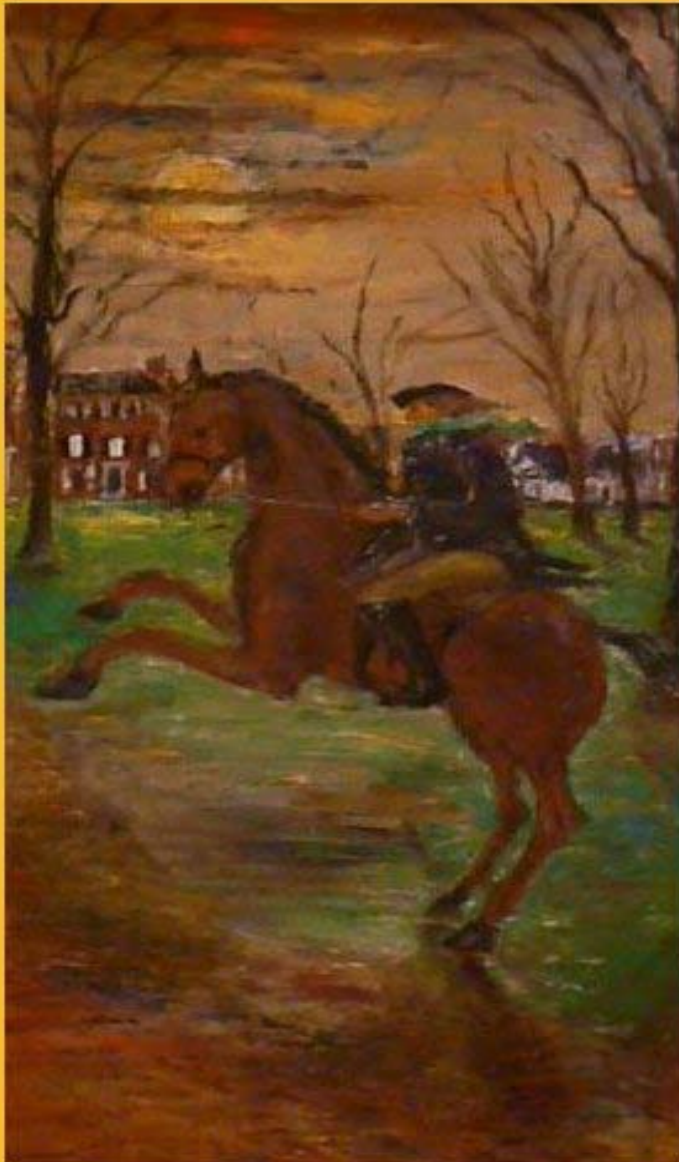


# Delaware Register of Regulations

Issue Date: February 1, 2008

Volume 11 - Issue 8, Pages 958 - 1084



"Caesar Rodney's Ride," by Jack Lewis  
on display at Legislative Hall, Dover, Delaware

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Final

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Appointments

Executive Orders

General Notice

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 January 15, 2008.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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

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
March 1	February 15	4:30 p.m.
April 1	March 17	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 15	4:30 p.m.
July 1	June 16	4:30 p.m.

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## Symbol Key

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

## Proposed Regulations

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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## DEPARTMENT OF AGRICULTURE THOROUGHBRED RACING COMMISSION

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

### PUBLIC NOTICE

#### 1001 Thoroughbred Racing Rules and Regulations

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

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

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

#### 1001 Thoroughbred Racing Rules and Regulations

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

#### 15.0 Medication; Testing Procedures

##### 15.1 Prohibition and Control of Medication:

# PROPOSED REGULATIONS

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

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

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

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

15.1.1.4 Notwithstanding the provisions of Rule 15.1.1.3 above, any person may have in his possession within a race track enclosure, any chemical or biological substance for use on his own person, provided that, if such chemical substance is prohibited from being dispensed by any Federal law or law of this State without a prescription, he is in possession of documentary evidence that a valid prescription for such chemical or biological substance has been issued to him.

15.1.1.5 Notwithstanding the provisions of Rule 15.1.1.3 above, any person may have in his possession within any race track enclosure, any hypodermic syringe or needle for the purpose of administering a chemical or biological substance to himself, provided that he has notified the Stewards: (1) of his possession of such device; (2) of the size of such device; and (3) of the chemical substance to be administered by such device and has obtained written permission for possession and use from the Stewards.

15.1.2 Definitions:

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

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

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

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

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

15.1.2.5 Chemist shall mean the Commission's chemist.

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

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

15.1.3 Foreign Substances:

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

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

15.1.3.1.2 A finding by the chemist of a foreign substance or an approved substance used in violation of Rule 15.1 in any test sample of a horse participating in a race shall result in the horse being disqualified from purse money or other awards, except for purposes of pari-mutuel wagering which shall in no way be affected.

15.1.3.1.3 A foreign substance of accepted therapeutic value may be administered as prescribed by a Veterinarian when test levels and guidelines for its use have been established by the Veterinary-Chemist Advisory Committee of the National Association of State Racing Commissioners and approved by the Commission. Aminocaproic acid may be present in a horse's body while it is participating in a race, subject to all the provisions of these Rules. Androgenic-Anabolic Steroids are subject to the provisions of Rule 15.17.

15.1.3.1.4 The only approved non-steroidal anti-inflammatory drug (NSAID) that may be present in a horse's body while it is participating in a race is phenylbutazone/oxyphenbutazone in the level stated in 15.1.3.1.5 or 15.1.3.1.6. The presence of any other NSAID at any test level is forbidden.

Revised: 1/6/92.

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

Micrograms per milliliter	Penalties
0 to 2.5	No action
2.6 to 4.9	First Offense-\$500.00 fine
2.6 to 4.9	Second Offense within 365 days \$1000.00 fine
2.6 to 4.9	Third Offense within 365 days \$1000.00 fine and/or Suspension and/or Loss of Purse
5.0 and Over	Fine, Suspension, Loss of Purse

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

Micrograms per milliliter	Penalties
0 to 2.5	No action
2.6 to 4.9	First Offense-\$500.00 fine
2.6 to 4.9	Second Offense within 365 days \$1000.00 fine
2.6 to 4.9	Third Offense within 365 days \$1000.00 fine and/or Suspension and/or Loss of Purse
5.0 and Over	Fine, Suspension, Loss of Purse

15.1.3.1.7 No bleeder medication otherwise permissible under this Rule may be administered to a horse within one hour of the scheduled post time of the horse's race. The administration of salix to a horse on race day will be governed by Rule 15.2.

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

15.1.3.1.9 A veterinarian administering bleeder medications shall report the administration of such medications on the same form that is used to report the administration of salix.

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

15.1.3.1.11 Any horse running on permissible bleeder medication under these Rules shall remain on the medication for a period of not less than sixty (60) days before being permitted to

race without the permissible bleeder medication.

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

15.1.3.1.13 Erythropietin (EPO)

A finding by the official chemist that the antibody of Erythropietin (EPO) was present in a post-race test specimen of a horse shall be promptly reported in writing to the Stewards. The Stewards shall notify the owner and trainer of the positive test result for Erythropietin antibodies. The Stewards shall notify the Commission Veterinarian of the name of the horse for placement on the Veterinarian's List, pursuant to Rule 5.32, if the positive test result indicates that the horse is unfit to race. Any horse placed on the Veterinarian's List pursuant to this Rule shall not be permitted to enter a race until the owner or trainer, at their own expense, provides proof of a negative test result for EPO antibodies from a laboratory approved by the Commission provided said test sample is obtained under collection procedures acceptable to the Commission or its designee under these Rules.

Notwithstanding any inconsistent provision of these Rules, a horse shall not be subject to disqualification from the race and from any share of the purse in the race and the trainer of the horse shall not be subject to application of trainer's responsibility based on the finding by the laboratory that the antibody of Erythropietin was present in the sample taken from that horse.

15.2 Bleeder Medication:

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

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

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

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

15.2.1.4 A horse in the Bleeder Program shall be required to be brought to an area designated by the Licensee and approved by the Commission not later than three and one-half (3 ½) hours before post time for the race in which it is entered. During the 3 ½ hour period, the horse shall be under the care and custody of a groom or caretaker appointed by the Trainer. The approved Furosemide medication may be administered by a licensed practicing veterinarian within three (3) hours before post time. The practicing veterinarian shall make a report to the Stewards of the treatment on forms provided by the Stewards on the same day of treatment.

15.2.1.5 (Deleted.)

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

Revised: 6/19/92.

15.2.1.7 Dosage. Furosemide (Salix) shall be administered intravenously, or intramuscularly as permitted under Rule 15.02.1.8, to horses in the Bleeder Program by a licensed practicing veterinarian, who will administer not more than 500 milligrams nor less than 100 milligrams, subject to the following conditions:

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

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

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

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

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

15.2.1.10.1.2 the horse in question must report to the detention barn four hours prior to post time.

15.2.1.10.1.3 the same handler/groom must stay with the horse at all times.

15.2.1.10.1.4 a blood sample shall be taken by the Commission veterinarian before the administration of furosemide.

15.2.1.10.1.5 the trainer's veterinarian must administer furosemide at a dosage not to exceed 500 milligrams.

15.2.1.10.1.6 the Commission veterinarian must witness the administration of furosemide.

15.2.1.10.1.7 the horse must return to the detention barn after the race for the taking of post-race blood and urine testing by the Commission veterinarian or assistant, no matter how the horse finishes in the race.

15.2.1.10.2 If, after all of the above conditions are met, the post race tests reveal that the specific gravity of the horse's urine is again below 1.010 and the concentration of furosemide in the blood plasma is greater than 100 nanograms per milliliter of plasma, and the blood sample taken in the detention barn before the administration of furosemide tests negative for furosemide, the horse will be placed on an "exempt" list and the first offense will be removed, provided further that any horse on the "exempt" list will be required to have all future prerace Salix treatments administered pursuant to the procedure set forth in Rules 15.2.1.9.1.2 through 15.2.1.9.1.7 set forth above. Any horse that is placed on the "exempt" list and later fails to follow the prerace procedure for Salix administration set forth in Rules 15.2.1.9.1.2 through 15.2.1.9.1.7 above will be removed from the "exempt" list, disqualified from the race, and subject to the penalties in this Rule for subsequent offenses.

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

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

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

15.3 Responsibility for Prohibited Administration:



15.3.1 Any person found to have administered or authorized a medication, drug or substance which caused or could have caused a violation of Rules 15.1 or 15.2, or caused, participated or attempted to participate in any way in such administration, shall be subject to disciplinary action.

15.3.2 The registered Trainer of a horse found to have been administered a medication, drug or substance in violation of Rules 15.1 or 15.2 shall bear the burden of proof to show freedom from negligence in the exercise of a high degree of care in safeguarding such horse from being tampered with and, failing to prove such freedom from negligence (or reliance on the professional ability of a licensed Veterinarian), shall be subject to disciplinary action.

15.3.3 The Assistant Trainer, groom, stable watchman or any other person having the immediate care and custody of a horse found to have been administered a medication, drug or substance in violation of Rules 15.1 or 15.2, if found negligent in guarding or protecting such horse from being tampered with, shall be subject to disciplinary action.

15.3.4 A licensed Veterinarian shall be responsible for any medication, drug or substance that he administers, prescribes or causes to be administered by his direction on a horse. If found to have made an error in type or quantity of same administered and if in reliance upon the correctness thereof a Trainer races such treated horse in violation of Rules 15.1 and 15.2, such licensed Veterinarian shall be subject to disciplinary action.

15.4 Reports of Administration:

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

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

15.4.3 Any Veterinarian practicing at any Delaware race track shall file a daily report with the Stewards and the Commission Veterinarian as to any medication prescribed or administered or professional service performed. This report shall be filed in person or postmarked within a period of forty-eight (48) hours from the time of treatment. Detection of any unreported medication, drug or substance by the Commission's Chemist in a pre-race or post-race test may be grounds for disciplinary action against such Veterinarian.

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

15.4.5 Such daily reports shall remain confidential except that the Commission's Veterinarian may compile general data therefrom to assist the Commission in formulating policies or rules and the Stewards may review the same in investigating a possible violation of these rules. See Rule 11.2.8 respecting a public list of horses declared to race on medication.

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

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

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

Violation of this Rule will constitute grounds for disciplinary action.

15.6 Bettors' Safeguard:

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

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

15.7 Commission List:

15.7.1 As a guide to Owners, Trainers and Veterinarians, the Commission may from time to time publish a list of medications, shown by brand and generic names, specifically prohibited for racing. Such list shall not be considered exclusive and medications shown thereon shall be considered only as among those, along with others not so listed, prohibited by general classification under Rule 15.1.

15.8 Detention Area:

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

15.9 Horses to be Tested:

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

15.9.1.1 Every effort shall be made to collect both blood and urine samples from all horses selected for post-race testing. Blood samples shall be tested;

15.9.1.1.1 For determination of those drugs with regulatory thresholds;

15.9.1.1.2 For those drugs not detectable in urine; and

15.9.1.1.3 To determine, when possible, whether a positive test result is consistent with the documented administration of the drug.

15.10 Procedure for Taking Specimens:

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

15.10.1.1 Blood samples must be collected at a consistent time, preferable not later than one hour post-race.

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

15.10.2.1 Buckets and water shall be furnished by the Commission veterinarian.

15.10.2.2 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.

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

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

15.10.3.1 The owner;

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

15.10.3.3 A stable representative designated by such owner or trainer.

15.10.4 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 Rule 15.10.3.

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

15.10.6 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.

15.10.6.1 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.

15.10.6.2 The Commission Veterinarian shall:

15.10.6.2.1 Identify the horse from which the specimen was taken.

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

15.10.6.2.3 Place the detached portions of the identification tags in sealed

envelope for delivery only to the stewards.

15.10.6.3 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.

15.10.6.3.1 Laboratories conducting post-race sample analysis must have access to LC/MS instrumentation for screening and/or confirmation purposes.

15.10.6.4 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.

15.10.6.5 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.

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

15.10.6.7 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.

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

15.10.6.9 Two (2) blood samples shall be collected in two (2) DTRC approved sample receptacles, one for the "primary" and one for the "secondary" sample.

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

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

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

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

15.10.6.11.1 A Commission representative and the owner, trainer, or other responsible person or a representative of the persons notified under these Rules 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.

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

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

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

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

15.11 Commission Chemist:

15.11.1 The Commission's Chemist, who shall be a member of the Association of Official Racing

Chemists, shall conduct tests on specimens provided him in order to detect and identify prohibited substances therein and report on such in such a manner, and according to such procedures, as the Commission from time to time may approve and/or prescribe.

15.12 Prohibited Practices

15.12.1 The following conduct shall be prohibited for all licensees:

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

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

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

15.12.1.4 The use of a nasogastric tube (a tube longer than six inches, inserted in a horses' nostril) for the administration of any substance within the 24-hour period considered raceday is forbidden without prior permission of the Commission.

15.12.1.5 The possession and/or use of blood doping agents, including but not limited to Erythropietin (EPO); Darbepietin; Oxyglobin; Hemopure or any other substance that abnormally enhances the oxygenation of equine body tissue is considered a prohibited practice that endangers the health and welfare of a horse and/or the safety and welfare of a rider. The possession and/or use of such substances on the premises of a facility under the jurisdiction of the Commission is strictly forbidden.

15.13 Testing for Prohibited Substances that Abnormally Enhance Oxygenation

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

15.13.1.1 Once a horse is entered to race;

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

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

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

15.13.1.5 Any horse that expires, consistent with DTRC Rules 10.7.1 through and inclusive of 10.7.6.

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

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

15.13.4 The trainer and/or owner of any horse that tests positive for the confirmed presence of EPO, DPO, Oxyglobin, Hemopure or any other substance that abnormally enhances the oxygenation of equine body tissue has the right to request a testing of the secondary sample consistent with DTRC Rule 15.10.6.10.1 through and inclusive of DTRC Rule 15.1.6.13.

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

15.13.6 The following penalties and disciplinary measures may be imposed for the confirmed presence of EPO, DPO, Oxyglobin, Hemopure or any other substance that abnormally enhances the

oxygenation of equine body tissue:

15.13.7 In the absence of extraordinary circumstances, a penalty of \$5,000 and/or a 10 year suspension, forfeiture of the purse money and assessment for cost of the drug testing may be imposed.

15.14 Shock Wave Therapy/Instruments

15.14.1 No person may possess on a licensee's race track an instrument used for shock wave therapy.

15.14.2 No horse may be treated with any form of shock wave therapy within ten (10) days of racing (the day of the treatment shall be considered the first day in counting the number of days).

15.14.3 The administration of shock wave therapy may only be performed by a licensed veterinarian. A veterinarian using shock wave therapy shall document and report each treatment on his daily medication report.

15.14.4 A Trainer or Veterinarian who has been found to have violated any of the above provisions of this Rule shall be subject to appropriate disciplinary action by the stewards and/or Commission including but not limited to a maximum suspension of ninety (90) days.

15.15 Blood Gas Testing

15.15.1 The Commission may use a testing machine that measures carbon dioxide levels in pre-race samples using a Base Excess testing protocol. A trainer whose horse is selected for blood gas testing and fails to report for the test will be penalized as if there was a positive test result.

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

15.15.3 A licensee has the right, pursuant to the quarantine procedure outlined at 15.15, or by such other procedures as may be established from time to time by the Commission, to attempt to prove that a horse has a naturally high carbon dioxide level in excess of the above-mentioned levels.

15.16 Quarantine Procedure for Carbon Dioxide Positive Tests (Prerace Or Postrace)

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

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

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

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

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

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

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

equip the quarantine stall.

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

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

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

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

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

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

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

15.16.3.12 Stalls for the quarantine of horses are designated by the Stewards of the DTRC, in cooperation with the racetrack.

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

15.16.3.14 Trainers are expected to train their horse in the same manner as the horse was trained on previous racing events. The horse will be equipped with all the items that it would normally carry, taken to the paddock, and handled in a manner similar to previous racing events.

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

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

## 15.17 Androgenic-Anabolic Steroids

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

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

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

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

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

# PROPOSED REGULATIONS

15.17.1.1.3.1 In geldings – 1 ng/ml in urine.

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

15.17.1.1.4 Testosterone

15.17.1.1.4.1 In geldings – 20 ng/ml in urine.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## DEPARTMENT OF EDUCATION

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 1311 (14 Del.C. §1311)  
 14 DE Admin. Code 729

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

### 729 School Custodians

#### 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 729 School Custodians. The amendments include a new definitions section; clarifies the training components related to additional pay stipends; and clarifies that charter schools are allocated custodial units similar to districts.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before March 5, 2007 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? This amended regulation is related to school custodians and does not affect student achievement.
2. Will the amended regulation help ensure that all students receive an equitable education? This amended regulation is related to school custodians and does not affect how students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This amended regulation is related to school custodians and helps to ensure all students' health and safety continue to be adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? This amended regulation is related to school custodians and does not affect students' legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This amended regulation is related to school custodians and does not change any of the authority and flexibility at the school board or school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? This amended regulation is related to school custodians and does not change any of the reporting or administrative requirements or mandates upon decision makers at the local board or school levels.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? This amended regulation is related to school custodians and does not change decision making authority.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? This amended regulation is related to school custodians and is consistent with and not an impediment to other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? This amended regulation is related to adding definitions and clarifying current training procedures and does not change the method in which school custodians have functioned.
10. What is the cost to the State and to the local school boards of compliance with the regulation? The amendments to this regulation will not affect the cost to the State or local school boards.

**729 School Custodians****1.0 Definitions**

"Central Heating Plant" means all the component parts and systems used to heat, air condition and ventilate a school facility to include traditional mechanical systems and computer building automation systems.

"Certificate of Occupancy" means the certificate issued by code enforcement agencies certifying that a building meets all building and safety codes required by the jurisdiction of that agency.

"Chief Custodian" means a Custodian who has completed the 120 class hour Chief Custodian training as prescribed by the Department of Education in 5.1.1 below. Employees who have earned the Chief Custodian certificate shall be paid an additional pay stipend in accordance with 14 Del.C. §1311(b). Employees who have earned the Chief Custodian certificate pursuant to 14 Del.C. §1311(b) are eligible to compete for chief custodial positions when they become vacant and earn pay in accordance with the pay scale identified in 14 Del.C. §1311(a).

"Classroom Equivalent" means areas or spaces in school buildings that are used for student instruction not classified as a classroom, such as but not limited to computer labs and centers, libraries, media centers, multiple intelligence rooms and areas, athletic training rooms.

"Classroom" means an area or space within a school building that is used for student instruction.

"Custodial Unit" means a formula used to determine the number of custodial positions earned by an educational facility

"Custodian" means a school district employee who is paid in accordance with 14 Del.C. §1311(a). The school district employee shall be entitled to an additional pay stipend pursuant to 14 Del.C. §1311(b) upon completion of the 60 hour Custodian certificate training as prescribed in 5.1.3 below.



# PROPOSED REGULATIONS

**“Firefighter and Custodian-Firefighter”** means a Custodian who has completed the 90 class Firefighter and Custodian-Firefighter certificate training as prescribed by the Department of Education in 5.1.2 below. This training includes but is not limited to the operation of boilers and central heating plant systems. Employees who have earned the Firefighter and Custodian-Firefighter certificate shall be paid an additional pay stipend in accordance with 14 Del.C. §1311(b). Employees with the Firefighter and Custodian-Firefighter certificate pursuant to 14 Del.C. §1311(b) are eligible to compete for Custodian Fireman positions when they become vacant and earn pay in accordance with the pay scale identified in 14 Del.C. §1311(a).

**“Maintenance Mechanic”** means an employee filling a custodial position with specialized technical skill in a particular trade or trades as determined by the school district in accordance with 4.3 below and paid in accordance with the pay scale identified in 14 Del.C. §1311(a).

**“Skilled Crafts Person”** means an employee filling a custodial position with specialized technical certification and/or licensure in a particular trade or trades as determined by the school district in accordance with 4.4 below and paid in accordance with the pay scale identified in 14 Del.C. §1311(a).

~~4-0~~ **2.0 Experience**

Custodians may be allowed one (1) year's experience for each creditable year of experience in similar employment as determined by the district.

~~2-0~~ **3.0 Allocation of Custodial Units**

~~2-4~~ **3.1** The custodial units allocated to a district may be assigned to various locations at the discretion of the local school board and the chief school officer.

~~2-2~~ **3.2** Districts and charter schools are allocated one (1) full-time custodial employee position for each twelve (12) custodial units or for a major fraction thereof. The number of units in each school is determined in the following way:

~~2-2-4~~ **3.2.1** One (1) unit for each classroom or classroom equivalent. Other space that can qualify as part of a classroom unit shall be determined through criteria established by the Department of Education.

~~2-2-2~~ **3.2.2** One (1) unit for a small auditorium (less than 150 students).

~~2-2-3~~ **3.2.3** Two (2) units for a large auditorium (more than 150 students).

~~2-2-4~~ **3.2.4** One (1) unit for a cafeteria having a seating capacity up to 150. One (1) unit for each 150 capacity or major fraction thereof.

~~2-2-5~~ **3.2.5** One (1) unit for a gymnasium.

~~2-2-6~~ **3.2.6** One (1) unit for a combined auditorium and gymnasium (less than 150 students).

~~2-2-7~~ **3.2.7** Two (2) units for a combined auditorium and gymnasium (more than 150 students).

~~2-2-8~~ **3.2.8** One (1) unit for two locker rooms.

~~2-2-9~~ **3.2.9** Seven (7) units for a swimming pool.

~~2-2-10~~ **3.2.10** Units for a central heating plant are determined from the following table:

No. of Classrooms or equivalent	No. of Units
1 to 6	1/2
7 to 9	3/4
10 to 15	1
16 to 20	1 1/2
21 to 25	2
26 to 30	2 1/2
31 to 25	3
36 to 40	3 1/2
41 to 45	4
46 to 50	4 1/2
51 to 55	5
56 to 60	5 1/2

61 or more	
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~~2-2.14~~ 3.2.11 One-half (1/2) unit for each developed acre of the school plant site, not to exceed 48 acres or 24 units on a given site. If two schools are located on the same site of 100 acres or more, the second school shall receive credit for half of the acres for that site.

~~2-3~~ 3.3 Part-time custodians equivalent to one or more full-time custodians may be employed with the provision that proper records will be maintained at the school district for review.

~~2-4~~ 3.4 A full custodial staff for a new school building may be employed two (2) months prior to the pupil occupancy of the building.

3.4.1 In order to maintain, heat and secure new school buildings completed with a certificate of occupancy date further in advance of student occupancy than the two (2) months identified in 3.4 above, the district is eligible to earn the custodial units provided for site maintenance and central heating plant as of the certificate of occupancy date, until eligible to employ the full custodial staff in accordance with 3.4.

~~2-5~~ 3.5 The termination date for custodial units in buildings closed shall be six (6) weeks from the last day classes are held in the building.

~~2-6~~ 3.6 Buildings which are closed and retained under the control of the school district shall lose all custodial units except units provided for site maintenance and heating.

~~2-7~~ 3.7 When the school district signs a lease or in any way loses direct control of the building, through transfer, sale or legislation, the custodial units for site maintenance and heating shall terminate on the effective date of the lease, transfer, sale or legislation.

~~2-8~~ 3.8 It is the school district's responsibility to notify the Department of Education when the function of a building is changed. When the notification is received, a re-evaluation of the custodial units will be completed by the Department of Education. The Department will notify the district by letter of the results of the re-evaluation.

~~2-9~~ 3.9 The Department of Education shall calculate and approve all custodial unit allocation requests submitted by the local school districts and charter schools.

## ~~3-0~~ 4.0 Classification

### ~~3-1~~ 4.1 Custodian Fireman

~~3-1.1~~ 4.1.1 When there is only one (1) custodian in a district, the custodian may be classified as a custodian fireman.

~~3-1.2~~ 4.1.2 There shall be only one custodian fireman employed in each building.

### ~~3-2~~ 4.2 Chief Custodian

~~3-2.1~~ 4.2.1 A custodian may be classified as a Chief Custodian when at least two other full time custodians or the equivalent are employed in the school building or other district facility. There shall only be one Chief Custodian per building.

~~3-3~~ 4.3 Maintenance Mechanic: Each school district may classify up to ten (10) percent of the total number of custodial personnel as maintenance mechanics. Qualifications shall be as defined by the employing ~~board~~ school district.

### ~~3-4~~ 4.4 Skilled Craftsperson

~~3-4.1~~ 4.4.1 Each district may classify an incumbent in one or more of its Maintenance Mechanic positions as a Skilled Craftsperson for purposes of this section if the incumbent:

~~3-4.1.1~~ 4.4.1.1 Has received a certificate as a union journeyman or equivalent in any of the following fields: Boiler Maker, Carpenter, Electrician, HVAC Mechanic, Mill Wright, Heavy Machinery Operator, Pipe Fitter, Plumber, Roofer, or Sheet Metal Worker; or

~~3-4.1.2~~ 4.4.1.2 Possesses a current state license in any of the fields listed in paragraph ~~3-4.1.1~~ 4.4.1.1 above; or

~~3-4.1.3~~ 4.4.1.3 Is an Automobile Mechanic who possesses two or more National Institute for Automotive Service Excellence (ASE) Certifications in the Automotive, Truck or School Bus categories; or

~~3-4.1.4~~ 4.4.1.4 Is a Boiler Maker who possesses either an AWS or ASME Welding Certification; or

~~3-4.1.5~~ 4.4.1.5 Is a Computer Technician who possesses an A Plus Certification from CompTIA (Computing Technology Industry Association); or

~~3-4.1.6~~ 4.4.1.6 Is an HVAC Mechanic who possesses two or more certifications from

manufacturers of digital control systems in use by the district, or possesses a certification from a manufacturer of centrifugal chillers used within the district; or

~~3.4.4.7~~ 4.4.4.7 Possesses two or more Hazardous Material Certifications from the State of Delaware, OSHA, or the United States Environmental Protection Agency; or

~~3.4.4.8~~ 4.4.4.8 Is a Pipe Fitter who possesses an AWS or ASME Welding Certification; or

~~3.4.4.9~~ 4.4.4.9 Is a Roofer who possesses Training Certifications from two or more manufacturers of Roofing Systems in use by the District; or

~~3.4.4.1~~ 4.4.4.1 Is a Burner Mechanic who possesses a certification from a manufacturer of oil or gas burners used within the District.

~~3.4.5~~ 4.4.5 Building and Grounds Supervisor: Each district with ninety five (95) or more custodial units may employ a school buildings and grounds supervisor according to the salary schedule. This position is included in the total number of custodial personnel allowed.

#### ~~4.0~~ 5.0 Certificates Granted by the Department of Education for Additional Hours of Special Training

~~4.1~~ 5.1 The Department of Education shall specify the special training needed in order for an individual to receive a certificate(s) for the additional pay stipends as outlined in 14 **Del.C.** §1311(b). The following hourly requirements shall be met in order for the Department of Education to grant the custodial certificates listed in ~~4.1.1~~ 5.1.1 through ~~4.1.3~~ 5.1.3. The certificate guarantees additional pay as specified in 14 **Del.C.** §1311(b) but only the local school district can change a custodian's classification for purposes of 14 **Del.C.** §1311(a).

~~4.1.1~~ 5.1.1 Chief Custodian Certificate (120 class hours)

~~5.1.2~~ 5.1.2 ~~Fireman and Custodian~~ Firefighter and Custodian-Firefighter Certificate (90 class hours)

~~5.1.3~~ 5.1.3 Custodian Certificate (60 ~~class~~ on-the-job hours)

2 DE Reg. 778 (11/1/98)

4 DE Reg. 225 (7/1/00)

6 DE Reg. 1349 (4/1/03)

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 745

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

#### 745 Criminal Background Check for Public School Related Employment

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

Amendment to Existing Regulation

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

The Secretary of Education seeks to amend 14 **DE Admin. Code** 745 Criminal Background Check for Public School Related Employment by requiring student teachers to have criminal background checks prior to placement in a school setting. The amended regulation was originally advertised in the December 1, 2007 *Register of Regulations*. This regulation is being re-advertised to clarify the responsibility of the higher education institutions in regard to the criminal background checks for persons being placed in student teacher assignments.

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

##### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? This regulation is related to criminal background checks for student teachers and does

not directly affect the student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? This regulation is related to criminal background checks for student teachers and does not directly whether students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation is related to criminal background checks for student teachers and will help ensure students' health and safety are better adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation is related to criminal background checks for student teachers and does not directly affect that students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation is related to criminal background checks for student teachers and preserves the necessary authority and flexibility of decision making at the local board and school levels.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The re-advertised regulation is related to criminal background checks for student teachers and makes changes so as not place to unnecessary reporting or administrative requirements or mandates on decision makers at the local board or school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The re-advertised regulation is related to criminal background checks for student teachers and allows the higher education institutions to make the determination of suitability for placement in a public school to reduce administrative requirements at the district or school level.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The re-advertised regulation has been changed with input from the higher education institutions to help ensure this process is as efficient and less burdensome as possible.

10. What is the cost to the State and to the local school boards of compliance with the regulation? Currently the state provides funds for criminal background checks.

### **745 Criminal Background Check for Public School Related Employment**

#### **1.0 Definitions**

**"Continuously Employed"** means having worked in the same public school district or charter school for at least ninety one (91) working days in the prior school year. Substitute teachers shall be considered Continuously Employed when they have worked forty five (45) days in the prior school year in any combination of Delaware school districts or charter schools. Persons participating in a student teacher assignment shall be considered Continuously Employed when they have participated for forty five (45) days in the prior school year in any combination of Delaware school districts or charter schools as a student teacher.

**"Covered Personnel"** means the following:

- All final candidates for public school related employment for compensation;
- All those persons who supply contracted services directly to students of a public school, or those who supply contracted services to a public school which results in regular direct access to children in or through a public school; and
- All those persons who have regular direct access to children in or through an extra duty position (also called Extra Pay for Extra Responsibility (EPER position) in public schools whether the person receives compensation or not.
- Effective July 1, 2008, all persons participating in student teaching activities in a public school district or charter school.

Notwithstanding the above definition of Covered Personnel the following persons are not subject to these regulations:

- Instructors in adult corrections institutions;

- Instructors in adult education programs involving Apprenticeship, Trade Extension, or a vocational general interest programs, or instructors in Adult Basic Education and GED programs who do not service students under age 18;
- Directly supervised professional artists sponsored by the Division of the Arts, Arts in Education Program, Very Special Arts and the Delaware Institute for the Arts in Education; and
- Substitute food service workers.

## 10 DE Reg. 684 (10/01/06)

### 2.0 Procedures for Candidates for Employment or Student Teaching, or for Persons Providing Services Under a Contract to Obtain a Criminal Background Check

2.1 A final candidate for a Covered Personnel position, as defined in 1.0, in a public school shall be subject to the following procedures:

2.1.1 After notification by a school district ~~or~~ charter school, or in the case of student teaching placement, the higher educational institution that he/she is a final candidate for a Covered Personnel position, the individual shall present him/herself to State Bureau of Identification personnel at one of the Delaware State Police Troops processing such criminal background checks or at an on site appointment arranged by the school district ~~or~~ charter school, or in the case of student teaching placement, the higher education institution. School districts and charter schools at their option may require an applicant to submit a criminal background check prior to becoming a final candidate.

2.1.2 The candidate shall cooperate in all respects with this criminal background check process, or his/her application cannot be accepted. On completion of the procedure, the candidate will be given a Verification Form of Processing by the State Bureau of Identification, which may be shown to prospective placing districts ~~and charter schools, charter school or in the case of student teaching, the higher educational institution~~ as proof that the candidate has completed the procedure. The candidate should retain the Verification Form of Processing for his/her records.

2.1.3 The candidate shall have the original of the completed criminal background check sent to one school district or charter school or in the case of student teaching placement, the higher education institution. A copy of all information sent to the school district or charter school or higher education institution shall be sent by the State Bureau of Identification to the candidate.

2.1.4 As a part of the application for public school related employment, assignment as a student teacher, or as a part of the contract for services, the candidate shall sign a release form approved by the Department of Education. The release will allow the school district ~~or~~ charter school, or in the case of student teaching placement, the higher education institution that was sent the original of the completed criminal background check to do the following:

2.1.4.1 Confirm the receipt of that original and disclose its contents to the district superintendent or charter school director or district or charter school chief personnel officer of other Delaware school districts or charter schools considering the person as a candidate.

2.1.4.2 Send the original criminal background check to the placing school district or charter school if the candidate is hired or placed under contract in another Delaware school district or charter school,

2.1.4.3 Send any subsequent criminal history information to the person's employing or contracting school district(s) or charter school(s).

2.1.5 Each final candidate shall have a determination of suitability made by the school district or charter school or in the case of student teaching placement, the higher education institution and forwarded to him/her. If a determination is made to deny a candidate employment based upon the criminal history, he/she shall have an opportunity to appeal as set forth in 5.0.

2.1.6 Final candidates for employment, or student teaching, or entering into a contract for services may have criminal background checks from other states accepted, if all of the following conditions are met:

2.1.6.1 The criminal background check shall have been conducted within the previous twelve (12) months and include a federal criminal background check;

2.1.6.2 The criminal background check shall be sent directly from the criminal background check agency in the other state to a Delaware school district ~~or~~ charter school, or in the case of student teaching placement, the higher education institution;

2.1.6.3 A verification from the candidate's most recent employer(s) covering the previous twelve (12) months, stating that the employer knows of no offenses committed by the candidate during that time, shall be sent directly from the candidate's most recent employer(s) to the Delaware school district or charter school or in the case of student teaching placement, the higher education institution which was sent the original background check.

2.1.6.4 The out of state candidate shall sign a release to allow the school district or charter school or in the case of student teaching placement, the higher education institution receiving the out of state criminal background check and the reference to confirm their receipt, disclose their contents and forward them, subject to the same disclosure regulations that apply to Delaware criminal background checks.

2.1.7 Except as described herein, all costs associated with obtaining a criminal background check shall be paid for by the person seeking a Covered Personnel position. School districts or charter schools or higher education institutions may use funds other than state funds to pay for criminal background check costs and may enter into consortia to pay such costs for persons covered by the law who work in more than one school district or charter school during the course of the school year.

**10 DE Reg. 684 (10/01/06)**

**3.0 Procedures for School Districts and Charter Schools and Higher Education Institutions for Criminal Background Checks on Candidates for Employment or Student Teaching, or for Persons Providing Services Under a Contract**

3.1 School districts ~~and~~, charter schools or in the case of student teaching placement, the higher education institution shall require all persons subject to the law and these regulations to complete a release as a part of the application, assignment as a student teacher, or contract submissions process and, if they become a final candidate for a Covered Personnel position, to initiate the criminal background check process prior to entering into the Covered Personnel position.

3.2 The school district or charter school, or in the case of student teaching placement, the higher education institution sent the original of a completed criminal background check shall keep the information received in a confidential manner and shall:

3.2.1 If requested by another Delaware school district superintendent or charter school director or school district or charter school chief personnel officer and assured that a signed release is on file in the requesting district or charter school, confirm the receipt of that original and disclose its contents to the superintendent or director or the chief personnel officer of the requesting Delaware school district or charter school considering the person for hire;

3.2.2 If requested by another Delaware school district superintendent or charter school director or school district or charter school chief personnel officer and sent a copy of the signed release on file in the requesting district or charter school, send the original criminal background check to the requesting Delaware school district or charter school if the candidate is placed in a Covered Personnel position; and

3.2.3 If sent any subsequent criminal history information on the person hired, assigned as a student teacher, placed under contract or assuming an extra duty position in another district or charter school, forward such information to the school district or charter school, or in the case of student teaching placement, the higher education institution.

3.2.4 School districts or charter schools may also share and forward the above information with the Delaware Department of Education under the same conditions applicable to school districts or charter schools. The provision shall apply only when the Department of Education is acting in its capacity as an employer, a party to a contract for services or taking on a person in an extra duty position.

3.3 The school district or charter school, in accordance with 11 **Del.C.** §8571(b), (d) and (e), shall make a determination of suitability for employment on each person it requested to initiate the criminal background check process. The determination of suitability for assignment as a student teacher shall be made by the placing higher education institution. That determination shall be communicated to the person in writing. If a determination is made to deny a candidate employment based upon the criminal history, he/she shall have an opportunity to appeal for reconsideration as set forth in 5.0.

3.4 When a candidate is finally placed in a Covered Personnel position the district or charter school shall do the following if the original of the completed criminal background check is not yet in its possession:

3.4.1 Make a written request to the school district or charter school that received the original of the completed criminal background check to forward the original copy to the placing district or charter school for

placement in the employee's, or contractor's file. As a part of the request, the placing district or charter school shall forward a copy of the release signed by the candidate.

3.4.2 Notify the State Bureau of Identification that the candidate has become Covered Personnel in the district or charter school and is no longer associated with the school district or charter school that received the original of the completed criminal background check.

3.5 A school district or charter school may place the candidate in a Covered Personnel position provisionally in accordance with 11 **Del.C.** §8571(f); however, the school district or charter school shall require the candidate to comply with the provisions described in these regulations, including the requirement to initiate the criminal background check prior to being hired provisionally.

**10 DE Reg. 684 (10/01/06)**

#### **4.0 Length of Validity of Criminal Background Check and Exemption for "Continuous Employment"**

4.1 A criminal background check obtained under these regulations shall only be valid for twelve (12) months. If a person is not Continuously Employed by a Delaware school district or charter school within that period, the district or charter school receiving the original criminal background check need not retain it beyond that time. If the person becomes Continuously Employed by a Delaware school district or charter school, the original criminal background check shall be kept on file for a minimum of five (5) years.

4.2 Each person who has been Continuously Employed in a public school district or charter school shall be exempt from the screening provisions of 11 **Del.C.** §8571.

4.3 A person who transfers between Delaware public school districts or charter schools and is placed in a Covered Personnel position shall comply with 11 **Del.C.** §8570, et seq., and these regulations before being hired or providing contracted services. A criminal background check performed within the previous twelve (12) months and held by another school district, charter school or out of state school, and supplied under 2.0 and 3.0 of these regulations is one means of complying with 11 **Del.C.** §8570, et seq., and these regulations.

**10 DE Reg. 684 (10/01/06)**

#### **5.0 Determination of Suitability and Appeal Process for Covered Employees, excluding Student Teachers**

5.1 A person covered by 11 **Del.C.** §8570, et seq., and these regulations, shall have the opportunity to respond to a school district or charter school regarding any criminal history information obtained prior to a determination of suitability for employment being made. See 11 **Del.C.** §8571(d). Such a response shall be made within ten (10) working days of the person's receipt of the criminal background check information from the State Bureau of Identification. The determination of suitability for employment shall be made by the school district or charter school pursuant to the factors listed in 11 **Del.C.** §8571(d).

5.2 The school district or charter school shall communicate the results of the determination of suitability to the person, in writing, within five (5) working days of the receipt of the person's response to the criminal history information. If a determination is made to deny a person placement in a Covered Personnel position, based upon the criminal history, the person shall have an opportunity to appeal for reconsideration as set forth in 5.3.1 through 5.3.3.

##### **5.3 Appeal for Reconsideration**

5.3.1 An appeal for reconsideration shall be initiated by a person notified that he/she is being denied or being terminated from placement in a Covered Personnel position, pursuant to 11 **Del.C.** §8571, by submitting a letter of appeal to the district superintendent or charter school director within ten (10) working days of the receipt of written notice.

5.3.2 The appeal shall be reviewed by the district superintendent or charter school director and the appellant shall have the right to be heard by the district superintendent or charter school director within ten (10) working days of the receipt of the letter of appeal.

5.3.2.1 Local school districts and charter schools shall develop procedures for appeals for reconsideration. The process shall be as informal and accessible as possible, but shall allow for impartial and complete review.

5.3.3 A written decision shall be rendered by the district superintendent or charter school director within ten (10) working days of the hearing. A decision made by the district superintendent or charter school director under this appeal procedure is final, unless the district or charter school has made specific

provisions for appeal to another entity within the district or charter school. The decision shall not be appealable to the State Board of Education or to the Department of Education.

**10 DE Reg. 684 (10/01/06)**

## **6.0 Determination of Suitability for Student Teachers**

6.1 The determination of suitability for assignment as a student teacher shall be made by the placing higher education institution. Such decisions shall be communicated to the student teacher candidate in writing. In addition, the receiving public school district or charter school may request a copy of the criminal background check which shall be maintained in compliance with 6.0.

### **~~6.0~~ 7.0 Confidentiality**

~~6.1~~ 7.1 All information and records pertaining to criminal background checks, pursuant to 11 **Del.C.** §8570, et seq., and these regulations, shall be maintained in a confidential manner including, but not limited to, the following:

~~6.1.1~~ 7.1.1 Access to criminal background check records, and letters of reference accompanying out of state criminal background checks, and determination of suitability shall be limited to the district superintendent or charter school director and the district or charter school chief personnel office or higher education institution officer responsible for student teacher assignments and one person designated to assist in the processing of criminal background checks, who will receive training in confidentiality, be required to sign an agreement to keep such information confidential and employ proper precautions to insure that interoffice communications remain confidential.

~~6.1.2~~ 7.1.2 All such records shall be kept in locked, fireproof cabinets;

~~6.1.3~~ 7.1.3 No information from such records shall be released without the signed approval of and the appropriate signed release of the candidate or person placed in a Covered Personnel position.

**10 DE Reg. 684 (10/01/06)**

### **~~7.0~~ 8.0 Penalties**

The district superintendent ~~or~~ charter school director ~~or~~ the district or charter school chief personnel officer, or higher education institution officer responsible for student teacher assignments shall report to the appropriate police authorities evidence of any person who knowingly provides false, incomplete or inaccurate criminal history information or who otherwise knowingly violates the provisions of 11 **Del.C.** §8571.

**10 DE Reg. 684 (10/01/06)**

### **~~8.0~~ 9.0 Subsequent Criminal History Information**

~~8.1~~ 9.1 Subsequent criminal history on a person in a Covered Personnel position may be sent by the State Bureau of Identification to the district superintendent or charter school director or district or charter school chief personnel office and shall be used by district or charter school in making a determination about the person's continued suitability for placement in a public school environment.

~~8.2~~ 9.2 If subsequent criminal history information is mistakenly directed to a district or charter school other than the current district or charter school of Covered Personnel, the information shall be forwarded immediately to the employing district or charter school by the receiving district superintendent, charter school director or district or charter school chief personnel officer.

~~8.3~~ 9.3 If a person is known to be in a Covered Personnel position in more than one district or charter school, the superintendent, director or chief personnel officer of the district or charter school receiving the subsequent criminal history information on that person shall share the information received immediately with the district superintendent, charter school director or district or charter school chief personnel officer of the other school district or charter school.

**5 DE Reg. 865 (10/1/01)**

**10 DE Reg. 684 (10/01/06)**



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# PROPOSED REGULATIONS

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## DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Section 314 and 2741 (18 **Del.C.** §§314 and 2741)  
18 **DE Admin. Code** 1003

### PUBLIC NOTICE

#### 1003 Credit for Reinsurance [Formerly Regulation 79]

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 1003 relating to credit for reinsurance. The docket number for this proposed amendment is 609.

The purpose of the proposed amended regulation is to require the use of ICC Publication No. 600LF ("UCP 600") as a replacement for UCP 500 and then all future ICC updates to 600. The text of the proposed amendment is reproduced in the February 2008 edition of the Delaware *Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday March 3, 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).

#### 1003 Credit for Reinsurance [Formerly Regulation 79]

##### 1.0 Authority

1.1 This regulation is promulgated pursuant to the authority granted by 18 **Del.C.** §§314 and 910 et seq. of the Insurance Code, and in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101. All references to section numbers shall refer to Title 18 (the Insurance Code) unless otherwise noted.

##### 2.0 Purpose

The purpose of this regulation is to set forth rules and procedural requirements which the commissioner deems necessary to carry out the provisions of 18 **Del.C.** §910 et seq. of the Insurance Code. The actions and information required by this regulation are hereby declared to be necessary and appropriate in the public interest and for the protection of the ceding insurers in this state.

##### 3.0 Severability

3.1 If any provisions of this regulation, or their application to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of this regulation which can be given effect without the invalid provision or application, and to that end the provisions of this regulation are separable.

##### 4.0 Credit for Reinsurance — Reinsurer Licensed in this State

4.1 Pursuant to 18 **Del.C.** §911(a) of the Act, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to assuming insurers which were licensed in this state as of the date of the ceding insurer's financial statement.

##### 5.0 Credit for Reinsurance — Accredited Reinsurers

5.1 Pursuant to 18 **Del.C.** §911(b) of the Act, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which is accredited as a reinsurer in this state as of the date of the ceding insurer's statutory financial statement. An accredited reinsurer is one which:

5.1.1 Files a properly executed Form AR-1 (attached as an exhibit to this regulation) as evidence of its submission to this jurisdiction and to this state's authority to examine its book and records; and

5.1.2 Files with the commissioner a certified copy of a letter or a certificate of authority or of compliance as evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact in insurance or reinsurance in at least one state; and

5.1.3 Files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and

5.1.4 Maintains a surplus as regards policyholders in an amount not less than \$20,000,000 and whose accreditation has not been denied by the commissioner within ninety (90) days of its submission or, in the case of companies with a surplus as regards policyholders of less than \$20,000,000, whose accreditation has been approved by the commissioner.

5.2 If the commissioner determines that the assuming insurer has failed to meet or maintain any of these qualifications, he may upon written notice and hearing revoke the accreditation. No credit shall be allowed a domestic ceding insurer with respect to reinsurance ceded after January 1, 1995 if the assuming insurer's accreditation has been denied or revoked by the commissioner after notice and hearing.

## **6.0 Credit for Reinsurance — Reinsurer Domiciled and Licensed in Another State**

6.1 Pursuant to 18 **Del.C.** §911(c) of the Act the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which as of the date of the ceding insurer's statutory financial statement:

6.1.1 Is domiciled and licensed in (or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed in) a state which employs standards regarding credit for reinsurance substantially similar to those applicable under the Act and this regulation;

6.1.2 Maintains a surplus as regards policyholders in an amount not less than \$20,000,000; and

6.1.3 Files a properly executed Form AR-1 with the commissioner as evidence of its submission to this state's authority to examine its books and records.

6.2 The provisions of this section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this section, "substantially similar" standards means credit for reinsurance standards which the commissioner determines equal or exceed the standards of the Act and this regulation.

## **7.0 Credit for Reinsurance — Reinsures Maintaining Trust Funds**

7.1 Pursuant to 18 **Del.C.** §911(d) of the Act, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of the date of the ceding insurer's statutory financial statement maintains a trust fund in an amount prescribed below in a qualified United States financial institution as defined in 18 **Del.C.** §913 of the Act, for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successor in interest. The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.

7.2 The following requirements apply to the following categories of assuming insurer:

7.2.1 The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to business written in the United States, and in addition, a trustee surplus of not less than \$20,000,000.

7.2.2 The trust fund for a group which includes incorporated and individual unincorporated underwriters shall consist of funds in trust in an amount not less than the group's aggregate liabilities attributable to business written in the United States and, in addition, the group shall maintain a trustee surplus of which \$100,000,000 shall be held jointly for the benefit of the United States ceding insurers of any member of the group. The incorporated members of such a group shall not engage in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. The group shall make available to the commissioner annual certifications by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter member of the group.

7.2.3 The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of \$10,000,000,000 (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the National Association of Insurance Commissioners) and which has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation, shall consist of funds in trust in an amount not less than the assuming insurers' liabilities attributable to business ceded by United States ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group and, in addition, the group shall maintain a joint trustee surplus of which \$100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group. The group shall file a properly executed Form AR-1 as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination. The group shall make available to the commissioner annual certifications by the members' domiciliary regulators and their independent public accountants of the solvency of each member of the group.

7.3 The trust shall be established in a form approved by the commissioner. The trust instrument shall provide that:

7.3.1 Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty (30) days after entry of the final order of any court of competent jurisdiction in the United States.

7.3.2 Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States policyholders and ceding insurers, their assigns and successors in interest.

7.3.3 The trust shall be subject to examination as determined by the commissioner.

7.3.4 The trust shall remain in effect for as long as the assuming insurers, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust.

7.3.5 No later than February 28 of each year the trustees of the trust shall report to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding year end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

7.3.6 No amendment to the trust shall be effective unless reviewed and approved in advance by the commissioner.

## **8.0 Credit for Reinsurance Required by Law**

8.1 Pursuant to 18 **Del.C.** §911(e), the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of 18 **Del.C.** § 911(a), (b), (c) or (d), but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means any state, district or territory of the United States and any lawful national government.

## **9.0 Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer**

9.1 Pursuant to 18 **Del.C.** §912, the commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of 18 **Del.C.** §911 in an amount not exceeding the liabilities carried by the ceding insurer. Such reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations thereunder. Such security must be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in 18 **Del.C.** §913. This security may be in the form of any of the following:

9.1.1 Cash.

9.1.2 Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets.

9.1.3 Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in 18 **Del.C.** §912(c), effective no later than December 31 of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance

(or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs.

9.1.4 Any other form of security acceptable to the Commissioner.

9.1.4.1 An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to sections 9.1.1, 9.1.2 and 9.1.3 shall be allowed only when the requirements of sections 10.0, 11.0 or 12.0 of this regulation are met.

## **10.0 Trust Agreements Qualified under Section 9.0**

10.1 As used in this section:

10.1.1 **"Beneficiary"** means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

10.1.2 **"Grantor"** means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

10.1.3 **"Obligations"**, as used in section 10.2.4.11 of this section, means:

10.1.3.1 Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

10.1.3.2 Reserves for reinsured losses reported and outstanding;

10.1.3.3 Reserves for reinsured losses incurred but not reported; and

10.1.3.4 Reserves for allocated reinsured loss expenses and unearned premiums.

10.2 Required conditions.

10.2.1 The trust agreement shall be entered into between the beneficiary, the grantor and a trustee which shall be a qualified United States financial institution as defined in 18 **Del.C.** §913.

10.2.2 The trust agreement shall create a trust account into which assets shall be deposited.

10.2.3 All assets in the trust account shall be held by the trustee at the trustee's office in the United States, except that a bank may apply for the Commissioner's permission to use a foreign branch office of such bank as trustee for the trust agreements established pursuant to this section. If the Commissioner approves the use of such foreign branch office as trustee, then its use must be approved by the beneficiary in writing and the trust agreement must provide that the written notice described in section 10.2.4.1 of this section must also be presentable, as a matter of legal right, at the trustee's principal office in the United States.

10.2.4 The trust agreement shall provide that:

10.2.4.1 The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

10.2.4.2 No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

10.2.4.3 It is not subject to any conditions or qualifications outside of the trust agreement; and

10.2.4.4 It shall not contain references to any other agreements or documents except as provided for under section 10.2.4.11 of this subsection.

10.2.4.5 The trust agreement shall be established for the sole benefit of the beneficiary.

10.2.4.6 The trust agreement shall require the trustee to:

10.2.4.6.1 Receive assets and hold all assets in a safe place;

10.2.4.6.2 Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;

10.2.4.6.3 Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

10.2.4.6.4 Notify the grantor and the beneficiary within ten (10) days, of any deposits to or withdrawals from the trust account;

10.2.4.6.5 Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

10.2.4.6.6 All no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

10.2.4.7 The trust agreement shall provide at least thirty (30) days, but not more than forty-five (45) days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

10.2.4.8 The trust agreement shall be made subject to and governed by the laws of the state in which the trust is established.

10.2.4.9 The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.

10.2.4.10 The trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct or lack of good faith.

10.2.4.11 Notwithstanding other provisions of this regulation, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, such a trust agreement may, notwithstanding any other conditions in this regulation, provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, for the following purposes:

10.2.4.11.1 To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

10.2.4.11.2 To may payment to the assuming insurer of any amounts held in the trust account that exceed 102 percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

10.2.4.11.3 Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in 18 **Del.C.** §913 apart from its general assets, in trust for such uses and purposes specified in sections 10.2.4.6.1. and 10.2.4.6.2 above as may remain executory after such withdrawal and for any period after the termination date.

10.2.4.12 The reinsurance agreement entered into in conjunction with the trust agreement may, but need not, contain the provisions required by 10.4.1.2 of this section, so long as these required conditions are included in the trust agreement.

### 10.3 Permitted conditions.

10.3.1 The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety (90) days after receipt by the beneficiary and grantor of the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety (90) days after receipt by the trustee and the beneficiary of the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

10.3.2 The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any such interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

10.3.3 The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determine are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in 10.4.1.2 of this section.

10.3.4 The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Such transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

10.3.5 The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.

10.4 Additional conditions applicable to reinsurance agreements.

10.4.1 A reinsurance agreement, which is entered into in conjunction with a trust agreement and the establishment of a trust account, may contain provisions that:

10.4.1.1 Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;

10.4.1.2 Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), and investments of the types permitted by the Insurance Code or any combination of the above, provided that such investments are issued by an institution that is not the parent, subsidiary or affiliate of either the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, then the trust agreement may contain the provisions required by this paragraph in lieu of including such provisions in the reinsurance agreement;

10.4.1.3 Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

10.4.1.4 Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

10.4.1.5 Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

10.4.1.5.1 To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

10.4.1.5.2 To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;

10.4.1.5.3 To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer liabilities for policies ceded under the agreement. The account shall include, but not be limited to, amounts for policy reserves, claims and losses incurred (including losses incurred but not reported), loss adjustment expenses and unearned premium reserves; and

10.4.1.5.4 To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

10.4.2 The reinsurance agreement may also contain provisions that:

10.4.2.1 Give the assuming insurer the right to seek approval from the ceding insurer to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

10.4.2.1.1 The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount, or

10.4.2.1.2 After withdrawal and transfer, the market value of the trust account is no less than 102 percent of the required amount.

10.4.2.1.3 The ceding insurer shall not unreasonably or arbitrarily withhold its approval.

10.4.2.2 Provide for:

10.4.2.2.1 The return of any amount withdrawn in excess of the actual amounts required for sections 10.4.1.5, 10.4.1.5.1, 10.4.1.5.2 and 10.4.1.5.3, or in the case of sections 10.4.1.5, 10.4.1.5.4, any amounts that are subsequently determined not to be due; and

10.4.2.2.2 Interest payments, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to section 10.4.1.5.3.

10.4.2.3 Permit the award any arbitration panel or court of competent jurisdiction of:

10.4.2.3.1 Interest at a rate different from that provided in Subparagraph (b)(ii)(10.4.2.2.2),

10.4.2.3.2 Court of arbitration costs,

10.4.2.3.3 Attorney's fees, and

10.4.2.4 Any other reasonable expenses.

10.4.3 Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this regulation when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

10.4.4 Existing agreements. Notwithstanding the effective date of this regulation, any trust agreement or underlying reinsurance agreement in existence prior to January 1, 1995 will continue to be acceptable until January 1, 1996, at which time the agreements will have to be in full compliance with this regulation for the trust agreement to be acceptable.

10.4.5 The failure of any trust agreement to specifically identify the beneficiary as defined in section 10.1 shall not be construed to affect any actions or rights which the commissioner may take or possess pursuant to the provisions of the laws of this state.

## 11.0 Letters of Credit Qualified under Section 9.0

11.1 The letter of credit must be clean, irrevocable and unconditional and issued or confirmed by a qualified United States financial institution as defined in 18 Del.C. §913. The letter of credit shall contain an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit shall also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents of entities, except as provided in section 11.2 below. As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

11.2 The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.

11.3 The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

11.4 The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" which prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period of no less than thirty (30) days' notice prior to expiry date or nonrenewal.

11.5 The letter of credit shall state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500 or subsequent updates), and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

11.6 If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500 or subsequent updates), then the letter of credit shall specifically address and make provision for an extension of time to draw against the letter of credit in the event that one or more ~~of the occurrences specified in Article 19 of~~ force majeure events specified in Publication 500 (or subsequent updates) occur.

11.7 The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to 18 **Del.C.** §913.

11.8 If the letter of credit is issued by a qualified United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in 11.7 of this section, then the following additional requirements shall be met:

11.8.1 The issuing qualified United States financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts, and

11.8.2 The "evergreen clause" shall provide for thirty (30) days' notice prior to expiry date for nonrenewal.

11.9 Reinsurance agreement provisions.

11.9.1 The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions which:

11.9.1.1 Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.

11.9.1.2 Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

11.9.1.2.1 To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

11.9.1.2.2 To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement;

11.9.1.2.3 To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement (such amount shall include, but not be limited to, amounts for policy reserves, claims and losses incurred and unearned premium reserves); and

11.9.1.2.4 To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

11.9.1.3 All of the foregoing provisions of 11.1 of this subsection should be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

11.9.2 Nothing contained in 11.1 of this subsection shall preclude the ceding insurer and assuming insurer from providing for:

11.9.2.1 An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to 11.9.1.2.3 of this subsection; and/or

11.9.2.2 The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or, in the case of 11.9.1.2.4 of this subsection, any amounts that are subsequently determined not to be due.



# PROPOSED REGULATIONS

11.9.2.3 When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health, where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of 11.9.1.2 of this subsection, require that the parties enter into a "Trust Agreement" which may be incorporated into the reinsurance agreement or be a separate document.

11.10 A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement. Further, the reduction for the letter of credit may be up to the amount available under the letter of credit but no greater than the specific obligation under the reinsurance agreement which the letter of credit was intended to secure.

## 12.0 Other Security

12.1 A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

## 13.0 Reinsurance Contract

13.1 Credit will not be granted to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of sections 4.0, 5.0, 6.0, 7.0 or 9.0 of this regulation or otherwise in compliance with 18 Del.C. §910 of the Act after the adoption of this regulation unless the reinsurance agreement:

13.1.1 Includes a proper insolvency clause pursuant to 18 Del.C. §914 of the Insurance Code; and

13.1.2 Includes a provision pursuant to 18 Del.C. §911(f) whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give such court of panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of such court panel.

## 14.0 Contracts Affected

All new and renewal reinsurance transactions shall conform to the requirements of the Act and this regulation of credit is to be given to the ceding insurer for such reinsurance.

## 15.0 Effective Date

This regulation shall become effective 30 days after the Commissioner's signature.

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## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Delaware Gaming Control Board

Statutory Authority: 28 Delaware Code, Section 1122 (28 Del.C. §1122)

24 DE Admin. Code 401, 403 and 404

**401 Regulations Governing Bingo**

**402 Regulations Governing Raffles**

**403 Regulations Governing Charitable Gambling Other Than Raffles**

**404 Regulations Governing No Limit Texas Hold'em Poker**

### A. Type of Regulatory Action Required

Amendment to Existing Regulation

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

The Delaware Gaming Control Board seeks to amend 24 DE Admin. Code 401-404 relating to timely filing

of applications for licensure and to clarify the meaning of terms used in the regulations.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before March 3, 2008 to: Delaware Gaming Control Board, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, Delaware 19904. A copy of this regulation is available from the above address or may be viewed at the Division of Professional Regulation business office.

## C. Summary of Proposal

Regulations currently provide that bingo games may not be held more often than once per week. The Board proposes to define the term "week" so that applicants will be able to determine when they may seek a license to conduct bingo.

The Board also seeks to require that persons submit applications for all bingo and charitable gambling events in sufficient time to allow the Board to consider the applications at two Board meetings if the Board determines that to be necessary.

## 401 Regulations Governing Bingo

### 1.0 Definitions

**Bingo** A game of chance played for prizes with cards bearing numbers or other designations, five or more in one line, the holder covering numbers as objects similarly numbered are drawn from a receptacle and the game being won by the person who first covers a previously designated arrangement of numbers on such a-card.

**Bingo Statute** The statutory law concerning bingo, as contained in 28 Del.C., §1101 et. seq.

**Board** The Delaware Gaming Control Board.

**Color Coded** A different color for each of the five letters of the word "BINGO."

**Cookie Jar Bingo** A game of chance in which players pay a set fee into a cookie jar or other container and receive a number which entitles the player to entry into a later drawing for the total funds deposited by all other players in the cookie jar or container.

#### 2 DE Reg. 1224 (1/1/99)

**Districts** Those districts mentioned in Article II, 917A of the Delaware Constitution.

**Equipment** The receptacle and color coded numbered objects to be drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them, the boards or signs, however operated, used to announce or display the numbers or designations as they are drawn, public address systems, tables, chairs, and other articles essential to the operation, conduct and playing of bingo.

**Game** The game of bingo.

**Instant Bingo** A game of chance played with sealed or covered cards which must be opened in some fashion by the holder such that the cards reveal instantly whether the holder has won a prize. This type of game includes but is not limited to games commonly known as "rip-offs" or "Nevada pull-tabs."

#### 2 DE Reg. 1224 (1/1/99)

**Member in Charge** A bona fide, active member of the "Qualified Organization" in charge of, and primarily responsible for the conduct of the game on each occasion.

**Occasion** A single gathering or session at which a series of successive bingo games (regular, special, or otherwise) is played, not to exceed forty (40) in number.

**Proceeds** The gross income received from all activities engaged in or on occasion when bingo is played, less only, such actual expenses incurred as are authorized in the Bingo Statute and these Rules and Regulations.

**Qualified Organization** A volunteer fire company, veterans organization, religious or charitable organization, or fraternal society that is operated in a manner so as to come within the provisions of Section 170 of the U.S. Secretary of the Treasury.

### 2.0 Applications For Bingo License

2.1 original applications shall be filed upon:

2.1.1 the first application of an organization for a license;

2.1.2 after the first application and upon a subsequent change in the organization's charter or bylaws; or

2.1.3 in the event of a subsequent application after a prior refusal, suspension, or revocation by

the Board.

2.2 Supplemental applications for bingo licenses shall be filed in all instances except those covered by the original application. All promotional give-away events, as defined under 28 **Del.C.** §1139(h)(2), must be listed on an applicant's application for licensure, giving the dates of the promotional give-away events. If the event is not listed on the application, no promotional give-away event can be conducted.

2.3 All original and supplemental applications shall be filed with the Secretary of the Board at least six (6) weeks prior to the date of the occasion.

2.3.1 An application must be submitted sufficiently in advance of the proposed date of the event as to allow the Board to consider the application at two consecutive meetings before deciding whether to approve the application.

2.4 No applications (original or supplemental) shall be accepted unless the applicant, at the time of the filing, attaches a check or money order for the full amount of the fees payable by law for each occasion requested. In the event an application is refused by the Board, the application fees shall be refunded in full to the applicant. There shall be a license fee of \$15 for each occasion on which bingo is conducted under a license.

2.5 No application shall be received by the Commission unless it clearly shows that the applicant is located in and seeks to conduct the game in a district which has approved the licensing of bingo by referendum, and on premises owned or regularly leased by the applicant. If the applicant desires to conduct games on premises specially leased for the occasion, a separate written request therefor (together with supporting reasons) shall accompany the application. The Board reserves the right to accept or reject any application for the conduct of games on specially leased premises. Organization conducting a Function shall prepare and have available on the premises a list of all persons taking part in the management or operation of the Function. Such list shall be maintained as part of the licensee's records of the Function and shall be made available to any member or agent of the Board or law enforcement officer.

**2 DE Reg. 1224 (1/1/99)**

**8 DE Reg. 531 (10/01/04)**

### 3.0 Bingo Licenses

3.1 Upon receiving an application, the Board shall make an investigation of the merits of the application. The Board shall consider the impact of the approval of any license application on existing licensees within the applicant's geographical location prior to granting any new license. The Board may deny an application if it concludes that approval of the application would be detrimental to existing licensees.

3.2 The Board may issue a license only after it determines that:

3.2.1 The applicant is duly qualified to conduct games under the State Constitution, statutes, and regulations.

3.2.2 The members of the applicant who intend to conduct the bingo games are bona fide active members of the applicant and are persons of good moral character and have never been convicted of a crime involving moral turpitude.

3.2.3 The bingo games are to be conducted in accordance with the provisions of the State Constitution, statutes, and regulations.

3.2.4 The proceeds are to be disposed of as provided in the State Constitution and statutes.

3.2.5 No salary, compensation or reward whatever will be paid or given to any member under whom the game is conducted. If the findings and determinations of the Board are to the effect that the application is approved, the Secretary shall execute a license for the applicant.

3.3 The license shall be issued in triplicate. The original thereof shall be transmitted to the applicant. Two copies shall be retained by the Commission for its files.

3.4 If the findings and determinations of the Commission are to the effect that the application is denied, the Secretary shall so notify the applicant by certified mail of the reasons for denial, and shall refund any application fees submitted.

3.5 In the event of a request for an amendment of a license, the request shall be promptly submitted to the Commission in writing, and shall contain the name of the licensee, license number, and a concise statement of the reasons for requested amendment. The Commission may grant or deny the request, in its discretion, and may require supporting proof from the licensee before making any determination. The Commission may require the payment of an additional license fee before granting the request. The licensee shall be notified of the Commission's action by appropriate communication, so that the licensee will not be unduly inconvenienced.

3.6 No license shall be effective for a period of more than one year from the date it was issued.

3.7 No license shall be effective after the organization to which it was granted has become ineligible to conduct bingo under any provision of Article II, §17A of the Delaware Constitution.

3.8 No license shall be effective after the voters in any District designated in Article II, §17A of the Constitution have decided against bingo in a referendum held pursuant to that section and subchapter II of the Bingo Statute.

3.9 No bingo licensee licensed prior to July 14, 1998, shall conduct more than ten (10) bingo events in any calendar month and no bingo licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998) shall conduct more than one (1) bingo event per week. A bingo licensee who was licensed prior to July 14, 1998 whose license lapses for six (6) months or more due to non-renewal or suspension or any other reason shall, upon licensing thereafter, be considered a licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998).

3.9.1 As used in this regulation, the term "week" means a seven day period beginning on Sunday and ending on Saturday.

3.10 The license application shall contain a full and fair description of the prize and the appraised value of the prize. In lieu of submitting an appraisal, the applicant or licensee may submit the full retail value of the prize. In cases where the applicant or licensee purchases the prize from a third party, the Board may require that the applicant or licensee arrange for an independent appraisal of the value of the prize from a person licensed to render such appraisals, or if there is no person licensed to render such appraisals, from a person qualified to render such appraisals.

**2 DE Reg. 1224 (1/1/99)**

**3 DE Reg. 1692 (6/1/00)**

**4 DE Reg. 334 (8/1/00)**

## 4.0 Conduct of Bingo

4.1 The officers of a licensee shall designate a bona fide, active member to be in charge of and primarily responsible for the conduct of the game of chance on each occasion. The member in charge shall supervise all activities on the occasions for which he is in charge and shall be responsible for the making of the required report thereof. The member in charge shall be familiar with the provisions of the Bingo Statute, and these rules and regulations.

4.2 The room where any game is being held, operated, or conducted, or where it is intended that any game shall be held, operated, or conducted, or where it is intended that any equipment be used, shall at all times be open to inspection by the appropriate law enforcement officers and agents of the District in which the premises are situated, and to the Board and its agents and employees. Bingo games shall not be commenced prior to 1:30 p.m. and the operation of a function shall be limited to six hours. Instant bingo is permitted during any event sponsored by the organization that is licensed to conduct it, regardless of the day or time.

4.3 No person under the age of eighteen (18) shall be permitted in any bingo game, the prize for which is money. No person under the age of 18 shall be permitted to participate in any instant bingo game. No person under the age of sixteen (16) shall participate in any game of bingo nor shall such person conduct or assist in the conduct of the playing of any game of bingo, except that persons no younger than the age of fourteen (14) may act as waiters and waitresses in the handling of food or drinks at an occasion on which a licensee conducts bingo.

4.4 No organization licensed prior to enactment of 71 **Del. Law** 444 (July 14, 1998), may hold, operate, or conduct bingo more often than ten (10) days in any calendar month. No bingo licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998) shall conduct more than one bingo event per week. A bingo licensee licensed prior to the enactment of 71 **Del. Laws** 444 (July 14, 1998), whose license lapses for six (6) months or more due to nonrenewal or suspension or any other reason shall, upon licensing thereafter, be considered a licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998).

4.5 The Board and its duly authorized agents and employees may examine the books and records of any licensee, so far as those books and records relate to any transaction connected with the holding, operating, and conducting of the game of bingo, and may examine any manager, officer, director, agent, member, employee, or assistant of the licensee under oath in relation to the conduct of the game of bingo.

4.6 (Deleted.)

4.7 No prize greater in an amount or value than \$250 shall be offered or given any single game and the aggregate amount or value of all prizes offered or given in all games played on a single occasion shall not exceed \$1,000. All winners shall be determined and all prizes shall be awarded in any game played on any

occasion within the same calendar day as that upon which the game is played. The value of any promotional giveaways, which shall be no more than \$500 per annum to be distributed at an organizational anniversary date and no more than three (3) holiday dates per year, shall not be counted towards the dollar amounts described in this section. However, a licensee may offer inducements, including but not limited to cookie-jar bingo games that do not exceed \$500 per game per night, free refreshments, and free transportation of players to and from bingo events, to attract bingo players to the bingo event, provided that the fair market value of inducements is limited to 15% of the total amount of all other prizes offered or given during the bingo event.

4.7.1 Any amounts in any cookie-jar bingo games shall not be included in the limitations of this section or in any prize money limitations. A bingo licensee may not have more than two \$500 cookie jar bingo pots at any one time which are to be awarded to players. The licensee must award the first cookie jar bingo pot before it may start a third cookie jar bingo pot. In the event that a licensee has a first cookie jar bingo pot of \$500 and then accrues a second cookie jar bingo pot of \$500, the licensee must award the first cookie jar pot to a player on the occasion at which the second cookie jar pot reaches the \$500 limit. On such occasion, if the first cookie jar pot is not awarded by the end of the occasion, the licensee shall conduct a final special bingo game of "full card" or "black out" bingo using a separate, single card, and the first \$500 cookie jar shall be won by the player or players who first covers all spaces on their entire card.

4.8 Two or more organizations may not hold games of bingo at the same place on the same day. Unless a bingo licensee has been licensed prior to the enactment of 71 **Del. Laws** 444 (July 14, 1998), only one licensed organization may hold bingo games in a licensed organization's building during any given week.

4.9 No alcoholic beverages shall be permitted in the room from the time the bingo hall opens until the conclusion of the last bingo game of the occasion.

4.10 All games shall be conducted with equipment that is owned absolutely by the licensee or that is leased for fees not in excess of those allowable under the Schedule of Rental for leasing of equipment on file with the Board. Equipment shall include playing cards. If the licensee uses cards that are for more than one session of playing bingo, these cards should be identified as the property of the licensee.

4.11 All winners shall be determined and all prizes shall be awarded in any game played on any occasion within the same calendar day as that upon which the game is played.

4.12 When more than one player is found to be the winner on the call of the same number in the same game, the designated prize shall be divided equally as possible; and when division is not possible, substitute prizes, whose aggregate value shall not exceed that of the designated prize, shall be awarded; but such substitute prizes shall be of equal value to each other.

4.13 The equipment used in the playing of bingo and the method of play shall be such that each card shall have an equal opportunity to be a winner. The objects drawn shall be essentially equal as to size, shape, weight, and balance, and as to all other characteristics that may control their selection, and all shall be present in the receptacle before each game is begun. All numbers shall be announced so as to be visible or audible to all players present.

4.14 The particular arrangement of numbers required to be covered in order to win the game shall be clearly described and announced to the players immediately before each game is begun.

4.15 No arrangement of numbers shall be required to be covered in order to win the game other than the following:

- 4.15.1 one unspecified horizontal row;
- 4.15.2 one unspecified vertical row;
- 4.15.3 one unspecified full diagonal row;
- 4.15.4 one unspecified row (horizontal, vertical, or diagonal);
- 4.15.5 Two or more of the foregoing, forming a specified arrangement;
- 4.15.6 The entire card;
- 4.15.7 Four corners;
- 4.15.8 Eight spaces surrounding the free space.

4.16 Within the limits contained in 28 **Del.C.** §1132(b), alternate prizes may be offered depending upon the number of calls within which bingo is reached, provided the application for the bingo license and the license so specify.

4.17 Any player shall be entitled to call for a verification of all numbers drawn at the time a winner is determined, and for a verification of the objects remaining in the receptacle and not yet drawn. The verification shall be made in the immediate presence of the member designated to be in charge on the occasion, but if such

member is also the announcer, then in the immediate presence of an officer of the licensee.

4.18 No licensee shall conduct more than forty (40) games on a single occasion.

4.19 In the playing of bingo, no person who is not physically present in the room where the game is actually conducted shall be allowed to participate as a player in the game.

4.20 Within the limits contained in 28 **Del.C.** §1132(6), the prizes offered may be varied depending upon the number of people who attend the occasion, provided the application for bingo license and license so specify. If a licensee avails itself of the provisions of this rule, it must announce at the beginning of each game the number of people present and the prizes to be awarded.

4.21 The entire proceeds of the games of bingo must be used solely for the promotion or achievement of the purposes of the licensee.

4.22 Any local rules adopted by the licensee that affect the conduct of the players or the awarding of prizes shall be prominently posted in at least four locations within the area where the bingo games are conducted.

4.23 The licensee shall be permitted to reserve seats within the area where the bingo games are conducted to provide for the special needs of handicapped persons, and the licensee shall ensure that the remaining seats are made available to the players on an equal basis.

4.24 A licensee may charge an admission fee to a game event in any room or area in which a game is to be conducted. The admission fee shall entitle the game player (a) to a card enabling the player to participate without additional charge in all regular games to be played under the license at the event, or (b) to free refreshments. The licensee may charge an additional fee to a game player for a single opportunity to participate in a special game to be played under license at the event.

4.25 No person shall conduct or assist in conducting any game except an active member of the organization to which the license is issued.

4.26 No item of expense shall be incurred or paid in connection with the conduct of the game except shall be incurred or paid in connection with the conduct of the game except such as are bona fide items of a reasonable amount for merchandise furnished or services rendered which are reasonably necessary for the conduct of the game.

**2 DE Reg. 1224 (1/1/99)**

**2 DE Reg. 1761 (4/1/99)**

## **5.0 Reports After the Function**

5.1 When no game is held on a date a licensee is authorized to hold such game, a report to that effect shall be filed with the Board.

5.2 Within 5 days of the last day of the function, the member-in-charge shall submit a report to the Board that includes all information required by 28 **Del.C.** §1140(a).

5.3 If a licensee fails to timely file a report or if a report is not properly verified, or not fully, accurately, and truthfully completed, no further license shall be issued to the licensee and any existing license shall be suspended until such time as the deficiency has been corrected.

**11 DE Reg. 516 (10/01/07)**

## **6.0 Suspension and Revocation of Licenses**

6.1 Proceedings to suspend or to revoke a license shall be brought by notifying the licensee of the ground thereof and the date set forth for a hearing thereon. The Commission may stop the operation of a game pending hearing, in which case the hearing must be held within five (5) days after such action.

6.2 When suspension or revocation proceedings are begun before the Commission, it shall hear the matter and make written findings in support of its decision. The licensee shall be informed of the decision and of the effective date of the suspension or revocation.

6.3 When a license is suspended or revoked, the licensee shall surrender up the license to the Board on or before that effective date set forth in the notice of decision. In no case shall any license be valid beyond the effective date of suspension or revocation, whether surrendered or not.

6.4 Upon finding of the violation of these rules and regulations or the Bingo Statute, such as would warrant the suspension or revocation of a license, the Board may in addition to any other penalties which may be imposed, declare the violator ineligible to conduct a game of bingo and to apply for a license under said law for a period not exceeding thirty (30) months thereafter. Such declaration of the ineligibility may be extended to include, in addition to the violator, any of its subsidiary organizations, its parent organization and any other organization

having a common parent organization or otherwise affiliated with the violator, when in the opinion of the Board, the circumstances of the violation warrant such action.

## 7.0 Severability

If any provision of these Regulations or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of these Regulations and the applicability of such provisions to other persons or circumstances shall not be affected thereby.

2 DE Reg. 1224 (1/1/99)

## 402 Regulations Governing Raffles

These regulations shall apply to any raffle conducted under 28 **Del.C.** §1130 in which the value of the prize or prizes to be awarded is \$5,000 or more or in which the ticket price is \$5.00 or more for a single drawing for prizes, or \$15.00 or more for a series of drawings for prizes occurring on a periodic schedule exceeding one month. These regulations are issued pursuant to the authority granted the Delaware Gaming Control Board in 28 **Del.C.** §1122(2).

2 DE Reg. 1224 (1/1/99)

## 1.0 Definitions

**Board** The Delaware Gaming Control Board.

**Prize** Any item or items chosen by a Sponsoring Organization as the subject of a raffle, which the organization announces it will award to a person selected by chance from among those purchasing tickets to the raffle.

**Qualified Member** For the purposes of eligibility to participate in managing or otherwise assisting in the operation of raffle, a person is a bona fide member of the licensed organization only when he or she:

Has become a member prior to the commencement of the function and such membership was not dependent upon, or in any way related to the payment or consideration to participate in, any gambling activity; and

Has held full and regular membership status in the licensed organization for a period of not less than three (3) consecutive months prior to the subject function; and

Has paid any reasonable initiation or admission fees for membership, and/or any dues, consistent with the nature and purpose of the licensed organization and with the type of membership obtained and is not in arrears in payment of any such fees or dues; and

Has met all other conditions required by the licensed organization for membership and is in all respects a member in good standing at the time of the subject function; and

Is a bona fide member of a bona fide charitable or bona fide nonprofit organization affiliated with or auxiliary to his or her sponsoring organization, or to which his or her own organization is auxiliary, when he or she meets all of the standards set out above respecting his or her own organization.

**Raffle** A form of lottery in which a number of persons buy one or more chances attempting to win the same prize. Any game such as so called "Nevada cards" or "pull cards" where the amount of the prize is determined by the contents of the ticket purchased are not raffles.

**Related Party** Includes:

An officer, director, or trustee (or an individual having powers or responsibilities similar to those of officers, directors, or trustees) of the organization.

A spouse other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance; a child including legally adopted children; grandchildren; parents; and grandparents of parties described in (a) above.

A corporation, trust, estate or partnership more than 35% of which is owned or held by any of the preceding.

**Sponsoring Organization** Any veterans, religious, or charitable organization, volunteer fire company or fraternal society as defined in Article II, §17A or §17B of the State Constitution.

## 2.0 Disclosure

2.1 In any raffle conducted pursuant to 28 **Del.C.** §1130, the sponsoring organization must disclose the following information on the raffle ticket itself:

- 2.1.1 A full and fair description of the prize;
- 2.1.2 The appraised value of the prize;
- 2.1.3 If there is a minimum number of tickets to be sold, what the minimum is and the procedure to be employed to secure a refund in the event the minimum is not reached;
- 2.1.4 The drawing date for the raffle;
- 2.1.5 The exact nature of the charitable purpose for which the proceeds will be used.

### **3.0 Obligations of the Sponsoring Organization**

3.1 If for any reason the raffle is not completed and a prize is not awarded on the scheduled drawing date, the sponsoring organization must take all steps necessary to notify ticket purchasers of that fact and return all money received from ticket purchasers within thirty days.

3.2 No member or employee, or immediate family member of a member or employee, of a sponsoring organization who has been directly involved in the promotion or operation of a raffle shall be permitted to purchase tickets to the raffle or win the prize. The sale of tickets alone shall not constitute the promotion and operation of a raffle for purposes of this section. Nothing in this section prohibits the award of a prize to a person for selling a winning ticket.

3.3 The sponsoring organization shall take such steps as are necessary under the circumstances to insure that each ticket purchaser has a chance to be selected as the prize winner and that prize winner is selected in an entirely random manner.

3.4 In cases where the sponsoring organization purchases the prize from a third party, the Board may require that the sponsoring organization arrange for an independent appraisal of the value of the prize from a person licensed to render such appraisals, or if there is no applicable licensing requirement, from a person qualified to render such appraisals.

3.5 If the sponsoring organization purchases a prize from a related party, the price to be paid must be at cost or substantially less than the appraised value of the prize.

3.6 No sponsoring organization or its employees, members, agents or servants, shall give away tickets to a raffle without receiving the full established price for them unless all members of the public have an equal chance to receive bonus chances or books of chances when buying a certain number of chances or books of chances.

3.7 The sponsoring organization shall structure the raffle in such a way that it may reasonably be anticipated that the sponsoring organization will retain a percentage of the gross proceeds which is reasonable under the circumstances and shall retain all of the net proceeds (gross proceeds minus the direct expenses of the raffle) for the purpose specified in their application under 28 **Del.C.** §1130.

### **4.0 Record Keeping, Financial Control**

4.1 A record keeper shall be designated from among the members of the organization as defined in **1.0 "Qualified Member"** and shall have been a member for a minimum of two (2) years prior to the commencement of the raffle. The record keeper or his designee shall be responsible for the keeping and distribution of raffle tickets to be sold, the safekeeping of paid-for and completed ticket stubs, and the maintenance of the records prescribed by this section during and after the completion or suspension of the raffle for a period of at least two years.

4.2 The raffle ticket shall have at least two parts, one of which is to be retained by the purchaser, and the other to be retained by the record keeper. The record keeper's part must at a minimum contain the purchaser's name, address, and telephone number. All such parts shall be imprinted with sequential serial numbers commencing with the numeral "1" through the maximum number of tickets to be sold.

4.3 The record keeper shall maintain and periodically update as the need arises, the following types of records:

4.3.1 all documents, bills of sale, agreements, appraisals or other documents concerning the purchase of the article or articles to be raffled;

4.3.2 all permits, licenses, and any other documents prescribed or required by law as necessary for the lawful conduct of a raffle;

4.3.3 a list or access to a list of all persons authorized to sell raffle tickets or participating in any way in the promotion or operation of the raffle. If raffle tickets are given to one person to sell and this person recruits other persons to help sell raffle tickets, the record keeper need only keep a list of those persons to whom



the record keeper has directly distributed raffle tickets.

4.3.4 a ledger book or other suitable record keeping device listing the number of tickets distributed, and the number of tickets returned as sold.

4.3.5 the ticket stubs used to conduct the drawing for a period of not less than six months.

4.4 Financial records shall be maintained by the record keeper sufficient to show:

4.4.1 the current amount of proceeds received on account of the raffle;

4.4.2 all expenses related to the conduct of the raffle including printing costs, advertising costs, lawyers fees, appraisal costs, insurance premiums, and any other costs reasonably attributable to the raffle.

## **5.0 Violations of Regulations**

Failure to comply with any of the Regulations shall subject the violator to suspension or revocation of any valid license issued under 28 **Del.C.** §1130 and criminal prosecution.

## **6.0 Application**

6.1 All applications for a license to conduct a raffle shall be submitted on Form BCC-2 at least six (6) weeks prior to the date of the function. The information supplied must include the name, address, and phone number of the sponsoring organization, the prize to be awarded, the value of the prize, the maximum number of tickets to be sold, the cost of each raffle ticket, the date the prize will be awarded, the exact nature of the charitable purpose for which the proceeds will be used, and the name, address and phone number of the person in charge of the organization, and the person designated to be the record keeper for the raffle.

6.1.1 An application must be submitted sufficiently in advance of the proposed date of the event as to allow the Board to consider the application at two consecutive meetings before deciding whether to approve the application.

6.2 There shall be a license fee of \$15 for each raffle application submitted to the Board for approval.

6.3 The Board shall make an investigation of the qualifications of each applicant and the merits of each application. The Board shall consider the impact, if any, of the approval of a new raffle license application on existing licensees within the applicant's geographical location prior to granting the approval, and may deny the application if it concludes that approval of the application would be detrimental to existing licensees.

6.4 The Board may issue a license only after it determines that:

6.4.1 The applicant is duly qualified to conduct raffles under the State Constitution, statutes, and rules and regulations governing raffles; and

6.4.2 The member or members of the applicant who intend to conduct the games are bona fide active members of the applicant and are persons of good moral character and have never been convicted of crimes involving moral turpitude; and

6.4.3 The proceeds are to be disposed of as provided in the State Constitution and statutes; and

6.4.4 No salary, compensation or reward whatever will be paid or given to any member under whom the game is conducted.

6.5 No raffle license application shall be effective for a period of more than one year from the date it was issued.

6.6 No raffle license shall be effective after the organization to which it was granted has become ineligible to conduct the game under any provision of Article II, §17A or §17B of the State Constitution.

**2 DE Reg. 1224 (1/1/99)**

## **7.0 Reports After the Drawing**

Within fifteen (15) days of the date for awarding the prize as specified in the license application, the record keeper shall furnish in writing to the Board, the name and address of each person to whom a prize was awarded, the gross receipts derived from the selling of raffle tickets, and the total expenses incurred for the raffle.

## **8.0 Suspension and Revocation of Licenses**

8.1 Proceedings to suspend or to revoke a license shall be brought by notifying the licensee of the ground thereof and the date set forth for hearing thereon. The Board may stop the operation of a raffle pending a hearing, in which case the hearing must be held within five (5) days after such action.

8.2 The Board shall cause the notice of hearing to be served personally on an officer of the licensee or the member in charge of the conduct of the raffle or to be sent by registered or certified mail to the licensee at the

address shown in the license. All hearing procedures shall be subject to the requirements of the Administrative Procedures Act, 29 **Del.C.** §10131.

8.3 When suspension or revocation proceedings are begun before the Board, it shall hear the matter and make written findings in support of its decision. The licensee shall be informed of the decision, and of the effective date of the suspension or revocation.

8.4 When a license is suspended or revoked, the licensee shall surrender up the license to the Board on or before that effective date set forth in the notice of the decision. In no case shall any license be valid beyond the effective date of suspension or revocation, whether surrendered or not.

8.5 Upon finding of the violation of these rules and regulations or the Delaware statutes, such as would warrant the suspension or revocation of a license, the Board may in addition to any other penalties imposed, declare the violator ineligible to conduct a raffle and to apply for a license under said law for a period not exceeding thirty (30) months thereafter. Such declaration of the ineligibility may be extended to include, in addition to the violator, any of its subsidiary organizations, its parent organization and any other organization having a common parent organization or otherwise affiliated with the violator, when in the opinion of the Board, the circumstances of the violation warrant such action.

**2 DE Reg. 1224 (1/1/99)**

## **9.0 Severability**

If any provision of these Regulations or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of these Regulations and the applicability of such provision to other persons or circumstances shall not be affected thereby.

### **403 Regulations Governing Charitable Gambling Other Than Raffles**

## **1.0 Definitions**

**“Board”** The Delaware Gaming Control Board.

**“Charitable Gambling”** Any game or scheme operated by an organization which has been in existence for two (2) years or longer in which chance is the dominant factor in determining the allocation of a prize, excluding slot machines, roulette, craps, baccarat games, or raffles as defined in the Board's Regulations for Raffles.

**“Function”** is a licensed event of Charitable Gambling maintained and conducted by a Sponsoring Organization for the disposal of awards of merchandise, cash, or its equivalent by means of **“Game”** as defined in this section. This includes without limitation thereto, so-called Las Vegas, Casino, or Monte Carlo Nights.

**“Game”** shall include without limitation card games such as draw poker, stud poker, or blackjack, devices such as big six wheels or similar devices, dice games other than craps, horse racing games, Nevada cards or pull tabs or any other activity similar to these mentioned games approved by the Board.

**“Gross Receipts”** means the total amount of money or other consideration received as admission fees, income from gambling and except for a bazaar, carnival, festival, or similar affair, from the sale of food and beverages from any one event.

**“Instant Bingo”** shall mean any game of chance played with sealed or covered cards which must be opened in some fashion by the holder, such that the cards reveal instantly whether the holder has won a prize. This game includes, but is not limited to games commonly known as “rip-offs” and “Nevada pull-tabs.”

**2 DE Reg. 1224 (1/1/99)**

**“Net Proceeds”** is Gross Receipts less license fee, prizes and reasonable and necessary expenses ordinarily incidental to the conduct of a function.

**“Sponsoring Organization”** Any veterans, religious, or charitable organization, volunteer fire company or fraternal society as defined in Article II, §17A or §17B of the State Constitution.

## **2.0 Licensing List Required To Be Kept: Membership List**

2.1 Each licensed organization must maintain a list of its current membership by name, address, and a description of the type of membership in the organization which shall be kept available for inspection at all reasonable times.

## **3.0 Conduct of Games**

3.1 Workers.

3.1.1 **Member in Charge.** Every Licensed Organization shall designate a bona fide, active member of the licensee to be in charge of and primarily responsible for each Function. The member-in-charge shall have been a member in good standing of the Sponsoring Organization for at least two (2) years. The member-in-charge shall supervise all activities and be responsible for the conduct of all games during the Function of which he is in charge, including the preparation of any financial reports required by law or these regulations. The member-in-charge or his qualified designee shall be present on the premises continually during the Function and shall be familiar with the provisions of these Regulations, and the terms of the license.

3.1.2 **List of Workers.** A Sponsoring Organization conducting a Function shall prepare and have available on the premises a list of all persons taking part in the management or operation of the Function. Such list shall be maintained as part of the licensee's records of the Function and shall be made available to any member or agent of the Board or law enforcement officer.

3.1.3 **Participation of Worker Restricted.** No person shall assist in the conduct of a Function except a bona fide member of the Sponsoring organization whose name appears on the lists required by §3.03(l)(b) of these Regulations.

3.1.4 **Bona Fide Member.** For the purposes of eligibility to participate in managing or otherwise assisting in the operation of a Function, a person is a bona fide member of the Sponsoring Organization only when he or she:

3.1.4.1 Has become a member prior to the commencement of the Function and such membership was not dependent upon, or in any way related to the payment of consideration to participate in, any gambling activity; and,

3.1.4.2 Has held full and regular membership status in the Sponsoring Organization for a period of not less than three (3) consecutive months prior to the subject Function; and,

3.1.4.3 Has paid any reasonable initiation or admission fees for membership, and/or any dues, consistent with the nature and purpose of the Sponsoring Organization and with the type of membership obtained and is not in arrears in payment of any such fees or dues; and,

3.1.4.4 Has met all other conditions required by the Sponsoring Organization for membership and in all respects is a member in good standing at the time of the subject Function; and,

3.1.4.5 Has met all of the standards set out above respecting his or her own organization, and he or she is a bona fide member of a bona fide charitable or bona fide nonprofit organization affiliated with or auxiliary to his or her Sponsoring Organization, or to which his or her own Sponsoring Organization is auxiliary; and,

3.1.4.6 Has met all of the standards set out above respecting his or her own organization, and this organization has prior to July 6, 1984, assisted the Sponsoring Organization to conduct charitable gambling; and,

3.1.4.7 Has met all of the standards set out above respecting his or her own Sponsoring Organization, and this organization is assisting another similar Sponsoring Organization (i.e. fire company assisting another fire company; fraternal society assisting another fraternal society; charitable, religious or veterans organization assisting another charitable, religious, or veterans organization) to conduct charitable gambling.

3.1.5 **Identification Required.** The member-in-charge and those assisting him in any capacity shall possess and display identification.

3.1.6 **Officer Responsible for Gross Receipts.** The Sponsoring Organization shall duly designate an officer of said organization to be in full charge and primarily responsible for the proper accounting, use and disposition of all Gross Receipts. Such officer's name shall appear on the list required under §3.03(1)(b) and such officer shall be a person other than the person designated member-in-charge pursuant to §3.03(l)(a).

3.1.7 **Payment of Workers Prohibited.** No commission, salary, compensation, reward, recompense, reimbursement of expenses or gift or other consideration shall be paid directly or indirectly, to any person for conducting or assisting in the conduct of any Function. No tip, gratuity or gift or other consideration shall be given or accepted by any person conducting or assisting in the conduct of a Function either directly or indirectly, and one or more signs prohibiting tipping shall be or more signs prohibiting tipping shall be prominently displayed in each playing area. No person shall solicit or receive any gift or donation or other consideration directly or indirectly on the premises during the conduct of a Function. Nothing in this subsection prohibits any person from sharing food and beverages made available at the functions, or the collection of bar tips for the benefit of the Sponsoring Organization.

**4.0 Limitation of Participation of Certain Persons**

No person directly or indirectly connected with the manufacture, sale, lease or distribution of gaming equipment or supplies, or the premises where the function is held if the premises are not owned by a Sponsoring Organization, or the agents, servants or employees of such person, shall conduct, participate, advise or assist in the conduct of a Function or render any service to anyone conducting, participating or assisting in the conduct of a Function including preparation of any form relating thereto.

**5.0 Equipment and Premises**

5.1 Ownership of Equipment. The licensed organization shall conduct games only with equipment owned by it, borrowed from another qualified Sponsoring Organization or which a lessor undertakes to provide by the terms of a written lease. The rental fee contained in such a lease shall be a sum certain and shall be commercially reasonable.

5.2 Equipment. Equipment used in the conduct of a bazaar must be maintained in good repair and sound working condition. Equipment shall be used and operated so that each player is given an equal opportunity to win.

5.3 The function shall be held on premises owned or regularly leased by the applicant. If the applicant desires to hold the function at other premises, a separate written request therefor (together with supporting reasons), shall accompany the application. The Board reserves the right to accept or reject any application for the conduct of a Function on specially leased or donated premises.

**6.0 Operation of Games**

6.1 The maximum initial wager permitted on any game at any function (with the exception of No Limit Texas Hold'em played under the provisions of 28 **Del.C.** §1801 et seq.) is one dollar, except that a wager of up to five dollars is permitted in blackjack, with doubling allowed. In other card game, the maximum ante is one dollar, and the maximum wager on any card for any draw is up to five dollars with three raises allowed.

6.2 House Rules. Prior to conducting a Function, each Licensed Organization shall develop a set of house rules which will govern the type, scope and manner of all games to be conducted. Among other information, these rules shall establish the maximum amount of wagers consistent with these regulations which may be placed by persons participating in games. In addition, the rules shall prohibit the giving of anything of value to any person involved in the management or operation of the Function and prohibit anyone involved in the management or operation of the Function from accepting anything of value. A copy of the rules shall be posted conspicuously on the premises where the Function is being conducted at all times during the occasion, and a copy thereof shall be made available upon request, to any law enforcement officer or agent of the Board. The maximum wager and a no tipping sign shall be displayed at the location of each game, so as to be conspicuous to those persons participating in said games. The rules for the individual games should be available on the premises for review upon request.

6.3 Monitoring of Poker Tables. An association which has obtained the proper license to conduct poker shall assign one monitor or dealer per table during the playing of poker.

**11 DE Reg. 516 (10/01/07)**

**7.0 Prohibited Acts**

7.1 Wagering Among Participants Not Permitted. No Sponsoring organization shall permit, as part of a Function, a gambling activity which involves a wagering or other items of value by one participant directly against another participant, if the activity does not provide for some portion of the proceeds to go to the Sponsoring Organization. This rule shall not be construed to prohibit games wholly administered by the Sponsoring organization wherein the licensee collects wagers from among the participants and determines the winners and amount of prizes on a parimutuel basis.

7.2 Credit and Checks. No Sponsoring Organization may extend credit to any patron at a Function. No checks may be cashed for more than \$20 or received by the Sponsoring organization except for the receipt of checks in the exact amount for any admission charge.

7.3 Persons Under Age Eighteen. No person under eighteen years of age shall be permitted on that portion of the premises used for a Function.

7.4 Transaction of Certain Business Prohibited. No person who is directly or indirectly connected with the manufacture, sale or distribution of gaming equipment or supplies or his agents, servants or employees may be present during a Function for the transaction of business.

7.5 Workers Prohibited From Participating. Workers are prohibited from participating in games at any Function during which they participate as workers except that they may participate during their breaks if they continue to display their identification, except that if a Function is scheduled for more than one day, a worker may participate in games on any day on which he does not participate as a worker.

## **8.0 Limitation of Functions**

8.1 No Sponsoring Organization shall conduct more than one Function in any single calendar month. Charitable games shall not commence prior to 1:30 p.m. The operation of a Function shall be limited to six (6) consecutive hours except as permitted by **§3.08(2)**. Instant bingo is permitted during any event sponsored by the organization that is licensed to conduct it, regardless of the time or time.

8.2 When a Function is conducted in conjunction with a bazaar, carnival, festival or similar affair scheduled for more than one day but less than ten consecutive days, the Function shall be considered one licensed event. The games may be operated during the hours when other activities of the bazaar, carnival, festival or similar affair are available to the public.

**2 DE Reg. 1224 (1/1/99)**

## **9.0 Record Keeping**

9.1 Record Keeping. Accurate records and books shall be kept by each Sponsoring Organization including but not limited to detailed financial reports of the amount and source of proceeds, the members participating in the promotion and/or operation of the Function, all expenses and disbursements.

9.2 Access to Records. Board personnel shall at all times have access to all books and records of any Sponsoring organization required by subsection (a).

9.3 Period for Retention of Records. All records, books of account, bank statements and all other papers incidental to the operation of events by the Sponsoring Organization shall be retained and available for inspection by Board personnel for a period of two years from the close of the calendar year to which the records apply.

9.4 Expenses. Each Sponsoring Organization should incur only those expenses which are reasonable and necessary for the promotion and/or operation of a Function.

## **10.0 Violations of Regulations**

10.1 Failure to comply with any of the Regulations shall be deemed a violation of 28 **Del.C.** Ch. 11.

## **11.0 Application**

11.1 All applications for a license to conduct a Function shall be submitted on Form BCC-3. The information supplied must include the name, address, and phone number of the Sponsoring organization, a list of the games to be conducted, the wagering limit on each game, the date and time that the function will be held, the premises where the Function will be held, the owner of the premises, the name, address, and phone number of the designated member in charge and the person responsible for the proper accounting and the exact nature of the charitable purpose for which the proceeds will be used.

11.1.1 An application must be submitted sufficiently in advance of the proposed date of the event as to allow the Board to consider the application at two consecutive meetings before deciding whether to approve the application.

11.2 There shall be a license fee of \$15 for each occasion upon which the organization wishes to conduct charitable gambling under a license.

11.3 There shall be an annual license fee of \$300 for each organization sponsoring instant bingo games.

11.4 The Board shall make an investigation of the qualifications of each applicant and the merits of each application. The Board shall consider the impact, if any, of the approval of a new charitable gambling license on existing licensees within the applicant's geographical location prior to granting the approval, and may deny the application if it concludes that approval of the application would be detrimental to existing licensees.

11.5 The Board may issue a license only after it determines that:

11.5.1 The applicant is duly qualified to conduct the charitable games under the State Constitution, statutes, and rules and regulations governing charitable gaming; and

11.5.2 The member or members of the applicant who intend to conduct the games are bona fide

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active members of the applicant and are persons of good moral character and have never been convicted of crimes involving moral turpitude; and

11.5.3 The proceeds are to be disposed of as provided in the State Constitution and statutes; and

11.5.4 No salary, compensation or reward whatever will be paid or given to any member under whom the game is conducted.

11.6 No charitable gambling license shall be effective for a period of more than one year from the date it was issued.

11.7 No charitable gambling license shall be effective after the organization to which it was granted has become ineligible to conduct the game under any provision of Article II, §17A or §17B of the State Constitution.

**2 DE Reg. 1224 (1/1/99)**

## **12.0 Reports After the Function**

12.1 Within 15 days of the last day of the function, the member-in-charge shall submit a report to the Board that includes all information required by 28 **Del.C.** §1140(a).

12.2 When no function is held on a date a licensee is authorized to hold such a function, a report to that effect shall be filed with the Board.

12.3 If a licensee fails to timely file a report or if a report is not properly verified, no further license shall be issued to the licensee and any existing licensee shall be suspended until such time as the deficiency has been corrected.

**2 DE Reg. 1224 (1/1/99)**

**11 DE Reg. 516 (10/01/07)**

## **13.0 Suspension & Revocation of Licenses**

13.1 Proceedings to suspend or to revoke a license shall be brought by notifying the licensee of the ground thereof and the date set forth for hearing thereon. The Board may stop the operation of a charitable gaming function pending a hearing, in which case the hearing must be held within five (5) days after such action.

13.2 The Board shall cause the notice of hearing to be served personally on an officer of the licensee or the member in charge of the conduct of the function or to be sent by registered or certified mail to the licensee at the address shown in the license. All hearing procedures shall be subject to the requirements of the Administrative Procedures Act, 29 **Del.C.** §10131.

13.3 When suspension or revocation proceedings are begun before the Board, it shall hear the matter and make written findings in support of its decision. The licensee shall be informed of the decision, and of the effective date of the suspension or revocation.

13.4 When a license is suspended or revoked, the licensee shall surrender up the license to the Board on or before that effective date set forth in the notice of the decision. In no case shall any license be valid beyond the effective date of suspension or revocation, whether surrendered or not.

13.5 Upon finding of the violation of these rules and regulations or the Delaware statutes, such as would warrant the suspension or revocation of a license, the Board may in addition to any other penalties imposed, declare the violator ineligible to conduct a raffle and to apply for a license under said law for a period not exceeding thirty (30) months thereafter. Such declaration of the ineligibility may be extended to include, in addition to the violator, any of its subsidiary organizations, its parent organization and any other organization having a common parent organization or otherwise affiliated with the violator, when in the opinion of the Board, the circumstances of the violation warrant such action.

**2 DE Reg. 1224 (1/1/99)**

## **14.0 Severability**

If any provision of these Regulations or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of these Regulations and the applicability of such provision to other persons or circumstances shall not be affected thereby.

### **404 Regulations Governing No Limit Texas Hold'em Poker**

## **1.0 Reports After the Function**

1.1 Within 30 days of the last day of the function, the member-in-charge shall submit a report to the

Board that includes all information required by 28 **Del.C.** §1140(a).

1.2 When no function is held on a date a licensee is authorized to hold such a function, a report to that effect shall be filed with the Board.

1.3 If a licensee fails to timely file a report or if a report is not properly verified, no further license shall be issued to the licensee and any existing license shall be suspended until such time as the deficiency has been corrected.

## 2.0 Limitation of Texas Hold'em Tournaments

2.1 The Board interprets the phrase "with each tournament by the sponsoring organization to be held at least 75 days apart" in 28 **Del.C.** §1827 to mean that no sponsoring organization may conduct a subsequent tournament less than 75 days from the date of their immediately prior tournament.

## 3.0 Re-buys

3.1 The statutory provisions of 28 **Del.C.** §1825 and 28 **Del.C.** §1826(2) do not harmonize. Consequently, the Board has determined that re-buys are optional.

**11 DE Reg. 516 (10/01/07)**

4.0 An application must be submitted sufficiently in advance of the proposed date of the event as to allow the Board to consider the application at two consecutive meetings before deciding whether to approve the application.

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## DIVISION OF PROFESSIONAL REGULATION

### 2930 Council on Real Estate Appraisers

Statutory Authority: 24 Delaware Code, Section 4006(a)(1) (24 **Del.C.** §4006(a)(1))

24 **DE Admin. Code** 2930

### PUBLIC NOTICE

### 2930 Council on Real Estate Appraisers

Pursuant to 24 **Del.C.** §4006(a)(1), the Council on Real Estate Appraisers has proposed a number of amendments to its rules and regulations. Rule 2.3.1.1, pertaining to continuing education, is amended to correct a typographical error in the most recent amendment to the Rules. Amended Rule 2.3.11 states that no continuing education is required for fewer than **6** months of licensure, not 16 months. A new Rule 2.5.10 is added to specify that at least 14 hours of continuing education per licensure period must be taken in a traditional classroom setting, including the mandatory 7 hour USPAP update course.

Rule 4.0 has been amended to clarify that, after January 1, 2008, an appraiser supervising a trainee must hold a certified license. Rule 4.0 has further been amended to require that licensees provide the Council with updated information regarding any change in e-mail address, telephone number, employer or supervisor. The amended Rule 4.0 also requires that licensees carry their pocket cards issued by the Council when performing appraisals and that appraiser trainees display their licenses at their supervisor's place of business.

Rule 4.2.4 has been amended to specify that any person who has been subject to disciplinary action within the preceding three years shall not be eligible to supervise trainees for three years after the completion of any sanction. Rule 4.3.2.3 has been amended to specify the requirements for a trainee to receive experience log credits.

Finally, Rule 11.0 has been amended to add additional crimes substantially related to the practice of real estate appraisal.

A public hearing will be held on March 18, 2008 at 9:45 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Council on Real Estate Appraisers, 861 Silver Lake Boulevard, Dover, Delaware 11904. Persons wishing to submit written comments may forward these to the Council at the above address. The final date to receive written

comments will be at the public hearing.

The Council will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

## 2930 Council on Real Estate Appraisers

### 1.0 Application for Appraiser License or Certificate

#### 1.1 Application

A person who wishes to file an application for a real property appraiser license or certificate may obtain the required form upon request to the Council. In general, the form calls for information such as the applicant's name and address, the applicant's social security number, places of residence and employment, experience, education, and other information as may be necessary to identify the applicant and review the applicant's qualifications for licensure or certification.

#### 1.2 Filing and Fees

1.2.1 Properly completed applications together with the appropriate fee(s) must be received in the Council's office prior to scheduling the examination.

1.2.2 A processing fee set by the Division of Professional Regulation will be charged for the following:

license	1.2.2.1	Initial application and licensure for appraiser trainee license
	1.2.2.2	Initial application and licensure for licensed real property appraiser
appraiser certificate	1.2.2.3	Initial application and certification for certified residential real property
appraiser certificate	1.2.2.4	Initial application and certification for certified general real property
	1.2.2.5	Renewal
	1.2.2.6	Duplicate license and certificate
	1.2.2.7	Roster
	1.2.2.8	Federal Appraiser Registry
	1.2.2.9	Letter of Good Standing

1.2.3 Fees shall be made payable to the "State of Delaware," and mailed to the Delaware Council on Real Estate Appraisers, Cannon Building, Suite 203, 861 Silver Lake Boulevard, Dover, Delaware 19904. For further information, please contact the Administrative Assistant to the Council at (302) 744-4500.

**4 DE Reg. 1504 (03/01/01)**

**9 DE Reg. 1377 (03/01/06)**

### 2.0 Appraiser Licensing and Certification

#### 2.1 Qualifications for Appraiser Licensure and Certification

2.1.1 The qualifications for licensure or certification shall be the criteria established by the Appraisal Qualifications Board (AQB) of the Appraisal Foundation for:

- 2.1.1.1 certified general real property appraiser;
- 2.1.1.2 certified residential real property appraiser;
- 2.1.1.3 licensed real property appraiser; and
- 2.1.1.4 trainee real property appraiser.

2.1.2 A summary of the criteria set by the AQB is available from the Division of Professional Regulation and designated "Informational Supplement to the Regulations." The Supplement is regularly updated by the Council but the most current information is available directly from The Appraisal Foundation, 1155 15th Street, NW, Suite 1111, Washington, DC 20005.

2.1.3 The 2008 qualification criteria established by the AQB will be phased in using the segmented approach. The three AQB components that must be satisfied to obtaining licensure are: education, experience and examination. An applicant must meet the criteria in effect at the time he or she completes one of these components. Therefore, all applicants for certification or licensure must meet the 2008 qualifications criteria established by the AQB for any component completed on or after January 1, 2008.



## 2.2 License and Certificate Renewal

2.2.1 In September of each odd numbered year, the Division of Professional Regulation will send renewal notices to the mailing address on file of all licensees and certificate holders. Certificates and licenses will expire on October 31st of each odd numbered year.

2.2.2 As a condition of renewal, all licensees and certificate holders, either resident or reciprocal, shall be required to satisfy the continuing education requirements set forth in rule 2.3 of this Section.

2.2.3 A licensee or certificate holder shall not perform appraisals after a license has expired. A licensee or certificate holder may renew a certificate or license within 12 months of its expiration. After 12 months, the individual must reapply as a new applicant.

2.2.4 A licensee or certificate holder may apply for inactive status for a period not to exceed 6 years if he or she is not performing appraisals in Delaware.

2.2.4.1 Persons with in an inactive license or certificate must complete the same continuing education requirement as active licensees or certificate holders. Evidence of completion is due at renewal as provided in Rule 2.3.

2.2.4.2 An inactive license or certificate can be reactivated by notifying the Council in writing.

## 2.3 Continuing Education

2.3.1 All licensees and certificate holders are required to attest to the completion of continuing education according to the following schedule:

2.3.1.1 No continuing education is required for fewer than 16 months of licensure;

2.3.1.2 Effective with the licensure period beginning November 1, 2007, fourteen (14) hours of continuing education are required after at least 6 months but fewer than 24 months of licensure; and

2.3.1.3 twenty-eight (28) hours of continuing education are required after 24 months of licensure.

2.4 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 2.0.

2.4.1 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.

2.4.2 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 2.5.

2.5 Random audits will be performed by the Council to ensure compliance with the CEU requirements.

2.5.1 The Council will notify licensees within sixty (60) days after January 31 that they have been selected for audit.

2.5.2 Licensees selected for random audit shall be required to submit verification within ten (10) days of receipt of notification of selection for audit.

2.5.3 Verification shall include such information necessary for the Council to assess whether the course or other activity meets the CE requirements in Section 2.0, which may include, but is not limited to, the following information:

2.5.3.1 Proof of attendance. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance;

2.5.3.2 Date of CE course;

2.5.3.3 Instructor of CE course;

2.5.3.4 Sponsor of CE course;

2.5.3.5 Title of CE course; and

2.5.3.6 Number of hours of CE course.

2.5.4 All licensees and certificate holders, except as provided in 2.3.1.1, must complete as a condition of each renewal:

2.5.4.1 the seven (7) hour National USPAP Update Course or its equivalent as determined through the AQB Course Approval Program or by an alternate method established by the AQB and

2.5.4.2 two (2) hours of education on Delaware Law, Rules and Regulations

2.5.5 Programs must be structured to maintain or increase an appraiser's skill, knowledge, and competency in real estate appraising. The following topics are appropriate but not exclusive:

2.5.5.1 Influences on real estate value

2.5.5.2 Legal consideration of appraisal

- 2.5.5.3 Types of value
- 2.5.5.4 Real estate markets and analysis
- 2.5.5.5 Valuation process
- 2.5.5.6 Property description
- 2.5.5.7 Highest and best use
- 2.5.5.8 Appraisal math & statistics
- 2.5.5.9 Sales comparison approach
- 2.5.5.10 Site value
- 2.5.5.11 Cost approach
- 2.5.5.12 Income approach
  - 2.5.5.12.1 Estimation of income and expenses
  - 2.5.5.12.2 Operating statement ratios
  - 2.5.5.12.3 Direct capitalization
  - 2.5.5.12.4 Cash flow estimates
  - 2.5.5.12.5 Measures of cash flow
  - 2.5.5.12.6 Discounted cash flow analysis
  - 2.5.5.12.7 Gross rent multiplier analysis
- 2.5.5.13 Valuation of partial interests
- 2.5.5.14 Appraisal standards and ethics
- 2.5.5.15 Narrative report writing
- 2.5.5.16 Appraisal Statistical concepts
- 2.5.5.17 Ad valorem taxation
- 2.5.5.18 Arbitration
- 2.5.5.19 Business courses related to real estate appraisal
- 2.5.5.20 Development cost estimating
- 2.5.5.21 Ethics and standards of professional practice
- 2.5.5.22 Land use planning, zoning and taxation
- 2.5.5.23 Management, leasing, brokerage, timesharing
- 2.5.5.24 Property development
- 2.5.5.25 Real estate appraisal (valuations/evaluations)
- 2.5.5.26 Real estate financing and investment
- 2.5.5.27 Real estate law
- 2.5.5.28 Real estate litigation
- 2.5.5.29 Real estate appraisal related computer applications
- 2.5.5.30 Real estate securities and syndication
- 2.5.5.31 Real property exchange
- 2.5.5.32 Delaware law and regulations

2.5.6 Continuing education credit, up to 14 hours per licensure cycle, may also be granted for participation, other than as a student, in:

2.5.6.1 Teaching, including preparation time up to the number of hours spent teaching, for example, a 3 hour class can be submitted for 6 hours if the preparation time was at least 3 hours.

2.5.6.2 Program development

2.5.6.3 Authorship of textbooks

2.5.7 Continuing education credit may be awarded for participation in field trips, conferences, and trade association meetings, excluding travel time, if those activities specifically relate to real estate appraisal education, but for no more than eight (8) hours per licensure period.

2.5.8 A creditable hour is defined as fifty minutes out of each sixty minute segment. The educational offering must be at least two hours.

2.5.9 The Delaware Council on Real Estate Appraisers may approve the content of a distance education course after approval of the delivery mechanism is approved from one of the following sources:

2.5.9.1 AQB approved organizations providing approval of course design and delivery, such as the International Distance Education Certification Center (IDECC);

2.5.9.2 A college that qualifies for content approval and awards academic credit for the distance education course; or

2.5.9.3 A qualifying college for content approval with a distance education delivery program that approves the course design and delivery that incorporates interactivity;

2.5.10 At least 14 hours per licensure period must be taken in a traditional classroom setting, with an instructor. The mandatory 7 hour USPAP update course must be taken in a traditional classroom setting, with an instructor.

2.5.4011 Educational offerings that have documented approval by the AQB or another state are automatically approved when they are submitted to the Council with a certificate of attendance. In cases where the educational offering has not been approved by the AQB or another state, either the provider or the appraiser must apply to the Council for approval using a form approved by the Council. Applicants seeking pre-approval must submit all required documentation 60 days before the scheduled offering.

2.6 Duplicate License or Certificate Fee

2.6.1 By submitting a written request to the Council and paying the appropriate fee as set by the Division of Professional Regulation, a licensee or certificate holder may obtain a duplicate real property appraiser license, certificate or pocket card to replace an original license, certificate or pocket card which has been lost, damaged, destroyed, or if the name of the licensee or certificate holder has been lawfully changed. A certified copy of a marriage license, divorce decree or court order of a name change must accompany a request for a change of name.

2.7 Federal Appraiser Registry

Licenseses and certificate holders are required to be enrolled in the federal roster or registry of state licensed and state certified real property appraisers. The fee established for that purpose shall be paid biennially by the license or certificate holder to the State of Delaware.

**4 DE Reg. 1504 (03/01/01)**

**6 DE Reg. 1668 (06/01/03)**

**9 DE Reg. 1377 (03/01/06)**

**11 DE Reg. 813 (12/01/07)**

### 3.0 Examination

3.1 Examination

3.1.1 The Council shall review each application to determine whether the applicant is qualified under 24 **Del.C.** §4008 to sit for the examination.

3.1.2 Applicants for licensure as a state licensed real property appraiser and for certification as a state certified residential or general real property appraiser shall successfully complete the examination as endorsed by the AQB and approved by the Council on Real Estate Appraisers.

3.1.3 The passing scores on the examinations shall be the scores recommended as passing by Assessment Systems, Inc., the successor agency or company then contracted by the Division of Professional Regulation for administering the examination as endorsed by the Council on Real Estate Appraisers.

**4 DE Reg. 1504 (03/01/01)**

**9 DE Reg. 1377 (03/01/06)**

### 4.0 General Appraisal Practice

4.1 Administrative Responsibilities

4.1.1 A State licensed real property appraiser shall utilize the term "State licensed real property appraiser"; a State certified residential real property appraiser shall utilize the term "State certified residential real property appraiser"; and a State certified general real property appraiser shall utilize the term "State certified general real property appraiser" when performing and signing appraisals. The terms "certified" or "licensed" shall not be used in connection with appraisals or appraisers in any other form. A State licensed appraiser trainee shall use the term "State licensed appraiser trainee" or "appraiser trainee" and shall only co-sign appraisals along with a State licensed or State certified real property appraiser. Approved abbreviations are as follows:

DE Cert Gen followed by the certification number,

DE Cert Res followed by the certification number,

DE Lic Appr followed by the license number,

DE Appr Trainee followed by the license number.

4.1.2 The real property appraiser license or certificate of a State licensed or State certified real property appraiser shall be prominently displayed at the appraiser's place of business. The license of a State

licensed appraiser trainee shall be prominently displayed at his or her supervisor's place of business.

4.1.3 The biennial license or certificate renewal pocket card issued by the Council to each State licensed or State certified real property appraiser shall be retained by the licensee or certificate holder as evidence of licensure or certification. When performing appraisals, the licensee or certificate holder shall carry on his/her person the pocket card issued by the Council.

4.1.4 When advertising or otherwise holding himself/herself out as a real property appraiser, a State licensed real property appraiser shall identify himself/herself as a "State licensed real property appraiser." A State certified residential real property appraiser shall identify himself/herself as a "State certified residential real property appraiser". A State certified general real property appraiser shall identify himself/herself as a "State certified general real property appraiser." A State licensed real estate appraisal trainee shall identify himself/herself as a "State licensed real estate appraiser trainee."

4.1.5 Licensure or certification as a real property appraiser is granted only to persons and does not extend to a business entity.

4.1.6 All licensees and certificate holders shall notify the Council in writing of each change of business address, residence address, e-mail address, business telephone number or trade name within ten (10) days of said change. The address information provided shall be sufficiently descriptive to enable the Council to correspond with and locate the licensee or certificate holder. All licensees and certificate holders shall notify the Council in writing of each change of supervisor or employer, and shall provide the Council with the new supervisor's or employer's name, business address, and business telephone number.

4.1.7 Each written appraisal report prepared by or under the direction of a State licensed or State certified real property appraiser shall bear the signature of the State licensed or State certified appraiser, the license or certificate number of the licensee or certificate holder in whose name the appraisal report is issued, and the appropriate title such as "appraiser trainee" (as co-signer only), "State licensed real property appraiser," "State certified residential real property appraiser," or the designation "State certified general real property appraiser," or the approved abbreviations as specified in Rule 4.1.1. Said certified or licensed appraiser shall be fully responsible for the content of the report prepared under his or her direction. Where applicable, each appraisal report shall also indicate whether or not the State licensed or State certified appraiser has personally inspected the property, and shall identify any other person who assists in the appraisal process other than by providing clerical assistance.

4.1.8 Each State certified or State licensed appraiser shall be responsible for the proper maintenance and retention of the appraisal records.

## 4.2 Responsibilities of Supervisors of State Licensed Trainees

4.2.1 A state licensed appraiser trainee may assist in the completion of an appraisal report, including an opinion of value, and may co-sign an appraisal, provided that he/she is actively and personally supervised by a state certified ~~or licensed~~ real property appraiser, provided that the appraisal report is reviewed and signed by the state certified ~~or licensed~~ real property appraiser, and provided that the ~~licensed or certified~~ appraiser accepts total responsibility for the appraisal report. An appraiser trainee is permitted to have more than one supervising appraiser. Notwithstanding any language in Rule 4.2 to the contrary, as of January 1, 2008 and in accord with the AQB qualification criteria in effect as of that date, only certified appraisers in good standing may supervise trainees.

4.2.2 A ~~state licensed or~~ state certified real property appraiser may employ a person(s) as a state licensed appraiser trainee(s) to assist in the performance of real estate appraisals, provided that the ~~state licensed or~~ state certified real property appraiser:

4.2.2.1 Provides direct supervision of the state licensed appraiser trainee as defined in the Uniform Standards of Professional Appraisal Practice (USPAP); "Direct Supervision" means to:

4.2.2.1.1 personally inspect with the trainee the interior and exterior of each property appraised;

4.2.2.1.2 personally review each appraisal report prepared by the trainee;

4.2.2.1.3 accept full responsibility for the report;

4.2.2.1.4 assign work to the trainee only if the trainee is competent to perform such work; and

4.2.2.1.5 approve and sign the report as being independently and impartially prepared and in compliance with USPAP, these rules and regulations, and applicable statutory requirements;

4.2.2.2 Reviews all appraisal reports and supporting data used in connection with

appraisals in which the services of a state licensed appraiser trainee is utilized;

4.2.2.3 Complies with all provisions of 4.1.7 regarding appraisal reports;

4.2.2.4 Reviews and approves a trainee's experience log maintained pursuant to

4.3.2.2. The supervisor shall make available to the trainee a copy of any appraisal report that the trainee assisted in preparing that is requested for review by the Council;

4.2.2.5 Supervises no more than three (3) trainees whose application for exemption has not been approved by the Council pursuant to Rule 4.2.3. Beginning January 1, 2008, a supervising appraiser shall not supervise more than three trainees at one time regardless of their status concerning exemption;

4.2.2.6 Signs an affidavit affirming that he/she is a State licensed or certified Real Property Appraiser and that he/she shall comply with all rules and policies regarding supervisory appraisers; and

4.2.2.7 Immediately advises the Council in writing when the certified or licensed appraiser is no longer supervising the trainee. The writing shall include the last known address of the appraiser trainee along with a copy of the letter from the supervisor to the trainee advising the trainee that his/her employment has been terminated or the letter of resignation from the trainee to the supervisor, whichever is applicable.

4.2.3 After the trainee has obtained two hundred fifty (250) hours of residential appraising or one thousand (1,000) hours of non-residential appraising experience as defined by the Appraisal Qualifications Board in its appraisal qualifications criteria, the supervisor and the trainee may jointly apply to the Council on a form provided by the Council, for an exemption that would allow the supervisor to sign the report without inspecting the property as provided by Rule 4.2.2.1.1, provided the trainee is competent to perform the inspection.

4.2.4 Beginning ~~January~~ July 1, 2008, any person who has been subject to disciplinary action within the preceding ~~two three~~ years that affects the supervisor's legal eligibility to engage in appraisal practice shall not be eligible to supervise trainees for three years after the completion of any sanction.

#### 4.3 Responsibilities of State Licensed Appraiser Trainees

4.3.1 All appraiser trainees must be licensed as required under 24 **Del.C.** Ch. 40.

4.3.2 A State licensed trainee may assist in the performance of real estate appraisals provided that:

4.3.2.1 The trainee shall only work under the direct supervision of one or more State licensed or state certified real property appraiser(s); an individual who is no longer supervised shall not engage in the act of appraising until a new license is issued showing a new supervisor;

4.3.2.2 The trainee shall maintain an appraisal experience log on a form provided by the Council and certified by the supervising appraiser;

4.3.2.3 The trainee shall inspect the property and participate in the appraisal process in order to receive experience credit for the hours spent. In order for the trainee to receive experience log credit, either the contribution of the trainee shall be identified in the report, with the trainee identified by name, state and license number, or the trainee shall sign the report. The appraisal shall be signed by the trainee as follows:

The trainee shall place on the "other" line in the signature section of the appraisal forms, his or her license # and the title "appraiser Trainee" in the appropriate places. For example:

"or other (describe) Appraiser Trainee State# X4-xxx"

4.3.2.4 The trainee shall ensure that the log is available at all times for inspection by the Council; and

~~4.3.2.5 When performing appraisal assignments, the trainee shall carry on his/her person the license issued by the Council.~~

**4 DE Reg. 1504 (03/01/01)**

**9 DE Reg. 1377 (03/01/06)**

**11 DE Reg. 813 (12/01/07)**

## 5.0 Temporary Practice & Reciprocity

### 5.1 Temporary Practice

The Division of Professional Regulation may grant temporary licensing or certification privileges to an appraiser licensed or certified in another state in accordance with 24 **Del.C.** §4010.

### 5.2 Reciprocity

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The Council may grant a reciprocal license in accordance with 24 **Del.C.** §4011 to applicants certified or licensed in another state whose requirements for certification or licensure are substantially similar to the State of Delaware.

**9 DE Reg. 1377 (03/01/06)**

**6.0 Guidelines for Qualifying Mass Appraisal Experience**

**6.1 Qualifying Mass Appraisal Experience**

6.1.1 Qualifying mass appraisal experience must conform to USPAP Standard 6. Credit will be given for experience that demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under USPAP Standard 1.

6.1.2 Components of the mass appraisal process that should be given credit are highest and best use analysis, model specification (developing the model), and model calibration (developing adjustments to the model). Other components of the mass appraisal process, by themselves, shall not be eligible for experience credit.

6.1.3 In order to evaluate the experience qualifications of ad valorem tax assessors with mass appraisal experience, the Council will review such applications considering the above - mentioned criteria, and shall review work samples for compliance with USPAP Standard 6. It is important to note that any individual appraisal reports prepared in conformity with USPAP Standards 1 and 2 are fully creditable as appraisal experience. Such reports are often prepared by ad valorem appraisers for defense of value work. Ad valorem appraisers are encouraged to apply for experience credit for full appraisals as well as for mass appraisal experience. An hour of experience is defined as actual verifiable time spent performing tasks in accordance with the Council Rules and Regulations. USPAP Standard 6 sets forth in detail the required work and the reporting of that work for ad valorem tax purposes. Unlike the fee appraiser who prepares and signs a report for each value estimate, the ad valorem appraiser typically prepares analyses and reports that support the appraisals for groups of properties. These efforts are focused on the specification and calibration of models (validation schedules) for these groups of properties.

6.1.4 Applicants seeking mass appraisal experience credit must demonstrate their experience using one of the following options:

6.1.4.1 Develop the mass appraisal system (model specification and calibration that includes highest and best use analysis) or;

6.1.4.2 Adjust an existing mass appraisal system to local market conditions (model calibration that includes highest and best use analysis).

6.1.5 Data collection for purposes of mass appraisal, defined as the on-site collection of property characteristics, is not by itself creditable as appraisal experience. However, as part of mass appraisal model specification and/or calibration, the applicant accepts responsibility for the accuracy of market (sales) data used to develop and/or calibrate the models. Therefore, it is important that the applicant have a working familiarity with the range of properties in the sales sample and thus creditable experience is allowed for sales verification work in conjunction with the mass appraisal model specification/calibration process.

6.1.6 The applicant must have a documented data collection manual that specifies how each property characteristic was measured. For each property characteristic that influences the final value for any property, a complete specification of the variable must be available in the mass appraisal model (schedule) documentation. This documentation must detail how each property characteristic influences value and it must provide a basis in terms of market evidence for using these characteristics.

6.1.7 If the applicant is using an existing mass appraisal system, either mass appraisal vendor supplied or a commercial cost service, documentation must exist which supports how the valuation system was calibrated to local market conditions. If the cost approach is used, documentation must exist which illustrates the extraction of depreciation schedules from local market analysis.

6.1.8 If the applicant develops the mass appraisal model (schedule) specification, evidence derived directly from the local market must be available that supports the use of each property characteristic. For property characteristics included in the model that have a marginal influence on value (items generally included for public relations purposes), such items should be specifically identified and their contribution to value detailed.

**6.2 Mass Appraisal Experience Log**

6.2.1 Applicants seeking mass appraisal experience credit must complete the Mass Appraisal Experience Log on a form approved by the Council.

4 DE Reg. 1504 (03/01/01)

9 DE Reg. 1377 (03/01/06)

## 7.0 Standards of Appraisal Practice

### 7.1 Appraisal Standards

7.1.1 In performing the acts and services of a state licensed or state certified real property appraiser, every appraiser trainee, state licensed and state certified real property appraiser shall comply with those appraisal practice standards known as the "Uniform Standards of Professional Appraisal Practice" (USPAP) and any subsequent amendments thereto, promulgated by the Appraisal Standards Board of the Appraisal Foundation or its successor organization, which standards are hereby adopted by reference.

7.1.2 Copies of the "Uniform Standards of Professional Appraisal Practice" are available from The Appraisal Foundation, Distribution Center, P.O. Box 381, Annapolis Junction, MD 20701-09381. An electronic version is available from the Foundation Store at the website of The Appraisal Foundation at [www.Appraisalfoundation.org](http://www.Appraisalfoundation.org).

9 DE Reg. 1377 (03/01/06)

## 8.0 Complaints and Hearing Procedures

### 8.1 Complaints

The Council incorporates by reference the procedures for investigation of complaints by the Division of Professional Regulation as set forth in 29 **Del.C.** §8807.

### 8.2 Hearing Procedures

8.2.1 All hearings shall be in accordance with the Administrative Procedures Act, 29 **Del.C.** §§10121-10129.

4 DE Reg. 1504 (3/1/01)

## 9.0 Public Disclosure

### 9.1 Public Notice

9.1.1 All meetings shall be convened in compliance with the Freedom of Information Act (FOIA) in 29 **Del.C.** Ch. 100.

### 9.2 Meeting Minutes

Minutes shall be kept of all meetings in accordance with the Freedom of Information Act.

9.2.1 Said minutes shall include a record of those present.

9.2.2 The minutes shall also include a record by individual members, on each vote taken, as well as any action agreed upon.

9.2.3 It shall be the responsibility of the Council's Administrative Assistant to prepare said minutes and keep a copy on file with the Division of Professional Regulation.

### 9.3 Council Records

9.3.1 It shall be the responsibility of the Division of Professional Regulation to maintain the Council's records and to make them accessible to the general public.

9.3.2 No person shall be denied reasonable access to the public records of the Council. Copies of records may be obtained from the Administrative Assistant at a cost per page as established by the Division.

9.3.3 Records will be open to the public as provided in the Freedom of Information Act.

4 DE Reg. 1504 (3/1/01)

## 10.0 Change and Modification to Rules and Regulations

10.1 The Council may, change or modify these Rules and Regulations as provided in 29 **Del.C.** §§10111-10119.

4 DE Reg. 1504 (3/1/01)

## 11.0 Crimes Substantially Related to the Practice of Real Estate Appraisal.

11.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of real estate appraisal in the State of Delaware without regard to the place of conviction:

11.1.1 Murder by abuse or neglect in the second degree; class B felony. 11 **Del.C.** §533

- 11.1.2 Murder by abuse or neglect in the first degree; class A felony. 11 Del.C. §634  
11.1.43 Murder in the second degree; class A felony. 11 Del.C. §635  
11.1.24 Murder in the first degree; class A felony. 11 Del.C. §636  
11.1.35 Unlawful sexual contact in the third degree; class A misdemeanor. 11 Del.C. §767  
11.1.46 Unlawful sexual contact in the second degree; class G felony. 11 Del.C. §768  
11.1.57 Unlawful sexual contact in the first degree; class F Felony. 11 Del.C. §769  
11.1.68 Rape in the fourth degree; class C felony. 11 Del.C. §770  
11.1.79 Rape in the third degree; class B felony. 11 Del.C. §771  
11.1.810 Rape in the second degree; class B felony. 11 Del.C. §772  
11.1.911 Rape in the first degree; class A felony. 11 Del.C. §773  
11.1.4012 Continuous sexual abuse of a child; class B felony. 11 Del.C. §778  
11.1.4413 Dangerous crimes against a child. 11 Del.C. §779  
11.1.14 Kidnapping in the second degree; class C felony. 11 Del.C. §783  
11.1.15 Kidnapping in the first degree; class B felony. 11 Del.C. §783A  
11.1.16 Arson in the third degree; class G felony. 11 Del.C. §801  
11.1.17 Arson in the second degree; class D felony. 11 Del.C. §802  
11.1.18 Arson in the first degree; class C felony. 11 Del.C. §803  
11.1.4219 Burglary in the third degree; class F felony. 11 Del.C. §824  
11.1.4320 Burglary in the second degree; class D felony. 11 Del.C. §825  
11.1.4421 Burglary in the first degree; class C felony. 11 Del.C. §826  
11.1.4522 Robbery in the second degree; class E felony. 11 Del.C. §831  
11.1.4623 Robbery in the first degree. 11 Del.C. §832  
11.1.24 Carjacking in the first degree; class C felony; class B felony. 11 Del.C. §836  
11.1.25 Extortion; class E felony. 11 Del.C. §846  
11.1.26 Misapplication of property; class G felony. 11 Del.C. §848  
11.1.27 Theft of rented property; class G felony. 11 Del.C. §849  
11.1.4728 Theft; class G felony; class A misdemeanor. 11 Del.C. §841  
11.1.4829 Theft; lost or mislaid property; mistaken delivery. 11 Del.C. §842  
11.1.4930 Theft; false pretense. 11 Del.C. §843  
11.1.2031 Theft; false promise. 11 Del.C. §844  
11.1.2432 Theft of services. 11 Del.C. §845  
11.1.2233 Identity theft; class E felony; class D felony. 11 Del.C. §854  
11.1.34 Forgery; class F felony; class G felony. 11 Del.C. §861  
11.1.35 Possession of forgery devices; class G felony. 11 Del.C. §862  
11.1.36 Tampering with public records in the first degree; class E felony. 11 Del.C. §876  
11.1.37 Issuing a false certificate; class G felony. 11 Del.C. §878  
11.1.38 Fraudulent conveyance of public lands; class G felony. 11 Del.C. §911  
11.1.39 Fraudulent receipt of public lands; class G felony. 11 Del.C. §912  
11.1.40 Insurance fraud; class G felony. 11 Del.C. §913  
11.1.41 Home improvement fraud; class G felony. 11 Del.C. §916  
11.1.42 New home construction fraud; class C felony, class F felony, class G felony. 11 Del.C. §917  
11.1.43 Dealing in children; class E felony. 11 Del.C. §1100  
11.1.2344 Endangering the welfare of a child; class E or G felony. 11 Del.C. §1102  
11.1.2445 Sexual exploitation of a child; class B felony. 11 Del.C. §1108  
11.1.2546 Unlawfully dealing in child pornography; class D felony. 11 Del.C. §1109  
11.1.47 Possession of child pornography; class F felony. 11 Del.C. §1111  
11.1.2648 Sexual offenders; prohibitions from school zones. 11 Del.C. §1112  
11.1.2749 Sexual solicitation of a child; class C felony. 11 Del.C. §1112A  
11.1.2850 Bribery; class E felony. 11 Del.C. §1201  
11.1.2951 Receiving a bribe; class E felony. 11 Del.C. §1203  
11.1.3052 Perjury in the second degree; class F felony. 11 Del.C. §1222  
11.1.3453 Perjury in the first degree; class D felony. 11 Del.C. §1223  
11.1.3254 Making a false written statement; class A misdemeanor. 11 Del.C. §1233



<u>11.1.55</u>	<u>Tampering with physical evidence; class G felony. 11 Del.C. §1269</u>
<u>11.1.56</u>	<u>Hate crimes; class G felony, class F felony, class E felony, class D felony, class C felony, class B felony, class A felony. 11 Del.C. §1304</u>
<u>11.1.3357</u>	<u>Possession of a deadly weapon during commission of a felony; class B felony. 11 Del.C. §1447</u>
<u>11.1.3458</u>	<u>Possession of a firearm during commission of a felony; class B felony. 11 Del.C. §1447A</u>
<u>11.1.59</u>	<u>Removing a firearm from the possession of a law enforcement officer; class C felony. 11 Del.C. §1458</u>
<u>11.1.60</u>	<u>Organized crime and racketeering, class B felony. 11 Del.C. §1504</u>
<u>11.1.61</u>	<u>Abuse of patient or resident in nursing home; class D felony; class G felony, class A felony. 16 Del.C. §1136(a)</u>
<u>11.1.62</u>	<u>Prohibited acts A; class B felony. 16 Del.C. §4751</u>
<u>11.1.63</u>	<u>Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, lysergic acid diethylamide (LSD), designer drugs, or 3, 4-methylenedioxymethamphetamine (MDMA); class B felony. 16 Del.C. §4753A</u>
<u>11.1.64</u>	<u>Knowing or reckless abuse of an infirm adult; class D felony; class E felony; class G felony; class A felony. 31 Del.C. §3913</u>
11.2	Crimes substantially related to the practice of appraisal shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.
	<b>4 DE Reg. 1504 (03/01/01)</b>
	<b>9 DE Reg. 1377 (03/01/06)</b>

## 12.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

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

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

12.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Council chairperson or that chairperson's designate(s).

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

12.5 Failure to cooperate fully with the participating Council chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Council chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection 12.8 of this section.

12.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement

which includes, but is not limited to, the following provisions:

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

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

12.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

12.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Council, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Council in addition to the administrative costs associated with the Voluntary Treatment Option.

12.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Council's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

12.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

12.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Council may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

12.8 The participating Council's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

12.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

12.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Council shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

12.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

12.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Council's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

**4 DE Reg. 1504 (03/01/01)**

**9 DE Reg. 1377 (03/01/06)**

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# PROPOSED REGULATIONS

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## DIVISION OF PROFESSIONAL REGULATION

### Controlled Substance Committee

Statutory Authority: 16 Delaware Code, Section 4731 (16 Del.C. §4731)

#### PUBLIC NOTICE

#### Uniform Controlled Substances Act Regulations

Consistent with a recent statutory amendment which relocated the Office of Controlled Substances to the Division of Professional Regulation, Department of State, the Delaware Controlled Substance Committee, in accordance with 29 Del.C. Chapter 101 and 16 Del.C. §4731, proposes amendments to its controlled substance regulations.

A public hearing is scheduled for Tuesday, March 25, 2008 at 1:00 p.m. in the Conference Room of the Medical Examiners Office, 200 South Adams Street, Wilmington, DE 19801. The Controlled Substance Committee will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Committee care of David Dryden, Division of Professional Regulation, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. 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 Dryden at the above address or by calling (302) 677-7313.

The Committee will consider promulgating the proposed regulations immediately following the public hearing.

#### Uniform Controlled Substances Act Regulations

(Adopted by the Secretary of Health and Social Services pursuant to 16 Del.C. §4731 effective February, 1973 amended July 8, 1974, May 27, October 30, 1975, September 27, 1976, February 1, 1983, July 1, 1985, January 28, 1987, March 5, 1992, and August 29, 1995.)

#### **4.0 Adoption of Federal Regulations**

To the extent consistent with 16 Del.C. Ch. 47, regulations promulgated by the Federal Government pursuant to the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, and in effect as of this date, are adopted as a part of these regulations. Readopted October 30, 1975.

#### **1.0 Controlled Substance Advisory Committee**

1.1 The Controlled Substance Advisory Committee (hereafter designated as "the Committee") has a primary objective to promote, preserve and protect the public health, safety and welfare by regulating and monitoring controlled substance use and abuse through a program of registration, inspection, investigation and education. The Committee regulates by registering prescribers, dispensers, manufactures, distributors, clinics, researchers and other controlled substance registrants (i.e. – dog handler). Among its functions, the Committee issues and renews licenses; and makes recommendations to the Secretary of State of new or amended controlled substance regulations and disciplinary actions of registrants who violate the law. (16 Del.C. §4700 to the end)

1.2 The Committee shall consist of 7 members: one physician, one dentist, one podiatrist, one veterinarian, one nurse practitioner, one pharmacist and one public member. The Secretary of State will be provided recommendations for appointments to the Committee from the associated licensing Boards. Members shall have engaged in the prescribing, dispensing or storing of controlled substances for at least 5 years. The public member will be appointed by the Secretary of State or their designee. The public member must be accessible to inquiries, comments and suggestions from the general public.

1.3 Each Committee member shall serve a term of five years and may succeed themselves for one additional term. A Committee member whose appointment has expired remains eligible to participate in Committee proceedings unless replaced by their respective Society or practice.

1.4 The Committee shall hold regularly scheduled meetings at least four times a calendar year and at other times the Committee considers necessary at the request of a majority of the members. A president and vice-president shall be elected by the members annually.

1.5 The conduct of all hearings and issuance of orders shall be in accordance with the procedures established pursuant to this section, Chapter 101 of Title 29, section 8735 of Title 29, and sections 4731 through 4736 of Title 16.

1.6 The Drug Control Administrator for the Division of Professional Regulation, who is an ex officio member of the Committee without a vote, is responsible for the performance of the regular administrative functions of the Committee and other duties as the Committee may direct.

1.7 A majority of members shall constitute a quorum, and no action shall be taken without the affirmative vote of at least 3 members. Any member who fails to attend 3 consecutive meetings, or who fails to attend at least half of all regular business meetings during any calendar year, shall automatically upon such occurrence be deemed to have resigned from office and a replacement shall be appointed by the Secretary of State.

1.8 Minutes of all meetings shall be maintained by the Division of Professional Regulation. At any hearing where evidence is presented, such hearing shall be recorded and transcribed by the Division. The person requesting the transcript shall incur the expense of preparing the transcript.

## **2.0 Requirements**

2.1 Registration shall be on a biennial basis upon forms supplied by the Division of Professional Regulation and/or Secretary for that purpose. The registration fee for prescribers, dispensers, researchers and laboratories will be \$40. The registration fee for manufacturers or distributors will be \$100. A separate registration is required at each principal place of business or professional practice where controlled substances are manufactured, distributed, dispensed, or kept for research substances are manufactured, distributed, dispensed, or kept for research or analysis. Out-of-State registrants who dispense or distribute controlled substances to patients or facilities are required to obtain a registration.

### 2.2 Revocation and Suspension

2.2.1 Revocation of registration by the Federal Government will result in automatic revocation of the State registration.

2.2.2 Proceedings for denying, suspending or revoking a registration shall be held before the Committee. The Committee will forward their recommendation in writing to the Secretary for his/her review and decision. Proceedings for denying, suspending or revoking a Legislation shall be informal in nature. Persons complained against may appear personally or by counsel, and may produce any competent evidence in their behalf in answer to the alleged violation. ~~Such proceedings shall be tape recorded.~~

2.2.3 Whenever a registration is denied, suspended, or revoked, the Secretary or his designee will reduce in writing his findings and rulings, and the reasons therefore, and forward them to the persons complained against within 15 days. This provision shall in no way stay any such denial, suspension, or revocation. The Secretary's decision is final and conclusive. A person aggrieved may file an appeal as provided in 16 Del.C. §4786.

## **3.0 Records and Inventory**

### 3.1 Requirements

3.1.1 Practitioners authorized to prescribe or dispense controlled substance shall maintain a record with the following information:

3.1.1.1 Name and address of patient

3.1.1.2 Date prescribed

3.1.1.3 Name, strength, refills authorized and amount of medication.

3.1.2 Other records required by 21 **CFR** 1300 to end of 1316. The information for prescribed controlled substances may be kept either in a log or on patient records provided such records or logs are made available for inspection. The information for dispensed controlled substances must be maintained in a separate log ~~at least 8 by 11 inches in dimension~~. Entries must include the date dispensed, name and address of the patient, name and strength of medication, and amount dispensed.

3.1.3 Other persons registered to manufacture, distribute, or dispense controlled substances shall maintain a record with the following information:

3.1.3.1 Amount received or distributed.

3.1.3.2 Names, addresses and dates regarding these transactions.

3.1.3.3 Other records required by 21 **CFR** 1300 to the end of 1316.

## 3.2 Accountability Audits

3.2.1 ~~Pharmacies~~ Accountability audits in pharmacies will be accomplished through a review of invoices, prescription files, other records required by 21 **CFR** 1300 to the end of 1316.

3.2.2 ~~Medical, dental and veterinary.~~ Accountability audits of ~~medical, dental and veterinary~~ registered practitioners will be accomplished through a review of records to be kept by paragraph 3.2-1 of this section.

3.2.3 ~~Manufacturers and distributors.~~ Accountability audits of registered manufacturers and distributors (including wholesalers) will be accomplished through a review of invoices received and distributed and other records required by 21 **CFR** 1300 to the end of 1316.

## 3.3 Final inventory

3.3.1 Pharmacies. Whenever the pharmacist in charge of a pharmacy in the State of Delaware leaves his position, a complete inventory of all medication covered by 16 **Del.C.**, Ch. 47 will be taken by the present and prospective pharmacist-in-charge. A copy of such inventory will be sent to the Office of ~~Narcotics and Dangerous Drugs~~ Controlled Substances and another copy retained on the premises.

For the purpose of this regulation, the "pharmacist-in-charge" is a pharmacist registered with the State Board of pharmacy and who is responsible for the prescription department of the registrant.

3.3.2 ~~Medical, dental and veterinary.~~ Registered practitioners who cease legal existence or discontinue business or professional practice shall notify the Office of ~~Narcotics and Dangerous Drugs~~ Controlled Substances promptly of such fact, and shall provide the Office with an inventory of off controlled substance on hand.

## 3.4 Retention of Records

3.4.1 All records required by this Regulation must be retained for a period of at least two (2) years.

## 4.0 Prescriptions

## 4.1 Definitions. As used in this section:

4.1.1 The term "**Act**" means the Controlled Substance Act, 16 **Del.C.**, Ch. 47.

4.1.2 The term "**individual practitioner**" means physician, dentist, veterinarian, podiatrist or other individual, licensed, registered, or otherwise permitted, by the United States or the State of Delaware to prescribe, dispense or store a controlled substance in the course of professional practice but does not include a pharmacist, a pharmacy, or an institutional practitioner.

4.1.3 The term "**pharmacist**" means any pharmacist licensed by the State of Delaware to dispense controlled substances and shall include any other person (e.g. pharmacist intern) authorized by the State of Delaware to dispense controlled substances under the supervision of a pharmacist licensed by this State.

4.1.4 The term "**prescription**" means an order for medication which is dispensed to or for an ultimate user but does not include an order for medication which is dispensed for immediate administration to the ultimate user. (e.g. an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription.)

4.1.5 The terms "**register**" and "**registered**" refer to registration required by 16 **Del.C.** §4732.

## 4.2 Persons Entitled to Issue Prescriptions

4.2.1 A Prescription for a controlled substance may be issued only by an individual practitioner who is:

4.2.1.1 Authorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession; and

4.2.1.2 Either registered or exempt from registration pursuant to 16 **Del.C.** §4732.

4.2.2 A verbal prescription for a controlled substance may only be communicated to a pharmacist or pharmacy intern by the prescriber. Prescriptions for controlled substances communicated by an employee or agent of the prescriber are not valid.

4.2.3 Written prescriptions for controlled substances may be transmitted via facsimile by a practitioner or by the practitioner's authorized agent to a pharmacy only when the transmission complies with 21 **CFR** 1306.11, 1306.21 and 1306.31.

## 4.3 Purposes of Issue of Prescription

4.3.1 A prescription for a controlled substance to be effective, must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of ~~his~~ their professional practice. The

responsibility for proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription not issued in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of §4738 of the Act and the person knowingly filling such a purported prescription, as well as the person issuing it shall be subject to the penalties provided for violation of the provisions of law relating to controlled substances.

4.3.2 A prescription may not be issued in order for an individual practitioner to obtain controlled substances for supplying the individual practitioner for the purpose of general dispensing to patients.

4.3.3 A prescription may not be issued for the dispensing of narcotic drugs listed in any schedule to a narcotic drug dependent person for the purpose of continuing his dependence upon such drugs, unless otherwise authorized by law.

4.4 Manner of Issuance of Prescriptions. All prescriptions for controlled substances shall be dated and signed on the day when issued and shall bear the full name and address of the patient, and the name, address and registration number of the practitioner. A practitioner may sign a prescription in the same manner as he would sign a check or legal document (e.g. J.H. Smith or John H. Smith). When an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or typewriter and shall be ~~manually~~ signed by the practitioner. The prescriptions may be prepared by a secretary or agent for the signature of a practitioner but the prescribing practitioner is responsible where the prescription does not conform in all essential respects to the law and regulations. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by these regulations. Each written prescription shall have the name of the practitioner stamped, typed, or hand-printed on it, as well as the signature of the practitioner.

4.5 Persons Entitled to fill Prescriptions. A prescription for controlled substances may only be filled by a pharmacist acting in the usual course of his professional practice and either registered individually or employed in a registered pharmacy or by a registered institutional practitioner.

4.6 Dispensing Narcotic Drugs for Maintenance Purposes. No person shall administer or dispense narcotic drugs listed in any schedule to a narcotic drug dependent person for the purpose of continuing his dependence except in compliance with and as authorized by Federal law and regulation.

4.7 Emergency Dispensing of Schedule II Substances. In an emergency situation a pharmacist may dispense controlled substances listed in Schedule II upon receiving oral authorization of a prescribing individual practitioner, provided that the procedures comply with Federal law and regulation.

4.8 Expiration of Prescription.

4.8.1 Prescriptions for controlled substances in Schedules II and III will become void unless dispensed within seven (7) days of the original date of the prescription or ~~if~~ unless the original prescriber authorizes the prescription past the seven (7) days period. Such prescriptions cannot be written nor dispensed for more than 100 dosage units or a 31 day supply whatever is the greater at one time. As an exception to dosage limitations set forth in this subparagraph, and in accordance with 21 **CFR** Section 1306.1(b), prescriptions for controlled substances in Schedule II for patients either having a medically documented terminal illness or patients in Long Term Care Facilities (LTCF), may be filled in partial quantities, to include individual dosage units. For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or another appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed and the identification of the dispensing pharmacist. The total quantity of Schedule II controlled substances dispensed in all partial fillings must not exceed the total quantity prescribed.

4.8.2 Schedule II prescriptions for terminally ill or LTCF patients, shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of the medication.

4.9 Mail Order Prescription. Before dispensing prescriptions for Schedules II, III, IV, V controlled substances by mail, the registrant and/or the pharmacist-in-charge must assure that the prescription is valid and written by a prescriber properly registered with the Federal Government. Such verification may be made either in writing or orally.

4.10 Pursuant to authority granted by 16 **Del.C.** §4732 the Secretary finds that waiver of the registration requirements contained in that section as to non-resident physicians or dentists is consistent with the public health and safety subject to the conditions contained in this regulation. Pharmacists may dispense controlled substances pursuant to a prescription written by a non-resident physician or dentist (who is not registered under 16 **Del.C.** Ch. 47) provided that:

# PROPOSED REGULATIONS

4.10.1 The pharmacist must establish that the non-resident physician or dentist is properly registered to prescribe controlled substances under Federal Law. The pharmacist may keep a record which contains the name and address of the non-resident physician or dentist, his Federal registration number, and the name and address of the source of the registration data.

~~4.10.2 The pharmacist must verify the identification of the bearer of the prescription by reference to a driver's license or some other identification which contains the bearer's photograph, and must keep a record of such person. The pharmacist and/or an employee under his/her direct supervision must verify the identification of the bearer and receiver of the controlled substance prescription by reference to valid photographic identification and record the unique number associated with the valid photographic identification as part of the prescription record. For the purposes of this section, a valid photographic identification is limited to the following:~~

4.10.2.1 A valid Delaware motor vehicle operator's license which contains a photograph of the person presenting the prescription - record the license number listed on the license as part of the prescription record.

4.10.2.2 A valid Delaware identification card which contains the photograph of the person presenting the prescription - record the identification number listed on the card as part of the prescription record.

4.10.2.3 A valid United States passport.

4.10.2.4 A valid passport or motor vehicle operator's license of another state, territory or possession of the United States or a foreign country only if it:

4.10.2.4.1 Contains a photograph of the person presenting the prescription:

4.10.2.4.2 Is encased in tamper-resistant plastic or is otherwise tamper-resistant.

4.10.2.4.3 Identifies the date of birth of the person presenting the prescription and has an identification number assigned to the document which can be recorded as part of the prescription record.

4.10.3 The pharmacist must establish that the name of the non-resident physician or dentist does not appear on the list kept by the Office of ~~Narcotics and Dangerous Drugs of the Division of Public Health~~ Controlled Substances of those non-resident physicians and dentists to whom the waiver granted by this regulation does not apply.

4.10.3.1 The waiver of the registration requirement provided by the registration shall not apply to non-resident physicians and dentists determined by the Office of ~~Narcotics and Dangerous Drugs of the Division of Public Health~~ Controlled Substances to have acted in a manner inconsistent with the Public Health and Safety, ~~and Safety, and~~ ~~the Office of Narcotics and Dangerous Drugs~~ Controlled Substances shall maintain a list of those non-resident physicians and dentists found by them to have so acted. Pharmacists shall not honor the prescriptions of non-resident physicians and dentists whose names appear on that list unless such non-resident physicians and dentists have registered pursuant to the provisions of 16 **Del.C.** §4732.

4.11 Except when dispensed directly by a practitioner other than a pharmacy to an ultimate user, no Schedule V cough preparation containing codeine, dilaudid or any other narcotic cough preparation may be dispensed without the written or oral prescription of a practitioner—~~effective date January 1, 1974.~~

~~4.12 The pharmacist or an employee under his/her supervision must verify the identity of the person receiving a dispensed controlled substance at the time it is transferred to that person. A driver's license or a similar document containing a photograph and the name and address of the person is an acceptable document. The name and address of the person should be recorded on either the prescription or patient's profile. The pharmacist or employee is not required to follow this procedure for each transaction if the identify of the person is clearly established by visual recognition. In those cases, the information shall be recorded at least once. The pharmacist and/or an employee under his/her supervision must also verify the identity of the person receiving a dispensed controlled substance at the time it is transferred to that person. The manner in which valid photographic identification is verified and recorded shall be the same as provided in 4.10.2.~~

## 5.0 Security and Disposal

### 5.1 Security

#### 5.1.1 Schedule II Substances Storage

5.1.1.1 Pharmacies and medical, dental and veterinary practitioners must store Schedule II controlled substances in a burglar resistant type safe or ~~GSA Class 5 grade steel cabinet or their equivalent~~. If the safe weighs less than 750 pounds, it must be bolted, cemented, or secured to the wall or floor in such a way that it cannot be readily removed. Other types of substantially construed, securely locked cabinets or drawers are acceptable provided that the room, storage area or areas shall be provided with electronic intrusion detection equipment to all sections of the said area or areas where Schedule II controlled substances are stored, so as to detect four-step movement (as defined in Section 12.8 of U.L. Standards 681).

5.1.1.1.1 The aforementioned electronic intrusion detection equipment shall be installed using equipment that must be U.L. approved and listed. The said system must be capable of transmitting a local alarm to an outside audible device that shall comply with U.L. Standard 4.64.

5.1.1.1.2 A local alarm connection shall not be permitted if the controlled substance premise is located more than 400 feet from a public roadway. If said controlled substances premise is more than 400 feet from public roadway or found to be within a location where such an alarm would not be effective, then the alarm system on said controlled substances premises shall transmit an alarm signal to a certified station or directly into a law enforcement agency that has 24-hour monitoring capabilities.

5.1.1.1.3 The Secretary or Drug Control Administrator may require additional security requirements if ~~he~~ either deems it necessary as a result of ~~excessive~~ diversion of controlled substances.

5.1.1.1.4 DEFINITIONS: Four-step movement - 12.8 - The system shall respond to the movement of a Four-step person walking not more than four consecutive steps at a rate of one step per second. Such Four-step movement shall constitute a "trial", and a sufficient number of detection units shall be installed so that, upon test, an alarm will be initiated in at least three out of every four consecutive "trials" made moving progressively through the protective area.

5.1.1.2 ~~Safes, cabinets or drawers~~ containing Schedule II controlled substances must be kept locked at all times. They may be opened only by the practitioner or by the pharmacist-in charge or other designees, who must be licensed medical professionals.

5.1.1.3 Practitioners who store no more than 400 total dosage units of Schedule II substances are not required to comply with the safe or alarm requirements of the Regulation. However, their Schedule II controlled substances must be stored in securely locked, substantially constructed cabinets.

5.1.1.4 Controlled substances listed in Schedules III, IV and V shall be stored in a securely locked, substantially constructed cabinet. Pharmacies may disperse such substances in Schedule III, IV and V throughout the stock of non-controlled substances in such a manner as to obstruct the theft or diversion of the controlled substances. The immediate area in a pharmacy containing dispersed, controlled drugs must be secured in a manner approved by the Office of ~~Narcotics and Dangerous Drugs~~ Controlled Substances which will prevent entry by unauthorized persons. The keys to such area shall at all times be carried by a pharmacist. The doors shall be locked whenever the area is not directly under the supervision of a pharmacist or a responsible person designated by the pharmacist.

## 5.1.2 Pharmacies.

5.1.2.1 Schedule II controlled substances kept in areas other than prescription areas in pharmacies must be placed in ~~safes, cabinets or drawers~~ of the type described above. These must be kept locked at all times and may be opened only by the pharmacist-in-charge or his designee, who must also be a registered pharmacist.

5.1.2.2 Schedule III through V controlled substances kept in areas other than prescription areas in pharmacies must be kept in adequately locked enclosures. They may be opened only by the pharmacist-in-charge, or his designees, who must be licensed pharmacists.

5.1.3 Report of Loss or Theft. Registrants shall notify the Office of ~~Narcotics and Dangerous Drugs, Division of Public Health~~ Controlled Substances, of any theft or significant loss of any controlled substances, or of any prescription blanks, upon the discovery of such loss or theft. In addition, registrants shall complete the Federal forms regarding such loss or theft, one copy of which must be filed with the Office of ~~Narcotics and Dangerous Drugs~~ Controlled Substances.

5.1.4 Hypodermic syringes and needles must be secured in an area only accessible to personnel authorized under 16 **Del.C.** Ch. 47 to dispense such items.

## 5.2 Disposal



5.2.1 Controlled Substances. Any registrant in possession of any controlled substances and desiring or required to dispose of such substance or substances shall contact the Office of ~~Narcotics and Dangerous Drugs, Division of Public Health~~ Controlled Substances for proper instructions regarding disposal.

5.2.2 Hypodermic Syringe or Needle. Hypodermic syringes or needles shall be destroyed before disposal in such a manner as will render it impossible to adapt them for the use of narcotic drugs by subcutaneous injections.

## 6.0 Procedures for Adoption of Regulations

6.1 Notice. Prior to the adoption, amendment or repeal of any of these controlled substances regulations, the Secretary will give at least twenty (20) days notice of the intended action.

The notice will include a statement of either the terms of substance of the intended action or a description of the subjects and issues involved, and the time when, the place where present their views thereon. The notice will be mailed to persons who have made timely request of the Office of ~~Narcotics and Dangerous Drugs~~ Controlled Substances for advance notice of such rule-making proceedings and shall be published in a newspaper of general circulation in this State.

6.2 Hearing. The Secretary shall designate the Committee to preside over hearings. The ~~Secretary Committee~~ will afford all interested persons a reasonable opportunity to submit data, views or arguments, orally or in writing. ~~He may appoint subordinates to preside over such hearings.~~

6.3 Emergency Regulations. If the Secretary, upon the recommendation of the Committee finds that an imminent peril to the public health, safety or welfare requires adoption of a regulation upon fewer than twenty (20) days notice and states in writing his reasons for that finding, ~~he~~ the Secretary may proceed without prior notice or hearing or upon any abbreviated notice and hearing he finds practicable, to adopt an emergency regulation. Such rules will be effective for a period not longer than 120 days, but the adoption of an identical rule under the procedures discussed above is not precluded.

6.4 Finding and Availability. The Secretary will maintain on file any adoption, amendment or repeal of these regulations ~~with the Secretary of State. Regulations will become effective upon such filing.~~ In addition, copies of these regulations will be available for public inspection at the Office of ~~Narcotics and Dangerous Drugs of Public Health Jesse S. Cooper Building, Dover, Delaware, 19904~~ Controlled Substances.

## 7.0 Severability

7.1 If any provision of these regulations is held invalid the invalidity does not effect other provisions of the regulations which can be given effect without the invalid provisions or application, and to this end the provisions of the regulation are severable.

7.2 Pursuant to 16 **Del.C.** §4718(f) and 16 **Del.C.** §4720(c) the Secretary finds that the compounds, mixtures or preparations listed in 21 **CFR** 1301.21, 21 **CFR** 1308.24 contain one or more active medical ingredients not having a stimulant or depressant effect on the central nervous system and that the admixtures included therein are in combinations, quantities, proportions, or concentrations that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system, and therefore:

7.2.1 The Secretary, as authorized by 16 **Del.C.** §4718(f) and 16 **Del.C.** §4720(c), does hereby except by rule the substances listed in 21 **CFR** 130.21, **CFR** 1308.24 and 21 **CFR** 1308.32 from Schedules III and IV of the Uniform Controlled Substances Act, 16 **Del.C.** Ch. 47.

**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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**DELAWARE STATE FIRE PREVENTION COMMISSION**

Statutory Authority: 16 Delaware Code, Section 6603 (16 Del.C. §6603)

**ORDER****Delaware State Fire Prevention Regulations Part X Ambulance Service Regulations****Nature of the Proceedings**

The State Fire Prevention Commission ("the Commission") held a properly noticed, public hearing on November 20, 2007 to receive comment on proposed additions, revisions, deletions, modifications and reservations to the Commission Regulations specifically Part X, Ambulance Regulations. (The regulations as adopted by the Commission are attached to this Order as "Exhibit A"). The attendance sheets and transcribed minutes of this hearing are attached to this Order as Exhibit "B" to supplement the brief summary of evidence below. Similarly, the written comment received by the Commission and introduced into evidence at the hearing is attached to this Order as Exhibit "C".

**Summary of the Evidence**

1. The Commission received a brief overview of the proposed updates to the Ambulance Regulations from Fire School Director Robert Newnam. The proposed changes are to the following sections of Part X:
  - Part X, Chapter III (Definitions) – revised Ambulance Attendant for the purpose of clarity.
  - Part X, Chapter IX has been rewritten for better clarity.
  - Part X, Chapter XIV modified to address the reinstatement procedures for Delaware EMT-B/ Ambulance Attendant.
  - Part X, Chapter XV modified to address requirements to the Criminal History Background Checks.
  - Part X, Chapter XVI modified to address requirements to the First Responder.
2. The Commission received one written comment via e-mail from Scott Cooper, EMS21, of the Mill Creek Fire Company (See Exhibit C). The Commission reviewed each of the comments proposed by Mr. Cooper

and voted to accept or reject those comments as indicated in the minutes (See Exhibit B).

3. The Commission received no public comment at the hearing in opposition to the proposed changes. Sandy Hypes and Diane Hainsworth of the Office of EMS were present and offered some clarification regarding Mr. Cooper's written comment, specifically, they pointed out that many of the changes suggested by Mr. Cooper in his written comment are already covered in Title 16 of the Delaware Code, Chapter 98.

### Findings of Fact

Based upon the evidence received, the Commission finds the following facts to be supported by the evidence.

1. There was no public comment presented in opposition to the proposed regulations at the public hearing.

2. In written correspondence, Scott Cooper raised a number of issues. Many of the issues are already defined and/or addressed in Title 16 of the Delaware Code, Chapter 98. In addition, Mr. Cooper suggested a number of revisions outside of those proposed by the Commission. The Commission determined that it would take those suggestions under advisement for future revisions to additional sections of the regulations but does not find that it is in the best interest to delay implementation of the current proposals. The Commission minutes reflect those changes that were accepted or declined by the Commission (See Exhibit B).

### The Law

The State Fire Prevention Commission's rulemaking authority is provided by 16 **Del.C.** §6711(b)(2) and §6717(a) that state:

§ 6711. Establishment of operational standards.

(a) . . .

(b) Emergency ambulance licensing and certification

(b)(1) . . .

(b)(2) The Commission shall adopt regulations specifying operational standards for ambulances. Regulations so adopted shall also require that the interior of the ambulance and the equipment within the ambulance be sanitary and maintained in good working order and sufficient quantities at all times.

§ 6717. Establishment of State Fire Prevention Commission ambulance service responsibility and authority; ambulance service districts; operational and administrative requirements; ambulance service permits.

(a) As the responsible agency for the regulation of ambulance services within the State, the Commission shall adopt regulations applicable to ambulance service providers including but not limited to the establishment of ambulance service districts, establishment of operational and administrative requirements and requirements for certification of ambulance service providers. The Commission shall also have the authority to establish a process for certification renewal and shall have the authority to decertify any agency for noncompliance with its regulations.

### Decision

The Commission hereby adopts the Ambulance Regulations as proposed with the alterations and clarifications noted in this Order and a copy of the Regulations as adopted is attached to this Order as Exhibit A. The Commission relies upon its expertise in this area and the evidence presented in the testimony and documents submitted.

It is so Ordered this 15<sup>th</sup> day of January, 2008.

## STATE FIRE PREVENTION COMMISSION

Marvin C. Sharp, Chairman      Bob Ricker, Vice Chairman  
Kenneth H. McMahan      W. (Bill) Betts, Jr.  
Douglas S. Murray      David J. Roberts  
Alan Robinson Jr.

### 2006 Delaware State Fire Prevention Regulations Part X Ambulance Service Regulations

#### 1.0 Purpose

The purpose of this regulation is to ensure a consistent and coordinated high quality level of ambulance service throughout the state, focusing on timeliness, quality of care and coordination of efforts.

#### 2.0 Application

2.1 This regulation shall apply to any person, firm, corporation or association either as owner, agent or otherwise providing either prehospital or interhospital ambulance service meeting the definitions of either "BLS Ambulance Service" or "Non-Emergency Ambulance Service" within the State of Delaware. The following are exempted from this regulation:

2.1.1 Privately owned vehicles not ordinarily used in the business of transporting persons who are sick, injured, wounded or otherwise incapacitated or helpless.

2.1.2 A vehicle rendering service as an ambulance in case of a major catastrophe or emergency when the ambulances with permits and based in the locality of the catastrophe or emergency are insufficient to render the services required.

2.1.3 Ambulances based outside the State rendering service in case of a major catastrophe or emergency when the ambulances with permits and based in the locality of the catastrophe or emergency are insufficient to render the services required.

2.1.4 Ambulances owned and operated by an agency of the United States Government.

2.1.5 Ambulances based outside the State engaged strictly in interstate transportation.

2.1.6 A vehicle which is designed or modified and equipped for rescue operations to release persons from entrapment and which is not routinely used for emergency medical care or transport of patients.

**7 DE Reg. 1649 (06/01/04)**

#### 3.0 Definitions

For the purpose of this policy the following definitions are used:

**Advanced Life Support (ALS)** - The advanced level of pre-hospital and inter hospital emergency care that includes basic life support functions including cardiopulmonary resuscitation, plus cardiac monitoring, cardiac defibrillation, telemetered electrocardiography, administration of anti arrhythmic agents, intravenous therapy, administration of specific medications, drugs and solutions, use of adjunctive medical devices, trauma care and other authorized techniques and procedures.

**Advertising** - Information communicated to the public, or to an individual concerned by any oral, written, or graphic means including, but not limited to, handbills, newspapers, television, billboards, radio, and telephone directories.

**Ambulance** - Any publicly or privately owned vehicle, as certified by the Delaware State Fire Prevention Commission, that is specifically designed, constructed or modified and equipped, and intended to be used for and is maintained or operated for the transportation upon the streets and highways of this state for persons who are sick, injured, wounded or otherwise incapacitated or helpless.

**Ambulance Attendant** - A person trained in emergency medical care procedures and currently certified by the Delaware State Fire Prevention Commission as an EMT-B in accordance with standards prescribed by the Delaware State Fire Prevention Commission. Ambulance Attendant remains in this document for the purpose of clarity and is to be construed interchangeably with EMT-B.

**Ambulance Service District** - A geographical area with boundaries which are typically (but not always) aligned to fire service districts within the state as identified and certified by the Delaware State Fire Prevention Commission.

**BLS Run Report** - Standardized Patient Care Report provided by the State EMS office, paper or computerized.

**Basic Life Support (BLS)** - The level of capability which provides EMT-B/Ambulance Attendant emergency patient care designed to optimize the patient's chances of surviving an emergency situation.

**BLS Ambulance Service** - Ambulance service which provides BLS level intervention both through the level of personnel and training provided.

**BLS Ambulance Service Contract** - A written contract between either a Primary or Secondary Ambulance Service Provider and an individual, organization, company, site location or complex or other entity for BLS ambulance service.

**BLS Run Report** - Standardized Patient Care Report provided by the State EMS office, paper or computerized.

**Cardiopulmonary Resuscitation (CPR)** – A combination of chest compressions and rescue breathing used during cardiac and respiratory arrest to keep oxygenated blood flowing to the brain. (AHA Manual)

**Center For Medicare/Medicaid Services (CMS)** - The Federal Agency which oversee Medicare Billing and Ambulance Standard.

**Certification** – An initial authorization by the Delaware State Fire Prevention Commission to practice the skills of an EMT-Basic/Ambulance Attendant or First Responder specifying that the individual has successfully completed and passed the approved curriculum and evaluation process.

**Delaware Refresher Course** - A course of instruction for re-certification required by the Delaware State Fire Prevention Commission for EMT-B/Ambulance Attendants and First Responders that meet the guidelines of the DOT Curriculum.

**Delaware State Fire Prevention Commission (DSFPC)** - The State Governing Body mandated in Title 16, Delaware Code whom Regulates the Basic Life Support System in Delaware.

**Delaware State Fire School (DSFS)** - An agency of the Delaware State Fire Prevention Commission which is designated as its duly authorized representative to administer the provisions of the Ambulance Service Regulations.

**Delaware Training Standard For Delaware Emt-B/Ambulance Attendants & First Responders** – The current of United States Department of Transportation Curriculum.

**Emergency** - The BLS and ALS response to the needs of an individual for immediate medical care in order to prevent loss of life or aggravation or physiological or psychological illness or injury.

**Emergency Medical Dispatch System** - Means an approved protocol system used by an approved dispatch center to dispatch aid to medical emergencies which must include:

- Systematized caller interrogation questions
- Systematized pre-arrival instruction; and
- Protocols matching the dispatcher's evaluation of injury or illness severity with vehicle response mode and configuration.

**Emergency Medical Services (EMS) Provider** – Individual providers certified by the Delaware State Fire Prevention Commission to perform pre hospital care. For the purposes of this regulation this includes EMT-B/Ambulance Attendant and First Responders.

**Emergency Medical Technician – Basic (EMT-B)** – The individual as defined in Title 16 of Delaware Code who provides patient care on an ambulance and has completed the National Department of Transportation curriculum and initially certified as a National Registered and Delaware Emergency Medical Technician-Basic and upon re-certification chooses to meet the State of Delaware requirements.

**First Responder** - An individual who has to take the First Responder Course that meets the DOT curriculum.

**HIPAA** - Health Insurance [Probability Portability] and Accountability Act of 1996.

**Hospital** - An institution having an organized medical staff which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services or rehabilitation services for the care or rehabilitation of injured, disabled, pregnant, diseased, sick or mentally ill persons. The term includes facilities for the diagnosis and treatment of disorders within the scope of specific medical specialties, but not facilities caring exclusively for the mentally ill.

**Medical Command Facility** - The distinct unit within a hospital which meets the operational, staffing and equipment requirements established by the Secretary, Delaware Health and Social Services for providing medical control to the providers of advanced life support services. Any hospital that operates an emergency medical facility and desires to be designated as a medical command facility shall maintain and staff such facility on its premises and at its own expense with exception of base station communication devices which shall be an authorized shared

expense pursuant to the provisions of Title 16, Chapter 98.

**Medical Control** - shall mean directions and advice normally provided from a centrally designated medical facility operating under medical supervision, supplying professional support through radio or telephonic communication.

**Medical Control Physician** - Any physician board-certified or board-prepared in emergency medicine, or a physician certified on advanced trauma life support (ATLS) and advanced cardiac life support (ACLS) who is credentialed by the hospital within which a medical command facility is located, and who is authorized by the medical command facility to give medical commands via radio or other telecommunication devices to a paramedic. When a medical control physician establishes contact with a paramedic, and provides medical control instructions that exceed or otherwise modify the standing orders of the statewide standard treatment protocol, the paramedic shall, solely for the purpose of compliance with the Medical Practices Act, be considered to be operating under the license of said medical control physician.

**National Department Of Transportation (DOT) – Emergency Medical Technician Curriculum** - A curriculum developed and adopted by the Federal Government as a recommended guide for people providing emergency care in the field.

**National Registry Of Emergency Medical Technicians (NREMT)** - The nationally recognized organization for the testing and registering of persons who have completed DOT, EMT-Basic and First Responder Courses.

**National Registered Emergency Medical Technician – Basic (NREMT-B)** - a person who completed the DOT curriculum and passed the National Registry of Emergency Medical Technicians Examination.

**Non-emergency Ambulance Service** - Ambulance service which provides routine transport of persons who are sick, convalescent, incapacitated and non-ambulatory but do not ordinarily require emergency medical treatment while in transit.

**Office Of Emergency Medical Services (OEMS)** - The State Agency Mandated in Title 16 that serves as the designated representative of the NREMT; provides medical advise and direction; regulates the statewide automatic external defibrillator program; and coordinates data collection activities for the EMS system.

**Patient** - An individual who is sick, injured, wounded or otherwise incapacitated or helpless and/or seeks immediate medical attention.

**Pre-hospital Care** - Any emergency medical service, including advanced life support, rendered by an emergency medical unit before and during transportation to a hospital or other facility.

**Primary Ambulance Service** - BLS Ambulance Service provided by the Primary Ambulance Service Provider certified by the Delaware State Fire Prevention Commission within a specific ambulance service district.

**Primary Ambulance Service Provider** - An organization or company which has been designated by the Delaware State Fire Prevention Commission as having primary responsibility for providing BLS ambulance service within a specific ambulance service district.

**Protocols** - shall mean written and uniform treatment and care plans for emergency and critical patient statewide that constitutes the standing order of basic life support provider. The treatment protocols shall be prepared by the Board of Medical Practice as defined by House Bill 332 of the 140th General Assembly.

**[Quality Assurance - is the retrospective review or inspection of services or processes that is intended to identify problems.**

**Quality Improvement - is the continuous study and improvement of a process, system or organization.]**

**Recertification Training** - A defined curriculum that once completed allows the individual to continue practicing as an EMT-B/Ambulance Attendant or First Responder for a specific period of time as determined by the Delaware State Fire Prevention Commission.

**Response Time** - The time the ambulance is notified by dispatch until the ambulance arrives on scene.

**Responsible Charge** - The individual who is identified as having both the responsibility and authority to ensure full and complete compliance with all requirements of this regulation.

**Secondary Ambulance Service** - Ambulance Service provided under contract to specific locations within a primary ambulance service district by a BLS Ambulance Service Provider other than the primary provider.

**Secondary Ambulance Service Provider** - An organization or company which provides supplemental BLS ambulance service anywhere in the state and always under specific contractual agreements.

**Semi Automatic External Defibrillation (AED)** – An external computerized defibrillator designed for use in unresponsive victims with no breathing or signs of circulation (AHA Manual).

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**State Board Of Medical Practice (Board)** - The Board of Medical Practice is charged with protecting the consumers of the Delaware healthcare system through the proper licensing and regulation of physicians and other health care professionals.

**7 DE Reg. 1649 (06/01/04)**

### **BLS AMBULANCE SERVICE**

#### **4.0 BLS Ambulance Service Permits**

4.1 Any person, firm, corporation or association either as owner, agent or otherwise who furnish, conduct, maintain, advertise or otherwise engage in or profess to be engaged in the business or service of providing BLS Ambulance Service upon the streets or highways of this state shall hold a valid permit as either a Primary or Secondary Ambulance Service Provider issued by the Delaware State Fire Prevention Commission. Application for this permit shall be upon forms provided by the Delaware State Fire Prevention Commission.

4.2 The issuance of a permit hereunder shall not be construed so as to authorize any person, firm, corporation or association to provide ambulance services or to operate any ambulance without compliance with all ordinances and regulations enacted or promulgated by any state, county or municipal government concerning ambulances.

4.3 Prior to issuing an original or renewal permit, the Delaware State Fire Prevention Commission shall determine that all requirements of this regulation are fully met. Additionally, the Delaware State Fire Prevention Commission has the authority to ensure continued compliance with these regulations through the periodic review of records and operations.

4.4 Only companies holding a current, valid BLS Ambulance Service Provider Permit shall be authorized to respond and provide BLS Ambulance Service within the state.

4.5 A Primary or Secondary Ambulance Service Provider may not discontinue BLS ambulance service until a replacement provider has been selected and can assume service with no reduction in service.

**7 DE Reg. 1649 (06/01/04)**

#### **5.0 BLS Ambulance Service Districts**

5.1 The Delaware State Fire Prevention Commission shall have the authority to establish Ambulance Service Districts as per Title 16 Delaware Code, Section 1617(a).

5.2 The role of Primary Ambulance Service Provider shall be assigned to those fire departments providing BLS Ambulance Service at the time this regulation was initially adopted in 1997. The ambulance service district for these providers shall correspond to their established fire districts as certified by the Delaware State Fire Prevention Commission.

5.3 In those areas in which fire departments were not providing BLS Ambulance Service at the time this regulation was officially adopted in 1997, the organization who was providing BLS Ambulance Service shall be designated as the Primary Ambulance Service Provider. The ambulance service district for these providers shall correspond to their current boundaries.

**7 DE Reg. 1649 (06/01/04)**

#### **6.0 Primary and Secondary BLS Ambulance Service Providers**

6.1 BLS Ambulance Service may be provided by Primary Ambulance Service Providers within their ambulance service district or in the course of providing mutual aid within other ambulance service districts provided:

6.1.1 They have a current permit

6.1.2 They are assigned by the Delaware State Fire Prevention Commission as a Primary Ambulance Service Provider

6.2 The Delaware State Fire Prevention Commission shall be authorized to select a new Primary Ambulance Service Provider at such time that:

6.2.1 The current Primary Ambulance Service Provider chooses to discontinue service

6.2.2 Failure to meet one or more elements of these regulations creates a threat to public safety

6.3 Any organization desiring to assume the role of Primary Ambulance Service Provider will be required to apply to the Delaware State Fire Prevention Commission showing adequate cause in the interest of

public safety to justify the change.

6.4 BLS Ambulance Service may be provided by Secondary Ambulance Service Providers only to those with whom they have a contract for such service provided they:

6.4.1 Have a current permit.

6.4.2 Have a written contract to provide BLS Ambulance Service to that specific location or site.

6.4.3 Provide the names, locations and conditions of all Secondary Ambulance Service contracts to the Delaware State Fire Prevention Commission within 20 days of contract finalization.

**7 DE Reg. 1649 (06/01/04)**

**7.0 BLS Ambulance Service Provider Permit Requirements**

7.1 BLS Administrative Requirements.

7.1.1 Procedures for securing a BLS ambulance service primary or secondary ambulance service permit include:

7.1.1.1 The owner or registered agent must apply to the Delaware State Fire Prevention Commission upon forms provided and according to procedures established by the Delaware State Fire Prevention Commission.

7.1.1.2 The Primary or Secondary Ambulance Service Provider shall either be based in Delaware or maintain an office in Delaware with a full time individual domiciled at that office who is in "Responsible Charge".

7.1.1.3 All requirements set forth in this regulation must be met before issuance of permit.

7.1.1.4 The Primary or Secondary Ambulance Provider must provide proof of liability insurance in the amount of \$1 Million blanket liability coverage.

7.1.1.5 The Primary or Secondary Ambulance Provider must provide proof of automobile liability insurance in the amount of \$1 Million individual, \$3 Million aggregate per occurrence.

7.1.2 Permits shall be valid for a period of one year from the permits effective date. Effective date runs for a calendar year.

7.1.3 The Delaware State Fire Prevention Commission may issue temporary permits when determined to be in the interest of public safety per Title 16.

7.1.4 On an on-going basis throughout the term of the permit, the owner or individual in "responsible charge" shall be available upon reasonable notification for the purpose of providing documentation on any provisions of this regulation and permitting physical inspection of all facilities and vehicles.

7.1.5 No ambulance service provider shall advertise or represent that it provides any ambulance service other than authorized to provide under this regulation.

7.1.6 All individuals or ambulance service providers shall be required to participate in the Delaware State Fire Prevention Commission approved ambulance data collection system which includes:

7.1.6.1 A BLS run report will be completed on all dispatched responses.

7.1.6.2 EMT-B/Ambulance Attendants must complete, without exception, a written/computer report on each patient contact. Reports must be completed in a timely fashion.

7.1.6.3 When available, the report will be entered electronically and forwarded to the state EMS office.

7.1.6.4 Failure to comply with data submission will result in loss of ambulance provider license or EMT-B/Ambulance Attendant Certification.

7.1.6.5 Submit any other data to the designated agencies as required by the Delaware State Fire Prevention Commission.

7.1.7. The ambulance company shall provide on an annual basis a financial statement to the Delaware State Fire Prevention Commission. The Delaware State Fire Prevention Commission has the option to withhold funding as per HB 332 for failing to report the financial statement.

7.2 BLS Operational Requirements

7.2.1 Vehicle Standards

7.2.1.1 All ambulances shall be registered and licensed in the State of Delaware by the Delaware Motor Vehicle Department.

EXCEPTIONS:

7.2.1.1.1 Those vehicles to which the international registration plan applies

7.2.1.1.2 Those vehicles properly registered in some other state.



7.2.1.2 Vehicles shall have clearly visible letters on both sides and the rear identifying the name of the organization or corporation or the vehicle's specific identifier as specified under permit documentation. The letters shall be at least three inches in height.

7.2.1.3 Vehicle patient compartment shall conform with the criteria within the GSA Federal Specifications for ambulances (KKK-1822C).

#### 7.2.2 Equipment Standards

Every ambulance shall be equipped with equipment and supplies as specified by the Delaware State Fire Prevention Commission and updated annually following recommendations from the Delaware State Fire School Director with concurrence from the Delaware State Fire Prevention Commission's Medical Director.

#### 7.2.3 Staffing Requirements

7.2.3.1 Minimum acceptable crew staffing when transporting a patient shall consist of a driver and one EMT-B/Ambulance Attendant.

7.2.3.2 A minimum of one EMT-B/Ambulance Attendant shall always be in the patient compartment when a patient is present.

7.2.3.3 BLS ambulance drivers are required to have completed the "Emergency Vehicle Operators" course conducted by the Delaware State Fire School or an equivalent program approved by the Delaware State Fire Prevention Commission.

#### 7.2.4 Quality Assurance

7.2.4.1 Each Primary and Secondary Ambulance Service Provider shall be responsible for monitoring quality assurance in the form of patient care and both mobilization and response times. The method in which this is accomplished is the authority and responsibility of the Primary or Secondary Ambulance Service Provider per the Quality Assurance and Improvement Program [adopted established] by the Delaware State Fire Prevention Commission [and in conjunction with] the Office of Emergency Medical Services [and adopted by the Delaware State Fire Prevention Commission.]

#### 7.2.5 Communications Requirements

##### 7.2.5.1 Dispatch Centers

7.2.5.1.1 Dispatch centers for both Primary and Secondary Ambulance Service Providers shall meet the criteria established by the Delaware State Fire Prevention Commission.

7.2.5.1.2 Secondary ambulance service providers dispatch centers shall be responsible for following call taking protocols as established by the Delaware State Fire Prevention Commission. Calls determined to be ALS in nature shall be transferred to the appropriate public safety answering point (PSAP) within 30 seconds of taking the call utilizing a dedicated phone line to that PSAP.

7.2.5.1.3 Calls determined to be BLS in nature shall not be required to be forwarded to the PSAP.

7.2.5.1.4 Dispatch centers shall follow an Emergency Medical Dispatch System approved by the Delaware State Fire Prevention Commission.

##### 7.2.5.2 Ambulances

7.2.5.2.1 All Ambulances shall be equipped with reliable communications systems which permit direct communications with their dispatch center and all medical command facilities with which the ambulance will or may operate.

7.2.6 SAED Requirements: Upon placing an SAED on any ambulance, the ambulance service provider will comply with the Delaware Early Defibrillation Program Administrative Policies as established by the Office of Emergency Medical Services.

7.2.7 Infection Control: All ambulance service providers will comply with the infection control requirements in chapter 12A, Title 16 of the Delaware code.

7.2.8 Medical Control: Ambulance service providers shall be required to follow all orders issued.

7.2.9 Center for Medicare Medicaid Services (CMS): All ambulance services providers will comply with the Final Rule in the Federal Register (64F.R3637) revising the Medicare policies for ambulance services adopted February 24, 1999.

7.2.10 Health Insurance Portability and Accountability Act of 1996 (HIPAA) All ambulance service providers will comply with the HIPAA of 1996.

**7 DE Reg. 1649 (06/01/04)**

**8.0 Compliance**

8.1 The owner or registered agent of every ambulance service provider shall provide ambulance service in accordance with the requirements set forth in this regulation and the contractual agreements established as either a primary or secondary Ambulance Service Provider and filed with the Delaware State Fire Prevention Commission in accordance with the provisions set forth in these regulations. Failure to provide this service shall be grounds for suspension or revocation of permit.

8.2 Grievances - All grievances relative to ambulance service shall follow procedures established within the Delaware State Fire Prevention Regulations, Part IX "Fire Service Standards".

8.3 Penalties - Following review of a valid complaint or upon failure to comply with any provision of this regulation, the Delaware State Fire Prevention Commission, following procedures established within the Delaware State Fire Prevention Regulations, shall have the authority to issue corrective orders, suspend or revoke the provider's permit.

8.4 Whenever there is reason to believe that any provisions of this regulation have been violated, the ambulance service provider shall be immediately notified. Violations shall require correction within five (5) working days of receipt of notice with the exception of those violations which represent an imminent danger to the public.

8.5 For those violations representing an imminent danger to the public, the Delaware State Fire Prevention Commission shall issue and deliver an order to cease and desist any further ambulance service until such time as the violation has been verified as being corrected and corrective measures accepted by the Delaware State Fire Prevention Commission.

8.6 The continued violation of any element of this regulation or failure or refusal to comply with any order to correct a violation or failure to obey a cease and desist order by any ambulance service provider shall be cause for revocation or suspension of permit by the Delaware State Fire Prevention Commission after determination that the provider is guilty of such violation.

8.7 In addition to 8.6, it shall be cause for revocation or suspension of a permit after determining the ambulance service provider:

8.7.1 Has practiced any fraud, misrepresentation, or deceit in obtaining or renewing a permit

8.7.2 Is guilty of gross negligence, incompetence or misconduct in providing services

8.7.3 Is guilty of a violation of the codes and regulations adopted by the Delaware State Fire Prevention Commission

8.7.4 Has been found guilty of an unfair or deceptive trade practice

8.7.5 Has violated any contractual agreement related to providing ambulance service

8.8 Upon issuance of an order, the ambulance service provider accused may request a review of the order by the Delaware State Fire Prevention Commission. All hearings shall be conducted in conformity with procedures established by the Delaware State Fire Prevention Commission.

8.9 Any person aggrieved by a violation or order may file an appeal to the Delaware State Fire Prevention Commission pursuant to 16 Del.C. Ch. 66, §6608.

**7 DE Reg. 1649 (06/01/04)****9.0 ~~Basic Life Support Data Assessment Committees~~**

9.1 ~~Members:—The Delaware State Fire Prevention Commission hereby establishes Basic Life Support (BLS) Data Assessment Committees, hereinafter referred to as the Committees.~~

9.1.1 ~~There shall be three committees, one in each county of the State of Delaware. Members shall consist of representatives from the County Volunteer Firemen's Association, the County Fire Chief's Association, the County Ambulance Association, County and/or State EMS Medical Directors, and the County or local Fire and Emergency Medical (EMS) Dispatch Center dispatching the respective Company's EMS calls.~~

9.1.2 ~~The President of his or her respective Association shall appoint each representative. The manager of the Fire and EMS Dispatch Center dispatching the Company's BLS incidents shall appoint the Dispatch Center representative.~~

9.1.3 ~~The representative from each Association shall serve on their respective Committee until a letter of appointment is received from the respective Association or Dispatch Center indicating replacement of their current representative.~~

9.2 ~~Duties:—Each Committee shall meet at least biannually, or as necessary, to review their respective County's Fire and EMS Dispatch Center's Basic Life Support (BLS) data. They shall review the monthly data for each Ambulance Provider, hereinafter referred to as Provider, in their County. Criteria for review shall include~~

numbers of dispatched calls, scratches, and special circumstances. Each committee shall submit biannually a written report to the Delaware State Fire Prevention Commission, reporting on their reviews, and any suggestions they might have to improve the BLS system or committee procedures.

9.2.1 If the Committee deems that a Provider needs improvement in an area, the Committee shall schedule a meeting with that Provider to determine if they can support the Provider in solving the identified problem(s). When meeting with the Provider, the Committee, by consensus, shall select a Chair to mediate discussions presented by the Committee to the Provider.

## **9.0 Statewide Basic Life Support Quality Assurance/Quality Improvement**

9.1 The Delaware State Fire Prevention Commission hereby establishes a Statewide Basic Life Support (BLS) Quality Assurance and Quality Improvement Committee hereinafter referred to as the Committee.

### **9.2 Purpose**

The Quality Assurance/Quality Improvement (QA/QI), under direction of the State Medical Director is responsible for assuring and improving the quality of Basic Life Support within EMS systems that are served by the State Of Delaware.

### **9.3 Definitions**

Quality Assurance is the retrospective review or inspection of services or processes that is intended to identify problems.

Quality Improvement is the continuous study and improvement of a process, system or organization]

### **9.4 Objectives**

9.4.1 Conduct medical incident reviews (QA)

9.4.2 Collect patient care statistics to evaluate system effectiveness and identify trends (QI)

9.4.3 Provide constructive feedback on quality improvement to all EMS professionals within the

State of Delaware

9.4.4 To coordinate the findings of quality assurance activities with the content of EMS continuing education programs

9.4.5 To provide assistance to EMS providers with local agency QA/QI programs.

### **9.5 EMS Agencies Quality Assurance and Improvement Requirements**

9.5.1 EMS agencies should appoint a Quality Assurance Manager

9.5.2 The Quality Assurance Manager is charged with the responsibility of assuring that reasonable standards of care and professionalism are met within their respective EMS agency.

9.5.3 The Quality Assurance Manager should attend a Quality Management Training Program.

9.5.4 The Quality Assurance Manager shall implement a Quality Assurance and Improvement Program within their agency, department.

9.5.5 The Quality Assurance Manager shall perform monthly reviews of their data collection and conduct formal reviews with their personnel.

9.5.6 The Quality Assurance Manager will work closely with the Statewide QA/QI Committee on EMS policies, guidelines, protocols and system performance.

9.5.7 The Quality Assurance manager will consult with their County and State EMS Medical Director.

9.5.8 The Quality Assurance manager will consult with the Delaware State Fire School Director or their designee.

### **9.6 Statewide QA/QI Improvement Committee**

The statewide BLS QA/QI committee shall be comprised of one BLS representative from each county (appointed by the County Fireman's Association), The BLS Medical Advisor, The State Medical Director, one representative from the State Fire Prevention Commission, **[who shall chair the committee,]** one representative from the Delaware State Fire School, one representative from the Office of EMS, one representative from the Delaware Volunteer Fireman's Association, a dispatch center representative and ~~an EDIN~~ **a State patient Care Report [R]** representative. The goal of this committee is to make sure BLS is meeting all State standards and is providing the best patient care to the citizens and visitors of Delaware.

### **9.7 Committee Responsibilities**

- Responsible to assure reasonable standards of care and professionalism are met within the State of Delaware's BLS system.

- Participate in Patient Care Report review audits, data collection, and evaluation of system performance.
- Maintain strict confidentiality of patient information, personnel and Q/A topics.
- Each committee member MUST sign a confidentiality statement [to be provided by the Office of Emergency Medical Services].
- Make sure information disseminated is protected from discovery of protected healthcare information.
- Make recommendations for changes to policies, guidelines and protocols.
- Attend a quarterly meeting to discuss QA/QI issues.
- Design and implement QI projects that are practical and able to collect patient care statistics to evaluate system effectiveness and identify trends in patient care.
- Establish clinical benchmarks to measure the State's BLS system.

## 9.8 Medical Incident Review and Analysis

9.8.1 The QA/QI process evaluates all aspects of patient care and EMS performance in the BLS system. The committee will concentrate on the following areas:

### 9.8.1.1 Time Elements

- 9.8.1.1.1 Hour of day
- 9.8.1.1.2 Day of week
- 9.8.1.1.3 Response times (dispatched-arrival)
- 9.8.1.1.4 Scene time (arrival-left scene)
- 9.8.1.1.5 Transport time (left scene-at hospital)

### 9.8.1.2 Patient Assessment

- 9.8.1.2.1 Chief complaint
- 9.8.1.2.2 Mechanism of injury
- 9.8.1.2.3 History
- 9.8.1.2.4 Vital Signs
- 9.8.1.2.5 Physical Examination

### 9.8.1.3 Patient Treatment

- 9.8.1.3.1 Treatment protocol followed
- 9.8.1.3.1 Appropriate protocol followed
- 9.8.1.3.1 If no, was deviation justified
- 9.8.1.3.1 Patient response to treatment adequately documented

### 9.8.1.4 Refused transport

- 9.8.1.4.1 Disposition appropriate
- 9.8.1.4.2 Appropriate releases signed

### 9.8.1.5 Documentation

- 9.8.1.5.1 Overall documentation adequate

### 9.8.1.6 System issues

- 9.8.1.6.1 Recourses (equipment and personnel)
- 9.8.1.6.1 Priority Medical Dispatch
- 9.8.1.6.1 Hospital Diversion
- 9.8.1.6.1 Scratch Rate
- 9.8.1.6.1 ALS cancellations
- 9.8.1.6.1 Air medical utilization
- 9.8.1.6.1 Funding

### 9.8.1.7 Outcomes

9.8.2 Quarterly reports will be developed through the states patient care reporting system, ~~EDIN~~. A percentage of the patient care reports will be reviewed using a designated and approved auditing tool.

9.8.3 The QA/QI committee shall review these reports during the quarterly meeting.

9.8.4 The primary goal is to identify and address any problem or improvement areas and recommend potential solutions:

- Knowledge or skill issues
- Documentation issue
- Resource issue

- Protocol issue
- Communication issue
- Statewide system issue
- Conduct issue

9.8.5 The QA/QI committee shall provide constructive feedback and recommendations to improve the State's BLS system.

- Recommend changes to policy, procedures, or protocols
- Recommend changes in operational procedures or equipment
- Recommend training

9.8.6 All committee recommendations will be forwarded to the appropriate agency(s) for consideration.

#### 9.3 9 Grievance Procedure

In the event that the Committee has problems with the Provider, or the Provider has problems with the Committee, either may forward the problem to the Delaware State Fire Prevention Commission through the normal Grievance Procedures, previously adopted by the Delaware State Fire Prevention Commission.

**7 DE Reg. 1649 (06/01/04)**

## NON-EMERGENCY AMBULANCE SERVICE

### 10.0 Non-emergency Ambulance Service Permits

10.1 Any person, firm, corporation or association either as owner, agent or otherwise who furnish, conduct, maintain, advertise or otherwise engage in or profess to be engaged in the business or service of providing non-emergency ambulance service upon the streets or highways of this state shall hold a valid permit issued by the Delaware State Fire Prevention Commission. Application for this permit shall be upon forms provided by the Delaware State Fire Prevention Commission.

10.2 The issuance of a permit hereunder shall not be construed so as to authorize any person, firm, corporation or association to provide ambulance services or to operate any ambulance without compliance with all ordinances and regulations enacted or promulgated by any state, county or municipal government concerning ambulances.

10.3 Prior to issuing an original or renewal permit, the Delaware State Fire Prevention Commission shall determine that all requirements of this regulation are fully met. Additionally, the Delaware State Fire Prevention Commission has the authority to ensure continued compliance with these regulations through the periodic review of records and operations.

10.4 Only companies holding a current, valid non-emergency ambulance service provider permit shall be authorized to respond and provide non-emergency ambulance service within the state.

### 11.0 Non-emergency Ambulance Service Provider Permit Requirements

#### 11.1 Administrative Requirements

11.1.1 Procedures for securing a non-emergency ambulance service permit include:

11.1.1.1 The owner or registered agent must apply to the Delaware State Fire Prevention Commission upon forms provided and according to procedures established by the Delaware State Fire Prevention Commission.

11.1.1.2 The non-emergency ambulance service provider shall either be based in Delaware or maintain an office in Delaware with a full time individual domiciled at that office who is in "Responsible Charge".

11.1.1.3 All requirements set forth in this regulation must be met before issuance of permit.

11.1.1.4 The non-emergency ambulance service provider must provide proof of liability insurance in the amount of \$1 Million blanket liability coverage.

11.1.1.5 The non-emergency ambulance service provider must provide proof of automobile liability insurance in the amount of \$1 Million individual, \$3 Million aggregate per occurrence.

11.1.2 Permits shall be valid for a period of one year from the permits effective date.

11.1.3 The Delaware State Fire Prevention Commission may issue temporary permits when determined to be in the interest of public safety per Title 16.

11.1.4 On an on-going basis throughout the term of the permit, the owner or individual in "responsible charge" shall be available upon reasonable notification for the purpose of providing documentation on any provisions of this regulation and permitting physical inspection of all facilities and vehicles.

11.1.5 No ambulance service provider shall advertise or represent that it provides any ambulance service other than authorized to provide under this regulation.

11.2 Operational Requirements

11.2.1 Vehicle Standards

11.2.1.1 All ambulances shall be registered and licensed in the State of Delaware by the Delaware Division of Motor Vehicle Department.

EXCEPTIONS:

11.2.1.1.1 Those vehicles to which the international registration plan applies.

11.2.1.1.2 Those vehicles properly registered in some other state.

11.2.1.2 Vehicles shall have clearly visible letters on both sides and the rear identifying the name of the organization or corporation or the vehicle's specific identifier as specified under permit documentation. The letters shall be at least three inches in height.

11.2.1.3 Vehicle patient compartment shall conform with the criteria within the GSA Federal Specifications for ambulances (KKK-A-1822C).

11.2.2 Equipment Standards

Every ambulance shall be equipped with equipment and supplies as specified by the Delaware State Fire Prevention Commission and updated annually considering recommendations from the Delaware State Fire School Director with concurrence from the Delaware State Fire Prevention Commission's Medical Director.

11.2.3 Staffing Requirements

11.2.3.1 Minimum acceptable crew staffing when transporting a patient shall consist of a driver and one EMT-B/Ambulance Attendant.

11.2.3.2 A minimum of one EMT-B/Ambulance Attendant shall always be in the patient compartment when a patient is present.

11.2.4 Communications Requirements Ambulances

All Ambulances shall be equipped with a reliable communications systems which permit direct communications with all medical command facilities with which the ambulance will or may operate.

11.2.5 SAED Requirements

Upon placing an SAED on any ambulance, the ambulance service provider will comply with the Delaware Early Defibrillation Program Administrative Policies as established by the Office of Emergency Medical Services

11.2.6 Infection Control

All ambulance service providers will comply with the infection control requirements in Chapter 11A, Title 16 of the Delaware code.

11.2.7 Center for Medicare Medicaid Services (CMS)

All ambulance services providers will comply with the Final Rule in the Federal Register (64F.R3637) revising the Medicare policies for ambulance services adopted February 24, 1999.

11.2.8 Health Insurance Portability and Accountability Act of 1996 (HIPAA) All ambulance service providers will comply with the HIPAA of 1996.

**7 DE Reg. 1649 (06/01/04)**

**12.0 Compliance**

12.1 The owner or registered agent of every ambulance service provider shall provide ambulance service in accordance with the requirements set forth in this regulation and the contractual agreements established as either a primary or secondary Ambulance Service Provider and filed with the Delaware State Fire Prevention Commission in accordance with the provisions set forth in these regulations. Failure to provide this service shall be grounds for suspension or revocation of permit.

12.2 Grievances - All grievances relative to ambulance service shall follow procedures established within the Delaware State Fire Prevention Regulations, Part IX "Fire Service Standards".

12.3 Penalties - Following review of a valid complaint or upon failure to comply with any provision of this regulation, the Delaware State Fire Prevention Commission, following procedures established within the Delaware

State Fire Prevention Regulations, shall have the authority to issue corrective orders, suspend or revoke the provider's permit.

12.4 Whenever there is reason to believe that any provisions of this regulation have been violated, the ambulance service provider shall be immediately notified. Violations shall require correction within five (5) working days of receipt of notice with the exception of those violations which represent an imminent danger to the public.

12.5 For those violations representing an imminent danger to the public, the Delaware State Fire Prevention Commission shall issue and deliver an order to cease and desist any further ambulance service until such time as the violation has been verified as being corrected and corrective measures accepted by the Delaware State Fire Prevention Commission.

12.6 The continued violation of any element of this regulation or failure or refusal to comply with any order to correct a violation or failure to obey a cease and desist order by any ambulance service provider shall be cause for revocation or suspension of permit by the Delaware State Fire Prevention Commission after determination that the provider is guilty of such violation.

12.7 In addition to 12.6, it shall be cause for revocation or suspension of a permit after determining the ambulance service provider:

12.7.1 Has practiced any fraud, misrepresentation, or deceit in obtaining or renewing a permit

12.7.2 Is guilty of gross negligence, incompetence or misconduct in providing services

12.7.3 Is guilty of a violation of the codes and regulations adopted by the Delaware State Fire Prevention Commission

12.7.4 Has been found guilty of an unfair or deceptive trade practice

12.7.5 Has violated any contractual agreement related to providing ambulance service

12.7 Upon issuance of an order, the ambulance service provider accused may request a review of the order by the Delaware State Fire Prevention Commission. All hearings shall be conducted in conformity with procedures established by the Delaware State Fire Prevention Commission.

12.8 Any person aggrieved by a violation or order may file an appeal to the Delaware State Fire Prevention Commission pursuant to 16 **Del.C.**, Ch. 66, §6608.

**7 DE Reg. 1649 (06/01/04)**

**13.0 Discontinuation Of Service By Ambulance Providers**

13.1 STEP 1: Any fire department and/or ambulance company desiring to terminate ambulance service in the state of Delaware must notify the Delaware State Fire Prevention Commission in writing 120 days before terminating service.

13.2 STEP 2: Immediately upon notification of a fire department and/or ambulance company's desire to terminate service, the Chairman or the Vice Chairman of the Delaware State Fire Prevention Commission shall notify the president of the county firemen's association in which the fire department and/or ambulance company provides service to the residences and visitors of the state of Delaware for that district.

13.3 STEP 3: Immediately upon receiving notification of a fire department and or ambulance company's desire to terminate service the county firemen's association president shall appoint a committee. The committee shall include, but not be limited to: two members shall be the President's of the County Fire Chief's and County Ambulance Associations or their designees. The County President shall have the right to appoint other members to this committee, as he and/or she may deem necessary.

13.3.1 To communicate and offer assistance to the terminating company in an effort to help them continue service.

13.3.2 In the event that the county committee is unable to get the company to continue service, they shall then contact the surrounding departments and ascertain and/or develop a plan for those departments to divide the district and continue service.

13.3.3 In the event that steps one and two fail the county committee may put forth any and all suggestions they deem viable in order to provide ambulance service to the residences and visitors of the state of Delaware for that district.

13.3.4 The committee, through the County Firemen's Association President, shall report to the Delaware State Fire Prevention Commission within 60 days with their recommendations and/or findings.

**7 DE Reg. 1649 (06/01/04)**

**14.0 Training/Certification**

All individuals who successfully complete initial EMT-B/Ambulance Attendant training shall be eligible for and must successfully pass the NREMT examination to receive Delaware EMT-B/Ambulance Attendant certification.

14.1 Eligibility For Certification/EMT-B/Ambulance Attendant

14.1.1 Apply to the Delaware State Fire Prevention Commission on the approved application form provided by the Delaware State Fire School.

14.1.2 An individual may apply for and receive certification as an EMT-B/Ambulance Attendant provided that.

14.1.2.1 They are a member in good standing of a Delaware Fire Department, an Ambulance Organization, a Private Ambulance Provider or any other group, business or industry certified by the Delaware State Fire Prevention Commission to provide ambulance service.

14.1.2.2 They have obtained EMT-B, EMT-I or EMT-P registration from the NREMT.

14.1.2.3 The Chief, CEO, or head of the respective organization signs the application.

14.1.2.4 They are compliant with criminal history background check legislation.

14.1.2.5 Must be 18 years of age.

14.1.2.6 Comply with the State of Delaware Immunization policy.

14.2 Certification

14.2.1 Certification will be obtained by completing a state approved EMT-B/Ambulance Attendant Course and passing the National Registry of Emergency Medical Technicians Exam. Registration & Certification will be issued for the time period to coincide with the NREMT registration cycle. This is typically a two-year period. Individuals will be issued a Delaware EMT-B/Ambulance Attendant certification upon successful completion of the NREMT registration process.

14.2.2 Individuals who take EMT-B/Ambulance Attendant class from approved provider other than the Delaware State Fire School are required to meet all Delaware State Fire Prevention Commission requirements for certification.

14.2.2.1 It is the responsibility of the individual applying for certification to provide criminal history background check as specified by Delaware State Fire Prevention Commission.

14.2.1.2 It is the responsibility of the individual applying to provide all necessary documentation for certification to include AED/CPR, protocol training and NREMT-B card.

14.3 Recertification as DELAWARE EMT-B/Ambulance Attendant]

14.3.1 Individuals will be re-certified for a two-year period.

14.3.2 The re-certification requirements for a Delaware EMT-B/Ambulance Attendant will be determined by the Delaware State Fire Prevention Commission, with recommendations of their medical advisor/director.

14.3.3 Requirements for re-certification are:

14.3.3.1 Individuals must submit a request for re-certification to the Delaware State Fire School documenting completion of requirements.

14.3.3.1.1 Requirements

- Attend a prescribed DOT/EMT-B/Ambulance Attendant refresher
- Current CPR/AED certificate

14.3.4 Re-registration as an NREMT-B: The registration requirements for a National Registry of Emergency Medical Technician – Basic will be determined by the National Registry of Emergency Medical Technicians.

14.3.4.1 Continuing education classes to achieve re-registration through the NREMT will be reviewed for approval by the Office of Emergency Medical Services in accordance with NREMT policy and procedures.

14.3.5 Active duty military personnel not able to re-certify due to deployment may request for an extension of certification until they are able to return and complete necessary requirements. Upon return the individual shall have 90 days to complete re-certification requirements.

14.4 Decertification

14.4.1 An EMT-B/Ambulance Attendant will lose their Delaware EMT-B/Ambulance Attendant Certification to provide patient care if:



14.4.1.1 They do not meet the re-certification requirements as defined by the Delaware State Fire Prevention Commission.

14.4.1.2 De-certification by the Delaware State Fire Prevention Commission following procedures and in compliance with Delaware State Fire Prevention Regulations, Part IX Fire Service Standards.

14.4.2 National Registry of Emergency Medical Technicians will revoke certification based upon their national policy. If an individual has their certification revoked by the National Registry of Emergency Medical Technicians the Delaware State Fire Prevention Commission may also decertify their Delaware EMT-B/Ambulance Attendant Certification.

14.4.3 The individual is convicted of an offense as specified in 16 Del C. §6712(b) while currently certified and the procedures in Part X, Section XV, Criminal History Background Check.

#### 14.5 Reinstatement For Delaware EMT-B/Ambulance Attendant

14.5.1 Individual desiring to regain certification as a Delaware EMT-B/Ambulance Attendant, after the expiration of their certification may do so provided the following conditions are met.

- Their card has been expired ~~48~~ 24 months or less.
- They must attend an approved EMT-B/Ambulance Attendant refresher course.
- ~~They must take and pass the Delaware Protocol examination.~~
- They must show proof of a current AED and CPR certification.
- They must take and pass the current protocol self study course available from the Delaware State Fire School Delaware Protocol examination. The protocol self study course available from the Delaware State Fire School.
- They must acquire a Delaware and Federal Background Check at their expense.
- They must submit all required paperwork and application for certification to the Delaware State Fire School.

14.5.2 Individuals whose card has expired ~~48~~ 24 months or more must take the entire EMT-B/Ambulance Attendant course and National Registry Examination.

14.5.3 Individuals desiring to regain registration as an NREMT-B must follow the policies of the National Registry Organization.

#### 14.6 Testing Procedures For National Registry

Initial testing and re-testing for National Registered EMT-B will follow the guidelines set forth by the National Registry of Emergency Medical Technicians.

#### 14.7 Reciprocity

14.7.1 Emergency Medical Technicians, paramedics, nurses, or physicians who enter Delaware with a National Registry EMT-B, EMT-I or EMT-P certification will receive reciprocity as EMT-B/Ambulance Attendant in the Delaware System provided that.

14.7.1.1 They become a member of a certified ambulance service provider in Delaware.

14.7.1.2 They submit the required application form to the Delaware State Fire School.

14.7.1.3 They have a current National Registry EMT-B, EMT-I or EMT-P certification.

14.7.1.4 CPR and AED as approved by the Delaware State Fire Prevention Commission.

14.7.1.5 Challenge practical exams as required.

14.7.1.6 ~~Challenge~~ Successfully completed Delaware Protocol Examination.

14.7.1.7 Provide mandated State & Federal background checks.

14.7.1.8 Applicants will be advised of the appeal process of Part X, Section XV, Criminal History Background Check if reciprocity is denied because of criminal history background check.

14.7.2 Applicants certified from other states without at least a Nationally Registered EMT-B certification must obtain National Registry prior to applying for Delaware Certification.

14.7.3 The Delaware State Fire Prevention Commission reserves the right to administer a written examination if deemed necessary.

**7 DE Reg. 1649 (06/01/04)**

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## 15.0 Criminal History Background Check

### 15.1 Authorized Governmental Designee for the Delaware State Fire Prevention Commission

15.1.1 The Delaware State Fire Prevention Commission authorizes the Director of the Delaware State Fire School to be its governmental designee to acquire and review State and Federal criminal history background checks submitted by the State Bureau of Identification for an applicant applying to become a Delaware EMT-B/Ambulance Attendant an Ambulance Attendant/ Delaware Emergency Medical Technician and to interview the applicant, if necessary.

### 15.2 Evaluation Procedure for Criminal History Background Checks

15.2.1 The Director of the Delaware State Fire School shall evaluate the criminal history background checks using the criteria established in 16 **Del.C.** §6712(b). All criminal history background checks will be forwarded by the State Bureau of Identification to the Director of the Delaware State Fire School.

15.2.2 Should the Director of the Delaware State Fire School as a result of the criminal history background check find cause to recommend to the Delaware State Fire Prevention Commission that it deny the application of the person seeking certification as an EMT-B/Ambulance Attendant, the Director shall notify the Delaware State Fire Prevention Commission of this decision.

15.2.3 The ~~Delaware State Fire Prevention Commission~~ Director of the Delaware State Fire School shall advise the applicant that ~~it intends to deny the application~~ the application is denied and state the reason therefor. The ~~Delaware State Fire Prevention Commission~~ Director of the Delaware State Fire School will also advise the applicant of the right to review all information reviewed by the Director ~~of the Delaware State Fire School~~ and the right to appeal the ~~Delaware State Fire Prevention Commission's~~ decision by requesting a hearing before the Delaware State Fire Prevention Commission.

### 15.3 Appeal Process for Denial of Certification or De-certification because of Criminal Conviction

15.3.1 Any Delaware EMT-B/Ambulance Attendant applicant or certificate holder notified by the Delaware State Fire Prevention Commission and or the Delaware State Fire School that the Delaware State Fire Prevention Commission intends to deny the application or decertify the certificate holder because of criminal history background check information may appeal the denial to the Delaware State Fire Prevention Commission. The process is:

15.3.1.1 Within 10 days after the postmark on the notification of the intent to deny certification or decertify a certificate holder, the applicant shall submit a written request for a hearing to the Delaware State Fire Prevention Commission stating the reason(s) supporting the appeal.

15.3.1.2 Notice of the hearing shall be given at least 20 days before the day of the hearing and comply with the provisions of 29 **Del.C.** §10122.

15.3.1.3 The grievance hearing before the Delaware State Fire Prevention Commission will be conducted in accordance with the *Delaware Administrative Procedures Act* 29 **Del.C.** Ch. 101.

15.3.1.4 The hearing will be closed to the public unless the applicant requests an open hearing. After the hearing, the Delaware State Fire Prevention Commission will inform the applicant of its decision.

### 15.4 Requirements for Certification

15.4.1 Persons seeking certification as an Ambulance Attendant/Delaware Emergency Medical Technician must be eighteen (18) years of age at the time of application.

15.4.1.1 Individuals entering an EMT-B/Ambulance Attendant course must be eighteen (18) years of age at the start of the course.

15.4.2 An individual applying for certification must meet the requirement of Part X, of the Delaware State Fire Prevention Regulations "Ambulance Service Regulations".

15.4.3 Persons seeking certification must meet the criminal history background check as mandated in 16 **Del.C.** §6712(b), effective July 12, 2001 and follow the procedures outlined in this policy.

### 15.5 Administrative Policy Pertaining to Criminal History Background Checks

15.5.1 Delaware State Fire School training announcements for EMT-B/Ambulance Attendant courses will include the statement "Criminal History Background checks will be required ~~on or before the first night of class~~ as per the regulations".

15.5.2 All Chiefs of Departments, Presidents or Ambulance Captains of volunteer rescue or ambulance squads or Operating Officers of private corporations which have students pre-registered for the class will be sent a notice to inform the student that a criminal history background checks ~~will be done on the first night of class and fingerprinting~~ will be required. It will be the responsibility of private EMT-B/Ambulance Attendant training

institution to make their students aware that a Criminal History Background Check is required to become a State of Delaware EMT-B/Ambulance Attendant and the Criminal History Background Check be available in order to receive certification.

15.5.3 Any student not pre-registered for the class will not be accepted as a walk-in.

15.5.4 All EMT-B/Ambulance Attendant students will sign a release provided by the State Bureau of Identification authorizing the criminal history background check. Any student failing to sign the designated form will not be allowed to participate in the course.

15.5.5 Students who are members of a private ambulance service are required to pay the course tuition prior to the first night of class. The tuition is non-refundable unless the student drops out prior to the first night of class. The tuition includes the cost of the criminal history background check which will be paid to the State Bureau of Identification on the student's behalf by the Delaware State Fire School.

15.5.6 Any volunteer fire, rescue or ambulance company registering a student who is denied certification pursuant to the provision of 16 Del.C. §6712(b), shall be responsible to reimburse the Delaware State Fire Prevention Commission for the cost of the criminal history background check.

15.5.7 Any student accepted into the course who does not complete the course will be required to reimburse the Delaware State Fire Prevention Commission the cost of the criminal history background check and course ~~textbook materials~~.

#### 15.6 Condition and Duration of Certification/De-certification

15.6.1 The Delaware State Fire Prevention Commission shall issue initial certification as an Ambulance Attendant/Delaware Emergency Medical Technician – Basic as prescribed in Part X, of the Delaware State Fire Prevention Regulations provided that:

##### 15.6.2 Procedure for De-certification for Criminal Offense

15.6.2.1 The Delaware State Fire Prevention Commission may decertify any currently certified EMT-B/Ambulance Attendant when it has reason to believe that the person has been convicted of a crime within the scope of §6712 of Title 15.

15.6.2.2 Upon receiving a written notice that an EMT-B/Ambulance Attendant was convicted of a crime within the provisions of §6712, Title 16 the Delaware State Fire Prevention Commission shall:

15.6.2.2.1 Immediately suspend the individual's certification pending an investigation into the allegations.

15.6.2.2.2 Notify the individual in writing of the allegations and suspensions and allow the certificate holder an informal opportunity to contest the allegations of a conviction.

15.6.2.2.3 Require the individual to obtain a current Criminal History background check at their expense.

15.6.2.2.3.1 Criminal History Background check information will be sent to and reviewed by the Director of the Delaware State Fire School, who will make determination if cause for de-certification exists. The Director of the Delaware State Fire School will notify the Delaware State Fire Prevention Commission of the findings.

15.6.2.2.4 Based on the information provided by the Director of the Delaware State Fire School, the Delaware State Fire Prevention Commission will either inform the certificate holder of the intent to de-certify the individual or lift the individual's suspension.

15.6.2.3 The individuals may appeal the de-certification using the procedure under Part X, Section XV, Criminal History Background Check, Appeal Process.

##### 15.6.3 Funding of Reciprocity Criminal History Background Checks

15.6.3.1 All applicants will pay for the criminal history background check at the time of their request.

15.6.3.1.1 It is the responsibility of the private providers, private individuals or City of Wilmington to pay all costs – they are not eligible for reimbursement.

15.6.3.1.2 Upon successful completion of the reciprocity process the Delaware State Fire Prevention Commission will reimburse the individual or the individual's volunteer fire, rescue or ambulance organization for the cost of the criminal history background check.

##### 15.6.4 Reciprocity for University of Delaware Students

15.6.4.1 The Delaware State Fire Prevention Commission will waive the criminal history background check requirements for all University of Delaware Students applying for certification as an Ambulance Attendant/Delaware Emergency Medical Technician.

15.6.4.1.1 The University Police Department will provide the Director of the Delaware State Fire School with a written document listing all eligible students and a statement that they have passed an internal background check at least equal to the requirement of 16 **Del.C.** §6712.

15.6.5 Confidentiality Of Criminal History Background Check Information

15.6.5.1 Information obtained pursuant to the criminal history background check is confidential and except as provided in Section ~~6~~ 4 below, shall not be released from the Delaware State Fire School under any circumstances to anyone.

15.6.5.2 All criminal history background check information that is reviewed by the Director of the Delaware State Fire School shall be retained in a locked file cabinet in the custody of the Director for a two (2) year period.

15.6.5.3 When a denial for certification is made, ~~the information will be turned over to the Delaware State Fire Prevention Commission where it will be advised by the Director of the Delaware State Fire School and the Background Check~~ will be secured for at least 60 days or until the appeal process is completed.

15.6.5.3.1 ~~[If an appeal is not filed at the end~~ **At the expiration** of 60 days, **[if an appeal has not been filed,]** the information is to be ~~[returned to retained by]~~ the Director of the Delaware State Fire School ~~[normal secured]~~ **file system**.

15.6.5.4 Per 16 **Del.C.** §6712 the individual may meet with the Director of the Delaware State Fire School and after providing proof of identification including a photo identification, review their information. Copies will not be provided to anyone.

**7 DE Reg. 1649 (06/01/04)**

**16.0 First Responder**

First Responders do not meet the requirements of EMT-B/Ambulance Attendant and cannot transport a patient without a Delaware EMT-B/Ambulance Attendant present and in the patient care compartment.

16.1 Eligibility for Delaware First Responder Certification

16.1.1 16 years of age

16.1.2 Complete Approved DOT First Responder Curriculum

16.1.3 National Registry First Responder Certification is optional

16.1.4 Submit required applications and paperwork to Delaware State Fire School

16.2 Certification is valid for 2 years with a re-certification date of September.

16.3 Re-certification

16.3.1 Must re-certify as mandated by the Delaware State Fire Prevention Commission.

16.3.1.1 DOT First Responder Refresher, AED and CPR.

16.3.1.2 National Registry – As determined by National Registry.

16.4 De-certification

16.4.1 May have their certification revoked by the Delaware State Fire Prevention Commission in compliance with the Delaware State Fire Prevention Regulations Part IX “Fire Service Standards”.

16.5 Expired First Responder Certifications

16.5.1 Individuals desiring certification as a First Responder after the expiration date of their certification may do so providing the following conditions are met.

16.5.1.1 Card expired ~~48~~ 24 months or less

16.5.1.2 Attend approved refresher course

16.5.1.3 Show proof of current AED/CPR Certification

16.5.1.4 Submit all required applications and paperwork to Delaware State Fire

School

16.5.2 Individuals whose card has expired more than ~~48~~ 24 months must attend a complete First Responder Training course.

16.5.3 Individuals desiring to regain National Registry Registration must follow the policies of the National Registry.

16.6 Testing procedures Delaware First Responder

16.6.1 Initial testing and retesting for First Responders will follow the guidelines set forth by Delaware State Fire School.

16.7 Reciprocity

- 16.7.1 First Responders from other state must submit a request
- 16.7.2 Show proof of attending a DOT curriculum
- 16.7.3 Obtain CPR/AED as approved by Delaware State Fire Prevention Commission
- 16.7.4 Challenge practical examinations as determined by the Delaware State Fire School
- 16.7.5 Challenge the State First Responder Examination

7 DE Reg. 1649 (6/1/04)

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## DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

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

### ORDER

#### 501 Harness Racing Rules, 1, 5, 6, 7 and 8

Pursuant to 29 Del.C. §10118 and 3 Del.C. §10005, the Delaware Harness Racing Commission (DHRC) issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on December 11, 2007, the Commission makes the following findings and conclusions:

#### Summary of the Evidence

1. The Commission posted public notice of the proposed amendments in the November 1, 2007 *Register of Regulations* and for the first two consecutive weeks in November in *The News Journal* and *Delaware State News*. The Commission proposed to update:

**Rule 1** to more accurately reflect the definitions of terms used in its daily business and the horse racing industry,

**Rule 5** to more accurately reflect current its current policies and practices regarding licensees,

**Rule 6** to more accurately reflect its current policies and practices regarding the types of races,

**Rule 7** to more accurately reflect its current policies and practices regarding the rules of the race, and

**Rule 8** to more accurately reflect its current policies and practices regarding veterinary practices and equine health medication.

2. The Commission received no written comments during either November or December, 2007.

3. The Commission held a public hearing on December 11, 2007. No written or oral comments were received at the Public Hearing.

#### Findings of Fact and Conclusions

4. 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.

5. The Commission, having received no public comments, and having agreed that the proposed changes are acceptable, hereby adopts the rule changes as proposed. The Commission believes that these rule changes will allow the Delaware Harness Racing Commission rules to more accurately reflect current definitions used in its daily business and in the horse racing industry, and its current policies and practices.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on February 1, 2008.

**IT IS SO ORDERED** this 8th day of January, 2008.

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Beth Steele, Chair  
Robert B. Brown, Commissioner  
Mary Ann Lambertson, Commissioner  
George P. Staats, Commissioner  
Kenneth Williamson, Commissioner

**\*Please note that no changes were made to the regulation as originally proposed and published in the November 2007 issue of the *Register* at page 550 (11 DE Reg. 550). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

**<http://regulations.delaware.gov/register/february2008/final/11 DE Reg 1050 02-01-08.htm>**

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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)

### ORDER

#### Irrevocable Funeral Arrangements and Burial Trusts

##### Nature of the Proceedings:

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 irrevocable funeral arrangements and burial trusts. 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 December 2007 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2007 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

##### Summary of Proposal

###### Statutory Authority

- House Bill #137, *An Act to Amend Title 5 of the Delaware Code Relating to Preneed Funeral Contracts*
- 5 **Del.C.** Ch. 34, *Preneed Funeral Contracts*

###### Background

Since January 30, 1992, Delaware law has allowed the establishment of irrevocable trust accounts for prepaid funerals. The irrevocable trust may represent all funds or any portion of payments made under the burial agreement, contract or plan.

###### Summary of Proposal

House Bill #137 with House Amendment 1 adds a new section that amends §3404(a) of Title 5 by increasing from \$10,000 to \$15,000 the amount of funds that may be placed in an irrevocable trust for a preneed funeral contract. The effective date is January 1, 2008. As such, DSSM 20340.5, *Irrevocable Funeral Arrangements* and DSSM 20400.12.2, *Burial Trusts* are revised to incorporate this mandatory provision.

**Summary of Comments Received with Agency Response**

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, qualifying irrevocable prepaid funerals are generally deemed disregarded assets for purposes of meeting Medicaid resource limits. See, e.g., 16 **DE Admin. Code** 20310.8.5 which recites as follows:

A prepaid burial contract (sometimes funded by a life insurance policy) that cannot be revoked and cannot be sold without significant hardship is excluded.

In May 2007, the Legislature enacted H.B. 137 which increased the statutory limit on prepaid funerals from \$10,000 to \$15,000 effective January 1, 2008. DMMA is now proposing to amend its Medicaid regulations to authorize a resource exemption of \$15,000 for conforming arrangements. SCPD endorses the proposed regulations since it expands resource exemptions for beneficiaries.

**Agency Response:** DMMA thanks you for the endorsement.

**Findings of Fact:**

The Department finds that the proposed changes as set forth in the December 2007 *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 the increase in the statutory limit on irrevocable funeral arrangements and burial trusts is adopted and shall be final effective February 10, 2008.

Vincent P. Meconi, Secretary, DHSS, January 1, 2008

**DMMA FINAL ORDER REGULATION #08-01  
REVISION:****20340.5 Irrevocable Funeral Arrangements**

Effective January 30, 1992, Delaware law allows the establishment of irrevocable trust accounts for prepaid funerals. The irrevocable trust may represent all funds or any portion of payments made under the burial agreement, contract or plan. The principal sum (excluding accrued interest) may not exceed \$5,000. Effective ~~March 22, 1996~~ January 1, 2008 the principal sum may not exceed ~~\$40,000~~ \$15,000. Irrevocable trusts established under ~~Section 304~~ Title 5, Chapter 34 of the **Delaware Code** must contain the following mandatory provisions.

**20340.5.1 Irrevocable**

The trust must include a provision which expressly identifies the trust as irrevocable for the lifetime of the beneficiary.

**20340.5.2 Alternative Disposition**

The trust must include a provision for the alternative disposition of trust funds upon discontinuation of business or inability to provide goods or services in accordance with the terms of the trust.

**20340.5.3 Inadequate Funds**

The trust must include a provision which sets forth that in the event funds paid into the trust are inadequate, at the

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time of the death of the beneficiary, to cover anticipated funeral expenses, the trustee shall contribute all trust funds toward payment of the actual funeral expenses for the funeral of the beneficiary.

#### **20340.5.4 Excess Funds**

The trust must include a provision which sets forth that in the event the sum held by the trust exceeds the total actual costs of the goods and services for the funeral of the beneficiary, the excess funds shall be paid to the estate of the beneficiary.

#### **20340.5.5 Contributions to Trust**

The trust must include a provision which sets forth that the trustee may, from time to time, accept periodic monetary contributions to the trust, provided that the principal sum contributed, exclusive of interest earned, shall not exceed ~~\$10,000.00~~ \$15,000.00.

#### **20340.5.6 Maximum Amount**

The trust must include a provision which shall state "In no event shall the principal amount of the trust exceed ~~\$10,000.00~~ \$15,000.00 plus interest".

Once an irrevocable trust is executed in conjunction with a burial contract, the funds are not available to the buyer. Any written request for a refund of money is no longer an option. The irrevocable trust arrangement will offset the \$1500 burial allowance. This is effective for irrevocable trust arrangements executed on or after January 30, 1992.

*(Break in Continuity of Sections)*

### **20400.12 When Application Of The Trust Provisions Would Cause Undue Hardship**

20400.12.1 Undue Hardship

20400.12.2 Burial Trusts

#### **20400.12.1 Undue Hardship**

Undue hardship exists when application of the trust provisions would deprive the individual of medical care such that his/her life would be endangered. Undue hardship also exists when application of the trust provisions would deprive the individual of food, clothing, shelter or other necessities of life AND there are no State facilities available to take care of this individual in the absence of Medicaid eligibility.

#### **20400.12.2 Burial Trusts**

A burial trust is a trust established by an individual for the purpose of paying, at some point in the future, for the various expenses associated with the individual's funeral and burial. Irrevocable prepaid burial trusts that do not exceed ~~\$10,000~~ \$15,000.00 are exempted under the undue hardship policy.



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# FINAL REGULATIONS

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### ORDER

### DSSM 20700.5 Acquired Brain Injury Medicaid Waiver Program

#### Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Acquired Brain Injury Medicaid Waiver Program (ABIMWP). 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 December 2007 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2007 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### Summary of Proposal

##### Statutory Authority

- Legal basis of the Medicaid home and community-based services (HCBS) waiver: Section 1915(c) of the Social Security Act
- Purpose and intent of a Medicaid HCBS: Section 1902(c) of the Social Security Act
- Allows states to create the HCBS waiver program: Omnibus Budget Reconciliation Act of 1981, Section 2176
- The Code of Federal Regulations (CFR) specifically dealing with HCBS services are in Title 42, Parts: 431.50, 435.3, 435.217, 435.726, 435.735, 440.1, 440.180, 440.250, 441.300 through 441.306, and 441.310.

##### Summary of Proposal

The Acquired Brain Injury Medicaid Waiver Program (ABIMWP) is a community-based services program funded by the Division of Medicaid and Medical Assistance and operated by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). It is targeted to individuals with acquired brain injury who meet Medicaid nursing facility admission criteria.

The proposed revises the rules and regulations governing the administration of the ABIWP, and describes the types of services available under the program. The regulations being amended, also, define the eligibility criteria that must be met by applicants for the services and the scope of services available to eligible applicants.

And, to simplify the policy format, Section 20700.5 is substantially revised, renumbered, and reorganized for greater clarity and ease of reading.

#### Summary of Comments Received with Agency Response and Explanation of Changes

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 basically "track" the waiver document and other regulations adopted this month [11 DE Reg. 786 (December 1, 2007)]. However, SCPD has two (2) observations.

First, the reference to the Division of Long Term Care Residents Protection (DLTCRP) Regulation 5.9 at the end of the regulation is ostensibly an inaccurate citation. The DLTCRP assisted living regulation is codified at 16 **DE Admin. Code** 3225.

**Agency Response:** We agree. The regulation's correct citation is reflected by [**Bracketed Bold Type**].

Second, DMMA POL-20700.5.1 ABI Program Absences Due To Hospitalization recites that "ABI waiver services will terminate upon the 31<sup>st</sup> day of hospitalization." It is unclear if DMMA intends this reference to mean that services are suspended/cease or that the participant is actually terminated from the waiver program. This provision is obtuse and may merit clarification. If the provision is retained, the following could be substituted to conform to the advance notice requirement of 16 DE Admin Code 5301:

1. In the event of an extended hospitalization, DMMA will send advance notice to the participant that all waiver services will terminate upon the 31<sup>st</sup> day of hospitalization.

This is a more consumer-oriented approach which alerts the participant that he/she may wish to promote discharge from the hospital before the 31<sup>st</sup> day. Otherwise, the regulation literally contemplates more draconian termination of all services with no advance warning.

If DMMA does intend to terminate waiver eligibility on the 31<sup>st</sup> day, the consequences to the participant could be severe. The participant would have to reapply for eligibility and be placed at the end of any waiting list [Appendix B:3:3]. The participant may lose the supports necessary for discharge, thus extending the hospital stay even further. It would therefore be preferable to suspend waiver services upon the 31<sup>st</sup> day of hospitalization rather than terminating the participant's enrollment in the waiver.

**Agency Response:** This provision refers to the actual waiver services, not to Medicaid. The Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) will be responsible for notifying the participant that waiver services will be terminated. DMMA will provide adequate notification if Medicaid will be terminated.

Further analysis and review by staff corrects the policy number designation from "DMMA" to DSSM" indicated in the Final Order Regulation by [**Bracketed Bold Type**].

#### **Findings of Fact:**

The Department finds that the proposed changes as set forth in the December 2007 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation related to the Acquired Brain Injury Medicaid Waiver Program is adopted and shall be final effective February 10, 2008.

Vincent P. Meconi, Secretary, DHSS, January 11, 2008

#### **DMMA FINAL ORDER REGULATION #08-02 REVISION:**

#### ~~**20700.5 ACQUIRED BRAIN INJURY MEDICAID WAIVER PROGRAM**~~

~~The Acquired Brain Injury Medicaid Waiver Program (ABIMWP) is a home and community-based services program funded by the Division of Social Services (DSS), Delaware Medical Assistance Program (DMAP) and operated by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). It is targeted to individuals with acquired brain injury who meet Medicaid nursing facility admission criteria.~~

~~The earliest implementation date for the ABIMWP is October 10, 2004.~~

#### ~~**20700.5.1 ELIGIBILITY CRITERIA**~~

~~To be eligible for the ABIMWP, an individual must:~~

- ~~1. be a Delaware resident~~
- ~~2. be between 18 and 64 years of age (persons who enter the waiver before age 65 may remain in the waiver after age 65)~~
- ~~3. meet the financial and medical criteria for the DSS Long Term Care Medicaid Program and meet nursing facility admission criteria.~~

~~Medical eligibility is determined by the Pre-Admission Screening Unit of DSAAPD.~~

~~Financial eligibility is determined by DSS.~~

~~Program eligibility is determined by DSAAPD. An individual must meet all of the following~~

criteria:

- Brain Injury)-
- monthly basis
- brain injury and currently reside in a nursing facility or is at risk for placement in a nursing facility
- trauma or rehabilitation programs
- a have an injury to the brain which is not hereditary or congenital (Acquired
  - b have a need of one waiver service, in addition to case management, on a
  - c have a physical, cognitive and/or behavioral symptom of an acquired
  - d have completed or would no longer benefit from intensive, inpatient, post-
  - e accept and maintain case management services

#### **20700.5.2 NUMBER OF RECIPIENTS**

There is a maximum number of recipients who may be served under the ABIMWP each fiscal year. The total unduplicated number of recipients served under the program cannot exceed the maximum number approved by the Centers for Medicare and Medicaid Services (CMS). DSAAPD will monitor the number of individuals receiving ABIMWP services so the maximum number will not be exceeded.

#### **20700.5.3 COST EFFECTIVE REQUIREMENT**

In order for an applicant to be eligible for the ABIMWP, the applicant's cost of care cannot exceed the cost of their care if the same applicant were institutionalized. This determination is made on an aggregate basis which considers all ABIMWP recipients. An average monthly cost for institutionalized individuals is used to determine the amount that may be spent on ABIMWP recipients. A DSAAPD worker determines cost effectiveness.

#### **20700.5.4 APPROVAL**

Upon approval, DSS will send a notice of approval to the applicant or the applicant's representative and the ABIMWP provider. The notice to the provider will include the effective date of Medicaid coverage, the patient pay amount, and the Medicaid identification number.

#### **20700.5.5 POST ELIGIBILITY BUDGETING**

See DSSM 20720 and 20995.1 for patient pay calculation.

For recipients residing in Assisted Living facilities, the personal needs allowance is equal to the current Adult Foster Care rate. Collection of the patient pay amount from the recipient or the recipient's representative is the responsibility of the assisted living provider.

For recipients residing in community based settings, the personal needs allowance is equal to 250% of the Federal SSI Benefit Rate. Collection of the patient pay amount from the recipient or the recipient's representative is the responsibility of the provider who is providing the most costly service.

#### **20700.5.6 DAYS APPROPRIATE FOR BILLING**

The waiver provider may not bill for any day that the recipient is absent from the program or facility for the entire day. The waiver provider may bill for services for any day that the recipient is present in the facility or program for any part of the day.

If the recipient resides in an assisted living facility, the waiver provider may not bill Medicaid for room and board.

#### **20700.5.7 HOSPITALIZATION OR ILLNESS**

Waiver services will terminate upon hospitalization. There are no Medicaid bed hold days for hospitalization. DSS will redetermine eligibility for continued Medicaid coverage. Waiver services may restart after hospital discharge as determined by DSAAPD staff.

If the recipient is a resident of an assisted living facility, the waiver provider shall not provide services to a recipient in accordance with the Delaware Regulations for Assisted Living Facilities outlined in section 63.409.

## ~~20700.5.8 ABIMWP SERVICES~~

~~Acquired brain injury waiver services will include the following:~~

- ~~Case Management~~
- ~~Personal Care~~
- ~~Respite Care~~
- ~~Adult Day Expanded Services~~
- ~~Specialized Medical Equipment and Supplies~~
- ~~Personal Emergency Response Systems (PERS)~~
- ~~Assisted Living Program~~
- ~~Behavioral and/or Cognitive Services~~

8 DE Reg. 557 (10/01/04) (Section 20700.5 added)

## [DMMA DSSM] POL-20700.5 ACQUIRED BRAIN INJURY MEDICAID WAIVER

- 20700.5.A Acquired Brain Injury (ABI) Medicaid Waiver Defined
- 20700.5.B ABI Eligibility Criteria
- 20700.5.C ABI Program Eligibility
- 20700.5.D ABI Number of Participants
- 20700.5.E ABI Cost Effectiveness Requirement
- 20700.5.F ABI Notification of Approval
- 20700.5.G ABI Post Eligibility Budgeting
- 20700.5.H ABI Billing of Appropriate Days
- 20700.5.I ABI Program Absences Due to Hospitalization
- 20700.5.J ABI Medicaid Waiver Program Services

## [DMMA DSSM] POL-20700.5.A ABI MEDICAID WAIVER DEFINED

1. The Acquired Brain Injury (ABI) waiver program is a home and community based services program funded by the Division of Medicaid and Medical Assistance (DMMA).
2. The ABI waiver is operated by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD).
3. This waiver is targeted to individuals with an acquired brain injury aged 18 years of age and above.
4. The individual must meet Medicaid criteria for nursing home admission.
5. The earliest implementation for the ABI waiver is December 1, 2007.

## [DMMA DSSM] POL-20700.5.B ABI ELIGIBILITY CRITERIA

1. The individual must be a Delaware Resident.
2. The individual must meet the financial and medical criteria for the DMMA Long Term Care Medicaid Program.
3. Medical eligibility is determined by the DSAAPD Pre-Admission Screening Unit. DSAAPD also accepts Long Term Care medical eligibility determinations performed by the DMMA Pre-Admission Screening Unit.
4. Financial eligibility is determined by the DMMA.
5. The individual must meet program eligibility guidelines (see DSSM 20700.5.C).

## [DMMA DSSM] POL-20700.5.C ABI PROGRAM ELIGIBILITY

1. The individual must have an injury to the brain which is not hereditary or congenital, degenerative, or induced by birth trauma.
2. The individual must have a need of at least one enhanced ABI waiver service in addition to case management.
3. The individual must have a physical, cognitive, and/or behavioral symptom of an ABI, which requires supervised and/or supportive care.

4. The individual must be at risk of placement or currently residing in a nursing facility.
5. The individual must have completed or no longer benefit from intensive inpatient, post-trauma or rehabilitation program(s).
6. The individual must accept and maintain case management services.

**[DMMA DSSM] POL-20700.5.D ABI NUMBER OF PARTICIPANTS**

1. There is a maximum number of participants who may be served under the ABI waiver program each year.
2. The total unduplicated number can not exceed the maximum number approved by the Centers for Medicare and Medicaid Services (CMS).
3. The DSAAPD will monitor the number of participants.

**[DMMA DSSM] POL-20700.5.E ABI COST EFFECTIVENESS REQUIREMENT**

1. The cost of care for an ABI waiver recipient can not exceed the cost of care if institutionalized.
2. The cost of care is determined on an aggregate basis which considers all ABI waiver recipients.
3. An average monthly cost for institutionalization is used to determine the amount that may be spent on an ABI waiver recipient's care.
4. The DSAAPD determines cost effectiveness.

**[DMMA DSSM] POL-20700.5.F ABI NOTIFICATION OF APPROVAL**

1. The DMMA will send a notice of Medicaid approval.
2. The notice will be sent to the applicant or representative.
3. If the recipient is in an Assisted Living facility a notice of approval will also be sent to the provider.
4. The notice to the provider will include the effective date of Medicaid coverage, the patient pay amount, and the Medicaid identification number.

**[DMMA DSSM] POL-20700.5.G ABI POST ELIGIBILITY BUDGETING**

1. DSSM policies 20720 and 20995.1 will be followed to calculate patient pay amount.
2. Persons residing in an Assisted Living facility will have a personal needs allowance equal to the current Adult Foster Care Rate.
3. Persons who are in a community based setting will have an income needs allowance equal to 250% of the Federal Benefit Rate.
4. Collection of the patient pay amount is the responsibility of the provider.

**[DMMA DSSM] POL-20700.5.H ABI BILLING OF APPROPRIATE DAYS**

1. The waiver provider may not bill for any day the individual is absent from the program, excluding case management services. (Case management services are billed monthly, and are still utilized up to 30 days of hospitalization.)
2. The waiver provider may bill for services rendered to the individual.
3. Assisted Living providers may not bill Medicaid for room and board.

**[DMMA DSSM] POL-20700.5.I ABI PROGRAM ABSENCES DUE TO HOSPITALIZATION**

1. ABI waiver services will terminate upon the 31<sup>st</sup> day of hospitalization.
2. There are no Medicaid bed hold days for hospitalization.
3. The DMMA will redetermine financial eligibility for continued Medicaid coverage.

**[DMMA DSSM] POL-20700.5.J ABI MEDICAID WAIVER PROGRAM SERVICES**

1. ABI waiver services will include:
  - Case Management
  - Assisted Living and Enhanced Assisted Living
  - Day Habilitation
  - Cognitive Services
  - Adult Day Services (Level I - Basic & Level II – Enhanced)

Personal Care

Respite Care

Personal Emergency Response System

2. Residents of an Assisted Living facility will receive services in accordance with the Division of Long Term Care Residents Protection regulation [~~5-9~~ codified at 16 DE Admin. Code 3225].
- 

## DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 9110 (16 **Del.C.** §9110)

### ORDER

#### 4408 Managed Care Organizations (MCO)--Repeal

##### Nature of the Proceedings:

The Department of Health and Social Services (hereinafter "Department") was established to extend general supervision of the interests of the health and lives of the people of the State of Delaware.

The Department was previously authorized by 16 **Del.C.**, Ch. 91 to promulgate regulations to effectuate those objectives by regulating managed care organizations operating within Delaware.

Pursuant to 16 **Del.C.**, Ch. 91, the Department is no longer authorized to regulate managed care organizations operating within Delaware. This authority has been transferred to the Department of Insurance. Therefore, all regulations previously promulgated by the Department are hereby **repealed**.

Pursuant to 29 **Del.C.** §10113(b)(5), no public hearing or period of public comment is required for amendments to existing regulations to make them consistent with changes in basic law.

The Department **repealed** the attached amendments on January 23, 2008.

##### Summary of the Evidence and Information Submitted

No period of public comment is required for Amendments to existing regulations to make them consistent with changes in basic law. 29 **Del.C.** §10113(b)(5).

##### Findings of Fact:

WHEREAS, the Department was previously charged with the regulation of managed care organizations operating within Delaware;

WHEREAS, 16 **Del.C.**, Ch. 91 transferred the authority for regulating these organizations to the Department of Insurance;

WHEREAS, due to this legislative change, the Department is no longer statutorily authorized to regulate these organizations;

NOW, THEREFORE, in consideration of these premises, and with the authority in 29 **Del.C.** §10113(b)(5), the Department hereby **repeals** the attached regulations.

##### Decision and Effective Date

The Department hereby adopts the proposed **repeal** of the regulations to be effective 10 days following final publication of this order in the Delaware *Register of Regulations*.

##### Text and Citation

The text of the final regulations is attached hereto as Exhibit A and is formatted to show the repeal. This order is expected to appear in the Delaware *Register of Regulations*, Volume 11, Issue 8, February 1, 2008.

IT IS SO ORDERED this 23<sup>rd</sup> day of January, 2008 by the Secretary of the Department of Health and Social Services.

Vincent P. Meconi, Secretary, DHSS, 1/23/2008

**\*Please note that regulation 4408 Managed Care Organizations (MCO) is being repealed. Due to the size of the regulation it is not being published here. A copy of the final regulation is available at <http://regulations.delaware.gov/register/february2008/final/11> DE Reg 1059 02-01-08.htm**

## **DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code, Section 311 (18 Del.C. §311)  
18 DE Admin. Code 1217

### **ORDER**

#### **1217 Unfair Discrimination in Life Insurance, Annuities and Health Insurance on the Basis of Physical or Mental Impairment**

Proposed Regulation 1217 relating to unfair discrimination in life insurance, annuities and health insurance on the basis of physical or mental impairment was published in the Delaware *Register of Regulations* on July 1, 2007. The comment period remained open until August 6, 2007. There was no public hearing on proposed Regulation 1217. Public notice of the proposed Regulation 1217 in the *Register of Regulations* and two newspapers of general circulation was in conformity with Delaware law.

#### **Summary of the Evidence and Information Submitted**

Public comment was received from the Governor's Advisory Council For Exceptional Citizens ("Council") and from the American Council of Life Insurers ("ACLI"). The Council suggested that since the proposed regulation covers three areas of insurance, governed by two separate chapters of Title 18, there should be two regulations. The Council also notes that allowing insurers to refuse coverage based on "actual or reasonably anticipated experience" may violate Section 2316 of Title 18 which prohibits such a standard in cases involving blindness or deafness. Finally, the Council questions the use of the words "related to" as too broad and raises a concern that permitting the use of "data" could give rise to the use of genetic information.

ACLI observes that the regulation is identical to the Model Regulation on the same subject, with the exception of the regulation's failure to use the phrase "on sound actuarial principles". The ACLI suggests uniformity is critical when states use model regulations and proposes the regulation be changed to include the deleted phrase.

#### **Findings of Fact**

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. It is in the public interest that discrimination on the basis of mental or physical impairment be prohibited in life insurance, annuities, and health insurance and that such acts or practices be identified.
2. In order to be consistent with other states in the National Association of Insurance Commissioners, it is appropriate to adopt the Model Regulation, modified to conform with Delaware law.
3. The proposed regulation meets the requirements of and is not in conflict with Delaware law.

#### **Decision and Effective Date**

Based on the provisions of 18 Del.C. §§311(a) and the record in this docket, I hereby adopt Regulation 1217 and as may more fully and at large appear in the version attached hereto to be effective on February 11,

2008.

**Text and Citation**

**IT IS SO ORDERED** this      day of January 2008.

Matthew Denn, Insurance Commissioner

**1217 Unfair Discrimination in Life Insurance, Annuities and Health Insurance on the Basis of Physical or Mental Impairment**

**1.0 Authority**

1.1 This regulation is promulgated pursuant to the authority granted by 18 **Del.C.** §§311, 2312 and 29 **Del.C.** Chapter 101.

**2.0 Purpose**

2.1 The purpose of this regulation is to identify specific acts or practices in life insurance, annuities, and health insurance which are prohibited by 18 **Del.C.** §2304(13).

**3.0 Unfairly Discriminatory Acts or Practices**

3.1 The following are hereby identified as acts or practices in life and health insurance and annuities which constitute unfair discrimination between individuals of the same class: Refusing to insure, or refusing to continue to insure, or limiting the amount, extent or kind of coverage available to an individual, or charging a different rate for the same coverage solely because of a physical or mental impairment, except where the refusal, limitation or rate differential is based on [sound actuarial principles or is related to] actual or reasonably anticipated experience.

**4.0 Effective Date**

4.1 This regulation shall become effective October 1, 2007.

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**DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code, Sections 311, 333, 6408 (18 **Del.C.** §§311, 2501, 2304(15)(c) & 2312)  
18 **DE Admin. Code** 1313

**ORDER****1313 Arbitration of Health Insurance Disputes Between Carriers and Providers**

Proposed Regulation 1313 relating to the requirements that health insurance carriers submit to arbitration any dispute with a health care provider regarding reimbursement for an individual claim, procedure or service upon request by the health care provider was published in the *Delaware Register of Regulations* on November 1, 2007. The comment period remained open until December 3, 2007. There was no public hearing on proposed Regulation 1313. Public notice of proposed Regulation 1313 in the *Register of Regulations* and two newspapers of general circulation was in conformity with Delaware law.

**Summary of the Evidence and Information Submitted**

Public comment was received from Coventry Health Care of Delaware, Inc. ("CHCDE"). The comment requested clarification that the phrase "final decision" in the regulation refers to a decision after all internal review processes have been completed. CHCDE also requested that utilization management decisions not be included in



the requirement for arbitration, since arbitrators may not have a "strong basis of medical knowledge".

#### Findings of Fact

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. It is in the public interest to provide a forum in which reimbursement disputes between health care providers and insurance carriers can be resolved in a fair, objective manner without imposing the costs of litigation upon both the health care provider and the insurance carrier; and
2. It is in the public interest that health care providers be given the opportunity to have their reimbursement disputes with health insurance carriers be resolved via arbitration; and
3. It is in the public interest that decisions regarding utilization management be included in the reimbursement disputes that may be submitted for arbitration. Delaware law already requires that when appointing arbitrators, the Insurance Commissioner "endeavor to appoint persons qualified to hear both legal and medical disputes" (18 **Del.C.** §333(e)) and Regulation 1313 requires that arbitrators "be of suitable background and experience to decide the matter." Given that the law and regulations already require that the arbitrators appointed be "qualified" and of "suitable background," there is no reason to exclude certain categories of decisions from being submitted to arbitration. Qualified arbitrators, like judicial officers who hear court proceedings, are able to hear evidence and make a fair and objective decision on the evidence notwithstanding the fact that they may not have a medical background; and
4. The phrase "final decision" refers to a decision made by an insurance carrier after all internal review processes have been completed.

#### Decision and Effective Date

Based on the provisions of 18 **Del.C.** §§311, 333, and 6408 and the record in this docket, I hereby adopt Regulation 1313 as attached hereto to be effective on February 11, 2008.

**IT IS SO ORDERED** this 16th day of January, 2008.

Matthew Denn  
Insurance Commissioner

\* Please note that no changes were made to the regulation as originally proposed and published in the November 2007 issue of the *Register* at page 637 (11 DE Reg. 637). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/february2008/final/11 DE Reg 1061 02-01-08.htm>

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## DEPARTMENT OF JUSTICE FRAUD AND CONSUMER PROTECTION UNIT

Statutory Authority: 6 Delaware Code, Section 2432A(h) (6 **Del.C.**, §2432A(h))

#### ORDER

#### 102 Debt Management Services

A public hearing was held to receive comments related to the Delaware Uniform Debt Management Services Act authorized under 6 **Del.C.** §2432A(h). Notice was provided as required under the Administrative Proceedings Act in the Register of Regulations at 11 DE Reg. 640 (11/01/07) as well as in the News Journal and Delaware State News on November 8, 2007. 29 **Del.C.** §10115.

The Director of Consumer Protection conducted the public hearing held at 9 a.m. on December 10, 2007 in the Carvel State Office Building, 6<sup>th</sup> floor, 820 N. French St., Wilmington, DE 19801.

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## Summary of the Evidence and Information Submitted

### *Written Comment:*

1. Wesley K. Young, Esq. submitted a letter dated December 4, 2007 on behalf of The Association of Settlement Companies (TASC). The comments related to proposed changes to **Rule 5.3** and **6.3**. The letter was admitted as Exhibit 1 for the record.

Debt settlement companies do not hold the funds of clients' in trust. Therefore, the accounting for monies in the renewal application should not apply to debt settlement companies and the second sentence in proposed **Rule 5.3.6** should be deleted.

The language in **Rule 6.3.2** can be a problem for debt settlement companies who do not know the concessions a creditor might make. In determining whether a debt settlement is suitable for the individual as required under 6 *Del.C.* 2417A(b)(3), debt settlement companies consider total debt, each individual debt, income and job stability, debt outside of the plan, nature of the debt, age of debt, payment history, assets, creditors involved and their collection practices, and other debt management options available to the debtor. **Rule 6.3.2** should not require the companies to consider concessions that may not be known to them but should rather state "... that the individual does not have the ability to satisfy creditors out of current income in a reasonable time unless the creditor reduces the principle of the debt."

2. Mark Guimond, Executive Director of the American Association of Debt Management Organizations (AADMO) submitted comments dated December 10, 2007. The comments are marked as Exhibit 2. AADMO does not take a position, or does not object to, most of the proposed changes. The exceptions are proposed **Rules 4.2.11.1, 6.4.4, 6.6, and 6.7.1.**

The monthly services fee in **Rule 4.2.11.1** should be based on accounts and not creditors since some individuals have multiple accounts with a single creditor. In addition, it is burdensome to calculate the fee each month and the calculation should be based on the number of accounts when the plan is established.

Proposed **Rule 6.4.4** requires the incorporation of concessions into an agreement with an individual when only the creditor knows the concessions. Many are based on the data from the credit report and controlled by an algorithm evaluating risk, need, account history, and ability to service.

AADMO does not support proposed **Rule 6.6**. Consumers should not pay any third party to solicit or qualify individuals for referral to debt management service providers.

Proposed **Rule 6.7.1** is vague when it speaks to "average eyesight." The expense, especially to the non-profit industry, in prolonging television ads is not justifiable.

### *Verbal Comment:*

1. Kimberly B. Gomes, Vice President of WolfBlock, Public Strategies, Delaware, LLC, appeared on behalf of TASC. She previously delivered the written comment from Wesley K. Young, Esq. and attended to answer any questions the Director might have.

## **Recommended Findings of Fact Based on the Evidence and Information Submitted**

The following are findings based on the specific comments received.

1. Wesley K. Young, Esq. for TASC.

The provision in the proposed **Rule 5.3.6** clarifies 6 *Del.C.* §2411A(6)(7). The second sentence in the proposed rule relates to paragraph (7). The explanation is found in the comments to the Uniform Act from the National Conference of Commissioners on Uniform State Laws (NCCUSL). Comment 4 of Section 11 states in part:

"Paragraph (7) supplements paragraph (6) by requiring a provider that does not take possession of its customers' funds to disclose the gross amount its customers have accumulated....A provider that does not take possession of its customers' money may monitor the customers' accounts either by direct access to the accounts or by requiring the customers to provide periodic copies of bank statements. If the provider does not do either of these, and therefore has no knowledge of the amounts accumulated, it need make no disclosure under paragraph (7)."

The exception for providers of debt settlement services with no knowledge is found in proposed **Rule 5.3.7.**

Proposed **Rule 6.3.2** derives its clarification of the statute from Comment 4 to Section 17 of the uniform act from NCCUSL, viz.,

“...For providers that assist an individual to settle debts for less than full payment, the suitability requirement means at a minimum that the individual does not have the ability to satisfy creditors out of current income within a reasonable time even if the creditors were to reduce finance charges and fees for late payment, default and delinquency. Section 15, which requires providers to act in good faith is especially important in connection with this paragraph. The administrator may adopt rules articulating specific standards for suitability.”

Providers of debt settlement services are not expected to know all of the concessions that a creditor might make. However, in obtaining the facts needed to support a consideration of “other debt management options available to the debtor,” the company is necessarily considering whether the debtor might qualify for a debt management plan that pays the principal debt with reduced interest and fees – even though the company might not know the exact concessions. The only requirement is one of good faith. With an estimated reduction in interest and elimination of some late charges, could the principal debt be satisfied in a reasonable period, e.g. five years? It is a question a qualified credit counselor can answer after reviewing the financial information provided by the debtor.

2. Mark Guimond, Executive Director, for AADMO.

Proposed **Rule 3.2.11.1** incorporates the statutory language of “\$10 times the number of creditors remaining in a plan at the time the fee is assessed...”6 *Del.C.* §2423A (d)(1)(B). The modifications suggested by AADMO would require an amendment to the statute.

Proposed **Rule 6.4.4** is based on the statutory language in 6 *Del.C.* §2419A(a)(6)(D) that requires in the agreement to include “any concessions the provider reasonably believes each creditor will offer...” “Concessions” are defined in 6 *Del.C.* §2502A(7) as repayment of a debt on terms more favorable than the contract with the creditor. It has been a problem for the reasons stated in the comment. However, the rule cannot change the statutory requirement. Providers have the experience to represent, in good faith, what they reasonably believe will be offered, even if it is only a reduction in interest. The reasonable expectation must be included in the agreement.

Proposed **Rule 6.6** is a clarification of fees derived from the Comment 1 to Section 23 of the uniform act from NCCUSL and intended to protect the individual. The comment states in part:

“...For example, a provider might use the services of a third person to solicit individuals, determine whether they are qualified for debt-management services, and refer them to the provider. This person might be paid by the provider or by the individual. If paid by the individual, this tactic shifts some to the provider’s cost of doing business to the individual and amounts to an attempt to evade the limits of this section. Amounts paid to a third person for determining that an individual qualifies for debt management services or for referring an individual to a provider, even if paid by the individual, should be viewed as part of the charge by the provider that this section limits. Hence, subsection (a) prohibits imposition of fees directly or indirectly except as permitted by this section.”

The proposed Rule insures that if an individual is solicited by a third party to which the individual pays a fee, that fee is attributed to the provider and included when insuring that the total fees to the provider are within the parameters of 6 *Del.C.* §2423A.

Proposed **Rule 6.7.1** clarifies 6 *Del.C.* §2430A that governs advertising. The term “easily comprehensible manner” is explained using the language in comment 2 of Section 30 of the uniform act from NCCUSL. Providers who consider the ordinary meaning of terms used such as “average eyesight” will be able to comply. Public awareness is important and, to be effective, the information must be presented in a way that can be perceived by the public. If the information is in a format that cannot be processed by an individual, then it is not disclosure.

### Recommended Action

After considering the provisions in the Delaware Uniform Debt Management Services Act and the

comments received, it is the recommendation of the Director of Consumer Protection that the Attorney General make the proposed findings and adopt the proposed rules as published pursuant to his authority in 6 *Del.C.* §2432(h) as published.

**DEPARTMENT OF JUSTICE**

Tim Mullaney, Sr., Director of Consumer Protection

Date: January 4, 2008

**Order and Effective Date**

After review of the law and comment as well as the recommendation of the Director of Consumer Protection, I hereby adopt the recommended findings of facts and the Rules as proposed in 11 DE Reg. 640 (11/01/07)

**DEPARTMENT OF JUSTICE**

Joseph R. Biden III, Attorney General

Date: January 22, 2008

\* Please note that no changes were made to the regulation as originally proposed and published in the November 2007 issue of the *Register* at page 640 (11 DE Reg. 640). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

[http://regulations.delaware.gov/register/february2008/final/11 DE Reg 1062 02-01-08.htm](http://regulations.delaware.gov/register/february2008/final/11%20DE%20Reg%201062%2002-01-08.htm)

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## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

**2500 Board of Pharmacy**Statutory Authority: 24 Delaware Code, Section 2509 (24 **Del.C.** §2509)24 **DE Admin. Code** 2500**ORDER**

The Board of Pharmacy ("Board") was established to "promote, preserve and protect the public health, safety and welfare by and through the effective control and regulation of the practice of pharmacy." 24 **Del.C.** §2501. It is a "matter of public interest and concern that the practice of pharmacy... merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practice of pharmacy in the State." *Id.* The Board is authorized by 24 **Del.C.** §2509 to make, adopt, amend, and repeal regulations as necessary to effectuate its mandates.

Pursuant to 24 **Del.C.** §2509, the Board proposed an amendment to its regulation section 1.0. Specifically, the proposed addition to **1.0 Pharmacist Licensure Requirements** sets the period within which a pharmacist license or pharmacy permit may be renewed after its expiration. The proposal also sets the requirements for late renewal, including mandatory audit of all late-renewed pharmacist licenses to verify compliance with the continuing education renewal requirement. Minor 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 5, at page 648 on November 1, 2007.

**Summary of the Evidence and Information Submitted**

No written or verbal comments were received.

**Findings of Fact**

The Board finds that adoption of the proposed amendment is necessary to clarify the requirements of and time limits on late renewal.

**Decision and Effective Date**

The Board hereby adopts the proposed amendment to the regulations to be effective 10 days following final publication of this order in the *Register of Regulations*.

**Text and Citation**

The text of the final regulations is attached hereto as Exhibit A and is formatted to show the amendment. A non-marked up version of the regulations as amended is attached hereto as Exhibit B.

**IT IS SO ORDERED** this 16<sup>th</sup> day of January 2008, by the **Delaware Board of Pharmacy**.

Don Holst, R.Ph., President  
Angelo Chiari, R.Ph.  
Howard Simon, R.Ph.  
David Bonar

Sebastian Hamilton, R.Ph., Vice Pres.  
Sandra Robinson, R.Ph.  
Carolyn Calio  
Michael Hertzfeld

**\*Please note that no changes were made to the regulation as originally proposed and published in the November 2007 issue of the *Register* at page 648 (11 DE Reg. 648). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

**[http://regulations.delaware.gov/register/february2008/final/11 DE Reg 1065 02-01-08.htm](http://regulations.delaware.gov/register/february2008/final/11%20DE%20Reg%201065%2002-01-08.htm)**

**DIVISION OF PROFESSIONAL REGULATION**

**3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals**  
Statutory Authority: 24 Delaware Code, Section 3006(a)(1) (24 **Del.C.** §3006(a)(1))  
**24 DE Admin. Code 3000**

**ORDER**

The Board of Mental Health and Chemical Dependency Professionals ("Board") was established to "protect the general public... from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered." 24 **Del.C.** §3001(a). Toward that end, the Board is required to "maintain minimum standards of licensee competency and to maintain certain standards in the delivery of services to the public." 24 **Del.C.** §3001(b). One way the Board meets its obligation is by developing "standards assuring professional competence." *Id.* The Board is authorized by 24 **Del.C.** §3006(a)(1) to make, adopt, amend, and repeal regulations as necessary to effectuate its mandates.

Pursuant to 24 **Del.C.** §3006(a)(1), the Board proposed amendments to its regulations in section **4.0 Licensure for Chemical Dependency Professionals**. By these amendments, the Board establishes the standards for licensure of Chemical Dependency Professionals. Other minor changes are also included that affect various sections of the regulations. As well, grammatical, typographic, and stylistic changes are included throughout the regulations.

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 5, at page 653 on November 1, 2007.

## Summary of the Evidence and Information Submitted

No written or verbal comments were received.

## Findings of Fact

The Board finds that adoption of the proposed amendment is necessary to establish the standards for licensure of Chemical Dependency Professionals and to improve the internal consistency of its regulations.

## Decision and Effective Date

The Board hereby adopts the proposed amendment to the regulations to be effective 10 days following final publication of this order in the *Register of Regulations*.

## Text and Citation

The text of the final regulations is attached hereto as Exhibit A and is formatted to show the amendment. A non-marked up version of the regulations as amended is attached hereto as Exhibit B.

**IT IS SO ORDERED** this 23<sup>rd</sup> day of January 2008, by the **Delaware Board of Mental Health and Chemical Dependency Professionals**.

**Dr. William Northey**, President  
**Daniel Cherneski**, Vice-President  
**Russell Buskirk**  
**Maynard Gregory**

**Dr. James Walsh**  
**Mary Krieger**  
**Winnie Lewis**  
**William Gale**

\*Please note that no changes were made to the regulation as originally proposed and published in the November 2007 issue of the *Register* at page 653 (11 DE Reg. 653). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/february2008/final/11 DE Reg 1066 02-01-08.htm>

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## DEPARTMENT OF TRANSPORTATION DIVISION OF TECHNOLOGY AND SUPPORT SERVICES

Statutory Authority: 17 Delaware Code Section 132(e) and 29 Delaware Code Section 8404(8)  
(17 Del.C. §132(e), 29 Del.C. §8404(8))

## ORDER

### 2501 External Equal Employment Opportunity Complaint Procedure

As authorized under 17 **Delaware Code** Section 132 (e) and 29 **Delaware Code** Section 8404(8), the Delaware Department of Transportation (DelDOT) sought to adopt an external equal employment opportunity complaint procedure for the programs comprising DelDOT's External EEO Programs.

The proposed procedures were previously advertised in the State *Register of Regulations*, at 11 DE Reg. 731, 12/01/2007. No written public comments were received.

## Summary of the Evidence and Information Submitted

There are no changes proposed for these procedures.

**Findings of Fact**

Based on the record in this docket, I make the following findings of fact:

1. The proposed procedures for handling external equal employment opportunity complaints are useful and proper, and have been vetted through the comment period process required under the Administrative Procedures Act.
2. The adoption of these proposed procedures is in the best interests of the State of Delaware.

**Decision and Effective Date**

Based on the provisions of Delaware law and the record in this docket, I hereby adopt the amended Delaware Standards and Regulations, 2501 External Equal Employment Opportunity Complaint Procedure, as set forth in the version attached hereto, to be effective on February 21, 2008.

**IT IS SO ORDERED** this 24<sup>th</sup> day of January, 2008.

Carolann Wicks, Secretary  
Delaware Department of Transportation

**\*Please note that no changes were made to the regulation as originally proposed and published in the December 2007 issue of the *Register* at page 731 (11 DE Reg. 731). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

**<http://regulations.delaware.gov/register/february2008/final/11 DE Reg 1067 02-01-08.htm>**

STATE OF DELAWARE  
**EXECUTIVE DEPARTMENT**

**EXECUTIVE ORDER  
NUMBER ONE HUNDRED FIVE**

**RE: Amendment To Executive Order Number One Hundred Two**

**WHEREAS**, the Delaware Information Assurance Task Force (the "Task Force") was created by Executive Order Number 102; and

**WHEREAS**, the Task Force is responsible for making recommendations concerning the development of information assurance products and services in Delaware by December 15, 2007; and

**WHEREAS**, it is important to have further study before the Task Force makes its recommendations,

**NOW, THEREFORE, I, RUTH ANN MINNER**, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order that: Paragraph 5 of Executive Order Number 102, dated September 20, 2007, is hereby deleted in its entirety, and replaced with the following:

"5. The Task Force shall submit its recommendations to the Governor, the Speaker of the House and the President Pro Tempore of the Senate by January 31, 2008."

Approved this 13<sup>th</sup> day of December, 2007.

Ruth Ann Minner,  
Governor

ATTEST:  
Harriet Smith Windsor, Secretary of State



**GOVERNOR'S APPOINTMENTS**

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
2-1-1 Advisory Board	The Honorable Patricia M. Blevins	12/11/2009
	Mr. Milton Delgado	12/11/2009
	Ms. Joanne C. Finnigan	12/11/2009
	The Honorable Thomas M. Jarrett	12/11/2009
	Ms. Patricia L. Maichle	12/11/2009
	Ms. Elizabeth Y. Olsen	12/11/2009
	Mr. Brian L. Posey	12/11/2009
	Mr. Richard C. Short	12/11/2009
Advisory Council on Planning Coordination	The Honorable John C. Carney	11/13/2010
	Ms. Bernice M. Edwards	11/13/2010
	Mr. Francis R. Julian	01/11/2008
	Mr. Paul H. Morrill, Jr.	11/13/2010
	Mr. Marty Ross	11/13/2010
Advisory Council to the Division of Substance Abuse and Mental Health	Ms. Brenda J. Phillips	01/07/2008
Alderman, City of Newark	Ms. Lisa R. Hatfield	At the Pleasure of the Governor
Appalachian State Low-Level Radioactive Waste Commission	Ms. K. Frieda Fisher-Tyler	12/04/2011
	The Honorable Vincent P. Meconi	12/04/2011
Architectural Accessibility Board	Mr. Wayne C. Carter	10/26/2011
Authority on Radiation Protection	Robert N. Arm, DMD	10/12/2010
	Ms. Robin L. Elliott	10/12/2010
	Ms. LaRay A. Fox	10/12/2010
	Robert W. Frelick, M.D.	10/12/2010
	Mr. David H. Irwin	10/12/2010
	Mr. Costas S. Krikelis	10/12/2010
	Mr. Sunjay A. Shah	10/12/2010
	Rajeshwari Subramanyam, Ph.D.	10/12/2010
Board of Accountancy	Mr. David C. Doane	08/25/2008
	Mr. Matthew M. Kent	04/06/2010
Board of Architects	Ms. Arden M. Bardol	10/19/2010
	Mr. Kenneth M. Freemark, Jr.	10/19/2010
	Ms. Sandra C. Mifflin	10/19/2010
Board of Chiropractic	Christopher W. Baldt, D.C.	11/07/2010
	Arthur W. Travis, D.C.	10/19/2010

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# GOVERNOR'S APPOINTMENTS

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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Board of Clinical Social Work Examiners	Fran K. Franklin, Ph.D.	10/26/2010
	Captain John E. Horsman	10/19/2010
	Ms. Diane M. Postell	10/19/2010
	Ms. Barbara M. Reed	11/07/2010
Board of Cosmetology and Barbering	Ms. Cecilia A. Jones	10/19/2010
	Ms. Madelyn M. Nellius	10/19/2010
	Ms. Mariana T. Pini	10/19/2010
	Mr. Richard Shultie, Jr.	10/19/2010
Board of Dental Examiners	Ms. Laureen J. Coyle	10/19/2010
	Blair Jones, DMD	10/19/2010
Board of Examiners of Nursing Home Administrators	Ms. Carolyn R. Cotter	10/19/2010
	Ms. Eileen K. Hanhauser	10/19/2010
	Ms. Fatima K. Woodard	10/19/2010
Board of Examiners of Private Investigators & Private Security Agencies	Mr. Michael D. Connelly	10/10/2010
	Ms. Kelly R. Jansen	10/13/2010
Board of Examiners of Psychologists	Ms. Eleanor G. Allione	10/12/2010
Board of Examiners in Optometry	Ms. Prameela D. Kaza	10/19/2010
Board of Geologists	Ms. Lorene J. Athey	07/01/2008
Board of Massage and Bodywork	Mr. Gordon L. Gelley	10/12/2010
Board of Medical Practice	Ray A. Blackwell, M.D.	10/19/2010
	Ms. Sharon S. Jones	10/19/2010
	Karl W. McIntosh, M.D.	10/19/2010
	Mr. Raymond L. Moore, Sr.	10/19/2010
Board of Nursing	Ms. Gwelliam Hines	10/19/2010
	Ms. Barbara J. Peterson	10/19/2010
	Mr. Delphos E. Price, Jr.	10/19/2010
	Ms. Bonnie Ullman	10/19/2010
Board of Occupational Therapy Practice	Ms. Wendy R. Mears	10/12/2010
	Ms. Rosemarie S. Vanderhoogt	10/12/2010
Board of Pharmacy	Mr. Michael F. Hertzfeld	10/19/2010
	Mr. Howard I. Simon	10/19/2010
Board of Pilot Commissioners	The Honorable David D. Brady	10/19/2012

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# GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Board of Plumbing, Heating, Ventilation, Air Conditioning & Refrigeration Examiners	Mr. Dean W. Sherman	10/22/2010
Board of Podiatry	Christopher L. Savage, D.P.M.	11/07/2010
Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers	Ms. Regina A. Bilton Ms. Carol A. Guilbert	11/07/2010 11/07/2010
Board of Veterinary Medicine	Ms. Rachel E. Longfellow	10/19/2009
Cherry Island Landfill Citizens Advisory Council	Mr. Robert P. McWilliams	At the Pleasure of the Governor
Child Death, Near Death and Stillbirth Review Commission	Ms. Leslie J. Newman	10/26/2010
Child Placement Review Board Executive Committee	Ms. Barbara H. Blair Mr. Ronney J. Bythwood	10/26/2010 10/26/2010
Child Placement Review Board - Kent	Mr. Gary A. Breakwell Ms. Cindy E. Montejo	10/26/2010 11/16/2010
Child Placement Review Board - New Castle	Ms. Caroline N. Bither Ms. Sandra M. Countley Ms. Phyllis N. Faulkner Ms. Kellie Fresolone Ms. Bonita E. Herring Mr. Lou Himelreich Ms. Elma E. Jackson Ms. Karla B. Jensen Ms. Carolyn Karney	10/12/2010 10/12/2010 10/12/2010 10/12/2010 10/12/2010 10/12/2010 10/12/2010 10/12/2010 10/12/2010
Child Placement Review Board - Sussex	Mr. John M. Norton	10/26/2010
Child Poverty Task Force	Mr. Brian S. Olson Mr. John P. Polidori The Honorable Teresa L. Schooley Ms. Debra Singletary	At the Pleasure of the Governor At the Pleasure of the Governor At the Pleasure of the Governor At the Pleasure of the Governor

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# GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Commission for the Purchase of Products & Services of the Blind and Other Severely Handicapped Individuals	Mr. Thomas A Burns	10/26/2011
	Mr. Roger M. Levy	10/26/2011
	Mr. Dominic E. Scatasti, Sr.	10/26/2011
Commission on Adult Entertainment Establishments	Maisha D. Britt, Ph.D.	07/05/2009
	Mr. Richard J. Chambers	10/12/2010
	Mr. Curtis E. Larrimore	10/12/2010
Community Involvement Advisory Council	The Honorable Bethany Hall-Long	10/26/2010
	Ms. Pamela Meitner	10/26/2010
	Ms. La Vaida J. Owens-White	10/26/2010
	Mr. Harold L. Truxon	10/26/2010
Council of Delaware Association of Professional Engineers	Thomas P. McGonigle	10/26/2011
Council on Archives	Mr. Thomas J. Chapman	10/26/2010
	Mr. E. Michael DiPaolo	10/26/2010
	Ms. Joan R. Hoge	10/26/2010
	Mr. C. Russell McCabe, II	10/26/2010
Council on Forestry	Mr. Joseph C. Wick	10/12/2010
Council on Housing	Mr. Hugh D. Leahy, Jr.	09/05/2008
	Mr. Vincent M. White	10/26/2010
Council on Manufactured Housing	Ms. Alma T. Bringham	02/28/2009
	Mr. James R. Grygiel	10/26/2009
Council on Real Estate Appraisers	Mr. Stephen E. Simmons	10/12/2008
Council on Services for Agings and Adults with Physical Disabilities	Ms. Esther B. Brennan	10/12/2010
	Ms. Elsie A. Hawthorne	10/12/2010
	Mr. William B. Payne	10/12/2010
Council on Social Services	Ms. Jessica A. Fullman	10/12/2010
Council on the Blind	Ms. Audrey M. Markel	11/13/2010
	Ms. Margaret McBride	10/26/2010
	Mr. Douglas Salter	10/26/2010
Council on Transportation	Mr. Walter E. Kee, Jr.	10/26/2010
	Mr. Weston E. Nellius	10/26/2010
	Ms. Barbara Y. Washam	10/26/2010

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# GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Deferred Compensation Council	Mr. Oliver J. Gumbs	11/13/2010
Delaware Agricultural Lands Preservation Foundation	Mr. Lynnwood L. Davenport	10/26/2010
Delaware Bicycle Council	Mr. Thomas Hartley Mr. Michael L. Krumrine Ms. Lisa S. Lasher Ms. Amy B. Wilburn Mr. Jesse E. Kitson The Honorable Barry B. Newstadt Mr. Henry L. Smith	10/26/2010 01/08/2010 10/26/2010 10/26/2010 11/08/2011 11/08/2011 01/11/2009
Delaware Commission for Women	Sujata K. Bhatia, M.D. Ms. Sherese B. Carr Ms. Rebecca C. Faber Theresa Del Tufo, Ph.D. Ms. Amanda Leaming Ms. Deborah W. Neff Ms. Sandra J. Peterson Ms. Gia Raines Ms. Marjorie D. Ressler	10/26/2010 10/26/2010 10/26/2010 10/26/2010 10/26/2010 10/26/2010 10/26/2010 04/12/2008 10/26/2010
Delaware Commission of Veterans' Affairs	Mr. Robert P. Corsa Mr. Maurice G. Evans Mr. John A. Endres Mr. Jesse E. Kitson The Honorable Barry B. Newstadt Mr. Henry L. Smith	11/08/2011 11/08/2011 11/08/2011 11/08/2011 11/08/2011 01/11/2009
Delaware Commission on Italian Heritage and Culture	Mr. Robert E. Buccini	11/16/2010
Delaware Emergency Medical Services Oversight Council	Mr. William G. Bush, IV	At the Pleasure of the Governor
Delaware Health Care Commission	Mr. A. Richard Heffron	12/17/2011
Delaware Health Resources Board	Mr. Thomas E. Mulhern Ms. Sarah K. Noonan Ms. Suzanne Raab-Long Ms. Kathleen E. Russell Ms. Mary E. Torsch	10/26/2010 10/26/2010 11/13/2010 08/30/2008 10/26/2010
Delaware Heritage Commission	Mr. Robert L. Byrd	10/12/2010

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# GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Delaware Heritage Commission	Mr. Richard B. Carter	10/12/2010
	Mr. Daniel F. Harkins	10/12/2010
	Ms. Reba R. Hollingsworth	10/12/2010
	Mr. Francis A. Ianni	10/12/2010
	Mr. Walter E. Kee, Jr.	10/12/2010
	Jonathan S. Russ, Ph.D.	10/12/2010
	Robert M. Stark, Ph.D.	10/12/2010
	Mr. Christian D. Wright	10/12/2010
Delaware Information Assurance Task Force	Mr. John L. Olsen	At the Pleasure of the Governor
	Mr. John Puckett	At the Pleasure of the Governor
	Mr. J. Breckenridge Smith	At the Pleasure of the Governor
Delaware Manufactured Home Relocation Authority	Ms. Teresa Rock	06/30/2013
Delaware Mentoring Council	Ms. Phyllis B. Collins	At the Pleasure of the Governor
	Mr. David C. Ring, Jr.	At the Pleasure of the Governor
Delaware Natural Areas Advisory Council	Ms. Jennifer A. Adkins	11/27/2011
	Mr. Carl. J. Solberg	11/27/2011
	Mr. John L. Williams	11/27/2011
Delaware Nursing Home Residents Quality Assurance Commission	The Honorable Joseph G. DiPinto	10/26/2010
	Mr. Walter E. Ferris, Jr.	10/26/2010
Delaware Open Space Council	Mr. Harvey G. Marvel, Jr.	11/13/2011
Delaware Performing Arts Center, Inc., Board of Directors	Mr. Robart V. A. Harra, Jr.	10/26/2012
	Ms. Denise Hindes	10/26/2012
Delaware State Arts Council	Ms. Pamela S. Bell	10/12/2009
	Mr. Steven Boyden	10/12/2010
	Ms. Lise M. Leary	10/12/2010
	Ms. Elisabeth S. Poole	10/12/2009
	Allen Sessoms, Ph.D.	10/12/2010
	Ms. Ruth S. Sokolowski	10/12/2009
	Ms. Joyce H. Stoner	10/12/2010
Ms. Deborah Wicks	10/12/2010	

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# GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Delaware Statewide Interoperability Executive Council	The Honorable Robert A. Mooney	At the Pleasure of the Governor
	Chief Michael J. Capriglione	At the Pleasure of the Governor
	Ms. Melinda L. Ciccia	At the Pleasure of the Governor
	Mr. James L. Cabbage	At the Pleasure of the Governor
	Mr. William R. Dempsey, Jr.	At the Pleasure of the Governor
	Ms. Karen N. Eller	At the Pleasure of the Governor
	Mr. George B. Giles	At the Pleasure of the Governor
	Ms. Julie D. Johnson	At the Pleasure of the Governor
	Mr. Kevin S. Neilson	At the Pleasure of the Governor
	The Honorable Terry L. Pepper	At the Pleasure of the Governor
Dental Hygiene Advisory Committee	Ms. Debora L. Mause	10/19/2010
	Ms. Karen L. Jones	11/13/2013
Developmental Disabilities Council	Ms. Karen L. Jones	11/13/2013
Dover/Kent Metropolitan Planning Organization, PAC	Mr. Horace W. Cook	10/26/2009
Environmental Appeals Board	Mr. Dean E. Holden	11/27/2010
	Stanley Tocker, Ph.D.	11/27/2010
Family Court, New Castle County, Judge	The Honorable Aida Waserstein	11/27/2019
Farmland Evaluation Advisory Committee	Mr. James H. Baxter, Jr.	07/01/2010
Governor's Advisory Council for Exceptional Citizens	Ms. Barbara R. Riley	At the Pleasure of the Governor
Governor's Commission on Community and Volunteer Service	Ms. Cynthia V. Andrews	10/12/2010
	Ms. Evangeline E. Austin	10/12/2010
	The Honorable Gerald L. Brady	10/12/2010

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# GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Governor's Commission on Community and Volunteer Service	Ms. Bernice M. Edwards	10/15/2010
	Ms. Joyce E. Edwards	10/12/2010
	Ms. Regina Greenwald	10/12/2010
	Mr. Robert P. Hall	10/12/2010
	Ms. Patricia A. Jimenez	10/12/2010
	Mr. Donald L. Kjelleren	10/12/2010
	Mr. George B. Meldrum, Jr.	10/12/2010
	Mr. Timothy D. Soper	10/12/2010
	Mr. Gregory C. Sweeney	10/12/2010
Mr. Paul R. Wilkinson	10/12/2010	
Governor's Commission on Community-Based Alternatives for Individuals with Disabilities	Timothy F. Brooks, Ed.D.	At the Pleasure of the Governor
	Mr. James J. Lafferty	At the Pleasure of the Governor
	Mr. Peter J. Thedinga	At the Pleasure of the Governor
Governor's Consortium on Hispanic Affairs	Mr. Rocco R. Duran	At the Pleasure of the Governor
Governor's Council on Hispanic Affairs	Ms. Caridad L. Alonso	10/26/2010
	Ms. Nancy Bastidas	10/26/2010
	Mr. Milton Delgado	10/26/2010
	Ms. Yvette Santiago	10/26/2010
	Ms. Maria M. Matos	10/26/2010
	The Honorable Joseph E. Miro	10/26/2010
	Ms. Carmen M. Rivera	10/26/2010
	Ms. Maria T. Villot	11/13/2010
Governor's Council on Lifestyles & Fitness	Darrin W. Anderson, Sr., Ph.D.	10/26/2009
	Lisa C. Barkley, M.D.	10/16/2009
	Mr. Paul Schweizer	10/17/2009
	Ms. Susan R. Weimer	10/26/2009
Governor's Energy Advisory Council	Mr. John W. Andrew	11/13/2010
	Mr. Richard A. Chambers	10/12/2010
	Mr. David R. Hodas	11/13/2010
	Mr. Seth Ross	11/13/2010
	Mr. Gary Stockbridge	11/13/2010
Health Facilities Authority	Mr. George W. Forbes, III	10/26/2012
	Mr. William G. Neaton	10/26/2012

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# GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Healthy Mother and Infant Consortium	Ms. Tiffany D. Chalk	At the Pleasure of the Governor
Human Relations Commission	Ms. Katharine V. Cropper	10/26/2011
	Ms. Bernice M. Edwards	10/26/2011
	Mr. Ralph A. Figueroa	10/26/2011
	Ms. Marian L. Harris	10/26/2011
	Ms. Shirley C. Horowitz	10/26/2011
	Mr. Douglas T. James	10/26/2011
	Ms. Prameela D. Kaza	02/26/2011
	Ms. Nancy A. Maihoff	10/26/2011
	Mr. Eli Ramos	04/12/2009
Interagency Coordinating Council	Ms. Marie-Anne E. Aghazadian	11/13/2010
	Billie L. Friedland, Ed.D.	10/12/2010
	Mr. Dennis L. Rubino	10/12/2010
Judicial Nominating Commission	Mr. Irwin G. Burton	10/26/2010
	Ms. Norma Lee Derrickson	10/26/2010
	Ms. Elizabeth McGeever	10/26/2010
	Ms. Mary L. McKenzie-Dantzler	10/26/2010
New Castle Vocational-Technical Board of Education	Ms. Yvette Santiago	10/10/2014
Newark Housing Authority	Mr. Lloyd Harris	10/23/2008
Organ and Tissue Donor Awareness Board	Ms. Trisha L. Queen-Barr	10/26/2010
Parks and Recreation Council	Mr. Ronald A. Breeding	11/13/2010
	Mr. Ronald D. Mears	11/13/2010
Pesticide Advisory Committee	Mr. David Allen Chorman	10/12/2010
	Mr. Jeffrey G. Hastings	10/12/2010
	Gerald Llewellyn, Ph.D.	10/12/2010
Recycling Public Advisory Council	Mr. Paul R. Bickhart	10/26/2010
Sex Offender Management Board	Mr. Marc V. Felizzi	10/23/2011
	Ms. Pauline E. Funk	10/23/2011
	Mr. Robert D. Gingrich	10/23/2011
	Ms. Valerie C. Marek	11/01/2011
	Ms. Cheryl W. Will	10/23/2011
State Committee of Dietetics/Nutrition	Ms. Sharon B. Collison	10/19/2010

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# GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
State Committee of Dietetics/Nutrition	Ms. Patricia A. Hawkins	10/19/2010
State Election Commissioner	The Honorable M. Elaine Manlove	11/28/2011
State Emergency Response Commission	Mr. Ralph T. Baker Mr. Alfred F. Johnson, Jr. Ms. Pamela Meitner Mr. John R. Peirce	10/26/2009 10/26/2009 10/26/2009 10/26/2009
State Employee Benefits Advisory Council	Ms. Meaghan C. Brennan	11/16/2010
State Examining Board of Physical Therapists and Athletic Trainers	Ms. Kristen C. Burris Ms. Denise A. Smith Mr. John J. Smith	10/19/2010 10/19/2010 11/10/2010
State Fire Prevention Commission	Mr. Douglas S. Murray Mr. David J. Roberts	10/10/2013 10/10/2013
State Rehabilitation Council	Mr. Steven Huber	10/12/2010
Statewide Labor Management Committee	Mr. Charles T. Neal	At the Pleasure of the Governor
Tourism Advisory Board	Mr. George J. Fiorile Ms. Linda M. Parkowski Mr. Xavier A Teixido	10/26/2010 10/26/2010 10/26/2010
Unemployment Compensation Advisory Council	Mr. Samuel E. Lathem	11/13/2010
Unemployment Insurance Appeal Board	Ms. Della D. Wells-Gates	05/01/2013
Vocational Rehabilitation Advisory Council for DVI	Ms. Lisa D.V. Cuff Ms. Kathleen B. Ginder-Vogel Ms. Pamela E. Kuttruff Ms. Lexie S. McFassel Ms. Beth A. Mineo Mr. Blake E. Roberts	06/06/2009 11/13/2010 10/26/2010 10/24/2008 10/26/2010 10/26/2010
Violence Against Women Act Implementation Committee	The Honorable Richard S. Gebelein	At the Pleasure of the Governor
Worker's Compensation Advisory Council	Mr. Samuel E. Lathem The Honorable Robert I. Marshall The Honorable William A. Oberle	10/26/2010 10/26/2010 10/26/2010

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## Revision to the Delaware State Implementation Plan (SIP) for Attainment of the PM<sub>2.5</sub> Annual National Ambient Air Quality Standard

January 3, 2008

### Executive Summary

In April 2005 the Environmental Protection Agency (EPA) designated 126 areas of the country as “non-attainment” under the annual fine particle (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS). Among those non-attainment areas is the Philadelphia-Wilmington, PA-NJ-DE Non-Attainment Area (NAA). This NAA includes one county in Delaware, five counties in southeastern Pennsylvania, and three counties in New Jersey.<sup>1</sup> According to the federal Clean Air Act (CCA) and the EPA Implementation Rule<sup>2</sup>, this entire NAA must attain compliance with the annual PM<sub>2.5</sub> NAAQS by 2010.

Particle pollution, especially fine particles, contains microscopic solids or liquid droplets that are so small that they can get deep into the lungs and cause serious health problems. Numerous scientific studies have linked particle pollution exposure to a variety of problems, including:

- increased respiratory symptoms, such as irritation of the airways, coughing, or difficulty breathing;
- decreased lung function;
- aggravated asthma;
- development of chronic bronchitis;
- irregular heartbeat;
- non-fatal heart attacks and premature death in people with heart or lung disease.

People with heart or lung diseases, children and older adults are the most likely to be affected by exposure to particle pollution. However, even healthy individuals may experience temporary symptoms from exposure to elevated levels of particle pollution.

In addition to these public health impacts, fine particles are the major cause of reduced visibility in parts of the United States, including many of our treasured national parks and wilderness areas. Also, particles are transported over long distances by wind and then settle on the ground or water. The effects of this settling include making lakes and streams acidic, changing the nutrient balance in coastal waters and large river basins, depleting the nutrients in soil, damaging sensitive forests and farm crops, and affecting the diversity of ecosystems.

In response to the April 2005 non-attainment designation Delaware has developed this State Implementation Plan (SIP) revision. This SIP:

- Demonstrates that with all existing and proposed controls, all of Delaware’s PM<sub>2.5</sub> monitors will show attainment in 2009.
- Demonstrates that the entire Philadelphia-Wilmington, PA-NJ-DE non-attainment area will attain the annual PM<sub>2.5</sub> NAAQS in 2009.
- Establishes Delaware’s 2009 mobile source budgets for transportation conformity determinations under Regulation No. 1132, Transportation Conformity.
- Treats emission reduction credits (ERCs) banked under Regulation No. 34, Emissions Banking and Trading Program, as “emitted.” As such, the future use of these credits is consistent with, and will not interfere with any calculation or provision of this SIP.

**\*Please Note: Due to the size of the General Notice, it is not being published here. A copy of the notice is available at:**

[http://regulations.delaware.gov/register/february2008/general/11\\_DE\\_Reg\\_1080\\_02-01-08.htm](http://regulations.delaware.gov/register/february2008/general/11_DE_Reg_1080_02-01-08.htm)

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1. See Figure 1-1.

2. Environmental Protection Agency, Clean Air Fine Particle Implementation Rule, 40 CFR Part 51, March 29, 2007.

**DEPARTMENT OF AGRICULTURE  
THOROUGHBRED RACING COMMISSION  
NOTICE OF PUBLIC HEARING**

**1001 Thoroughbred Racing Rules and Regulations**

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

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

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

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**DEPARTMENT OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, February 14, 2008 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF INSURANCE  
NOTICE OF PUBLIC COMMENT PERIOD**

**1003 Credit for Reinsurance [Formerly Regulation 79]**

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 1003 relating to credit for reinsurance. The docket number for this proposed amendment is 609.

The purpose of the proposed amended regulation is to require the use of ICC Publication No. 600LF ("UCP 600") as a replacement for UCP 500 and then all future ICC updates to 600. The text of the proposed amendment is reproduced in the February 2008 edition of the Delaware *Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday March 3, 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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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**Delaware Gaming Control Board**  
**NOTICE OF PUBLIC COMMENT PERIOD**

**Gaming Application Rules**

**A. Type of Regulatory Action Required**

Amendment to Existing Regulation

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

The Delaware Gaming Control Board seeks to amend 24 **DE Admin. Code** 401-404 relating to timely filing of applications for licensure and to clarify the meaning of terms used in the regulations.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before March 3, 2008 to: Delaware Gaming Control Board, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, Delaware 19904. A copy of this regulation is available from the above address or may be viewed at the Division of Professional Regulation business office.

**C. Summary of Proposal**

Regulations currently provide that bingo games may not be held more often than once per week. The Board proposes to define the term "week" so that applicants will be able to determine when they may seek a license to conduct bingo.

The Board also seeks to require that persons submit applications for all bingo and charitable gambling events in sufficient time to allow the Board to consider the applications at two Board meetings if the Board determines that to be necessary.

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**DIVISION OF PROFESSIONAL REGULATION**  
**2930 Council on Real Estate Appraisers**  
**NOTICE OF PUBLIC HEARING**

Pursuant to 24 **Del.C.** § 4006(a)(1), the Council on Real Estate Appraisers has proposed a number of amendments to its rules and regulations. Rule 2.3.1.1, pertaining to continuing education, is amended to correct a typographical error in the most recent amendment to the Rules. Amended Rule 2.3.11 states that no continuing education is required for fewer than 6 months of licensure, not 16 months. A new Rule 2.5.10 is added to specify that at least 14 hours of continuing education per licensure period must be taken in a traditional classroom setting, including the mandatory 7 hour USPAP update course.

Rule 4.0 has been amended to clarify that, after January 1, 2008, an appraiser supervising a trainee must hold a certified license. Rule 4.0 has further been amended to require that licensees provide the Council with updated information regarding any change in e-mail address, telephone number, employer or supervisor. The amended Rule 4.0 also requires that licensees carry their pocket cards issued by the Council when performing appraisals and that appraiser trainees display their licenses at their supervisor's place of business.

Rule 4.2.4 has been amended to specify that any person who has been subject to disciplinary action within the preceding three years shall not be eligible to supervise trainees for three years after the completion of any sanction. Rule 4.3.2.3 has been amended to specify the requirements for a trainee to receive experience log credits.

Finally, Rule 11.0 has been amended to add additional crimes substantially related to the practice of real estate appraisal.

A public hearing will be held on March 18, 2008 at 9:45 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Council on Real Estate Appraisers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit

written comments may forward these to the Council at the above address. The final date to receive written comments will be at the public hearing.

The Council will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

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**DIVISION OF PROFESSIONAL REGULATION**  
**Controlled Substance Committee**  
**NOTICE OF PUBLIC HEARING**

**Uniform Controlled Substances Act Regulations**

Consistent with a recent statutory amendment which relocated the Office of Controlled Substances to the Division of Professional Regulation, Department of State, the Delaware Controlled Substance Committee, in accordance with 29 **Del.C.** Chapter 101 and 16 **Del.C.** §4731, proposes amendments to its controlled substance regulations.

A public hearing is scheduled for Tuesday, March 25, 2008 at 1:00 p.m. in the Conference Room of the Medical Examiners Office, 200 South Adams Street, Wilmington, DE 19801. The Controlled Substance Committee will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Committee care of David Dryden, Division of Professional Regulation, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. 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 Dryden at the above address or by calling (302) 677-7313.

The Committee will consider promulgating the proposed regulations immediately following the public hearing.