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# Delaware Register of Regulations

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The Delaware Revolutionary War Monument,  
"The Delaware Continentals"  
by Ron Tunison  
Legislative Hall, Dover

## IN THIS ISSUE:

### Regulations:

Proposed

Final

General Notice

### Governor:

Executive Orders

Appointments

General Notices

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 July 15, 2008.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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89

## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

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

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

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## 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.

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

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

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

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

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

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## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
September 1	August 15	4:30 p.m.
October 1	September 15	4:30 p.m.
November 1	October 15	4:30 p.m.
December 1	November 17	4:30 p.m.
January 1	December 15	4:30 p.m.

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# TABLE OF CONTENTS

---

91

Cumulative Tables..... 93

---

## PROPOSED

### DEPARTMENT OF AGRICULTURE

#### Harness Racing Commission

501 Harness Racing Rules and Regulations, 6.0 Type of Races  
and 8.0 Veterinary Practices, Equine Health Medication..... 95

### DEPARTMENT OF EDUCATION

#### Office of the Secretary

255 Definitions of Public School, Private School and Nonpublic School..... 108  
506 Policies for Dual Enrollment and Awarding Dual Credit..... 110  
525 Requirements for Career Technical Education Programs..... 113  
716 Maintenance of Local School District and Charter School Personnel Records..... 116  
901 Education of Homeless Children and Youth..... 119

### DEPARTMENT OF HEALTH AND SOCIAL SERVICES

#### Division of Medicaid and Medical Assistance

Long Term Care – Acute Care Program (SSI)..... 123

#### Division of Social Services

**DSSM:** 1000 Responsibility for the Administration of Delaware's Assistance Programs..... 126  
1003 Confidentiality..... 126  
9007.1 Citizenship and Alien Status ..... 128  
9060 Income Deductions..... 135  
9068.1 Certification Period Length..... 135  
9085 Reporting Changes..... 135

### DEPARTMENT OF INSURANCE

301 Audited Financial Reports [Formerly Regulation 50]..... 140

### DEPARTMENT OF LABOR

#### Division of Industrial Affairs

1311 Office of Anti-Discrimination Rules and Regulations..... 158

### DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

#### Division of Fish and Wildlife

3311 Freshwater Fisherman Registry  
3567 Tidal Water Fisherman Registry..... 167  
3901 Wildlife, Sections 3.0, 5.0, 7.0, 8.0, 20.0 and 21.0 ..... 169

### DEPARTMENT OF STATE

#### Human Relations Commission

1501 Equal Accommodations Regulations..... 179  
1502 Fair Housing Regulations..... 179

### DEPARTMENT OF TRANSPORTATION

#### Division of Motor Vehicles

2222 School Bus Driver Qualifications and Endorsements..... 196

---

## FINAL

### DEPARTMENT OF AGRICULTURE

#### Thoroughbred Racing Commission

1001 Thoroughbred Racing Rules and Regulations, 13.0 Claiming Races..... 201

### DEPARTMENT OF EDUCATION

#### Office of the Secretary

103 Accountability for Schools, Districts and the State..... 202  
110 Teachers and Specialists Appraisal Process..... 204

---

# TABLE OF CONTENTS

112 Addendum to Teachers and Specialists Appraisal Process, (Repeal) .....	205
115 School Level Administrator Appraisal Process.....	207
258 Federal Programs General Complaint Procedures .....	208
275 Charter Schools.....	211
502 Alignment of Local School District Curricula to the State Content Standards .....	216
605 Student Rights and Responsibilities .....	219
615 School Attendance .....	221
881 Releasing Students to Persons Other Than Their Parent, Guardian or Relative Caregiver.....	222
<b>DEPARTMENT OF HEALTH AND SOCIAL SERVICES</b>	
<b>Division of Medicaid and Medical Assistance</b>	
DSSM 20810 Treatment of Couples in Medical Institutions.....	224
Title XIX Medicaid State Plan - Medicaid Integrity Program, Page 79y (4.43).....	226
Title XIX Medicaid State Plan - School-Based Health Services, Attachment 3.1-A.....	228
<b>Division of Public Health</b>	
4403 Free Standing Birthing Centers.....	235
<b>Division of Social Services</b>	
DSSM: 5304.2 Nursing Facility Discharge Notice Hearings.....	242
5304.5 Jurisdiction for Hearings over Medicaid Program Services.....	242
<b>DEPARTMENT OF TRANSPORTATION</b>	
<b>Office of the Secretary</b>	
2101 Freedom of Information Act (FOIA).....	245
<hr/> <b>GOVERNOR</b> <hr/>	
Executive Order No. 107 and Executive Order No. 108.....	248
Appointments.....	249
<hr/> <b>GENERAL NOTICE</b> <hr/>	
<b>DEPARTMENT OF FINANCE</b>	
<b>Division of Revenue</b>	
Technical Information Memorandum 2008-01.....	252
<hr/> <b>CALENDAR OF EVENTS/HEARING NOTICES</b> <hr/>	
<b>Dept. of Agriculture</b> , Notice of Public Hearing	
<i>Harness Racing Commission</i> .....	255
<b>State Board of Education</b> , Notice of Monthly Meeting.....	255
<b>Dept. of Health and Social Services</b> , Notices of Public Comment Periods	
<i>Div. of Medicaid and Medical Assistance</i> .....	255
<i>Div. of Social Services</i> .....	255
<b>Dept. of Insurance</b> , Notice of Public Comment Period .....	257
<b>Dept. of Labor</b> , Notice of Public Hearing	
<i>Div. of Industrial Affairs</i> .....	257
<b>Dept. of Natural Resources</b> , Notices of Public Comment Periods	
<i>Div. of Fish and Wildlife</i> .....	257
<b>Dept. of State</b> , Notices of Public Hearings	
<i>Div. of Professional Regulation</i> .....	260
<i>Human Relations Commission</i> .....	260
<b>Dept. of Transportation</b> , Notice of Public Comment Period	
<i>Div. of Motor Vehicles</i> .....	261

The table printed below lists the regulations that have been proposed, adopted, amended or repealed in the preceding issues of the current volume of the *Delaware Register of Regulations*.

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.).

**DELAWARE MANUFACTURED HOME RELOCATION AUTHORITY**

201 Delaware Manufactured Home Relocation Trust Fund Regulations..... 12 **DE Reg.** 59 (Final)

**DELAWARE STATE FIRE PREVENTION COMMISSION**

Delaware State Fire Prevention Regulations, Part IX, Fire Service Standards ..... 12 **DE Reg.** 6 (Prop.)

**DEPARTMENT OF EDUCATION**

**Office of the Secretary**

410 Satellite School Agreements..... 12 **DE Reg.** 61 (Final)  
 603 Compliance with the Gun Free Schools Act..... 12 **DE Reg.** 9 (Prop.)  
 608 Unsafe School Choice Option for Students in Persistently Dangerous  
 Schools and for Students who have been Victims of a Violent Felony..... 12 **DE Reg.** 62 (Final)  
 745 Criminal Background Check for Public School Related Employment..... 12 **DE Reg.** 11 (Prop.)  
 746 Criminal Background Check for Student Teaching ..... 12 **DE Reg.** 17 (Prop.)  
 915 James H. Groves High School..... 12 **DE Reg.** 63 (Final)

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

**Division of Medicaid and Medical Assistance**

Pharmaceutical Services Program - Tamper-Resistant Prescription Pads..... 12 **DE Reg.** 20 (Prop.)  
 Title XIX Medicaid State Plan - Third Party Data Exchange..... 12 **DE Reg.** 65 (Final)

**Division of Social Services**

**DSSM** 9044.1 Newly-Certified Households..... 12 **DE Reg.** 22 (Prop.)

**DEPARTMENT OF INSURANCE**

606 Proof of Automobile Insurance..... 12 **DE Reg.** 23 (Prop.)

**DEPARTMENT OF LABOR**

**Division of Industrial Affairs**

1341 Workers' Compensation Regulations..... 12 **DE Reg.** 67 (Final)

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

**Division of Air and Waste Management**

Administrative and Non-Substantive Changes in Regulations Governing the  
 Control of Air Pollution, 7 **DE Admin. Code** Ch. 1100..... 12 **DE Reg.** 29 (Prop.)  
 1138 Emission Standards for Hazardous Air Pollutants for Source Categories,  
 Section 11..... 12 **DE Reg.** 38 (Prop.)

**Division of Fish and Wildlife**

3901 Wildlife, Section 19.0 Bald Eagle Protection (Withdraw)..... 12 **DE Reg.** 69 (Final)

**DEPARTMENT OF STATE**

**Division of Professional Regulation**

300 Board of Architects..... 12 **DE Reg.** 70 (Final)  
 1400 Board of Electrical Examiners, Sections 1.0 through 3.0, 5.0 through 7.0,  
 and 15.0..... 12 **DE Reg.** 73 (Final)  
 2500 Board of Pharmacy, Sections 11 and 18..... 12 **DE Reg.** 48 (Prop.)  
 2600 Examining Board of Physical Therapists and Athletic Trainers..... 12 **DE Reg.** 53 (Prop.)

# CUMULATIVE TABLES

---

2925 Real Estate Commission, Section 6.0, Program Criteria and Section 8.0, Provider Responsibilities.....	12 DE Reg.	74 (Final)
5300 Board of Massage and Bodywork, Sections 1.0, 2.0 and 7.0.....	12 DE Reg.	75 (Final)

## DEPARTMENT OF TRANSPORTATION

### Division of Motor Vehicles

2221 Use of Translators.....	12 DE Reg.	77 (Final)
------------------------------	------------	------------

### Division of Transportation Solutions

Revisions to the Delaware Manual on Uniform Traffic Control Devices, Parts 2, 3 and 6.....	12 DE Reg.	56 (Prop.)
Revisions to the Delaware Manual on Uniform Traffic Control Devices, Parts 1, 7, 8, and 9.....	12 DE Reg.	79 (Final)

**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.

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**DEPARTMENT OF AGRICULTURE**  
**HARNESS RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 1005 (3 **Del.C.** §10005)  
3 **DE Admin. Code** 501

**PUBLIC NOTICE**

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rules 6 and 8. The Commission will hold a public hearing on the proposed rule changes on September 9, 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 August 1, 2008.

The proposed changes are for the purpose of updating Rules 6 and 8 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](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)****6.0 Types of Races**

## 6.1 Types of Races Permitted

In presenting a program of racing, the racing secretary shall use exclusively the following types of races:

## 6.1.1 Overnight events which include:

6.1.1.1 Conditioned races;

6.1.1.2 Claiming races;

6.1.1.3 Preferred, invitational, handicap, open or free-for-all races;

## 6.1.2 Added money events which include:

6.1.2.1 Stakes;



# PROPOSED REGULATIONS

- 6.1.2.2 Futurities;
- 6.1.2.32 Early closing events; and
- 6.1.2.43 Late closing events
- 6.1.3 Match races
- 6.1.4 Qualifying Races (See Rule 7.0 -- "Rules of the Race")
- 6.1.5 Delaware-owned or bred races as specified in 3 **Del.C.** §10032
- 6.2 Overnight Events
  - 6.2.1 General Provisions
    - 6.2.1.1 For the purpose of this rule, overnight events shall include conditioned, claiming, preferred, invitational, handicap, open, free-for-all, or a combination thereof.
    - 6.2.1.2 Condition sheets must be available to participants at least 18 hours prior to closing declarations to any race program contained therein.
    - 6.2.1.3 A fair and reasonable racing opportunity shall be afforded both trotters and pacers in reasonable proportion from those available and qualified to race.
    - 6.2.1.4 Substitute races may be provided for each race program and shall be so designated on condition sheets. A substitute race may be used when a regularly scheduled race fails to fill.
    - 6.2.1.5 Regularly scheduled races or substitute races may be divided where necessary to fill a program of racing, or may be divided and carried over to a subsequent racing program, subject to the following:
      - 6.2.1.5.1 No such divisions shall be used in the place of regularly scheduled races which fill.
      - 6.2.1.5.2 Where races are divided in order to fill a program, starters for each division must be determined by lot after preference has been applied, unless the conditions provide for divisions based upon age, performance, earnings or sex may be determined by the racing secretary.
      - 6.2.1.5.3 However, where necessary to fill a card, not more than three races per day may be divided into not more than three divisions after preference has been applied. The divisions may be selected by the racing secretary. For all other overnight races that are divided, the division must be by lot unless the conditions provide for a division based on performance, earnings or sex.
  - 6.2.2 Conditions
    - 6.2.2.1 Conditions may be based only on:
      - 6.2.2.1.1 horses' money winnings in a specified number of previous races or during a specified previous time;
      - 6.2.2.1.2 horses' finishing positions in a specified number of previous races or during a specified period of time;
      - 6.2.2.1.3 age, provided that no horse that is 15 years of age or older shall be eligible to perform in any race except in a matinee race;
      - 6.2.2.1.4 sex;
      - 6.2.2.1.5 number of starts during a specified period of time;
      - 6.2.2.1.6 special qualifications for foreign horses that do not have a representative number of starts in the United States or Canada;
      - 6.2.2.1.7 horse's race condition in a specified number of previous races or during a specified period of time;
      - 6.2.2.1.8 claiming price in a horse's last one to three previous races;
      - 6.2.2.1.9 Delaware-owned or bred races as specified in 3 **Del.C.** §10032;
    - or
    - 6.2.2.1.10 any one or more combinations of the qualifications herein listed.
    - 6.2.2.2 Conditions shall not be written in such a way that any horse is deprived of an opportunity to race in a normal preference cycle. Where the word preference is used in a condition, it shall not

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supersede date preference as provided in the rules. Not more than three also eligible conditions shall be used in writing the conditions for overnight events.

6.2.2.3 The Commission may, upon application from the racing secretary, approve conditions other than those listed above for special events.

6.2.2.4 In the event there are conflicting published conditions and neither one nor the other is withdrawn by the Association, the one more favorable to the declarer shall govern.

6.2.2.5 For the purpose of eligibility, a racing season or racing year shall be the calendar year. All races based on winnings will be programmed as Non-Winners of a multiple of \$100 plus \$1 or Winners over a multiple of \$100. Additional conditions may be added. When recording winnings, gross winnings shall be used and cents shall be disregarded. In the case of a bonus, the present value of the bonus shall be credited to the horse as earnings for the race or series of races for which it received the bonus. It shall be the responsibility of the organization offering the bonus to report the present value of the bonus to the United States Trotting Association in a timely manner.

6.2.2.6 Records, time bars shall not be used as a condition of eligibility.

6.2.2.7 Horses must be eligible when declarations close subject to the provision that:

6.2.2.7.1 Wins and winnings on or after the closing date of declarations shall not be considered;

6.2.2.7.2 Age allowances and eligibility shall be according to the age of the horse on the date the race is contested.

6.2.2.7.3 In mixed races, trotting and pacing, a horse must be eligible under the conditions for the gait at which it is stated in the declaration the horse will perform.

6.2.2.8 When conditions refer to previous performances, those performances shall only include those in a purse race. Each dash or heat shall be considered as a separate performance for the purpose of condition races.

6.2.2.9 In overnight events, on a half mile racetrack there shall be no trailing horses. On a bigger racetrack there shall be no more than one trailing horse. At least eight feet per horse must be provided the starters in the front tier.

6.2.2.10 The racing secretary may reject the declaration to an overnight event of any horse whose past performance indicates that it would be below the competitive level of other horses declared to that particular event.

### 6.3 Claiming Races

#### 6.3.1 General Provisions

6.3.1.1 Claiming Procedure and Determination of Claiming Price. The trainer or authorized agent entering a horse in a claiming race warrants that he has authorization from the registered owner(s) to enter said horse in a claiming race for the designated amount. In the event of a claim, the owner(s) or authorized agent shall submit a signed registration to the Presiding Judge prior to receiving proceeds from the claim and the registration shall be immediately forwarded to the U.S.T.A. registrar for transfer.

6.3.1.2 Except for the lowest claiming price offered at each meeting, conditions and allowances in claiming races may be based only on age and sex. Whenever possible, claiming races shall be written to separate horses five years old and up from young horses and to separate males from females. Mares shall be given a price allowance; provided, however, that there shall be no price allowance given to a spayed mare racing in a claiming race.

6.3.1.3 Registration certificate in current ownership, together with the application for transfer thereon duly endorsed by all registered owners, must be filed in the office of the racing secretary for all horses claimed within a reasonable time after the race from which the horse was claimed.

6.3.1.4 The price allowances that govern for claiming races must be approved by the Commission. Claiming prices recorded on past performance lines in the daily race program and on eligibility certificates shall not include allowances.

6.3.1.5 The claiming price, including any allowances, of each horse shall be printed on the official program adjacent to the horse's program number and claims shall be for the amount designated, subject to correction if printed in error.

6.3.1.6 In handicap claiming races, in the event of an also eligible horse moving into the race, the also eligible horse shall take the place of the horse that it replaces provided that the handicap is the same. In the event the handicap is different, the also eligible horse shall take the position on the outside of horses with a similar handicap, except when the horse that is scratched is a trailing horse, in which case the also eligible horse shall take the trailing position, regardless of its handicap. In handicap claiming races with one trailer, the trailer shall be determined as the fourth best post position.

6.3.1.7 To be eligible to be claimed a horse must start in the event in which it has been declared to race, except as provided in 6.3.1.8 of this subsection.

6.3.1.8 The successful claimant of a horse programmed to start may, at his option, acquire ownership of a claimed horse, even though such claimed horse was scratched and did not start in the claiming race from which it was scratched. The successful claimant must exercise his option by noon of the next day following the claiming race to which the horse was programmed and scratched. Upon notification that the successful claimant has exercised his option, the owner shall present the horse for inspection, and the claim shall not be final until the successful claimant has had the opportunity to inspect the horse. No horse may be claimed from a claiming race unless the race is contested.

6.3.1.9 Any licensed owner or the authorized agent of such person who holds a current valid Commission license may claim any horse or any person who has properly applied for and been granted a claiming certificate shall be permitted to claim any horse. Any person or authorized agent eligible to claim a horse may be allowed access to the grounds of the Association, excluding the paddock, in order to effect a claim at the designated place of making claims and to take possession of the horse claimed.

6.3.1.10 Claiming certificates are valid for a 30 day period from the date of issuance. These certificates may be applied for at the office designated by the Association prior to post time on any day of racing.

6.3.1.11 There shall be no change of ownership or trainer once a horse is programmed.

#### 6.3.2 Prohibitions on Claims

6.3.2.1 A person shall not claim directly or indirectly his own horse or a horse trained or driven by him or cause such horse to be claimed directly or indirectly for his own account.

6.3.2.2 A person shall not directly or indirectly offer, or directly or indirectly enter into an agreement, to claim or not to claim or directly or indirectly attempt to prevent another person from claiming any horse in a claiming race.

6.3.2.3 A person shall not have more than one claim on any one horse in any claiming race.

6.3.2.4 A person shall not directly or indirectly conspire to protect a horse from being claimed by arranging another person to lodge claims, a procedure known as protection claims.

6.3.2.5 No qualified owner or his agent shall claim a horse for another person.

6.3.2.6 No person shall enter in a claiming race a horse against which there is a mortgage, bill or sale, or lien of any kind, unless the written consent of the holder thereof shall be filed with the Clerk of the Course of the association conducting such claiming race.

6.3.2.7 Any mare which has been bred shall not be declared into a claiming race for at least 30 days following the last breeding of the mare, and thereafter such a mare may only be declared into a claiming race after a veterinarian has pronounced the mare not to be in foal. Any mare pronounced in foal shall not be declared into a claiming race. Where a mare is claimed out of a claiming race and subsequently proves to be in foal from a breeding which occurred prior to the race from which she was claimed, the claim may be voided by the judges at the option of the successful claimant provided the mare is subjected to a pregnancy examination within 18 days of the date of the claim, and is found pregnant as a result of that pregnancy examination. A successful

claimant seeking to void the claim must file a petition to void said claim with the judges within 10 days after this pregnancy examination and shall thereafter be heard by the judges after due notice of the hearing to the parties concerned.

6.3.2.8 No one shall claim more than one horse in a race either alone, in a partnership, corporation or other legal entity.

6.3.2.9 If a horse is claimed, no right, title or interest therein shall be sold or transferred except in a claiming race for a period of thirty (30) days following the date of the claiming.

### 6.3.3 Claiming Procedure

6.3.3.1 A person desiring to claim a horse must have the required amount of money, on deposit with the Association at the time the completed claim form is deposited. The deposit shall be in cash or may be in a certified check at the discretion of the Association. The Association may require that a certified check clear the bank upon which it was drawn and funds transferred to the Association's account prior to the credit being "established."

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

6.3.3.3 The claim form shall be completed and signed by the claimant prior to placing it in an envelope provided for this purpose by the Association and approved by the Commission. The claimant shall seal the envelope and identify on the outside the date, time of day, race number and track name only.

6.3.3.4 The envelope shall be delivered to the designated area, or licensed delegate, at least ~~fifteen (15)~~ thirty (30) minutes before post time of the race from which the claim is being made. That person shall certify on the outside of the envelope the time it was received, ~~the current license status of the claimant and whether credit in the required amount has been established.~~

6.3.3.5 It shall be the responsibility of the Association to ensure that all such claim envelopes are delivered unopened or otherwise undisturbed to the judges prior to the race from which the claim is being made. The Association shall provide for an agent who shall, immediately after closing, deliver the claim to the judges' stand.

6.3.3.6 The claim shall be opened and the claims, if any, examined by the judges prior to the start of the race. The Association's auditor, or his agent, shall be prepared to state whether the claimant has on deposit, the amount equivalent to the specified claiming price and any other required fees and taxes.

6.3.3.7 The judges shall disallow any claim made on a form or in a manner which fails to comply with all requirements of this rule.

6.3.3.8 Documentation supporting all claims for horses, whether successful or unsuccessful, shall include details of the method of payment either by way of a photostatic copy of the check presented, or written detailed information to include the name of the claimant, the bank, branch, account number and drawer of any checks or details of any other method of payment. This documentation is to be kept on file at race tracks for three (3) years and is to be produced to the Commission for inspection at any time during the period.

6.3.3.9 When a claim has been lodged it is irrevocable, unless otherwise provided for in these rules.

6.3.3.10 In the event more than one claim is submitted for the same horse, the successful claimant shall be determined by lot by the judges, and all unsuccessful claims involved in the decision by lot shall, at that time, become null and void, notwithstanding any future disposition of such claim.

6.3.3.11 Upon determining that a claim is valid, the judges shall notify the paddock judge of the name of the horse claimed, the name of the claimant and the name of the person to whom the horse is to be delivered. Also, the judges shall cause a public announcement to be made.

6.3.3.12 Every horse entered in a claiming race shall race for the account of the owner who declared it in the event, but title to a claimed horse shall be vested in the successful claimant from the time the horse is deemed to have started, and the successful claimant shall become the owner of the horse,

whether it be alive or dead, or sound or unsound, or injured during or after the race. ~~If a horse is claimed out of a heat or dash of an event having multiple heats or dashes, the judges shall scratch the horse from any subsequent heat or dash of the event.~~

6.3.3.13 A post-race test may be taken from any horse claimed out of a claiming race. The trainer of the horse at the time of entry for the race from which the horse was claimed shall be responsible for the claimed horse until the post-race sample is collected. The successful claimant shall have the right to void the claim should the forensic analysis be positive for any prohibited substance or an illegal level of a permitted medication, or if a blood sample exhibits a positive response to Darbepoietin (DPO), ~~the~~ Erythropoietin (EPO) in itself, or through an antibody test. The claimed horse may be entered to race while results are pending, but not be permitted to race until the approved laboratory chemist notifies the DHRC on his findings in the samples taken from the horse.

6.3.3.14 Any person who refuses to deliver a horse legally claimed out of a claiming race shall be suspended, together with the horse, until delivery is made. The horse's halter must accompany the horse. Altering or removing the horse's shoes will be considered a violation of these rules.

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

6.3.3.16 The claiming price shall be paid to the owner of the horse at the time entry for the race from which the horse was claimed only when the judges are satisfied that the successful claim is valid and the registration has been received by the racing secretary for transfer to the new owner and the Presiding Judge has signed a release notice of horse claimed and application for transfer form.

6.3.3.17 The judges shall rule a claim invalid:

6.3.3.17.1 at the option of the claimant if the official racing chemist reports a positive test on a horse that was claimed, provided such option is exercised within 24 hours following notification to the claimant of the positive test by the judges;

6.3.3.17.2 if the horse has been found ineligible to the event from which it was claimed, regardless of the position of the claimant.

6.3.3.18 Mares and fillies who are in foal are ineligible to claiming races. Upon receipt of the horse, if a claimant determines within 48 hours that a claimed filly or mare is in foal, he may, at their option, return the horse to the owner of the horse at the time of entry for the race from which the horse was claimed.

6.3.3.19 When the judges rule that a claim is invalid and the horse is returned to the owner of the horse at the time of entry for the race in which the invalid claim was made:

6.3.3.19.1 the amount of the claiming price and any other required fees and/or taxes shall be repaid to the claimant;

6.3.3.19.2 any purse monies earned subsequent to the date of the claim and before the date on which the claim is ruled invalid shall be the property of the claimant; and

6.3.3.19.3 the claimant shall be responsible for any reasonable costs incurred through the care, training or racing of the horse while it was in his possession.

#### 6.4 Added Money Events

##### 6.4.1 General Provisions

6.4.1.1 For the purpose of this rule, added money events include stakes, ~~futures~~, early closing events and late closing events.

6.4.1.2 All sponsors and presenters of added money events must comply with the rules and must submit to the Commission the conditions and other information pertaining to such events.

6.4.1.3 Any conditions contrary to the provisions of any of these rules are prohibited.

**6.4.2 Conditions**

Conditions for added money events must specify:

6.4.2.1 which horses are eligible to be nominated;

6.4.2.2 the amount to be added to the purse by the sponsor or presenter, should the amount be known at the time;

6.4.2.3 the dates and amounts of nomination, sustaining and starting payments;

6.4.2.4 whether the event will be raced in divisions or conducted in elimination heats, and;

6.4.2.5 the distribution of the purse, in percent, to the money winners in each heat or dash, and the distribution should the number of starters be less than the number of premiums advertised; and

6.4.2.6 whether also eligible horses may be carded prior to the running heats or legs of added money events.

**6.4.3 Requirements of Sponsors/Presenters**

6.4.3.1 Sponsors or presenters of stakes, futurities or early closing events shall provide a list of nominations to each nominator or owner and to the Associations concerned within sixty (60) days after the date on which nominations close, other than for nominations payable prior to January 1st of a horse's two-year-old year.

~~6.4.3.2 In the case of nominations for futurities payable during the foaling year, such lists must be forwarded out prior to October 15th of that year and, in the case of nominations payable in the yearling year, such lists must be forwarded out not later than September 1 of that year.~~

6.4.3.2 Sponsors or presenters of stakes, futurities or early closing events shall also provide a list of horses remaining eligible to each owner of an eligible within 45 days after the date on which sustaining payments are payable. All lists shall include a resume of the current financial status of the event.

6.4.3.3 The Commission may require the sponsor or presenter to file with the Commission a surety bond in the amount of the fund to ensure faithful performance of the conditions, including a guarantee that the event will be raced as advertised and all funds will be segregated and all premiums paid. Commission consent must be obtained to transfer or change the date of the event, or to alter the conditions. In any instance where a sponsor or presenter furnishes the Commission with substantial evidence of financial responsibility satisfactory to the Commission, such evidence may be accepted in lieu of a surety bond.

**6.4.4 Nominations, Fees and Purses**

6.4.4.1 All nominations to added money events must be made in accordance with the conditions.

6.4.4.2 Dates for added money event nominations payments are:

6.4.4.2.1 Stakes: The date for closing of nominations on yearlings shall be May 15th. The date for closing of nominations to all other stakes shall fall on the fifteenth day of a month.

~~6.4.4.2.2 Futurity: The date for closing of nominations shall be July 15th of the year of foaling.~~

6.4.4.2.3 Early Closing Events: The date for closing of nominations shall fall on the first or fifteenth day of a month. Nominations on two-year-olds shall not be taken prior to February 15th.

6.4.4.2.4 Late Closing Events: The date for closing of nominations shall be at the discretion of the sponsor or presenter.

6.4.4.3 Dates for added money event sustaining payments are:

6.4.4.3.1 Stakes and Futurities: Sustaining payments shall fall on the fifteenth day of a month. No stake or futurity sustaining fee shall become due prior to (Month) 15th of the year in which the horses nominated become two years of age.

6.4.4.3.2 Early and Late Closing Events: Sustaining payments shall fall on the first or fifteenth day of a month.

6.4.4.4 The starting fee shall become due when a horse is properly declared to start and shall be payable in accordance with the conditions of the added money event. Once a horse has been properly declared to start, the starting fee shall be forfeited, whether or not the horse starts. Should payment not be made thirty (30) minutes before the post time of the event, the horse may be scratched and the payment shall become a liability of the owner who shall, together with the horse or horses, be suspended until payment is made in full, providing the Association notifies the Commission within thirty (30) days after the starting date.

6.4.4.5 Failure to make any payment required by the conditions constitutes an automatic withdrawal from the event.

6.4.4.6 Conditions that will eliminate horses nominated to an event, or add horses that have not been nominated to an event by reason of performance of such horses at an earlier meeting, are invalid. Early and late closing events shall have not more than two also eligible conditions.

6.4.4.7 The date and place where early and late closing events will be raced must be announced before nominations are taken. The date and place where stakes ~~and futurities~~ will be raced must be announced as soon as determined but, in any event, such announcement must be made no later than March 30th of the year in which the event is to be raced.

6.4.4.8 Deductions may not be made from nomination, sustaining and starting payments or from the advertised purse for clerical or any other expenses.

6.4.4.9 Every nomination shall constitute an agreement by the person making the nomination and the horse shall be subject to these rules. All disputes and questions arising out of such nomination shall be submitted to the Commission, whose decision shall be final.

6.4.4.10 Nominations and sustaining payments must be received by the sponsor or presenter not later than the hour of closing, except those made by mail must bear a postmark placed thereon not later than the hour of closing. In the event the hour of closing falls on a Saturday, Sunday or legal holiday, the hour of closing shall be extended to the same hour of the next business day. The hour of closing shall be midnight of the due date.

6.4.4.11 If conditions require a minimum number of nominations and the event does not fill, the Commission and each nominator shall be notified within twenty (20) days of the closing of nominations and a refund of nomination fees shall accompany such notice to nominators.

6.4.4.12 If conditions for early or late closing events allow transfer for change of gait, such transfer shall be to the lowest class the horse is eligible to at the adopted gait, eligibility to be determined at the time of closing nominations. The race to which the transfer may be made must be the one nearest the date of the event originally nominated to. Two-year-olds, three-year-olds, or four-year-olds, nominated in classes for their age, may only transfer to classes for the same age group at the adopted gait to the race nearest the date of the event they were originally nominated to, and entry fees to be adjusted.

6.4.4.13 A nominator is required to guarantee the identity and eligibility of nominations, and if this information is given incorrectly he or she may be fined, suspended, or expelled and the horse declared ineligible. If any purse money was obtained by an ineligible horse, the monies shall be forfeited and redistributed among those justly entitled to the same.

6.4.4.14 Early or late closing events must be contested if six or more betting interests are declared to start. If less horses are declared to start than required, the race may be declared off, in which case the total of nominations, sustaining and starting payments received shall be divided equally to the horses declared to start. Such distribution shall not be credited as purse winnings.

6.4.4.15 Stakes ~~or futurities~~ must be contested if one or more horses are declared to start. In the event only one horse, or only horses in the same interest start, it constitutes a walk-over. In the event no declarations are made, the total of nomination and sustaining payments shall be divided equally to the horses remaining eligible after payment to the last sustaining payment, but such distribution shall not be credited as purse winnings.

6.4.4.16 Associations shall provide stable space for each horse on the day of the race.

6.4.4.17 The maximum size of fields permitted in any added money event shall be no more than one trailer unless otherwise approved by the Commission.

6.4.4.18 An Association may elect to go with less than the number of trailers specified in subdivision 17 above.

6.4.4.19 In the event more horses are declared to start than allowed in one field, the race will be conducted in divisions or eliminations, as specified in the conditions.

6.4.4.20 In early closing races, late closing races and overnight races requiring entry fees, all monies paid in by the nominators in excess of 85 percent of the advertised purse shall be added to the advertised purse and the total shall then be considered to be the minimum purse. If the race is split and raced in divisions, the provisions of subdivision 21 below shall apply. Provided further that where overnight races are split and raced in eliminations rather than divisions, all starting fees payable under the provisions of this rule shall be added to the advertised purse.

6.4.4.21 Where a race other than a stake or futurity is divided, each division must race for at least 75 percent of the advertised purse.

6.4.4.22 The number of horses allowed to qualify for the final heat of an event conducted in elimination heats shall not exceed the maximum number permitted to start in accordance with the rules. In any elimination dash where there are horses unable to finish due to an accident and there are fewer horses finishing than would normally qualify for the final, the additional horses qualifying for the final shall be drawn by lot from among those unoffending horses not finishing.

6.4.4.23 The judges' decisions in arriving at the official order of finish of elimination heats on the same program shall be final and irrevocable and not subject to appeal or protest.

6.4.4.24 Unless the conditions for the added money event provide otherwise the judges shall draw by lot the post positions for the final heat in elimination events, i.e. they shall draw positions to determine which of the two elimination heat winners shall have the pole, and which the second position; which of the two horses that were second shall start in the third position, and which in the fourth, etc.

~~6.4.4.25 In a two in three race, a horse must win two heats to win a race and there shall be 10 percent set aside for the race winner. Unless conditions state otherwise, the purse shall be divided and awarded according to the finish in each of the first two or three heats, as the case may be. If the number of advertised premiums exceeds the number of finishers, the excess premiums shall go to the winner of the heat. The fourth heat, when required, shall be raced for 10 percent of the purse set aside for the race winner. In the event there are three separate heat or dash winners and they alone come back in order to determine the race winner, they will take post positions according to the order of their finish in the previous heat. In a two year old race, if there are two heat winners and they have made a dead heat in the third heat, the race shall be declared finished and the one standing best in the summary shall be awarded the 10 percent. If the two heat winners make a dead heat and stand the same in the summary, the 10 percent shall be divided equally among them.~~

#### 6.5 Cancellation of a Race

In case of cancellation of races, see Rule 7.3 --"Postponement and Cancellation."

#### 6.6 Delaware Owned or Bred Races

6.6.1 Persons licensed to conduct harness horse racing meets under title 3, chapter 100, may offer non-stakes races limited to horses wholly owned by Delaware residents or sired by Delaware stallions.

6.6.2 For purposes of this rule, a Delaware bred horse shall be defined as one sired by a Delaware stallion who stood in Delaware during the entire breeding season in which he covered a book of mares or a horse whose dam was a wholly-owned Delaware brood mare at the time of breeding as shown on the horse's United State Trotting Association registration or electronic eligibility papers. The breeding season means that period of time beginning February 1 and ending August 1 of each year.

6.6.3 All horses to be entered in Delaware owned or bred races must first be registered and approved by the Commission or its designee. The Commission may establish a date upon which a horse must be wholly-owned by a Delaware resident(s) to be eligible to be nominated, entered, or raced as Delaware-owned. In the case of a corporation seeking to enter a horse in a Delaware-owned or bred event as a Delaware-owned entry,



all owners, officers, shareholders, and directors must meet the requirements for a Delaware resident specified below. In the case of an Association or other entity seeking to enter a horse in a Delaware owned or bred event as a Delaware-owned entry, all owners must meet the requirements for a Delaware resident specified below. Leased horses are ineligible as Delaware owned entries unless both the lessor and the lessee are Delaware residents as set forth in this Rule and 3 **Del.C.** §10032.

6.6.4 The following actions shall be prohibited for Delaware-owned races and such horses shall be deemed ineligible to be nominated, entered, or raced as Delaware-owned horses:

- 6.6.4.1 Payment of the purchase price over time beyond the date of registration;
- 6.6.4.2 Payment of the purchase price through earnings beyond the date of

registration;

- 6.6.4.3 Payment of the purchase price with a loan, other than from a commercial lender regulated in Delaware and balance due beyond the date of registration;

- 6.6.4.4 Any management fees, agent fees, consulting fees, or any other form of compensation to non-residents of Delaware, except industry standard training and driving fees; or

- 6.6.4.5 Leasing a horse to a non-resident of Delaware.

6.6.5 The Commission or its designee shall determine all questions about a person's eligibility to participate in Delaware-owned races. In determining whether a person is a Delaware Resident, the term "resident" shall mean the place where an individual has his or her permanent home, at which that person remains when not called elsewhere for labor or other special or temporary purposes, and to which that person returns in seasons of repose. The term "residence" shall mean a place a person voluntarily fixed as a permanent habitation with an intent to remain in such place for the indefinite future.

6.6.6 The Commission or its designee may review and subpoena any information which is deemed relevant to determine a person's residence, including but not limited to, the following:

- 6.6.6.1 Where the person lives and has been living;
- 6.6.6.2 The location of the person's sources of income;
- 6.6.6.3 The address used by the person for payment of taxes, including federal,

state and property taxes;

- 6.6.6.4 The state in which the person's personal automobiles are registered;

- 6.6.6.5 The state issuing the person's driver's license;

- 6.6.6.6 The state in which the person is registered to vote;

- 6.6.6.7 Ownership of property in Delaware or outside of Delaware;

- 6.6.6.8 The residence used for U.S.T.A. membership and U.S.T.A. registration of a horse, whichever is applicable;

- 6.6.6.9 The residence claimed by a person on a loan application or other similar document;

- 6.6.6.10 Membership in civic, community, and other organizations in Delaware and elsewhere.

- 6.6.6.11 None of these factors when considered alone shall be dispositive, except that a person must have resided in the State of Delaware in the preceding calendar year for a minimum of one hundred and eighty three (183) days. Consideration of all of these factors together, as well as a person's expressed intention, shall be considered in arriving at a determination. The burden shall be on the applicant to prove Delaware residency and eligibility for Delaware-owned or bred races. The Commission may promulgate by regulation any other relevant requirements necessary to ensure that the licensee is a Delaware resident. In the event of disputes about a person's eligibility to enter a Delaware-owned or bred race, the Commission shall resolve all disputes and that decision shall be final.

6.6.7 Each owner and trainer, or the authorized agent of an owner or trainer, or the nominator (collectively, the "entrant"), is required to disclose the true and entire ownership of each horse with the Commission or its designee, and to disclose any changes in the owners of the registered horse to the Commission or its designee. All licensees and racing officials shall immediately report any questions concerning the ownership status

of a horse to the Commission racing officials, and the Commission racing officials may place such a horse on the steward's or judge's list. A horse placed on the steward's or judge's list shall be ineligible to start in a race until questions concerning the ownership status of the horse are answered to the satisfaction of the Commission or the Commission's designee, and the horse is removed from the steward or judge's list.

6.6.8 If the Commission, or the Commission's designee, finds a lack of sufficient evidence of ownership status, residency, or other information required for eligibility, prior to a race, the Commission or the Commission's designee, may order the entrant's horse scratched from the race or ineligible to participate.

6.6.9 After a race, the Commission or the Commission's designee, may upon reasonable suspicion, withhold purse money pending an inquiry into ownership status, residency, or other information required to determine eligibility. If the purse money is ultimately forfeited because of a ruling by the Commission or the Commission's designee, the purse money shall be redistributed per order of the Commission or the Commission's designee.

6.6.10 If purse money has been paid prior to reasonable suspicion, the Commission or the Commission's designee may conduct an inquiry and make a determination as to eligibility. If the Commission or the Commission's designee determines there has been a violation of ownership status, residency, or other information required for eligibility, it shall order the purse money returned and redistributed per order of the Commission or the Commission's designee.

6.6.11 Anyone who willfully provides incorrect or untruthful information to the Commission or its designee pertaining to the ownership of a Delaware-owned or bred horse, or who attempts to enter a horse restricted to Delaware-owned entry who is determined not to be a Delaware resident, or who commits any other fraudulent act in connection with the entry or registration of a Delaware-owned or bred horse, in addition to other penalties imposed by law, shall be subject to mandatory revocation of licensing privileges in the State of Delaware for a period to be determined by the Commission in its discretion except that absent extraordinary circumstances, the Commission shall impose a minimum revocation period of two years and a minimum fine of \$5,000 from the date of the violation of these rules or the decision of the Commission, whichever occurs later.

6.6.12 Any person whose license is suspended or revoked under subsection (k) of this rule shall be required to apply for reinstatement of licensure and the burden shall be on the applicant to demonstrate that his or her licensure will not reflect adversely on the honesty and integrity of harness racing or interfere with the orderly conduct of a race meeting. Any person whose license is reinstated under this subsection shall be subject to a two year probationary period, and may not participate in any Delaware-owned or bred race during this probationary period. Any further violations of this section by the licensee during the period of probationary licensure shall, absent extraordinary circumstances, result in the Commission imposing revocation of all licensure privileges for a five year period along with any other penalty the Commission deems reasonable and just.

6.6.13 Any suspension imposed by the Commission under this rule shall not be subject to the stay provisions in 29 Del.C. §10144.

**1 DE Reg. 503 (1/1/97)**

**2 DE Reg. 1241 (1/1/99)**

**2 DE Reg. 1765 (4/1/99)**

**3 DE Reg. 432 (9/1/99)**

**3 DE Reg 1520 (5/1/00)**

**4 DE Reg. 1123 (1/1/01)**

**4 DE Reg 1652 (4/1/01)**

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

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

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

**11 DE Reg. 308 (09/01/07)**

**11 DE Reg. 1050 (02/01/08)**

*(Break in Continuity of Sections)*

## 8.0 Veterinary Practices, Equine Health Medication

*(Break in Continuity within section)*

### 8.4 Testing

#### 8.4.1 Reporting to the Test Barn

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

the following protocol:

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

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

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

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

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

#### 8.4.2 Sample Collection

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

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

#### 8.4.3 Procedure for Taking Specimens

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

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

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

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

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

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

8.4.3.3.1 The owner;

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

8.4.3.3.3 A stable representative designated by such owner or trainer.

8.4.3.4 Sample Containers/Receptacles.

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

8.4.3.4.2 Blood sample receptacles will also be supplied by the Commission laboratory in sealed packages as received from the manufacturer.

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

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

8.4.3.5.2 The Commission Veterinarian shall:

8.4.3.5.2.1 Identify the horse from which the specimen was taken.

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

8.4.3.5.2.3 Place the detached portions of the identification tags in a

sealed envelope for delivery only to the stewards.

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

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

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

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

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

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

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

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

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

# PROPOSED REGULATIONS

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

8.4.3.5.4110 The Commission shall bear the responsibility of preparing and shipping the sample, and the cost of preparation, shipping, and testing at the referee laboratory shall be assumed by the person requesting the testing, whether it be the owner, trainer, or other person charged.

8.4.3.5.4110.1 A Commission representative and the owner, trainer, or other responsible person or a representative of the persons notified under these Rules and Regulations may be present at the time of the opening, repackaging, and testing of the "secondary" sample to ensure its identity and that the testing is satisfactorily performed.

8.4.3.5.4110.2 The referee laboratory shall be informed of the initial findings of the Commission chemist prior to making the test.

8.4.3.5.4110.3 If the finding of the referee laboratory is proven to be of sufficient reliability and does not confirm the finding of the initial test performed by the Commission chemist and in the absence of other independent proof of the administration of a prohibited drug of the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

8.4.3.5.4211 The Commission Veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause the specimens to be delivered only to the Commission chemist as soon as possible after sealing, in a manner so as not to reveal the identity of a horse from which the sample was taken.

8.4.3.5.4312 If an Act of God, power failure, accident, strike or other action beyond the control of the Commission occurs, the results of the primary official test shall be accepted as prima facie evidence.

*(Break in Continuity within section)*

**\*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/title3/500/501/index.shtml#TopOfPage>

## DEPARTMENT OF EDUCATION

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)

(14 Del.C. §122(b) and §154(e))

14 DE Admin. Code 255

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

#### 255 Definitions of Public School, Private School and Nonpublic School

##### A. Type of Regulatory Action Required

Reauthorization of Existing Regulation

##### B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to reauthorize 14 DE Admin. Code 255 Definitions of Public School, Private School and Nonpublic School with no changes.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before September 5, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of

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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 reauthorized regulation provides definitions and does not directly address student achievement issues.

2. Will the amended regulation help ensure that all students receive an equitable education? The reauthorized regulation provides definitions and does not directly address equitable education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The reauthorized regulation provides definitions and does not directly address health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The reauthorized regulation provides definitions and does not directly address 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 reauthorized regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.

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

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

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The reauthorized 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 is not a less burdensome method for addressing the purpose of this regulation and is intended to reflect state statute.

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

**255 Definitions of Public School, Private School and Nonpublic School****1.0 Public School**

A public school shall mean a school or Charter School having any or all of grades kindergarten through twelve, supported primarily from public funds and under the supervision of public school administrators. It also shall include the agencies of states and cities which administer the public funds.

**2.0 Private School**

A private school shall mean a school having any or all of grades kindergarten through twelve, operating under a board of trustees and maintaining a faculty and plant which are properly supervised and shall be interpreted further to include an accredited or approved college or university.

**4 DE Reg. 1251 (2/1/01)**

**3.0 Nonpublic School**

A nonpublic school shall mean a private school as that term is defined in paragraph 2.0 of this regulation or any homeschool defined in 14 **Del.C.** §2703A.

**7 DE Reg. 618 (11/1/03)**

**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 506

**506 Policies for Dual Enrollment and Awarding Dual Credit****A. Type of Regulatory Action Required**

New Regulation

**B. Synopsis of Subject Matter of the Regulation**

The Secretary of Education seeks the consent of the State Board of Education to promulgate a new regulation 14 **DE Admin. Code** 506 Policies for Dual Enrollment and Awarding Dual Credit. The purpose of this regulation is to ensure all reorganized local school districts, including vocational technical school districts have policies regarding dual enrollment and the awarding of dual credit to promote consistency and equity across the state. The Secretary and State Board of Education are in agreement with the purpose statement articulated by Jobs for the Future when they state in their 2008 report "On Ramp to College" that "dual enrollment and the awarding of dual credit is to serve as a bridge to college for students not already college bound and as a head start on college for those already committed to a postsecondary credential."

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before September 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 new regulation help improve student achievement as measured against state achievement standards? The new regulation is intended to broaden and add rigor to curricula options available to high school students to improve student achievement.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation is written to ensure all students are made aware of dual credit and dual enrollment opportunities, thus providing for a more equitable education.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation is related to dual credit and dual enrollment and does not specifically address students' health and safety.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation is written to ensure all students legal rights are respected as related to dual credit and dual enrollment opportunities.

5. Will the new regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The authority and flexibility of decision continues to be with local school districts; however, input will be needed from the postsecondary institutions as policies are developed.

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? Because dual enrollment and the awarding of dual credit already exists in most cases, this regulation serves to ensure consistency and equity across the state.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing dual enrollment and dual credit remains the with the district or schools and the postsecondary institutions.

8. Will the new 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 new regulation is consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies. This regulation further supports the educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing dual enrollment and the awarding of dual credit that ensures consistency and equity across the state.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There may be costs for dual enrollment and the awarding of dual credit that parents or local school boards will incur. At this time, the costs cannot be determined and the district policies will address funding sources as they become known and available.

## **506 Policies for Dual Enrollment and Awarding Dual Credit**

### **1.0 Purpose**

The purpose of this regulation is to ensure all reorganized local school districts, including vocational technical school districts have policies regarding dual enrollment and the awarding of dual credit to promote consistency and equity across the state.

### **2.0 Definitions:**

For purposes of this regulation the definitions in 14 DE Admin. Code 505 apply. Additional definitions for purposes of this regulation include the following:

“Accredited Postsecondary Institution” means a regionally accredited higher education institution.

“Articulation Agreement” means the agreement between the Accredited Postsecondary Institution and school district, school or charter school that specifies, at a minimum, student eligibility and participation requirements, the course syllabus, the expected course competencies, grading policy, attendance policy, and conditions for awarding Dual Credit. Further provided, student eligibility and participation requirements shall be based on multiple indicators of readiness such as, but not limited, to a combination of tests, course grades, teacher recommendations or portfolios.

“Dual Credit” means the credit awarded at both the high school and postsecondary levels.

“Dual Credit Course” means a course for which a student may receive both high school credit towards graduation and postsecondary credit. The course may be taken in a variety of settings such as in a high school, on a postsecondary institution campus, or electronically. Examples of a dual credit course include Advanced Placement (AP), International Baccalaureate (IB) and Tech Prep courses.

“Dual Enrollment” means simultaneous enrollment in both a high school and an Accredited Postsecondary Institution.

“Dual Enrollment Course” means a course for which a student may receive both high school credit towards graduation and postsecondary credit while simultaneously registered at both the high school and the Accredited Postsecondary Institution.

“Dual Enrollment Instructor” or “Instructor” means an individual teaching a Dual Enrollment Course who meets the requirements of a faculty member or adjunct faculty member at the credit granting Accredited Postsecondary Institution.

“Principal or principal’s designee” means the person at the high school the local school district board of education or superintendent, or charter school board, if applicable, assigns to approve the courses that may result in credit for that high school.

### **3.0 District Policy Requirement**

**3.1** Local school districts shall develop policies for Dual Enrollment and the awarding of Dual Credit that at a minimum meet the following criteria:

**3.1.1** All courses for which dual credit is awarded shall incorporate any applicable state content standards;

**3.1.2** All courses for which dual credit is awarded shall be taken at or through an Articulation Agreement with an Accredited Postsecondary Institution except for AP or IB courses;



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# PROPOSED REGULATIONS

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- 3.1.3 All students shall be provided information regarding dual enrollment and the awarding of dual credit opportunities;
- 3.1.4 Those students eligible as determined in the Articulation Agreement shall have access to dual credit and dual enrollment courses;
- 3.1.5 Funding sources such as Tech Prep, College Board waivers or other grants shall be identified as well as the procedures for applying and the procedures for the awarding of such funds or waivers. No student shall be denied access to dual credit or dual enrollment courses because of the student's or family's inability to pay;
- 3.1.6 Students shall have multiple points of access for dual credit and dual enrollment course(s) including, but not limited to, course(s) offered on the high school campus, course(s) offered on the postsecondary institution campus, course(s) offered online, or a combination of any of the above;
- 3.1.7 All courses for which Dual Credit is awarded through an Accredited Postsecondary Institution shall be taught by an approved Dual Credit Instructor;
- 3.1.8 Any course that offers Dual Credit shall have the prior approval for the awarding of Dual Credit by the principal or the principal's designee of the high school in which the credit is to be awarded; and
- 3.1.9 Dual enrollment and dual credit shall be included in the Student Success Plan (SSP), as required in 14 DE Admin. Code 505, for students electing to participate.

## **4.0 Quality Assurance and Granting of Postsecondary Credit**

- 4.1 All Advanced Placement (AP) and International Baccalaureate (IB) courses used for purposes of Dual Credit shall meet the requirements of their respective program authorizers.
  - 4.1.1 Postsecondary credit for Advanced Placement or IB courses shall be at the discretion of the credit granting Accredited Postsecondary Institution.
- 4.2 For Tech Prep courses, the Accredited Postsecondary Institution shall ensure the student's attainment of competencies as outlined in the Articulation Agreement between the high school and Accredited Postsecondary Institution.
- 4.3 All courses for which Dual Credit is granted shall meet the requirements of the sponsoring Accredited Postsecondary Institution as outlined in the Articulation Agreement.

## **5.0 Reporting of Dual Enrollment and awarding of Dual Credit**

- 5.1 The school shall indicate on a student's high school transcript any Dual Enrollment Courses taken and any courses for which Dual Credit has been granted.

## **6.0 Policy Reporting Requirements**

- 6.1 Each public school district shall have an electronic copy of its current policy for dual enrollment and awarding dual credit on file with the Department of Education.
- 6.2 Each public school district shall provide an electronic copy of any dual enrollment and dual credit policy within ninety (90) days of such revision(s) including revisions made as a result of changes to Federal, state or local law, regulations, guidance or policies.

## **7.0 Secondary Charter School Policy**

- 7.1 A secondary charter school that chooses to offer Dual Enrollment or Dual Credit opportunities shall be subject to the provisions of this regulation.
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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)  
(14 Del.C. §122(b) and §154(e))  
14 DE Admin. Code 525

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

#### 525 Requirements for Career Technical Education Programs

##### A. Type of Regulatory Action Required

Amendment to Existing Regulation

##### B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 525 Requirements for Career Technical Education Programs for alignment to the reauthorization of the Carl D. Perkins Career and Technical Education Act of 2006. The amended regulation reflects changes to be consistent with current laws, such as, career and technical rather than trade and industrial; inclusion of the Student Success Plan as a way to collect student occupational interests; and language to include provisions related to the Americans with Disabilities Act.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before September 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 is related to career and technical programs and may result in improved student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is related to career and technical programs and supports that all students achieve and equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation is related to career and technical education and does not directly impact student health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is related to career and technical programs and supports that all students legal rights are respected.

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing career and technical education programs.

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

## 525 Requirements for Career Technical Education Programs

### 1.0 Career Technical Education Programs

All Career Technical Education Programs shall meet the provisions of Delaware's State Plan for Career and Technical Education and meet the provisions of the content standards approved by the Department of Education or, if there are no approved state content standards, meet local program standards approved by the Department of Education.

#### 6 DE Reg. 955 (2/1/03)

### 2.0 All Local School Districts and Charter Schools that Offer State Approved Career Technical Education Programs Shall:

- 2.1 Meet the requirements within the state plan for the Carl D. Perkins Career and Technical Education Act of 2006.
- 2.42 Have the approval of the Department of Education before implementing new ~~programs~~ CTE courses and or pathways.
- 2.23 ~~Have adequate funding to~~ Adequately fund, support and sustain the instructional program.
- 2.34 ~~Employ~~ Ensure all teachers are certified in the Career Technical Education Program areas in which they teach.
- 2.45 Make provisions for meeting the unique needs of all students.
- 2.56 Establish and maintain an active CTE advisory committee which includes labor and management personnel to assist in the development and operation of the program.
- 2.67 ~~Use present and projected labor market information, available from the Delaware Occupational Information Coordinating Committee,~~ Department of Labor market projections to determine the need for new and continuing Career Technical Education Programs.
- 2.78 ~~Survey local business and industry to determine their~~ Assess occupational needs and the availability of placement and employment opportunities for program completers with input from the local CTE advisory committee.
- 2.89 ~~Survey the student population to determine their occupational interests and needs. Use the information derived from the Student Success Plan (SSP) portfolio to determine student occupational interests, needs and educational program.~~
- 2.910 Organize and financially support Career Technical Student Organizations as integral components of Career Technical Education Programs in public schools that complement and enrich instruction. The following career technical student organizations are affiliated in Delaware:
  - 2.910.1 Business Professionals of America (BPA)
  - 2.910.2 Technology Student Association (TSA)
  - 2.910.3 ~~Distributive Education Clubs of America (DECA),~~ an association of marketing students
  - 2.910.4 Family, Career and Community Leaders of America (FCCLA)
  - 2.910.5 The National FFA Organization
  - 2.910.6 Skills USA/~~VICA~~
  - 2.910.7 The Delaware Career Association (DCA)
- 2.4011 Integrate related academic content into individual career technical education courses, and guide students through a course selection process that supports the necessary academic preparation required by the student's career path and educational goals as documented in the student's SSP.
- 2.4112 ~~Schedule trade and industrial~~ skilled and technical sciences (trade and industrial) education programs, when offered, for a minimum of two consecutive periods a day or the equivalent, five days a week for two or more years.

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- 2.4213 Establish no rules practices or regulations that interfere with, prohibit or otherwise prevent students from having the opportunity to learn about, enroll in and complete a Career Technical Education Program in a career technical school district.
- 2.4314 Use equipment and facilities comparable to that used by local business and industry for which the Career Technical Education Program is preparing students.
- 2.4415 Schedule Department of Education and Delaware Advisory Council on Career and Technical Education Program review and monitoring visits upon request.
- 2.16 Report CTE program data as required by the Delaware Department of Education.
- 1 DE Reg. 1196 (2/1/98)
  - 6 DE Reg. 955 (2/1/03)
  - 8 DE Reg. 1603 (5/1/05)
  - 9 DE Reg. 1070 (01/01/06)

### **3.0 Cooperative Education Programs**

Cooperative Education Programs provide senior Career Technical Education Program students with coordinated on the job training not ordinarily available in the classroom. During the student's senior year, or under unique circumstances as approved by the Department of Education, employers may provide this on the job training in occupations directly related to the Career Technical Education Program in which the student is enrolled. For the purpose of granting credit during the school year two hours of Cooperative Education Work Experience shall equal one hour of instructional time. In a summer Cooperative Education Work Experience Program one half unit of credit shall be granted and shall be counted toward the units of credit necessary for graduation.

- 3.1 In order to qualify for Career Technical Education funding units the Career Technical Education Program Teacher or Career Guidance Counselor shall be provided with a full class period, each day, for every fifteen (15) students enrolled in the Cooperative Education Work Experience Program in order to make at least quarterly visits to the student's place of employment to ensure coordination between the classroom and the on the job experience.
- 3.2 In order to qualify for career technical education funding units the students shall; possess minimum occupational competencies specified by the Career Technical Education Teacher Coordinator before being placed in cooperative employment, be in their senior year and be in a Cooperative Education Work Experience Program that relates directly to the student's current or completed career technical education pathway, meet the requirements of 3.0 and be supervised through on site visits by an assigned Career Technical Education Program Teacher Coordinator or Career Guidance Counselor.
- 3.3 In order to qualify for career technical education funding units the school shall have on file, for each student; a training agreement that includes training objectives and is signed by a parent, guardian or Relative Caregiver, the employer, the student and a representative of the district or charter school. A State Work Permit for Minors in accordance with State Department of Labor regulations shall also be on file.
- 3.4 ~~For an Individuals with Disabilities Education Act (IDEA) eligible student, the student's Individualized Education Plan (IEP) team, in consultation with the Career Technical Education Teacher Coordinator, may authorize the student's participation in this program irrespective of lack of senior year status if necessary to provide the student a free, appropriate public education. Students whose education plans are guided by an Individualized Education Program (IEP) or a 504 plan through the Americans with Disabilities Act (ADA) may participate in Cooperative Education programs without senior year status if participation is necessary to provide the student a free appropriate public education and if approved by the IEP team and Career and Technical Education Teacher Coordinator.~~

- 2 DE Reg. 111 (07/01/98)
- 6 DE Reg. 955 (02/01/03)
- 9 DE Reg. 1070 (01/01/06)

## 4.0 Diversified Occupations Programs

Diversified Occupations Programs provide students with coordinated on the job training not ordinarily available in the classroom. During the student's junior or senior year or under unique circumstances as approved by the Department of Education, employers provide this on the job training. For the purpose of granting credit during the school year, two hours of work experience in a Diversified Occupations Work Experience Program shall equal one hour of instructional time. In a summer Diversified Occupations Work Experience Program one half unit of credit shall be granted and that credit shall be counted toward the units of credit necessary for graduation.

- 4.1 In order to qualify for career technical education funding units a Career Technical Education Program Teacher or Career Guidance Counselor shall be provided with a full class period, each day, for every fifteen (15) students enrolled in the Diversified Occupations Work Experience Program in order to make at least quarterly on site visits to the student's place of employment to ensure coordination between the classroom and the on the job experience.
- 4.2 In order to qualify for career technical education funding units the students shall; possess minimum readiness competencies as specified by the Career Technical Education Program Teacher Coordinator before being placed in a Diversified Occupations Work Experience Program employment situation, meet the requirements of 4.0 and be actively enrolled in a Diversified Occupations Work Experience Program and meets for at least one class period per week.
- 4.3 In order to qualify for career technical education funding units the school shall have on file, for each student; a training agreement that includes training objectives and is signed by a parent, guardian or Relative Caregiver, the employer, the student and a representative of the district or charter school. A State Work Permit for Minors in accordance with State Department of Labor regulations shall also be on file.
- 4.4 ~~For an Individuals with Disabilities Education Act (IDEA) eligible student, the student's Individualized Education Plan (IEP) team, in consultation with the Career Technical Education Teacher Coordinator, may authorize the student's participation in this program irrespective of lack of junior or senior year status if necessary to provide the student a free, appropriate public education. Students whose education plans are guided by an Individualized Education Program (IEP) or a 504 plan through the Americans with Disabilities Act (ADA) may participate in Cooperative Education programs without junior or senior year status if participation is necessary to provide the student a free appropriate public education and if approved by the IEP team and Career and Technical Education Teacher Coordinator.~~

2 DE Reg. 111 (07/01/98)

6 DE Reg. 955 (02/01/03)

9 DE Reg. 1070 (01/01/06)

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)  
 (14 Del.C. §122(b) and §154(e))  
 14 DE Admin. Code 716

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

#### 716 Maintenance of Local School District and Charter School Personnel Records

#### A. Type of Regulatory Action Required

Amendment to Existing Regulation

## B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 **DE Admin. Code** 716 Maintenance of Local School District Personnel Records in order to align it with the new rules of the Delaware Public Archives concerning the retention of the personnel records of inactive employees. The retention period has been increased from 30 years to 50 years by the Delaware Public Archives. In addition, there is clarification related to the number of summative appraisals that are to be kept in personnel files.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before September 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 addresses the maintenance of personnel records not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses the maintenance of personnel records not equitable education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses the maintenance of personnel records not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses the maintenance of personnel records not students' legal rights.

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the regulation.

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

## 716 Maintenance of Local School District and Charter School Personnel Records

### 1.0 Definitions

"**Delaware Public Archives (DPA)**" means the division within the Department of State that is charged with administering, implementing and enforcing all provisions of the Delaware Public Records Law.

"**Employee**" shall in this case mean any person whose terms of employment are adequate to qualify the employee for the earning of credit toward pension.

"**Termination**" in this case does not refer only to retirement but to any reason for the employee to leave the district.

**2.0 Records Retention**

Records for all school district and charter school employees shall be kept up to date including:

- 2.1 Salary data records for each year of employment in the school district or charter school. (Total salary paid identified as fiscal or calendar year); and
- 2.2 Records that show sick leave days earned and used and the number of days available at any time; and
- 2.3 The record of vacation time for those employees whose terms of employment provide for earned vacation.
- 2.4 All forms and documents that become part of the Delaware Performance Appraisal System II (DPAS II) shall be retained in the individual's personnel file until there are at least five (5) complete summatives. The oldest complete set of evaluation forms and documents may be purged from the personnel file once the sixth set is complete.

**9 DE Reg. 395 (9/1/05)**

**3.0 Records Retention**

Each school district and charter school shall keep the records referred to in section 2.0 above for all employees' inactive personnel files for at least ~~thirty~~ fifty (50) years following termination of employment.

- 3.1 For the security of records and the protection of the personnel for whom the information is recorded, it is recommended that original records are to be maintained at the school district or charter school for three (3) years after termination of an employee and a successful audit of such records. Records shall be purged in accordance with the *Delaware Public Archives School Districts General Records Retention Schedule* and prepared for storage according to the "*Delaware Public Archives Records Management Handbook Preparation of Records for Short-Term Storage*". Records shall remain in their original format and shall then be transferred to DPA and retained in storage for the balance of the ~~thirty (30)~~ fifty (50) required years. Local District and charter school records officers and authorized agents may request files from storage in accordance with DPA's procedures for requesting files. At the end of the retention period, the documents will be destroyed in accordance with DPA's destruction procedures.
- 3.2 The style and form of the records shall be at the discretion of the local school districts or charter schools, except that records transferred to the Delaware Public Archives for storage shall be in a format acceptable to DPA. Individual local school districts and charter schools may elect to have their records recorded onto a different type of media at district expense, in accordance with DPA guidelines.
  - 3.2.1 The information referred to above shall be maintained and available for any employee or former employee seeking information concerning their own employment records for a period of ~~thirty (30)~~ fifty (50) years after termination of employment. (It is recommended that for the convenience of employees and former employees that school districts and charter schools develop an alphabetically arranged file showing the name of each employee and the disposition of his or her records.)

**3 DE Reg. 1077 (2/1/00)**

**4 DE Reg. 989 (12/1/00)**

**9 DE Reg. 395 (9/1/05)**

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)  
(14 Del.C. §122(b) and §154(e))  
14 DE Admin. Code 901

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

#### 901 Education of Homeless Children and Youth

##### A. Type of Regulatory Action Required

Amendment to Existing Regulation

##### B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 DE Admin. Code 901 Education of Homeless Children and Youth. The amendments include: 1) the addition of the definition for "awaiting foster care placement" to be consistent with 14 Del.C. §202(c), which allows all children in foster care to be considered "homeless" and subject to the provisions of the regulation; 2) changing "calendar" to "business" days under the resolution dispute procedures; and 3) clarifying the state level dispute resolution process.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before September 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 primary amendment revises the regulation to be consistent with state law thus allowing all children in foster care to be eligible for the provisions of this regulation. The amendment may improve student achievement by allowing stability in student placement.

2. Will the amended regulation help ensure that all students receive an equitable education? The primary amendment revises the regulation to be consistent with state law thus allowing all children in foster care to be eligible for the provisions of this regulation. The amendment may help ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The primary amendment revises the regulation to be consistent with state law thus allowing all children in foster care to be eligible for the provisions of this regulation. The amendment may help ensure all students' health and safety is adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The primary amendment revises the regulation to be consistent with state law thus allowing all children in foster care to be eligible for the provisions of this regulation. The amendment may help ensure all students' legal rights are respected.

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

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The primary amendment revises the regulation to be consistent with state law thus allowing all children in foster care to be eligible for the provisions of this regulation. The amendment does not place any unnecessary reporting or administrative requirements or mandates upon the decision makers.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability does not change.



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 is 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 federal statute requires the state to have a process for resolving disputes concerning this issue.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There should not be additional transportation costs associated with the amendment since the Delaware law defining "awaiting foster child placement" was signed in July 2005.

## 901 Education of Homeless Children and Youth

### 1.0 Purpose

Consistent with the provisions of the McKinney-Vento Homeless Education Assistance Improvement Act, as amended by the No Child Left Behind Act of 2001 (42 U.S.C. §11431 et. seq.), the intent of this regulation is to ensure the educational rights and protections for children and youth experiencing homelessness.

### 2.0 Definitions

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

**"Awaiting foster care placement"** as defined by the provisions of 14 Del.C. §202(c) includes all children in foster care.

**"Department"** means the Delaware Department of Education.

**"Homeless Children and Youths"** as defined by the provisions of the 42 U.S.C. §11434a(2), means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of 42 U.S.C. §11302(a)(1)); and includes:

Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship or similar reason; are living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are ~~a~~awaiting foster care placement;

Children and youths who have a primary nighttime residence that is in a private or public place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of 42 U.S.C. §11302(a)(2)(C));

Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and Migratory children (as such term is defined in section 6399 of Title 20, the Elementary and Secondary Education Act of 1965) who qualify as homeless because the children are living in circumstances described above.

**"LEA Homeless Liaison"** means the Local Educational Liaison for Homeless Children and Youths designated under 42 U.S.C. §11432(g)(1)(J)(ii).

**"Secretary"** means the Secretary of Education.

**"State Coordinator"** means the Delaware Coordinator for Education of Homeless Children and Youths designated under 42 U.S.C. §11432(d)(3).

**"Unaccompanied Youth"** as defined by the provisions of 42 U.S.C. §11434a(6) includes a youth not in the company of a parent or guardian.

## 3.0 Federal Regulations

Local school districts shall comply with the provisions of the McKinney-Vento Homeless Education Assistance Improvement Act, as amended by the No Child Left Behind Act of 2001 (42 U.S.C. §11431 et. seq.) and any regulations issued pursuant thereto.

## 4.0 Procedures for the Resolution of Disputes Concerning the Educational Placement of Homeless Children and Youths

- 4.1 If a dispute arises over school selection or enrollment, the local school district must immediately enroll the homeless student in either the school of origin (as defined in 42 U.S.C. 11432(g)(3)(G)) or the school that nonhomeless students who live in the attendance area in which the homeless student is actually living are eligible to attend, whichever is sought by the parent, guardian, Relative Caregiver or homeless youth, pending resolution of the dispute.
- 4.2 The local school shall provide the parent, guardian, Relative Caregiver or homeless youth with a written notice of the school's decision regarding school selection or enrollment. 5The notice shall include:
  - 4.2.1 A written explanation of the school's decision regarding school selection or enrollment;
  - 4.2.2 Contact information for the LEA Homeless Liaison and State Coordinator, with a brief description of their roles;
  - 4.2.3 A simple, detachable form that parents, guardians, Relative Caregiver or homeless youth can complete and turn into the school to initiate the dispute resolution process;
  - 4.2.4 Instructions as to how to dispute the school's decision at the district level;
  - 4.2.5 Notice of the right to enroll immediately in the school of choice pending resolution of the dispute;
  - 4.2.6 Notice that immediate enrollment includes full participation in all school activities for which the student is eligible;
  - 4.2.7 Notice of the right to appeal to the State if the district level resolution is not satisfactory; and
  - 4.2.8 Time lines for resolving district and State level appeals.
- 4.3 District Level Dispute Resolution Process
  - 4.3.1 Local school districts shall develop a dispute resolution process at the district level. The dispute resolution process shall be as informal and accessible as possible, but shall allow for impartial and complete review. Parents, guardians, Relative Caregivers and homeless youth shall be able to initiate the dispute resolution process directly at the school they choose or the school district or LEA Homeless Liaison's office.
  - 4.3.2 Within ten (10) ~~calendar~~ business days of the initiation of the district level dispute resolution process; the school district shall inform the parties in writing of its determination, along with notice of the right to appeal to the State if the district level resolution is not satisfactory.
- 4.4 Interdistrict Resolution Process
  - 4.4.1 When interdistrict issues arise, including transportation, representatives from all involved school districts, the State Coordinator, or his or her designee, and the parent(s), guardian(s) or unaccompanied youth shall meet within ten (10) ~~calendar~~ business days of the initiation of the dispute process to attempt to resolve the dispute.
  - 4.4.2 The State Coordinator's role is to facilitate the meeting.
  - 4.4.3 If the parties are unable to resolve the interdistrict dispute, it shall be referred to the Secretary within ten (10) ~~calendar~~ business days of the meeting. Subsection 4.5.4 through 4.5.9 shall govern the Secretary's or review official's determination. The Secretary or review official shall consider the entire record of the dispute, including any written statements submitted and shall make a determination based on the child's or youth's best interest, as defined in 42 U.S.C. §11432(g)(3).
    - 4.4.3.1 Notwithstanding 4.4.3, where the interdistrict dispute is limited solely to the issue of the apportionment of responsibility and costs for providing the child transportation to and from the school of origin, there shall be no referral to the Secretary. Pursuant to 42 USC 11432

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## PROPOSED REGULATIONS

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(g)(1)(J)(iii)(II), if the school districts are unable to agree upon such a method of appropriation, the responsibility for the costs for transportation shall be shared equally.

### 4.5 State Level Dispute Resolution Process

- 4.5.1 The State level dispute resolution process is available for appeals from district-level decisions and interdistrict disputes. Appeals may be filed by parents, guardians, homeless youths or school districts. Appeals filed by a local school shall not be accepted.
- 4.5.2 To initiate the State level dispute resolution process, the appellant must file a written notice of appeal with the Secretary no later than ten (10) ~~calendar~~ business days after receiving written notification of the district level or interdistrict decision. The notice of appeal shall state with specificity the grounds of the appeal, and shall be signed by the appellant. Where the appeal is being initiated by a school district, the superintendent of the district must sign the notice of appeal.
- 4.5.3 A copy of the notice of appeal shall be delivered by hand or certified mail to all other parties to the proceeding at the time it is sent to the Secretary. A copy of any other paper or document filed with the Secretary or review official shall, at the time of filing, also be provided to all other parties to the proceeding.
- 4.5.4 Upon receipt of a notice of appeal, the Secretary or his/her designee, shall within five (5) ~~calendar~~ business days decide whether to hear the appeal or assign it to an independent and impartial review official and shall so advise the parties.
- 4.5.5 The local district shall file a certified record of the district or inter-district level dispute proceeding with the Secretary or review official within five (5) ~~calendar~~ business days of the date the Secretary notifies the parties that an appeal has been filed. The record shall contain any written decision, any written minutes of the meeting(s) at which the disputed action was taken, all exhibits or documentation presented at the district or interdistrict level dispute proceeding, and any other evidence relied on by the District(s) in making its (their) decision.
- 4.5.6 Appeals are limited to the record. The parties may support their positions in written statements limited to matters in the existing record. In order to be considered, written statements must be filed with the Secretary or review official no later than twenty (20) ~~calendar~~ business days after the appeal is filed.
- 4.5.7 The Secretary or review official shall consider the entire record of the dispute, including any written statements submitted in reaching his or her decision. The Secretary or review official shall overturn the district or interdistrict decision only if he or she decides that the district's decision was not supported by substantial evidence or was arbitrary or capacious or is inconsistent with state and federal law or regulation.
- 4.5.8 Within thirty (30) ~~calendar~~ business days of the receipt of the notice of appeal, the Secretary or review official shall inform the parties of his or her determination.
- 4.5.9 The determination of the Secretary or review official shall be final and is not subject to further appeal within the Department of Education.

1 DE Reg. 963 (1/1/98)

7 DE Reg. 620 (11/1/03)

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### Long Term Care – Acute Care 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 Medicaid and Medical Assistance (DMMA) is proposing to amend existing rules in the Division of Social Services Manual (DSSM) used to determine eligibility related to Long Term Care, specifically, the Acute Care 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, 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 August 31, 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 proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend existing rules in the Division of Social Services Manual (DSSM) used to determine eligibility related to Long Term Care, specifically, the *Acute Care Program*.

#### Statutory Authority

- 42 CFR §435.211, *Individuals who would be eligible for cash assistance if they were not in medical institutions;*
- 42 CFR §435.236, *Individuals in institutions who are eligible under a special income level; and,*
- 42 CFR §435.622, *Individuals in institutions who are eligible under a special income level.*

#### **Summary of Proposal**

**DSSM 20800, ~~Long Term Acute Care Program (SSI)~~ Determining Eligibility for the Acute Care Program:** First, the rule title has been renamed to reflect the revised content of the rule regarding medical eligibility rules for 30-day hospitalization/rehabilitation and out-of-state rehabilitation. Individuals who are inpatients of an acute care hospital for 30 days or more may be eligible for Long Term Care Medicaid.

Second, to simplify the policy format, Section 20800 is substantially revised, renumbered, and reorganized for greater clarity and ease of reading. Individuals requiring out-of-state placement in a rehabilitation center may also be eligible for Long Term Care Medicaid. Specific medical policy clarifications have been added to assist DMMA staff in obtaining the necessary information when determining medical eligibility.

#### **DMMA PROPOSED REGULATION #08-30**

#### **REVISION:**

#### **~~20800 Long Term Acute Care Program (SSI)~~**

~~Until 12/31/95, Medicaid coverage was available to individuals in acute care hospitals for more than 30 days, who would be eligible for SSI (aged, blind, or disabled) except that their income is between 100% and 250% of the~~

SSI standard. Effective 1/1/96, individuals with income exceeding 100% of the SSI standard are not eligible. Individuals who would be eligible for TANF if not hospitalized may also qualify. This section will focus on applicants who would be eligible for SSI. These individuals will be determined eligible only after the patient has been in the hospital for 30 consecutive days. For example, if an individual enters the hospital on April 24th, Medicaid units need not consider eligibility unless the individual is still hospitalized on May 23rd (and has been continuously hospitalized since April 24th).

Financial eligibility for this program is always handled by the Financial Eligibility Units. Medical eligibility can be determined by PAS or by the Medicaid Review Team. To be medically eligible, the applicant must have required the level of care provided by a hospital during the time of his/her hospitalization. The individual may also be found eligible based on age alone (age 65 or older) or if the individual is statutorily blind and in the need of acute care services. Anyone 65 or statutorily blind and hospitalized for 30 consecutive days, and in need of acute care services would be medically eligible.

## **20800.1 Referral Procedures**

1. The referral is taken by PAS if the applicant is seeking Nursing Home placement or Home and Community Based Services, in addition to this program. PAS will determine medical eligibility and will refer the case to the Financial Eligibility Unit. If Home and Community Based Services are needed, the Financial Unit will refer the case to the HCBS Unit.

2. If the applicant is planning to be discharged to his home or to an out of state hospital or has already been discharged and does not require Home and Community Based Services or long term care placement, the referral is taken by the Financial Eligibility Unit. The eligibility process begins only when the applicant has reached his 30th day of hospitalization. The Financial Eligibility Unit obtains a FORM 408 from the hospital and forwards it with any pertinent medical information to the Medical Review Team. If the applicant is under the age of 19 and does not require long term care or HCBS, the Financial Eligibility Unit refers the case to the Family and Community Medicaid Unit.

3. If, in either of the above two situations the referral is an emergency, i.e., the applicant requires a heart transplant, bone marrow transplant, etc., the appropriate referral unit will begin the eligibility process without waiting for the 30 days to elapse or for the FORM 408 Form to be completed.

In emergency situations, the worker handling the referral will notify her supervisor. The supervisor will inform the Long Term Care Coordinator of the applicant's medical situation. The Long Term Care Coordinator will determine medical eligibility with the assistance of a staff nurse.

## **20800.2 Financial Determination**

1. Applicant or representative must complete the application process

2. Eligibility will be determined using all nursing home technical and financial standards.

3. If applicant is eligible, the Medicaid case must be opened on DCIS retroactive from the hospital admission date. For example, if an individual enters the hospital April 24th and is continuously hospitalized at least until May 23rd. The Medicaid coverage would begin effective April 24th. In no case shall the effective date of eligibility be earlier than the first day of hospitalization.

4. There is a patient pay requirement for these individuals and the patient pay amount is determined in accordance with policy section 20600 (Post Eligibility Definitions/Procedures). Notification of patient pay amount and approval must be sent to the appropriate hospital social worker.

Complete data entry functions to update DCIS and templates.

5. Redeterminations of eligibility must be completed at six month intervals, but biweekly contacts must be made with the hospital to determine that the recipient is still institutionalized.

## **LTC POL-20800      Determining Eligibility for the Acute Care Program**

This policy applies to all applications received for Medicaid payment of Inpatient hospitalization or rehabilitation.

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## **Thirty Consecutive Days of Hospitalization**

Eligibility for this program will only be determined once the individual has been hospitalized for 30 consecutive days, unless:

- the discharge plan is for nursing home placement; or
- the individual is seeking out of state inpatient rehabilitation placement.

## **Licensed and Certified Hospital or Rehabilitation Facility**

The medical facility must be licensed and certified as a Title XIX Acute Care or Rehabilitation Medical Facility.

The Acute Care facility must be engaged in providing diagnostic and therapeutic services for medical diagnosis, treatments, and care of injured, disabled, or sick persons. These services must be provided by or under the supervision of physicians. Continuous twenty-four (24) hour nursing services are provided.

The Rehabilitation facility may be a freestanding rehabilitation hospital or a rehabilitation unit in an Acute Care hospital.

## **Medical Eligibility Requirements For In State Hospitalization and/or Rehabilitation**

Medical eligibility for Inpatient hospitalization/rehabilitation services received within the state is determined by the Division of Medicaid and Medical Assistance Pre-Admission Screening (PAS) units. The individual must have required the level of care provided by a hospital during the time of his/her hospitalization, as determined by the PAS units.

Anyone 65 years of age or older, or statutorily blind would meet the medical eligibility criteria if they were in need of acute care services during the time of their hospitalization.

## **Medical Eligibility Requirements For Out of State Rehabilitation**

Medical eligibility for Inpatient Rehabilitation services to be received out of state is determined by the Division of Medicaid and Medical Assistance Medical Director. The individual must require:

- close medical supervision by a rehabilitation physician;
- twenty-four (24) hour nursing supervision;
- an intensive level of physical, occupational or speech therapy; or
- psychological services; or
- prosthetic-orthotic services.

The individual must be able to tolerate and participate in:

- at least 3 hours of physical and/or occupational therapy per day;
- and any other required therapies or services.

Medical eligibility must be reviewed on a bi-weekly basis.

Prior authorization must be requested and approved before out of state placement is made.

## **Financial Eligibility Requirements**

Financial eligibility is determined by the Division of Medicaid and Medical Assistance Financial units. An individual must meet income and resource guidelines.

## **Income Guidelines**

The income limit is equal to 100% of the Federal SSI Standard. However, if the individual is going to a nursing home directly from a hospital or rehabilitation facility, the higher income limit of 250% of the Federal SSI standard will be applied.

For out of state rehabilitation the income limit is 250% of the Federal SSI standard.

Refer to DSSM sections 20200, 20210, and 20240 for additional guidelines regarding income.

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# PROPOSED REGULATIONS

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## Resource Guidelines

The resource limit is \$2,000.00. Refer to DSSM sections 20300 – 20360, and 20400 for additional information on determining countable resources.

## Spousal

If applicable, Spousal Impoverishment rules should be followed. (DSSM 20900)

## Financial Redetermination

A redetermination of the individual's financial eligibility should be completed at six month intervals.

## Post Eligibility Budgeting

There is a patient pay requirement for these individuals. The patient pay amount is determined in accordance with DSSM section 20600 - (Post-Eligibility Definitions/Procedures). Notification of patient pay amount and approval must be sent to the appropriate hospital/rehabilitation social worker.

## Medicaid Eligibility Effective Date

In no case shall the effective date of eligibility be earlier than the first day of hospitalization.

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## **DIVISION OF SOCIAL SERVICES**

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

### **PUBLIC NOTICE**

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 is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the *Responsibility for the Administration of Delaware's Assistance Programs and Confidentiality*.

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 August 31, 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 CHANGES**

The proposed changes described below amend policies in the Division of Social Services Manual (DSSM) regarding *Responsibility for the Administration of Delaware's Assistance Programs and Confidentiality*.

#### **Statutory Authority**

- Title 31 – Welfare, including  
Chapter 5, *State Public Assistance Code*  
Chapter 6, *Food Stamp Program*

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## Chapter 9, *Work Assignments for Recipients of Assistance*

- Title IV-A of the Social Security Act, *Grants to States for Temporary Assistance for Needy Families*
- Title IV of the Immigration and Nationality Act
- Title XX of the Social Security Act, *Block Grants to States for Social Services*
- 7 U.S.C., Chapter 51, *Food Stamp Program*
- Child Care Development Block Grant, as amended by the Personal Responsibility and Work Reconciliation Act of 1996
- 7 CFR §273.7, *Work Provisions*
- 7 CFR §272.1(c), *General Terms and Conditions – Disclosure*
- 45 CFR §205.50, *Safeguarding Information for the Financial Assistance Programs*

## Summary of Proposed Changes

**DSSM 1000, *Responsibility for the Administration of Delaware's Assistance Programs*:** This section is being revised to include omitted programs and services; and, to reorganize for clarity. DSSM 1000 is updated to include the following programs and services: the Emergency Assistance Program, the Refugee Resettlement Program, the Child Care Subsidy Program, and Food Stamp Employment and Training services.

**DSSM 1000, *Confidentiality*:** This section revises the text wording and clarification of reference to the Code of Federal Regulations citations by including the correct citations for the confidentiality regulation.

## **DSS PROPOSED REGULATION #08-29**

### **REVISIONS:**

### **1000 Responsibility for the Administration of Delaware's Assistance Programs**

The Department of Health and Social Services is the agency designated by the State as responsible for Delaware's public assistance programs ~~as allowed under Title IV – A of the Social Security Act (the TANF Program), Title 31 of the Delaware Code (the General Assistance Program), and Public Law 95 – 113, (the Food Stamp Program).~~ Within the Department, the Division of Social Services (DSS) administers these programs. The specific programs are those allowed under:

1. Title IV-A of the Social Security Act (the TANF Program and the Emergency Assistance Program);
2. Title 31 of the **Delaware Code**, Chapter 5 (the General Assistance Program);
3. Title IV of the Immigration and Nationality Act (the Refugee Resettlement Program);
4. Title 31 of the **Delaware Code**, Title XX of the Social Security Act, 7 CFR §273.7, and the CCDBG as amended by the Personal Responsibility and Work Reconciliation Act of 1996 (the Child Care Subsidy Program);
5. Title 31 of the **Delaware Code**, Chapter 9 (Food Stamp Employment and Training services); and
6. 7 U.S.C. Chapter 51 and Title 31 of the **Delaware Code**, Chapter 6 (the Food Stamp Program).

Included in this manual are technical and financial eligibility rules for the following programs:

1. Temporary Assistance ~~to~~ for Needy Families (TANF)
2. The General Assistance Program
3. The Food Stamp Program
4. The Refugee Resettlement Program
5. ~~Purchase of Day-Care Services~~ The Child Care Subsidy Program
6. The Emergency Assistance Program
7. Employment and Training Services



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# PROPOSED REGULATIONS

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*(Break in Continuity of Sections)*

## 1003 Confidentiality

[272.1(e)(1) 7 CFR §272.1(c); 45 CFR §205.50]

Federal and State laws provide that public assistance information and records may be used only for purposes directly connected with the administration of public assistance programs. Thus, all information gathered regarding individuals for public assistance purposes is considered confidential and will be safeguarded by DSS.

By safeguarding public assistance information, DSS protects its clients from being identified as a special group based on financial needs and protects their right to privacy.

See Administrative Notice:

A-14-98 Subpoenas for Public Assistance Records

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## DIVISION OF SOCIAL SERVICES

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

### PUBLIC NOTICE

#### FOOD STAMP PROGRAM

#### 9007.1 Citizenship and Alien Status

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 is proposing to amend Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding *Citizenship and Alien Status*.

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 August 31, 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 CHANGES

The proposed change described below amends the Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding *Citizenship and Alien Status*.

#### Statutory Authority

- 7 CFR §273.4, *Citizenship and Alien Status*

## Summary of Proposed Changes

**DSSM 9007.1, *Citizens and Qualified Aliens*:** The proposed revisions at 9007.1 are being made to rename this section and replace with Citizenship and Alien Status and to reorganize and reformat the content to align text with federal regulations at 7 CFR §273.4.

### **9007.1 ~~Citizens and Qualified Aliens~~ Citizenship and Alien Status**

[7 CFR 273.4]

#### Citizens and qualified aliens

~~The following residents of the United States are eligible to participate in the Food Stamp Program without limitations based on their citizenship/alienage status:~~

~~1. Persons born in the 50 states and the District of Columbia, Puerto Rico, Guam, Virgin Islands, and the Northern Mariana Islands. Children born outside the United States are citizens if they meet one of the following conditions:~~

- ~~■ both parents are citizens of the United States and one parent has had a residence in the United States, or one of its outlying possessions, prior to the birth of the child; or~~
- ~~■ one parent is a citizen of the United States who has been physically present in the United States, or one of its outlying possessions, for a continuous period of one year prior to the birth of the child, and the other parent is a national, but not a citizen of the United States; or~~
- ~~■ one parent is a citizen of the United States who has been physically present in the United States, or one of its outlying possessions, for a continuous period of one year at any time prior to the birth of the child.~~

~~2. Naturalized citizens or a United States non-citizen national (person born in an outlying possession of the United States, like American Samoa or Sawin's Island, or whose parents are U.S. non-citizen nationals;~~

~~3. Individuals who are:~~

~~A. An American Indian born in Canada who possesses at least 50 per centum of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act (INA) apply;~~

~~B. A member of an Indian tribe as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians;~~

~~C. Lawfully residing in the U.S. and was a member of the Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975;~~

~~(i) The spouse or surviving spouse of such Hmong or Highland Laotian who is deceased, or~~

~~(ii) An unmarried dependent child of such Hmong or highland Laotian who is under the age of 18 or if a full-time student under the age of 22 of such a deceased Hmong or Highland Laotian provided that the child was dependent upon him or her at the time of his or her death; or an unmarried disabled child age 18 or older if the child was disabled and dependent prior to the child's 18<sup>th</sup> birthday.~~

~~4. Individuals who are eligible indefinitely due to being:~~

~~A. A lawfully admitted for permanent residence (LPR) who can be credited with 40 quarters of work as determined under Title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, based on the sum of: quarters the alien worked; quarters credited for the work of a parent the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of an alien during their marriage if they are still married or the spouse is deceased. A spouse cannot get credit for quarters of coverage of a spouse when the couple divorces before a determination of eligibility is made. If a determination of eligibility has been made based on the quarters of coverage of a spouse, and the couple later divorces, the alien's eligibility continues until the next recertification. At~~

~~that time, eligibility is determined without crediting the alien with the former spouses quarters of coverage. (Beginning January 1, 1997, any quarter in which the alien received any Federal means tested benefits does not count as a qualifying quarter. A parent's or spouse's quarter is not creditable if the parent or spouse received any Federal means tested benefits or actually received food stamps in that quarter. If an alien earns the 40<sup>th</sup> quarter of coverage before applying for food stamps or any other Federal means tested benefit in that same quarter, all that quarter toward the 40 qualifying quarters total.);~~

~~B. lawfully living in the U. S. for five (5) years as a qualified alien beginning on the date of entry:~~

~~Qualified aliens include lawfully admitted residents (holders of green cards), those granted asylum, refugees, victims of a severe form of trafficking, those paroled in the United States under section 212(d)(5) of the INA for at least one year, those whose deportation is being withheld, those granted conditional entry under section 501(e) of the Refugee Education Assistance Act of 1980, Cuban or Haitian entrants, and under certain circumstances, a battered spouse, battered child or parent or child or battered person with a petition pending under 204(a)(1)(A) or (B) or 244(a)(3) of the INA.~~

~~C. lawfully in US and is now under 18 years of age;~~

~~D. lawfully in US and is receiving disability or blind (payments listed under DSSM 9013.1)~~

~~E. lawfully in US and 65 or older on 8/22/96 (born on or before 8/22/31).~~

~~F. An alien with one of the following military connections:~~

~~(i) A veteran who was honorably discharged for reasons other than alien status who fulfills the minimum active duty service requirements of 38 U.S.C. 5303A(d), including an individual who died in active military, naval or air service;~~

~~(ii) A veteran includes an individual who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines while such forces were in the service of the Armed Forces of the U.S. or in the Philippine Scouts, as described in 38 U.S.C. 107;~~

~~(iii) An individual on active duty in the Armed Forces of the U.S. other than for training; or~~

~~(iv) The spouse and unmarried dependent children (legally adopted or biological) of a person described above in (i) through (iii), including spouse of a deceased veteran, provided the marriage fulfilled the requirements of 38 U.S.C. 1304, and the spouse has not remarried. An unmarried child for the purposes of this section is: a child who is under the age of 18 or, if a full-time student, under the age of 22; such unmarried dependent child of a deceased veteran was dependent upon the veteran at the time of the veteran's death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran prior to the child's 18<sup>th</sup> birthday.~~

~~5. The following aliens with a seven year (7) time limit:~~

~~(A) refugees admitted under section 207 of the Act;~~

~~(B) asylees admitted and granted asylum under section 208 of the Act;~~

~~(C) aliens whose deportation or removal has been withheld under section 241(b)(3) and 243(h) of the INA.~~

~~(D) Cuban and Haitians admitted under section 501(e) of the Refugee Education Act of 1980; and~~

~~(E) Amerasians admitted under Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998.~~

~~The seven year (7) time limit begins from the date they obtained their alien status, (was granted asylum, was admitted as a refugee, from the date the deportation or removal was withheld).~~

~~(F) Immigrants who are victims of severe trafficking in persons per Public Law 106-386 Trafficking Victims Protection Act of 2000. Severe forms of trafficking in persons is defined as sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. Victims of trafficking are issued T visas by US Immigration and Citizenship Services.~~

~~The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 expanded eligibility to include the minor children, spouses, and in some cases the parents and siblings of victims of severe trafficking. Under TVPRA,~~

eligible relatives of trafficking victims are entitled to visas designated as T-2, T-3, T-4 or T-5 (known as Derivative T Visas) and are eligible for food stamps like the direct victims of severe trafficking.

If an alien is awarded a T visa and was under the age of 21 years on the date the T visa application was filed, the Derivative T Visas are available to the alien's spouse, children, unmarried siblings under 18 years of age, and parents.

If an alien is awarded a T visa and was age of 21 years or older on the date the T visa application was filed, the Derivative T Visas are available to the alien's spouse and children.

Adult victims of severe trafficking will be certified by the U. S. Department of Health and Human Services (HHS) and will receive a certification letter. Children, those under 18 years of age, who are victims of severe trafficking do not need to be certified but will receive a letter stating that the child is a victim of a severe form of trafficking. These victims of trafficking, and eligible relatives awarded Derivative T Visas, are treated like refugees for food stamp purposes. Victims of trafficking do not have to hold a certain immigration status, but they need to be certified by HHS in order to receive food stamps.

When a direct victim of a severe form of trafficking applies for benefits, DSS will follow normal procedures for refugees except DSS will:

1. Accept the original certification letter for child in place of INS documentation. Victims of severe forms of trafficking are not required to provide any documentation regarding immigrant status. (DO NOT CALL SAVE.)
2. Call the trafficking verification line at (202) 401-5510 to confirm the validity of the certification letter or similar letter for children and to notify the Offices of Refugee Resettlement (ORR) of the benefits for which the individual has applied.
3. Note the "entry date" for refugee benefit purposes. The individual's "entry date" for refugee benefit purposes is the certification date, which appears in the body of the certification letter or letter for children.
4. Issue benefits to the same extent as a refugee, provided the victim of a severe form of trafficking meets other program eligibility criteria like income limits.
5. Re-certification letters will be used to confirm that the individual continues to meet the certification requirements. These letters will have the same "entry date" as the original certification letters. The regular recertification periods will apply to these individuals in the same manner that they apply to refugees.
6. The seven year (7) time limit begins from the date they obtained their alien status, (was granted asylum, was admitted as a refugee, from the date the deportation or removal was withheld).
7. An alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse, an alien whose child has been battered or subjected to battery or cruelty, or an alien child whose parent has been battered.

When an eligible relative of a direct victim of severe trafficking applies for benefits:

1. Accept the nonimmigrant T-2, T-3, T-4 or T-5 Derivative Visa and follow the normal procedures for providing services and benefits to refugees.
2. Call the toll free trafficking verification lines at 1 (866) 401-5510 to notify ORR of the benefits for which the individual has applied. (NOTE: the DHS Systematic Alien Verification for Entitlements (SAVE) system does not contain information about victims of a severe form of trafficking or nonimmigrant alien family members. DO NOT CONTACT SAVE concerning victims of trafficking or their nonimmigrant alien family members.)
3. Issue benefits to the same extent as a refugee provided the Derivative T Visa holder meets other program eligibility criteria like income.
4. For an individual who is already present in the United States on the date the Derivative T Visa is issued, the date of entry for food stamp purposes is the Notice Date on the I-797, Notice of Action of Approval of that individual's Derivative T Visas.
5. For an individual who enters the United States on the basis of a Derivative T Visa, the date of entry for food stamp purposes is the date of entry stamped on that individual's passport or I-94 Arrival Record.

# PROPOSED REGULATIONS

The following residents of the United States (U.S.) are eligible to participate in the Food Stamp Program based on their citizenship or alien status:

A. U.S. Citizens

1. Persons born in the 50 states, the District of Columbia, Puerto Rico, Guam, Virgin Islands, and the Northern Mariana Islands.
2. Children born outside the U.S. are citizens if they meet one of the following conditions:
  - a. Both parents are citizens of the U.S. and one parent has had a residence in the U. S., or one of its outlying possessions, prior to the birth of the child; or
  - b. One parent is a citizen of the U.S. who has been physically present in the U. S., or one of its outlying possessions, for a continuous period of one year prior to the birth of the child, and the other parent is a national, but not a citizen of the U. S; or
  - c. One parent is a citizen of the U.S. who has been physically present in the U. S., or one of its outlying possessions, for a continuous period of one year at any time prior to the birth of the child.
3. Naturalized citizens or a U.S. non-citizen national (person born in an outlying possession of the U. S., American Samoa or Swains Island, or whose parents are U.S. non-citizen nationals);
4. Individuals who are:
  - a. An American Indian born in Canada who possesses at least 50 per centum of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act (INA) apply; or
  - b. A member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians;
  - c. Lawfully residing in the U.S. and was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975;
  - d. The spouse or surviving spouse of such Hmong or Highland Laotian who is deceased, or
  - e. An unmarried dependent child of such Hmong or Highland Laotian who is:
    - under the age of 22;
    - an unmarried child under the age of 18, or if a full-time student under the age of 22, of a deceased Hmong or Highland Laotian provided that the child was dependent upon him or her at the time of his or her death; or
    - an unmarried disabled child age 18 or older if the child was disabled and dependent prior to the child's 18<sup>th</sup> birthday.

B. An individual who is **BOTH** a **qualified** alien and an **eligible** alien as follows:

1. A **qualified** alien is:
  - a. An alien lawfully admitted for permanent residence (Immigration and Nationality Act [INA]);
  - b. An alien who is granted asylum to the U.S. (section 208 of INA);
  - c. A refugee who is admitted to the U.S. (section 207 of the INA);
  - d. An alien who is paroled into the U.S. for a period of at least one year (section 212[d][5] of the INA);
  - e. An alien whose deportation/removal is being withheld (sections 207[a][7] and 241[b][3] of the INA);
  - f. An alien who is granted conditional entry (section 203[a][7])
  - g. An alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse;
  - h. An alien who is a Cuban or Haitian entrant (section 501[e] of the Refugee Education Assistance Act of 1980);
2. An **eligible** alien is:
  - a. An alien lawfully admitted for permanent residence who has 40 quarters of work as determined under Title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, based on the sum of:

- quarters the alien worked;
- quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and
- quarters credited from the work of a spouse of an alien during their marriage if they are still married or the spouse is deceased.

(i) A spouse cannot get credit for quarters of coverage of a spouse when the couple divorces before a determination of eligibility is made.

If a determination of eligibility has been made based on the quarters of coverage of a spouse, and the couple later divorces, the alien eligibility continues until the next recertification.

At that time, eligibility is determined without crediting the alien with the former spouse quarters of coverage.

(ii) Beginning January 1, 1997, any quarter in which the alien received any Federal means-tested benefits does not count as a qualifying quarter. A parent or spouse quarter is not creditable if the parent or spouse received any Federal means-tested benefits or actually received food stamps in that quarter. If an alien earns the 40<sup>th</sup> quarter of coverage before applying for food stamps or any other Federal means-tested benefit in that same quarter, all that quarter counts toward the 40 qualifying quarters total.

- b. lawfully living in the U.S. for five (5) years as a qualified alien beginning on the date of entry.
- c. A refugee who is admitted to the U.S. (section 207 of the INA);
- d. An alien who is granted asylum to the U.S. (section 208 of INA);
- e. An alien whose deportation/removal is being withheld (sections 207[a][7] and 241[b][3] of the INA);
- f. An alien who is a Cuban or Haitian entrant (section 501[e] of the Refugee Education Assistance Act of 1980);
- g. An Amerasian who is admitted to the U.S. (section 584 of P.L. 100-202, amended by P.L. 100-461);
- h. An alien with one of the following military connections:

(i) A veteran who was honorably discharged for reasons other than alien status, who fulfills the minimum active-duty service requirements of 38 U.S.C. 5303A(d), including an individual who died in active military, naval or air service.

A veteran includes an individual who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines while such forces were in the service of the Armed Forces of the U.S. or in the Philippine Scouts, as described in 38 U.S.C. 107;

(ii) An individual on active duty in the Armed Forces of the U.S. other than for training; or

(iii) The spouse and unmarried dependent children (legally adopted or biological) of a person described above in (i) through (iii), including the spouse of a deceased veteran, provided the marriage fulfilled the requirements of 38 U.S.C. 1304, and the spouse has not remarried. An unmarried child for the purposes of this section is: a child who is under the age of 18 or, if a full-time student, under the age of 22; such unmarried dependent child of a deceased veteran was dependent upon the veteran at the time of the veteran's death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran prior to the child's 18<sup>th</sup> birthday.

- i. lawfully in U.S. and is receiving disability or blind payments (listed under DSSM 9013.1);
- j. lawfully in U.S. and 65 or older on 8/22/96 (born on or before 8/22/31)
- k. lawfully in U.S. and is now under 18 years of age (when child turns 18, the child must meet another eligibility criteria like 40 quarters or the five-year residency rule to continue to get food stamps);
- l. lawfully in U.S. in a qualified status for five years;
- m. Immigrants who are victims of severe trafficking in persons per Public Law 106-386 Trafficking Victims Protection Act of 2000. Severe forms of trafficking in persons is defined as sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary

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servitude, peonage, debt bondage, or slavery. Victims of trafficking are issued T visas by U.S. Immigration and Citizenship Services.

The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 expanded eligibility to include the minor children, spouses, and in some cases the parents and siblings of victims of severe trafficking. Under TVPRA, eligible relatives of trafficking victims are entitled to visas designated at T-2, T-3, T-4 or T-5 (known as Derivative T Visas) and are eligible for food stamps like the direct victims of severe trafficking.

If an alien is awarded a T visa and was under the age of 21 years on the date the T visa application was filed, the Derivative T Visas are available to the alien's spouse, children, unmarried siblings under 18 years of age, and parents.

If an alien is awarded a T visa and was age of 21 years or older on the date the T Visa application was filed, the Derivative T Visa are available to the alien's spouse and children.

Adult victims of severe trafficking will be certified by the U.S. Department of Health and Human Services (HHS) and will receive a certification letter. Children, those under 18 years of age, who are victims of severe trafficking do not need to be certified but will receive a letter stating that the child is a victim of a severe form of trafficking. These victims of trafficking, and eligible relatives awarded a Derivative T Visa, are treated like refugees for food stamp purposes. Victims of trafficking do not have to hold a certain immigration status, but they need to be certified by HHS in order to receive food stamps.

When a direct victim of a severe form of trafficking applies for benefits, DSS will follow normal procedures for refugees except DSS will:

Accept the original certification letter or letter for children in place of INS documentation. Victims of severe forms of trafficking are not required to provide any documentation regarding immigrant status. (DO NOT CALL SAVE.)

Call the trafficking verification line at (202) 401-5510 to confirm the validity of the certification letter or similar letter for children and to notify the Office of Refugee Resettlement (ORR) of the benefits for which the individual has applied.

Note the "entry date" for refugee benefit purposes. The individual "entry date" for refugee benefits purposes is the certification date, which appears in the body of the certification letter or letter for children.

Issue benefits to the same extent as a refugee, provided the victim of a severe form of trafficking meets other program eligibility criteria like income limits.

Re-certification letters will used to confirm that the individual continues to meet the certification requirements. These letters will have the same "entry date" as the original certification letters. The regular recertification periods will apply to these individuals in the same manner that they apply to refugees.

When an eligible relative of a direct victim of severe trafficking applies for benefits:

Accept the nonimmigrant T-2, T-3, T-4 or T-5 Derivative Visa and follow the normal procedures for providing services and benefits to refugees.

Call the toll-free trafficking verification line at 1 (866) 402-5510 to notify ORR of the benefits for which the individual has applied. (NOTE: the DHS Systematic Alien Verification for Entitlements (SAVE) system does not contain information about victims of a severe form of trafficking or nonimmigrant alien family members. DO NOT CONTACT SAVE concerning victims of trafficking or their nonimmigrant alien family members.)

Issue benefits to the same extent as a refugee provided the Derivative T Visa holder meets other program eligibility criteria like income.

For an individual who is already present in the United States on the date the Derivative T Visa is issued, the date of entry for food stamp purposes is the Notice Date on the I-797, Notice of Action of Approval of that individual Derivative T Visa.

For an individual who enters the United States on the basis of a Derivative T Visa, the date of entry for food stamp purposes is the date of entry stamped on that individual passport or I-94 Arrival Record.

**8 DE Reg. 1712 (6/1/05)**

**10 DE Reg. 1702 (05/01/07)**

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## DIVISION OF SOCIAL SERVICES

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

### PUBLIC NOTICE

#### FOOD STAMP PROGRAM

#### Income Deductions, Certification Period Lengths, Reporting Changes

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 is proposing to amend Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding *Income Deductions, Certification Period Lengths and Reporting Changes*.

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 August 31, 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 CHANGES

The proposed changes described below amend Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding *Income Deductions, Certification Period Lengths and Reporting Changes*.

#### Statutory Authority

- Food, Conservation, and Energy Act of 2008, Title IV, Section 4103, *Supporting Working Families with Child Care Expenses* and Section 4105, *Facilitating Simplified Reporting*;
- 7 CFR §273.10(f), *Certification Periods*; and,
- 7 CFR §273.12, *Requirements for Change Reporting Households*.

#### Summary of Proposed Changes

The proposed changes amend the Food Stamp Program rules to implement the mandatory provisions of Section 4103 and Section 4105 of the Food, Conservation, and Energy Act of 2008 (the Farm Bill) that removes the cap on the deduction for dependent care expenses which allows working families with children to deduct the entire amount of child care expenses when calculating eligibility and benefit levels (**DSSM 9060**). The Division of Social Services (DSS) further proposes to simplify the reporting requirements for the elderly and disabled households with no earned income with a 12-month certification period (**DSSM 9068.1 and DSSM 9085**).

#### DSS PROPOSED REGULATIONS #08-27

#### REVISIONS:

#### 9060 Income Deductions

[273.9(d)]

Deductions from income will be allowed only for the following household expenses:



A. **Standard Deduction** A standard deduction per household per month. (Refer to current October Cost-of-Living Adjustment Administrative Notice for amount of the standard deduction.)

B. **Earned Income Deduction** Twenty percent, (20%) of gross earned income as defined at DSSM 9056. Earnings excluded in DSSM 9058 and DSSM 9059 will not be included in gross earned income deduction. (Do not allow the earned income deduction for income under a work supplementation program.)

C. **Excess Medical Deductions** That portion of unreimbursed medical expenses in excess of \$35 per month, excluding special diets, incurred by any household member who is 60 years of age or over or disabled as defined in DSSM 9013.1. Spouses or other persons receiving benefits as a dependent of the SSI or disability and blindness recipient are not eligible to receive this deduction, but persons receiving emergency SSI benefits based on presumptive eligibility are eligible for this deduction.

Allowable medical costs include: Medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner or other qualified health professional, hospitalization, outpatient treatment, nursing home care (including payments by the household for an individual who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the State).

Prescription drugs and over the counter medication when approved by a licensed practitioner or other qualified health professional. Also the cost of medical supplies and sick room equipment (including rental costs) are deductible (when approved by a licensed practitioner or other health professional). Health and hospitalization insurance are deductible, but health and accident insurance policies such as income maintenance or death or dismemberment policies are not deductible.

Any Medicare premiums, cost-sharing or spend down expenses incurred by Medicaid recipients, dentures, hearing aids and prosthetics are deductible as well as the costs of securing and maintaining a seeing eye or hearing dog including dog food and veterinary bills. Eye glasses prescribed by a physician skilled in eye disease or by an optometrist and the reasonable costs of transportation and lodging to obtain medical treatment or services are deductible.

Reasonable transportation and lodging costs to obtain medical treatment or services are limited to costs incurred in order to obtain such treatment. These costs are to be verified. Reasonable costs of transportation include, but are not limited to, trips to the doctor, dentist, to fill prescriptions for medicine, dentures, hearing aids or eye glasses. Allowance for mileage in privately-owned vehicles should be standard in a State. As for lodging costs, eligibility workers should use good ~~judgement~~ judgment in determining the reasonableness of such costs based on the area and average costs.

Maintaining an attendant, homemaker, home health aide, housekeeper, or child care services necessary due to age, infirmity, or illness are deductible costs. In addition, an amount equal to the one person food stamp allotment shall be deducted if the household furnishes the majority of the attendant's meals. The allotment allowed shall be the amount in effect at the time of initial certification, and will not be updated until the time of the next scheduled recertification. If a household incurs attendant care costs that could qualify under both the medical deduction and dependent care deduction, the costs shall be treated as a medical expense.

D. **Dependent Care Payments** for the actual costs for the care of a child or other dependent when necessary for a household member to seek, accept, or continue employment, comply with the employment and training requirements in DSSM 9018, or attend training or pursue education which is preparatory to employment. ~~The dependent care deduction for children under two (2) is higher than for children two (2) and older (Refer to the current October Cost of Living Adjustment Administrative Notice for the dependent care deductions.-)~~

E. **Child support payments deduction** - Legally obligated child support payments made to or for, children who live outside of the household. Only child support payments that are legally obligated can be allowed as a deduction. This also includes:

a) Amounts paid out of the household's current income to make up for months in which the household did not meet its obligation, except for amounts paid through tax intercept, and

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The value of legally binding child support that is provided in-kind, such as payment of rent directly to the landlord.

Payments provided for health care,

Payments for education,

Payments for recreation,

Payments for clothing,

Payments to meet other specific needs of a child or children, and

Payments to cover attorney's fee, interest, and court costs.

The following are examples of how to treat child support payments:

1. Mr. A is court ordered to pay Mrs. A \$100 a week in child support. He also pays \$30 a month child support for arrears to make up the months he was not able to pay. Mr. A is eligible for a \$463 ( $\$100 \times 4.33 = \$433 + \$30$ ) child support deduction from his current income.

2. Mr. C is court ordered to pay Mrs. C \$800 a month in child support. He pays \$500 a month directly to the landlord for Mrs. C's rent and \$100 directly to the utility company for Mrs. C's electric. Mrs. C receives the \$200 balance in cash. Mr. C is eligible for a \$800 child support deduction from his current income.

Alimony payments are not included in the child support deduction.

F. Shelter Costs Monthly shelter costs in excess of 50% of the household's income after all other deductions in A, B, and C above have been allowed. The shelter deduction must not exceed the maximum excess shelter deduction limit. (Refer to the current October Cost-of-Living Adjustment Administrative Notice for the maximum excess shelter deduction.) This is applicable unless the household contains a member who is age sixty (60) or over, or disabled per DSSM 9013.1. Such households will receive an excess shelter deduction for the monthly costs that exceeds 50% of the household's monthly income after all other applicable deductions.

Shelter costs will include only the following:

1. Continuing charges for the shelter occupied by the household, including rent, mortgages, condo and association fees, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments. A mortgage is defined as any loan which uses the house as collateral.

Households required to pay the "last month's rent" along with the first month's rent before they can move into the dwelling can claim both amounts in the month that the household is billed.

For example, a client rents an apartment in January and must pay January's and the next December's rent in January. Both rental amounts can be used for January's food stamp budget. A rent deduction would not be allowed in December since it was paid in January.

Households required to pay a security deposit before they move into a dwelling cannot claim the deposit as a shelter cost.

For example, a client rents a home and must pay a \$450 security deposit and the first month's rent before she moves in. The security deposit will be refunded when she moves out if the home is in good condition. She cannot claim the deposit as a shelter cost for food stamp purposes.

2. Property taxes, State and local assessments and insurance on the structure itself, but no separate costs for insuring furniture or personal belongings. If separate insurance costs for furniture or personal belongings are not identified, use the total. (Local assessments include, but are not limited to, regular school taxes and an annual school capitation tax.)

3. Mandatory Utility and Phone Allowances

a. Heating and Cooling Standard Utility Allowance (HCSUA) - The HCSUA is mandatory for:

- households that incur heating or cooling costs separate and apart from their rent or mortgage payments;
- residents of private rental housing who are billed on a monthly basis by their landlords for actual usage as determined through individual usage or who are charged a flat rate;

- households receiving energy payments under the Low Income Home Energy Assistance (LIHEA);
- households receiving direct or indirect energy assistance payments like HUD utility reimbursements, other than LIHEA, that is excluded as income and who continue to incur any out-of-pocket heating or cooling expenses during any month in the previous twelve (12) months; and
- households living in a public housing unit or other rental housing unit which has central utility meters and charges the household only for excess heating or cooling costs.

Heating costs must be verified to use the HCSUA. For cooling costs, you must verify the utility, like electricity, that provides the air conditioning. Accept the household's statement that they pay for cooling unless it is questionable.

b. Limited Utility Allowance (LUA) - The LUA is mandatory for households that incur costs for two non-heat or non-cooling utilities like electric, gas cooking, water, sewerage, well and septic tank installation and maintenance, telephone and garbage or trash collection.

c. One-utility Standard - The one-utility standard is mandatory for households that incur only one non-heat, non-cooling, or non-phone utility.

d. Telephone Allowance - The standard telephone allowance will be used for households billed only for a telephone regardless of their actual cost.

Refer to the current October Cost-of-Living Adjustment Administrative Notice for the standard utility and phone allowance amounts.

There is no proration of the utility or phone allowance when more than one household shares living quarters. This means when two or more households share living costs each household may receive full utility or phone allowance. There is no proration of the utility or phone allowances when you have prorated deemers like ineligible aliens.

4. The shelter costs of the home if not occupied by the household because of employment or training away from home, illness or abandonment caused by a natural disaster or casualty loss. For costs of a home vacated by the household to be included in the household's shelter costs, the household must intend to return to the home; the current occupants of the home, if any must not be claiming the shelter costs for food stamp purposes; and the home must not be leased or rented during the absence of the household.

A household that has both an occupied home and an unoccupied home is only entitled to one standard utility allowance.

5) Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood. Shelter costs will not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source. Repairs, other than those due to natural disasters, do not count as a deduction, even when tenants must pay for them or be evicted.

### *(Break in Continuity of Sections)*

#### **9068.1 Certification Period Length**

DSS will assign the longest certification period possible according to each household's circumstances.

~~Households subject to change reporting where all members are elderly or disabled and have no earned income will be assigned a 12-month certification period.~~

~~Households subject to simplified reporting will be assigned a 6-month certification period. A shorter certification period of no less than 4 months can be assigned on a case-by-case basis if the household's circumstances warrant it.~~

- DSS will assign households subject to simplified reporting requirement a six-month certification period, except for elderly or disabled households with no earned income.
- DSS will assign households where all members are elderly or disabled with no earned income a 12-month certification period.
- DSS can assign a shorter certification period of no less than 4 months on a case-by-case basis if the household's circumstances warrant it.

2 DE Reg. 2271 (6/1/1999)

8 DE Reg. 114 (7/1/2004)

*(Break in Continuity of Sections)*

## 9085 Reporting Changes

[273.12]

Certified food stamp households are required to report the following changes in circumstances:

### Simplified Reporting Requirements

The following reporting requirements are for all households ~~except those households where all members are elderly or disabled and without earned income:~~

- Households are required to only report income changes when the monthly income exceeds 130 percent of the poverty income guideline for the household size that existed at the time of the certification or recertification.
- When a household's monthly income exceeds the 130 percent of the poverty income guideline, the household is required to report that change within ten days after the end of the month that the household determines the income is over the 130 percent amount.
- Households will not have to report any changes in the household composition, residence and resulting changes in shelter costs, acquisition of non-excluded licensed vehicles, when liquid resources exceed \$2000.00 and changes in the legal child support obligation.

Additional reporting requirement for ABAWD individuals:

- Adults living in a home without any minor children, who are getting food stamps because they are working over 20 hours a week, must report when they start working less than 20 hours a week.

~~Change Reporting Requirements for households not eligible for the simplified reporting requirements above:~~

~~Change reporting households must report the following changes in circumstances by the 10<sup>th</sup> day of the month following the month of the change:~~

- ~~• Changes in the amount of gross unearned income of more than \$50, except changes in the public assistance grants. Changes reported in person or by telephone are to be acted upon in the same manner as those reported on the change report form;~~
- ~~• A change in the source of income, including starting or stopping a job or changing jobs, if the change in employment causes a change in income.~~
- ~~• All changes in household size, such as the addition or loss of a household member;~~
- ~~• Changes in residence and the resulting changes in shelter costs;~~
- ~~• The acquisition of a licensed vehicle not fully excludable under DSSM 9051 (for non-categorically eligible households);~~
- ~~• When cash on hand, stocks, bonds, and money in a bank account or savings institution reach or exceed a total of \$2,000 (for non-categorically eligible households);~~
- ~~• Changes in the legal obligation to pay child support; and~~
- ~~• Changes in work hours that bring an ABAWD individual below 20 hours per week, averaged monthly.~~

An applying household must report all changes related to its food stamp eligibility and benefits at the certification interview. Changes, ~~as provided in this Section,~~ listed above which occur after the interview but before the date of the notice of eligibility, must be reported by the household within ten (10) days of the date of the notice.

Only the reporting requirements in this Section and no other reporting requirements can be imposed by the Division.

10 DE Reg. 560 (09/01/06)

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# PROPOSED REGULATIONS

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## DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314, 322(a), 324 and 526  
(18 Del.C. §§314, 322(a), 324 and 526)  
18 DE Admin. Code 301

### Public Notice

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 301 relating to audited financial reports and financial statements of insurance companies. The docket number for this proposed amendment is 810.

The purpose of the proposed amendment to Regulation 301 is to update the existing financial report and audit requirements by enacting the Model Regulation, as modified to conform to statutory law. The text of the proposed amendment is reproduced in the August 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 4:00 p.m., Tuesday September 2, 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](mailto:mitch.crane@state.de.us).

### 301 Audited Financial Reports [Formerly Regulation 50]

#### 1.0 Authority

~~1.1 This Regulation is promulgated and adopted pursuant to 18 Del.C. §§314, 322(a), 324 and 526, and 29 Del.C. §10117.~~

#### 2.0 Purpose and Scope

~~2.1 The purpose of this Regulation is to improve the Delaware Insurance Department's surveillance of the financial condition of insurers by requiring an annual examination by independent certified public accountants of the financial statements reporting the financial condition.~~

~~2.2 Every insurer (as defined in Section 3.0) shall be subject to this regulation. Insurers having direct premiums written in this state of less than \$1,000,000 in any calendar year and less than 1,000 policyholders or certificate holders of directly written policies nationwide at the end of such calendar year shall be exempt from this Regulation for such year unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities except those insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of \$1,000,000 or more will not be so exempt.~~

~~2.3 Foreign or alien insurers filing audited financial reports in another state, pursuant to such other state's requirements of audited financial reports that has been found by the Commissioner to be substantially similar to the requirements herein, are exempt from this regulation if:-~~

~~2.3.1 A copy of the Audited Financial Report, Report on Significant Deficiencies in Internal Controls, and the Accountant's Letter of Qualifications that are filed with the other state are filed with the commissioner in accordance with the filing dates specified in Sections 4, 11 and 12, respectively (Canadian insurers may submit accountants' reports as filed with the Canadian Dominion Department of Insurance).~~

~~2.3.2 A copy of any Notification of Adverse Financial Condition Report filed with the other state is filed with the commissioner within the time specified in Section 10.~~

~~2.4 This regulation shall not prohibit, preclude or in any way limit the Commissioner ordering and/or conducting and/or performing examinations of insurers under the rules and regulations of the Delaware Insurance Department and the practices and procedures of the Delaware Insurance Department.~~

## 3.0 Definitions

~~"Audited financial report"~~ means and includes these items specified in Section 5.0 of this rule.

~~"Accountant" or "Independent Certified Public Accountant"~~ means an independent certified public accountant or accounting firm in good standing with the American Institute of CPAs and in all states in which he, she or they are licensed to practice; for Canadian and British companies, it means a Canadian chartered or British chartered accountant.

~~"Indemnification"~~ means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

~~"Insurer"~~ means a licensed insurer as defined in Title 18 ~~Del.C.~~ Ch.5 or authorized insurer as defined in Title 18 ~~Del.C.~~, Ch.19.

## 4.0 Filing and Extensions for Filing of Annual Audited Financial Reports

All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the Commissioner on or before June 1 for the year ended December 31 immediately preceding. The Commissioner may require an insurer to file an audited financial report earlier than June 1 with ninety (90) days advance notice to the insurer. Extensions of the June 1 filing date may be granted by the Commissioner for thirty day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting such extension and determination by the Commissioner of good cause for an extension. The request for extension must be submitted in writing not less than ten (10) days prior to the due date in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.

## 5.0 Contents of Annual Audited Financial Report

5.1 The annual audited financial report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the Department of Insurance of the state of domicile

5.2 The annual Audited Financial Report shall include the following:

5.2.1 Report of independent certified public accountant.

5.2.2 Balance sheet reporting admitted assets, liabilities, capital and surplus.

5.2.3 Statement of operations.

5.2.4 Statement of cash flows.

5.2.5 Statement of changes in capital and surplus.

5.2.6 Notes to financial statements. These notes shall be those required by the appropriate NAIC *Annual Statement Instructions* and the NAIC *Accounting Practices and Procedures Manual*. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to 18 ~~Del.C.~~ §526 with a written description of the nature of these differences. 5.2.7 The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the Commissioner, and the financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

## 6.0 Designation of Independent Certified Public Accountant

6.1 Each insurer required by this regulation to file an annual audited financial report must within sixty (60) days after becoming subject to such requirement, register with the Commissioner in writing the name and address of the independent certified public accountant or accounting firm (generally referred to in this rule as the "accountant") retained to conduct the annual audit set forth in this regulation. Insurers not retaining an independent certified

~~public accountant on the effective date of this regulation shall register the name and address of their retained certified public accountant not less than six (6) months before the date when the first audited financial report is to be filed.~~

~~6.2 The insurer shall obtain a letter from the accountant, and file a copy with the Commissioner stating that the accountant is aware of the provisions of the Insurance Code and the rules and regulations of the Insurance Department of the state of domicile that relate to accounting and financial matters and affirming that accountant will express his or her opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that Department, specifying such exceptions as he or she may believe appropriate.~~

~~6.3 If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns the insurer shall within five (5) business days notify the Department of this event.~~

~~6.3.1 The insurer shall also furnish the Commissioner with a separate letter within ten (10) business days of the above notification stating whether in the twenty four (24) months preceding such event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure; which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion.~~

~~6.3.2 The disagreements required to be reported in response to this Section include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction.~~

~~6.3.3 Disagreements contemplated by this section are those that occur at the decision-making level, i.e., between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report.~~

~~6.3.4 The insurer shall also in writing request such former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which he or she does not agree; and the insurer shall furnish such responsive letter from the former accountant to the Commissioner together with its own.~~

## **7.0 Qualifications of Independent Certified Public Accountant**

~~7.1 The Commissioner shall not recognize any person or firm as a qualified independent certified public accountant if the person or firm:~~

~~7.1.1 Is not in good standing with the American Institute of CPAs and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or~~

~~7.1.2 Has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as *indemnification*) with respect to the audit of the insurer.~~

~~7.2 Except as otherwise provided herein, an independent certified public accountant shall be recognized as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the Delaware Board of Public Accountancy, or similar code.~~

~~7.3 A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under 18 **Del.C.** Ch. 59, the mediation or arbitration provisions shall operate at the option of the statutory successor.~~

~~7.4 The time during which an accountant may serve shall be subject to the following provisions:~~

~~7.4.1 No partner or other person responsible for rendering a report may act in that capacity for more than seven (7) consecutive years. Following any period of service such person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two (2) years. An insurer 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:~~

~~7.4.1.1 Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;~~

~~7.4.1.2 Premium volume of the insurer; or~~

~~7.4.1.3 Number of jurisdictions in which the insurer transacts business.~~

~~7.5 The Commissioner shall not recognize as a qualified independent certified public accountant, nor accept any annual Audited Financial Report, prepared in whole or in part by, any natural person who:~~

~~7.5.1 Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law;~~

~~7.5.2 Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this regulation; or~~

~~7.5.3 Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this regulation.~~

~~7.6 The Insurance Commissioner, as provided in the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101, and 18 Del.C. Ch. 3, may hold a hearing to determine whether a certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual audited financial report made pursuant to this regulation and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this regulation.~~

## **8.0 Consolidated or Combined Audits**

~~8.1 An insurer may make written application to the Commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies which utilizes a pooling or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and such insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:~~

~~8.1.1 Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;~~

~~8.1.2 Amounts for each insurer subject to this section shall be stated separately;~~

~~8.1.3 Noninsurance operations may be shown on the worksheet on a combined or individual basis;~~

~~8.1.4 Explanations of consolidating and eliminating entries shall be included; and~~

~~8.1.5 A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.~~

## **9.0 Scope of Examination and Report of Independent Certified Public Accountant**

~~Financial statements furnished pursuant to Section 5.0 hereof shall be examined by an independent certified public accountant. The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. Consideration should also be given to such other procedures illustrated in the *Financial Condition Examiner's Handbook* promulgated by the National Association of Insurance Commissioners as the independent certified public accountant deems necessary.~~

## **10.0 Notification of Adverse Financial Condition**

~~10.1 The insurer required to furnish the annual Audited Financial Report shall require the independent certified public accountant to report, in writing, within five (5) business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the Commissioner as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirement of the Delaware Insurance Statute as of that date. An insurer that has received a report pursuant to this paragraph shall forward a copy of the report to the Commissioner within five (5) business days of receipt of such report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the Commissioner. If the independent certified public accountant fails to receive such evidence within the required five~~



~~(5) business day period, the independent certified public accountant shall furnish to the Commissioner a copy of its report within the next five (5) business days.~~

~~10.1.1 An insurer who has received a report pursuant to this paragraph shall forward a copy of the report to the Commissioner within five (5) business days of receipt of such report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the Commissioner.~~

~~10.1.2 If the independent certified public accountant fails to receive such evidence within the required five (5) business day period, the independent certified public accountant shall furnish to the Commissioner a copy of its report within the next five (5) business days.~~

~~10.2 No independent public accountant shall be liable in any manner to any person for any statement made in connection with the above paragraph if such statement is made in good faith in compliance with Section 10.1.~~

~~10.3 If the accountant, subsequent to the date of the Audited Financial Report filed pursuant to this regulation, becomes aware of facts which might have affected his or her report, the Department notes the obligation of the accountant to take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants.~~

#### **11.0 Report on Significant Deficiencies in Internal Controls**

~~In addition to the annual audited financial statements, each insurer shall furnish the Commissioner with a written report prepared by the accountant describing significant deficiencies in the insurer's internal control structure noted by the accountant during the audit. SAS No. 60, Communication of Internal Control Structure Matters Noted in an Audit (AU Section 325 of the Professional Standards of the American Institute of Certified Public Accountants) requires an accountant to communicate significant deficiencies (known as "reportable conditions") noted during a financial statement audit to the appropriate parties within an entity. No report should be issued if the accountant does not identify significant deficiencies. If significant deficiencies are noted, the written report shall be filed annually by the insurer with the Department within sixty (60) days after the filing of the annual audited financial statements. The insurer is required to provide a description of remedial actions taken or proposed to correct significant deficiencies, if such actions are not described in the accountant's report.~~

#### **12.0 Accountant's Letter of Qualifications**

~~12.1 The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:~~

~~12.1.1 That the accountant is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and the Rules of Professional Conduct of the Delaware Board of Public Accountancy, or similar code.~~

~~12.1.2 The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within this regulation shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards.~~

~~12.1.3 That the accountant understands the annual audited financial report and his or her opinion thereon will be filed in compliance with this regulation and that the Commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers.~~

~~12.1.4 That the accountant consents to the requirements of Section 13.0 of this regulation and that the accountant consents and agrees to make available for review by the Commissioner, or the Commissioner's designee or appointed agent, the workpapers, as defined in Section 13.0;~~

~~12.1.5 A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants; and~~

~~12.1.6 A representation that the accountant is in compliance with the requirements of Section 7.0 of this regulation.~~

#### **13.0 Definition, Availability and Maintenance of CPA Workpapers**

~~13.1 Workpapers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's examination of the financial statements of an insurer. Workpapers, 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 accountant in the course of his examination of the financial statements of an insurer and which support the accountant's opinion thereof.~~

~~13.2 Every insurer required to file an Audited Financial Report pursuant to this regulation, shall require the accountant to make available for review by Department examiners, all workpapers prepared in the conduct of the accountant's examination and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the Insurance Department or at any other reasonable place designated by the Commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the Insurance Department has filed a Report on Examination covering the period of the audit but no longer than seven (7) years from the date of the audit report.~~

~~13.3 In the conduct of the aforementioned periodic review by the Department examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the Department. Such reviews by the Department examiners shall be considered investigations and all working papers and communications obtained during the course of such investigations shall be afforded the same confidentiality as other examination workpapers generated by the Department.~~

#### **14.0 Exemptions and Effective Dates**

~~14.1 Upon written application of any insurer, the Commissioner may grant an exemption from compliance with this regulation if the Commissioner finds, upon review of the application, that compliance with this regulation would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten (10) days from a denial of an insurer's written request for an exemption from this regulation, such insurer may request in writing a hearing on its application for an exemption. Such hearing shall be held in accordance with the Delaware Administrative Procedures Act, 29 ~~Del.C.~~ Ch. 101, and 18 ~~Del.C.~~ Ch. 3.~~

~~14.2 Domestic insurers retaining a certified public accountant on the effective date of this regulation who qualify as independent shall comply with this regulation for the year ending December 31, 1994 and each year thereafter unless the Commissioner permits otherwise.~~

~~14.3 Domestic insurers not retaining a certified public accountant on the effective date of this regulation who qualify as independent may meet the following schedule for compliance unless the Commissioner permits otherwise.~~

~~14.3.1 As of December 31, 1994, file with the Commissioner:~~

~~14.3.1.1 Report of independent certified public accountant;~~

~~14.3.1.2 Audited balance sheet;~~

~~14.3.1.3 Notes to audited balance sheet.~~

~~14.3.2 For the year ending December 31, 1994 and each year thereafter, such insurers shall file with the Commissioner all reports required by this regulation.~~

~~14.4 Foreign insurers shall comply with this regulation for the year ending December 31, 1994 and each year thereafter, unless the Commissioner permits otherwise.~~

#### **15.0 Canadian and British Companies**

~~15.1 In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their domiciliary supervision authority duly audited by an independent chartered accountant.~~

~~15.2 For such insurers, the letter required in Section 6.0 shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the Commissioner pursuant to Section 4.0 and shall affirm that the opinion expressed is in conformity with such requirements.~~

**16.0 Severability Provision**

~~16.1 If any section or portion of a section of this regulation or the applicability thereof to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of such provision to other persons or circumstances shall not be affected thereby.~~

**17.0 Effective Date**

~~This regulation became effective July 29, 1987. The first amendment became effective on September 12, 1994. This second amendment shall become effective on October 12, 2004.~~

**1.0 Authority**

- ~~1.1 This regulation is promulgated and adopted pursuant to 18 **Del.C.** §§314, 322(a), 324 and 526 and 29 **Del.C.** §10117.~~

**2.0 Purpose and Scope**

- ~~2.1 The purpose of this regulation is to improve the Delaware Insurance Department's surveillance of the financial condition of insurers by requiring an annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants, Communication of Internal Control Related Matters Noted in an Audit, and Management's Report of Internal Control over Financial Reporting.~~
- ~~2.2 Every insurer (as defined in Section 3.0) shall be subject to this regulation. Insurers, and their affiliates in the same group, having direct premiums written in this State of less than \$1,000,000 in any calendar year and less than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year shall be exempt from this regulation for the year (unless the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out statutory responsibilities) except that insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of \$1,000,000 or more will not be so exempt.~~
- ~~2.3 Foreign or alien insurers filing the Audited Financial Report in another state, pursuant to that state's requirement for filing of audited financial reports, which has been found by the Commissioner to be substantially similar to the requirements herein, are exempt from Sections 4 through 13 of this regulation if:~~
- ~~2.3.1 A copy of the audited financial report, Communication of Internal Control Related Matters Noted in an Audit, and the Accountant's Letter of Qualifications that are filed with the other state are filed with the Commissioner in accordance with the filing dates specified in Sections 4, 11 and 12, respectively (Canadian insurers may submit accountants' reports as filed with the Office of the Superintendent of Financial Institutions, Canada).~~
- ~~2.3.2 A copy of any Notification of Adverse Financial Condition Report filed with the other state is filed with the Commissioner within the time specified in Section 10.~~
- ~~2.4 Foreign or alien insurers required to file Management's Report of Internal Control over Financial Reporting in another state are exempt from filing the Report in this state provided the other state has substantially similar reporting requirements and the Report is filed with the Commissioner of the other state within the time specified.~~
- ~~2.5 This regulation shall not prohibit, preclude or in any way limit the Commissioner from ordering or conducting or performing examinations of insurers under the rules and regulations of the Delaware Department of Insurance and the practices and procedures of the Delaware Department of Insurance.~~

**3.0 Definitions**

~~"**Accountant**" or "**Independent Certified Public Accountant**" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants (AICPA) and in all states in which he or she is licensed to practice; for Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.~~

An **"Affiliate"** of, or person **"Affiliated"** with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

**"Audit Committee"** means a committee (or equivalent body) established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, and audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of this regulation at the election of the controlling person. Refer to Section 14.1.4 for exercising this election. If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.

**"Audited Financial Report"** means and includes those items specified in Section 5 of this regulation.

**"Group of Insurers"** means those licensed insurers included in the reporting requirements of 18 **Del.C.** Ch. 50 or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financial reporting.

**"Indemnification"** means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

**"Independent Board Member"** has the same meaning as described in Section 14.1.3.

**"Insurer"** means a licensed insurer as defined in 18 **Del.C.** Ch. 5 of the Delaware insurance law or an authorized insurer as defined in 18 **Del.C.** Ch. 19 of the Delaware insurance law.

**"Internal Control Over Financial Reporting"** means a process effected by an entity's board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, i.e., those items specified in Section 5.2.2 through 5.2.7 of this regulation, and includes those policies and procedures that:

- (1) Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;
- (2) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, i.e., those items specified in Section 5.2.2 through 5.2.7 of this regulation and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and
- (3) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements, i.e., those items specified in Section 5.2.2 through 5.2.7 of this regulation.

**"SEC"** means the United States Securities and Exchange Commission.

**"Section 404"** means Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated there in.

**"Section 404 Report"** means management's report on internal control over financial reporting as required by the Section 404 and the related attestation report of the independent certified public accountant.

**"SOX Compliant Entity"** means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002: (i) the preapproval requirements of Section 201 (Section 10A(i) of the Securities Exchange Act of 1934); (ii) the audit committee independence requirements of Section 301 (Section 10A(m)(3) of the Securities Exchange Act of 1934), if applicable to the entity; and (iii) the internal control over financial reporting requirements of Section 404 (Item 308 of SEC Regulation S-K).

## **4.0 General Requirements Related to Filing and Extensions for Filing of Annual Audited Financial Reports and Audit Committee Appointment**

- 4.1 All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the Commissioner on or before June 1 for the year ended December 31

# PROPOSED REGULATIONS

immediately preceding. The Commissioner may require an insurer to file an audited financial report earlier than June 1 with ninety (90) days advance notice to the insurer.

- 4.2 Extensions of the June 1 filing date may be granted by the Commissioner for thirty-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting an extension and determination by the commissioner of good cause for an extension. The request for extension must be submitted in writing not less than ten (10) days prior to the due date in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.
- 4.3 If an extension is granted in accordance with the provisions in Section 4.2, a similar extension of thirty (30) days is granted to the filing of Management's Report of Internal Control over Financial Reporting.
- 4.4 Every insurer required to file an annual audited financial report pursuant to this regulation shall designate a group of individuals as constituting its audit committee, as defined in Section 3. The audit committee of an entity that controls an insurer may be deemed to be the insurer's audit committee for purposes of this regulation at the election of the controlling person.

## **5.0 Contents of Annual Audited Financial Report**

- 5.1 The annual audited financial report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the Department of Insurance of the state of domicile.
- 5.2 The annual audited financial report shall include the following:
- 5.2.1 Report of independent certified public accountant.
- 5.2.2 Balance sheet reporting admitted assets, liabilities, capital and surplus.
- 5.2.3 Statement of operations.
- 5.2.4 Statement of cash flow.
- 5.2.5 Statement of changes in capital and surplus.
- 5.2.6 Notes to financial statements. These notes shall be those required by the appropriate National Association of Insurance Commissioners (NAIC) *Annual Statement Instructions* and the NAIC *Accounting Practices and Procedures Manual*. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to 18 **Del.C.** §526 with a written description of the nature of these differences.
- 5.2.7 The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the Commissioner, and the financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. (However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted).

## **6.0 Designation of Independent Certified Public Accountant**

- 6.1 Each insurer required by this regulation to file an annual audited financial report must within sixty (60) days after becoming subject to the requirement, register with the Commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit set forth in this regulation. Insurers not retaining an independent certified public accountant on the effective date of this regulation shall register the name and address of their retained independent certified public accountant not less than six (6) months before the date when the first audited financial report is to be filed.
- 6.2 The insurer shall obtain a letter from the accountant, and file a copy with the Commissioner stating that the accountant is aware of the provisions of the insurance code and the regulations of the insurance department of the insurer's state of domicile that relate to accounting and financial matters and affirming that the accountant will express his or her opinion on the financial statements in terms of their

conformity to the statutory accounting practices prescribed or otherwise permitted by that insurance department, specifying such exceptions as he or she may believe appropriate.

- 6.3 If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall within five (5) business days notify the Commissioner of this event. The insurer shall also furnish the Commissioner with a separate letter within ten (10) business days of the above notification stating whether in the twenty-four (24) months preceding such event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure; which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion. The disagreements required to be reported in response to this section include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this section are those that occur at the decision-making level, i.e., between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which he or she does not agree; and the insurer shall furnish the responsive letter from the former accountant to the Commissioner together with its own.

## **7.0 Qualifications of Independent Certified Public Accountant**

- 7.1 The Commissioner shall not recognize a person or firm as a qualified independent certified public accountant if the person or firm:
- 7.1.1 Is not in good standing with the AICPA and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or
  - 7.1.2 Has either directly or indirectly entered into an agreement of indemnification with respect to the audit of the insurer.
- 7.2 Except as otherwise provided in this regulation, the Commissioner shall recognize an independent certified public accountant as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the AICPA and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the Delaware State Board of Accountancy, or similar code.
- 7.3 A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under 18 **Del.C.** Ch 59, the mediation or arbitration provisions shall operate at the option of the statutory successor.
- 7.4 The lead (or coordinating) audit partner (having primary responsibility for the audit) may not act in that capacity for more than five (5) consecutive years. Thereafter, that person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five (5) consecutive years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. This application should be made at least thirty (30) days before the end of the calendar year. The Commissioner may consider the following factors in determining if the relief should be granted:
- 7.4.1 Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;
  - 7.4.2 Premium volume of the insurer; or
  - 7.4.3 Number of jurisdictions in which the insurer transacts business.
- 7.5 The insurer shall file, with its annual statement filing, the approval for relief from Section 7.4 with the states that it is licensed in or doing business in and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

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## PROPOSED REGULATIONS

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- 7.6 The Commissioner shall neither recognize as a qualified independent certified public accountant, nor accept an annual Audited financial report, prepared in whole or in part by, a natural person who:
- 7.6.1 Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961 to 1968, or any dishonest conduct or practices under federal or state law;
  - 7.6.2 Has been found to have violated the insurance laws or regulations of this state with respect to any previous reports submitted under this regulation; or
  - 7.6.3 Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this regulation.
- 7.7 The Commissioner may, as provided in 18 Del.C. §323, hold a hearing to determine whether an independent certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual audited financial report made pursuant to this regulation and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this regulation.
- 7.8 The Commissioner shall not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following non-audit services:
- 7.8.1 Bookkeeping or other services related to the accounting records or financial statements of the insurer;
  - 7.8.2 Financial information systems design and implementation;
  - 7.8.3 Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
  - 7.8.4 Actuarially-oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification ("opinion") on an insurer's reserves if the following conditions have been met:
    - 7.8.4.1 Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;
    - 7.8.4.2 The insurer has competent personnel (or engages a third party actuary) to estimate the reserves for which management takes responsibility; and
    - 7.8.4.3 The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;
  - 7.8.5 Internal audit outsourcing services;
  - 7.8.6 Management functions or human resources;
  - 7.8.7 Broker or dealer, investment adviser, or investment banking services;
  - 7.8.8 Legal services or expert services unrelated to the audit; or
  - 7.8.9 Any other services that the commissioner determines, by regulation, are impermissible.
- 7.9 In general, the principles of independence with respect to services provided by the qualified independent certified public accountant are largely predicated on three basic principles, violations of which would impair the accountant's independence. The principles are that the accountant cannot function in the role of management, cannot audit his or her own work, and cannot serve in an advocacy role for the insurer.
- 7.10 Insurers having direct written and assumed premiums of less than \$100,000,000 in any calendar year may request an exemption from Section 7.8. The insurer shall file with the Commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions. If the Commissioner finds, upon review of this statement, that compliance with this regulation would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.

- 7.11 A qualified independent certified public accountant who performs the audit may engage in other non-audit services, including tax services, that are not described in Section 7.8 or that do not conflict with Section 7.9, only if the activity is approved in advance by the Audit committee, in accordance with Section 7.12.
- 7.12 All auditing services and non-audit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be pre-approved by the audit committee. The preapproval requirement is waived with respect to non-audit services if the insurer is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity or:
- 7.12.1 The aggregate amount of all such non-audit services provided to the insurer constitutes not more than five percent (5%) of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the non-audit services are provided;
- 7.12.2 The services were not recognized by the insurer at the time of the engagement to be non-audit services; and
- 7.12.3 The services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one or more members of the Audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.
- 7.13 The audit committee may delegate to one or more designated members of the Audit committee the authority to grant the preapprovals required by Section 7.12. The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.
- 7.14 The Commissioner shall not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer, was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. This section shall only apply to partners and senior managers involved in the audit. An insurer may make application to the commissioner for relief from the above requirement on the basis of unusual circumstances.
- 7.14.1 The insurer shall file, with its annual statement filing, the approval for relief from Section 7.13 with the states that it is licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

## **8.0 Consolidated or Combined Audits**

- 8.1 An insurer may make written application to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies that utilizes a pooling or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:
- 8.1.1 Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;
- 8.1.2 Amounts for each insurer subject to this section shall be stated separately;
- 8.1.3 Noninsurance operations may be shown on the worksheet on a combined or individual basis;
- 8.1.4 Explanations of consolidating and eliminating entries shall be included; and
- 8.1.5 A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.



**9.0 Scope of Audit and Report of Independent Certified Public Accountant**

9.1 Financial statements furnished pursuant to Section 5 shall be examined by the independent certified public accountant. The audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with AU Section 319 of the Professional Standards of the AICPA, *Consideration of Internal Control in a Financial Statement Audit*, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU 319, for those insurers required to file Management's Report of Internal Control over Financial Reporting pursuant to Section 16, the independent certified public accountant should consider (as that term is defined in Statement on Auditing Standards No. 102, *Defining Professional Requirements in Statements on Auditing Standards* or its replacement) the most recently available report in planning and performing the audit of the statutory financial statements. Consideration shall be given to the procedures illustrated in the *Financial Condition Examiners Handbook* promulgated by the NAIC as the independent certified public accountant deems necessary.

**10.0 Notification of Adverse Financial Condition**

10.1 The insurer required to furnish the annual Audited financial report shall require the independent certified public accountant to report, in writing, within five (5) business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under audit or that the insurer does not meet the minimum capital and surplus requirement of the Delaware insurance code as of that date. An insurer that has received a report pursuant to this paragraph shall forward a copy of the report to the commissioner within five (5) business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the commissioner. If the independent certified public accountant fails to receive the evidence within the required five (5) business day period, the independent certified public accountant shall furnish to the commissioner a copy of its report within the next five (5) business days.

10.2 No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with the above paragraph if the statement is made in good faith in compliance with Section 10.1.

10.3 If the accountant, subsequent to the date of the audited financial report filed pursuant to this regulation, becomes aware of facts that might have affected his or her report, the commissioner notes the obligation of the accountant to take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the AICPA.

**11.0 Communication of Internal Control Related Matters Noted in an Audit**

11.1 In addition to the annual audited financial report, each insurer shall furnish the commissioner with a written communication as to any unremediated material weaknesses in its Internal control over financial reporting noted during the audit. Such communication shall be prepared by the accountant within sixty (60) days after the filing of the annual audited financial report, and shall contain a description of any unremediated material weakness (as the term material weakness is defined by Statement on Auditing Standard 60, *Communication of Internal Control Related Matters Noted in an Audit*, or its replacement) as of December 31 immediately preceding (so as to coincide with the audited financial report discussed in Section 4.1 in the insurer's internal control over financial reporting noted by the accountant during the course of their audit of the financial statements. If no unremediated material weaknesses were noted, the communication should so state.

11.2 The insurer is required to provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the actions are not described in the accountant's communication.

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## **12.0 Accountant's Letter of Qualifications**

- 12.1 The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual Audited financial report, a letter stating:
  - 12.1.1 That the accountant is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the Code of Professional Ethics and pronouncements of the AICPA and the Rules of Professional Conduct of the Delaware State Board of Accountancy, or similar code.
  - 12.1.2 The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within this regulation shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards;
  - 12.1.3 That the accountant understands the annual audited financial report and his opinion thereon will be filed in compliance with this regulation and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of the insurers;
  - 12.1.4 That the accountant consents to the requirements of Section 13.0 of this regulation and that the accountant consents and agrees to make available for review by the commissioner, or the commissioner's designee or appointed agent, the workpapers, as defined in Section 13.0;
  - 12.1.5 A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the AICPA; and
  - 12.1.6 A representation that the accountant is in compliance with the requirements of Section 7.0 of this regulation.

## **13.0 Definition, Availability and Maintenance of Independent Certified Public Accountants Workpapers**

- 13.1 Workpapers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's audit of the financial statements of an insurer. Workpapers, 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 accountant in the course of his or her audit of the financial statements of an insurer and which support the accountant's opinion.
- 13.2 Every insurer required to file an audited financial report pursuant to this regulation, shall require the accountant to make available for review by insurance department examiners, all workpapers prepared in the conduct of the accountant's audit and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the insurance department or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the insurance department has filed a report on examination covering the period of the audit but no longer than seven (7) years from the date of the audit report.
- 13.3 In the conduct of the aforementioned periodic review by the insurance department examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the department. Such reviews by the department examiners shall be considered investigations and all working papers and communications obtained during the course of such investigations shall be afforded the same confidentiality as other examination workpapers generated by the department.

## **14.0 Requirements for Audit Committees**

- 14.1 This section shall not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity.
  - 14.1.1 The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant (including resolution of disagreements between management and the accountant regarding financial reporting) for the purpose of preparing or

## PROPOSED REGULATIONS

- issuing the audited financial report or related work pursuant to this regulation. Each accountant shall report directly to the Audit committee.
- 14.1.2 Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to Section 14.1.3 and Section 3.
- 14.1.3 In order to be considered independent for purposes of this section, a member of the audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. However, if law requires board participation by otherwise non-independent members, that law shall prevail and such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.
- 14.1.4 If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the Commissioner, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.
- 14.1.5 To exercise the election of the controlling person to designate the Audit committee for purposes of this regulation, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers. Notification shall be made timely prior to the issuance of the audited financial report and include a description of the basis for the election. The election can be changed through notice to the Commissioner by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.
- 14.1.6 The audit committee shall require the accountant that performs for an insurer any audit required by this regulation to timely report to the Audit committee in accordance with the requirements of SAS 61, *Communication with Audit Committees*, or its replacement, including:
- 14.1.6.1 All significant accounting policies and material permitted practices;
- 14.1.6.2 All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and
- 14.1.6.3 Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.
- 14.1.7 If an insurer is a member of an insurance holding company system, the reports required by Section 14.1.6 may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.
- 14.1.8 The proportion of independent audit committee members shall meet or exceed the following criteria:

<b>Prior Calendar Year Direct Written and Assumed Premiums</b>		
<b><u>\$0 - \$300,000,000</u></b>	<b><u>Over \$300,000,000 - \$500,000,000</u></b>	<b><u>Over \$500,000,000</u></b>
No minimum requirements. See also Note A and B.	Majority (50% or more) of members shall be independent. See also Note A and B.	Supermajority of members (75% or more) shall be independent. See also Note A.

Note A: The Commissioner has authority afforded by state law to require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is in

any RBC action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

Note B: All insurers with less than \$500,000,000 in prior year direct written and assumed premiums are encouraged to structure their audit committee with at least a supermajority of independent audit committee members.

Note C: Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from non-affiliates for the reporting entities.

14.1.9 An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000 may make application to the Commissioner for a waiver from the Section 14.0 requirements based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from Section 14 with the states that it is licensed in or doing business in and the NAIC. If the non-domestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

## **15.0 Conduct of Insurer in Connection with the Preparation of Required Reports and Documents**

15.1 No director or officer of an insurer shall, directly or indirectly:

15.1.1 Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under this regulation; or

15.1.2 Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review or communication required under this regulation.

15.2 No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to this regulation if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

15.3 For purposes of Subsection 15.2 of this section, actions that, "if successful, could result in rendering the insurer's financial statements materially misleading" include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead or fraudulently influence an accountant:

15.3.1 To issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances (due to material violations of statutory accounting principles prescribed by the Commissioner, generally accepted auditing standards, or other professional or regulatory standards);

15.3.2 Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;

15.3.3 Not to withdraw an issued report; or

15.3.4 Not to communicate matters to an insurer's audit committee.

## **16.0 Management's Report of Internal Control over Financial Reporting**

16.1 Every insurer required to file an Audited financial report pursuant to this regulation that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of \$500,000,000 or more shall prepare a report of the insurer's or group of insurers' internal control over financial reporting, as these terms are defined in Section 3. The report shall be filed with the Commissioner along with the Communication of Internal

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## PROPOSED REGULATIONS

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- Control Related Matters Noted in an audit described under Section 11. Management's Report of Internal Control over Financial Reporting shall be as of December 31 immediately preceding.
- 16.2 Notwithstanding the premium threshold in Section 16.1, the Commissioner may require an insurer to file Management's Report of Internal Control over Financial Reporting if the insurer is in any RBC action level event, or meets any one or more of the standards of an insurer deemed to be in hazardous financial condition.
- 16.3 An insurer or a group of insurers that is
- 16.3.1 directly subject to Section 404;
  - 16.3.2 a part of a holding company system whose parent is directly subject to Section 404;
  - 16.3.3 not directly subject to Section 404 but is a SOX Compliant Entity; or
  - 16.3.4 a member of a holding company system whose parent is not directly subject to Section 404 but is a SOX Compliant Entity; may file its or its parent's Section 404 Report and an addendum in satisfaction of this Section 16 requirement provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in Section 5.2.2 through 5.2.7 of this regulation) were included in the scope of the Section 404 Report. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in Section 5.2.2 through 5.2.7 of this regulation) excluded from the Section 404 report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the Section 404 report, the insurer or group of insurers may either file (i) a Section 16 report, or (ii) the Section 404 report and a Section 16 report for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the Section 404 report.
- 16.4 Management's Report of Internal Control over Financial Reporting shall include:
- 16.4.1 A statement that management is responsible for establishing and maintaining adequate Internal control over financial reporting;
  - 16.4.2 A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its Internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;
  - 16.4.3 A statement that briefly describes the approach or processes by which management evaluated the effectiveness of the insurer's internal control over financial reporting; and
  - 16.4.4 A statement that briefly describes the scope of work that is included and whether any internal controls were excluded;
  - 16.4.5 Disclosure of any unremediated material weaknesses in internal control over financial reporting identified by management as of December 31 immediately preceding. Management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting;
  - 16.4.6 A statement regarding the inherent limitations of internal control systems; and
  - 16.4.7 Signatures of the insurer's chief executive officer and chief financial officer (or equivalent position/ title).
- 16.5 Management shall document and make available upon financial condition examination the basis upon which its assertions, required in Section 16.4 above, are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities.

- 16.5.1 Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost effective manner and, as such, may include assembly of or reference to existing documentation.
- 16.5.2 Management's Report on Internal Control over Financial Reporting, required by Section 16.1, and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the Insurance Department.

## **17.0 Exemptions and Effective Dates**

- 17.1 Upon written application of any insurer, the Commissioner may grant an exemption from compliance with any and all provisions of this regulation if the Commissioner finds, upon review of the application, that compliance with this regulation would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten (10) days from a denial of an insurer's written request for an exemption from this regulation, the insurer may request in writing a hearing on its application for an exemption. The hearing shall be held in accordance with the regulations of the Delaware Department of Insurance pertaining to administrative hearing procedures.
- 17.2 Domestic insurers retaining a certified public accountant on the effective date of this regulation who qualify as independent shall comply with this regulation for the year ending December 31, 2010 and each year thereafter unless the commissioner permits otherwise.
- 17.3 Domestic insurers not retaining a certified public accountant on the effective date of this regulation who qualifies as independent may meet the following schedule for compliance unless the commissioner permits otherwise.
- 17.3.1 As of December 31, 2010, file with the commissioner an audited financial report
- 17.3.2 Effective January 1, 2010, such insurers shall file with the Commissioner all reports and communication required by this regulation.
- 17.4 Foreign insurers shall comply with this regulation for the year ending December 31, 2010 and each year thereafter, unless the Commissioner permits otherwise.
- 17.5 The requirements of Sections 7.1.2 and 7.3 shall be in effect for audits of the year beginning January 1, 2008.
- 17.6 The definition of "Indemnification" in Section 3.0 shall be effective December 31, 2008.
- 17.7 The requirements of Section 7.4 shall be in effect for audits of the year beginning January 1, 2010 and thereafter.
- 17.8 The requirements of Section 14 are to be in effect January 1, 2010. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members (as opposed to a supermajority) because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one (1) year following the year the threshold is exceeded (but not earlier than January 1, 2010) to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one (1) calendar year following the date of acquisition or combination to comply with the independence requirements.
- 17.9 The requirements of Section 16 and other modified sections, except for Section 14 covered above, are effective beginning with the reporting period ending December 31, 2010 and each year thereafter. An insurer or group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two (2) years following the year the threshold is exceeded (but not earlier than December 31, 2010) to file a report. Likewise, an insurer acquired in a business combination shall have two (2) calendar years following the date of acquisition or combination to comply with the reporting requirements.

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# PROPOSED REGULATIONS

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## **18.0 Canadian and British Companies**

- 18.1 In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their supervision authority duly audited by an independent chartered accountant.
- 18.2 For such insurers, the letter required in Section 6.2 shall state that the accountant is aware of the requirements relating to the annual audited financial report filed with the Commissioner pursuant to Section 4 and shall affirm that the opinion expressed is in conformity with those requirements.

## **19.0 Severability Provision**

- 19.1 If any section or portion of a section of this regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of the provision to other persons or circumstances shall not be affected.
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## **DEPARTMENT OF LABOR**

### **DIVISION OF INDUSTRIAL AFFAIRS**

#### **1310 The Office of Anti-Discrimination**

Statutory Authority: 19 Delaware Code, Sections 712(a)(2) and 728  
(19 Del.C. §712(a)(2) & §728)

The Secretary of Labor in accordance with 19 Del.C. §712(a)(2) has proposed rules and regulations relating to the Delaware Department of Labor's Office of Anti-Discrimination ("Anti-Discrimination Office"). These proposals set forth the Anti-Discrimination Office's procedures for the handling of discrimination charges with coordinated instructions and procedures developed by the Anti-Discrimination Office Administrator and staff ("Rules and Regulations").

A public hearing will be held before the Director of Industrial Affairs and Anti-Discrimination Office Administrator (collectively the "Department") at 2:00 p.m. on September 24, 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 Julie Klein Cutler, Administrator, Office of Anti-Discrimination, Division of Industrial Affairs, Department of Labor, 4425 N. Market Street, Wilmington, Delaware 19802. Persons wishing to submit written comments may forward these to Ms. Cutler at the above address. The final date to receive written comments will be at the public hearing.

The Department will consider making a recommendation to the Secretary following the public hearing.

### **1311 Office of Anti-Discrimination Rules and Regulations**

## **1.0 General Provisions**

- 1.1 Purpose and scope.
- 1.1.1 The regulations set forth in this part contain the procedures established by the Department of Labor for carrying out its responsibilities in the administration and enforcement of 19 Del.C. Ch 7, Subchapters II-III.
- 1.2 Address; office hours.
- 1.2.1 Questions may be addressed to "Anti-Discrimination Office Administrator" at 4425 N. Market Street, Wilmington, Delaware 19802. The office is open daily from 8:00 a.m. to 4:30 p.m. except Saturdays, Sundays, and Legal Holidays.
- 1.3 Definitions.
- 1.3.1 The terms **Charging Party, Conciliation, Delaware Right to Sue Notice, Mediation, No Cause Determination, Reasonable Cause Determination, and Respondent**, when used in this regulation, shall have the meanings set forth in 19 Delaware Code, Section 710.

1.3.2 The following words and terms, when used in this regulation, should have the following meaning:

“Administrator” means the Office of Anti-Discrimination Administrator or his designee.

“Complainant” means any individual claiming to have been harmed by an unlawful employment practice under the Discrimination in Employment Act (19 Del.C. §711) or the Handicapped Persons Employment Protections Act (19 Del.C. §724).

“Day” means calendar day unless otherwise specified.

“Department” means the Department of Labor.

“Fact-finding conference” means a conference convened by the administrator as an investigative forum intended to define the issues, to determine which elements are undisputed, to resolve those issues that can be resolved and to ascertain whether there is a basis for negotiated settlement of the verified charge.

“Mediation Director” means the director of the Discrimination Mediation Unit or his designee.

“Party” means any complainant, charging party, respondent, or the Department of Labor.

“Verified charge” or “charge” means the charge of discrimination which sets forth a concise statement of facts, in writing, verified under oath and signed by the Charging Party.

1.4 Attorneys; form of appearance on behalf of parties.

1.4.1 An attorney may appear on behalf of a party by providing written notice of appearance. To constitute an appearance, a form, letter, or document shall contain the names of the parties, the department’s docket number if known, the name of the party which the attorney represents, and the attorney’s address, telephone number, facsimile number, and email address.

1.4.2 If a party appears through an attorney, all papers shall be served on the attorney with the same force and effect as though served on the client.

1.4.3 An attorney may withdraw his appearance by providing written notice of withdrawal to the department, certifying that a copy of the notice of withdrawal was mailed to all parties.

1.5 Parties’ obligation to keep department informed of change of address or status.

1.5.1 The parties shall promptly notify the department of any change in address, telephone number, contact information, or other material change in business status while the charge is pending.

1.6 Liberal construction of regulations.

1.6.1 These regulations shall be liberally construed by the administrator to permit the department to discharge its statutory duties under 19 Del.C. Ch. 7, Subchapters II and III.

1.7 Practice where regulations do not govern.

1.7.1 In any circumstance that arises not governed by these regulations, the administrator shall exercise his discretion in order to permit the department to discharge its statutory duties under 19 Del.C. Ch. 7, Subchapters II and III.

1.8 Validity of regulations if any portion declared invalid.

1.8.1 If any portion of these regulations is adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any portion loses its force and effect, the ruling or action will not affect, impair or void the remainder of these regulations.

1.9 Amendment of regulations.

1.9.1 The administrator may rescind, amend or expand these regulations from time to time as necessary to comply with the Discrimination in Employment Act, 19 Del.C. Ch 7, Subchapter II or the Handicapped Persons Employment Protection Act, 19 Del.C. Ch 7, Subchapter III, and such new regulations shall be submitted to the Registrar’s office in accordance with the provisions of 29 Del. C. §10161(b).

## **2.0 Commencement of Actions**

2.1 Manner of commencing actions.

2.1.1 An action shall be commenced by the filing of a verified charge with the department’s Office of Anti-Discrimination.



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# PROPOSED REGULATIONS

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## 2.2 Who may file a verified charge.

2.2.1 A complainant may file a verified charge alleging a violation of the Discrimination in Employment Act or the Handicapped Persons Employment Protections Act.

## 2.3 Preparation and contents of verified charge.

2.3.1 A verified charge shall be filed on a printed form approved by the administrator.

2.3.2 The department shall assist the complainant in the completion of the verified charge where necessary.

2.3.3 The verified charge shall indicate that it is filed with the department, and shall set forth the following:

2.3.3.1 The complainant's full name, address, and telephone number;

2.3.3.2 The respondent's full name, address, and telephone number if known;

2.3.3.3 A brief statement of jurisdiction identifying the nature, date of, and location of the employment relationship;

2.3.3.4 The specific prohibited basis or bases that gave rise to the alleged violation;

2.3.3.5 The specific adverse employment action alleged to have occurred as a result of the alleged violation;

2.3.3.6 A brief statement setting forth the facts deemed to constitute the alleged violation;

2.3.3.7 The specific law or laws allegedly violated;

2.3.3.8 A brief statement explaining why the complainant alleges a causal relationship between the prohibited basis and the adverse action; and

2.3.3.9 Notarized signature and verification by the complainant.

## 2.4 Filing a verified charge.

2.4.1 The filing of a verified charge is perfected upon completion of the following steps before an official of the Office of Anti-Discrimination:

2.4.1.1 Administration of an oath;

2.4.1.2 Execution of the verified charge; and

2.4.1.3 Notarization of the complainant's verified signature.

## 2.5 Notification of filing.

2.5.1 Upon filing of a verified charge, the department shall provide the charging party with a form approved by the administrator which notifies the charging party of the jurisdictional limitations of the department, including the limitation of the department to only administer claims under the Discrimination in Employment Act and the Handicapped Persons Employment Act, and the inability of the department to provide an attorney or conduct a hearing.

## 2.6 Service of a charge.

2.6.1 Within 14 days of filing a charge, the department shall cause a copy of the charge to be served on the respondent by certified mail, return receipt requested.

2.6.2 In its discretion, the department may also cause to be served an invitation to participate in mediation, or a request for information with the copy of the charge.

2.6.3 At the time of service, the department shall provide the respondent with notice of the respondent's right to file an answer.

2.6.4 Service on a respondent is determined to be the delivery date noted on the certified mail return receipt.

## 2.7 Amendment of a charge.

2.7.1 Any time before the department issues its final determination under 19 Del.C. §712(c)(3), the charging party, with the approval of the administrator, may file an amendment to the charge.

2.7.2 Amendments that cure technical defects or clarify allegations made in the original charge, or allege additional acts which constitute unlawful practices related to or growing out of the allegations set forth in the original charge, will relate back to the date the charge was first filed.

2.7.3 Within seven days of filing an amendment, the department shall cause a copy of the amendment to be served on the respondent by certified mail, return receipt requested. The department shall provide written notice to the respondent of the respondent's right to file an amended answer within 20 days of receipt.

## **3.0** **Answers**

### **3.1** Time for filing an answer.

3.1.1 A respondent may file an answer to the charge within 20 days of receipt, certifying that a copy of the answer was mailed to the charging party or his attorney where appropriate at the address provided.

3.1.2 A Respondent, in lieu of filing an answer, may request mediation within 20 days of receipt, certifying that a copy of the request for mediation was mailed to the charging party or his attorney where appropriate at the address provided.

3.1.3 A request for extension of time shall be in writing and addressed to the administrator. The administrator within his discretion may authorize an extension.

### **3.2** Form and content of answer.

3.2.1 The answer to the charge shall fully and completely advise the charging party and the department as to the nature of the respondent's defenses to each claim asserted, and shall specifically admit or deny the allegations set forth in each paragraph of the charge. A respondent may admit in part and deny in part.

3.2.2 An affirmative defense to an allegation shall be set forth separately.

3.2.3 The following information may be redacted from the copy of the answer served on the charging party:

3.2.3.1 Employment records of individuals other than the charging party;

3.2.3.2 Medical records of individuals other than the charging party;

3.2.3.3 Confidential trade secrets; and

3.2.3.4 The identity of witnesses who respondent intends to produce.

## **4.0** **Preliminary Findings and Recommendations**

### **4.1** Timing of preliminary findings and recommendations.

4.1.1 The administrator shall issue preliminary findings and recommendations within 60 days from the date of service of the charge on the respondent as required by 19 Del.C. §712(c)(2).

### **4.2** Form and content of preliminary findings and recommendations.

4.2.1 The preliminary findings and recommendations shall set forth the following:

4.2.1.1 A brief statement of whether or not the respondent filed an answer;

4.2.1.2 A referral to mediation, investigation, or recommending dismissal.

### **4.3** Service of preliminary findings and recommendations.

4.3.1 Within one business day of issuing the preliminary findings and recommendations, the department shall cause a copy to be mailed to each party by U.S. mail.

### **4.4** Criteria for preliminary recommendation of dismissal.

4.4.1 In determining whether to issue a preliminary recommendation of dismissal, the administrator shall take the following factors into account based on a review of all information submitted by the parties that has been properly served as required by 19 Del.C. §712(c)(1):

4.4.1.1 The nature of the discrimination charged;

4.4.1.2 Probability of obtaining additional evidence that may impact the department's final determination after full investigation; and

4.4.1.3 Whether the public interest is best served by the continuation of the investigatory process.

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# PROPOSED REGULATIONS

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4.4.2 Before dismissing a case under 19 Del.C. §712(c)(2) the administrator shall notify the charging party of the reason for the recommendation, and shall offer the charging party at least 14 days to present additional information which warrants further investigation.

4.4.2.1 The administrator in his sole discretion shall determine whether additional information provided warrants further investigation.

4.4.2.2 If the charging party does not present additional information which warrants further investigation within the stated time, the department may dismiss the case and issue a Delaware Right to Sue Notice.

## **5.0 Mediation**

5.1 Confidentiality of Mediation Communications and Records.

5.1.1 All information exchanged during mediation proceedings are considered dispute resolution communications and shall be kept confidential. Records obtained in the course of mediation should remain confidential and not be used as evidence in any manner unless obtained independent of the mediation. Parties participating in the mediation process shall be required to sign and adhere to a confidentiality agreement in a form approved by the administrator.

5.1.2 Mediation settlement agreements are confidential and shall not be disclosed by the department except where the department seeks enforcement of the agreement under Section 5.3.

5.2 Mediation proceedings.

5.2.1 At any time following the time for filing an answer, the administrator at his discretion may refer a case to the mediation unit for mediation proceedings.

5.2.2 The mediation director may designate a mediator employed by the department or otherwise appointed by the mediation director to conduct the mediation proceedings.

5.2.3 If the mediation does not result in a settlement agreement, the mediation director shall refer the case to the investigation unit.

5.2.4 If the mediation does not result in a settlement agreement and the respondent has not yet filed an answer, the respondent must file an answer to the charge within 20 days of the respondent's receipt of notification that the charge is being referred to the investigation unit.

5.2.5 If the mediation does not result in a settlement agreement and the respondent has filed an answer, the respondent must file a response to any pending request for information, and may file a supplementary answer, within 20 days of the respondent's receipt of notification that the charge is being referred to the investigation unit.

5.2.6 The mediation director and staff, including appointed mediators, may not participate in the investigation of any case referred to the investigation unit.

5.3 Enforceability of mediation settlement agreements.

5.3.1 A mediation settlement agreement reached during a mediation conference shall be set forth in writing and signed by the parties.

5.3.2 Allegations of breach of a mediation settlement agreement shall be brought to the attention of the mediation director. The mediation director shall review and investigate the allegations of breach of a mediation settlement agreement to determine whether a breach has occurred.

5.3.3 The mediation director shall issue written findings to the parties with regard to the allegation of breach of a mediation settlement agreement.

5.3.4 The administrator in his discretion will determine whether to forward the allegations of a breach of the mediation settlement agreement to the Attorney General for review.

## **6.0 Investigation**

6.1 Timing of investigations.

6.1.1 The administrator shall promptly initiate an investigation into stated allegations of discrimination when:

- 6.1.1.1 The administrator refers a charge for investigation in accordance with 19 Del.C. §712(c)(2)(c); or
- 6.1.1.2 The mediation director refers a case to the investigation unit after unsuccessful mediation.
- 6.1.2 The department shall complete its investigation as promptly as possible.
- 6.2 Investigatory procedures.
  - 6.2.1 In the conduct of investigations, all investigatory powers granted by 19 Del.C. §§107-108 shall be available to the department. In its discretion, the department may conduct investigations using, among other things, written requests for information, fact finding conferences, subpoenas, on site visits, interviews, and depositions as provided in these regulations.
  - 6.2.2 In connection with an investigation, the department may require the submission of information relating to:
    - 6.2.2.1 The race, marital status, genetic information, color, age, religion, sex, national origin or disability of employees;
    - 6.2.2.2 The employment records of employees;
    - 6.2.2.3 The procedures for advertising or notifying the public of the availability of jobs;
    - 6.2.2.4 The procedures for hiring or selecting employees;
    - 6.2.2.5 The testing, seniority, promotion and discharge procedures; and
    - 6.2.2.6 Such other information as the department determines to be reasonably necessary to carry out the provisions of the Discrimination in Employment Act or Handicapped Persons Employment Protections Act.
- 6.3 Requests for Information.
  - 6.3.1 The department may serve requests for information to assist the department in its investigation. Unless otherwise specified in a request for information, the response shall be due to the department within 14 days following service.
- 6.4 On Site Visits.
  - 6.4.1 The department may conduct on site visits to assist the investigatory process for the purpose of gathering evidence, interviewing witnesses, observing a respondent's facilities, and reviewing documents.
  - 6.4.2 The department shall provide the respondent with written notice of the on site visit at least 14 days prior to the visit. The notice shall specify the date and time of the visit.
  - 6.4.3 The respondent shall grant access to its premises, documents, and employees during a scheduled on site visit.
- 6.5 Subpoenas.
  - 6.5.1 The administrator may issue a subpoena as he deems necessary to assist the investigatory process. The administrator shall issue a subpoena in the name of the department, and the subpoena shall direct the person designated to personally appear and bring any books, records, documents and any other evidence which relates to any charge under investigation, or, in lieu of personal appearance, to produce any books, records, documents and any other evidence which relates to any charge under investigation.
  - 6.5.2 A subpoena shall state the time and place where the person designated is directed to appear.
  - 6.5.3 A subpoena shall be served either by personal service by any person 18 or more years of age by delivery of a copy thereof to the person named therein, by overnight delivery by commercial courier, or by registered or certified mail, return receipt requested.
- 6.6 Depositions.
  - 6.6.1 The department may take depositions of witnesses under oath as part of any investigation when, in the discretion of the administrator, such depositions will aid the investigatory process.
- 6.7 Enforcement of subpoenas.
  - 6.7.1 If any person fails to comply with a subpoena issued by the department, he shall be subject to the appropriate enforcement provisions of 19 Del.C. §108.

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# PROPOSED REGULATIONS

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## 6.8 Fact-finding conferences.

### 6.8.1 Fact-finding conferences, as part of a discrimination investigation, are subject to the following:

6.8.1.1 As part of its investigation and at the discretion of the administrator, the department may convene a fact-finding conference for the purpose of obtaining evidence, identifying the issues in dispute, ascertaining the positions of the parties and exploring the possibility of settlement. The fact-finding conference is not an adjudication of the merits of the charge.

6.8.1.2 The department shall provide the parties with written notice of the fact finding conference at least 30 days prior to the conference. The notice shall specify the date, time and location of the conference and shall identify the individuals requested to attend on behalf of each party, and any documents which a party is requested to provide at the conference.

### 6.8.2 The conference shall be conducted as follows:

6.8.2.1 The department employee acting as fact-finder shall conduct and control the proceedings.

6.8.2.2 With prior notice to the department, the parties may request to bring witnesses to the conference in addition to those whose attendance may be specifically requested by the department. The fact-finder has discretion over which witnesses shall be heard and the order in which they are heard. The fact-finder may exclude any witness or other person from the conference, except one representative of each party and counsel shall be permitted to remain throughout.

6.8.2.3 The department may request the parties to provide affidavits from witnesses who intend to appear at the fact-finding conference.

6.8.2.4 A party may be accompanied at a fact-finding conference by his or her attorney, and by a translator, if necessary.

6.8.2.5 An attorney for a party who has not previously entered his appearance shall do so at the outset of the conference.

6.8.2.6 Because the fact-finding conference is a means of investigation and not a hearing on the merits of a case, the parties shall not be entitled to cross-examine witnesses. All questioning shall be conducted by the fact-finder, unless in his discretion the fact-finder permits questions to be asked by other persons present at the conference.

6.8.2.7 During the conference, the fact-finder may allow a recess to permit the parties to discuss settlement.

### 6.8.3 Postponements of a fact-finding conference shall be subject to the following:

6.8.3.1 Except in extraordinary circumstances, requests for postponements must be made by notice to all parties at least 14 days prior to the conference.

6.8.3.2 Any opposition to a request for postponement must specifically state the basis for the opposition and must be received by the department at least seven days prior to the conference.

6.8.3.3 If a party or witness fails to appear at a scheduled fact-finding conference, the department may proceed with the conference without the party.

### 6.8.4 If the respondent or the charging party refuses or fails to attend a scheduled fact-finding conference, the department may in its discretion schedule an alternate conference date. The department may subpoena any party or witness who failed to attend the initially scheduled fact-finding conference. The department may also subpoena any documents which either party was requested to bring, and failed to bring, to the fact-finding conference.

## **7.0 Administrative Dismissal**

### 7.1 The administrator may in his discretion administratively dismiss a charge for reasons including but not limited to the following:

7.1.1 Lack of jurisdiction;

7.1.2 The charging party is unavailable or unwilling to participate in the investigation, or to attend a scheduled conference or conciliation;

- 7.1.3 Relief is precluded by the respondent's bankruptcy or other special circumstances as determined by the administrator.
- 7.1.4 The charge was not timely filed under 19 Del.C. §712(c); or
- 7.1.5 The charge on its face fails to state a claim under the Delaware Discrimination in Employment Act or Handicapped Persons Employment Act.
- 7.2 The department will determine whether to administratively dismiss a charge under 19 Del.C. §712(c)(5).
- 7.3 Prior to administratively dismissing a charge under 19 Del.C. §712(c)(5) for lack of jurisdiction, untimeliness or failure to state a claim, the administrator shall notify the charging party of the reason for the proposed dismissal and shall offer the charging party the opportunity to respond.
  - 7.3.1 The administrator shall make his final determination, considering all responses received within 14 days of the date of notice.

## **8.0** **Withdrawal of Charge of Discrimination**

- 8.1 A pending charge may be withdrawn by the charging party within 60 days of the commencement of the action. After 60 days the charge may only be withdrawn with the consent of the administrator.
- 8.2 A request for withdrawal shall be in writing and shall be signed by the charging party and his attorney if applicable.

## **9.0** **Final Determinations**

- 9.1 Issuance of findings.
  - 9.1.1 Following the completion of an investigation of a charge, the administrator shall determine whether or not reasonable cause exists to support the allegations of the charge.
  - 9.1.2 If the administrator determines that reasonable cause exists to believe a violation of 19 Del.C. Ch. 7, Subchapter II or III has occurred, he shall issue to the parties a finding of reasonable cause.
  - 9.1.3 If the administrator determines that the conditions for issuing a finding of reasonable cause have not been met, he shall issue a finding of no reasonable cause.
  - 9.1.4 If the administrator determines that reasonable cause exists as to some but not all of the allegations of the charge, he shall issue a determination setting forth those issues to which he finds reasonable cause exists and those issues to which he finds no reasonable cause exists.
  - 9.1.5 Subject to the provisions of section 9.2, a Notice of Final Determination is final when issued.
- 9.2 Request for reconsideration of finding of reasonable cause.
  - 9.2.1 A party requesting reconsideration of a finding of reasonable cause shall file a written request to the administrator within ten days of receipt of the finding, with a copy to the opposing party.
  - 9.2.2 The administrator shall determine whether reconsideration is warranted within ten days of its receipt.
    - 9.2.2.1 The administrator in his sole discretion shall determine what if any further supporting evidence or information is needed to complete his review, and shall offer the party at least fourteen days to present additional information.
  - 9.2.3 The administrator shall issue his written decision to the parties. The administrator's decision is final when issued.

## **10.0** **Conciliation**

- 10.1 Timing of conciliation proceedings.
  - 10.1.1 Within 30 days from the date of a final determination of "reasonable cause", every attempt will be made to commence conciliation proceedings for the purpose of negotiating a settlement of the charge and compliance with all affected statutes.
- 10.2 Confidentiality of conciliation records.

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## PROPOSED REGULATIONS

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10.2.1 All information exchanged during conciliation proceedings are considered dispute resolution communications and shall be kept confidential. Records obtained in the course of conciliation should remain confidential and not be used as evidence in any manner unless obtained independent of the conciliation. Parties participating in the conciliation process shall be required to sign and adhere to a confidentiality agreement in a form approved by the administrator.

10.2.2 Conciliation settlement agreements are confidential and shall not be disclosed by the department except where the department seeks enforcement of the agreement under Section 11.

### 10.3 Conciliation conference proceedings.

10.3.1 After a finding of reasonable cause, the administrator shall schedule a conciliation proceeding.

10.3.2 The parties shall have at least 14 days notice of the date, time and place of the conciliation proceeding.

10.3.3 The department employee acting as conciliator shall conduct and control the proceeding.

10.3.4 A party may be accompanied at a conciliation proceeding by his or her attorney or another representative, and by a translator, if necessary.

10.3.5 The conciliator may exclude any person from the conciliation proceeding, except counsel and translators shall be permitted to remain throughout.

10.3.6 An attorney for a party who has not previously entered his appearance shall do so at the outset of the proceeding.

10.3.7 A party's failure to attend the conciliation proceeding may be deemed to be a failure of conciliation effort.

10.3.8 Any conciliation agreement shall be subject to the approval of the department.

### **11.0 Enforceability of settlement agreements.**

11.1 A settlement agreement reached during investigation or conciliation shall be set forth in writing and signed by the parties.

11.2 Allegations of breach of a settlement agreement shall be brought to the attention of the administrator. The administrator shall review and investigate the allegations of breach of a settlement agreement to determine whether a breach has occurred.

11.3 The administrator shall issue written findings to the parties with regard to the allegation of breach of a settlement agreement.

11.4 The administrator in his discretion will determine whether to forward allegations of breach of the settlement agreement to the Attorney General for review.

### **12.0 Delaware Right to Sue Notice**

#### 12.1 Issuance of a Delaware Right to Sue Notice.

12.1.1 The administrator shall issue a Delaware Right to Sue Notice under 19 Del.C. §712(c)(3), (5) upon the following:

12.1.1.1 Issuance of a final determination of no reasonable cause;

12.1.1.2 Failure of conciliation efforts; or

12.1.1.3 Administrative dismissal of the charge in accordance with Section 7.

12.1.2 The administrator may issue a Delaware Right to Sue Notice while the charge is pending upon the following:

12.1.2.1 At the request of the Charging Party; or

12.1.2.2 By initiation of the administrator, in his discretion.

#### 12.1.3 Termination of proceedings.

12.1.3.1 Issuance of a Delaware Right to Sue Notice shall terminate further proceedings of the charge by the department.

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## **13.0 Service of Recommendations, Determinations, and Notices**

- 13.1 All preliminary recommendations, final determinations and Delaware Right to Sue Notices shall be promptly served on all parties by U.S. Mail or as otherwise indicated by written agreement of the parties.

## **14.0 Access to Department's Investigatory Files**

- 14.1 Confidentiality of department's investigatory files.
- 14.1.1 The department's investigatory records are confidential and exempt from public access under 29 Del.C. Ch. 100.
- 14.2 Parties' right to obtain factual documents.
- 14.2.1 After issuance of a Delaware Right to Sue Notice under 19 Del.C. §712(c)(3), (5), while litigation is pending, a party to a charge may make a written request to the administrator for copies of the following information in the department's file of that charge:
- 14.2.1.1 Witness statements; and
- 14.2.1.2 All factual written data, factual written reports or documentary information obtained or provided to the department in the course of its investigation which is not otherwise subject to confidentiality or privilege.
- 14.3 A request made under this section must certify that a copy was mailed to the other party or his attorney where appropriate at the address provided.
- 14.4 Discovery of department's investigatory files by non-parties.
- 14.4.1 Non-parties to a charge shall not have access to the material in the department's investigatory file of that charge.
- 14.5 Copying Costs.
- 14.5.1 The department's fee for copying documents requested under this section shall be the same fee as is applicable to requests granted pursuant to 29 Del.C. Ch. 100. The administrator may waive or modify this fee in the case of an indigent party or in other extraordinary situations for good cause.

## **15.0 Retention of Investigatory Files**

- 15.1 The department shall retain investigative files for two years after the end of the administrative process.
- 15.2 Where a charge is filed concurrently with the United States Equal Employment Opportunity, the department shall retain the investigative file for two years after the end of the federal administrative process.

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## **DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

### **DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Sections 102(c), 504, 508, 510 and 513  
(7 Del.C. §§102(c), 504, 508, 510 and 513)  
7 DE Admin. Code 3311 and 3567

**REGISTER NOTICE SAN# 2008-17**

### **1. Title of the Regulations:**

- New Non-tidal Finfish Regulation 3311, Freshwater Fisherman Registry.  
New Tidal Finfish Regulation 3567, Tidal Water Fisherman Registry.



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

These proposed additions to the tidal and non-tidal fishing regulations would enable Delaware to provide a computerized registry of names, addresses, and phone numbers of saltwater anglers to the federal National Marine Fisheries Service so that Delaware may avoid requirements for federal licensing of Delaware saltwater anglers. In order to improve upon present means of determining recreational catch and effort in marine waters, Congress authorized the National Marine Fisheries Service to compile a registry of all anglers fishing in saltwater beginning in 2009 and to begin charging for participation in this registry as of 2011. The fees so generated will be deposited in the federal treasury and not returned to the states according to existing federal plans.

The National Marine Fisheries Service has determined that any state such as Delaware that already has a complete name and address file of marine recreational fishermen via state-issued recreational fishing licenses will be exempt from the federal registry and the federal fees to be imposed. Under Delaware's present fishing license statutory requirements contained in Chapter 5 of 7 Delaware Code, Delaware would be classified by the National Marine Fisheries Service as a non-exempt state because the holder of a recreational boat license may take any number of non-licensed anglers with them on the licensed vessel, thus these unlicensed anglers would not be included in the database of all anglers. In addition, resident senior citizens age 65 and older also are exempt from Delaware recreational fishing license requirements. Therefore, to avoid a federal determination that Delaware is a non-exempt state, this regulation will establish a state-level registration process for all anglers fishing in Delaware at no additional cost to the angler. This new Delaware registration will be known as the F.I.N number (Fisherman Information Network).

All prospective Delaware anglers age of 16 or older, whether they are licensed or not, will be required by this regulation to obtain a F.I.N number on an annual basis before fishing in Delaware's waters. This requirement is similar to a federal registration known as the Hunter Information Program (H.I.P.) for all who intend to hunt migratory birds. This F.I.N. number may be obtained at no cost to the angler by calling a toll free number and providing the required information over the phone or by entering the required information on-line through an internet access portal designated by the Department for this purpose. Each person who requests a F.I.N. number should write this number on his or her Delaware fishing license, or for those who are legally unlicensed, be able to produce this number when challenged by an authorized enforcement agent.

Both the appropriate web site address and toll-free number will be advertised and made readily available to all prospective Delaware anglers. The caller or computer user will be instructed to indicate whether they intend to fish in Delaware's freshwaters, marine (tidal) waters, or both, and then give their name, address, and phone number. Once all Delaware fishermen have obtained a F.I.N. number, Delaware will be able to supply a complete computerized name, address, and telephone number file of saltwater anglers to the National Marine Fisheries Service so that Delaware may be exempt from the federal marine recreational fishing registry and associated federal charges.

**3. Possible Terms of the Agency Action:**

These changes would go into effect January 1, 2009 and remain in effect indefinitely unless changed.

**4. Statutory Basis:**

7 Del.C. § 504, 508, 510, 513, 102(c), 903 (a) and (b), and 903 (f).

**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 August 27, 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

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[Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us). The hearing record will remain open for written or e-mail comments until 4:30 PM August 31, 2008.

**7. Prepared By:**

Roy W. Miller 302-739-9914 July 14, 2008

**3311 Freshwater Fisherman Registry**

1.0 All persons ages 16 and older who wish to fish in Delaware's fresh or tidal waters or both in any given year must first obtain a Fisherman Identification Network (F.I.N.) number for the year in question before fishing. This number may be obtained at no cost to the angler by calling a toll free number and providing the required information over the phone or by entering the required information on-line through an internet access portal designated by the Department for that purpose. Each person who requests a F.I.N. number is to write this number on his or her Delaware fishing license, or those who are legally unlicensed must be able to produce this number when checked by an enforcement agent when fishing in Delaware waters. Failure to provide a valid F.I.N. number for the year in question is a violation of 7 Del.C. §501 in the case of residents, or 7 Del.C. §506 in the case of non-residents, and will be treated the same as a failure to have a fishing license before going fishing. Information provided during the process of obtaining a F.I.N. number shall be treated as confidential and may only be shared with the National Marine Fisheries Service for the purpose of compliance with federal requirements for a national registry of marine fishermen.

**3567 Tidal Water Fisherman Registry**

1.0 All persons ages 16 and older who wish to fish in Delaware's fresh or tidal waters or both in any given year must first obtain a Fisherman Identification Network (F.I.N.) number for the year in question before fishing. This number may be obtained at no cost to the angler by calling a toll free number and providing the required information over the phone or by entering the required information on-line through an internet access portal designated by the Department for that purpose. Each person who requests a F.I.N. number is to write this number on his or her Delaware fishing license, or those who are legally unlicensed must be able to produce this number when checked by an enforcement agent when fishing in Delaware waters. Failure to provide a valid F.I.N. number for the year in question is a violation of 7 Del.C. §501 in the case of residents, or 7 Del.C. §506 in the case of non-residents, and will be treated the same as a failure to have a fishing license before going fishing. Information provided during the process of obtaining a F.I.N. number shall be treated as confidential and may only be shared with the National Marine Fisheries Service for the purpose of compliance with federal requirements for a national registry of marine fishermen.

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**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Sections 102 and 103 (7 Del.C. §§102 & 103)  
7 DE Admin. Code 3901

**PUBLIC NOTICE**

**SAN #2008-10, SAN#2008-11, SAN#2008-12, SAN#2008-13, SAN#2008-14, SAN#200815**

**1. Title of the Regulation:**

3900 Wildlife Regulations

**2. Brief Synopsis of the Subject, Substance and Issues:****3.0 Federal Laws and Regulations Adopted (Formerly WR-3)**

This action is needed to establish in regulation the special 1 day waterfowl hunt for youth and disabled hunters and set the minimum participation age at 10 years old to conform to the minimum age for hunter safety certification and to the special 1 day deer hunt for youth and disabled hunters. This action is needed to prohibit the possession and release of mute swans which are a non-native invasive species that can severely damage aquatic ecosystems and drive out native birds.

**5.0 Wild Turkey (Formerly WR-5)**

This action is needed to expand the opportunities for hunters to take a turkey education class and thus become eligible for a Delaware turkey hunting permit. There is a growing desire by non-residents of Delaware to come here to hunt turkeys. At this point in time, they have to travel to Delaware to take the mandatory turkey hunting safety class. This regulatory change will allow hunters to take comparable classes in their home state and then be certified to hunt in Delaware. This action is also needed to establish a youth day for Delaware turkey hunting as is offered for deer and waterfowl hunting. Because of the limited turkey hunting opportunities on public land in Delaware, this day would only apply to private land hunting.

**7.0 Deer (Formerly WR-7)**

This action is needed to correct an omission regarding the Non Resident Quality Buck Deer Tag making it a legally recognized tag. Secondly, this action is needed to clarify that only 2 antlered deer may be killed during a license year and it clarifies legal transportation of deer. Thirdly, children 10 years of age or older may take the Delaware General Hunter Education course and become certified. This regulatory amendment will provide conformity between the minimum age a child can be certified under the Hunter Safety Program and the age at which they may participate in the special Youth Day deer hunt.

**8.0 General Rules and Regulations Governing Land and Waters Administered by the Division (Formerly WR-8)**

As Delaware's population grows and its open space declines, more people are seeking out State Wildlife Areas for outdoor activities that have nothing to do with wildlife. The Division's goal is to accommodate these non-wildlife related activities in so far as they do not disrupt other citizens engaged in wildlife related pursuits on the areas. This action is needed to allow for geocaching on State Wildlife Areas while at the same time, separating it from hunting activity. This separation will prevent conflict and improve safety. Furthermore, this amendment will strengthen the trespass section of Regulation 8.0. The Division publishes annual maps and rules of all State Wildlife Areas. This change will allow for unique Wildlife Area entry restrictions to be published on area maps that will be backed up in regulation.

**20.0 Game Bird Releases (New)**

This action will require that all domestically raised quail, chukar partridge, Hungarian partridge and pheasants released into the wild be fitted with a Division approved leg band. As wild bird numbers decline, more hunters are releasing domestically raised game birds for hunting and dog training purposes. When hunters report harvested bird numbers on Division game surveys, it is unclear how many are wild birds. This makes it difficult to assess wild bird mortality and population levels and adjust hunting seasons and management efforts appropriately. To release banded game birds, a free Division permit will have to be obtained. This permit requirement will assist in determining the locations and numbers of released birds. Game harvest survey questions will be written to distinguish between wild un-banded birds and released banded birds.

**21.0 Guide License Requirements (New)**

This action is needed to define the requirements for a guide license as found in Title 7, Chapter 5. Licenses, of the Delaware Code.

**3. Possible Terms of the Agency Action:**

N/A

**4. Statutory Basis or Legal Authority to Act:**

7 Delaware Code, Chapter 1, Sections 102 and 103

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## 5. Other Regulations That May Be Affected By the Proposal:

None

## 6. Notice of Public Comment:

These regulatory changes will be presented in a series of public hearings on August 25<sup>th</sup> 2008 beginning at 6:30 p.m., DNREC Auditorium, 89 Kings Highway, Dover, Delaware. The hearing record for these proposed Regulations will remain open until 4:30 P.M., Sunday August 31, 2008. The order of hearings is as follows:

Regulation 3901.3 – Federal Regulations Adopted

Regulation 3901.5 – Wild Turkey

Regulation 3901.7 – Deer

Regulation 3901.8 – General Rules and Regulations Governing Land and Waters Administered by the Division.

Regulation 3901.20 – Game Bird Releases

Regulation 3901.21 – Guide License Requirements

Written comments for the hearing record should be addressed to Kenneth Reynolds, 6180 Hay Point Landing Road, Smyrna, DE 19977 or to [Kenneth.Reynolds@state.de.us](mailto:Kenneth.Reynolds@state.de.us). The record will remain open for written public comment until 4:30 P.M. August 31, 2008.

## 7. Prepared By:

Kenneth M. Reynolds, 6180 Hay Point Landing Road, Smyrna, DE 19977

[Kenneth.Reynolds@state.de.us](mailto:Kenneth.Reynolds@state.de.us)

(302) 735-3600

## 3901 Wildlife

### *(Break in Continuity of Sections)*

## 3.0 ~~Federal Laws and Regulations Adopted~~ Waterfowl (Formerly WR-3)

(Penalty Section 7 Del.C. §103(d))

### 3.1 Federal Laws.

It shall be unlawful for any person to hunt, buy, sell or possess any protected wildlife or part thereof, except in such manner and numbers as may be prescribed by the following federal laws and regulations promulgated thereunder: Airborne Hunting Act (16 USC § 742j-l et seq.), Eagle Act (16 USC § 668 et seq.), Endangered Species Act (16 USC 1531 et seq.), Lacey Act (16 USC § 3371 et seq.), Marine Mammal Protection Act (16 USC § 1361 et seq.), and the Migratory Bird Treaty Act (16 USC § 703 et seq.). Notwithstanding the foregoing, the federal laws and regulations shall be superseded by more stringent restrictions prescribed by State law or regulation of the Department.

### 3.2 Sea Ducks.

Scoters, eiders and old squaw ducks may be taken during their special season not less than 800 yards seaward from the Delaware Bay shore beginning at an east/west line between Port Mahon and the Elbow Cross Navigation Light south to the Atlantic Ocean or in the Atlantic Ocean.

### 3.3 Non-toxic Shot.

3.3.1 Required Usage. Non-toxic shot, as defined by federal regulations, shall be required for waterfowl hunting in Delaware. It shall be unlawful for any person to possess shells loaded with lead shot while waterfowl hunting.

3.3.2 Maximum Shot Size. It shall be unlawful for any person to hunt, except for deer, in Delaware with any size non-toxic shot (as defined by federal regulations) pellet(s) larger than size T (.20 inches in diameter).

### 3.4 Special Mallard Release Areas.

# PROPOSED REGULATIONS

The Division may issue permits to allow the taking of captive-reared mallards during the established waterfowl season under applicable federal regulations. Permits shall only be issued to persons who: control at least 100 acres of land on which there is suitable waterfowl habitat; agree to follow a management plan and federal regulations; and maintain a log of guests and birds harvested. Failure to follow the management plan or a violation of State or federal laws may result in the revocation of a Special Mallard Release Area Permit. Waterfowl may only be hunted on Special Mallard Release Areas from one-half hour after sunrise to one hour before sunset.

## 3.5 Mute Swans (*Cygnus olor*)

3.5.1 Mute swans shall be considered an exotic, invasive species that is not subject to state protection.

3.5.2 It shall be unlawful to possess, buy, sell, barter, trade, or transfer any mute swan or their eggs to or from another person unless permitted by the Director of the Division of Fish and Wildlife.

3.5.3 It shall be unlawful to release any mute swan into the wild.

## 3.6 Special Shotgun Season for Young and Disabled Hunters

3.6.1 Waterfowl may be hunted on a special day established annually by the Division for disabled (non-ambulatory) hunters using a wheelchair for mobility and hunters 10 years of age or older but less than 16 years of age (10-15 years inclusive). Hunters 13-15 years of age must have completed an approved course in hunter training and possess a Delaware Resident or Non-Resident Junior Hunting License. Young hunters must be accompanied by a licensed non-hunting adult who is 21 years of age or older. Young hunters must be of sufficient size, physical strength and emotional maturity to safely handle a shotgun.

**3 DE Reg. 289 (8/1/99)**

**6 DE Reg. 536 (10/1/02)**

### *(Break in Continuity of Sections)*

## **5.0 Wild Turkeys (Formerly WR-5)**

(Penalty Section 7 **Del.C.** §103(d))

### 5.1 Possession of Wild Turkey Prohibited; Exceptions.

It shall be unlawful for any person, other than authorized representatives of the Division, to release or possess *Meleagris gallopavo* (wild turkey) in Delaware without a permit from the Division. The prohibition to possess and/or release *Meleagris gallopavo* shall include both birds taken from the wild and birds bred in captivity.

### 5.2 Instruction Requirement.

It shall be unlawful for any person to hunt wild turkeys in Delaware before that same person attends and passes a Division approved course of instruction in turkey hunting. In addition to official Delaware Division of Fish and Wildlife sponsored courses, official NRA Wild Turkey Hunting Clinics, official NWF Turkey Hunting Courses and out-of-state Turkey Hunting Courses (minimum of 4 hours) officially sponsored and sanctioned by other state or provincial Hunter Education Programs shall be recognized as being Division approved courses of instruction in turkey hunting.

### 5.3 Method of Take.

5.3.1 It shall be unlawful for any person to use any firearm to hunt wild turkeys, except a 10, 12, 16, or 20 gauge shotgun loaded with size 4, 5, or 6 shot or a longbow with a broadhead arrow, 7/8 inches in minimum width.

5.3.2 It shall be unlawful for any person to use bait or dogs to hunt wild turkeys.

5.3.3 It shall be unlawful for any person to "drive" wild turkeys.

5.3.4 It shall be unlawful for any person to shoot any wild turkey that is in a roost tree.

5.3.5 It shall be unlawful for any person to hunt wild turkeys unless said person is wearing camouflage clothing.

5.3.6 It shall be unlawful for any person to hunt wild turkeys if said person is wearing any garment with the colors white, red, or blue.

5.3.7 It shall be unlawful for any person to hunt wild turkeys and use artificial turkey decoys of either sex that are wholly or partially made from any part of a turkey that was formerly alive.

5.3.8 It shall be unlawful for any person to hunt wild turkeys using an electronic calling device.

### 5.4 Season and Limit.

5.4.1 The Division may establish a season for hunting bearded wild turkeys by permit. The Division will determine the terms and conditions of the issuance of permits. It shall be unlawful for any person to hunt wild turkey, except as permitted by the written authorization of the Division.

5.4.2 It shall be unlawful for any person to hunt wild turkeys, except from one-half hour before sunrise to 1:00 p.m.

5.4.3 It shall be unlawful for any person to not check a wild turkey at an authorized checking station by 2:30 p.m. on the day of kill.

5.4.4 It shall be unlawful for any person to take or attempt to take more than one bearded wild turkey per season.

**5.5 Special Season for Young and Disabled Hunters**

5.1.1 Turkeys may be hunted on private land only on the Saturday prior to the opening of the regular spring turkey hunting season by disabled (non-ambulatory) hunters using a wheelchair for mobility, and hunters 10 years of age or older but less than 16 years of age (10-15 years inclusive). Hunters 13-15 years of age must have completed an approved course in hunter training as well as a Division approved turkey hunter safety class and possess a Delaware Resident or Non-Resident Junior Hunting License. Young hunters must be accompanied by a licensed non-hunting adult who is 21 years of age or older who has also completed a Delaware approved turkey hunter safety class. Young hunters must be of sufficient size, physical strength and emotional maturity to safely handle a shotgun.

**3 DE Reg. 289 (8/1/99)**

**11 DE Reg. 334 (09/01/07)**

**6.0 Game Preserves (Formerly WR-6)**

(Penalty Section 7 Del.C. §103(d))

6.1 It shall be unlawful for any person to hunt liberated game on licensed game preserves from April 1 through October 14.

**3 DE Reg. 289 (8/1/99)**

**3 DE Reg. 1738 (6/1/00)**

**7.0 Deer (Formerly WR-7)**

(Penalty Section 7 Del.C. §103(d))

7.1 Limit.

7.1.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to:

7.1.1.1 Kill or take or attempt to kill or take more than four antlerless deer in any license year;

7.1.1.2 Kill or take four antlerless deer in any license year without at least two of the four deer being female deer; or

7.1.1.3 Possess or transport ~~any~~ an antlered deer that was unlawfully killed.

7.1.1.4 Possess or transport an antlerless deer that was unlawfully killed.

7.1.1.5 Kill any antlered deer without first purchasing a Delaware Resident Combination Hunter's Choice Deer tag and Quality Buck Deer Tag, ~~or~~ a Delaware Non Resident Antlered Deer Tag, or a Non-Resident Quality Buck Deer Tag except that persons exempt from purchasing a hunting license shall be entitled to take one Hunter's Choice deer at no cost.

7.1.2 For the purposes of this section, a person "driving deer" and not in possession of any weapon or firearm shall not be treated as if they are hunting deer, provided they are assisting lawful hunters.

7.1.3 It shall be unlawful for any person to purchase, sell, expose for sale, transport or possess with the intent to sell, any deer or any part of such deer at any time, except that hides from deer lawfully killed and checked may be sold when tagged with a non-transferable tag issued by the Division. Said tag must remain attached to the hide until it leaves the State or is commercially processed into leather. This subsection shall not apply to venison approved for sale by the United States Department of Agriculture and imported into Delaware.

7.1.4 Notwithstanding subsection 7.1.1 of this section, a person may purchase Antlerless Deer Tags for \$10 each to kill or take additional antlerless deer during the open season. Hunters may take additional antlerless deer on Antlerless Deer Damage Tags at no cost.

7.1.5 Notwithstanding subsection 7.1.1 of this section, a person may use one Quality Buck tag to take an antlered deer with a minimum outside antler spread of fifteen inches, provided the tag is valid for the season in which it is used. Hunters exempt from the requirement to purchase a hunting license must purchase a Quality Buck tag in order to take a second antlered deer in any one license year.

7.2 Tagging and Designated Checking Stations.

7.2.1 Attaching Tags. Each licensed person who hunts and kills a deer shall, immediately after the killing and before removing the deer from the location of the killing, attach an approved tag to the deer and record in ink the date of harvest on the tag. An approved tag shall mean an Antlerless Deer Tag or Doe Tag received with the hunting license, a Delaware Resident Quality Buck Deer Tag, a Delaware Resident Hunter's Choice Deer Tag, a Delaware Non Resident Quality Buck Deer Tag, a Delaware Non Resident Antlered Deer Tag, an Antlerless Deer Damage Tag, or an Antlerless Tag purchased in addition to the hunting license tags. Any unlicensed person not required to secure a license shall make and attach a tag to the deer that contains the person's name, address and reason for not having a valid Delaware hunting license.

7.2.2 Retention of Tag. The tag required by subsection 7.1.1 of this section shall remain attached to the deer until the deer is presented to an official checking station for examination and tagging or registered by phone or over the internet, as prescribed by subsection 7.1.3 of this section.

7.2.3 Checking Stations. Each person who hunts and kills a deer shall, within 24 hours of killing said deer, present the deer to a checking station designated by the Division or to an authorized employee of the Division. Hunters may also check deer by phone or over the internet through systems authorized by the Division.

7.2.4 Dressing. It shall be unlawful for any person to remove from any deer any part thereof, except those internal organs known as the viscera, or cut the meat thereof into parts, until such deer has been examined by an authorized employee of the Division or a checking station, as prescribed by subsection 7.1.3 of this section or registered using the phone or internet system.

7.2.5 Receipt Tag. The Division shall issue, at a checking station or otherwise, an official receipt tag proving the deer was examined by an authorized employee of the Division or a checking station, as prescribed by subsection 7.1.3 of this section. The receipt tag shall remain with the deer until such time as the deer is processed for consumption or prepared for mounting. Deer checked over the phone or internet will be given a registration number. These deer shall be tagged by the hunter, butcher or taxidermist with the registration number, hunter's first and last name, hunter's date of birth, and date of kill. This tag may be homemade or be one provided by the Division and must remain with the head and/or carcass until the mount is picked up from the taxidermist or the meat is processed and stored as food.

7.3 Method of Take.

7.3.1 Shotgun. It shall be unlawful for any person to hunt deer during the shotgun season using a shotgun of a caliber smaller than 20 gauge, or have in his or her possession any shell loaded with shot smaller than what is commonly known as "buckshot."

7.3.2 Bow and Arrow. It shall be unlawful for any person to hunt deer during the longbow season and have in his or her possession any weapon or firearm other than a knife, a bow and sharpened broadhead arrows having minimum arrowhead width of 7/8 of an inch.

7.3.3 Muzzle-loading Pistols. A single shot muzzle-loading pistol of .42 caliber or larger using a minimum powder charge of 40 grains may be used to provide the coupe-de-grace on deer during the primitive firearm season.

7.3.4 Refuge in Water. It shall be unlawful for any person to shoot, kill or wound or attempt to shoot, kill or wound any deer that is taking refuge in or swimming through the waters of any stream, pond, lake or tidal waters.

7.3.5 Dogs. It shall be unlawful for any person to make use of a dog for hunting during the shotgun or muzzleloader seasons for deer (in each county), except as permitted in the hunting of migratory waterfowl from an established blind or for hunting dove, quail, raccoon or rabbit on properties closed to deer hunting with firearms during December and January.

7.4 Illegal Hunting Methods; Baiting.

It shall be unlawful for any person to set, lay or use any trap, snare, net, or pitfall or make use of any artificial light, or other contrivance or device, for the purpose of hunting deer. This subsection does not preclude the use of bait for the purpose of attracting deer in order to hunt them on private land.

7.5 Seasons.

7.5.1 Shotgun Seasons. Deer may be hunted with shotgun in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer: from the Friday in November that precedes Thanksgiving by thirteen (13) days through the second Saturday succeeding said Friday; and from the Saturday that precedes the third Monday in January through the following Saturday in January.

7.5.2 Archery Seasons. Deer may be hunted with longbow in accordance with statutes and regulations of the State of Delaware governing the hunting of deer: from September 1 (September 2, if September 1 is a Sunday) through the last day of January, provided hunter orange is displayed in accordance with § 718 of Title 7 when it also lawful to hunt deer with a firearm.

7.5.3 Muzzleloader Seasons. Deer may be hunted with muzzle-loading rifles in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer: from the Friday that precedes the second Monday in October through the second Saturday that succeeds the Friday opening day; and from the Monday that follows the close of the January shotgun season through the next Saturday.

7.5.4 Special Antlerless Season. Antlerless deer may be hunted with a shotgun in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer during all Fridays, Saturdays and Mondays in October except for during the October Muzzleloader season and the last Monday prior to the opening Friday of the October Muzzleloader season. Notwithstanding the foregoing, antlered deer may be taken with archery equipment that is legal during this October shotgun season. Antlerless deer may be hunted with shotgun in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer: from the second Saturday in December through the third Saturday in December.

7.5.5 Crossbow Seasons. Crossbows may be used in lieu of shotguns during that part of the November shotgun season that runs from Monday through Saturday of each year and in any shotgun or muzzleloader deer season open in December or January.

7.5.6 Special Shotgun Season for Young and Disabled Hunters. Deer may be hunted on the first Saturday of November by disabled (non-ambulatory) hunters using a wheelchair for mobility, and hunters ~~42~~ 10 years of age or older but less than 16 years of age (~~42~~ 10 to 15 inclusive) ~~who have completed an approved course in hunter training.~~ Hunters 13-15 years of age must have completed an approved course in hunter training and possess a Delaware Resident or Non-Resident Junior Hunting License. Young hunters must be accompanied by a licensed non-hunting adult who is 21 years of age or older. Young hunters must be of sufficient size, physical strength and emotional maturity to safely handle a shotgun.

## 7.6 Carcass Importation Ban.

7.6.1 Importation. It shall be unlawful to import or possess any carcass or part of a carcass of any member of the family Cervidae (deer) originating from a state or Canadian province in which Chronic Wasting Disease has been found in free-ranging or captive deer. Notwithstanding the foregoing, the following parts may be imported into the state:

- 7.6.1.1 Boned-out meat that is cut and wrapped;
- 7.6.1.2 Quarters or other portions of meat with no part of the spinal column or skull attached;
- 7.6.1.3 Hides or capes with no skull attached;
- 7.6.1.4 Clean (no meat or tissue attached) skull plates with antlers attached;
- 7.6.1.5 Antlers (with no meat or tissue attached);
- 7.6.1.6 Upper canine teeth (buglers, whistlers, or ivories); and
- 7.6.1.7 Finished taxidermy products.

7.6.2 Carcass Notification. Any person who imports into Delaware any deer carcass or parts described in subsection 7.6.1 of this section and is notified that the animal has tested positive for Chronic Wasting Disease must report the test results to the department within 72 hours of receiving the notification. In order to facilitate the proper disposal of any infected material, the department may take into possession any imported carcass or carcass part of an animal if the animal has tested positive for Chronic Wasting Disease.

**3 DE Reg. 289 (8/1/99)**

**6 DE Reg. 536 (10/1/02)**

**8 DE Reg. 352 (8/1/04)**

**11 DE Reg. 334 (09/01/07)**



**8.0 General Rules and Regulations Governing Land and Waters Administered by the Division (Formerly WR-8)**

(Penalty Section 7 **Del.C.** §103(d))

**8.1 Motorized Vehicles.**

8.1.1 General. It shall be unlawful for any person to drive or operate a motorized vehicle upon any lands administered by the Division, except on established roads or as otherwise authorized by the Director.

8.1.2 Noise. It shall be unlawful for any person to drive or operate a motorized vehicle upon any lands administered by the Division, unless such vehicle is equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise.

8.1.3 Speed Limit. It shall be unlawful for any person to drive or operate a vehicle in excess of twenty (20) miles per hour when on lands administered by the Division, unless otherwise authorized by the Director.

8.1.4 Unlicensed Vehicles. It shall be unlawful for any person to drive or operate any motorized vehicle upon any lands administered by the Division, unless said vehicle is licensed for use upon public highways and roadways or the driver or operator of said vehicle has been issued a permit from the Division.

**8.1.5 Parking.**

8.1.5.1 It shall be unlawful for any person to park any vehicle on lands administered by the Division in such a manner as to obstruct the use of a boat ramp, roadway or trail. Any vehicle parked in such manner shall be subject to removal, and the owner of said vehicle shall bear all costs involved with such removal.

8.1.5.2 Unless otherwise authorized by the Director, it shall be unlawful for any person to park and leave unattended any vehicle or trailer in any Division parking lot, unless said lot is lawfully being used for direct access to lands or waters administered by the Division.

8.1.5.3 Unless otherwise authorized by the Director, it shall be unlawful for any person to leave any vehicle on lands administered by the Division for a period exceeding 24 hours.

**8.2 Conditions of Use.**

8.2.1 Trespass. It shall be unlawful for any person to enter upon lands or waters administered by the Division when those lands or waters have been closed by the Division to: protect public safety; protect Department property; or manage wildlife. Persons shall adhere to special entry restrictions as listed on official area maps signed by the Division Director.

8.2.2 Hours of Entry. It shall be unlawful for any person to be present upon lands or waters administered by the Division between sunset and sunrise, unless such person is lawfully hunting or fishing or has been authorized by written permission of the Director.

8.2.3 Camping. It shall be unlawful for any person to camp on lands administered by the Division, except conservation oriented groups may, with written permission of the Director, camp in areas specified in such permit.

8.2.4 Swimming. It shall be unlawful for any person to swim in waters administered by the Division, except by written permission of the Director.

**8.2.5 Dumping.**

8.2.5.1 It shall be unlawful for any person to place, dump, deposit, throw or leave any garbage, refuse or similar debris within or upon any lands or waters administered by the Division, except in receptacles provided for such purpose;

8.2.5.2 It shall be unlawful for any person to bring any trash, refuse or similar material onto lands administered by the Division for the purpose of disposing such in Division receptacles.

8.2.5.3 Unless otherwise authorized by the Director, it shall be unlawful for any person to deposit any material, structure, debris or other objects on lands or waters administered by the Division.

**8.2.6 Destruction of State Property.**

8.2.6.1 It shall be unlawful for any person to deface, damage, remove or alter any structures, buildings, natural-land features, or other property or equipment belonging to the Division.

8.2.6.2 Unless authorized by the Division for management, research or educational purposes, it shall be unlawful for any person to cut, injure or remove trees, shrubs, wildflowers, ferns, mosses or other plants from lands administered by the Division.

8.2.6.3 It shall be unlawful for any person to erect or use any portable or permanent deer stand that involves the use of nails or screws placed in a tree.

8.2.6.4 Unless otherwise authorized by the Director, it shall be unlawful for any person to kindle, build, maintain or use a fire on lands administered by the Division.

8.3 Hunting and Firearms.

8.3.1 Hunting.

8.3.1.1 It shall be unlawful for any person to hunt on lands administered by the Division, except as permitted by the Director in writing and specified on current wildlife area maps distributed by the Division.

8.3.1.2 A daily permit must be obtained before hunting waterfowl at Augustine, Cedar Swamp, Little Creek, Woodland Beach, Ted Harvey, Prime Hook and Assawoman wildlife areas. Permits may be obtained on-site from an authorized agent of the Division and must be returned upon leaving the area. The Director may specify the hours of a permit's effectiveness and determine the conditions of its issuance.

8.3.2 Waterfowl.

8.3.2.1 It shall be unlawful for any person to hunt waterfowl on areas administered by the Division, except from State built blinds, or other blinds authorized by the Division, or by written permission of the Director.

8.3.2.2 It shall be unlawful for any person to enter tidal and/or impounded areas administered by the Division during the waterfowl season, except for access as authorized by paragraph (1) of this subsection.

8.3.3 Trapping. It shall be unlawful for any person to trap or attempt to trap on areas administered by the Division, except for: persons holding a valid contract with the Division to do so; authorized agents of the Division who are conducting authorized wildlife management practices; or scientific purposes as specifically authorized in writing by the Director.

8.3.4 Firearms on Division Areas.

8.3.4.1 It shall be unlawful for any person to possess a firearm on lands or waters administered by the Division from March 1 through August 31, except as authorized by the Director in writing.

8.3.4.2 It shall be unlawful for any person to possess a rifled firearm of any description at any time on those lands bordering the Chesapeake and Delaware Canal and licensed to the Department by the Government of the United States for wildlife management purposes, except that muzzleloaders and shotguns with rifle barrels may be used during deer seasons when it is lawful to use those firearms.

8.3.4.3 It shall be unlawful for any person to discharge any firearm on lands or waters administered by the Division on Sunday, except in areas designated by the Director or with a permit from the Director.

8.3.4.4 It shall be unlawful for any person to discharge any firearm on lands or waters administered by the Division for any purpose, including target shooting, other than to hunt during an open season, under conditions approved by the Director and specified on the current wildlife area map.

8.3.5 Dikes. It shall be unlawful for any person to be in possession of any firearm on any dike administered by the Division, unless such person is temporarily crossing a dike at a ninety degree angle or traversing a dike to reach a Division authorized deer stand location during a deer firearms hunting season.

8.3.6 Deer Hunting By Driving. It shall be unlawful for residents to participate in deer drives, except where authorized on current wildlife area maps between the hours of 9:00 a.m. and 3:00 p.m. No more than six (6) resident hunters may participate in driving deer at any one time. Nonresidents may not participate in deer drives at any time. Nonresidents are restricted to hunting deer from stationary locations. Nonresidents may not possess a loaded firearm during the deer season, except to hunt from a stationary location or to retrieve a deer that they wound.

8.4 Horses and Bicycles. It shall be unlawful to ride horses or bicycles on, or allow horses to use, any lands or waters administered by the Division, except on established roads or trails that have been designated by the Division for such purposes on current wildlife area maps.

8.5 Concessions, Posters and Solicitations.

8.5.1 It shall be unlawful for any person to erect, post or distribute any placard, sign, notice, poster, billboard or handbill on lands or waters administered by the Division without written authorization of the Director.

# PROPOSED REGULATIONS

8.5.2 It shall be unlawful for any person to engage in the vending of merchandise, food or services on lands or waters administered by the Division without written authorization of the Director.

8.5.3 It shall be unlawful for any person to do any form of solicitation for money or goods on any lands or waters administered by the Division without written authorization of the Director.

8.6 Firewood. It shall be unlawful for any person to remove firewood from lands administered by the Division without a permit from the Division, except when special firewood areas are designated by the Director in writing.

8.7 Dog Training.

8.7.1 General. It shall be unlawful for any person to train a dog on lands or waters administered by the Division, except:

8.7.1.1 During open hunting seasons for the game that the dog is being trained to hunt;

8.7.1.2 Within a dog training area established by the Division; and

8.7.1.3 As permitted by the Director in writing on current wildlife area maps.

8.7.2 C&D Canal Summit Area. – It shall be unlawful for any person to enter the dog training area west of the Summit Bridge (Rt. 896), designated on the current wildlife area map of the C&D Canal Wildlife Area, for any purpose other than to train dogs or hunt for deer during the shotgun deer seasons. It shall be unlawful for any person to fish, operate a model or full size boat, ride horses or bicycles, or conduct any other activity on the area.

8.8 Geocaching

8.8.1 It shall be unlawful to place caches or letterboxes on Division of Fish and Wildlife property without a permit from the Division. Permits may be obtained by submitting a completed permit application to the appropriate Fish and Wildlife Regional Office. The proposed caching location will be specified in the application. The Regional Fish and Wildlife Manager will review and approve or deny the permit request. A permit will be valid for a maximum of one year from the date of issue at which time the geocache or letterbox must be removed or re-permitted. The permitted time frame will be determined by the area manager and be based on the local wildlife species present and the management activities planned for the area. The area manager will be provided the location of the cache or letterbox and may remove it at his or her discretion, with notice to the permit holder, should circumstances warrant. Online geocache and letterbox descriptions, such as those on geocaching.com or letterboxing.org must include information about access during hunting seasons and provide a link to Delaware Division of Fish and Wildlife Hunting Information. Geocache and letterbox contents must be suitable for all ages. Food, alcohol, tobacco, weapons or other dangerous items, prescription or illegal drugs and adult items are prohibited. From September 1st. through February 15th. of each year and during the spring turkey hunting season, the placement of or searching for geocaches and letterboxes may only occur on Sundays from sunrise to sunset. During the remainder of the year, geocaching and letterbox activities may occur 7 days per week from sunrise to sunset.

3 DE Reg. 289 (8/1/99)

11 DE Reg. 334 (09/01/07)

*(Break in Continuity of Sections)*

## **20.0 Game Bird Releases**

(Penalty Section 7 Del.C. §103(d))

20.1 Permit for releasing game birds

20.1.1 All persons possessing or releasing 25 or fewer domestically raised quail, chukar partridge, Hungarian partridge and pheasants into the wild must obtain a permit from the Division. This permit is free.

20.2 Banding Released Game Birds.

20.2.1 All domestically raised quail, chukar partridge, Hungarian partridge and pheasants must be leg banded with a Division approved band before being released into the wild. Permitted banders must report the band numbers of birds released, the type of bird released (quail, chukar partridge, Hungarian partridge or pheasant) and the release date and location.

## **21.0 Guide License**

(Penalty Section 7 **Del.C.** §103(d))

### 21.1 Persons required to obtain a Delaware Guide License

21.1.1 All individuals receiving monetary or in-kind compensation for providing personal guide services to hunters are required to have a Delaware Guide License.

### 21.2 Age Requirement

21.2.1 Persons acquiring a guide license, must be 18 years of age or older

### 21.3 Fish and Wildlife Violations

21.3.1 Persons acquiring a guide license must not have been convicted for violations of any wildlife or fisheries statutes or regulations within the last three years prior to applying for a Delaware Guide License.

### 21.4 Reporting

21.4.1 All persons possessing a Delaware Guide License are required to complete and submit an annual report to the Division within seven days after the close of the season to include the following information which must be available daily for inspection by enforcement officers: full name of each hunter, address of each hunter in the party, hunting license number for each hunter, date, number and species of each animal harvested, location of hunts and the name and license number of the guide.

### 21.5 Record Retention

21.5.1 The guide shall retain all hunting field records for a period of three years.

### 21.6 General Hunting License

21.6.1 A resident or non resident hunting license is not required for persons holding a valid Delaware Guide License.

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## **DEPARTMENT OF STATE HUMAN RELATIONS COMMISSION**

Statutory Authority: 6 Delaware Code, Section 4506 (6 **Del.C.** 4506)  
1 **DE Admin. Code** 1501 and 1502

### **PUBLIC NOTICE**

#### **1501 Equal Accommodations Regulations & 1502 Fair Housing Regulations**

The State Human Relations Commission, in accordance with 29 **Del.C.** Chapter 101 and 6 **Del.C.** §4506, proposes amendments to the Equal Accommodations Regulations. The changes are required to clarify hearing procedures and to comply with changes to "The Delaware Equal Accommodations Law" 6 **Del.C.** Chapter 45, and 31 **Del.C.** Chapter 30, and other items.

The Commission also proposes amendments to the Fair Housing Regulations. The changes are required to clarify hearing procedures and to comply with changes to "The Delaware Fair Housing Act" 6 **Del.C.** Chapter 46, and 31 **Del.C.** Chapter 30, and other items.

A public hearing is scheduled for Thursday, September 11, 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.

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. 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~~ ~~Public~~ ~~Accommodation~~ ~~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:

**"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).

**"Staff"** means a person ~~who is~~ persons employed by the Division of Human Relations of the State of Delaware.

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## 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 may file a written complaint with the ~~Commission~~ Division. 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 ~~¶~~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 Party's attorneys.

## 5.0 Case Closing Prior to Hearing (~~Formerly Rule 10~~)

- 5.1 Voluntary Termination and Dismissal

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## PROPOSED REGULATIONS

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- 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 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 that 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 designee (or, if a Panel has not been appointed, to the Chairperson or other designee), for dismissal of the complaint under Rule 5.1.5.
- 5.1.67 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 The Panel Chair or designee (or, if no panel has been appointed, the Commission Chairperson or other designee) shall ~~A Panel will convene to~~ consider the application for dismissal. ~~Unless directed by the Panel based on~~ In the absence of compelling or unusual circumstances, such consideration shall be without an evidentiary hearing or oral argument. The Panel Chair or designee (or, the Commission Chairperson 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 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 and 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 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 and 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) 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



## PROPOSED REGULATIONS

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, or privileged or other protected matter and no exception or waiver applies; subjects a person to undue burden or hardship; or requires disclosure of the opinion of an expert not retained for a hearing 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 may be 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 (3)~~ Commissioners appointed to a Panel shall constitute a quorum for all Commission Panel hearings. In the absence of any duly appointed Panel ~~M~~member, ~~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) 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) days prior to the hearing. Motions filed beyond this time limit may not be considered at the discretion of 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.
- 8.10 ~~Hearings shall be recorded by electronic instrument or court reporter.~~
- 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 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.
- 8.910.1 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.
- 8.910.2 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.
- 8.11 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.
- 8.142 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.
- 8.123 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.

- 8.134 ~~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.~~
- 8.145 Staff shall be required to attend the Hearing in order to assist in the proceedings, or, where appropriate, to be a witness.
- 8.156 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:
- 8.156.1 Formal rules of evidence need not be strictly followed.
- 8.156.2 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.
- 8.156.3 Testimony from any person may be allowed at the discretion of the Panel.
- 8.156.4 Witnesses may be sequestered at the discretion of the Panel Chair upon the request of any Party(ies).
- 8.156.5 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.
- 8.156.6 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.
- 8.156.7 Following the presentation of the evidence, an opportunity shall be given to each Party to make a closing statement.
- 8.156.8 The Panel may recall the Parties for further testimony if necessary to reach a decision.
- 8.169 Deliberations of the Panel typically commence immediately following the hearing, and are not open to the public.
- 8.167 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, and 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 at the 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

## PROPOSED REGULATIONS

incurred after such date through the end of the Hearing. Any objections to the motion shall be presented at the Hearing. 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, and 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
- Discriminatory Housing Practice
- Division
- Dwelling
- Familial Status
- Family
- Handicap or Disability
- 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.

**“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 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) days prior to the hearing. Motions filed beyond this time limit may be considered at the discretion of 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 party ~~to a proceeding of the Panel~~ Staff or Panel member. Such requests shall be submitted no later than twenty (20) 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.

- 11.5.4~~2~~ Any ~~S~~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 ~~O~~office.
- 11.5.2~~3~~ 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.
- 11.6.2.4~~2~~ Formal rules of evidence ~~need~~ will not be strictly followed.
- 11.6.2.2~~3~~ 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.
- 11.6.2.3~~4~~ Witnesses may be sequestered at the discretion of the Commission Panel.
- 11.6.2.4~~5~~ Evidence on behalf of the Complainant should ordinarily be introduced first, to be followed by the Respondent, then allowing rebuttal, if any.
- 11.6.2.5~~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.
- 11.6.2.6~~7~~ Following presentation of the evidence an opportunity shall be given to each party to make a closing statement.
- 11.6.2.7~~8~~ 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 reconsider 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.

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## 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 MOTOR VEHICLES

Statutory Authority: 21 Delaware Code, Sections 302, 2708, 2709, 4362, 4363 and 4364  
(21 Del.C. §§302, 2708, 2709, 4362, 4363 & 4364)  
2 DE Admin. Code 2222

### PUBLIC NOTICE

The Delaware Division of Motor Vehicles gives notice of intent to adopt proposed Division of Motor Vehicles Regulation 2222 relating to school bus driver qualifications and endorsements.

Any person who wishes to make written suggestions, briefs or other written materials concerning this proposed new regulation must submit the same to Scott Vien, CDL Program Manager, Delaware Division of Motor Vehicles, P.O. Box 698, Dover, Delaware 19903, or by fax to (302) 739-2602 by August 31, 2008.

### 2222 School Bus Driver Qualifications and Endorsements (Formerly Regulation No. 35)

#### 1.0 Authority

The authority to promulgate this regulation is 21 Del.C. §302, 21 Del.C. §2708, 21 Del.C. §2709, 21 Del.C. §4362, 21 Del.C. §4363, and 21 Del.C. §4364.

#### 2.0 Purpose

- 2.1 This regulation establishes administrative procedures for the issuance, renewal, removal, and reinstatement of the school bus (S) endorsement on a Delaware commercial driver licenses.
- 2.2 The Division of Motor Vehicles (DMV) uses this regulation to initiate program requirements.

#### 3.0 Applicability

This regulation interprets §2708 and §2709 of Title 21 of the Delaware Code.

#### 4.0 Definitions.

The following words and terms, when used in the regulation, should have the following meaning unless the context clearly states otherwise:

“Air Brake Restriction” means a restriction that prohibits the CDL holder from operating a school bus (or any commercial motor vehicle) which is equipped with air brakes. The CDL will be marked with an “L”.

“Commercial Driver License (CDL)” means a driver license issued in accordance with the requirements of 21 Del.C. Chapter 26 which authorizes the holder to operate a certain class or classes of a commercial motor vehicle. The classes of a CDL are as follows:

CDL CLASS A - Required for the operation of vehicles with a registered, actual or gross vehicle weight rating (GVWR) of 26,001 or more pounds and the vehicle is towing a vehicle with a registered, actual or GVWR of 10,000 or more pounds. The holder of a Class A CDL may, with proper endorsement, operate any Class B or Class C vehicle.

CDL CLASS B - Required for the operation of vehicles with a registered, actual or GVWR of 26,001 or more pounds and not towing a vehicle with a GVWR of 10,000 or more pounds. The holder of a Class B CDL may, with proper endorsement, operate any Class C vehicle.

CDL CLASS C - Required for vehicles with a GVWR less than 26,001 pounds when the vehicle is designed to transport 16 or more passengers, including the driver, or for vehicles required to be placarded for carrying hazardous materials.

“Commercial Motor Vehicle (CMV)” means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- Has a gross combination weight rating (GCWR) of 26,001 pounds or more inclusive of a towed unit(s) with a gross vehicle weight rating (GVWR) of more than 10,000 pounds; or
- Has a gross vehicle weight rating (GVWR) of 26,001 pounds or more; or
- Is designed to transport 16 or more passengers, including the driver; or
- Is of any size and is required to be placarded for the transportation of hazardous materials.

“Green Card” means a card issued by the district/school transportation supervisor that certifies satisfactory completion of an annual Department of Education (DOE) physical certification. The Green Card is to be in the immediate possession of the school bus driver at all times, while operating or in control of a school bus except when in possession of a CDL permit and undergoing training or evaluation and accompanied by a Certified Delaware School Bus Driver Trainer.

““P” Endorsement” means an endorsement that authorizes a driver to transport passengers in all classes of commercial motor vehicles.

““Q” Endorsement” means an endorsement that authorizes a driver to transport passengers in only Class B and Class C commercial motor vehicles.

““R” Endorsement” means an endorsement that authorizes a driver to transport passengers in only Class C commercial motor vehicles.

““S” Endorsement” means an endorsement that indicates the CDL holder meets the requirements of 21 Del.C. §2708 and this regulation and is authorized to operate a school bus. The CDL must also display a passenger (P, Q or R) endorsement to specify the class of commercial vehicle the driver may operate when transporting passengers.

“School Bus” means every motor vehicle which has the words “School Bus” displayed on the front and rear of the vehicle as specified in 21 Del.C. §4362(a) and which is painted the uniform color “national school bus chrome yellow” as specified in 21 Del.C. §4363(a), which is equipped with flashing lamps as specified in 21 Del.C. §4364(a), which meets the minimum size requirements as specified in 21 Del.C. §4363(b), and which meets other regulations as required by the Department of Transportation (DOT) and the Department of Education.

“Yellow Card” means a card issued by the district/school transportation supervisor that certifies satisfactory completion of DOE requirements for an S endorsement as specified in 21 Del.C. §2708 (b)(3). The applicant will surrender the Yellow Card to DMV when the applicant’s CDL and/or school bus endorsement is issued. The DMV will forward the Yellow Cards to DOE.

## **5.0 Substantive of Policy**

### **5.1 Procedures.**

#### **5.1.1 Basic Requirements:**

**5.1.1.1** Basic. School bus drivers are required to have been issued and have in their possession, while driving a school bus, a CDL with an S endorsement, a passenger endorsement (P, Q or R), and a valid physical examination certification (Green Card).

**5.1.1.2** Exceptions. These exceptions are only for drivers undergoing school bus training and evaluation.

**5.1.1.2.1** Basic Training. For training and evaluation a driver may drive a school bus with a CDL permit or a valid CDL with the proper passenger endorsements (P, Q or R), but only when accompanied by a DOE Certified Delaware School Bus Driver Trainer (CDSBDT) or a DMV Examiner. In addition, for vehicle maneuvering skills training, a driver may drive a school bus with a CDL permit or a valid CDL with the proper passenger endorsements (P, Q or R) when accompanied by a driver with a valid CDL with an S endorsement and other proper endorsements.

**5.1.1.2.2** 45-Day Temporary S Endorsement for Classroom Training Unavailability. If a driver has completed all DMV CDL requirements, including the DMV road test, and the DOE 6 hours of on-bus training, DMV may, upon specific written DOE request, issue a CDL

## PROPOSED REGULATIONS

license along with a one-time only temporary S endorsement for a period not to exceed 45 days. This temporary S endorsement allows the driver to carry students without a CDSBDT, if all other S endorsement requirements have been met. This temporary S endorsement is intended for the driver who, due to exceptional circumstances, has been unable to complete the DOE classroom training. This temporary S endorsement will only be issued one time and cannot be extended.

- 5.1.1.2.3 Temporary S Endorsement Conversion. DMV will convert the temporary S-endorsed CDL to an S-endorsed CDL upon receipt of certification (Yellow Card) issued to the applicant by the district/school transportation supervisor (5.1.2.10 of this regulation) indicating that the required training has been completed. DMV will forward the Yellow Cards to DOE.
- 5.1.2 Initial Issuance Requirements: All of the following requirements shall be met by all new and out-of-state transfer applicants for a school bus (S) endorsement. Drivers must:
- 5.1.2.1 Be 18 years of age or older with at least one (1) year of valid driving experience.
- 5.1.2.2 Have a valid Delaware CDL with a passenger (P, Q or R) endorsement.
- 5.1.2.3 Complete a driver training course with specific course content as determined by 49 C.F.R. 383.123(a)(2) and DOE requirements as specified in 21 Del.C. §2708(b)(3).
- 5.1.2.4 Pass the school bus knowledge test administered by DMV containing specific content as required by 49 C.F.R. 383.123(a)(2).
- 5.1.2.5 Pass a road test in a school bus administered by DMV as required by 49 C.F.R.383.123 (a)(3).
- 5.1.2.6 Not have more than five (5) points (full point value) on the applicant's three (3) year driving record. NOTE: Recalculated points and the Defensive Driving Course three (3) point credits do not apply to S endorsement holders in meeting this requirement.
- 5.1.2.7 Not have had the applicant's license suspended, revoked or disqualified in this State or any other jurisdiction for moving violations in the last five (5) years. This five (5) year period will begin from the date the suspension, revocation or disqualification has been cleared. Certified driving records from other jurisdictions may be requested from these applicants for DMV to verify compliance with this section.
- 5.1.2.8 Never been convicted of any crime under the laws of this State or any other jurisdiction as specified in 21 Del.C. §2708(b)(7).
- 5.1.2.8.1 Prior to being issued a S endorsement applicants must complete a Federal Bureau of Investigation and a State Bureau of Investigation criminal history background check to verify that he/she is clear of any disqualifying crime as specified in 21 Del.C. §2708(b)(7) and to ensure applicants are qualified in accordance with 5.1.2.8 above.
- 5.1.2.8.2 Questionable criminal history background check reports will be reviewed by the Department of Transportation's (DOT) Deputy Attorney General. The DOT Deputy Attorney General will forward the questionable criminal history background check reports, with issuance recommendation, to DMV.
- 5.1.2.9 Have a valid physical examination certification (Green Card).
- 5.1.2.10 The applicant will be issued a School Bus Driver's Certificate (Yellow Card) by a district/school transportation supervisor as certification of DOE requirements being completed as specified in 21 Del.C. §2708(b)(3). The applicant will surrender the Yellow Card to DMV when the applicant's CDL and/or school bus (S) endorsement is issued. DMV will forward the Yellow Cards to DOE.
- 5.1.2.11 Drivers transferring into Delaware with other jurisdiction school bus endorsed licenses will be required to meet all Delaware Initial Issuance Requirements (5.1.2 this regulation).
- 5.1.2.11.1 Transferring S endorsement holders shall provide a five year motor vehicle driving record from his/her previous jurisdiction or jurisdictions to DMV. DMV will electronically check transferring S endorsement holders' motor vehicle records. If the electronic check is unable to be performed, transferring S endorsement holders will

need to provide an official certified copy of their motor vehicle driving records to DMV. DMV will ensure these driving records meet the requirements in 5.1.2.6 and 5.1.2.7.

5.1.2.11.2 In accordance with 5.1.2.10, applicants will be issued a School Bus Driver's Certificate (Yellow Card) by district/school transportation supervisors.

5.1.2.11.3 All transferring S endorsement holders will be required to pass a DMV-administered road test in a school bus per 5.1.2.5, regardless of past experience, training or qualifications.

5.1.2.11.4 All transferring S endorsement holders will be required to pass a school bus knowledge test administered by DMV per 5.1.2.4, regardless of past experience, training or qualifications.

### 5.1.3 Removal of School Bus Endorsements:

5.1.3.1 All school bus (S) endorsement removals, except those under 5.1.3.8 below, will be approved by the Chief of Driver Services, the CDL Program Manager or the CDL Management Analyst.

5.1.3.2 The school bus (S) endorsement will be removed when driving privileges are withdrawn.

5.1.3.3 The school bus (S) endorsement will be removed when a driver's record exceeds eight (8) points (full point value) for moving violations on the driver's three (3) year driving record. NOTE: Recalculated points and the Defensive Driving Course three (3) point credits do not apply to S endorsement holders in meeting this requirement.

5.1.3.4 The school bus (S) endorsement will be removed when the DMV is made aware of a conviction of a disqualifying crime as specified in 21 **Del.C.** §2708(b)(7).

5.1.3.5 The school bus (S) endorsement will be removed when the DMV receives in writing, a report from a physician that a driver is not medically qualified to operate a motor vehicle and/or commercial motor vehicle as specified in 21 **Del.C.** §2733(a)(3).

5.1.3.6 The school bus (S) endorsement will be removed if a driver downgrades from a CDL to a Class D license.

5.1.3.7 Any driver that has a school bus (S) endorsement and is required to register as a sex offender with DMV pursuant to 11 **Del.C.** §4120 and § 4121, shall have the school bus (S) endorsement removed.

5.1.3.8 DMV will notify the S endorsement holder and DOE, in writing, when an S endorsement is removed from a license including the reason for removal. This notification will entitle the S endorsement holder to request a DMV hearing and will also require the S endorsement holder to notify his/her employer.

5.1.4 School Bus Endorsement Reinstatement: A school bus (S) endorsement, once removed, may be reinstated if all other licensing requirements are met. If the school bus (S) endorsement is withdrawn for one year or more, then the driver will need to retake all DMV school bus (S) endorsement testing requirements, pay appropriate fees, and provide DMV with a new School Bus Driver's Certificate (Yellow Card).

5.1.4.1 If the school bus (S) endorsement was removed for points, the driver shall be eligible for reinstatement once the full point total on his/her three (3) year driving record falls to eight (8) points or below. NOTE: Recalculated points and the Defensive Driving Course three (3) point credits do not apply to school bus drivers in meeting this eligibility.

5.1.4.2 If the school bus (S) endorsement was removed due to a suspension, revocation or disqualification for moving violations, the driver shall be eligible to reapply for the school bus (S) endorsement five (5) years from the date the suspension, revocation or disqualification has been cleared, as long as there are no further violations incurred affecting eligibility during this time period.

5.1.4.3 If the school bus (S) endorsement was removed due to a medical reason, the driver may be eligible for reinstatement once approved by the DMV.

5.1.4.4 If the driver voluntarily downgrades from an S endorsed CDL to a Class D license and then the driver wishes to reinstate the S endorsed CDL, the driver will be required to meet the



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## PROPOSED REGULATIONS

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initial issue requirements in accordance with 5.1.2 of this regulation, if the downgrade has been over one (1) year, including providing a new School Bus Driver's Certificate (Yellow Card).

5.1.4.5 Any driver that has been convicted of a disqualifying crime as outlined in 21 Del.C. §2708(b)(7)(a-f) will never be eligible for a school bus (S) endorsement or reinstatement regardless of the amount of time since the conviction.

5.1.4.6 After five (5) years has passed since the completion of all sentencing requirements resulting from the conviction of any other felony crime, other than those listed in 21 Del.C. §2708(b)(7)(a) through (f), and which have not been pardoned, then 21 Del.C. §2708(b)(7)(g) applies, and the driver must reapply as a new applicant for a school bus (S) endorsement. DMV may seek DOT Deputy Attorney General guidance/clarification in these situations.

5.2 Driver's Status, Records and Record's Review: The following shall apply concerning the driving records and the status of all Delaware-licensed school bus drivers.

5.2.1 Upon a request from DOE, a school district or a school bus contractor, DMV shall provide a copy of a school bus driver's Delaware driving record free of charge. These agencies shall certify on DMV forms that they understand and will comply with the Delaware Privacy Act provisions as found in 21 Del.C. §305.

5.2.2 DMV shall at any time review the driving records of all Delaware-licensed school bus drivers to ensure they continually meet school bus qualification requirements. This review is accomplished through a computerized search of records for violations, which may result in the removal of a school bus (S) endorsement and notification to the driver and the DOE. Although not a prerequisite to a suspension, revocation or removal of an endorsement or a license, DMV will attempt to send warning letters to S endorsement holder's with copies of such letters being sent to DOE, when a S endorsement holders driving record indicates a situation where additional violations could readily result in the withdrawal of driving authority or school bus (S) endorsement.

5.2.3 Drivers moving to Delaware and requesting a school bus (S) endorsement shall provide to the DMV a copy of their driving records for the previous five (5) years from the driver's former state(s) of record. DMV will electronically check the drivers' motor vehicle records. If the electronic check is unable to be performed, the driver will need to provide an official certified copy of his/her motor vehicle driving record to DMV.

### **6.0 Severability**

If any part of this regulation is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portion shall be severed, and the remaining portions shall remain in full force and effect under Delaware law.

### **7.0 Effective Date**

This regulation shall be effective 10 days from the date the order is signed and it is published in its final form in the Register of Regulations in accordance with 29 Del.C. §10118(e) or October 1, 2008, whichever is later.

## 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.

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## DEPARTMENT OF AGRICULTURE THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 4815(b)(3)(c)(3) (3 **Del.C.** §4815(b)(3)(c)(3))  
3 **DE Admin. Code** 1001

### ORDER

#### 1001 Thoroughbred Racing Rules and Regulations

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 June 24, 2008, the Commission makes the following findings and conclusions:

#### Summary of the Evidence

1. The Commission posted public notice of the proposed rules June 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 13 of the rules and regulations to address Claiming Races by amending existing Rule 13.1.1, and adding Rule 13.20.
2. The Commission received no written comments. The Commission held a public hearing on June 24, 2008 and received no public comments.

#### Findings of Fact and Conclusions

3. 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.

4. The Commission concludes that Rule 13.1.1 and Rule 13.20 should be adopted to reflect current policies, practices, and procedures.

5. The effective date of this Order will be ten (10) days from the publication of this Order in the Register of Regulations on August 1, 2008.

**IT IS SO ORDERED** this 14th day of July 2008.

Bernard J. Daney, Chairman  
W. Duncan Patterson, Secretary/Commissioner  
Henry James Decker, Commissioner  
Edward Stegemeier, Commissioner  
Debbie Killeen, Commissioner

**\*Please note that no changes were made to the regulation as originally proposed and published in the June 2008 issue of the *Register* at page 1533 (11 DE Reg. 1533). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at**

**<http://regulations.delaware.gov/register/august2008/final/12 DE Reg 201 08-01-08.htm>**

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**DEPARTMENT OF EDUCATION**  
**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)  
(14 **Del.C.** §122(b) and §154(e))  
14 **DE Admin. Code** 103

**Regulatory Implementing Order**

**103 Accountability for Schools, Districts and the State**

**I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 103 Accountability for Schools, Districts and the State to provide the processes for non charter schools and charter schools to restructure for purposes of the federal Elementary and Secondary Education Act of 1965 (currently reauthorized the No Child Left Behind Act). A non charter school that wishes to restructure into a charter school must follow the process for a new charter application and a charter school that wishes to restructure shall follow the processes in place and be considered a major modification to the existing charter.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Tuesday, June 3, 2008, in the form hereto attached as Exhibit "A". Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities endorsing the regulation.

**II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 103 Accountability for Schools, Districts and the State in order to establish the process for a non charter school that wants to restructure in a charter school.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 103 Accountability for Schools, Districts and the State. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 103 Accountability for Schools, Districts and the State attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 103 Accountability for Schools, Districts and the State hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text and Citation**

The text of 14 **DE Admin. Code** 103 Accountability for Schools, Districts and the State amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 103 Accountability for Schools, Districts and the State in the Administrative Code of Regulations for the Department of Education.

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on July 17, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 17th day of July 2008.

**DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

Approved this 17th day of July 2008

**STATE BOARD OF EDUCATION**

Jean W. Allen, President

G. Patrick Heffernan

Barbara Rutt

Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President

Jorge L. Melendez

Dennis J. Savage

**\*Please note that no changes were made to the regulation as originally proposed and published in the June 2008 issue of the *Register* at page 1536 (12 DE Reg. 1536). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at**

**<http://regulations.delaware.gov/register/august2008/final/12 DE Reg 202 08-01-08.htm>**

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# FINAL REGULATIONS

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 1270 (14 **Del.C.** §1270)  
14 **DE Admin. Code** 110

### Regulatory Implementing Order

#### 110 Teachers and Specialists Appraisal Process

##### I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to repeal 14 **DE Admin. Code** 110 Teachers and Specialists Appraisal Process. This regulation is replaced by 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) and 107 **DE Admin. Code** Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II). The new Delaware Performance Appraisal System (DPAS II) has been phased in over the past two years and shall be effective for all public school districts and charter schools beginning with the 2008-2009 school year. This regulation is no longer needed.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Tuesday, June 3, 2008, in the form hereto attached as Exhibit "A". The Department did not receive comments on this regulation.

##### II. Findings of Facts

The Secretary finds that it is appropriate to repeal 14 **DE Admin. Code** 110 Teachers and Specialists Appraisal Process because it is being replaced by 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) and 107 **DE Admin. Code** Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).

##### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 **DE Admin. Code** 110 Teachers and Specialists Appraisal Process. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 110 Teachers and Specialists Appraisal Process attached hereto as Exhibit "B" is hereby repealed. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 110 Teachers and Specialists Appraisal Process hereby repealed with the effective date of this order as set forth in Section V. below.

##### IV. Text and Citation

The text of 14 **DE Admin. Code** 110 Teachers and Specialists Appraisal Process repealed hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** Repealed 110 Teachers and Specialists Appraisal Process in the *Administrative Code of Regulations* for the Department of Education.

##### V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on July 17, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

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IT IS SO ORDERED the 17th day of July 2008.

## DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 17th day of July 2008

## STATE BOARD OF EDUCATION

Jean W. Allen, President

G. Patrick Heffernan

Barbara Rutt

Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President

Jorge L. Melendez

Dennis J. Savage

\*Please note that no changes were made to the regulation as originally proposed and published in the June 2008 issue of the *Register* at page 1538 (11 DE Reg. 1538). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/august2008/final/12 DE Reg 204 08-01-08.htm>

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 1270 (14 Del.C. §1270)  
14 DE Admin. Code 112

### Regulatory Implementing Order

#### 112 Addendum to Teachers and Specialists Appraisal Process

##### I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to repeal 14 **DE Admin. Code** 112 Addendum to Teachers and Specialists Appraisal Process. This regulation is replaced by 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) and 107 **DE Admin. Code** Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II). The new Delaware Performance Appraisal System (DPAS II) has been phased in over the past two years and shall be effective for all public school districts and charter schools beginning with the 2008-2009 school year. This regulation is no longer needed.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Tuesday, June 3, 2008, in the form hereto attached as Exhibit "A". The Department did not receive comments on this regulation.

##### II. Findings of Facts

The Secretary finds that it is appropriate to repeal 14 **DE Admin. Code** 112 Addendum to Teachers and Specialists Appraisal Process. Because it is being replaced by 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) and 107 **DE Admin. Code** Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 **DE Admin. Code** 112 Addendum to Teachers and Specialists Appraisal Process. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 112 Addendum to Teachers and Specialists Appraisal Process attached hereto as Exhibit "B" is hereby repealed. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 112 Addendum to Teachers and Specialists Appraisal Process is hereby repealed with the effective date of this order as set forth in Section V. below.

**IV. Text and Citation**

The text of 14 **DE Admin. Code** 112 Addendum to Teachers and Specialists Appraisal Process repealed hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** Repealed 112 Addendum to Teachers and Specialists Appraisal Process in the Administrative Code of Regulations for the Department of Education.

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on July 17, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 17th day of July 2008.

**DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

Approved this 17th day of July 2008

**STATE BOARD OF EDUCATION**

Jean W. Allen, President  
G. Patrick Heffernan  
Barbara Rutt  
Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President  
Jorge L. Melendez  
Dennis J. Savage

\*Please note that no changes were made to the regulation as originally proposed and published in the June 2008 issue of the *Register* at page 1540 (11 DE Reg. 1540). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/august2008/final/12 DE Reg 205 08-01-08.htm>

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 1270 (14 **Del.C.** §1270)  
14 **DE Admin. Code** 115

### Regulatory Implementing Order

#### 115 School Level Administrator Appraisal Process

##### I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to repeal 14 **DE Admin. Code** 115 School Level Administrator Appraisal Process. This regulation is replaced by 14 **DE Admin Code** 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II). The new Delaware Performance Appraisal System (DPAS II) has been phased in over the past two years and shall be effective for all public school districts and charter schools beginning with the 2008-2009 school year. This regulation is no longer needed.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Tuesday, June 3, 2008, in the form hereto attached as Exhibit "A". The Department did not receive comments on this regulation.

##### II. Findings of Facts

The Secretary finds that it is appropriate to repeal 14 **DE Admin. Code** 115 School Level Administrator Appraisal Process because it is being replaced by 14 **DE Admin Code** 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II).

##### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 **DE Admin. Code** 115 School Level Administrator Appraisal Process. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 115 School Level Administrator Appraisal Process attached hereto as Exhibit "B" is hereby repealed. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 115 School Level Administrator Appraisal Process is hereby repealed with the effective date of this order as set forth in Section V. below.

##### IV. Text and Citation

The text of 14 **DE Admin. Code** 115 School Level Administrator Appraisal Process repealed hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** Repealed 115 School Level Administrator Appraisal Process in the *Administrative Code of Regulations* for the Department of Education.

##### V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on July 17, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.



**IT IS SO ORDERED** the 17th day of July 2008.

**DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

Approved this 17th day of July 2008

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\*Please note that no changes were made to the regulation as originally proposed and published in the June 2008 issue of the *Register* at page 1542 (11 DE Reg. 1542). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/august2008/final/12 DE Reg 207 08-01-08.htm>

**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 258

**Regulatory Implementing Order**

**258 Federal Programs General Complaint Procedures\***

**I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to amend 14 DE Admin. Code 258 Federal Programs General Complaint Procedures. The amended regulation reflects the addition of a limitation on the time by which a complaint may be filed and provides a numbering change in cross referencing other parts of Administrative Code. The amended regulation also explicated identifies a charter schools as a Local Education Agency for purposes of this regulation.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on June 3, 2008, in the form hereto attached as Exhibit "A". Comments were received from Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities endorsing the regulation with a few observations. The Department made a clerical revision based on the comments. The Department respectfully declines to make the addition of language related to the Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. This is because under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, primary responsibility is at the program or service delivery level. Accordingly, local school districts are primarily responsible for the appropriate implementation of both statutes. Further, the Office of Civil Rights is the enforcement agency for Section 504 claims.

## **II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 258 Federal Programs General Complaint Procedures in order to clarify charter schools are considered Local Education Agency for purposes of this regulation and to provide for a time limitation for the filing of a complaint.

## **III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 258 Federal Programs General Complaint Procedures. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 258 Federal Programs General Complaint Procedures attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 258 Federal Programs General Complaint Procedures hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## **IV. Text and Citation**

The text of 14 **DE Admin. Code** 258 Federal Programs General Complaint Procedures amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 258 Federal Programs General Complaint Procedures in the Administrative Code of Regulations for the Department of Education.

## **V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on July 14, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

**IT IS SO ORDERED** the 14th day of July 2008.

### **DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

Approved this 14th day of July 2008

### **258 Federal Programs General Complaint Procedures\***

#### **1.0 Programs Covered by the Complaint Process**

This complaint process shall apply to the following programs: Title I Part A Improving Basic Programs Operated by Local Education Agencies; Title I Part B-1 Reading First; Title I Part B-2 Early Reading First; Title I Part B-3 William F. Goodling Even Start Family Literacy Program; Title I Part C Education of Migratory Children; Title I Part D Prevention and Intervention Programs for Children and Youth Who are Neglected, Delinquent, or at Risk; Title I Part F Comprehensive School Reform; Title I Part G Advanced Placement; Title II Part A Teacher and Principal Training and Recruiting Fund, Grants to States; Title II Part A-5-2151(B) School Leadership; Title II Part D 1 and 2 Enhancing Education Through Technology; Title III Language Instruction for Limited English Proficient and Immigrant Students; Title IV Part A Safe and Drug Free Schools and Communities; Title IV Part B 21st Century Community Learning Centers; Title V Part A Innovative Programs and Title V Part B-1 Public Charter Schools.

**2 DE Reg. 217 (8/1/98)**

**7 DE Reg. 161 (8/1/03)**

**2.0 Right to File a Complaint**

An organization or an individual may file a complaint regarding an alleged violation of Federal Program Statutes or regulations by the Delaware Department of Education or the Local Education Agency. For purposes of this regulation, a Local Education Agency shall also include charter schools. A written and signed complaint shall be filed with the Delaware Department of Education.

- 2.1 The complaint shall include a statement specifying the alleged violation by the State Education Agency or a Local Education Agency. Such statement shall include facts and documentation of the alleged violation.
- 2.2 The Delaware Department of Education shall investigate the complaint and issue a written report including findings of fact and a decision to the parties included in the complaint within sixty (60) working days of the receipt of the complaint. An extension of the time limit may be made by the Delaware Department of Education only if exceptional circumstances exist with respect to a particular complaint.
- 2.3 The Delaware Department of Education may conduct an independent onsite investigation of the complaint, if it is determined that an on site investigation is necessary.
- 2.4 The complaint shall allege a violation that occurred not more than one (1) year prior to the date that the complaint is received.

**2 DE Reg. 217 (8/1/98)**

**7 DE Reg. 161 (8/1/03)**

**3.0 Complaint Made to the Local Education Agency**

An organization or an individual is encouraged to file a written, signed complaint with the Local Education Agency, prior to submission of the complaint to the Delaware Department of Education, concerning an alleged violation by the Local Education Agency of a Federal statute or regulation that applies to the Local Education Agency's program.

- 3.1 The complaint shall include a statement specifying the alleged violation by the Local Education Agency. Such statement shall include facts and documentation of the alleged violation.
- 3.2 The superintendent or the agency head of the Local Education Agency shall investigate the complaint and issue a written report including findings of fact and a decision to the parties involved in the complaint within sixty (60) working days of the receipt of the complaint.
- 3.3 An appeal of the Local Education Agency decision may be made by the complainant to the Delaware Department of Education. The appeal shall be in writing and signed by the individual or by an individual representative of the organization making the appeal. The Delaware Department of Education shall resolve ~~address~~ the appeal in the same manner as a complaint, as indicated in 2.0.

**2 DE Reg. 217 (8/1/98)**

**7 DE Reg. 161 (8/1/03)**

**4.0 Review of Final Decision by the U.S. Department of Education**

Any party to the complaint has the right to request that the Secretary, U. S. Department of Education, review the final decision of the Delaware Department of Education. The request for an appeal of the decision to the Secretary, U. S. Department of Education, shall be made in writing to the Delaware Department of Education within sixty days of the receipt of the decision.

**2 DE Reg. 217 (8/1/98)**

**5.0 Complaints and appeals to the Delaware Department of Education shall be mailed to the following address:**

Secretary of Education  
Delaware Department of Education  
401 Federal Street  
Suite 2

Dover, Delaware 19901-3639

\*IDEA Part B, as amended, has other specific remedies and procedural safeguards specified under Section 615 of the Act to protect ~~disabled~~ students with disabilities. See 14 **DE Admin. Code** 925, ~~Children with Disabilities~~ 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies.

**2 DE Reg. 217 (8/1/98)**

**7 DE Reg. 161 (8/1/03)**

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)  
(14 **Del.C.** §122(b) and §154(e))  
14 **DE Admin. Code** 275

### Regulatory Implementing Order

#### 275 Charter Schools

##### I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 275 Charter Schools to require a charter school that plans to restructure pursuant to the federal Elementary and Secondary Education Act of 1965 (currently reauthorized as the No Child Left Behind Act) to submit such plan as a major modification, to clarify definitions, and to provide guidance on what can be considered part of the record as it relates to decisions made by the Secretary and State Board for charter applications, renewals, major modifications, and formal review of a charter.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Tuesday, June 3, 2008, in the form hereto attached as Exhibit "A". Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities endorsing the regulation subject to correction of one technical error in §4.2.1.1 (changing the word success to successor) and one observation that the Council would like clarification on the time a new charter school opens based on the application. The original proposed language reflects the need to acknowledge schools some schools may start the school year prior to September 1st. The Department appreciates the Council's comment but is not inclined to make a language change at this time.

##### II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 275 Charter Schools in order to add a requirement for plans to restructure be submitted as a major modification to clarify definitions, and provide guidance on what can be considered part of the record as it related to decisions made by the Secretary and State Board.

##### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 275 Charter Schools. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 275 Charter Schools attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 275 Charter Schools hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. Text and Citation

The text of 14 **DE Admin. Code** 275 Charter Schools amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 275 Charter Schools in the *Administrative Code of Regulations* for the Department of Education.

#### V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on July 17, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 17th day of July 2008.

#### DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 17th day of July 2008

#### STATE BOARD OF EDUCATION

Jean W. Allen, President

G. Patrick Heffernan

Barbara Rutt

Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President

Jorge L. Melendez

Dennis J. Savage

#### 275 Charter Schools

#### *(Break in Continuity of Sections)*

#### 4.0 Standards and Criteria for Granting Charter

##### 4.1 Applicant Qualifications

4.1.1 The Applicant must demonstrate that its board of directors has and will maintain collective experience, or contractual access to such experience, in the following areas:

4.1.1.1 Research based curriculum and instructional strategies, to particularly include the curriculum and instructional strategies of the proposed educational program.

4.1.1.2 Business management, including but not limited to accounting and finance.

4.1.1.3 Personnel management.

4.1.1.4 Diversity issues, including but not limited to outreach, student recruitment, and instruction.

4.1.1.5 At risk populations and children with disabilities, including but not limited to students eligible for special education and related services.

4.1.1.6 School operations, including but not limited to facilities management.

4.1.2 The application must identify the certified teachers, the parents and the community members who have been involved in the preparation of the application and the development of the proposed Charter School.

4.1.3 The Applicant's bylaws must be submitted with the application and must demonstrate that:

4.1.3.1 The Charter Holder's board of directors will include a certificated teacher employed as a teacher at the Charter School and a Parent of a currently enrolled student of the school no later than the school's First Instructional Day, further provided a single individual shall not represent both the certified teacher and parent role on the board;

- 4.1.3.2 The Applicant's business is restricted to the opening and operation of: Charter Schools, before school programs, after school programs and educationally related programs offered outside the traditional school year.
- 4.1.3.3 The board of directors will meet regularly and comply with the Freedom of Information Act, 29 **Del.C.** Ch. 100 in conducting the Charter School's business.
- 4.2 Student Performance
- 4.2.1 Minimum Requirements
- 4.2.1.1 The Applicant must agree and certify that it will comply with the requirements of the State Public Education Assessment and Accountability System pursuant to 14 **Del.C.** §§151, 152, 153, 154, and 157 and Department rules and regulations implementing Accountability, to specifically include the Delaware Student Testing Program or any ~~success~~ successor statewide assessment program.
- 4.2.1.2 The Applicant must demonstrate that it has established and will apply measurable student performance goals on the assessments administered pursuant to the Delaware Student Testing Program (DSTP), and a timetable for accomplishment of those goals.
- 4.2.1.3 The Applicant must agree and certify that the Charter School's average student performance on the DSTP assessments in each content area will meet or exceed the statewide average student performance of students in the same grades for each year of test administration, unless the student population meets the criteria established in Section 4.2.2.
- 4.2.2 Special Student Populations
- 4.2.2.1 An Applicant for a charter proposing enrollment preferences for students at risk of academic failure shall comply with the minimum performance goals established in Subsections 4.2.1.2 and 4.2.1.3. This requirement shall be waived where the Applicant demonstrates to the satisfaction of the Department and State Board that the Charter School will primarily serve at risk students and will apply performance goals and timetables which are appropriate for such a student population.
- 4.2.2.2 An Applicant for a charter proposing an enrollment preference other than a preference for students at risk of academic failure shall comply with the Section. 4.2.1. In addition, the Department, with the approval of the State Board, may require such an Applicant to establish and apply additional and higher student performance goals consistent with the needs and abilities of the student population likely to be served as a result of the proposed enrollment preferences.
- 4.2.3 If the Applicant plans to adopt or use performance standards or assessments in addition to the standards set by the Department or the assessments administered pursuant to the DSTP, the application must specifically identify those additional standards or assessments and include a planned baseline acceptable level of performance, measurable goals for improving performance and a timetable for accomplishing improvement goals for each additional indicator or assessment. The use of additional performance standards or assessments shall not replace, diminish or otherwise supplant the Charter School's obligation to meet the performance standards set by the Department or to use the assessments administered pursuant to the DSTP.
- 4.3 Educational Program
- 4.3.1 The application must demonstrate that the school's proposed program, curriculum and instructional strategies are aligned to State content standards, meet all grade appropriate State program requirements, and in the case of any proposed Charter High School, includes driver education. The educational program shall include the provision of extra instructional time for at risk students, summer school and other services required to be provided by school districts pursuant to the provisions of 14 **Del.C.** §153. Nothing in this subsection shall prevent an Applicant from proposing high school graduation requirements in addition to the state graduation requirements.
- 4.3.2 The application must demonstrate that the Charter School's educational program has the potential to improve student performance. The program's potential may be evidenced by:

- 4.3.2.1 Academically independent, peer reviewed studies of the program conducted by persons or entities without a financial interest in the educational program or in the proposed Charter School;
- 4.3.2.2 Prior successful implementation of the program; and
- 4.3.2.3 The Charter School's adherence to professionally accepted models of student development.
- 4.3.3 The application must demonstrate that the Charter School's educational program and procedures will comply with applicable state and federal laws regarding children with disabilities, unlawful discrimination and at risk populations, including but not limited to the following showings.
  - 4.3.3.1 The school's plan for providing a free appropriate public education to students with disabilities in accordance with the Individuals with Disabilities Education Act, with 14 **Del.C.** Ch. 31 and with 14 **DE Admin. Code** 925, specifically including a plan for having a continuum of educational placements available for children with disabilities.
  - 4.3.3.2 The school's plan for complying with Section 504 of the Rehabilitation Act of 1973 and with the Americans with Disabilities Act of 1990.
  - 4.3.3.3 The school's plan for complying with Titles VI and VII of the Civil Rights Act of 1964.
  - 4.3.3.4 The school's plan for complying with Title IX of the Education Amendments of 1972.
- 4.4 Economic Viability.
  - 4.4.1 The application must demonstrate that the school is economically viable and shall include satisfactory documentation of the sources and amounts of all proposed revenues and expenditures during the school's first three years of school operation after opening for instructional purposes. There must be a budgetary reserve for contingencies of not less than 2.0% of the total annual amount of proposed revenues. In addition, the application shall document the sources and amounts of all proposed revenues and expenditures during the start up period prior to the opening of the school.
  - 4.4.2 The Department may require that the Applicant submit data demonstrating sufficient demand for Charter School enrollment if another Charter School is in the same geographic area as the Applicant's proposed school. Such data may include, but is not limited to, enrollment waiting lists maintained by other Charter Schools in the same geographic area and demonstrated parent interest in the Applicant's proposed school.
  - 4.4.3 The application shall identify with specificity the proposed source(s) of any loan(s) to the Applicant including, without limitation, loans necessary to implement the provisions of any major contract as set forth below, and the date by which firm commitments for such loan(s) will be obtained.
  - 4.4.4 The application shall contain a timetable with specific dates by which the school will have in place the major contracts necessary for the school to open on schedule. "Major contracts" shall include, without limitation, the school's contracts for equipment, services (including bus and food services, and related services for special education), leases of real and personal property, the purchase of real property, the construction or renovation of improvements to real property, and insurance. Contracts for bus and food services must be in place no later than August 1st of the year in which the school proposes to open and August 1st of each year thereafter. Contracts for the lease or purchase of real property, or the construction or renovation of improvements to real property must be in place sufficiently far in advance so that the Applicant might obtain any necessary certificate of occupancy for the school premises no later than June 15th of the year in which the school proposes to open.
  - 4.4.5 Reserved
- 4.5 Attendance, Discipline, Student Rights and Safety
  - 4.5.1 The application must include a draft "Student Rights and Responsibilities Manual" that meets applicable constitutional standards regarding student rights and conduct, including but not limited to discipline, speech and assembly, procedural due process and applicable Department regulations regarding discipline.

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- 4.5.1.1 The "Student Rights and Responsibilities Manual" must comply with the Gun Free Schools Act of 1994 (20 U.S.C.A. §8921) and Department Regulation 878.
  - 4.5.1.2 The application must include a plan to distribute the "Student Rights and Responsibilities Manual" to each Charter School student at the beginning of each school year. Students who enroll after the beginning of the school year shall be provided with a copy of the "Student Rights and Responsibilities Manual" at the time of enrollment.
  - 4.5.2 The application must include the process and procedures the Charter School will follow to comply with the following laws:
    - 4.5.2.1 14 **Del.C.** Ch. 27 and applicable Department regulations regarding school attendance, including a plan to distribute attendance policies to each Charter School student at the beginning of each school year. Students who enroll after the beginning of the school year shall be provided with a copy of the attendance policy at the time of enrollment.
    - 4.5.2.2 11 **Del.C.** Ch. 85 and applicable Department regulations regarding criminal background checks for public school related employment.
    - 4.5.2.3 14 **Del.C.** §4112 and applicable Department regulations regarding the reporting of school crimes.
    - 4.5.2.4 The Family Educational Rights and Privacy Act (FERPA) and implementing federal and Department regulations regarding disclosure of student records.
    - 4.5.2.5 The provision of free and reduced lunch to eligible students pursuant to any applicable state or federal statute or regulation.
  - 4.5.3 The requirement that the Applicant provide for the health and safety of students, employees and guests will be judged against the needs of the student body or population served. Except as otherwise required in this regulation, the Applicant must either agree and certify that the services of at least one (1) full time nurse will be provided for each facility in which students regularly attend classes, or demonstrate that it has an adequate and comparable plan for providing for the health and safety of its students. Any such plan must include the Charter School's policies and procedures for routine student health screenings, for administering medications to students (including any proposed self administration), for monitoring chronic student medical conditions and for responding to student health emergencies. Any applicant which receives funding equivalent to the funding provided to school districts for one or more school nurses shall provide its students the full time services of a corresponding number of registered nurses.

**6 DE Reg. 274 (9/1/02)**

**7 DE Reg. 928 (1/1/04)**

**9 DE Reg. 1752 (5/1/06)**

**\*Please Note:** As the rest of the sections were not amended since the proposal in the June 2008 issue, they are not being published here. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/august2008/final/12 DE Reg 211 08-01-08.htm>



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# FINAL REGULATIONS

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(6) (14 **Del.C.** §122(b)(6))  
14 **DE Admin. Code** 502

### Regulatory Implementing Order

#### 502 Alignment of Local School District Curricula to the State Content Standards

##### I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 502 Alignment of Local School District Curricula to the State Content Standards to include the process by which school districts shall demonstrate the Career and Technical Education content areas (Agriscience, Business Finance and Marketing Education, Technology Education, Skilled and Technical Sciences, and the Family and Consumer Sciences) are aligned to the state content standards.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on June 3, 2008, in the form hereto attached as Exhibit "A". Comments were received from Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities. The final order reflects the suggested reference change.

##### II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 502 Alignment of Local School District Curricula to the State Content Standards in order to include the Career and Technical Education content areas.

##### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 502 Alignment of Local School District Curricula to the State Content Standards. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 502 Alignment of Local School District Curricula to the State Content Standards attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 502 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

##### IV. Text and Citation

The text of 14 **DE Admin. Code** 502 Alignment of Local School District Curricula to the State Content Standards amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 502 Alignment of Local School District Curricula to the State Content Standards in the *Administrative Code of Regulations* for the Department of Education.

##### V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on July 14, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 14th day of July 2008.

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## DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 14th day of July 2008

### 502 Alignment of Local School District Curricula to the State Content Standards

#### 1.0 Purpose

- 1.1 The purpose of this regulation is to provide a process through which all Delaware school districts demonstrate the alignment of their local curricula with the State Content Standards in the content areas specified in the 14 **DE Admin. Code** 501.

#### 2.0 Definitions

**“Alignment Index”** means a co relational measure of alignment between the Survey of Enacted Curriculum in a specific content area and the state standards used for comparison. The Wisconsin Center for Educational Research automatically calculates and reports the alignment index to schools and districts that use the surveys.

**“Content Map”** means a graphic depiction of local curriculum alignment automatically reported to schools and districts as part of the analysis of teacher survey data by the Wisconsin Center for Educational Research.

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

**“Grade Level Expectations”** means the documents created and officially released by the Delaware Department of Education for English language arts, mathematics, science, and social studies which detail student learning objectives in each content area for kindergarten through grade twelve.

**“Scope and Sequence”** means a curriculum plan, usually in chart form, with a range of instructional objectives and skills organized according to the successive levels at which they are taught.

**“Statewide Recommended Curriculum Frameworks”** means the Delaware Recommended Curriculum documents comprised of Academic Content Standards, Clarifications and Grade Level Expectations posted to the Delaware Department of Education website.

**“Survey of Enacted Curriculum (SEC)”** means the alignment survey sponsored by the Council of Chief State School Officers and the Wisconsin Center for Education Research. The SEC is a teacher survey tool based on scientifically based research which yields detailed information about the alignment of classroom instruction to state academic standards and state assessments. The survey is available for English language arts, mathematics, and science at the present time. A survey for social studies is in development. An analysis of results by grade level, school and district is completed by the Wisconsin Center for Educational Research with formal reports provided to the participating schools and districts.

**“Tile Chart”** means a graphic depiction of local curriculum alignment automatically reported to schools and districts as part of the analysis of teacher survey data by the Wisconsin Center for Educational Research.

**“Unit Summative Assessment”** means a performance measure of skills and knowledge mastered by students at the end of a unit as a result of classroom instruction. Examples of unit assessment measures include but are not limited to teacher constructed unit tests and commercially published measures such as those provided by curriculum publishers.

#### 3.0 Alignment Requirement

- 3.1 All school districts shall provide evidence to the Department that their school district curricula are aligned with the State Content Standards. ~~As of 2006~~ State Content Standards exist in English Language Arts, Mathematics, Social Studies, Science, World Languages, Visual and Performing Arts,

Health, Physical Education, Agriscience, Business Finance and Marketing Education, Technology Education, Skilled and Technical Sciences, and the Family and Consumer Sciences. Content standards as developed by the Department in the future shall also be included under this section.

#### **4.0 Use of the Statewide Recommended Curricula Frameworks**

- 4.1 School districts shall utilize the Statewide Recommended Curricula Frameworks including the State Content Standards, Content Area Clarifications and Grade Level Expectations as guides to the development or revision of their local curricula, syllabi, and Scope and Sequence in the content areas listed in 3.0.

#### **5.0 Documentation of Curriculum Alignment**

- 5.1 Evidence of curriculum alignment to the State Content Standards shall be submitted to the Department no later than twelve (12) months following the official release by the Department of the Statewide Recommended Curriculum Frameworks in each content area.
- 5.2 Documentation of alignment of school district curriculum to the State Content Standards shall be submitted through evidence provided by the school districts on forms as developed and required by the Department.
- 5.3 Evidence of curriculum alignment submitted by school districts shall be subject to Department review during on site monitoring visits.

#### **6.0 Criteria for the Evaluation of the Alignment**

- 6.1 School districts shall be required to submit evidence of local curriculum alignment for English Language Arts, Mathematics, Social Studies, Science, World Languages, Visual and Performing Arts, Health, and Physical Education content areas for each grade cluster K to 2, 3 to 5, 6 to 8 and 9 to 12 from at least two of the permissible categories of evidence in 6.1.1 through 6.1.5. **One** of the two categories shall be the evidence described in 6.1.1. The second required category and any additional submitted evidence shall be selected by the district from categories 6.1.2 through 6.1.5. The school district may choose to vary the choice of the second category of evidence by grade cluster level. School districts shall be required to submit evidence of local curriculum alignment for Career and Technical Education content areas (Agriscience, Business Finance and Marketing Education, Technology Education, Skilled and Technical Sciences, and the Family and Consumer Sciences) from the permissible category of evidence in 6.1.6. Evidence of alignment to each standard in a given content area shall be submitted.
  - 6.1.1 Category 1 is a narrative describing the local curriculum alignment evidence and the extent to which it addresses all student subgroups. For English language arts, mathematics, science and social studies, a required element of this narrative shall be an analysis of school district disaggregated student performance data on state assessments over the most recent three year period of available state assessment data.
  - 6.1.2 Category 2 is the Grade level result (all teachers in at least one grade per grade cluster K to 2, 3 to 5, 6 to 8 and 9 to 12 of the Survey of Enacted Curriculum for the content area under consideration. The SEC results shall demonstrate an Alignment Index of .50 or higher, and include a graphic summary including either a Tile Chart or Content Maps.
  - 6.1.3 Category 3 is three (3) units of study from a specific grade cluster, accompanied by the corresponding summative unit assessment and scoring rubric, and matrix table detailing applicable content standards, grade level expectations and course expectations for all students served in the grade cluster.
  - 6.1.4 Category 4 is an external formal curriculum alignment report detailing a review of local instruction and documentation of standards alignment. The district is required to submit three (3) sample units and three (3) corresponding unit summative assessments, and a narrative detailing how all students served in the grade cluster receive standards aligned instruction. The district is required to submit the curriculum audit contractor's credentials.

- 6.1.5 Category 5 is a formative assessment benchmarking system with grade cluster Scope and Sequence, including three sample units from the grade cluster. The district is required to submit (1) a narrative detailing evidence of alignment of formative student assessment or assessments to the State Content Standards and (2) sample assessment items in the content area.
- 6.1.6 Category 6 is curriculum alignment evidence specific to Career and Technical Education content areas. Evidence for Agriscience, Business Finance and Marketing Education, Technology Education, Skilled and Technical Sciences, and the Family and Consumer Sciences shall be submitted as required through ~~Title 14, Section 525~~ 14 DE Admin. Code 525] for Career and Technical Education.
- 6.2 Required documentation for specific student subpopulations
- 6.2.1 As part of its submitted evidence, the district shall make detailed comments on the extent to which any modification or enhancement of the instructional program for specific subgroups such as students with disabilities, gifted students, English language learners or any other special population of students is aligned to the State Content Standards in the content area where there have been modifications or enhancements.

### **7.0 Participation of Building Level Staff**

- 7.1 All school districts shall describe and document to the Department the method and the level of involvement in the alignment process by their building administrators, teachers and specialists.

### **8.0 Subsequent Review of Alignment**

- 8.1 Each district shall resubmit evidence of alignment with the State Content Standards on forms developed and required by the Department between three and five years from the initial approval and on a recurring cycle of three to five years as determined by the Department. Further provided, the district shall be required to present evidence of curriculum alignment if there are major changes to a content area in the approved curricula. The district shall only be required to submit evidence of curriculum alignment in the affected content area.

**10 DE Reg. 344 (08/01/06)**

**10 DE Reg. 1583 (04/01/07)**

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## **OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 605

### **Regulatory Implementing Order**

#### **605 Student Rights and Responsibilities**

##### **I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to amend 14 **DE Admin. Code** 605 Student Rights and Responsibilities. The amendments clarify that district and charter school student rights and responsibilities policy(s) must be based on the most current version or reauthorization of Delaware Code, Delaware Administrative Code, federal legislation such as, but not limited to, Individuals with Disabilities Education Act (IDEA), Civil Rights Act, Elementary and Secondary Education Act (ESEA), and the Code of Federal Regulations Title IX.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Tuesday, June 3, 2008, in the form hereto attached as Exhibit "A". Comments were received from the State Council for Persons with Disabilities and from the Governor's Advisory Council for Exceptional Citizens. Both Councils

endorsed the changes with recommendations for changes to the federal law references. The final order reflects those recommendations.

## II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 605 Student Rights and Responsibilities in order to clarify the state and federal laws the policy(s) must be based and how the policy(s) are to be distributed to students and families.

## III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 605 Student Rights and Responsibilities. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 605 Student Rights and Responsibilities attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 605 Student Rights and Responsibilities hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. Text and Citation

The text of 14 **DE Admin. Code** 605 Student Rights and Responsibilities amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 605 Student Rights and Responsibilities in the *Administrative Code of Regulations* for the Department of Education.

## V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on July 14, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 14th day of July 2008.

### DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 14th day of July 2008

## 605 Student Rights and Responsibilities

### 1.0 Required Policy

- 1.1 All local school districts and charter schools shall have their own policies on student rights and responsibilities. ~~and shall distribute and explain these policies to every student at the beginning of every school year and whenever a student enrolls or re-enrolls in the school during the school year. These policies shall be based on the Department of Education document Guidelines for the Development of District Policies on Student Rights and Responsibilities, as may be from time to time revised by the Department of Education, and on Department of Education regulations, Possession, Use or Distribution of Drugs and Alcohol, and Compliance with the Gun Free Schools Act. These policies shall be based on the most current version or reauthorization of Delaware Code, Delaware Administrative Code, federal legislation such as, but not limited to, Individuals with Disabilities Education Act (IDEA), Civil Rights Act, Elementary and Secondary Education Act (ESEA), [Section 504 of the Rehabilitation Act, Americans with Disabilities Act (ACD),] and the [Code of Federal Regulations Title IX~~ Patsy T. Mink Equal Opportunity in Education Act (Title IX)].

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## **2.0 Distribution of Student Rights and Responsibilities Policy**

- 2.1 Each local school district and charter school shall distribute and explain these policies to every student at the beginning of each school year.
- 2.2 Each district and charter school shall distribute and explain these policies to each student enrolling or re enrolling during the school year.
- 2.3 Each district and charter school shall post the policies on student rights and responsibilities on its website and notify a parent, guardian or Relative Caregiver of each student in writing where this policy(s) can be accessed. A hard copy shall be provided to a parent, guardian or Relative Caregiver upon request.

## **3.0 Reporting Requirements and Timelines**

- 3.1 Each local school district and charter school shall have an electronic copy of its current student rights and responsibilities policy(s) on file with the Department of Education.
  - 3.2 Each local school district and charter school shall provide an electronic copy of any student rights and responsibilities policy(s) to the Department within ninety (90) days of such revision(s) regardless of whether said revisions were made as a result of changes to Federal, state or local law, regulations, guidance or policies.
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### **OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 615

### **Regulatory Implementing Order**

#### **615 School Attendance**

#### **I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 615 School Attendance. The amended regulation clarifies how the School Attendance policy will be distributed and provided to the Department of Education as well as the Reporting Requirements and Timelines.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Tuesday, June 3, 2008, in the form hereto attached as Exhibit "A". The Department did not receive comments on this regulation.

#### **II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 615 School Attendance to clarify how the School Attendance policy will be distributed and provided to the Department of Education as well as the Reporting Requirements and Timelines.

#### **III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 615 School Attendance attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.**

§122(e), 14 **DE Admin. Code** 615 School Attendance hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. Text and Citation

The text of 14 **DE Admin. Code** 615 School Attendance amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 615 School Attendance in the *Administrative Code of Regulations* for the Department of Education.

#### V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on July 17, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 17th day of July 2008.

#### DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 17th day of July 2008

#### STATE BOARD OF EDUCATION

Jean W. Allen, President

G. Patrick Heffernan

Barbara Rutt

Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President

Jorge L. Melendez

Dennis J. Savage

**\*Please note that no changes were made to the regulation as originally proposed and published in the June 2008 issue of the *Register* at page 1558 (11 DE Reg. 1558). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at**

**[http://regulations.delaware.gov/register/august2008/final/12 DE Reg 221 08-01-08.htm](http://regulations.delaware.gov/register/august2008/final/12%20DE%20Reg%20221%2008-01-08.htm)**

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#### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 881

#### Regulatory Implementing Order

### 881 Releasing Students to Persons Other Than Their Parent, Guardian or Relative Caregiver

#### I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 881 Releasing Students to Persons Other Than Their Parent, Guardian or Relative Caregiver. The amended regulations will require each district to post the

policy on its website and notify a parent, guardian or Relative Caregiver of each student in writing where this policy can be accessed. A hard copy shall be provided to a parent, guardian or Relative Caregiver upon request. The policy would need to reflect the procedures for the release of a student to a person other than the parent, guardian, or Relative Caregiver in an emergency care situation and for a student who has reached the age of majority (18th birthday).

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on June 3, 2008, in the form hereto attached as Exhibit "A". The Department did not receive comments on this regulation change.

## II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 881 Releasing Students to Persons Other Than Their Parent, Guardian or Relative Caregiver in order to require a district to post the policy on its website and to provide for the release of students to persons other than a parent, guardian or Relative Caregiver.

## III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 881 Releasing Students to Persons Other Than Their Parent, Guardian or Relative Caregiver. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 881 Releasing Students to Persons Other Than Their Parent, Guardian or Relative Caregiver attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 881 Releasing Students to Persons Other Than Their Parent, Guardian or Relative Caregiver hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. Text and Citation

The text of 14 **DE Admin. Code** 881 Releasing Students to Persons Other Than Their Parent, Guardian or Relative Caregiver amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 881 Releasing Students to Persons Other Than Their Parent, Guardian or Relative Caregiver in the *Administrative Code of Regulations* for the Department of Education.

## V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on July 14 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 14th day of July 2008.

### DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 14th day of July 2008

**\*Please note that no changes were made to the regulation as originally proposed and published in the June 2008 issue of the *Register* at page 1560 (11 DE Reg. 1560). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at**

**[http://regulations.delaware.gov/register/august2008/final/12 DE Reg 222 08-01-08.htm](http://regulations.delaware.gov/register/august2008/final/12%20DE%20Reg%20222%2008-01-08.htm)**



**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

**ORDER****Long Term Care – Treatment of Income and Resources of Couples**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend existing rules in the Division of Social Services Manual (DSSM) used to determine eligibility related to Long Term Care, specifically, applying couple computation rules. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the June 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by June 30, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations

**SUMMARY OF PROPOSAL**

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend existing rules in the Division of Social Services Manual (DSSM) used to determine eligibility related to Long Term Care, specifically, applying couple computation rules.

**Statutory Authority**

- Social Security Act 1611(e)(3);
- 42 CFR §435.602(a)(4); *Financial Responsibility of Relatives and Other Individuals*; and,
- State Medicaid Manual, *Treatment of Couples in Medical Institutions*.

**Summary of Proposal**

DSSM 20810, ~~*Treatment of Couples in Medical Institutions*~~ *Treatment of Income and Resources of Couples*: First, the rule title has been renamed to reflect the revised content of the rule. Second, the language has been clarified to better describe how income and resources are counted when determining and redetermining long-term care Medicaid eligibility for legally married couples. The changes clarify how the couple income and resource standards should be applied. Current policy does not address how to treat the income and resources of the couple for the first six (6) months of institutionalization.

**SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES**

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DMMA has considered each comment and responds as follows.

As background, the current regulation allows couples cohabiting in a long-term care facility for at least six months to be budgeted as either a couple or two individuals, whichever is more beneficial to the spouses. The proposed regulation makes a few changes. The standards are not intuitive and are difficult to follow.

First, the Summary of Proposal section indicates that the new regulation addresses "how to treat the income and resources of the couple for the first six (6) months of institutionalization." However, the actual standards are not very clear in this context. Council infers that if both are institutionalized OR if one is institutionalized and the second has applied for admission to the same institution, the "couples" income and resource standards apply for six

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months. For example, if both had vehicles, 16 **DE Admin. Code** 20330.1 would exempt only one vehicle from the resources limit since the standard allows couples to exempt one vehicle. After six months, both could claim the exemption for separate vehicles since they could be budgeted as separate individuals.

**Agency Response:** One vehicle is excluded per household. Even after 6 months of institutionalization in the same facility a couple is still considered a household of one. They may be budgeted as an individual however; only one vehicle will be excluded.

Second, the "couples" standards are extended to couples receiving or applying for Home and Community Based Services (HCBS). However, the favorable option of being treated as a couple or separate individuals after six months do not apply. That option literally applies only to persons in "the same nursing facility".

**Agency Response:** Correct. A couple receiving HCBS does not have the option of being budgeted as an individual after 6 months.

Our recommendations are as follows:

First, the regulation literally states that if one spouse is in a nursing home and the other spouse applies for residency at the nursing home, the income and resource standards for couples must apply. This means that the spousal impoverishment protections would not apply to the spouse living at home who has applied for nursing home care. This would ostensibly violate the spousal impoverishment regulations. The spouse in the home is a "community spouse" under 16 **DE Admin. Code** 20910.2 entitled to favorable financial allowances.

**Agency Response:** The community spouse will receive spousal impoverishment protections until they are admitted to a nursing facility. However, during the application process the couple standards will be applied in order to determine Medicaid eligibility. If the community spouse is not eligible for Long Term Care Medicaid, the spousal impoverishment allowances would continue.

Second, the "6-month" standard does not appear in the applicable federal regulation [42 C.F.R. 435.604] and DMMA could consider simply deleting the six-month standard for ease of administration. If adopted, spouses would have the option of being budgeted as a couple or individuals and the spousal impoverishment issue would not be presented.

**Agency Response:** The "6-month" standard does appear in section 1611 of the Social Security Act and in Section 3597 of the State Medicaid Manual. DMMA will retain this standard.

Third, the reference to "the same nursing facility" may be "under inclusive". In other sections, the reference is to "an institution" or "a medical institution or nursing facility". The superseded regulation applied to hospitals as well as nursing homes.

**Agency Response:** For the sake of clarity and consistency, the reference to the "same nursing facility" will be amended to read "same facility".

## FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the June 2008 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual (DSSM) related to Long Term Care, specifically, treatment of income and resources of couples, is adopted and shall be final effective August 10, 2008.

*Karryl McManus for*  
Vincent P. Meconi, Secretary, DHSS, July 2, 2008

## DMMA FINAL REGULATION #08-33

## REVISION:

**20810 Treatment of Couples in Medical Institutions**

~~A legally married husband and wife who have continuously shared a room in a hospital, nursing home, skilled nursing facility or intermediate care facility for a period of at least 6 months, may be considered a Couples Case and the Couples Case income and resource limits would apply to them. Should a married couple be determined a Couples Case, then spousal rules will not apply. The decision to treat a married couple as a Couples Case or as 2 individuals should be based on the couple's best interests in regard to the income and resource limits. See DSSM 20100.2.2 and 20300.~~

**20810 Treatment of Income and Resources of Couples**

This policy applies to all legally married couples when determining and redetermining Long Term Care Medicaid eligibility for both husband and wife.

**Treatment of Home and Community Based Services (HCBS) Couples**

The income and resource standards for a HCBS couple will be applicable if:

- Both are requesting HCBS AND reside at the same address; OR
- One is currently receiving HCBS and the spouse is requesting HCBS AND they reside at the same address.

**Treatment of Couples Residing in an Institution**

The income and resource standards for couples residing in an institution will be applicable if:

- Both are requesting institutional services AND they will be residing in the same facility;
- OR**
- One is currently receiving institutional services and the spouse is requesting institutional services at the same facility.

After a husband and wife have resided in the same ~~[nursing]~~ facility for 6 months they have the option of being budgeted as a couple or as two individuals. This decision should be based on the couple's best interests in regard to the income and resource limits.

See DSSM 20100.2.2 (income standards) and 20300 (resource standards).

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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

**ORDER****Title XIX Medicaid State Plan - Medicaid Integrity Program****Nature of the Proceedings:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan to comply with the Medicaid Program Integrity provision mandated by Section 6034 of the Deficit Reduction Act (DRA) of 2005 (Public Law 109-171). The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the June 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by June 30, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

## Summary of Proposed Amendment

The proposed amends the Title XIX Medicaid State Plan to document compliance with Section 6034 of the Deficit Reduction Act of 2005 (DRA). Section 6034 requires States to comply with all of the provisions of section 1902(a)(69) of the Social Security Act (the Act) entitled, "State Requirement to Cooperate with Integrity Program Efforts."

### Statutory Authority

Deficit Reduction Act of 2005 (Public Law 109-171), enacted on February 8, 2006, Section 6034

### Background

Section 6034 of the DRA established the Medicaid Integrity Program in section 1936 of the Act and identified certain of the Centers for Medicare and Medicaid Services' (CMS) responsibilities for carrying out the activities of the program, including contracting with entities that will audit provider claims and identify overpayments, and providing effective support and assistance to the States to combat provider fraud and abuse. This provision also established section 1902(a)(69) of the Act entitled, "State Requirement to Cooperate with Integrity Program Efforts." Section 1902(a)(69) of the Act requires that the Medicaid State plan "provide that the State must comply with any requirements determined by the Secretary to be necessary for carrying out the Medicaid Integrity Program established under section 1936." The provisions of section 1902(a)(69) of the Act must be implemented immediately.

The provisions of this amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

### Summary of Proposed Amendment

The proposed rule would amend the Medicaid state plan to assure programmatic compliance with such requirements determined by the Secretary to be necessary for carrying out the Medicaid Integrity Program established under section 1936 of the Social Security Act.

## SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following endorsement.

The GACEC and the reviewed the Centers for Medicare and Medicaid Services (CMS) proposed regulation whereby CMS requires all States to include assurances in their Medicaid plans that they are compliant with CMS "integrity program" standards. The "integrity program" standards cover audits, fraud, abuse, etc. We **endorse** the proposed regulation.

**Agency Response:** We appreciate your participation. Thank you for the endorsement.

### Findings of Fact:

The Department finds that the proposed changes as set forth in the June 2008 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Title XIX Medicaid State Plan to comply with the Medicaid integrity program efforts provision mandated by Section 6034 of the Deficit Reduction Act (DRA) of 2005 is adopted and shall be final effective August 10, 2008.

Vincent P. Meconi, Secretary, DHSS, July 15, 2008

\*Please note that no changes were made to the regulation as originally proposed and published in the June 2008 issue of the *Register* at page 1582 (11 DE Reg. 1582). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/august2008/final/12 DE Reg 226 08-01-08.htm>

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### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### ORDER

#### School-Based Health Services

#### Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan related to School-Based Health Services. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the May 2008 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### Summary of Proposed Amendment

The proposed amends the Title XIX Medicaid State Plan as it relates to School-Based Health Services.

#### Statutory Authority

- Section 504 of the Rehabilitation Act of 1973;
- 45 CFR Part 84, *Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance*;
- Individuals with Disabilities Education Act (IDEA) - P.L. 94-142;
- Section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 - P.L. 100-360;
- 42CFR§440.40, *Early and Periodic Screening and Diagnosis and Treatment*;
- 42CFR§431.53, *Assurance of Transportation*; and,
- 42CFR§433.20, *Rates of FFP for Administration: Reimbursement for School-Based Administrative Expenditures (NEW)*

#### Background

##### *School-Based Health Services*

The Medicaid program can pay for certain medically necessary services which are specified in Medicaid law when provided to individuals eligible under the state plan for medical assistance. The Individuals with Disabilities Education Act (IDEA) formerly called the Education of the Handicapped Act, authorized Federal funding to states for programs that impact Medicaid payment for services provided in schools.

Section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (P.L. 100-360) amended section 1903(c) of the Act to permit Medicaid payment for medical services provided to children under IDEA through a child's Individualized Education Plan (IEP) or Individualized Family Service Plan (IFSP). This amendment was enacted to ensure that Medicaid would cover the health-related services under IDEA.

Under Part B of IDEA, school districts must prepare an IEP for each child which specifies all special education and "related services" needed by the child. The Medicaid program can pay for some of the "health related services" required by Part B of IDEA in an IEP, if they are among the services specified in Medicaid law. In addition, the services must be included in the state's Medicaid plan or available through the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) Program. Examples of such services include physical therapy, speech pathology services, occupational therapy, psychological services and medical screening and assessment services.

In summary, the Centers for Medicare and Medicaid Services' (CMS) policy is that health-related services included in a child's IEP or IFSP can be covered under Medicaid if all relevant statutory and regulatory requirements are met. A state may cover services often included in an IEP or IFSP as long as: 1) the services are medically necessary and coverable under a Medicaid coverage category (speech therapy, physical therapy, etc.); 2) all other Federal and state regulations are followed, including those for provider qualifications, comparability of services and the amount, duration and scope provisions; and, 3) the services are included in the state's plan or available under the EPSDT Program.

#### *School Administration Expenditures and Costs Related to Transportation of School-Age Children Between Home and School*

On December 28, 2007, CMS published a final rule, at 72 Federal Register 73635, which would eliminate Federal Medicaid payment for school administration expenditures and costs related to transportation of school-aged children between home and school. The Secretary has found that these activities are not necessary for the proper and efficient administration of the Medicaid State plan and are not within the definition of the optional transportation benefit.

Based on these determinations, under this final rule, Federal Medicaid payments will no longer be available for administrative activities performed by school employees or contractors, or anyone under the control of a public or private educational institution, and for transportation from home to school.

This regulation is effective on February 26, 2008. Under legislation passed by Congress, there is a six-month delay in implementing these changes so school budgets in the 2007-2008 school year will not be affected. However, Congress is making new efforts to delay CMS's rules to allow time for further review of the financial impact the rules will have on states, local government agencies and providers. The current moratorium that precludes CMS from implementing these rules will expire on June 30, 2008.

#### **Summary of Proposed Amendment**

CMS reviewed both the School-Based Health Services program and reimbursement methodology included in the Title XIX Medicaid State Plan. Pending that review, CMS only approved the current methodology until July 1, 2008. The Division of Medicaid and Medical Assistance (DMMA) must amend the State Plan at Attachment 3.1-A to clarify and update the description of covered categories of services and revise the reimbursement methodology for these services at Attachment 4.19-B.

Therefore, effective July 1, 2008, reimbursement for covered services provided or purchased by the Department of Education (DOE) or Local Education Agencies (LEA) is determined on a fee-for-service basis. Rates include allowable direct costs (salaries, benefits, purchase of service and other costs directly related to the delivery of the medical services) and indirect costs, allocated as part of an approved Cost Allocation Plan per OMB Circular A-87. Rates must be consistent with efficiency, economy and quality of care. Also, upon implementation by CMS, Federal Financial Participation (FFP) will not be available for the cost of transportation of school-age children between home and school pursuant to 42 CFR §§431.53(b) and 433.20.

The provisions of this amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

## SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DMMA has considered each comment and responds as follows:

As background, CMS issued proposed regulations last year [72 Fed. Reg. 51397 (September 7, 2007)] narrowing eligibility for Medicaid reimbursement of school transportation of students with disabilities between home and school and back. The regulations generated a groundswell of negative comments but were adopted as final standards at the end of 2007 [72 Fed. Reg. 73635 (December 28, 2007)]. Congress delayed implementation of the regulations through Section 206 of P.L. 110-173 until June 30, 2008. As a prophylactic measure, DMMA is now issuing regulatory amendments to become effective July 1, 2008 to comport with the CMS regulations. The Councils have the following observations.

First, there are multiple references in the Plan [§4.b.2) on p. 1423 and §5(d) on pp. 1424-1425] which refer to the DOE and the Local Education Agency (LEA) eligibility for reimbursement. DMMA may wish to consider whether these references are "underinclusive". For example, charter schools are also public schools [Title 14 **Del.C.** §§501 and 503] which could logically benefit from participation in the Medicaid cost reimbursement program. Likewise, students placed by the DOE and districts in specialized private schools pursuant to Title 14 **Del.C.** §3124 would have Individualized Education Plans (IEPs). It is unclear if school-based health services of such students are recovered by the DOE and districts or if it would be beneficial to allow the private school to seek reimbursement.

**DMMA Response:** DMMA did not intend in its reference to DOE and LEA's to limit the schools that may participate in the Medicaid program. The term "LEA" was intended to cover the districts and their schools, including charter schools that wish to participate in the Medicaid program and that otherwise meet the criteria. Rather this change in language was an attempt to clarify the previous language that referred only to services "provided in a school setting". That language did not distinguish between services provided or purchased *by* schools from those that are merely furnished *in* schools by entities that have no relationship to the schools, such as the School-based Wellness Centers that are operated by the Division of Public Health. That distinction was the purpose of adding the more specific language.

Second, the prohibition on recovery of transportation services only applies to "school-age children". See 72 Fed. Reg. at 51403 and 72 Fed Reg. at 73645 and 73648. CMS indicates that "(w)e do intend the term 'school-age children' to be defined by age." At 73648. DMMA can lessen the adverse impact of the CMS regulation by adopting a restrictive definition of "school-age children". Options include age 3 [based on Title 14 **Del.C.** §3101(5) and 16 **DE Admin Code** 900, §1.0]; or age 5 [based on Title 14 **Del.C.** §202 and 2721]. We recommend that DMMA affirmatively incorporate the age 5 standard in its Plan. For clarity, it would also be useful to indicate that students with IFSPs are still eligible for transportation reimbursement. Students with IFSPs are always under 36 months of age. See Title 16 **Del.C.** §§212 and 215.

**DMMA Response:** DMMA agrees with the recommendation of the SCPD to define the term "school age children" as children ages 5 through 20 consistent with Title 14 **Del.C.** §202 and will amend its proposed language accordingly.

Third, there are some hospital-based school sites that should arguably continue to be eligible for transportation reimbursement (e.g. the First State School and A.I. duPont school program). Although somewhat cryptic, CMS appears somewhat less rigid in the context of transportation to medical sites. In response to an inquiry about schools sending children to alternative placements because of a student's medical needs, CMS responded as follows:

We agree, however, that when an individual is transported for the provision of medical services to a location that is not a school, such as a community provider, the transportation would be covered because that transportation was necessary to access a medical service not available in a school.

At 73646.

**DMMA Response:** DMMA will add language to the proposed State Plan amendment to clarify that transportation to and from a facility whose primary purpose is to provide medical treatment will continue to be a covered service even if the regulation at 42 CFR §§431.53(b) is implemented.

Fourth, CMS emphasizes that the limitation on transportation reimbursement does not affect eligibility for “medical services that might be required under an IEP or IFSP in the course of such transportation”, including “a personal care attendant or home health aide during transportation from home to school and back. At 73642. See also commentary at 73645 (authorizing “monitoring or medical related services during transport” and commentary at 73646 (coverage continues for “medical equipment, appliances and supplies that are covered under the home health benefit”). DMMA may wish to include some clarifying provision or note in the State Plan to highlight the continued eligibility of such services. For example, on p. 1425, DMMA could add the following concluding sentence: “FFP for medical equipment, appliances, supplies, monitoring of related services, and home health services during transportation remain available.” The same sentence could also be included after “date.” in §4.b.(d) on p. 1423.

**DMMA Response:** DMMA agrees that the purpose of this amendment is not to limit other medically necessary state plan services that a recipient may receive during transportation to and from a school setting to which a recipient may be entitled. We have, therefore, added language similar to that which was proposed by the Councils that achieves the same clarifying purpose.

Fifth, there is “typo” at the top of p. 1423. The heading refers to “Remdial” which should be “Remedial”.

**DMMA Response:** DMMA thanks the Councils for pointing out this typo that also exists in the current version of this section of the State Plan. Correction made.

Sixth, p. 1423 contains the following standard:

With the exception of EPSDT screens, all services provided under this section are diagnostic or active treatments designed to reasonably improve the student’s physical or mental condition and are provided to the student whose condition or function can be expected to reasonably improve with interventions.

This statement essentially requires that services are limited to those linked to “medical improvement”. This is inaccurate. Under EPSDT, children are entitled to “health care, diagnostic services, treatment, or other measures...to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services...”. See 42 U.S.C. 1396d(r)(5). This has historically been interpreted to include maintenance of function or prevention of worsening of conditions:

EPSDT covers “necessary” diagnostic and treatment services to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screen. This definition of necessary EPSDT services is obviously broad. Thus, services must be covered if they correct, compensate for, or improve a condition, or prevent a condition from worsening - even if the condition cannot be prevented or cured.

NHeLP, “An Advocate’s Medicaid EPSDT Reference Manual” (1993) at p. 6 [excerpt attached].

This concept is reflected in the attached DMMA “medical necessity” regulation which is not limited to services causing medical improvement but include those which “prevent the worsening of conditions or effects of conditions” and services which allow a beneficiary to “retain” independence, self-care, etc.. A strict “medical improvement” standard would disallow all palliative services for a terminally ill child, palliative services to a non-terminally ill child experiencing pain, and all therapies and interventions for children with chronic health conditions which may never “improve” but whose functioning can be “maintained” or “prevented from worsening”.

Based on the above standards, DMMA should consider the following substitute standard:

All services provided under this section are diagnostic or active treatments designed to reasonably ameliorate, improve, or prevent the worsening of a mental or physical illness or condition.

**DMMA Response:** DMMA thanks the Councils for bringing to our attention the potential unintended consequence of our proposed language. DMMA did not intend to limit the definition of medically necessary EPSDT services to exclude those services necessary to maintain or prevent the worsening of a mental or physical condition. DMMA will amend its language accordingly.



## Findings of Fact:

The Department finds that the proposed changes as set forth in the May 2008 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Title XIX Medicaid State Plan regarding School-Based Health services is adopted and shall be final effective August 10, 2008.

Vincent P. Meconi, Secretary, DHSS, July 15, 2008

**DMMA PROPOSED REGULATIONS #08-31  
REVISIONS:**

ATTACHMENT 3.1-A  
Page 2 Addendum

State of Delaware

AMOUNT, DURATION, AND SCOPE OF MEDICAL  
AND REM[**E**]DIAL CARE AND SERVICES PROVIDED TO THE  
CATEGORICALLY NEEDY

LIMITATIONS:

- 4.b. EPSDT services are limited only by medical necessity criteria and are not arbitrarily limited in amount, duration, or scope. Limitations on organ transplants are identified in Attachment 3.1-A, Page 1 Addendum.

~~Non-State Plan~~ EPSDT services include:

- 1) Prescribed Pediatric Extended Care (PPEC) ~~services~~ facilities that are licensed as such by the State's Office of Health Facilities, Licensing and Certification and that are provided as an alternative to more expensive institutionalization or as an alternative to community/home care for children who are determined to be in medical need of the service. These services include nursing, nutrition, developmental assessment, speech therapy, physical therapy and occupational therapy provided in an outpatient setting, up to twelve hours per day, five days a week.

PPEC services ~~will~~ must be prior authorized ~~on an individual basis~~, using policy established by the Delaware Medicaid program.

ATTACHMENT 3.1-A  
Page 2 Addendum

State of Delaware

AMOUNT, DURATION, AND SCOPE OF MEDICAL  
AND REM[**E**]DIAL CARE AND SERVICES PROVIDED TO THE  
CATEGORICALLY NEEDY

- 4.b. (continued)
- 2) School-Based Health Services – Medicaid covers the following health and mental health services provided in a school setting or purchased by the Delaware Department of Education (DOE) or

Local Education Agency (LEA) when they are medically necessary and furnished by providers meeting specified criteria:

- (a) EPSDT screens, including vision, dental, immunization, orthopedic and developmental screening (per 42 CFR §440.40(b) and 441 Subpart B)
- (b) Nursing Services, including provision of one-on-one individualized Health Education (per 42 CFR §440.60 and §440.170)
- (c) Assessment and/or Treatment as follows:  
Physical Therapy, Occupational Therapy, Speech Therapy, Language, and Hearing Services, Vision, Dental, Immunizations, Developmental/Orthopedic, Health Education, Psychological (per 42 CFR §440.110)
- (d) Medically necessary behavioral health services designed to correct or ameliorate a mental health or developmental disability and restore a recipient to his or her best possible level of functioning as determined via an EPSDT screen and documented in an Individualized Education Plan (IEP)/Individualized Family Service Plan (IFSP) (per 42 CFR §§440.130 and 440.160), including:
  - Mental health assessment
  - Psychological and developmental testing
  - Counseling and therapy
  - Facility-based mental health or developmental disability treatment
  - Inpatient psychiatric services for individuals under age 21

**[~~If~~ Upon federal implementation of] the regulatory changes at 42 CFR §§431.53(b) and 433.20 regarding the elimination of reimbursement for the cost of transportation of school-age children between home and school either as a reimbursable service or administrative activity are implemented. Delaware will cease claiming for those costs as of the effective date. [For the purpose of this section, the term "school age children" shall mean children ages 5 through 20 years. Medically necessary services that might be required under an IEP or IFSP in the course of such transportation, such as: medical equipment, appliances, supplies, monitoring of related services and home health services shall remain allowable services to the extent that they meet all applicable requirements under the State Plan. Upon implementation of the regulation at 42 CFR §§431.53(b) by CMS, transportation to and from a facility whose primary purpose is to provide medical care and treatment and where a school age child also receives legally mandated education services, shall continue to be a covered service.]**

With the exception of EPSDT screens, all services provided under this section are diagnostic or active treatments designed to reasonably [ameliorate,] improve [or prevent the worsening of] the student's physical or mental condition and are provided to the student whose condition or functioning can be expected to reasonably improve with interventions.

Such services shall be medically necessary and shall be prescribed in a written treatment plan signed by a licensed practitioner within the scope of practice as defined under state law or regulations and documented in the student's IEP/IFSP. Services must be performed by qualified professionals operating within the scope of their practice under State law and regulations.

ATTACHMENT 3.1-A  
Page 2 Addendum

State of Delaware

AMOUNT, DURATION, AND SCOPE OF MEDICAL  
AND REM[**E**]DIAL CARE AND SERVICES PROVIDED TO THE  
CATEGORICALLY NEEDY

Services must be provided by qualified providers who meet the requirements of the regulations cited above in this section and other applicable state law and regulations. Unlicensed professionals may operate under the direction of a licensed practitioner who acts as supervisor and is responsible for the work, who plans the work and methods, who regularly reviews the work performed and who is accountable for the results. Supervision must adhere to the requirements of the practitioner's applicable licensing board. The licensed practitioner must co-sign documentation for all services provided by practitioners under his or her direction.

Providers must maintain all records necessary to fully document the nature, quality, amount and medical necessity of services furnished to Medicaid recipients.

- 3) Mental Health and Drug/Alcohol services approved and monitored through the Department of Services for Children, Youth and their Families. These include:
  - (a) Mental Health Outpatient Services
  - (b) Mental Health Case Management
  - (c) Professional Medical Services (i.e., neurologists, clinical psychologists, psychiatric social workers and other licensed medical providers)
  - (d) Psychiatric facility services
  - (e) Drug/Alcohol Rehabilitation Services
- 4) Assistive Technology
- 5) Orthotics and Prosthetics
- 6) Chiropractic Services
- 7) Any other medical or remedial care provided by licensed medical providers
- 8) Any other services as required by §6403 of OBRA '89 as it amended §1902(a)(43), §1905(a)(4)(B) and added a new §1905(r) to the Act

***(Break in Continuity of Sections)***

ATTACHMENT 4.19-B  
Page 19a

5. Other EPSDT Services

Reimbursement for services not otherwise covered under the State Plan is determined by the Medicaid agency through review of a rate setting committee. Non-institutional services are paid on a fee-for-service basis. Institutional services are per diem rates based on reasonable costs. These services include:

- (a) Prescribed Pediatric Extended Care - see ATT. 4.19-B, Page 7
- (b) Inpatient and Partial Hospital Psychiatric Services – reimbursed on a per diem basis
- (c) Outpatient Psychiatric Facility Services - fee-for-service
- (d) School-Based Health Services - ~~fee for service; this reimbursement methodology will expire effective July 1, 2008~~ reimbursement for covered services provided or purchased by the Department of Education (DOE) or Local Education Agencies (LEA) is determined on a fee-for-service basis. Rates include allowable direct costs (salaries, benefits, purchase of service and

other costs directly related to the delivery of the medical services) and indirect costs, allocated as part of an approved Cost Allocation Plan per OMB Circular A-87. Rates must be consistent with efficiency, economy and quality of care. Upon implementation by CMS [of the regulation at 42 CFR §431.53(b)], FFP will not be available for the cost of transportation of school-age children[, as defined in ATTACHMENT 3.1-A 4(b)(2)(d) of the State Plan, ~~between home and school pursuant to 42 CFR §§431.53(b) and 433.20~~].

- (e) Mental Health and Drug/Alcohol Rehabilitation Services:
- Institutional - per diem
  - Non-Institutional - fee-for-service or, if managed by the Department of Services for Children, Youth and Their Families' Division of Child Mental Health (see ATTACHMENT 4.19-B, Page 19 Addendum).

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**DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Section 122(3)p (16 **Del.C.** §122(3)p)  
16 **DE Admin. Code** 4403

**ORDER****4403 Free Standing Birthing Centers****Nature of the Proceedings:**

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt amendments to the State of Delaware Regulations governing Free Standing Birthing Centers. The DHSS proceedings to amend the regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Delaware Code**, Section 122 (3) p.

On November 1, 2007 (Volume 11, Issue 5), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 **Delaware Code** Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by November 30, 2007, or be presented at a public hearing on November 27, 2007, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

Verbal and written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

**Summary of Evidence**

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations governing Free Standing Birthing Centers were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*. Verbal comments were received at the November 27 public hearing and written comments were received on the proposed regulations during the public comment period (November 1, 2007 through November 30, 2007). Entities offering written comments included:

- Delaware Association of Nurse Anesthetists
- Delaware Midwives Guild
- Medical Society of Delaware
- The Birth Center

Public comments and the DHSS (Agency) responses are as follows:

Section 6.3.8.1: This section refers to administration of systemic analgesics by a "professional staff member" but does not define this individual specifically as a nurse or physician. I question the definition of "professional staff". I recommend the following changes to the proposed regulation.

Delete the proposed Section 6.3.8.1 and insert the following: "6.3.8.1 The physician or nurse who administers the systemic analgesic or local anesthetic is licensed to practice in the State of Delaware."

**Agency Response:** The regulations require that the person administering the anesthetic agents be legally authorized to do so. The proposed regulations specifically state that "Services provided in a birthing center shall be provided by a licensed physician, certified nurse midwife or certified professional midwife and a registered nurse". The proposed regulations also specifically state that "The professional staff member who administers the systemic analgesic is legally authorized to do so". This automatically limits who may administer the anesthetic agents and requires compliance with law.

The current rules and regulations do not include language regarding the administration of analgesia and anesthesia.

**Agency Response:** The current regulations do address analgesia and local anesthesia as follows, "systemic analgesia may be administered and local anesthesia for pudendal block and episiotomy repair may be performed".

Section 6.3.8: This section merely refers to systemic analgesics and local anesthetics, but there is no specific language limiting them in any way to anesthesia techniques for obstetrics. If regulatory language is necessary to define the administration of obstetric-specific anesthetics, then this language must precisely define not only the anesthetic agents, but also the techniques by which they are administered and what nursing or medical practitioners will be administering them.

**Agency Response:** The Agency is not aware of any regulations that precisely define anesthetic agents. Agents change and if they were defined in regulations, facilities would not have the flexibility to use new agents. Techniques and who administers is within the professional practice arena.

Recommendation made that the Agency should table the proposed regulations pending the outcome of House Bill 106, which is currently pending in the 144th General Assembly and concerns the practice of midwifery by certified professional midwives.

**Agency Response:** Since the Free Standing Birthing Centers regulations and the midwifery legislation are separate and distinct the Agency does not see the need to hold the proposed regulations pending the outcome of the legislation. As with all regulations, if something happens through legislation that would affect these regulations, the law always supersedes the regulations.

Section 6.5.1.8: This section should be changed to read, "Premature rupture of the membranes (occurring within a timeframe agreed upon by the midwife and supporting physician in their collaborative agreement)" since there is an indication by members of the medical profession that the timeframe varies from physician to physician, and there is no fixed standard. Leaving this to the discretion of the collaborating physician and midwife allows for flexibility without compromising patient safety, and it promotes communication between the physician and midwife. A physician who prefers to induce after 6 hours would not be required to wait for 12 hours, and a physician who is comfortable waiting 24 hours would not be restricted to 12 hours.

**Agency Response:** After careful review of this section, the Agency agrees with this suggestion and has made appropriate changes to the final regulation.

Section 6.5.1.8: Regarding premature rupture of the membranes occurring more than 12 hours before onset of active labor a request was made that this be changed from 12 hours to 24 hours.

**Agency Response:** As above, after careful review of this section, the Agency agrees to make appropriate changes to the final regulation and will leave the timeframe to the discretion of the collaborating physician and midwife.

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## Findings of Fact:

Based on comments received, non-substantive changes were made to the proposed regulations. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

**THEREFORE, IT IS ORDERED**, that the proposed State of Delaware Regulations governing Free Standing Birthing Centers are adopted and shall become effective August 10, 2008, after publication of the final regulation in the Delaware Register of Regulations.

Vincent P. Meconi, Secretary, DHSS, July 15, 2008

### 4403 Free Standing Birthing Centers

#### **1.0 Definitions**

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

**“Acute Postpartum Period”** means a minimum of two hours following delivery of the placenta and until the patient is clinically stable.

**“Administrator”** means a person who is delegated the responsibility for the implementation and proper application of policies, programs and services established for the birthing center.

**“Birthing Center”** means a public or private health facility other than a hospital which is established for the purpose of delivering babies and providing immediate postpartum care. Non-emergency births are planned to occur away from the mother’s usual residence following a documented period of prenatal care for a normal uncomplicated pregnancy which has been determined to be low risk through a formal risk scoring examination.

**“Birthing Service”** means the prenatal, intrapartum and postpartum care provided for individuals with uncomplicated pregnancy, labor and vaginal birth and newborns during the recovery period. Services provided in a birthing center shall be provided by a licensed physician, certified nurse midwife or certified professional midwife and a registered nurse. Services provided in a birthing center shall be limited in the following manner:

- (1) surgical services shall be limited to those normally performed during uncomplicated childbirth, such as episiotomy and repair, and shall not include operative obstetrics or cesarean sections;
- (2) surgical repair of a fourth degree laceration is beyond the scope of practice for the midwife;
- (3) labor shall not be inhibited, stimulated or augmented with chemical agents during the first or second stage of labor;
- (4) systemic analgesia may be administered and local anesthesia for pudendal block and episiotomy repair may be performed;
- (5) general and conductive anesthesia shall not be administered at birthing centers;
- (6) patients shall not routinely remain in the facility in excess of twenty-four (24) hours.

**“Bylaws”** means a set of rules adopted by a birthing center for governing the facility’s operation.

**“Certified Midwife”** means either a Certified Nurse Midwife or a Certified Professional Midwife as defined in these regulations.

**“Certified Nurse Midwife”** means an individual who is currently licensed to practice nursing as a nurse midwife pursuant to 24 **Del.C.** Ch. 19.

**“Certified Professional Midwife”** means an individual who is currently certified to practice midwifery pursuant to 16 **Del.C.** §122(3)h and who holds a permit from the Division of Public Health.

**“Change of Ownership (CHOW)”** see “Modification of Ownership and Control (MOC)”.

**["Clinical Record" means a written account of all services provided to a patient by the birthing center, as well as other pertinent information necessary to provide care.]**

**"Department"** means the Delaware Department of Health and Social Services.

**"Governing Body or Other Legal Authority"** means the individual, partnership, agency, group, or corporation designated to assume full legal responsibility for the policy determination, management, operation and financial liability of the birthing center.

**"Hospital"** means a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care for not less than 24 hours in any week of 4 or more non-related individuals suffering from illness, disease, injury or deformity or a place devoted primarily to providing for not less than 24 hours in any week of obstetrical or other medical or nursing care for 2 or more non-related individuals but does not include sanatoriums, rest homes, nursing homes or boarding homes.

**"Immediate Jeopardy"** means a crisis situation in which the health and safety of patients is at risk. It is a deficient practice which indicates an inability to furnish safe care and services.

**"Legal Entity"** means a business organizational structure that is recognized as such by 6 **Del.C.** or 8 **Del.C.**

**"License"** means the document issued by the Department which constitutes the authority to receive patients and perform services included within the scope of these regulations.

**"Licensee"** means the individual, corporation, or public entity with whom rests the ultimate responsibility for maintaining approved standards for the birthing center.

**"Low Risk"** means normal, uncomplicated prenatal course as determined by adequate prenatal care and prospects for a normal, uncomplicated birth as defined by reasonable and generally accepted criteria of maternal and fetal health.

**"Majority Interest"** means the largest percentage of ownership interest.

**"Minority Interest"** means any percentage of ownership less than the majority interest.

**"Modification of Ownership and Control (MOC)"** means the sale, purchase, transfer or re-organization of ownership rights.

**"Owner"** means an individual or legal entity with ownership rights of the facility.

**"Ownership"** means the state or fact of exclusive possession and control of the facility.

**"Ownership Interest"** means the percentage of ownership an individual or legal entity possesses.

**"Patient"** means a pregnant female who plans to deliver away from her usual residence following a documented period of prenatal care for a normal uncomplicated pregnancy which has been determined to be low risk through risk status criteria.

**["Patient Record" means a written account of all services provided to a patient by the birthing center, as well as other pertinent information necessary to provide care.]**

**"Physician"** means an individual currently licensed as such pursuant to 24 **Del.C.** Ch. 17.

**"Plan of Correction"** means a birthing center's written response to findings of regulatory non-compliance. Plans must adhere to the format specified by the licensing agency, must include acceptable timeframes in which deficiencies will be corrected and must be approved by the licensing agency.

**"Recovery Period"** means that period of time starting at the birth and ending with the discharge of the patient from the birthing center.

**"Registered Nurse"** means an individual who is currently licensed to practice nursing pursuant to 24 **Del.C.** Ch. 19.

**"Risk Status Criteria"** means

- (1) patients are limited to those women who are initially determined to be at low maternity risk and who are evaluated regularly throughout pregnancy to assure that they remain at low risk for a poor pregnancy outcome;
- (2) an established written risk assessment system;

- (3) determination of general health status and risk assessment by a physician or certified midwife after obtaining a detailed medical history, performing a physical examination and taking into account family circumstances and other social and psychological factors;
- (4) acceptance for and continuation of care throughout pregnancy and labor is limited to those women for whom it is appropriate to give birth in a setting where anesthesia is limited to local infiltration of the perineum or a pudendal block and where analgesia is limited;
- (5) minimum risk factor criteria shall be applied to all patients prior to acceptance for birthing center services and throughout the pregnancy for continuation of services.

“Survey” means an inspection conducted by a representative of the Department to determine if a licensee is in compliance with Del.C. and this chapter.

“Transfer Agreement” means an agreement with a hospital which has an organized obstetrical services with an obstetrician and a pediatrician on active staff and 24-hour emergency care and cesarean section capability within thirty (30) minutes, providing such service on a continuing basis, stating that said hospital agrees to accept from the birthing center such cases as may need to be referred for whatever reason, and agrees to accept phone consultation for problems that arise in the birthing center.

*(Break in Continuity of Sections)*

**6.0 Patient Care**

**6.1 Admissions**

- 6.1.1 Only those mothers who demonstrate the potential for a normal uncomplicated course of pregnancy and labor may be accepted for childbirth at the facility.
  - 6.1.1.1 The facility must utilize a written risk assessment system to determine risk status criteria.
  - 6.1.1.2 Those mothers determined to be at risk as defined in Sec. 3.2 must be referred to a physician for care.
- 6.1.2 All patients admitted to the facility shall be under the direct care of a member of the clinical staff and agree to remain at the facility not less than four (4) hours postpartum.
- 6.1.3 The facility and the patient shall have a written agreement for services which shall include:
  - 6.1.3.1 An explanation of the services available;
  - 6.1.3.2 An explanation of services not available, including types of anesthesia;
  - 6.1.3.3 The location (distance and driving time) of the nearest hospital providing obstetrical/gynecological/pediatric services; and
  - 6.1.3.4 A statement of charges for services.
- 6.1.4 Every woman seeking birthing center services shall have an initial assessment by a professional member of the staff to determine eligibility for admission.

**6.2 Prenatal Care**

- 6.2.1 A childbirth education program shall be provided or made available by the birthing center. The program shall include but not be limited to:
  - 6.2.1.1 Prenatal care and its outcome;
  - 6.2.1.2 Care of the newborn;
  - 6.2.1.3 Instruction regarding labor and delivery; and
  - 6.2.1.4 Preparation for participation in the childbirth process.
- 6.2.2 Prenatal care shall be in accordance with acceptable standards.
- 6.2.3 When, in the course of prenatal care, risk factors are identified which preclude childbirth at the facility, the patient shall be referred for care to a qualified physician.
- 6.2.4 Prenatal visits shall be scheduled:
  - 6.2.4.1 At least every four (4) weeks until the twenty-eighth (28th) week;



6.2.4.2 At least every two (2) weeks between the twenty-eighth (28th) week and the thirty-sixth (36th) week; and

6.2.4.3 At least every week between the thirty-sixth (36th) week and delivery.

### 6.3 Intrapartum Care

6.3.1 A professional staff member must be present and available to the patient at all times during her stay at the facility.

6.3.2 The professional staff shall monitor the progress of labor and the condition of the patient and fetus at sufficient frequent intervals to identify abnormalities or complications at the earliest possible time.

6.3.3 If complications occur in the course of labor and delivery, it is the responsibility of the professional staff to arrange for the patient to be transferred to the hospital.

6.3.4 The family or support persons shall be instructed as needed to assist the patient during labor and delivery.

6.3.5 Interventions shall be limited to those required to accomplish a vaginal delivery.

6.3.6 Labor shall not be inhibited, stimulated or augmented with chemical agents.6.3.7No surgical procedures shall be performed except episiotomy, repair of episiotomy or laceration, or circumcision.

6.3.8 Systemic analgesics and local anesthesia may be administered under the following conditions:

6.3.8.1 The professional staff member who administers the systemic analgesic is legally authorized to do so;

6.3.8.2 The dosage and drug are specifically noted in the protocols for clinical services; and

6.3.8.3 The use of such drugs is in conformance with the policies and procedures of the facility and with national standards.

6.3.9 General and conduction anesthesia shall not be administered.

### 6.4 Postpartum Care

6.4.1 The patient shall remain at the facility a minimum of four (4) hours postpartum after a normal uncomplicated birth.

6.4.2 Postpartum care shall be delivered in accordance with acceptable professional standards and legal requirements.

6.4.3 The newborn shall be referred to a physician or a hospital for any condition requiring medical care.

6.4.4 The condition of the patient shall be monitored frequently to detect signs of hemorrhage or other complications requiring prompt transfer to a hospital.

6.4.5 The patient shall be counseled regarding breast feeding, perineal care, family planning, signs of common complications, activities and exercise, sexual relations, care and feeding of the newborn and changing family relationships.

6.4.6 A member of the facility's professional staff must be accessible to patients by telephone, twenty-four (24) hours a day.

6.4.7 The facility must make provisions for appropriate follow-up care for the patient and newborn after discharge.

### 6.5 Management of Emergencies

6.5.1 Criteria shall be established to determine risk status which requires medical consultation or transfer to a hospital and shall include but not be limited to:

6.5.1.1 Premature labor (occurring at less than thirty-seven (37) weeks gestation);

6.5.1.2 Development of hypertension or pre-eclampsia;

6.5.1.3 Non-vertex presentation

6.5.1.4 Failure to progress in labor

6.5.1.5 Evidence of an infectious process;

6.5.1.6 Suspected placenta previa or abruption;

6.5.1.7 Hemorrhage of greater than 500 cc of blood;

- 6.5.1.8 Premature rupture of the membranes (occurring ~~[more than twelve (12) hours before onset of active labor];~~ **within a timeframe agreed upon by the certified midwife and back-up physician in their collaborative agreement:]**)
  - 6.5.1.9 Suspected congenital anomaly;
  - 6.5.1.10 Anemia consisting of less than ten (10) grams of hemoglobin per one hundred (100) milliliters of blood or thirty (30) percent hematocrit;
  - 6.5.1.11 Persistent fetal tachycardia (heart rate greater than 160 beats per minute), repetitive fetal bradycardia (heart rate less than 120 beats per minute) or undiagnosed abnormalities of the fetal heart tones;
  - 6.5.1.12 Rising antibody titre of any type that is known to affect fetal well-being;
  - 6.5.1.13 Excessive need for analgesia during labor, or for anesthesia other than pudendal or local; or
  - 6.5.1.14 Persistent hypothermia in the newborn.
- 6.5.2 Criteria shall be established to determine risk status which requires immediate emergency transfer to a hospital and shall include but not be limited to:
- 6.5.2.1 Prolapsed cord;
  - 6.5.2.2 Uncontrolled hemorrhage;
  - 6.5.2.3 Need for transfusion;
  - 6.5.2.4 Placenta abruption;
  - 6.5.2.5 Retained placenta greater than sixty (60) minutes;
  - 6.5.2.6 Convulsions;
  - 6.5.2.7 Thick meconium staining at the time of membrane rupture;
  - 6.5.2.8 Apgar score of seven (7) or less at five (5) minutes;
  - 6.5.2.9 Fetal heart rate of ninety (90) or less beats per minute for three (3) minutes;
  - 6.5.2.10 Major anomaly of the newborn;
  - 6.5.2.11 Respiratory distress in the newborn;
  - 6.5.2.12 Newborn weight less than 2500 grams;
  - 6.5.2.13 Newborn need for oxygen beyond five (5) minutes; or
  - 6.5.2.14 Signs of prematurity.
- 6.6 Food Service
- 6.6.1 The facility may provide patients and families with nutritious liquids and snacks as needed.
  - 6.6.2 When the facility policy allows for the preparation and/or storage of food brought in by the patients or families:
    - 6.6.2.1 There shall be refrigerator able to maintain cold foods at a temperature of 45° Fahrenheit or lower;
    - 6.6.2.2 There shall be a stove and/or a microwave oven;
    - 6.6.2.3 There shall be dry storage and counter space; and
    - 6.6.2.4 There shall be a dishwashing machine and/or a sink.
  - 6.6.3 Food may not be stored together with medications requiring refrigeration.
  - 6.6.4 All refrigerated food items must be labeled and dated.
  - 6.6.5 If applicable, the facility's food services will be subject to the food establishment requirements.
- 6.7 Pharmaceutical Service
- 6.7.1 Medicines and drugs maintained at the facility shall be properly stored and secured in specifically designated cabinets, closets, drawers or storerooms.
  - 6.7.2 Only authorized persons shall have access to storage enclosures.
  - 6.7.3 Controlled drugs shall be stored in accordance with state and federal laws.
    - 6.7.3.1 Records shall be kept on the receipt and disposition of all controlled substances.

- 6.7.4 Medicines and drugs shall not be administered to patients unless ordered by an independent licensed practitioner with prescriptive authority.
- 6.7.4.1 Orders for medicines and drugs must be in writing and must be signed by the prescribing licensed practitioner.
- 6.7.4.1.1 Verbal and telephone orders may only be received by a registered nurse, midwife, physician or pharmacist.
- 6.7.4.1.2 All verbal and telephone orders must be countersigned by the ordering practitioner within forty-eight (48) hours of the order.
- 6.7.4.2 Pain control should depend primarily on close emotional support and adequate preparation for the birth experience.
- 6.7.5 All medicines and drugs must be properly labeled according to state and federal law.
- 6.7.6 Medicines and drugs requiring refrigeration must be stored and secured in a refrigerator for that purpose.
- 6.7.7 Medicines and drugs shall be administered only by persons authorized and licensed to administer medicines and drugs.
- 6.7.8 When the facility maintains its own pharmaceutical services, it shall comply with applicable state laws and regulations.
- 6.8 Laboratory Service
- 6.8.1 Clinical pathology services shall be available as required by the needs of the patients and as determined by the facility staff.
- 6.8.2 The facility may either provide a clinical laboratory or make contractual arrangement with an outside laboratory.

**\*Please Note: As the rest of the sections were not amended since the proposal in the November 2007 issue, they are not being published here. A copy of the final regulation is available at <http://regulations.delaware.gov/register/august2008/final/12 DE Reg 235 08-01-08.htm>**

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**DIVISION OF SOCIAL SERVICES**

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

**ORDER**

**Fair Hearing Practice and Procedures, 5304 Jurisdiction**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to Fair Hearing Practice and Procedures, specifically jurisdiction for hearings over Medicaid program waiver services. The Department's proceedings were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of public comment pursuant to 29 **Delaware Code** Section 10115 in the June 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by June 30, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

The purpose of this regulatory action is to amend the Division of Social Services Manual (DSSM) related to Fair Hearing Practice and Procedures, specifically to clarify jurisdiction for hearings over Medicaid program waiver services.

**Statutory Authority**

- 42 CFR Part 431 Subpart E, *Fair Hearings for Applicants and Recipients*

1) DSSM 5304.2, *Nursing Facility Discharge Notice Hearings*: This rule text is deleted from the Division of Social Services Manual as the Division of Long-Term Care Residents Protection (DLTCRP) now has jurisdiction over these types of hearings. Reference is made to DLTCRP's Patient's Bill of Rights, Appendix A of Regulation No. 3201, *Nursing Home Regulations for Skilled Care* and Regulation No. 3205, *Nursing Home Regulations for Intermediate Care*.

2) DSSM 5304.5, *Jurisdiction for Hearings over Medicaid Program Services*: This new rule clarifies that the Division of Social Services (DSS) has jurisdiction over fair hearings involving Medicaid program waiver services.

**SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES**

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DMMA has considered each comment and responds as follows:

The regulations were published as 11 DE Reg. 1583 in the June 1, 2008 issue of the Register of Regulations and address two (2) matters: 1) nursing home discharge hearings; and 2) Medicaid waiver disputes.

**Nursing Home Discharge Hearings**

SCPD previously commented on DSS proposed fair hearing regulations published as 11 DE Reg. 1193 (March 1, 2008) and final regulations published as 11 DE Reg. 1482 (May 1, 2008). SCPD noted that, although DSS regulations contemplated DSS processing of nursing home discharge hearings, the DLTCRP processed hearings involving discharges from other LTC facilities. DSS responded that the Attorney General's Office was reviewing jurisdiction in this context. At 1484. DSS now proposes to repeal its regulation based on DLTCRP regulations under which the DLTCRP is arguably responsible for processing nursing home discharge hearing requests:

This rule is deleted from the Division of Social Services Manual as the Division of Long-Term Care Residents Protection (DLTCRP) now has jurisdiction over these types of hearings. Reference is made to DLTCRP's Patient's Bill of Rights, Appendix A of Regulation 3201, *Nursing Home Regulation for Skilled Care* and Regulation No. 3205, *Nursing Home Regulations for Intermediate Care*.

At 1584.

SCPD believes there are multiple problems with this approach. First, as the Councils noted in their commentary, the DLTCRP has no hearing regulations akin to the DSS 5000 standards to define its hearing process. For this reason, the Councils recommended clarifying that the DSS 5000 series regulations applied to the hearings. Second, the attached DLTCRP regulations literally delegate the hearing authority to the Division of Public Health. The Division of Public Health was responsible for these hearings before the DLTCRP was established and this reference may no longer be viable. If it is viable, it is unclear if DPH has any regulations to guide hearing participants. It would be preferable for DSS to either apply the 5000 series procedures to these hearings or issue regulations defining procedures for the hearings. Otherwise, it is impossible for participants to know who has the burden of proof, if subpoenas can be requested, if hearsay is admissible, etc. Finally, if a nursing home resident is being funded through Medicaid (i.e. has a "Medicaid bed") and is being discharged, would he/she be categorically precluded from requesting a Medicaid hearing through DSS to contest the discharge?

**Agency Response:** Thank you for your comments concerning DLTCRP's hearing process. The Division of Medicaid and Medical Assistance (DMMA) will work with DLTCRP to assure that its hearing process for nursing home discharges conforms to federal requirements.

### Medicaid Waiver Disputes

DSS adds a regulation clarifying that DSS has jurisdiction over disputes concerning Medicaid waivers. There are two (2) concerns with this standard. First, rather than refer to "waivers for the mentally retarded", DSS should preferably use "people-first" language (e.g. waivers for persons with mental retardation). Second, since DPH is involved with the AIDS waiver, it should be listed with the other divisions in §5304.5. See DSS commentary at 11 DE Reg. 1483 (bottom).

**Agency Response:** We agree with your recommended wording change to "waivers for persons with mental retardation." Your letter indicates that the Division of Public Health (DPH) is involved with the AIDS waiver. DPH does not administer or manage this waiver. DMMA administers and manages this waiver. DMMA contracts with DPH to provide waiver case management services. That is the extent of DPH's involvement in this waiver.

### FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the June 2008 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual regarding Fair Hearing Practice and Procedures, specifically jurisdiction for hearings over Medicaid program waiver services, is adopted and shall be final effective August 10, 2008.

Vincent P. Meconi, Secretary, DHSS, July 15, 2008

### DSS FINAL REGULATIONS #08-34

#### REVISIONS:

#### **5304.2 Nursing Facility Discharge Notice Hearings**

~~Consistent with 42 CFR 438.202 and 438.204 (a)(1), a person who has received a notice of intent to discharge or transfer a person from his/her residential nursing facility may take an appeal of the decision to the Division of Social Services. RESERVED~~

*(Break in Continuity of Sections)*

#### **5304.5 Jurisdiction for Hearings over Medicaid Program Services**

The Delaware Medicaid Program operates Medicaid waiver projects offering home and community-based services (HCBS). These projects include waivers for ~~[the mentally retarded]~~ persons with mental retardation], for the elderly and disabled, for persons with acquired immune deficiency syndrome and other HIV-related diseases, for persons with acquired brain injuries, for residential services under an Assisted Living waiver, and for other types of conditions that require special services. (See DSSM 20700 et seq.)

The Division of Social Services ("DSS") has jurisdiction for hearings over disputes involving these services. The delivery of these services is managed by other Divisions within the Department of Health and Social Services ("DHSS") including the Division of Services for Aging and Adults with Physical Disabilities ("DSAAPD"), the Division of Developmental Disabilities Services ("DDDS") and the Division of Medicaid and Medical Assistance ("DMMA"). For these hearings, the Division taking the action in dispute will prepare the §5312 hearing summary and defend the action at the hearing.

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## DEPARTMENT OF TRANSPORTATION OFFICE OF THE SECRETARY

Statutory Authority: 29 Delaware Code, Chapter 100 (29 Del.C. Ch. 100)  
2 DE Admin. Code 2101

### ORDER

#### 2101 Freedom of Information Act (FOIA)

The proposed Freedom of Information Act (FOIA) Regulations establish the procedures the Department of Transportation will follow in responding to requests for information and documents from the public under the Freedom of Information Act (29 Del.C. Chapter 100). The Department published the proposed regulations with a notice seeking public comment in the June 1, 2008 edition of the Delaware Register of Regulations. The comment period remained open through June 30, 2008. No comments were received.

#### Summary of the Evidence and Information Submitted

Although no comments were received on the document as published, an internal review of the document prompted the following minor changes; none of which the Department considers as substantive:

1. Unnecessary periods removed from some subsection numbers.
2. Unnecessary underlining removed from subsection 5.2.
3. The first line in Section 6, Requests for Confidentiality was changed from "A person may request records or portions of records submitted to the Department that are confidential." To "A person may request that records or portions of records submitted to the Department be treated as confidential." The purpose of this change was to clarify the intent of the section.

#### Findings of Fact

Based on Delaware Law and the record in this docket, I make the following findings of fact:

1. The proposed regulations meet the requirements of the Administrative Procedures Act and are not in conflict with Delaware Law.
2. The adoption of these regulations is in the best interest of the State of Delaware.

#### Decision and Effective Date

Based on the provisions of 29 Del.C. Chapter 100 and the record in this docket, I hereby adopt the Freedom of Information Act Regulations as set forth in the version attached hereto, to be effective on August 12, 2008.

**IT IS SO ORDERED THIS 16TH DAY OF JULY, 2008.**

Jennifer Cohan, Acting Secretary  
Delaware Department of Transportation

*(Break in Continuity of Sections)*

#### 6.0 Requests for Confidentiality

~~[A person may request records or portions of records submitted to the Department that are confidential.]~~ A person may request that records or portions of records submitted to the Department be

treated as confidential.] Certain information may be determined confidential if its disclosure could potentially cause substantial competitive harm to the person or business from whom the information was obtained.

The following section sets forth procedures and criteria by which the Department will determine confidentiality of records or portions of records.

#### 6.1 Procedure

6.1.1 In order for the Department to make a determination that information submitted is of a confidential nature, and therefore to be afforded confidential status, a request must be made in writing to the Secretary at the time the record is submitted. The request shall provide substantiation (following guidelines in 29 Del.C. §10002(g)) for the allegation that the information should be treated as confidential.

The request shall contain the following information:

6.1.1.1 The measures taken to guard against undesired disclosure of the information to others;

6.1.1.2 The extent to which the information has been disclosed to others, and the precautions taken in connection therewith;

6.1.1.3 Whether disclosure of the information would be likely to result in substantial harmful effects on their competitive position, and if so, what those harmful effects would be, why the effects should be viewed as substantial, and an explanation of how the disclosure would cause such harmful effects; and

6.1.1.4 Verification that significant effort or money has been expended in developing the information.

6.1.2 The following information shall be submitted:

6.1.2.1 Two public versions of the entire package of information that is submitted for determination, with alleged confidential information redacted (this version will be made available for public review).

The public versions shall correspond page for page with the confidential versions, with the confidential portions having been redacted;

6.1.2.2 Two confidential versions of the entire package of information that is submitted for determination, that includes the alleged confidential information (this version will be used internally for technical review); and

6.1.2.3 Certification through a separate, notarized affidavit that the information is either trade secret, or commercial/financial information that is of a confidential nature. The affidavit will be signed by the Responsible Official.

6.1.3 The burden lies with the party asserting the claim of confidentiality. A unilateral assertion that a record is confidential is insufficient evidence to support the Secretary in making a determination of confidentiality pursuant to this privilege.

6.1.4 After a final determination of confidentiality has been issued by the Secretary, any further submissions containing the same confidential information shall be deemed to be confidential based on the prior determination if the Department determines that:

6.1.4.1 The Responsible Official notified the Department in writing contemporaneously with the later submission that the later submission contains information previously determined to be confidential; and

6.1.4.2 The later submission identifies with particularity the prior confidentiality determination; and

6.1.4.3 The notice to the Department met the requirements of Section 6.1.2 above relating to submission of multiple and redacted copies, and included the required affidavit of the Responsible Official; and

6.1.4.4 The later representations of confidentiality are sufficient to meet the requirements for a confidentiality determination.

#### 6.2 Criteria

6.2.1 The Secretary may determine that the information submitted is entitled to confidential treatment if all of the following criteria are met:

- 6.2.1.1 Reasonable measures to protect the confidentiality of the information and an intention to continue to take such measures have been satisfactorily shown;
- 6.2.1.2 The information is not, and has not been, reasonably obtainable by other persons (other than governmental bodies) by use of legitimate means (other than court enforced order) without prior consent;
- 6.2.1.3 No statute specifically requires disclosure of the information;
- 6.2.1.4 A satisfactory showing has been made that disclosure of the information is likely to cause substantial harm to their competitive position; and
- 6.2.1.5 Verification that significant effort or money has been expended in developing the information.

## 6.3 Final Determination

The Secretary will make a final determination as to whether the information shall be considered public or confidential based upon a review of the information submitted pursuant to this Section. The person making the confidentiality request will be notified in writing of the Secretary's determination.

- 6.3.1 If the Secretary determines that disclosure of the information would violate 29 Del.C. §10002(g)(2), the information will be deemed confidential until such time as the basis for a determination of confidentiality changes. It is the responsibility of the person who requested that the information be given confidential status to notify the Department in writing of such changes.
- 6.3.2 If the Secretary finds that the information is not entitled to confidential treatment, the information will be considered public.

## 6.4 Defense of Secretary's Determination

### 6.4.1 Verification of Information

There will be instances in which the Secretary may be unable to verify the accuracy of the information submitted for determinations of confidentiality. The Secretary relies heavily upon the information furnished by the affected party in order to make a reasonable determination of confidentiality.

### 6.4.2 Information Determined Confidential

If the Secretary makes a confidentiality determination that certain information is entitled to confidential treatment, and the Department is sued by a requestor for disclosure of that information, the Department will:

- 6.4.2.1 Notify each affected party of the suit;
- 6.4.2.2 Call upon each affected party to furnish assistance where necessary in preparation of the Department's defense; and
- 6.4.2.3 Defend the final confidentiality determination, but expect the affected party to cooperate to the fullest extent possible in the defense.

## 7.0 Effective Date of this Regulation

These regulations will become effective 11 days after being published as a final regulation. Any and all FOIA requests currently in process at the time of adoption will be subject to these regulations.

**\*Please Note: As the rest of the sections were not amended since the proposal in the June 2008 issue, they are not being published here. A copy of the final regulation is available at**

**[http://regulations.delaware.gov/register/august2008/final/12 DE Reg 245 08-01-08.htm](http://regulations.delaware.gov/register/august2008/final/12%20DE%20Reg%20245%2008-01-08.htm)**



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**GOVERNOR'S EXECUTIVE ORDERS**

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**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER****EXECUTIVE ORDER  
NUMBER ONE HUNDRED SEVEN****RE: Terminating Drought Watch**

**WHEREAS**, on October 20, 2007, I issued Executive Order No. 103, declaring a statewide drought watch, pursuant to Section 3116, Title 20 of the Delaware Code and recommending voluntary conservation measures to preserve the water supply in the State of Delaware; and

**WHEREAS**, stream flows and ground water levels are now at normal levels; and

**WHEREAS**, the Water Supply Coordinating Council has unanimously recommended that the drought watch be rescinded,

**NOW THEREFORE, I, RUTH ANN MINNER**, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order as follows:

1. The drought watch implemented by Executive Order No. 103, is terminated, effective immediately.
2. Citizens of the State are commended for their efforts to reduce water use during the drought watch.

Approved: April 23, 2008

Ruth Ann Minner,  
Governor

ATTEST:

Harriet Smith Windsor, Secretary of State

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**EXECUTIVE ORDER  
NUMBER ONE HUNDRED EIGHT****RE: National Law Enforcement Officers Memorial Flag**

**WHEREAS**, there have been 23 Delaware State Troopers who have died in the line of duty;

**WHEREAS**, it is important to remember these lost heroes and to honor them for giving their lives while serving the public;

**WHEREAS**, a specifically designed flag honoring fallen officers is flown over the National Law Enforcement Officers Memorial in Washington, D.C. every day in appreciation of law enforcement officers who have made the ultimate sacrifice and their survivors;

**WHEREAS**, this same flag should be flown over Delaware soil every day to honor those that gave their lives protecting the citizens of Delaware,

**NOW THEREFORE, I, RUTH ANN MINNER**, by virtue of the authority vested in me as Governor of the State of Delaware do hereby declare and order as follows:

1. The National Law Enforcement Officers Memorial Flag shall be flown or prominently displayed at each Delaware State Police facility.

Approved: May 7, 2008

Ruth Ann Minner,  
Governor

ATTEST:

Harriet Smith Windsor, Secretary of State

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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Advisory Council on Tidal Finfisheries	Dewayne A. Fox, Ph.D. Mr. Kenneth H. Logan	06/30/2013 06/28/2012
Alderman	Mr. Stephen E. Simmons	06/28/2009
Board of Accountancy	Mr. James A. Cohee	06/10/2011
Board of Architects	Mr. Joseph J. Schorah, Jr.	06/10/2011
Board of Cosmetology and Barbering	Ms. Leila Lord-Dufaj	06/10/2011
Board of Education	Mr. G. Patrick Heffernan	06/25/2014
Board of Examiners of Psychologists	Steve K. D. Eichel, Ph.D. Mark C. Fleming, Ph.D.	06/06/2009 07/02/2011
Board of Geologists	Ms. Patricia C. Ennis	06/10/2011
Board of Landscape Architecture	Mr. Goodwin K. Cobb, IV	06/10/2011
Board of Medical Practice	Gregory D. Adams, M.D. Mr. John W. Banks Mr. George E. Brown Oluseyi N. Senu-oke, M.D.	06/02/2011 06/02/2011 06/02/2011 06/02/2011
Board of Pension Trustees	Ms. Helen R. Foster	05/07/2012
Board of Professional Counselors of Mental Health and Chemical Dependency Professionals	Ms. Lisa D. Ritchie	06/10/2011
Board of Professional Land Surveyors	Mr. Joseph M. McDonough	03/23/2009
Cash Management Policy Board	John V. Flynn, Jr., Ph.D.	06/12/2011
Child Placement Review Board Executive Committee	Ms. Janice K. Baly	06/02/2011
Clean Water Advisory Council	Mr. Lee J. Beetschen Mr. Manubhai C. Karia	06/30/2011 06/30/2011
Commission on Adult Entertainment Establishments	Mr. James D. Nutter	At the pleasure of the Governor
Commissioner of the Court of Common Pleas	The Honorable Mary M. McDonough	06/30/2014

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# GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Council on Apprenticeship and Training	Mr. John M. Hagelstein	01/30/2009
	Mr. R. Joseph Johnson	06/02/2011
	Mr. David G. Kitto	06/02/2011
	Mr. Andrew S. Nowell	06/02/2011
Council on Boiler Safety	Mr. Carl D. Kinney, Sr.	06/02/2011
Council on Real Estate Appraisers	Mr. Bradford T. Levering	05/06/2011
Council on Shell Fisheries	Mr. Steven Copp	06/02/2011
	Mr. Patrick M. Gaffney	06/02/2011
	Mr. Virgilio Pacelli	06/02/2011
	Mr. Paul A. Satterfield	06/02/2011
	Mr. Robert G. Thompson	06/02/2011
Court of Common Pleas	The Honorable John K. Welch	06/30/2020
Delaware Economic and Financial Advisory Council	Mr. John J. Casey, Jr.	At the pleasure of the Governor
	The Honorable William A. Oberle, Jr.	At the pleasure of the Governor
Delaware Gaming Control Board	Ms. Sharon M. McDowell	06/30/2011
Delaware Interscholastic Athletic Association	Ms. Edna L. Cale	06/30/2009
	Mr. Ronald B. Eby	06/30/2011
	Mr. Eugene F. Montano	06/30/2011
	Mr. Randall E. O'Neal	06/25/2011
	R. Dianne Sole, Ed.D.	06/30/2011
	Ms. Teresa A. Taylor	06/30/2011
	Mr. Michael T. Wagner	06/30/2009
Delaware Solid Waste Authority	Mr. Gerard L. Esposito	06/25/2011
Enhanced 911 Emergency Reporting System Service Board	The Honorable Finley B. Jones, Jr.	06/30/2011
Environmental Appeals Board	Mr. Michael A. Horsey	06/30/2011
Health Care Advisory Panel	Barry L. Bakst, D.O.	05/15/2011
	Ms. Linda Y. Cho	05/15/2011
	Mr. James E. Downing, M.D.	05/15/2011
	Mr. A. Richard Heffron	05/15/2011
	R. Walter Powell, M.D.	06/12/2011

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# GOVERNOR'S APPOINTMENTS

251

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Justice of the Peace	The Hon. Laurence L. Fitchett, Jr.	07/05/2014
	The Honorable John D. McKenzie	07/03/2014
	The Honorable Jana E. Mollohan	07/05/2014
	The Honorable James A. Murray	07/07/2014
	The Honorable Terry L. Smith	07/07/2014
	Mr. William S. Young, III	07/21/2012
Manufactured Home Installation Board	Ms. Kathleen A. Bartron	01/24/2009
New Castle Vocational-Technical Board of Education	Mr. Mark S. Stellini	07/01/2015
Poet Laureate	Ms. JoAnn A Balingit	At the pleasure of the Governor
Professional Standards Board	Cristy L. Greaves, Ed.D.	06/30/2009
	Ms. Samtra K. Devard	06/12/2011
	Mr. David S. Kohan	06/30/2009
	Ms. Jill T. Lewandowski	06/28/2010
	Ms. Whitney L. Price	06/12/2011
State Employee's Charitable Campaign Steering Committee	Ms. Mary E. Gzym	At the pleasure of the Governor
	Mr. Robert H. Strong	At the pleasure of the Governor
Sussex County Vocational-Technical School Board of Education	Mark A. Isaacs, Ph.D.	07/01/2015
Tax Appeals Board	Mr. Steven R. Director	06/30/2011
	Ms. Cynthia L. Hughes	06/30/2011
	Mr. Todd C. Schiltz	06/30/2011
University of Delaware Board of Trustees	Mr. Everett C. Toomey	06/25/2014
Violent Crimes Compensation Board	Mr. Thaddeus A. Koston	06/30/2011

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# GENERAL NOTICES

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## DEPARTMENT OF FINANCE DIVISION OF REVENUE

### TECHNICAL INFORMATION MEMORANDUM 2008-01

**DATE:** July 09, 2008

**SUBJECT:** Legislation passed during the Second Session of the 144<sup>th</sup> Delaware General Assembly.

During the Second Session of Delaware's 144<sup>th</sup> General Assembly, ending June 30, 2008, eight (8) bills were enacted of interest to or having an impact on Delaware taxpayers and/or the state's Division of Revenue. The subjects of these bills range from an increase in gross receipts tax rates (HB 513) to the creation of a 'Retail Crime Unit' to investigate and prosecute retail crime (HB458 w/HA1).

Legislation significant to Delaware's Division of Revenue has been summarized below and is divided into two categories for retrieval ease:

Legislation directly affecting tax procedures and filing requirements for businesses and individuals in the upcoming year; and

Legislation implementing broad policy changes or altering Division of Revenue processes with little to no effect on tax-filing requirements for the upcoming year.

Bills in their entirety may be viewed on the Delaware General Assembly website: [www.legis.delaware.gov](http://www.legis.delaware.gov).

This memorandum is intended for general notification and explanation of recently enacted Delaware laws and should not be relied upon exclusively in any pending or future audit or judicial review of an individual taxpayer or transaction. Taxpayers are advised to consult the particular bill, the Delaware Code, or Delaware regulations in all matters conflicting with any part of this memorandum.

Taxpayers with general questions about the application of Delaware law and procedures may call the Division of Revenue Help Line at (302) 577-8200, or visit the Division's website at [\[www.revenue.delaware.gov\]](http://www.revenue.delaware.gov) where information about tax topics and links to phone numbers for other information may be found.

#### **(I) Legislation directly affecting tax procedures and filing requirements for businesses and individuals in the upcoming year:**

##### **Senate Bill 334**

Signed by Governor on 06/30/08

#### AN ACT TO AMEND TITLE 12 OF THE DELAWARE CODE RELATING TO ESCHEATS

This Act lowers the period of dormancy to 3 years for investment type properties. As federal securities laws generally require due diligence to be performed twice before the expiration of 3 years of dormancy and if an owner cannot be located within this period and reunited with their property the property shall now be turned over to the State in this shorter period of time as the holder has completed their due diligence requirements.

The Act became effective when signed on June 30, 2008 and therefore the first filing period will result in a three year catch up of property with a dormancy period of three, four and five years.

##### **Senate Bill 335**

Signed by Governor on 06/30/08

#### AN ACT TO AMEND TITLES 3 AND 12 OF THE DELAWARE CODE RELATING TO ESCHEATS

This Act provides for the escheat of monies due on unclaimed pari-mutuel tickets after a one year period of dormancy. The Act became effective when signed on June 30, 2008. Any pari-mutuel tickets sold prior to this date are not subject to this amendment.

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## House Bill 513

Signed by Governor on 07/01/08

### AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO GROSS RECEIPTS TAXES

Delaware has enacted legislation increasing a number of gross receipts tax rates. The rate increases are effective for taxable periods beginning after December 31, 2008 and are repealed for taxable periods beginning after March 31, 2012. After March 31, 2012, the rates in effect before the increase are restored.

**Occupations requiring licenses.** The gross receipts license fee for occupations requiring licenses rises from 0.307% to 0.384% of aggregate gross receipts.

**Contractors.** The contractors' gross receipts license fee rises from 0.499% to 0.624% of aggregate gross receipts. **Manufacturers.** The manufacturers' gross receipts license fee rises from 0.144% to 0.180% of aggregate gross receipts.

**Wholesalers.** The wholesalers' gross receipts license fee rises from 0.307% to 0.384% of aggregate gross receipts.

**Petroleum products wholesalers.** The additional petroleum product wholesalers' gross receipts license fee rises from 0.192% to 0.240% of all taxable gross receipts derived from the sale of petroleum or petroleum products.

**Food processors wholesalers.** The food processors wholesalers' gross receipts license fee rises from 0.154% to 0.192% of aggregate gross receipts.

**Commercial feed dealer wholesalers.** The commercial feed dealer wholesalers' gross receipts license fee rises from 0.077% to 0.096% of aggregate gross receipts.

**Retailers.** The retailers' gross receipts license fee rises from 0.576% to 0.720% of aggregate gross receipts.

**Transient retailers.** The transient retailers' gross receipts license fee rises from 0.576% to 0.720% of aggregate gross receipts.

**Restaurant retailers.** The restaurant retailers' gross receipts license fee rises from 0.499% to 0.624% of aggregate gross receipts.

**Farm machinery retailers.** The farm machinery retailers' gross receipts license fee rises from 0.077% to 0.096% of aggregate gross receipts.

**Grocery store retailers.** The grocery store retailers' gross receipts license fee rises from 0.307% of the first \$2 million per month and 0.576% of aggregate gross receipts afterwards, to 0.315% of the first \$2 million per month and 0.590% of aggregate gross receipts afterwards.

**Lessees.** The leasing use tax rises from 1.536% to 1.92% of the rent paid under a lease of tangible personal property.

**Lessors.** The lessors' gross receipts license fee rises from 0.230% to 0.288% of lease rental payments received.

## Senate Bill 213

Signed by Governor on 06/3/08

### AN ACT TO AMEND TITLE 5 OF THE DELAWARE CODE PERTAINING TO THE DELAWARE BANK FRANCHISE TAX AND TITLE 30 OF THE DELAWARE CODE PERTAINING TO THE DELAWARE CORPORATION INCOME TAX

This Act recognizes the changing nature of the financial services industry by permitting certain types of corporations to apportion their apportionable income based on a single ratio of Delaware-sourced gross receipts from asset management services to all gross receipts from asset management services, rather than the 3 ratio average apportionment factor used by other corporations.

The Act creates a definition of an "asset management corporation," which is a corporation, 90% or more of the federally reported gross receipts of which are derived from asset management services, which is also defined by the Act. The Act permits, but does not require, corporations that meet the criteria for treatment as asset management corporations to elect such treatment for each taxable year. Asset management services are services

rendered with respect to intangible investments and consist of rendering investment advice, determining the timing of sales and purchases of intangible investments, selling and purchasing intangible investments, rendering administration and distribution services and managing contracts for sub-advisory services. The sourcing of gross receipts derived from providing asset management services is based generally on the domicile of the consumer of asset management services.

The Act prevents the election by subsidiary corporations of banking organizations, trust companies or electing banking organizations and trust companies under the Delaware Bank Franchise Tax to be taxed as asset management corporations under the Corporation Income Tax of Title 30 of the Delaware Code rather than under the Delaware Bank Franchise Tax under Title 5 of the Delaware Code.

**House Bill 515**

Signed by Governor on 07/01/08

AN ACT TO AMEND CHAPTER 82 OF TITLE 3 OF THE DELAWARE CODE PERTAINING TO THE  
VETERINARIAN SERVICES TAX AND OTHER MATTERS

This Act eliminates the veterinarian services tax credit after December 31, 2008. Veterinarians participating in the Animal Population and Control Program and Spay/Neuter Fund, after December 31, 2008, are entitled to monthly reimbursements for services rendered thereby eliminating the need for the tax credit. It also makes technical corrections and clarifies eligibility requirements for participation in the Spay/Neuter Program.

**(II) Legislation implementing broad policy changes or altering Division of Revenue processes with little to no effect on tax-filing requirements for the upcoming year:**

**Senate Bill 336**

Signed by Governor on 06/30/08

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO GROSS RECEIPTS TAXES

This Act repeals the earmark of the lessees' use and the lessors' license taxes to the Transportation Trust Fund, which will result in the deposit of such taxes into the General Fund, upon enactment.

Patrick Carter, Director of Revenue

**DEPARTMENT OF AGRICULTURE**  
**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 Rules 6 and 8. The Commission will hold a public hearing on the proposed rule changes on September 9, 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 August 1, 2008.

The proposed changes are for the purpose of updating Rules 6 and 8 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](http://regulations.delaware.gov/services/current_issue.shtml). A copy is also available for inspection at the Racing Commission office.

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**DEPARTMENT OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, August 21, 2008 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**  
**NOTICE OF PUBLIC COMMENT PERIOD**  
**20800 Long Term Acute Care Program (SSI)**

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 existing rules in the Division of Social Services Manual (DSSM) used to determine eligibility related to Long Term Care, specifically, the Acute Care 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, 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 August 31, 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.

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**DIVISION OF SOCIAL SERVICES**  
**NOTICE OF PUBLIC COMMENT PERIOD**  
**1000 Responsibility for the Administration of Delaware's Assistance Programs**

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 is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the *Responsibility for the Administration of Delaware's Assistance Programs and Confidentiality*.



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 August 31, 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.

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**DIVISION OF SOCIAL SERVICES**  
**NOTICE OF PUBLIC COMMENT PERIOD**

**FOOD STAMP PROGRAM**  
**Citizenship and Alien Status**  
**9007.1 Citizens and Qualified Aliens**

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 is proposing to amend Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding *Citizenship and Alien Status*.

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 August 31, 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.

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**DIVISION OF SOCIAL SERVICES**  
**NOTICE OF PUBLIC COMMENT PERIOD**

**FOOD STAMP PROGRAM**  
**DSSM 9060, 9068.1 and 9085**

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 is proposing to amend Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding *Income Deductions, Certification Period Lengths and Reporting Changes*.

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 August 31, 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.

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**DEPARTMENT OF INSURANCE****PUBLIC NOTICE OF PROPOSED CHANGES TO THE DEPARTMENT OF INSURANCE'S REGULATION 301  
RELATING TO AUDITED FINANCIAL REPORTS**

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 301 relating to audited financial reports and financial statements of insurance companies. The docket number for this proposed amendment is 810.

The purpose of the proposed amendment to Regulation 301 is to update the existing financial report and audit requirements by enacting the Model Regulation, as modified to conform to statutory law. The text of the proposed amendment is reproduced in the August 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 4:00 p.m., Tuesday September 2, 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](mailto:mitch.crane@state.de.us).

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**1000 DEPARTMENT OF LABOR****1300 Division of Industrial Affairs****1310 The Office of Anti-Discrimination****NOTICE OF PUBLIC HEARING****1311 Office of Anti-Discrimination Rules and Regulations**

The Secretary of Labor in accordance with 19 *Del.C.* §712(a)(2) has proposed rules and regulations relating to the Delaware Department of Labor's Office of Anti-Discrimination ("Anti-Discrimination Office"). These proposals set forth the Anti-Discrimination Office's procedures for the handling of discrimination charges with coordinated instructions and procedures developed by the Anti-Discrimination Office Administrator and staff ("Rules and Regulations").

A public hearing will be held before the Director of Industrial Affairs and Anti-Discrimination Office Administrator (collectively the "Department") at 2:00 p.m. on September 24, 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 Julie Klein Cutler, Administrator, Office of Anti-Discrimination, Division of Industrial Affairs, Department of Labor, 4425 N. Market Street, Wilmington, Delaware 19802. Persons wishing to submit written comments may forward these to Ms. Cutler at the above address. The final date to receive written comments will be at the public hearing.

The Department will consider making a recommendation to the Secretary following the public hearing.

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL  
CONTROL****DIVISION OF FISH AND WILDLIFE****PUBLIC NOTICE****Title of the Regulations:**

New Non-tidal Finfish Regulation 3311, Freshwater Fisherman Registry.

New Tidal Finfish Regulation 3567, Tidal Water Fisherman Registry.

**Brief Synopsis of the Subject, Substance and Issues:**

These proposed additions to the tidal and non-tidal fishing regulations would enable Delaware to provide a computerized registry of names, addresses, and phone numbers of saltwater anglers to the federal National Marine Fisheries Service so that Delaware may avoid requirements for federal licensing of Delaware saltwater anglers. In order to improve upon present means of determining recreational catch and effort in marine waters, Congress authorized the National Marine Fisheries Service to compile a registry of all anglers fishing in saltwater beginning in 2009 and to begin charging for participation in this registry as of 2011. The fees so generated will be deposited in the federal treasury and not returned to the states according to existing federal plans.

The National Marine Fisheries Service has determined that any state such as Delaware that already has a complete name and address file of marine recreational fishermen via state-issued recreational fishing licenses will be exempt from the federal registry and the federal fees to be imposed. Under Delaware's present fishing license statutory requirements contained in Chapter 5 of 7 Delaware Code, Delaware would be classified by the National Marine Fisheries Service as a non-exempt state because the holder of a recreational boat license may take any number of non-licensed anglers with them on the licensed vessel, thus these unlicensed anglers would not be included in the database of all anglers. In addition, resident senior citizens age 65 and older also are exempt from Delaware recreational fishing license requirements. Therefore, to avoid a federal determination that Delaware is a non-exempt state, this regulation will establish a state-level registration process for all anglers fishing in Delaware at no additional cost to the angler. This new Delaware registration will be known as the F.I.N number (Fisherman Information Network).

All prospective Delaware anglers age of 16 or older, whether they are licensed or not, will be required by this regulation to obtain a F.I.N number on an annual basis before fishing in Delaware's waters. This requirement is similar to a federal registration known as the Hunter Information Program (H.I.P.) for all who intend to hunt migratory birds. This F.I.N. number may be obtained at no cost to the angler by calling a toll free number and providing the required information over the phone or by entering the required information on-line through an internet access portal designated by the Department for this purpose. Each person who requests a F.I.N. number should write this number on his or her Delaware fishing license, or for those who are legally unlicensed, be able to produce this number when challenged by an authorized enforcement agent.

Both the appropriate web site address and toll-free number will be advertised and made readily available to all prospective Delaware anglers. The caller or computer user will be instructed to indicate whether they intend to fish in Delaware's freshwaters, marine (tidal) waters, or both, and then give their name, address, and phone number. Once all Delaware fishermen have obtained a F.I.N. number, Delaware will be able to supply a complete computerized name, address, and telephone number file of saltwater anglers to the National Marine Fisheries Service so that Delaware may be exempt from the federal marine recreational fishing registry and associated federal charges.

**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 August 27, 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](mailto:Lisa.Vest@state.de.us). The hearing record will remain open for written or e-mail comments until 4:30 PM August 31, 2008.

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**DIVISION OF FISH AND WILDLIFE****PUBLIC NOTICE****SAN #2008-10, SAN#2008-11, SAN#2008-12, SAN#2008-13, SAN#2008-14, SAN#200815****Title of the Regulation:**

3900 Wildlife Regulations

**Brief Synopsis of the Subject, Substance and Issues:****3.0 Federal Laws and Regulations Adopted (Formerly WR-3)**

This action is needed to establish in regulation the special 1 day waterfowl hunt for youth and disabled hunters and set the minimum participation age at 10 years old to conform to the minimum age for hunter safety certification and to the special 1 day deer hunt for youth and disabled hunters. This action is needed to prohibit the possession and release of mute swans which are a non-native invasive species that can severely damage aquatic ecosystems and drive out native birds.

**5.0 Wild Turkey (Formerly WR-5)**

This action is needed to expand the opportunities for hunters to take a turkey education class and thus become eligible for a Delaware turkey hunting permit. There is a growing desire by non-residents of Delaware to come here to hunt turkeys. At this point in time, they have to travel to Delaware to take the mandatory turkey hunting safety class. This regulatory change will allow hunters to take comparable classes in their home state and then be certified to hunt in Delaware. This action is also needed to establish a youth day for Delaware turkey hunting as is offered for deer and waterfowl hunting. Because of the limited turkey hunting opportunities on public land in Delaware, this day would only apply to private land hunting.

**7.0 Deer (Formerly WR-7)**

This action is needed to correct an omission regarding the Non Resident Quality Buck Deer Tag making it a legally recognized tag. Secondly, this action is needed to clarify that only 2 antlered deer may be killed during a license year and it clarifies legal transportation of deer. Thirdly, children 10 years of age or older may take the Delaware General Hunter Education course and become certified. This regulatory amendment will provide conformity between the minimum age a child can be certified under the Hunter Safety Program and the age at which they may participate in the special Youth Day deer hunt.

**8.0 General Rules and Regulations Governing Land and Waters Administered by the Division (Formerly WR-8)**

As Delaware's population grows and its open space declines, more people are seeking out State Wildlife Areas for outdoor activities that have nothing to do with wildlife. The Division's goal is to accommodate these non-wildlife related activities in so far as they do not disrupt other citizens engaged in wildlife related pursuits on the areas. This action is needed to allow for geocaching on State Wildlife Areas while at the same time, separating it from hunting activity. This separation will prevent conflict and improve safety. Furthermore, this amendment will strengthen the trespass section of Regulation 8.0. The Division publishes annual maps and rules of all State Wildlife Areas. This change will allow for unique Wildlife Area entry restrictions to be published on area maps that will be backed up in regulation.

**20.0 Game Bird Releases (New)**

This action will require that all domestically raised quail, chukar partridge, Hungarian partridge and pheasants released into the wild be fitted with a Division approved leg band. As wild bird numbers decline, more hunters are releasing domestically raised game birds for hunting and dog training purposes. When hunters report harvested bird numbers on Division game surveys, it is unclear how many are wild birds. This makes it difficult to assess wild bird mortality and population levels and adjust hunting seasons and management efforts appropriately. To release banded game birds, a free Division permit will have to be obtained. This permit requirement will assist in determining the locations and numbers of released birds. Game harvest survey questions will be written to distinguish between wild un-banded birds and released banded birds.

**21.0 Guide License Requirements (New)**

This action is needed to define the requirements for a guide license as found in Title 7, Chapter 5. Licenses, of the Delaware Code.

**Notice of Public Comment:**

These regulatory changes will be presented in a series of public hearings on August 25<sup>th</sup>, 2008 beginning at 6:30 p.m., DNREC Auditorium, 89 Kings Highway, Dover, Delaware. The hearing record for these proposed Regulations will remain open until 4:30 P.M., Sunday August 31, 2008. The order of hearings is as follows:

Regulation 3900.3 – Federal Regulations Adopted

Regulation 3900.5 – Wild Turkey

Regulation 3900.7 – Deer

Regulation 3900.8 – General Rules and Regulations Governing Land and Waters Administered by the Division.

Regulation 3900.20 – Game Bird Releases

Regulation 3900.21 – Guide License Requirements

Written comments for the hearing record should be addressed to Kenneth Reynolds, 6180 Hay Point Landing Road, Smyrna, DE 19977 or to [Kenneth.Reynolds@state.de.us](mailto:Kenneth.Reynolds@state.de.us). The record will remain open for written public comment until 4:30 P.M. August 31, 2008.

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**2500 BOARD OF PODIATRY**

**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.

In compliance with 29 *Del.C.* §10115, notice of the public hearing and a copy of the proposed regulatory changes was published in the Delaware *Register of Regulations*, Volume 11, Issue 10, at page 1352 on April 1, 2008. The public hearing was originally scheduled for Thursday, July 17, 2008. That hearing has been rescheduled. **The public hearing will now take place on Thursday, September 18, 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 David Mangler 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 David Mangler at the above address or by calling (302) 744-4500.

The Board will consider promulgating the proposed regulations immediately following the public hearing.

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**HUMAN RELATIONS COMMISSION**  
**NOTICE OF PUBLIC HEARING**  
**1501 Equal Accommodations Regulations**  
**1502 Fair Housing Regulations**

The State Human Relations Commission, in accordance with 29 *Del.C.* Chapter 101 and 6 *Del.C.* §4506, proposes amendments to the Equal Accommodations Regulations. The changes are required to clarify hearing procedures and to comply with changes to “The Delaware Equal Accommodations Law” 6 *Del.C.* Chapter 45, and 31 *Del.C.* Chapter 30, and other items.

The Commission also proposes amendments to the Fair Housing Regulations. The changes are required to clarify hearing procedures and to comply with changes to "The Delaware Fair Housing Act" 6 **Del.C.** Chapter 46, and 31 **Del.C.** Chapter 30, and other items.

A public hearing is scheduled for Thursday, September 11, 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.

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**DEPARTMENT OF TRANSPORTATION****DIVISION OF MOTOR VEHICLES****NOTICE OF PUBLIC COMMENT PERIOD****2222 School Bus Driver Qualifications and Endorsements**

The Delaware Division of Motor Vehicles gives notice of intent to adopt proposed Division of Motor Vehicles Regulation 2222 relating to school bus driver qualifications and endorsements.

Any person who wishes to make written suggestions, briefs or other written materials concerning this proposed new regulation must submit the same to Scott Vien, CDL Program Manager, Delaware Division of Motor Vehicles, P.O. Box 698, Dover, Delaware 19903, or by fax to (302) 739-2602 by August 31, 2008.