision shall mean that the supervisor and the individual being supervised perform their work in the same office where personal contact is routine.

“**Division**” Division of Professional Regulation, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, Delaware 19904.

“**EESA**” Educational Evaluation Services for Architects. A provider of architectural education evaluation services administered by NAAB.

“**Examination**” The current Architect Registration Examination (A.R.E.), as accepted by the Board.

“**IDP Applicant**” An individual who has completed the IDP training requirements set forth herein and has submitted an application for registration to the Board.

“**Initial Registration**” Receiving for the first time a certificate of registration as an architect in any United States jurisdiction or Canadian province.

“**Intern**” Any individual in the process of satisfying the Board's training requirements. This includes graduates from recognized architectural programs, architectural students who acquire acceptable training prior to graduation and other qualified individuals identified by the Board.

“**Other Official**” A vice president, treasurer, secretary or board officer, but shall not mean a subcommittee chairperson, subcommittee member or general member.

“**NAAB**” The National Architectural Accrediting Board.

“**NCARB**” The National Council of Architectural Registration Boards.

“**Principal**” An individual who is a registered architect and in charge of an organization's architectural practice, either alone or with other registered architects.

“**Safety**” Design characteristics of a building or its surrounding site relating to, but not limited to, compliance with occupancy classification requirements; compliance with construction classification requirements;

means of egress; fire-rated construction assemblies; compliance with interior finish requirements; fire detection, alarm and suppression systems; and compliance with environmental health regulations and smoke control systems, compliance with the minimum requirements for heating and cooling; natural and artificial illumination; natural and artificial ventilation; physical hygiene; and accessibility from environmental barriers.

“TU” Training unit, used to calculate the hours of training earned by IDP applicants

2.0 General Provisions

2.1 NCARB:

2.1.1 The Board shall maintain membership in NCARB and pay the necessary costs thereof.

2.1.2 The Board shall keep up-to-date information on the recommended policies adopted from time to time by NCARB.

2.1.3 The Board shall cooperate with NCARB in establishing uniform standards of architectural registration throughout the United States.

2.2 Practice of Architecture:

2.2.1 Only architects shall engage in the practice of architecture as defined in 24 **Del.C.** Ch. 3.

The practice of architecture means the rendering or offering to render those services, hereinafter described, in connection with the design and construction, enlargement or alteration of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding structures; the services referred to include planning, preparing studies, designs, drawings, specifications and other technical submissions and furnishing administration of construction contracts.

2.2.2 Services offered in connection with the "utilization of space within" such structures include space planning and programming, and interior design. Services offered in connection with the "space surrounding such structures" include site analysis and site design. These provisions shall not be construed to prevent or affect the practice of landscape architecture by a landscape architect or the practice of engineering by an engineer.

2.2.3 The seal of an architect shall not be required for:

2.2.3.1 activities associated with detached, single and two-family dwellings, and any sheds, storage buildings and garages incidental to such dwellings or

2.2.3.2 farm buildings, including barns, silos, sheds or housing for farm equipment and livestock, provided such structures are designed to be occupied by no more than ten (10) persons; or

2.2.3.3 alteration, renovation or remodeling of a structure which does not affect structural or other safety features of the structure, regardless of whether local authorities require a building permit for such work and when the work contemplated by the design does not require the issuance of a permit under applicable building codes.

2.2.3.4 Pursuant to 24 **Del.C.** §303(b)(11) and (12), every person holding a NCARB Certificate, but not registered as an architect in Delaware and intending to offer architectural services in Delaware or participate in an architectural design competition in Delaware shall submit notice of such intent to the Board using the appropriate form appended to these regulations.

3.0 Application for Registration:

3.1 Submission of Application fee: Every individual seeking registration shall submit an application to the Board, accompanied by the filing fee established above. Such filing fee shall be determined in accordance with statutory criteria.

3.1.1 References from employers listed on an application for registration must be provided to substantiate the minimum experience required in support of education and training standards. It is the applicant's responsibility to see that fees references are submitted to the Board. Such reference information shall be submitted on forms furnished by the Board.

3.1.2 Proof of self-employment must be substantiated with the following:

3.1.2.1 a copy of business license(s) for those duration's claimed as part of the application or a letter from your accountant or local building official substantiating experience, or similar objective proof of self-employment.

3.2 Applicants; General:

3.2.1 Applicants needing additional practical experience reference forms may use photostatic copies.

3.2.2 The Board will take no action to review an application until all references, transcripts and fees are received.

3.2.3 An applicant is not registered until so notified in writing by the Board.

3.2.4 Filing of an application, fees, etc., shall not be construed as completing the registration process; the board will register applicants at regular Board meetings only.

3.2.5 A license issued by the Division of Professional Regulation certifies that the individual named has met the qualifications of the Board to engage in practice.

3.3 Requirements of All Applicants. Applicants Must:

3.3.1 submit the required fees

3.3.2 answer all questions on the application form completely and legibly.

3.3.3 obtain the notarization of the application in the space provided. Applications shall contain a current affidavit that has been signed and notarized within the twelve (12) months immediately preceding presentation of the application to the Board.

3.4 Applicants for Registration by Examination (A.R.E.)

3.4.1 Must have filed a completed application with the Board, including the NCARB record showing completion of IDP training requirements.

4.0 Registration Standards:

4.1 Registration Standards: To be granted registration an applicant must:

4.1.1 Hold a professional degree in architecture from a degree program that is accredited by NAAB at the time of graduation or not later than two years after termination of enrollment. Receipt of a professional degree in architecture from a degree program accredited by CACB will be accepted as equivalent to a NAAB accredited professional degree in architecture.

4.1.2 Applicants who received their education outside of the United States shall obtain and provide to the Board an educational evaluation by EESA as directed through NAAB, and must provide evidence of training and degree equivalent to accredited programs. For purposes of 24 **Del.C.** §307(a)(1), an evaluation by EESA of training and degree equivalent to accredited programs constitutes such other education as the Board deems equivalent.

4.1.3 Applicants for admittance to the A.R.E. must submit proof of completion of IDP requirements through NCARB.

4.1.4 Have passed the examination. ~~The examinee is permitted unlimited retakes of each part of the A.R.E. All parts of the exam must be successfully completed within a six year (6) duration from the date of his/her first sitting. If all sections are not passed in the six (6) year period, the entire examination must be taken and passed again. Timing of administration and retake policy for failed portions of the examination will be governed by the rules adopted from time to time by NCARB.~~

4.1.5 Have complied with all regulations of the Board and 24 **Del.C.** Ch. 3.

5.0 IDP Training Requirements

5.1 The IDP is a requirement for all applicants for initial registration in the State of Delaware. Applicants holding a current registration in good standing in another United States jurisdiction or Canadian province and documenting five (5) or more years of practicing architecture immediately preceding the date of the application that is acceptable to the Board may obtain a waiver of the IDP requirement. A request for waiver shall be made on a form prescribed by the Board

5.2 The IDP, which is administered by the National Council of Architectural Registration Boards (NCARB), will be initiated by completing an application for NCARB/IDP Council Record and submitting required application fees. This application may be obtained from NCARB, 1801 K Street NW, Suite 1100, Washington, D.C. 20006-1310 or www.ncarb.org. Preparation of all components of the IDP record for references, transcripts, training, etc., will be done in accordance with current NCARB standards. The NCARB Council Record will be accepted as verification of education and training requirements for initial registration.

5.3 Reciprocity

5.3.1 Registration through reciprocity applications shall be governed by 24 **Del.C.** §309.

5.3.2 Applicants for registration through reciprocity who were previously registered as architects in Delaware and had the Certificate of Registration cancelled or lapsed shall be required to certify that they have satisfied the minimum Continuing Education Requirement for Renewal provided in Regulation 6.2 and 6.3 for the

two year period preceding the new registration, notwithstanding that the Certificate of Registration was cancelled or lapsed.

6.0 Registration

6.1 Duration- Each certificate of registration issued by the Board shall be valid for two years, or the expiration of the current licensing period.

~~6.2 Continuing Education Requirements For Renewal: For license or registration periods beginning August 1, 2003, and thereafter, each holder of a Certificate of Registration shall complete sixteen (16) hours of continuing education (Professional Development Units or PDUs) acceptable to the Board during each biennial licensing period. Completion of required continuing education is a condition for renewal of a Certificate of Registration. Each Registered Architect shall be exempt from the continuing education requirement in his or her initial biennial licensing period, or any portion thereof, in which he or she is licensed or registered to practice. Each Registered Architect shall be required to complete and submit forms prescribed by the Board certifying compliance with the continuing education requirement for renewal of registration. Required documentation may include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity, as well as proof of attendance. The Board reserves the right to require additional information or documentation regarding continuing education compliance from a Registered Architect.~~

6.2.1 For registration periods beginning August 1, 2007 and thereafter, each holder of a certificate of registration shall complete twenty four (24) contact hours of continuing education acceptable to the Board during each biennial registration period.

6.2.2 All continuing education shall be obtained in the areas of Health, Safety and Welfare. The following are acceptable continuing education: a) NCARB monograph programs; b) health safety and welfare programs approved by AIA.

6.2.3 Completion of required continuing education is a condition for renewal of a certificate of registration.

6.2.4 One (1) contact hour is defined as one hour or one unit of acceptable continuing education in accordance with the standards of NCARB for NCARB monograph programs and the AIA for health, safety and welfare programs approved by the AIA.

6.2.5 An Architect who has been registered for less than one year in Delaware on July 31 biennial renewal shall be exempt from the continuing education requirement for the preceding two (2) year period.

6.2.6 Each registered architect shall be required to attest to the satisfactory completion of twenty four (24) contact hours of continuing education within the immediately preceding two (2) year period. No continuing education credits may carryover over into a later biennial period.

~~6.3 Content: All continuing education shall be obtained in the areas of Health, Safety and Welfare. The following are deemed acceptable continuing education: a) NCARB monograph programs; b) health safety and welfare programs approved by AIA. Continuing Education Rules:~~

6.3.1 Random audits of compliance will be performed by the Board. All registrants shall maintain documentation of continuing education, which shall include proof of attendance and verification that the education was an NCARB monograph course or a health, safety and welfare course approved by AIA.

6.3.2 Attestation of compliance may be completed electronically if the renewal is accomplished online. Alternatively, paper renewal documents that contain the attestation of compliance may be submitted.

6.3.3 Attestation of continuing education shall be submitted to the Division of Professional Regulation prior July 31 of the reporting year.

6.4 Hardship Extension: The Board may, in its discretion, grant an extension of time within which the continuing education requirement must be completed for reasons, including, but not limited to, illness, disability, military service, and exceptional family responsibilities. The period of hardship extension granted shall be determined by the Board. Requests for a hardship extension must be in writing and submitted to the Board prior to the expiration of the licensing period.

6.5 Late Renewal

~~6.5.1 A licensee that has failed to renew on or before the renewal date may apply to renew their expired registration within six (6) months following the renewal date; provided however, that those licensees with a pending renewal from the 2003 biennial registration period may submit such application within six months of the effective date of this Rule, unless otherwise required by law. A registrant that has failed to renew on or before July 31 renewal date may apply to the Board to renew their registration within six (6) months following the renewal date.~~

6.5.2 All late renewal applications must be accompanied by:

6.5.2.1 Renewal fee

6.5.2.2 Late renewal fee

6.5.2.3 Documentation of compliance with the continuing education requirement

prior to the renewal date.

6.5.3 ~~A licensee who has failed to complete the continuing education requirement by the renewal date may request an extension of time of up to six (6) months following the renewal date to satisfy the prior license period continuing education requirement; provided however, that those licensees with a pending renewal from the 2003 biennial registration period may satisfy such continuing education requirement with 6 months of the effective date of this Rule, unless otherwise required by law. A registrant who has failed to complete the continuing education requirement by the August 1 renewal date may request, in writing, an extension of time of no more than six (6) months following the renewal date to satisfy the immediately preceding two (2) year requirement.~~

6.5.4 No continuing education completed during the late period may be used to satisfy future renewal requirements.

6.6 Not Transferable - A certificate of registration shall not be transferable.

6.7 Revocation, Suspension, Cancellation or Non-renewal of Registration - In the event of revocation, cancellation, suspension or nonrenewal of any registration, the registered architect shall be required immediately to return his/her Certificate of Registration, seal and license to the Board.

9 DE Reg. 1764 (5/1/06)

7.0 Rules of Professional Conduct - All architects shall abide by these Rules of Professional Conduct.

7.1 Competence

7.1.1 When practicing architecture, an architect shall act with reasonable care and competence, and shall apply the technical knowledge and skill which are ordinarily applied by architects of good standing, practicing in the same locality.

7.1.2 In designing a project, an architect shall take into account applicable building laws and regulations. While a registered architect may rely on the advice of other professionals (e.g., attorneys, engineers and other qualified persons) as to the intent and meaning of such regulations, once having obtained such advice, an architect shall not knowingly design a project in violation of such laws and regulation.

7.1.3 An architect shall undertake to perform professional services only when he or she, together with those whom the architect may engage as consultants, is qualified by education, training and experience in the specific technical areas involved.

7.1.4 No individual shall be permitted to engage in the practice of architecture if, in the Board's judgment, such individual's professional competence is substantially impaired by physical or mental disabilities.

7.2 Conflict of Interest

7.2.1 An architect shall not accept compensation for his/her services from more than one party on a project unless the circumstances are fully disclosed to and agreed to by (such disclosure and agreement to be in writing) all interested parties.

7.2.2 If an architect has any business association or direct or indirect financial interest which is substantial enough to influence his/her judgment in connection with the performance of professional services, the architect shall fully disclose in writing to his/her client or employee the nature of the business association or financial interest. If the client or employee objects to such association or financial interest, the architect will either terminate such association or interest or offer to give up the commission or employment.

7.2.3 An architect shall not solicit or accept compensation from material or equipment suppliers in return for specifying or endorsing their products.

7.2.4 When acting as the interpreter of building contract documents and the judge of contract performance, an architect shall render decisions impartially, favoring neither party to the contract.

7.3 Full Disclosure

7.3.1 An architect, making public statements on architectural questions, shall disclose when he/she is being compensated for making such statements.

7.3.2 An architect shall accurately represent to prospective or existing client or employee his/her responsibility in connection with work for which he/she is claiming credit.

7.3.3 If, in the course of his/her work on a project, an architect becomes aware of a decision taken by his/her employer or client, against such registered architect's advice, which violates applicable state or

municipal building laws and regulations which will, in the registered architect's judgment, materially and adversely affect the safety to the public of the finished project, the architect shall:

7.3.3.1 report the decision to the local building inspector or other public official charged with the enforcement of the applicable state or municipal building laws and regulations; and

7.3.3.2 refuse to consent to the decision; and

7.3.3.3 in circumstances where the architect reasonably believes that other such decisions will be taken, notwithstanding his/her objection, terminate his/her services with respect to the project. In the case of a termination in accordance with clause 3, the architect shall have no liability to his/her client or employer on account of such termination.

7.3.4 An architect shall not deliberately make a materially false statement or fail deliberately to disclose a material fact requested in connection with his/her application for a registration or renewal thereof.

7.3.5 An architect possessing knowledge of a violation of the provisions set forth in 7.0 by another architect shall report such knowledge to the Board.

7.4 Compliance with Laws

7.4.1 An architect shall not, in the conduct of his or her practice, knowingly violate any state, federal or local law, rule or regulation.

7.4.2 An architect shall neither offer nor make any payment or gift to a government official (whether elected or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which the architect is interested.

7.4.3 An architect shall comply with the registration laws and regulations governing his/her professional practice in any United States jurisdiction.

7.5 Professional Conduct

7.5.1 Each office in Delaware offering architectural services shall have an architect resident and regularly employed in that office having direct supervision of such work.

7.5.2 An architect may sign and seal technical submissions only if the technical submissions were: (i) prepared by the architect; (ii) prepared by persons under the architect's responsible control; or (iii) prepared by another architect registered in this State if the signing and sealing architect has reviewed the other architect's work and either has coordinated the preparation of the work or has integrated the work into his or her own technical submissions. "Responsible control" shall be that amount of control over and detailed professional knowledge of the content of technical submissions during their preparation as is ordinarily exercised by architects applying the required professional standard of care. Reviewing, or reviewing and correcting, technical submissions after they have been prepared by others does not constitute the exercise of responsible control because the reviewer has neither control over nor detailed knowledge of the content of such submissions throughout their preparation. Any registered architect signing or sealing technical submissions not prepared by that architect but prepared under the architect's responsible control by persons not regularly employed in the office where the architect is resident, shall maintain and make available to the Board upon request for at least five (5) years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the architect's control over and detailed knowledge of such technical submissions throughout their preparation. "Technical submissions" are designs, drawings, specifications, studies, and other technical reports prepared in the course of practicing architecture."

7.5.3 An architect shall neither offer nor make any gifts, other than gifts of nominal value (including, for example, reasonable entertainment and hospitality), with the intent of influencing the judgment of an existing or prospective client in connection with a project in which the architect is interested.

7.6 Design and Use of Architect's Seal

7.6.1 Pursuant to 24 **Del.C.** §313, and subject to 6.7 and 7.5, each architect shall procure a seal, which shall contain the name of the architect; his/her registration number and the phrase REGISTERED ARCHITECT--STATE OF DELAWARE. This seal shall comply in all respects, including size and format, with the specimen shown below. The architect shall use his/her legal name on the Certificate of Registration, the seal and the license.



7.6.2 As required by 24 Del.C. §313, the seal shall be imprinted on all technical submissions, as follows: On each design and each drawing; on the cover or each set of specifications and on the cover page of all other technical submissions. The original signature of the individual named on the seal shall appear across the face of each original seal imprint. Pursuant to 24 Del.C. §313, all technical submissions which are published and/or are submitted to public authorities for building permits or regulatory approvals shall be sealed by the architect. Each design, each drawing, each set of specifications, all addenda and the cover of all other technical submissions shall be sealed. Other technical submissions include designs and drawings of a preliminary nature which are submitted to any public and/or the reviewing agency. When technical submissions are submitted for any permit, at each place where the seal is imprinted, there shall be an original signature, date of the signature, and the date of expiration of the architect's Delaware registration all located in close proximity to the seal in a format substantially similar to the following:

Signature: _____

Date of signature: _____

Date of registration expiration: _____

7.6.3 The seal appearing on any technical submission shall be prima facie evidence that said technical submission was prepared by or under the direct supervision of the individual named on said submission.

7.6.4 All technical submissions prepared by an architect shall contain the following legend wherever the architect's seal appears: "The professional services of the architect are undertaken for and are performed in the interest of [name of person employing architect]. No contractual obligation is assumed by the architect for the benefit of any other person involved in the project."

7.6.5 Pursuant to 24 Del.C. §303(c)(2), if a registered architect has not been employed to furnish construction contract administration services at the time such registered architect issues such technical submissions, the registered architect shall note on such technical submissions that the registered architect has not been so employed by including the following text, in minimum 12 point type, in close proximity to the seal:

The architect who sealed, signed and dated this document has not been employed to furnish construction contract administration services as defined in 24 Del.C §303(c).

7.6.6 No person shall remove or alter any seal, signature or date required by 7.6.1, 7.6.4 and/or 7.6.5.

8.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

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

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

8.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility.

This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

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

8.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection 8.8 of this section.

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

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

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

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

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

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

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

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

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

8.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon

completion of the program.

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

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

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

6 DE Reg. 850 (1/1/03)

9.0 Crimes substantially related to the practice of architecture

9.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of architecture in the State of Delaware without regard to the place of conviction:

- 9.1.1 Criminal solicitation in the second degree. 11 **Del.C.** §502
- 9.1.2 Criminal solicitation in the first degree. 11 **Del.C.** §503.
- 9.1.3 Conspiracy in the first degree. 11 **Del.C.** §513.
- 9.1.4 Aggravated Menacing. 11 **Del.C.** §602(b).
- 9.1.5 Reckless endangering in the first degree. 11 **Del.C.** §604.
- 9.1.6 Abuse of a pregnant female in the second degree. 11 **Del.C.** §605.
- 9.1.7 Abuse of a pregnant female in the first degree. 11 **Del.C.** §606.
- 9.1.8 Assault in the third degree. 11 **Del.C.** §611
- 9.1.9 Assault in the second degree. 11 **Del.C.** §612.
- 9.1.10 Assault in the first degree. 11 **Del.C.** §613.
- 9.1.11 Terroristic threatening; felony. 11 **Del.C.** §621.
- 9.1.12 Vehicular assault in the first degree 11 **Del.C.** §629.
- 9.1.13 Vehicular homicide in the first degree 11 **Del.C.** §630A.
- 9.1.14 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633.
- 9.1.15 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634.
- 9.1.16 Murder in the second degree. 11 **Del.C.** §635
- 9.1.17 Murder in the first degree. 11 **Del.C.** §636.
- 9.1.18 Unlawful sexual contact in the second degree. 11 **Del.C.** §768.
- 9.1.19 Unlawful sexual contact in the first degree. 11 **Del.C.** §769.
- 9.1.20 Rape in the fourth degree. 11 **Del.C.** §770.
- 9.1.21 Rape in the third degree. 11 **Del.C.** §771.
- 9.1.22 Rape in the second degree. 11 **Del.C.** §772.
- 9.1.23 Rape in the first degree. 11 **Del.C.** §773
- 9.1.24 Sexual extortion. 11 **Del.C.** §776.
- 9.1.25 Continuous sexual abuse of a child. 11 **Del.C.** §778.
- 9.1.26 Female genital mutilation. 11 **Del.C.** §780.
- 9.1.27 Unlawful imprisonment in the first degree. 11 **Del.C.** §782.
- 9.1.28 Kidnapping in the second degree. 11 **Del.C.** §783.
- 9.1.29 Kidnapping in the first degree. 11 **Del.C.** §783A.
- 9.1.30 Arson in the third degree. 11 **Del.C.** §801
- 9.1.31 Arson in the second degree. 11 **Del.C.** §802.
- 9.1.32 Arson in the first degree. 11 **Del.C.** §803.
- 9.1.33 Burglary in the third degree 11 **Del.C.** §824
- 9.1.34 Burglary in the second degree. 11 **Del.C.** §825.
- 9.1.35 Burglary in the first degree. 11 **Del.C.** §826
- 9.1.36 Robbery in the second degree. 11 **Del.C.** §831.

PROPOSED REGULATIONS

- 9.1.37 Robbery in the first degree. 11 Del.C. §832.
- 9.1.38 Carjacking in the second degree. 11 Del.C. §835.
- 9.1.39 Carjacking in the first degree. 11 Del.C. §836.
- 9.1.40 Theft 11 Del.C. §841.
- 9.1.41 Theft; false pretenses 11 Del.C. §843
- 9.1.42 Extortion. 11 Del.C. §846.
- 9.1.43 Identity theft. 11 Del.C. §854.
- 9.1.44 Forgery. 11 Del.C. §861.
- 9.1.45 Tampering with public records in the first degree. 11 Del.C. §876.
- 9.1.46 Issuing a false certificate 11 Del.C. §878
- 9.1.47 Bribery 11 Del.C. §881
- 9.1.48 Receiving a bribe 11 Del.C. §882
- 9.1.49 Criminal impersonation of a police officer. 11 Del.C. §907B.
- 9.1.50 Insurance fraud 11 Del.C. §913
- 9.1.51 Dealing in children. 11 Del.C. §1100
- 9.1.52 Endangering the welfare of a child. 11 Del.C. §1102.
- 9.1.53 Sexual exploitation of a child. 11 Del.C. §1108.
- 9.1.54 Unlawfully dealing in child pornography. 11 Del.C. §1109.
- 9.1.55 Possession of child pornography. 11 Del.C. §1111.
- 9.1.56 Felony Bribery 11 Del.C. §1201
- 9.1.57 Felony Receiving a Bribe 11 Del.C. §1203
- 9.1.58 Perjury in the second degree. 11 Del.C. §1222.
- 9.1.59 Perjury in the first degree. 11 Del.C. §1223.
- 9.1.60 Terroristic threatening of public officials or public servants. 11 Del.C. §1240.
- 9.1.61 Unlawfully dealing with a dangerous weapon. 11 Del.C. §1445.
- 9.1.62 Possession of a deadly weapon during commission of a felony. 11 Del.C. §1447.
- 9.1.63 Possession of a firearm during commission of a felony. 11 Del.C. §1447A
- 9.1.64 Possession and purchase of deadly weapons by persons prohibited. 11 Del.C. §1448.
- 9.1.65 Giving a firearm to person prohibited. 11 Del.C. §1454.
- 9.1.66 Engaging in a firearms transaction on behalf of another. 11 Del.C. §1455.
- 9.1.67 Possession of a weapon in a Safe School and Recreation Zone; class D, E, or F Felony. 11 Del.C. §1457.
- 9.1.68 Removing a firearm from the possession of a law enforcement officer. 11 Del.C. §1458.
- 9.1.69 Criminal Penalties, Organized Crime and Racketeering. 11 Del.C. §1504.
- 9.1.70 Victim or Witness intimidation. 11 Del.C. §§ 3532 & 3533.
- 9.2 Crimes substantially related to the practice of architecture shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

8 DE Reg. (02/01/05)



Notice of Offer of Architectural Services in Delaware

To: **Delaware Board of Architects**
861 Silver Lake Blvd., Suite 203
Dover, DE 19904

From:

Name of NCARB Certificate holder: _____
NCARB Certificate number: _____
Firm Name: _____
Firm Address: _____

Telephone: _____
Mail: _____

Notice is hereby provided, pursuant to 24 Del.C. §303(b)(11), to the Delaware Board of Architects by the undersigned person, that:

a. The person holds a National Council of Architectural Registration Boards (NCARB) certificate and is not currently registered in Delaware, but will be present in Delaware for the purpose of offering to provide architectural services;

b. The person will deliver a copy of this notice to every potential client to whom the person offers to render architectural services; and

c. The person will provide the Board with a statement of intent that the person will apply immediately to the Board for registration, if selected as the architect for a project in Delaware.

The undersigned person shall not perform any of the professional services involved in the practice of architecture in Delaware until registered as an architect in Delaware.

Signature of NCARB certificate holder:

Date: _____

*_*_*_*_*_*
Del.
Seal
*_*_*_*_*_*

**Notice of Participation in an Architectural Design
Competition in Delaware**

To: Delaware Board of Architects
861 Silver Lake Blvd., Suite 203
Dover, DE 19904

From:

Name of NCARB Certificate holder: _____
NCARB Certificate number: _____
Firm Name: _____
Firm Address: _____

Telephone: _____
Mail: _____

Notice is hereby provided, pursuant to 24 Del.C. §303(b)(12), to the Delaware Board of Architects by the undersigned person, that:

PROPOSED REGULATIONS

a. The person holds a National Council of Architectural Registration Boards (NCARB) certificate and is not currently registered in Delaware, but will be present in Delaware for the purpose of participating in an architectural design competition;

b. The person will deliver a copy of this notice to every person conducting architectural design competition in which the person participates; and

c. The person will provide the Board with a statement of intent that the person will apply immediately to the Board for registration, if selected as the architect for the project.

Signature of NCARB certificate holder:

Date:

DIVISION OF PROFESSIONAL REGULATION

500 Board of Podiatry

Statutory Authority: 24 Delaware Code, Section 506(a)(1) (24 Del.C. §506(a)(1))

24 DE Admin. Code 500

PUBLIC NOTICE

The Board of Podiatry ("Board") was established to protect the public from unsafe practices and from occupational practices, which tend to reduce competition or fix the price of services rendered by the professions under its purview. The Board was further established to maintain minimum standards of practitioner competency and delivery of services to the public. The Board is authorized by 24 Del.C. §506(a)(1) to make, adopt, amend, and repeal regulations as necessary to effectuate those objectives.

Pursuant to 24 Del.C. §3706(a)(1), the Board has proposed amendments to its regulation section 5.0. Specifically, the proposed changes to section **5.0 Licenses (In-Training, Lapse/Renewal, Inactive)** create a mandatory audit of all late-renewed licensees to verify compliance with the continuing education requirement. Other grammatical, typographic, or stylistic changes are also included.

A public hearing is scheduled for Thursday, July 17, 2008 at 5:00 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 regulations. Written comments should be submitted to the Board care of Margaret Foreit at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Margaret Foreit at the above address or by calling (302) 744-4500.

The Board will consider promulgating the proposed regulations immediately following the public hearing.

500 Board of Podiatry

(Break in Continuity of Sections)

5.0 Licenses (In-Training, Lapse/Renewal, Inactive)

5.1 In-Training License.

5.1.1 Pursuant to 24 Del.C. §513(d), the Board will issue, without examination, an In-Training license to podiatric physicians who are (1) participating in this State in a residency program accredited by the Council on Podiatric Medical Education and (2) are otherwise qualified for licensure.

5.1.2 A podiatric physician who will be employed by a hospital as a resident or fellow in an accredited residency or fellowship program may apply for an In-Training license. Application shall be made on forms provided by the Board. Such applications shall include:

5.1.2.1 An affidavit of the employer hospital's residency program director

certifying that the podiatric physician will be employed by the hospital and meets all requirements for licensure specified in 24 **Del.C.** §508(a)(1) through (a)(7), excluding 24 **Del.C.** §508(a)(2).

5.1.2.2 An affidavit of the podiatric physician seeking licensure certifying that he meets all the requirements for licensure specified in 24 **Del.C.** §508(a)(1) through (a)(7), excluding 24 **Del.C.** §508(a)(2).

5.1.2.3 An affidavit of the podiatric physician seeking licensure certifying that he intends to limit himself solely to practice within the hospital or the performance of such medical duties outside the hospital which may be assigned to him as part of the residency program.

5.1.3 Residents employed by accredited hospitals who have been granted In-Training licenses shall be specifically limited to the practice of medicine within the hospital where they are employed, except for any medical duties which may be assigned as part of the residency program as long as those outside duties are performed under the supervision of a fully licensed podiatric physician.

5.1.4 An In-Training license is required for all podiatric physicians who will spend 45 or more consecutive days in a Delaware institution as part of a rotation for an out-of-state residency program.

5.1.5 The licensee and the employer hospital shall notify the board not later than three (3) days after the licensee's completion of or withdrawal from the residency program.

5.1.6 Valid In-Training licenses may be renewed by the licensee by paying the renewal fee set by the Division of Professional Regulation.

5.2 Lapse/Renewal

5.2.1 ~~Any~~ licensee whose license lapses for non-renewal may ~~re-apply~~ renew within one (1) year by paying the late fee required by 24 **Del.C.** §511 and having completed all continuing education ~~which a licensee would have been required to complete~~ for renewal. Late renewals shall be audited for satisfactory completion of the continuing education requirement.

5.2.2 If a licensee allows his or her license to lapse for over one (1) year and has not been granted inactive status, that licensee must reapply for licensure in the same manner as a new applicant.

5.2.3 It shall be the responsibility of all licensees, active or inactive, to keep the Board informed of any change in name, home or business address.

5.2.4 License renewal may be accomplished online at <http://www.dpr.delaware.gov>.

5.3 Inactive Status

5.3.1 A licensee may be placed on inactive status by the Board for a period of no more than five (5) years. Requests for inactive status shall be made, in writing, to the Board and requests which exceed one (1) year shall be renewed biennially at the time of regular license renewals. After application to the Board and payment of a renewal fee, an inactive licensee may obtain a new license and re-enter active practice after completion of the continuing education requirements below.

5.3.1.1 Inactive status for one (1) year or less: 16 CE hours.

5.3.1.2 Inactive status for more than one (1) year: 32 CE hours, completed within 24 months prior to reapplication.

10 DE Reg. 1153 (01/01/07)

(Break in Continuity of Sections)

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

[http://regulations.delaware.gov/register/april2008/proposed/11 DE Reg 1352 04-01-08.htm](http://regulations.delaware.gov/register/april2008/proposed/11%20DE%20Reg%201352%2004-01-08.htm) 500 Board of Podiatry

PROPOSED REGULATIONS

DIVISION OF PROFESSIONAL REGULATION

2925 Real Estate Commission Education Committee

Statutory Authority: 24 Delaware Code, Sections 2905(a)(1) and 2911(b) (24 Del.C. §§2905(a)(1) and 2911(b))
24 DE Admin. Code 2925

PUBLIC NOTICE

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 24 Del.C. Sections 2905(a)(1) and 2911(b), the Delaware Real Estate Commission proposes to revise its Guidelines for Fulfilling the Delaware Real Estate Education Requirements. First, Rule 6.1.1.7 will be added to provide that courses addressing the use of technology in delivering real estate services may be considered eligible for continuing education credits. Rule 6.3 will be added to provide that continuing education programs must be a minimum of one hour and delivered in one hour increments. Finally, Rule 8.2 will be amended to state that a student who arrives at a continuing education program after the instruction begins shall not receive continuing education credit.

A public hearing will be held on May 8, 2008 at 9:15 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 11904. Persons wishing to submit written comments may forward these to the Commission at the above address. The final date to receive written comments will be at the public hearing.

The Commission will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

2925 Real Estate Commission Education Committee Guidelines for Fulfilling the Delaware Real Estate Education Requirements

(Break in Continuity of Sections)

6.0 Program Criteria

6.1 Areas of Concentration for Acceptable Courses

6.1.1 Courses of instruction and seminars, to be considered eligible for continuing education credit approval must be in a definable real estate topic area. Courses that may be considered eligible must be in the following topic areas:

6.1.1.1 Federal, State or Local Legislative Issues (Legislative Update).

6.1.1.2 Fair Housing Law

6.1.1.3 Anti-Trust Law

6.1.1.4 Real Estate Ethics or Professional Standards

6.1.1.5 Agency Relationships and Responsibilities

6.1.1.6 Professional Enhancement for Practicing Licensees

6.1.1.7 Use of technology (including, but not limited to, the use of internet and computers) in delivering real estate services.

6.1.2 Unless specifically identified in Guideline 6.2 as acceptable for credit, courses of instruction which Are Not acceptable for credit include, but are not limited to:

6.1.2.1 Offerings in mechanical office and business skills such as typing, business machines and computer operations.

6.1.2.2 Personal development and/or enrichment and motivational courses, speed reading memory improvement, and language report writing.

6.1.2.3 Correspondence courses and program learning courses not under the direct supervision of a certified instructor, except those courses that have been certified through The Association of Real Estate License Law Officials (ARELLO) Distance Education Certification Program.

6.1.2.4 General training or education required of licensees to function in a representative capacity for an employing broker except if said training or education complies with the above stated

topic areas, has been approved by the Commission and is taught by a certified instructor.

6.1.2.5 Meetings which are a normal part of in-house staff or licensee training, sales promotions or other meetings held in connection with the general business of the licensee and/or broker; any meetings that a licensee is required to attend as a condition of continued employment, whether imposed by rules of the employing broker or by a contractual agreement between broker and franchiser, does not qualify for continuing education credit. Work experience does not qualify for continuing education credit.

6.1.2.6 Non-educational activities of associations, trade organizations, and professional and occupational group membership or certification are not considered accreditable continuing education activities. Examples of such activities are, but not limited to:

6.1.2.6.1 membership or service in a professional, occupational or other society or organization;

6.1.2.6.2 attendance at annual, periodic or special meetings, conventions, conferences, rallies and retreats;

6.1.2.6.3 writing or presentation of articles or research papers;

6.1.2.6.4 a program or other type of organizational assignment;

6.1.2.6.5 self-directed reading or study. As a guiding principle "self-directed studies" and "individual scholarship" are not considered accreditable educational activities.

6.2 The following are approved for credit as indicated:

6.2.1 In any biennial license period, up to three (3) credits applicable towards legislative update may be obtained by Delaware Association of Realtors (DAR) members who serve on the State Government Affairs Committee provided that: 1) the member attends no less than eighty percent (80%) of the annual State Government Affairs Committee meetings; and 2) the DAR Executive Vice President or DAR President certifies attendance in the form and manner prescribed by the Commission.

6.3 Programs shall be a minimum of one (1) hour and delivered in one (1) hour increments.

5 DE Reg. 1171 (11/1/01)

5 DE Reg. 1859 (4/1/02)

6 DE Reg. 516 (10/1/02)

7.0 Course Approval Process

7.1 An application for course approval (on forms approved by the Commission), course outline, all applicable fees and any other documentation that may be required, must be filed by the course sponsor or provider, with the Division of Professional Regulation, Delaware Real Estate Commission, Education Committee, 861 Silver Lake Boulevard, Suite 203, Dover, Delaware 19904-2467, at least sixty (60) days prior to the date that the course is to be held. Failure to file within the appropriate time limit may be cause for rejection. Recommendations of the Education Committee shall be made to the Commission within thirty (30) days after the Education Committee receives and reviews the completed application. An application that is incomplete when filed shall not be considered to have been filed.

7.2 A course may be certified for a period of two (2) calendar years, provided the course is conducted by the sponsor or provider making application, the curriculum and course length remains exactly as approved, and certified instructors are utilized. The Education Committee may recommend a shorter or probationary approval where good cause for limited approval can be demonstrated. A sponsor who receives approval to conduct a certified course or activity, must notify the Commission in writing, of the intent to hold such activity, at least seven (7) days in advance of the start of the activity. Included in the letter of intent shall be the course approval number, date(s) and time(s) and location of the course, topic area, course name, instructor name(s) and instructor certification number(s). Courses can not be automatically renewed. Sponsors providers will need to reapply by the course expiration date and before conducting further courses. The Education Committee shall have the right to recommend to the Commission that a provider's privilege of conducting a certified course be revoked for the remainder of the approval period, if the Education Committee determines that the provider is not maintaining the standards required in these guidelines.

7.3 An application for an individual student request for approval of an educational activity (on forms approved by the Commission), course outline, instructor resume of a qualified instructor, and any other documentation that may be required, may be filed by the individual student with the Delaware Real Estate Commission, Real Estate Education Committee within twelve (12) months. Recommendations of the Education Committee shall be made to the Commission within thirty (30) days after the Education Committee receives and

reviews the completed application. An application that is incomplete when filed shall not be considered to have been filed. The subject educational activity must comply with Section 6.0 herein and any other applicable Guidelines.

5 DE Reg. 1395 (01/01/02)

6 DE Reg. 516 (10/1/02)

8.0 Provider Responsibilities

8.1 The organization receiving approval of a course or program accepts the responsibility to maintain a permanent record of the course activity for not less than three years from the date of the course offering. The permanent record shall include the documents as listed in "Maintenance and Availability of Records".

8.2 Sponsors or providers of all continuing education courses shall be wholly and completely responsible for the conduct of their courses, including faithful and complete student attendance as well as facilities management. Faithful and complete attendance is attentive presence for at least fifty (50) minutes of each credit hour. A student who arrives after the instruction has begun shall not be given continuing education credit. The provider may admit the student for his or her own educational benefit.

8.2.1 Sponsors and providers shall arrange for an on-site monitor in addition to the certified instructor for each course or activity.

8.2.2 Monitors are appointed to assist the course sponsors or providers and instructors. As a minimum, monitors will ensure students provide their own signatures on the course roster and advise the provider of those students who do not comply with faithful and complete attendance.

8.2.3 Monitors may be a student for educational credit for that course or activity.

8.3 The course sponsor or provider, will supply to the student at the completion of the course or program, a certificate of completion. This certificate must contain, but is not limited to, the following information:

- _ Student Name
- _ Sponsors Name
- _ Topic Area Name
- _ Course Title
- _ Date course was completed
- _ Number of Credit Hours
- _ Course Approval Number
- _ Instructor Name(s)
- _ Instructor Certificate Number(s)

8.4 The organization offering the course, shall, within fifteen (15) days after the completion of the activity, provide a list of participants, their real estate license numbers (if applicable) and a copy of each student's course and instructor evaluation form and an evaluation summary report form to the Commission's Office. The evaluation summary report form shall be signed by any instructors who participated in the delivery of the course thus indicating each has had the opportunity to review the evaluation result. Failure of the organization to provide this information may be grounds to suspend the approval of that course or educational activity, in the absence of a showing of good cause for that failure.

8.5 Where the provider is a prelicensing school, the administrator thereof is responsible to apply to the Delaware Department of Public Instruction for certification and to maintain such certification. Proof of current certification must be attached to the application for course approval submitted to the Education Committee.

8.6 Prelicensing schools are to solicit the names of students interested in being contacted by recruiters by the second class meeting. Any students joining after the first class must be informed of the opportunity to be a part of the recruiting roster at the first class attended. Schools must supply the recruiting roster within seven (7) days of receiving a request from a broker.

8.7 Prelicensing schools will also furnish each student with current information regarding the prelicensing examination to include the "Real Estate Candidate Handbook" which is available to prelicensing schools through the testing service for this purpose.

8.8 Members of the Real Estate Commission or Education Committee And/or Their Official Representatives Shall Have the Right to Monitor Any Approved Course Without Notice.

5 DE Reg. 1071 (11/1/01)

6 DE Reg. 8 (7/1/02)

6 DE Reg. 516 (10/1/02)

(Break in Continuity of Sections)

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

<http://regulations.delaware.gov/register/april2008/proposed/11 DE Reg 1354 04-01-08.htm> 2925 Real Estate Commission Education Committee

HUMAN RELATIONS COMMISSION

Statutory Authority: 6 Delaware Code, Section 4506 (6 **Del.C.** §4506)

Equal Accommodations and Fair Housing

PUBLIC NOTICE

The State Human Relations Commission, in accordance with 29 **Del.C.** Chapter 101 and 6 **Del.C.** §§4506 and 4616, proposes amendments to the Equal Accommodations Regulations and Fair Housing Regulations. The changes are required to clarify hearing procedures and to comply with changes to "The Delaware Equal Accommodations Law" and "The Delaware Fair Housing Act", 6 **Del.C.** Chapters 45 and 46 and 31 **Del.C.** Chapter 30 and 31, and other items.

A public hearing is scheduled for Thursday, May 8, 2008 at 7:00 p.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904, where members of the public may offer comments. The Commission will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Commission care of Sheryl A. Paquette, Division of Human Relations, 861 Silver Lake Blvd., Suite 205, Dover, DE 19904. The final date to submit written comments shall be at the public hearing. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from Sheryl A. Paquette, Division of Human Relations, 861 Silver Lake Blvd., Suite 205, Dover, DE 19904, (302) 739-4567.

1501 Equal Accommodations Regulations

Introduction

These Rules and Regulations have been prepared pursuant to the powers granted the Human Relations Commission and are intended to meet the applicable requirements of the Administrative Procedures Act, under 29 **Del.C.** §10101, et seq.

These Regulations shall govern individual cases over which the Human Relations Commission and the Division of Human Relations have jurisdiction pursuant to 6 **Del.C.** Ch. 45, ~~as it may be amended from time to time.~~

These Regulations refer to "hearings" for case decisions only and are, therefore, to be distinguished from any other public hearings which may be held by the Commission to address general issues of public concern and which are not controlled by these Regulations.

These Rules and Regulations are specific to the processing of complaints of discrimination under the Delaware Equal Accommodations Law. The Commission believes these Rules and Regulations are necessary to ensure the appropriate administration of the Equal Accommodations Law.

These Regulations shall apply to Equal Accommodation causes of action arising under the Delaware Equal Accommodations Law on or after ~~July 1, 1996~~ May 8, 2008. Delaware Fair Housing Act actions under 6 **Del.C.** Ch. 45 are not affected by these Regulations.

1.0 Definitions (~~Formerly Part I~~)

1.1 The following terms used in these Regulations shall have the same definitions as those terms contained in the Equal Accommodations Law, 6 **Del.C.** Ch. 45, §4502:

~~A place of public accommodation~~
Chairperson
Commission

Complainant
 Conciliation
 Conciliation Agreement
Disability
 Discriminatory ~~p~~Public ~~a~~Accommodation ~~p~~Practice
Division
 Handicap
 Marital Status
 Panel
 Panel Chair
Place of Public Accommodation
 Respondent
 Special Administration Fund

1.2 As used in these Regulations, the following terms are defined:

“Business Day” means a day of the week other than Saturday, Sunday or a State Holiday.

“Commissioner” means a person duly serving as a member of the Commission.

“Division Director” means the administrator and head of the Division of Human Relations, or other person duly authorized to act as such.

“Minor” means a person under the age of eighteen years who has not been court emancipated

“Office” means any one of the places of business of the Division of Human Relations.

“Party or Parties” means the Complainant(s) or Respondent(s).

“Persons Entitled to Protection” means all persons within the jurisdiction of this State regardless of the race, age, marital status, creed, color, sex, handicap or national origin of such persons.

“Staff” means a person ~~who is~~ or persons employed by the Division of Human Relations of the State of Delaware.

2.0 Commencement of Proceedings (~~Formerly Rules 1, 2, 3, 4, 5, 6 & 7~~)

2.1 Any person claiming to be aggrieved by discriminatory public accommodations practices within the jurisdiction of the ~~Commission~~ Division may file a written complaint with the Commission. Minors shall be represented by a parent, guardian or other responsible adult for the purpose of bringing an action.

2.2 The Commission ~~and the Division~~ may each initiate an investigation into compliance with the Equal Accommodations Law, whether or not a complaint is filed. If an investigation is initiated by the Commission, ~~Such investigations~~ may be initiated by written statement showing justification signed by the Chairperson or by such person as may be authorized by the Commission. In accordance with applicable provisions of the law, and to the extent practicable, the procedures in these Regulations shall apply to Commission-initiated ~~and Division-initiated~~ investigations.

2.3 A complaint shall be filed at any one of the places of business of the Division of Human Relations.

2.4 Complaints made with the Commission through the Division of Human Relations shall be in writing and deemed to be "filed" when received at the Division in substantially completed form.

2.5 All complaints must be filed on a complaint form provided by the ~~Office~~ Division.

2.6 All complaint forms shall include the following information:

2.6.1 ~~¶~~The complainant's name and address;

2.6.2 ~~¶~~The name and location of the place of public accommodation at which the discriminatory public accommodation practice(s) occurred, and the date, time and ~~other details~~ an explanation thereof; and

2.6.3 ~~¶~~if known, the name and address of each Respondent and, if different, the name of the owner, lessee, proprietor, manager or superintendent of the place of public accommodations.

2.6.4 The date of the first occurrence of the alleged discriminatory practice and whether the practice is of a continuing nature; ~~and~~

2.6.5 The signature of the complainant or his/her attorney.

2.7 Complainants and Respondents must keep the Division of Human Relations informed of their current addresses and telephone numbers during the pendency of any proceedings.

2.8 Service of the complaint shall be made by the Division of Human Relations in accordance with 12.2 (~~Formerly Rule 30~~) of these ~~r~~Regulations.

3.0 Response to Complaint (~~Formerly Rule 8~~)

3.1 Respondent shall file a written response to the complaint, on a form provided by the Division of Human Relations, or a notice of intention to pursue no-fault settlement, within twenty (20) days of receipt of service of the complaint.

3.2 Either of such documents shall be signed by the Respondent or Respondent's attorney and shall be filed at the Office of the Division where the complaint was filed, showing and shall provide proof that a copy has been served on the Complainant.

4.0 Amending a Complaint (~~Formerly Rule 9~~)

4.1 ~~The Complainant(s) Complaint may be amended a complaint at any time prior to service of the response on the Complainant(s); thereafter, amendment is subject to approval by the Panel Chair or the Chairperson of the Commission.~~

4.2 The Respondent shall serve an answer to any amended complaint within ten (10) days of receipt of service of the amended complaint, whichever is greater, or within the time remaining to respond to the initial complaint, whichever is greater.

4.3 Amended complaints and the answers shall be signed by the Party(s) or their the Party's attorneys.

5.0 Case Closing Prior to Hearing (~~Formerly Rule 10~~)**5.1 Voluntary Termination and Dismissal**

5.1.1 A case may be dismissed by the Complainant without order of the Commission by filing a notice of dismissal at any time before service of a response to the complaint or by filing a stipulation of dismissal signed by all parties who have appeared in the case. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a Complainant who has once dismissed a case before the Commission based on or including the same claim. A Complainant who dismisses a case pursuant to this paragraph without prejudice may refile a complaint within ninety (90) days after the occurrence of the alleged discriminatory public accommodation practice.

5.1.2 After a the Respondent has filed a response to the complaint, a case shall not be dismissed at the Complainant's request except upon order of the Commission or upon order by a single Commissioner authorized by the Commission prior to the appointment of a panel and upon such terms and conditions as the Commission deems proper. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

5.1.3 A case may be dismissed, upon notice of the Commission or of the Division, for lack of activity. Application shall be made in writing by the Division staff to a Panel ~~of or~~ or if no Panel has been appointed, then to the Division Director ~~of or Commission~~ Chairperson, stating the reason for the proposed dismissal.

5.1.4 A case may be dismissed, upon notice of the Commission or of the Division for failure of Complainant to cooperate upon application of the Division staff to the Panel or if no Panel has been appointed, then to the Division Director or Commission Chairperson. Failure to cooperate includes, but is not limited to, failure to keep the Division informed of Complainant's current address.

5.1.5 A case may be dismissed upon written application to the Panel Commission by the Respondent or the Division Director when

5.1.5.1 the Commission does not have jurisdiction to determine the case; or

5.1.5.2 the facts alleged do not state a violation of the law.

5.1.6 If the Division determines that the Commission does not have jurisdiction over the case or the complaint does not allege facts that state a violation of the law, the Division Director shall apply in writing to the Panel Chair or a designee or if a Panel has not been appointed to the Chairperson or a designed, for dismissal of the complaint under Rule 5.1.5.

5.1.6~~7~~ An application for dismissal by the Respondent shall show proof of service of the application upon the Complainant and the Division. Complainant shall have 10 days after being served to respond to the Respondent and Commission. An application for dismissal by the Division shall show proof of service on all parties and all parties shall have 10 days after being served to respond to the Commission with proof of service to the Division.

5.1.78 A Panel will convene to If there is a Panel Chair or designee or if no Panel has been appointed, the Commission Chair or designee shall consider the application for dismissal. Unless otherwise directed by the Panel based due on compelling or unusual circumstances, such consideration shall be without an evidentiary hearing or oral argument. The Panel Chair or designee or the Commission Chair or designee will consider only the facts in the pleadings. The facts alleged by the claimant will be considered as true for the purpose of the dismissal proceeding.

5.1.89 All notices of case dismissals shall be served on all parties and shall include a statement of the right to appeal, to have the case reopened for good cause shown to the Panel, or if no Panel has been appointed, then to the Division Director or Chairperson.

5.1.10 All orders issued by the Panel resulting from an application for dismissal are subject to Superior Court review pursuant to 6 Del.C. § 4511.

7 DE Reg. 793 (12/1/03)

6.0 Investigation (Formerly Rule 14)

6.1 Investigation of the complaint shall be conducted by Staff and shall commence promptly after the filing of the complaint. Investigation may include, without limitation: interviews, questionnaires, fact finding conferences, searching of records, testing, identification of any witnesses, development of statistics, other studies of practices and patterns, or other work to gather relevant evidence.

6.2 Evidence sought by a subpoena issued in connection with an investigation must be relevant to the investigation, be adequately specified, and only cover a reasonable period of time.

7.0 Conciliation (Formerly Rules 12, 13 & 14)

7.1 The opportunity to conciliate or settle a case is available at any stage of the complaint process and may include a no-fault settlement offer. The Complainant(s) shall be notified of the opportunity to conciliate when a complaint is filed, and the Respondent(s) shall be so notified when a complaint is served. Staff shall schedule an informal conciliation fact-finding conference to be held with the Complainant(s), the Respondent(s) and, if they so choose, attorneys representing them, within thirty (30) days after the receipt of the response to the complaint, unless it is impractical to do so.

7.2 (Formerly Rule 13) Conciliation shall be initiated upon request of any Party, or upon the request or recommendation of Staff or a member of the Commission.

7.3 (Formerly Rule 14) Any agreement achieved by conciliation shall be set forth in writing and shall specify the appropriate relief agreed upon by the Parties. Forms of relief may include, without limitation:

7.3.1 binding arbitration to resolve the dispute;

7.3.2 payment of damages; other monetary relief;

7.3.3 payment to the Special Administration Fund;

7.3.4 monitoring of the future activities of Respondent(s);

7.3.5 measures taken to ensure future compliance with the Equal Accommodations Law; and/or

7.3.6 such other relief as is agreed upon by the Parties.

7.4 Executed copies of such agreements shall be given to all Parties.

8.0 Hearings (Formerly Rules 15, 16, 17, 18, 19, 20, 21, 22 & 23)

8.1 The purpose of a hearing is:

8.1.1 to hear argument;

8.1.2 where appropriate, to receive evidence and determine facts; and

8.1.3 in all events to render an adjudication in accordance with applicable law.

8.2 If a complaint cannot be resolved through conciliation, as provided in Section 4508(c) of the Delaware Equal Accommodations Law, the Commission shall appoint a Panel to hold a public hearing within 60 days after the expiration of the 120-day period for investigation and conciliation. The deadlines provided in Section 4508(c) and Section 4508(e) may be extended by the Chairperson or if a Panel has been appointed by the Panel Chair at the request of any Party or Staff upon a showing of good cause.

8.3 The date, time, place and a brief description of the subject matter of the hearing shall be included in the Notice of Hearing sent to all Parties, the Panel and the Attorney General's representative, as well as other information required by the Administrative Procedures Act.

8.4 The Hearing shall be held within the county in which the discriminatory practice is alleged to have

occurred.

8.5 ~~As provided in 6 Del.C. §4510, A~~ subpoena shall be issued upon written request by any Party, Staff, or a Panel Member. Such requests shall be submitted no later than ~~ten (10)~~ twenty (20) business days in advance of the Hearing. Witnesses and documents must be clearly described in writing. The consequence of failure to request a subpoena in a timely fashion shall be in the discretion of the Panel.

8.5.1 Any individual or entity served with a subpoena may apply to the Panel to quash or modify the subpoena on any legal basis including but not limited to the following: that the subpoena does not adequately describe the evidence requested; is not relevant to the complaint; covers an unreasonable period of time; requires disclosure of a trade secret, confidential research, development or commercial information, privileged or other protected matter and no exception or waiver applies; subjects a person to undue burden or hardship; or requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute.

8.5.2 Where a person fails or neglects to attend and testify or to produce records or other evidence in obedience to a subpoena or other lawful order, the Commission may petition the Superior Court for an order requiring the person to appear to produce evidence or give testimony. Failure to obey such order is punishable by the Court as contempt.

8.6 Subpoenas may be served by Staff, a Commissioner, or by another person who is not a Party and is not less than 18 years of age. The return of service of each subpoena shall be promptly filed at the appropriate Division office.

8.7 No fewer than ~~the majority of the three (3) Commissioners appointed to a Panel~~ shall constitute a quorum for all Commission Panel hearings. In the absence of any duly appointed Panel Mmember, ~~for any reason whatsoever,~~ the Chairperson or his or her designee shall be empowered to make a substitution, without notice to the Parties, provided the Hearing has not yet begun.

8.8 A written list of witnesses a Party intends to call during a panel hearing must be delivered to the office of the Division of Human Relations where the complaint was filed and to all other Parties at least ~~ten (10)~~ twenty (20) days prior to a hearing.

8.8.1 The Panel, in its discretion, may refuse to receive into evidence any testimony of a witness who has not been named on the witness list.

8.9 All motions shall be delivered to the office of the Division of Human Relations where the complaint was filed and to all other Parties at least ten (10) business days prior to the hearing. Motions filed beyond this time limit will not be considered by the Panel. Opposing Parties may file a response to the motion or may present opposition at the hearing. Replies to responses to motions are not permitted.

~~8.9.1 The Panel may refuse to receive into evidence any exhibit, a copy or photographs of which has not been delivered to the Commission and to an adverse Party as provided herein.~~

~~8.9.2 Exhibits submitted at Panel Hearings are to be kept by the Commission during the passage of time for judicial review under §4511 of the Delaware Equal Accommodations Law or until all relevant proceedings have been concluded, whichever is later. The exhibits shall then be returned to the Party which submitted such or, at the request of that Party, destroyed.~~

~~8.910~~ Copies or photographs of all exhibits, except exhibits intended solely for impeachment, must be delivered to the office of the Division of Human Relations where the complaint was filed and to all other parties at least ten (10) business days prior to the Hearing. The Panel shall consider such exhibits without formal proof unless the pParties and the Commission have been notified at least five (5) business days prior to the Hearing that an adverse Party intends to raise an issue concerning the authenticity of the exhibit.

~~8.10 Hearings shall be recorded by electronic instrument or court reporter.~~

~~8.10.1 The Panel may refuse to receive into evidence as an exhibit, documents or photographs, which have not been delivered to the Commission and to an adverse Party as provided herein.~~

~~8.10.2 Exhibits submitted at Panel hearings are to be kept by the Commission during the passage of time for judicial review under Section 4511 of the Delaware Equal Accommodations Law or until all relevant proceedings have been concluded, whichever is later. The exhibits shall then be returned to the Party which submitted such or, at the request of that Party, destroyed.~~

8.11 The hearing shall be conducted by the Panel Chair. Individuals may be represented by counsel. A corporate entity must be represented by an attorney admitted to practice law in Delaware. Every hearing shall be recorded by electronic instrument or court reporter.

8.412 Certain Hearings may address purely legal issues, in which event all Parties or their counsel may, at the discretion of the Panel, have an opportunity to present oral argument.

PROPOSED REGULATIONS

~~8.4213~~ In evidentiary hearings, all Parties or their counsel shall be given the opportunity to make a brief opening statement prior to the introduction of any evidence in the case. The Panel Chair shall explain to the Parties that they may make a general statement of what they intend to prove through testimony and exhibits but that they are not permitted at this time to testify or to present argument to the Panel. The Panel Chair shall interrupt a Party who attempts to testify or present argument during an opening statement and inform the Party that such testimony or argument can be provided at the appropriate time during the hearing. The Panel Chair will then offer the opposing Party the opportunity to present an opening statement if the opposing Party has not already done so or shall move to the next stage of the proceedings.

~~8.4314~~ Testimony shall be under oath or affirmation administered by the ~~Panel Chair~~ court reporter. If a court reporter is not present, witnesses shall be sworn in by the Panel Chair.

~~8.4415~~ Staff shall be required to attend the Hearing in order to assist in the proceedings, or, where appropriate, to be a witness.

~~8.4516~~ The Panel Chair shall have full authority to control the hearing proceedings, including, but not limited to the authority to call and examine witnesses; to admit or exclude evidence; and to rule upon all motions and objections subject to the following:

~~8.4516.1~~ Formal rules of evidence ~~need~~ will not be strictly followed.

~~8.4516.2~~ Direct and cross examination shall be preserved and may be conducted by the Parties or their attorney(s), or Panel Members or the Deputy Attorney General representing the panel may question any witness.

~~8.4516.3~~ Testimony from any person may be allowed at the discretion of the Panel.

~~8.4516.4~~ Witnesses may be sequestered at the discretion of the Panel Chair upon the request of any Party(ies).

~~8.4516.5~~ Evidence on the behalf of the Complainant(s) should ordinarily be introduced first, to be followed by the Respondent(s)' evidence, then allowing rebuttal, if any.

~~8.4516.6~~ The Panel may continue a hearing from day to day or adjourn it to a later date or to a different place by so announcing at the Hearing or by appropriate notice to all Parties.

~~8.4516.7~~ Following the presentation of the evidence, an opportunity shall be given to each Party to make a closing statement.

~~8.4516.8~~ The Panel may recall the Parties for further testimony if necessary to reach a decision.

~~8.16.9~~ Deliberations of the Panel typically commence immediately following the hearing, and are not open to the public.

~~8.4617~~ A written transcript shall be prepared, if and as required, on the written request of any Party, provided that such Party pays for the cost of preparing the transcript. Staff shall coordinate this process under State contract. A deposit may be required. Such recordings and transcripts shall be preserved with the official file record of a case.

9.0 Decision and Orders (~~Formerly Rules 25, 26, & 27~~)

9.1 The case decision may be rendered immediately following the Hearing or the Panel may reserve its decision to a later date. Case decisions shall be by a majority vote of the Panel.

9.2 A copy of the Panel's Final Order shall be mailed by certified mail, return receipt requested, delivered by hand or delivered by regular first class mail to the last address which each Party has provided to the Division of Human Relations for the Party or, if the Party is represented, the Party's attorney.

9.3 ~~Any party w~~Within five (5) business days after receipt of the ~~Final~~ Panel's decision or order may apply to the Panel for reconsideration by briefly and distinctly stating the grounds. The application shall show that it was served on the opposing party. Within five (5) business days after service of such application, the opposing party may serve and file a brief answer to each ground asserted. The Panel shall promptly convene to consider such application for reconsideration. The filing of such application shall extend the time for judicial review under 6 Del.C. §4511.7 DE Reg. 793 (12/1/03)

10.0 Recovery of Attorney's Fees and Expenses (~~Formerly Rule 28~~)

10.1 Any Party seeking to recover attorneys' fees and expenses pursuant to Section 4508 (g) or (h) shall, at least five (5) business days prior to the hearing, file at the ~~office of the Division of Human Relations~~

Division office where the complaint was filed, and serve upon the other Parties, a motion and affidavit detailing the time spent and fees incurred and a reasonable estimate of the fees likely to be incurred after such date through the end of the H~~earing~~. Any objections to the motion shall be presented at the H~~earing~~. Determination that a Party is entitled to an award of attorneys' fees or costs shall be made solely at the Panel's discretion. Failure to timely file such motion and affidavit as set forth in these Regulations shall constitute a waiver of a Party's right to an award of attorneys' fees or costs.

11.0 Miscellaneous Provisions (~~Formerly Rules 29, 30, 31, 32, 33, & 34~~)**11.1 Time**

11.1.1 In computing any period of time prescribed or allowed, by these Regulations or by order of court or by statute, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or Sunday, legal holiday, in which event the period shall run until the end of the next business day. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and other legal holidays shall be excluded in the computation. As used in this rule, "legal holidays" shall be those days provided by statute or appointed by the Governor or the Chief Justice of the Supreme Court of the State of Delaware.

11.1.2 When, by these Regulations or by a notice given thereunder or by order of court, an act is required, or allowed to be done, at or within a specified time, the Panel Chair or the Chairperson of the Commission, for good cause shown, may, at any time, in its discretion:

11.1.2.1 with or without motion or notice, order the period enlarged if the request therefore is made before the expiration of the period originally prescribed or as extended by a previous order; or

11.1.2.2 upon a motion made after the expiration of a specified period, permit the act to be done where the failure to act was the result of excusable neglect.

11.1.3 Whenever a Party has the right to do, or is required to do, some act or take some proceeding within a prescribed period after being served, and service is by mail, three (3) days shall be added to the prescribed period.

11.2 Service. Unless otherwise specifically required by the Equal Accommodations Law or these Regulations, service of complaints, answers, other pleadings, motions, requests or notices shall be made according to this Rule.

11.2.1 For the initial complaint and any pleading which brings in a new Party, service shall be made by certified mail, return receipt requested with the return receipt card signed by: the person to be served; a person living with or working in the office of the person to be served; or an agent authorized by appointment or by law to receive service of process. Alternatively, where appropriate, service may be made in accordance with Superior Court Civil Rule 4(f), or Superior Court Civil Rule 4(h) for service under Title 10, Section 3104.

11.2.2 For documents other than the initial complaint and any document which brings in a new Party, once jurisdiction over a party has been established, service shall be by certified mail, return receipt requested; by hand delivery or first class mail, as evidenced by a certificate of service; by an express mail service, with a receipt showing that the notice was delivered to the express mail service; or by telecopier or facsimile machine with confirmation of the transmission from the sender's machine.

11.2.2.1 Where a Party is represented by an attorney, service shall be made on the attorney only.

11.3 The Administrative Procedures Act (29 **Del.C.** Ch. 101), as it may be amended from time to time, shall provide the method by which these Regulations may be amended.

11.4 These Regulations shall be reviewed periodically by the Commission, or a designee and the Director of the Division of Human Relations. Any recommendations for revision shall be submitted in writing to the Commission for consideration at a regularly scheduled meeting.

11.5 These Regulations shall be liberally construed in such a manner as to accomplish the purpose of the Equal Accommodations Law.

11.6 Copies of these Regulations shall be available during regular office hours at each of the offices of the Division of Human Relations or, upon request, by mail. A fee established by the Division of Human Relations may be charged for the provision of copies.

1502 Fair Housing Regulations

ADOPTED: APRIL 8th, 1993

EFFECTIVE: MAY 10th, 1993

Introduction

Pursuant to the authority granted to the Human Relations Commission under 6 **Del.C.** §4616 of the Delaware Fair Housing Act, and in accordance with the applicable requirements of The Administrative Procedures Act, the Human Relations Commission has adopted these rules and regulations to carry out the Delaware Fair Housing Act (The Act).

These regulations shall govern individual cases over which the Human Relations Commission and the Division of Human Relations have jurisdiction pursuant to 6 **Del.C.**, Ch. 46.

These procedural regulations are intended to carry out the Delaware Fair Housing Act prohibiting unlawful discrimination in housing, and to enable the Commission to achieve equal or greater protection, thereby allowing eligibility for certain Federal funding necessary to carry out this function as a substantially equivalent agency.

These rules and regulations are specific to the processing of complaints of unlawful housing discrimination under the Delaware Fair Housing Act. The Commission believes these rules and regulations are necessary to ensure the appropriate administration of the Fair Housing Act and in order that the commission will be regarded as a substantially equivalent agency.

1.0 Definitions

1.1 The following terms used in these regulations shall have the same definition as defined in the Delaware Fair Housing Act, Section 4602:

Age
 Aggrieved persons
 Chairperson
 Commission
 Complainant
 Conciliation
 Conciliation Agreement
 Court
 Covered Multifamily Dwellings
~~Handicap or Disability~~
 Discriminatory Housing Practice
Division
 Dwelling
 Familial Status
 Family
 Housing For Older Persons
 Marital Status
 Panel
 Panel Chair
 Person
 Residential Real Estate - Related Transaction
 Respondent
 To Rent
 To Sell or sale
 Special Administration Fund

1.2 As used in these Rules and Regulations, the following terms are defined:

“**Act**” means The Delaware Fair Housing Act as amended from time to time, 6 **Del.C.**, Ch. 46.

“**Business Day**” means a day of the week other than Saturday, Sunday or a State Holiday.

“**Charging Party**” means the same as "Complainant" (including in some instances the Commission).

“**Commissioner**” means a person duly serving as a member of the Commission.

“**Creed**” means any system of beliefs guiding or directing a person's behavior and actions including, but not limited to, an organized religion, sect, or philosophical society.

“**Direct Threat**” means an individualized assessment that is based on reliable objective evidence (e.g., current conduct, or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat. In evaluating a recent history of overt acts, a provider must take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat (i.e., a significant risk of substantial harm). In such a situation, the provider may request that the individual document how the circumstances have changed so that he no longer poses a direct threat. A provider may also obtain satisfactory assurances that the individual will not pose a direct threat during the tenancy.

“**Director**” means the administrator and head of the Office Division of Human Relations or person duly authorized to act as such.

“**Major Life Activity**” means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking. This list of major life activities is not exhaustive.

“**Minor**” means a person under the age of eighteen years who has not been court emancipated.

“**National Origin**” means the native country of an individual or his ancestor(s).

“**Office**” means any one of the places of business of the Division of Human Relations.

“**Party**” means the Complainant(s) or Respondent(s).

“**Physical or Mental Impairment**” includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

“**Reasonable Accommodation**” means a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. The Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling. To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.

“**Religion**” means a particular system of faith and worship recognized and practiced by a particular church, sect or denomination or other group of people.

“**Request for Reasonable Accommodation**” means whenever a resident or applicant for housing makes clear to the housing provider that a request is being made for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability. The request should include the type of accommodation that is being requested and, the need for the accommodation if the need for the accommodation is not readily apparent or not known to the provider, and an explanation of the relationship between the requested accommodation and the disability. The request need not be made in a particular manner or at a particular time or use any special words including but not limited to “reasonable accommodation.” The request must be made in a manner that a reasonable person would understand to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability. Housing providers must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

“**Sex**” means the basis of being male or female.

“**Substantially Limits**” means that the limitation is “significant” or “to a large degree.”

“**Verified**” means that the person signing the complaint or answer has sworn or affirmed that the statements of facts in the document are true.

2.0 Filing a Complaint

2.1 Any aggrieved person or the Commission itself may file a written complaint. Minors may be represented by a parent or guardian for the purpose of bringing an action.

2.2 The Commission may initiate an investigation regarding compliance with applicable law whether or not a complaint is filed. Such investigations may be initiated by written statement showing justification signed by the ~~Commission Chair~~ Chairperson or such person as may be authorized by the Commission in accordance with applicable provisions of law. To the extent practicable, procedures in these Regulations shall apply to Commission-initiated investigations.

2.3 A complaint shall be filed at any one of the places of business of the Division of Human Relations.

2.4 Complaints filed with the Commission through the Division of Human Relations shall be in writing and deemed to be filed when received at the office in substantially completed form as required. A complaint referred to the Commission or the Division of Human Relations by a federal agency shall be deemed to be filed on the date it was taken or filed with such agency.

2.5 Form of Complaint

2.5.1 All complaints should be filed on a Complaint Form provided by the ~~Office~~ Division.

2.5.2 All complaints shall include the following data:

2.5.2.1 Full name and address of Complainant(s).

2.5.2.2 Full name and address of Respondent (s), if known, identifying whether each Respondent is an individual, partnership, corporation, etc.

2.5.2.3 The alleged discriminatory housing practice(s). A concise statement of the facts thereof.

2.5.2.4 The date (s) of the alleged discriminatory practice (s) and whether the practice(s) is/are of a continuing nature together with the duration of such continuing practice(s).

2.5.2.5 The signature of Complainant or his/her attorney or, in the case of a minor, a parent, or guardian. Such signature shall be notarized as a verified complaint. The Division of Human Relations shall provide such notarial service without charge for persons coming into the office.

2.6 Complainants and Respondents must keep the Division of Human Relations informed of their current addresses and telephone numbers.

3.0 Answer to Complaint

Any written answer of Respondent shall be verified and filed with the Commission within twenty (20) days of receiving the complaint with proof of service showing a copy has been served on the Complainant.

4.0 Investigation of the Complaint

4.1 Investigation of complaints shall be conducted by the Division and commenced within thirty (30) days after filing the complaint, and may include: interviews, questionnaires, fact finding conferences, search of records, tests, identification of witnesses, development of statistics, other studies of alleged practices and patterns, or other work to gather relevant evidence.

4.1.1 Evidence sought by a subpoena issued in connection with an investigation must be relevant to the investigation, be adequately specified, and only cover a reasonable period of time.

4.2 Within thirty (30) days after a complaint is filed, the Division shall prepare questionnaires to be answered by the parties. Questions may be suggested by the parties for inclusion in such questionnaires. The answer to such questionnaires shall be submitted in writing to the Division within ten (10) business days after service of the questionnaire. Each party shall receive a copy of every other party's response to questionnaires.

4.3 The Division may schedule an informal fact-finding conference to be held with the Complainant and Respondent within thirty (30) days of the date the complaint is filed, unless it is impractical to do so.

4.4 Investigation of a complaint shall proceed according to the time limits set forth in the Act, to aid conciliation, to determine if reasonable cause exists to issue a charge and to prepare the case for hearing or Court.

4.5 At the end of each investigation, the Division shall prepare a final investigative report containing that information set forth in Section 4610 (b)(5) of The Act.

5.0 Conciliation and Agreement

5.1 The opportunity to conciliate or settle a case is available at any stage of the complaint process and may include a no-fault settlement opportunity prior to the onset of the investigation; the Complainant shall be advised of the opportunity when a complaint is filed and the Respondent when a complaint is served.

5.2 Conciliation shall be initiated upon request of Complainant or Respondent or recommendation of the Division or the Panel assigned to the case. Statements made in the course of conciliation can be disclosed only

as provided under the Act.

5.3 An employee of the Division may serve as conciliator. A Commissioner, who is not assigned to the hearing Panel may be appointed by the Chairperson to serve as conciliator.

5.4 Any agreement achieved by conciliation shall be set forth in writing and shall specify the appropriate relief agreed upon by the parties. The following may be included:

5.4.1 binding arbitration to resolve the dispute; payment of damages;

5.4.2 compensation or other monetary relief;

5.4.3 payments made to the Special Administration Fund of the Human Relations Commission under 31 **Del.C.**, Ch. 30;

5.4.4 monitoring of future activities;

5.4.5 affirmative action measures;

5.4.6 closing or terminating the case; and

5.4.7 other relief agreed upon by the parties that will further the purposes of the Act.

5.5 A conciliation agreement shall become effective when signed by all parties and the ~~Commission~~ Chair Chairperson or his or her designee.

5.6 Written and executed copies of such agreements shall be given to all parties. Conciliation agreements shall be publicly available unless the complainant and respondent otherwise agree and the Commission determines that disclosure is not required to further the purpose of the Act.

5.7 Conciliation Agreements shall be enforced according to the Act.

6.0 Administrative Closure

6.1 A case can be voluntarily terminated upon withdrawal of complaint by Complainant in writing prior to a response by the Respondent. However, after a response is filed by Respondent, a complaint may be withdrawn only with the consent of the Respondent or with approval by the Chairperson or his or her designee.

6.2 A case may be closed by the Division for lack of activity in the case for more than ninety (90) days, failure of the Complainant to cooperate, or loss of contact with the Complainant. Application shall be made in writing to the Director or Chairperson, stating the reason for the proposed closing.

6.3 All notices of case closing shall be served on all parties at the last addresses they provided to the Division and shall include a statement of the option to re-file the complaint as provided under that Act within the applicable statute of limitations.

7.0 Charge and Answer

7.1 Except in the case of complaints initiated by the Commission, the Director or his or her designee shall make a determination as to whether or not reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur and issue a charge on behalf of the aggrieved person or dismiss the complaint pursuant to Section 4610(f).

7.2 The time for conciliation specified by Section 4610(b)(1) of the Act ends with the filing of a charge or a dismissal under Section 4610(f)(1)(2). Any subsequent settlement negotiations are conducted between the Respondent, or his or her attorney, and the Deputy Attorney general assigned to represent the Division.

7.3 The charge shall consist of a short and plain statement of the facts that support a finding of reasonable cause by the Division and shall be served on the Respondent and the aggrieved person. The charge shall be based on the final investigative report and need not be limited to the facts alleged in the complaint.

7.4 An aggrieved person may intervene as a party in the proceeding with written notice to the Division and the Respondent.

7.5 Within twenty (20) days after service of the charge, a Respondent shall file an answer with the Division.

7.6 Failure to file an answer to the charge shall be deemed an admission by the Respondent of all matters of fact recited therein and may result in the entry of a default decision by the Commission.

7.7 Any party may elect in writing to proceed for judicial determination rather ~~that~~ than the administrative hearing before the Commission by notifying the Division within twenty (20) days of receiving the charge. If an election for judicial determination is made, the Respondent is not required to file an answer to the charge with the Division. The subsequent proceeding are subject to the rules of the Court.

8.0 Appointment of Panel

8.1 In the absence of an election to proceed with judicial determination pursuant to Section 4612 of the Act, the ~~Commission Chair~~ Chairperson or designee shall promptly appoint a panel of three (3) Commissioners, one of whom shall be designated as the Panel Chair.

8.2 The Panel shall have all the powers of the Commission with respect to matters before it.

9.0 Expedited Discovery after a Charge is Filed

9.1 After a charge is filed by the Division, parties may obtain discovery by depositions, written interrogatories, production of documents or things, and requests for admission. The expense of such discovery shall be borne by the party requesting the discovery.

9.2 Pursuant to the Fair Housing Act, Sections 4612(d) and (e), discovery in administrative proceedings shall be conducted as expeditiously as possible consistent with the need of all parties to obtain relevant evidence and the statutory requirement that a hearing be scheduled within one hundred and twenty (120) days following the issuance of the charge unless impracticable.

9.3 The parties shall try to agree on procedures for discovery. Where the parties cannot agree, disputes shall be presented in writing, and the dispute shall be resolved by written decision of a Commissioner, appointed by the Chairperson, who will not be assigned to the hearing Panel.

9.4 Discovery need not be formal. For example, the parties need not have a professional stenographer for transcription of depositions, so long as a record is made in some fashion such as an audio or video tape. Parties shall be entitled to a copy of the record, in whatever form, at their own expense.

10.0 ~~Pre-Hearing Production~~ Requirements

10.1 Copies or photographs of all exhibits, except exhibits intended solely for impeachment, must be delivered to the Commission at the office of the Division where the complaint was filed and to all parties at least ten (10) business days prior to the hearing. The hearing panel shall consider such exhibits without formal proof unless the parties and the Commission have been notified at least five (5) business days prior to the hearing that an adverse party intends to raise an issue concerning the authenticity of the exhibit.

10.1.1 The Panel may refuse to receive into evidence any exhibit, a copy or photographs of which has not been delivered to the Commission and to an adverse party as provided herein. After commencement of the hearing, the Panel, in its discretion, may view or inspect exhibits or the location involved in a case.

10.1.2 Exhibits submitted at Panel Hearings are to be kept by the Commission during the passage of time for judicial review under Section 4612(i) or until all relevant proceedings have been concluded, whichever is later. When such time has passed, the exhibits shall be returned to their proper owner or destroyed.

10.2 A written list of witnesses a party intends to call during a Panel Hearing, must be delivered to the Commission and all parties at least ten (10) business days prior to the hearing.

10.2.1 The Commission Panel, may refuse to receive into evidence any testimony of a witness which has not been named on the witness list.

10.2.2 A party requesting that a witness be subpoenaed to appear shall provide the address where service can be made as required under Rule 11.5. A witness is required to appear only if a subpoena has been issued.

10.3 All motions shall be delivered to the office of the Division of Human Relations where the complaint was filed and to all other Parties at least ten (10) business days prior to the hearing. Motions filed beyond this time limit will not be considered by the Panel. Opposing Parties may file a response to the motion or may present opposition at the hearing. Replies to responses to motions are not permitted.

11.0 Hearings

11.1 The purpose of a hearing is to receive evidence, determine facts, and, after deliberation, render an adjudication in accordance with applicable law.

11.2 Notice of the hearing shall be sent to the parties pursuant to the Administrative Procedures Act (29 Del.C. Ch. 101).

11.3 No fewer than three (3) Commissioners shall constitute a quorum for all Commission Panel hearings. In the absence of any duly appointed Panel member the ~~Commission Chair~~ Chairperson or his or her designee shall be empowered to make a substitution without notice to the parties, provided the hearing has not yet

begun.

11.4 The hearing shall be held in the county in which the discriminatory housing practice is alleged to have occurred or is about to occur.

11.5 ~~As provided in 6 Del.C. §4510, A~~ subpoena shall be issued upon written request by any ~~p~~Party, ~~to a proceeding or the Panel Staff or Panel member. Such requests shall be submitted no later than twenty (20) business days in advance of the hearing. Such request shall be submitted by a party within a reasonable time in advance of the hearing or deposition. Witnesses and documents requested must be clearly described in writing and include addresses for service. The consequence of failure to request a subpoena in timely fashion shall be at the discretion of the Panel.~~

11.5.1 Any individual or entity served with a subpoena may apply to the Panel to quash or modify the subpoena on any legal basis including but not limited to the following: that the subpoena does not adequately describe the evidence requested; is not relevant to the complaint; covers an unreasonable period of time; requires disclosure of a trade secret, confidential research, development or commercial information, privileged or other protected matter and no exception or waiver applies; subjects a person to undue burden or hardship; or requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute.

11.5.42 Any Subpoenas may be served by the Division or a person 18 years of age or older who is not a Respondent or aggrieved person in the proceeding. A The return of service of each subpoena shall be promptly filed at the appropriate Division Office.

11.5.23 Where a person fails or neglects to attend and testify or to produce records or other evidence in obedience to a subpoena or other lawful order, the Commission may petition the Superior Court for an order requiring the person to appear to produce evidence or give testimony. Failure to obey such order is punishable by the Court as contempt.

11.6 The hearing shall be conducted by the Panel Chair ~~in a setting designed to put the parties at ease.~~ Individuals may be represented by counsel. A corporate entity must be represented by an attorney admitted to practice in Delaware. Every hearing shall be recorded by electronic instrument or court reporter.

11.6.1 All parties or their counsel shall be given the opportunity to make a brief opening statement prior to the introduction of any evidence in the case. The purpose of opening statements shall be to clarify the positions of the parties and the issues being presented for determination.

11.6.2 All evidence shall be presented by sworn testimony and exhibits at the hearing. The Panel Chair shall have full authority to control the procedure of a hearing, including, but not limited to the authority to call and examine witnesses, admit or exclude evidence, and rule upon all motions and objections subject to the following:

11.6.2.1 All witnesses shall be sworn by the court reporter. If a court reporter is not present, witnesses shall be sworn by the Panel Chair.

11.6.2.42 Formal rules of evidence ~~need~~ will not be strictly followed.

11.6.2.23 Examination shall be preserved and may be conducted by a party who represents himself or herself, an attorney admitted to practice in Delaware who represents a party, or the Commission Panel.

11.6.2.34 Witnesses may be sequestered at the discretion of the Commission Panel.

11.6.2.45 Evidence on behalf of the Complainant should ordinarily be introduced first, to be followed by the Respondent, then allowing rebuttal, if any.

11.6.2.56 The Panel may continue a hearing from day to day or adjourn it to a later date or to a different place by so announcing at the Hearing or by appropriate notice to all parties.

11.6.2.67 Following presentation of the evidence an opportunity shall be given to each party to make a closing statement.

11.6.2.78 The Panel may re-call the parties for further testimony if it is unable to reach a decision.

11.7 A written transcript shall be prepared, if and as required, on the written request of any party to the matter, provided that such party pays for the cost of preparing the transcript. The Division shall coordinate this process under State contract.

12.0 Decision and Orders

12.1 Deliberations of the Panel are non-public. The case decision may be rendered immediately following the Hearing or the Panel may reserve its decision to a later date and so advise the parties. Decisions shall be by majority vote of the Panel.

12.2 A copy of the Final Order shall be delivered by hand or mailed by Certified Mail, Return Receipt Requested, or by regular first class mail to the parties' last known address. In addition each party shall be notified of the right to seek reconsideration by the Panel.

12.3 Any party within ten (10) business days after mailing of the Final order may apply to the Panel for reconsideration briefly and distinctly stating the grounds therefor. Such application for reconsideration must show service on the opposing party.

Within ten (10) business days after service of such motion, the opposing party may serve and file a brief answer to each ground asserted in the motion. The Panel shall promptly convene to consider such motion for reconsideration. The filing of such application shall not extend the time for judicial review under Section 4612(i).

13.0 Recovery of Attorney's Fees, Costs, and Expenses

13.1 Any party seeking to recover attorney's fees, costs, and expenses shall file a motion and affidavit detailing the time spent and fees incurred no later than the close of any hearing held before the Panel.

13.2 A motion filed by a Respondent shall state with particularity the improper purpose that would permit recovery of attorney's fees, costs, and expenses as provided pursuant to 6 **Del.C.** §4615.

14.0 Miscellaneous Provision**14.1 Time.****14.1.1**

In computing any period of time prescribed or allowed by these Rules, by order of court, or by statute, the day of the act, event or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or Sunday, or other legal holiday, or other day on which the Division of Human Relations is closed, in which event the period shall run until the end of the next day on which the Division is open. As used in this rule, "legal holidays" shall be those days provided by statute or appointed by the Governor or the Chief Justice of the State of Delaware.

14.1.2

When by these Rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the Commission for cause shown may at any time in its discretion

14.1.2.1

with or without motion or notice order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order or

14.1.2.2

upon motion made after the expiration of specified period permit the act to be done where the failure to act was the result of excusable neglect.

14.1.3

Whenever a party has the right to or is required to do some act or take some proceeding within a prescribed period after being served and service is by mail, 3 days shall be added to the prescribed period.

14.2 Service. Unless otherwise specifically required by the Acts or these regulations, service of complaints, answers, other pleadings, charges, motions, requests or notices shall be made according to this Rule.

14.2.1

For the initial complaint and any pleading which brings in a new party, service shall be sufficient if made according to Superior Court Civil Rule 4(f), Rule 4(h) for service under 10 **Del.C.**, §3104, or by certified mail, return receipt requested with the return receipt card signed by (1) the person to be served, (2) a person living with or working in the office of the person to be served, or (3) an agent authorized by appointment or by law to receive service of process.

14.2.2

Once jurisdiction over a party has been established, service may be by certified mail, return receipt requested, or by hand delivery or mail pursuant to Superior Court Civil Rule 5(b), or by some other means of notice generally recognized in the community with some confirmation of the notice having been sent such as by regular first class mail to the parties' last known address as evidenced by a certificate of mailing, by an express mail service with a receipt showing the notice was delivered to the express mail company, or by telecopier or fax with confirmation of transmission from the sender's machine.

14.3 These regulations shall be liberally construed to accomplish the purpose of the applicable laws.

14.4 These regulations shall be reviewed periodically by the Commission or its designee and the Director of the Division of Human Relations. Any recommendations for change shall be submitted in writing to the

Commission for consideration at a regularly scheduled meeting.

14.5 The Administrative Procedures Act (29 Del.C., Ch. 101) shall provide the method by which these regulations may be amended.

14.6 Copies of these regulations shall be available during regular office hours at the Division of Human Relations or, upon request, by mail. A copy of the rules and regulations are also available on the Delaware Administrative Code website.

15.0 Regulations related to Housing for Older Persons.

15.1 Housing for persons age 62 or older.

15.1.1 Housing that is designated for persons age 62 or older must be solely occupied by persons age 62 or older.

15.1.2 No person under age 62 may move into a unit designated for persons age 62 or older even if it is also occupied by a person who is qualified by age. For example, if a person age 65 who lives in a unit designated for persons age 62 or older marries a person age 60, the person age 60 does not qualify to live in the unit.

15.1.3 Units occupied by persons under age 62 who are employees of the housing facility are not considered in determining whether housing qualifies as housing for persons age 62 or older.

15.1.4 Units occupied by persons under age 62 who are necessary to provide a reasonable accommodation to residents with disabilities are not considered in determining whether housing qualifies as housing for persons age 62 or older.

15.2 Housing for persons age 55 or older.

15.2.1 Housing qualifies under this section as long as at least 80% of the units are occupied by at least one person age 55 or older.

15.2.1.1 In computing whether the 80% occupancy test is met, unoccupied units are not included in the calculation.

15.2.1.2 Units occupied by persons under age 55 who are employees of the housing facility are not considered in determining whether housing qualifies as housing for persons age 55 or older.

15.2.1.3 Units occupied by persons under age 55 who are necessary to provide a reasonable accommodation to residents with disabilities are not considered in determining whether housing qualifies as housing for persons age 55 or older.

15.2.1.4 A unit that is temporarily vacant is deemed to be occupied by a person 55 or older if, within the preceding 12 months, the unit was occupied by a person 55 or older who intends to periodically return.

15.2.1.5 Owners or managers must maintain records demonstrating that at least 80% of the units are occupied by at least one person age 55 or older. These records shall include biennial surveys made to confirm the ages of occupants by reliable documentation, such as drivers' licenses, passports, etc. Surveys shall be made available to the Division for inspection if a complaint of discrimination is filed.

15.2.2 To qualify under this section, a facility or community must publish and adhere to policies and procedures that demonstrate the intent of the owner to maintain housing for persons age 55 or older. The publication must be available for inspection at the management office during regular business hours.

~~15.2.3 To qualify under this section, a facility or community must have significant facilities and services designed to meet the physical or social needs of older persons. These can include periodic seminars, clubs, social activities, field trips, transportation, a local bus stop, homemaker or health services, maintenance, clubhouse, exercise equipment, recreation area, newsletters, etc. The Division will maintain a list of suggestions available for the convenience of providers of housing for persons 55 or older. The list is not all inclusive.~~

15.3 Provisions under the Act regarding familial status and age are not applicable to qualified housing for older persons.

15.4 A child under eighteen 18 years of age may be a temporary resident in a unit of housing for older persons if the child's parent, guardian, or person acting as a parent, with whom the child just resided, is unable to care for the child by reason of death, serious injury or serious illness.

8 DE Reg. 591 (10/01/04)

PROPOSED REGULATIONS

DEPARTMENT OF TRANSPORTATION DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 17 Delaware Code Sections 134, 141 and 21 Delaware Code Chapter 41
(17 Del.C. §§134,141 and 21 Del.C. Ch. 41)

PUBLIC NOTICE

Revisions to the Delaware Manual on Uniform Traffic Control Devices

Under Title 17 of the **Delaware Code**, Sections 134 and 141, as well as 21 **Delaware Code** Chapter 41, the Delaware Department of Transportation (DelDOT), is seeking to adopt a Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). The Department has now drafted changes to Parts 1, 7, 8, and 9 of the Federal MUTCD. Other portions of the MUTCD have already been drafted and adopted.

Public Comment Period

The Department will take written comments on the draft changes to the Delaware MUTCD from April 1, 2008 through April 30, 2008.

Copies of the Draft Delaware MUTCD can be obtained by reviewing or downloading a PDF copy at the following web address: <http://regulations.delaware.gov/register/april2008/proposed/MUTCD.pdf>.

Questions or comments regarding this document should be directed to:

Donald Weber, P.E.

Assistant Director of Transportation Engineering

Division of Transportation Solutions

Delaware Department of Transportation

169 Brick Store Landing Road

Smyrna, DE 19977

(302) 659-2002 (telephone)

(302) 653-2859 (fax)

don.weber@state.de.us

***Please Note:** Due to the size of the proposed regulation, the DelDOT Manual on Uniform Traffic Control Devices, Parts 1, 7, 8 and 9, is not being published here. A PDF version is available at the website listed below:

<http://regulations.delaware.gov/register/april2008/proposed/MUTCD.pdf>

Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. **[Bracketed Bold language]** indicates text added at the time the final order was issued. ~~**[Bracketed stricken through]**~~ indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the **Register of Regulations**. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

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

DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10005; 29 Delaware Code, Section 4815(b)(3)(c)(3) (3 **Del.C.** §10005; 29 **Del.C.** §4815(b)(3)(c)(3))
3 **DE Admin. Code** 1001

PUBLIC NOTICE

Pursuant to 29 **Del.C.** §10118 and 3 **Del.C.** §10103, the Delaware Thoroughbred Racing Commission issues this Order adopting proposed rules to the Commission's Rules. Following notice and a public hearing on October 23, 2007, the Commission makes the following findings and conclusions:

Summary of the Evidence

1. The Commission posted public notice of the proposed rules October 1, 2007 in the *Register of Regulations* and for two consecutive weeks in The News Journal and Delaware State News. The Commission proposed to add rules 13.8.2, 13.13.2, 13.13.3, and 13.13.4 to reflect current policies, practices, and procedures.
2. The Commission received no written comments. The Commission held a public hearing on October 23, 2007 and received no public comments.

Findings of Fact and Conclusions

1. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.
2. The Commission concludes that rules 13.8.2, 13.13.2, 13.13.3, and 13.13.4 should be adopted to reflect current policies, practices, and procedures.
3. The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on April 1, 2008.

IT IS SO ORDERED this 12th day of March 2008

Bernard J. Daney, Chairman
W. Duncan Patterson, Secretary/Commissioner
Henry James Decker, Commissioner
Debbie Killeen, Commissioner
Edward Stegemeier, Commissioner

1001 Thoroughbred Racing Rules and Regulations

*Please note that no changes were made to the regulation as originally proposed and published in the October 2007 issue of the *Register* at page 396 (11 DE Reg. 396). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/april2008/final/11 DE Reg 1373 04-01-08.htm>

THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10103; 29 Delaware Code,
Section 10103 (3 **Del.C.** §10103)
3 **DE Admin. Code** 1001

ORDER

Pursuant to 29 **Del.C.** §10118 and 3 **Del.C.** §10103, the Delaware Thoroughbred Racing Commission issues this Order adopting proposed rules to the Commission's Rules. Following notice and a public hearing on March 11, 2008, the Commission makes the following findings and conclusions:

Summary of the Evidence

1. The Commission posted public notice of the proposed rules February 1, 2008 in the *Register of Regulations* and for two consecutive weeks in The News Journal and Delaware State News. The Commission proposed to amend Section 15 of the rules and regulations to address use of Androgenic-Anabolic Steroids by thoroughbred horses by amending existing Rule 15.1.3.1.3 and adding new Rule 15.17.
2. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.
3. The Commission has considered the public comments and hereby adopts the rule changes as proposed.

Findings of Fact and Conclusions

1. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.
2. The Commission concludes that the proposal to amend Section 15 by amending existing Rule 15.1.3.1.3 and adding new Rule 15.17 should be adopted to address use of Androgenic-Anabolic Steroids by thoroughbred horses.
3. The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on April 1, 2008.

IT IS SO ORDERED this 12th day of March 2008
Bernard J. Daney, Chairman
W. Duncan Patterson, Secretary/Commissioner
Henry James Decker, Commissioner

Debbie Killeen, Commissioner
Edward Stegemeier, Commissioner

1001 Thoroughbred Racing Rules and Regulations

*Please note that no changes were made to the regulation as originally proposed and published in the February 2008 issue of the *Register* at page 969 (11 DE Reg. 969). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/april2008/final/11 DE Reg 1374 04-01-08.htm>

DEPARTMENT OF EDUCATION PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1505

REGULATORY IMPLEMENTING ORDER

1505 Standard Certificate

I. Summary of the Evidence and Information Submitted

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 regulation **DE Admin. Code** 1505 Standard Certificate. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation to provide clarification on the requirements for a Delaware educator to attain a second or subsequent certification.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on January 2, 2008 in the form hereto attached as Exhibit "A". The notice invited written comments. Corroborating comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V below.

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1505 of the Administrative Code of Regulations of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 7TH DAY OF MARCH, 2008

Kathleen Thomas, Chair
Joanne Christian
Sandra Falatek
Barbara Grogg
Lori Hudson
Mary Mirabeau
Gretchen Pikus
Michael Thomas

Cathy Cathcart
Marilyn Dollard
Karen Gordon
Leslie Holden
Dorothy McQuaid
Wendy Murray
Karen Schilling-Ross
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 20TH DAY OF MARCH, 2008.

STATE BOARD OF EDUCATION

Jean W. Allen, President
Mary B. Graham, Esquire
Barbara Rutt
Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President
Jorge L. Melendez
Dennis J. Savage

1505 Standard Certificate

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a).

7 DE Reg. 161 (8/1/03)

7 DE Reg. 629 (11/1/03)

2.0 Definitions

2.1 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“**Certification**” means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.

“**Department**” means the Delaware Department of Education.

“**Educator**” means a person licensed and certified by the State under 14 **Del.C.** §1202 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board. The term ‘educator’ does not include substitute teachers.

“**Examination of Content Knowledge**” means a standardized test which measures knowledge in a specific content area, such as PRAXIS™ II.

“**Fifteen (15) Credits or Their Equivalent in Professional Development**” means college credits or an equivalent number of hours, with one (1) credit equating to fifteen (15) hours taken either as part of a degree program or in addition to it, from a regionally accredited college or university or a professional development

provider approved by the employing school district or charter school.

“Immorality” means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator’s effectiveness by reason of his or her unfitness.

“License” means a credential which authorizes the holder to engage in the practice for which the license is issued.

“Major or its Equivalent” means a minimum of thirty (30) semester hours of course work in a particular content area.

“NASDTEC” means The National Association of State Directors of Teacher Education and Certification. The organization represents professional standards boards, commissions and departments of education in all 50 states, the District of Columbia, the Department of Defense Dependent Schools, the U.S. Territories, New Zealand, and British Columbia, which are responsible for the preparation, licensure, and discipline of educational personnel.

“NCATE” means The National Council for Accreditation of Teacher Education, a national accrediting body for schools, colleges, and departments of education authorized by the U.S. Department of Education.

[“Second Certificate” or “Second Standard Certificate” means any standard certificate issue after the first standard certificate including any second or subsequent standard certificate.]

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

“Standards Board” means the Professional Standards Board established pursuant to 14 Del.C. §1201.

“State Board” means the State Board of Education of the State pursuant to 14 Del.C. §104.

“Valid and Current License or Certificate from Another State” means a current full or permanent certificate or license issued by another state. It does not include temporary, emergency or expired certificates or licenses issued from another state.

7 DE Reg. 161 (8/1/03)

7 DE Reg. 629 (11/1/03)

7 DE Reg. 1742 (6/1/04)

10 DE Reg. 98 (07/01/06)

3.0 Standard Certificate

The Department shall issue a Standard Certificate to an educator who holds a valid Delaware Initial, Continuing or Advanced License; or Limited Standard, Standard, or Professional Status Certificate issued prior to August 31, 2003, who has met the following requirements:

3.1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:

3.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or

3.1.2 Meeting the requirements set forth in the relevant Department or Standards Board regulation governing the issuance of a Standard Certificate in the area for which a Standard Certificate is sought; or

3.1.3 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in the area of the Standard Certificate requested, or

3.1.4 Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or

3.1.5 Holding a bachelor’s degree from a regionally accredited college or university in any content area, and

3.1.5.1 for applicants applying after June 30, 2006 for their first standard certificate, satisfactory completion of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) or their equivalent credits must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and

3.2 For applicants applying after December 31, 2005, where **[an examination of content knowledge such as]** a Praxis™ II examination in the area of the Standard Certificate requested is applicable and available,

achieved a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination; or

3.3 Met the requirements for licensure and holding a valid and current license or certificate from another state in the area for which a Standard Certificate is requested; or

3.4 Met the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C. §1203.

3.5 If additional criteria are imposed by a specific regulation in the area for which a Standard Certificate is sought, the additional requirement must also be met.

7 DE Reg. 161 (8/1/03)

7 DE Reg. 629 (11/1/03)

7 DE Reg. 1004 (2/1/04)

7 DE Reg. 1742 (6/1/04)

10 DE Reg. 97 (07/01/06)

10 DE Reg. 1593 (04/01/07)

***Please Note:** As the rest of the sections were not amended since the proposal in the January 2008 issue, they are not being published here. Please refer to the January 2008 *Register*, page 865 (11 DE Reg. 865) or contact the Professional Standards Board for more information. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/april2008/final/11 DE Reg 1375 04-01-08.htm>

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Section 314 and 2741 (18 Del.C. §§314 and 2741)
18 DE Admin. Code 1003

ORDER

Proposed changes to Regulation 1003 relating to Credit for Reinsurance were published in the Delaware *Register of Regulations* on February 1, 2008. The comment period remained open until March 3, 2008. There was no public hearing on the proposed changes to Regulation 1003. Public notice of the proposed changes to Regulation 1003 in the *Register of Regulations* was in conformity with Delaware law.

Summary of the Evidence and Information Submitted

No public comment was received as a result of the publication of the proposed changes for comment. Regulation 1003 prior to the proposed amendment required the use of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 500. Publication 500 has been updated since the enactment of Regulation 1003 and is likely to be updated in the future. The purpose of Regulation 1003 is best served by the utilization of the most current update of Publication 500.

Findings of Fact

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. 18 Del.C. §910 et. seq. of the Insurance Code requires a regulation to set forth rules and procedural requirements which the commissioner deems necessary to carry out the provisions of the Code.
2. The use of the most current version of Publication 500 of the Uniform Customs and Practices for Documentary Credits of the International Chamber of Commerce best serves the purpose of those rules and requirements.

Decision and Effective Date

Based on the provisions of 18 **Del.C.** §§311(a) and 1718 and 29 **Del.C.** §§10113-10118 and the record in this docket, I hereby adopt Regulation 1003 as amended and as may more fully and at large appear in the version attached hereto to be effective on April 11, 2008.

Text and Citation

The text of the proposed amendments to Regulation 1003 last appeared in the *Register of Regulations* Vol. 11, Issue 8, pages 990-998.

IT IS SO ORDERED this __th day of March 2008.

Matthew Denn

Insurance Commissioner

1003 Credit for Reinsurance [Formerly Regulation 79]

*Please note that no changes were made to the regulation as originally proposed and published in the February 2008 issue of the *Register* at page 990 (11 DE Reg. 990). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/april2008/final/11 DE Reg 1378 04-01-08.htm>

DEPARTMENT OF AGRICULTURE
ANIMAL HEALTH AND FOOD PRODUCTS INSPECTION
NOTICE OF PUBLIC COMMENT PERIOD

301 Food Products Inspection

The Delaware Department of Agriculture Poultry and Animal Health and Food Products Inspection Section ("the Department") is proposing to amend its existing regulations concerning the inspection of meat, poultry, and egg products and for the humane slaughter of livestock so that they are equal to existing federal statutes and regulations that deal with these subject matters. By doing so the Department will bring its regulations current with modifications to 9 CFR Parts 300 through 500 since the Department last promulgated its regulations for food safety in April of 2002. The Department also proposes to incorporate by reference the U.S. Department of Agriculture's regulations dealing with the inspection of eggs and egg products and for the voluntary inspection of eggs.

Comments by the public concerning these proposed regulations should be submitted in writing to Assistant State Veterinarian, Caroline Hughes, D.V.M., whose address with the Department is 2320 South Dupont Highway, Dover, Delaware 19901. Written comments must be received by Dr. Hughes on or before May 1, 2008 to be considered prior to the adoption of these proposed regulations.

Copies of the relevant portions of the Code of Federal Regulations that are to become enforceable in this state at the conclusion of the administrative procedures process may be obtained by contacting the Superintendent of Documents, U. S. Government Printing Office, Washington, D.C. 20402-9328. For more information, contact Dr. Hughes by calling (302) 698-4561.

ANIMAL HEALTH AND FOOD PRODUCTS INSPECTION
NOTICE OF PUBLIC COMMENT PERIOD

304 Exotic Animal Regulations

The Delaware Department of Agriculture proposes these regulations in accordance with the General Assembly's mandate to enforce Chapter 72 of Title 3 of the **Delaware Code** and to specify the means by which citizens of the State of Delaware may obtain a permit from the Delaware Department of Agriculture to possess, sell, or exhibit, exotic animals within the state. **It should be noted here that these regulations do not supersede Delaware Code Title 7 Chapter 6 regarding Endangered Species.**

The Delaware Department of Agriculture solicits written comments from the public concerning these proposed regulations. Any such comments should be submitted to the State Veterinarian, Sara Busch, DVM, at Delaware Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901 on or before May 1, 2008. Copies of the proposed regulations are available on request.

HARNESS RACING COMMISSION
NOTICE OF PUBLIC HEARING

501 Harness Racing Rules and Regulations

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rule 10 by the addition of a proposed Rule 10.2.8.3. The Commission will hold a public hearing on the proposed rule changes on May 13, 2008. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on April 1, 2008.

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

THOROUGHBRED RACING COMMISSION NOTICE OF PUBLIC HEARING

1001 Thoroughbred Racing Rules and Regulations

The Delaware Thoroughbred Racing Commission in accordance with 3 **Del.C.** §10103(c) has proposed changes to its rules and regulations. The proposal amends Section 13 of the rules and regulations to address Claiming Races by amending existing Rule 13.1.1, 13.1.2, and 13.6.1.

A public hearing will be held on April 30, 2008 at 10:00 a.m. in the second floor conference room of the Horsemen's Office at Delaware Park, 777 Delaware Park Boulevard, Wilmington, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed regulations may obtain a copy from the Delaware Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml. Persons wishing to submit written comments may forward these to the attention of John F. Wayne, Executive Director, at the above address. The final date to receive written comments will be at the public hearing.

DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, April 17, 2008 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE NOTICE OF PUBLIC COMMENT PERIOD

Medicaid for Workers with Disabilities

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) related to the implementation of the Medicaid Buy-In program for the working disabled.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning and Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by April 30, 2008.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

DIVISION OF SOCIAL SERVICES NOTICE OF PUBLIC COMMENT PERIOD Child Care Subsidy Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and

Social Services (DHSS) / Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by April 30, 2008.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

DEPARTMENT OF INSURANCE**NOTICE OF PUBLIC COMMENT PERIOD****302 Captive Insurance Financial Regulation [Formerly Regulation 51]**

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 302 relating to financial and reporting requirements of captive insurance companies. The docket number for this proposed amendment is 681.

The purpose of the proposed amendment to regulation 302 is to update the existing regulation with respect to statutory law. The text of the proposed amendment is reproduced in the April 2008 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday May 5, 2008, and should be addressed to Mitchell G. Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

DEPARTMENT OF LABOR**DIVISION OF INDUSTRIAL AFFAIRS****OFFICE OF WORKERS' COMPENSATION****NOTICE OF PUBLIC HEARING**

The Secretary of Labor in accordance with 19 **Del.C.** §§2322B and §2322F(j) has proposed rules and regulations relating to workers' compensation. These proposals set forth health care payment system with coordinated instructions and guidelines developed by the Health Care Advisory Panel to assist in the health care treatment in workers' compensation ("Practice Guidelines") and also set forth the utilization review program developed by the Health Care Advisory Panel and associated utilization request form to assist in the health care treatment in workers' compensation ("Utilization Review" and "Utilization Review Form").

A public hearing will be held before the Health Care Advisory Panel ("Panel") at 4:00 p.m. on May 12, 2008, in the Department of Labor Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802 where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from John Kirk, Administrator, Workers' Compensation, Division of Industrial Affairs, Department of Labor, P.O. Box 9828, 4425 N. Market Street, Wilmington, Delaware 19809-0828. Persons wishing to submit written comments may forward these to the Panel at the above address. The final date to receive written comments will be at the public hearing.

The Panel will consider making a recommendation to the Secretary at the regularly scheduled meeting following the public hearing.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF FISH AND WILDLIFE****NOTICE OF PUBLIC HEARING AND COMMENT PERIOD****3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas, and
3758 Possession of V-notched Lobsters Prohibited****Title of the Regulations:**

Tidal Finfish Regulation and Shellfish Regulation

Brief Synopsis of the Subject, Substance and Issues:

The commercial black sea bass fishery in Delaware is managed by an individual quota system (ITQ) that is distributed to those fishermen meeting specific qualifying criteria for participation in either the fish pot or commercial hook and line fisheries. The current regulations do not allow the transfer of quota between individuals. However, declining quotas due to slower than anticipated stock recovery rates and a lack of participation by some individuals that are assigned quotas has created a situation where it would be advantageous to the fishermen to transfer quota in order to fully utilize Delaware's annual commercial black sea bass quota. This amendment to the regulation would permit eligible participants in the commercial sea bass fishery to make a one-time per season transfer of their quota, either in part or in total, to another eligible participant in either the commercial sea bass pot fishery or the commercial sea bass hook and line fishery respectively on forms to be supplied by the Department.

The purpose of the proposed lobster regulatory change is to bring Delaware in to compliance with Addendum XI to Amendment 3 of the Atlantic States Marine Fisheries Commission lobster management plan for federal waters off Delaware in what is known as Lobster Conservation Management Area 5. Delaware is required to re-define marking requirements for female lobsters. The mark used, called a V-notch, is presently defined in Delaware regulations as a straight-sided triangular cut without setal hairs at least $\frac{1}{4}$ inch in depth in the right of center tail flipper. The proposed change will re-define a V-notch as being at least $\frac{1}{8}$ inch deep with or without setal hairs.

Notice of Public Comment:

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, (302) 739 3441. A public hearing on these proposed regulations will be held in the Department of Natural Resources and Environmental Control Auditorium, at 89 Kings Highway, Dover, DE at 7:00 PM on April 24, 2008. Individuals may present their opinion and evidence either at the hearing or in writing to Lisa Vest, Hearing Officer, Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, DE 19901 or via e-mail to Lisa.Vest@state.de.us. The hearing record will remain open for written or e-mail comments until 4:30 PM April 30, 2008.

Prepared By:

Richard Cole, 302-739-4782, February 19, 2008

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
300 Board of Architecture****NOTICE OF PUBLIC COMMENT PERIOD**

The Delaware Board of Architects in accordance with 24 Del.C. §306(a)(1) has proposed changes to its rules and regulations. The proposal amends multiple sections of the rules and regulations to address notice requirements for out of state architects intending to offer services or participate in a design competition in Delaware, conforming Architect Registration Examination timing and retake requirements to the rules of the National Conference of Architectural Registration Board, Continuing Education (CE) requirements for previously licensed architects, increasing the biennial CE requirement from 16 to 24 unit hours, and signature and seal requirements for technical submissions. The proposed changes to the rules and regulations also contain provisions

for online renewal and attestation of having fulfilled CE requirements.

Members of the public can offer comments on the proposed changes by submitting their comments in writing to the Board of Architects, Attn: Margaret Foreit, 861 Silver Lake Boulevard, Suite 203, Dover, Delaware 19904. The final date to receive written comments will be April 30, 2008. Anyone wishing to receive a copy of the proposed regulations may obtain a copy from the Board of Architects at the above address. The Board will consider promulgating the proposed regulation at its regularly scheduled meeting following the written comment period.

DIVISION OF PROFESSIONAL REGULATION
500 Board of Podiatry

NOTICE OF PUBLIC HEARING AND COMMENT PERIOD

The Board of Podiatry ("Board") was established to protect the public from unsafe practices and from occupational practices, which tend to reduce competition or fix the price of services rendered by the professions under its purview. The Board was further established to maintain minimum standards of practitioner competency and delivery of services to the public. The Board is authorized by 24 **Del.C.** §506(a)(1) to make, adopt, amend, and repeal regulations as necessary to effectuate those objectives.

Pursuant to 24 **Del.C.** §3706(a)(1), the Board has proposed amendments to its regulation section 5.0. Specifically, the proposed changes to section **5.0 Licenses (In-Training, Lapse/Renewal, Inactive)** create a mandatory audit of all late-renewed licensees to verify compliance with the continuing education requirement. Other grammatical, typographic, or stylistic changes are also included.

A public hearing is scheduled for Thursday, July 17, 2008 at 5:00 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 regulations. Written comments should be submitted to the Board care of Margaret Foreit at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Margaret Foreit at the above address or by calling (302) 744-4500.

The Board will consider promulgating the proposed regulations immediately following the public hearing.

DIVISION OF PROFESSIONAL REGULATION
2925 Real Estate Commission Education Committee

NOTICE OF PUBLIC HEARING AND COMMENT PERIOD

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Sections 2905(a)(1) and 2911(b), the Delaware Real Estate Commission proposes to revise its Guidelines for Fulfilling the Delaware Real Estate Education Requirements. First, Rule 6.1.1.7 will be added to provide that courses addressing the use of technology in delivering real estate services may be considered eligible for continuing education credits. Rule 6.3 will be added to provide that continuing education programs must be a minimum of one hour and delivered in one hour increments. Finally, Rule 8.2 will be amended to state that a student who arrives at a continuing education program after the instruction begins shall not receive continuing education credit.

A public hearing will be held on May 8, 2008 at 9:15 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 11904. Persons wishing to submit written comments may forward these to the Commission at the above address. The final date to receive written comments will be at the public hearing.

The Commission will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

HUMAN RELATIONS COMMISSION
Equal Accommodations and Fair Housing
NOTICE OF PUBLIC HEARING AND COMMENT PERIOD

The State Human Relations Commission, in accordance with 29 **Del.C.** Chapter 101 and 6 **Del.C.** §§4506 and 4616, proposes amendments to the Equal Accommodations Regulations and Fair Housing Regulations. The changes are required to clarify hearing procedures and to comply with changes to "The Delaware Equal Accommodations Law" and "The Delaware Fair Housing Act", 6 **Del.C.** Chapters 45 and 46 and 31 **Del.C.** Chapter 30 and 31, and other items.

A public hearing is scheduled for Thursday, May 8, 2008 at 7:00 p.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904, where members of the public may offer comments. The Commission will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Commission care of Sheryl A. Paquette, Division of Human Relations, 861 Silver Lake Blvd., Suite 205, Dover, DE 19904. The final date to submit written comments shall be at the public hearing. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from Sheryl A. Paquette, Division of Human Relations, 861 Silver Lake Blvd., Suite 205, Dover, DE 19904, (302) 739-4567.

DEPARTMENT OF TRANSPORTATION
DIVISION OF TRANSPORTATION SOLUTIONS
NOTICE OF PUBLIC COMMENT PERIOD

Revisions to the Delaware Manual on Uniform Traffic Control Devices, Parts 1, 7, 8 and 9

Under Title 17 of the **Delaware Code**, Sections 134 and 141, as well as 21 **Delaware Code** Chapter 41, the Delaware Department of Transportation (DelDOT), is seeking to adopt a Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). The Department has now drafted changes to Parts 1, 7, 8, and 9 of the Federal MUTCD. Other portions of the MUTCD have already been drafted and adopted.

Public Comment Period

The Department will take written comments on the draft changes to the Delaware MUTCD from April 1, 2008 through April 30, 2008.

Copies of the Draft Delaware MUTCD can be obtained by reviewing or downloading a PDF copy at the following web address: <http://regulations.delaware.gov/register/april2008/proposed/MUTCD.pdf>.

Questions or comments regarding this document should be directed to:

Donald Weber, P.E.

Assistant Director of Transportation Engineering

Division of Transportation Solutions

Delaware Department of Transportation

169 Brick Store Landing Road

Smyrna, DE 19977

(302) 659-2002 (telephone)

(302) 653-2859 (fax)

don.weber@state.de.us

11 DE Reg. 1380 (04/01/08)