
Delaware Register of Regulations

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Final

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Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before January 15, 2009.

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the *Delaware Register of Regulations* is \$135.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

DEPARTMENT OF AGRICULTURE

DIVISION OF ANIMAL HEALTH AND FOOD PRODUCTS INSPECTION

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

3 **DE Admin. Code** 304

PUBLIC NOTICE

The Delaware Department of Agriculture repropose these regulations in accordance with the General Assembly's mandate to enforce Chapter 72 of Title 3 of the **Delaware Code** and to specify the means by which citizens of the State of Delaware may obtain a permit from the Delaware Department of Agriculture to possess, sell, or exhibit, exotic animals within the state.

These proposed regulations will be considered at a public hearing scheduled for February 20, 2009 at 10:00 a.m. at the Department of Agriculture Building, Conference Room 1.

The Delaware Department of Agriculture solicits written comments from the public concerning these proposed regulations. Any such comments should be submitted to the Assistant State Veterinarian, Caroline Hughes, VMD, at Delaware Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901 on or before March 2, 2009. Copies of the proposed regulations are available on request.

304 Exotic Animal Regulations

1.0 Authority

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

2.0 Purpose

These regulations govern the permitting process, possession, sale, rehabilitation and exhibition of exotic animals, i.e., live wild mammals or hybrids of wild mammals or live reptiles not native to or generally found in the State of Delaware. The State Veterinarian or her or his designee shall have the

authority to administer these regulations and shall be solely responsible for making the determinations required herein.

3.0 Definitions

"Accurate Description of the Exotic" means the name, residence, age, gender, markings/color, tattoo, identification tag, microchip and/ or other distinguishing characteristics of the exotic together with the name and residence of the owner or custodian.

"Adopter" means a person who becomes an owner or custodian of an exotic animal.

"Animal Attack Protocol" means a written document that outlines an owner's or custodian's plan should the exotic animal bite, injure or attack a human or animal.

"Carnivore" means a flesh-eating mammal, which possesses teeth and claws adapted for attacking and devouring prey.

"Class of Exotic" means each of the following groups constitute a separate and distinct class: Carnivore, Herbivore, Hybrid of a wild animal, Omnivore, Primate and Reptile.

"Custodian" means a person who possesses or cares for an exotic animal. A custodian has immediate charge and control of the exotic.

"Department" means the Delaware Department of Agriculture.

"Emergency Evacuation Plan" means a written document that outlines the actions the owner or custodian plans to implement in an emergency or ordered departure in order to provide for the exotic's welfare and the public's health and safety.

"Exhibitor" means a person who displays exotic animals to the public.

"Exotic" means a live wild mammal or hybrid of a wild mammal or a live reptile not native to or generally found in Delaware as determined by the Delaware Department of Natural Resources and Environmental Control (DNREC) and the Division of Fish and Wildlife.

"Herbivore" means a mammal that feeds exclusively on vegetable matter.

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

"Nuisance" means an act or the threat of an action that unreasonably interferes with the health, safety or property rights of the community at large.

"Omnivore" means an animal which eats any sort of food, both animal and vegetable in origin.

"Owner" means a person who owns an exotic animal. An owner has or holds the exotic animal as property.

"Permit Holder" means an owner or custodian of an exotic animal who holds an applicable exotic animal permit.

"Person" means any individual, partnership, corporation, trade or professional association, firm, limited liability company, joint venture, association, trust, estate or any other legal entity, and any officer, member, shareholder, director, employee, agent or representative thereof.

"Pet" means an exotic animal that is kept for interest, companionship and amusement and is associated with a household.

"Primate" means a mammal that belongs to the highest order of mammals including monkeys and lemurs.

"Purchaser" means a person who becomes an owner of an exotic animal by exchange of cash, goods or animals.

"Rehabilitator" means a person who restores an exotic animal to good condition by providing short term care.

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

"Seller" means a person who holds a Sales permit and is engaged in the sale or trade of exotic animals for cash, goods, or animals.

"Secretary" means the Secretary of the Delaware Department of Agriculture or his or her designee.

"State Veterinarian" means the State Veterinarian of the Delaware Department of Agriculture, or his or her designee.

"USDA" means the United States Department of Agriculture.

"Valid Identification" (Valid ID) means a photo identification such as Delaware driver's license, State of Delaware Identification card, or a Passport that includes the name and address of the purchaser/adopter of the exotic animal.

"Welfare" means that the owner or custodian provides for the health and well-being and safeguards the physiological requirements of the exotic animal.

"Zoo" means a park or institution accredited by the Association of Zoos and Aquariums (AZA) (or its designated successor organization) where: exotics are primarily kept in cages or enclosures for people to come and see; exotics are exhibited outside of the park to the public for educational purposes; and exotics are bred and studied by scientists.

4.0 The State Veterinarian Powers; Duties

- 4.1 The State Veterinarian is responsible for administering and enforcing these regulations. The State Veterinarian has the power to grant, deny, or revoke permits to own or have custody of exotics in this state.
- 4.2 The State Veterinarian is vested with the power to designate agencies to seize and when warranted to humanely destroy an exotic if necessary to protect the public health, safety, or welfare and to protect the health of other animals. The State Veterinarian or his/her agent can humanely destroy an exotic without first notifying the exotic animal's owner or custodian.
- 4.3 The State Veterinarian will maintain a list of exotic animals that are exempt from the permitting requirement. This list will be available to the public and is subject to change in keeping with current animal and human health and safety concerns.
- 4.4 The State Veterinarian will maintain a list of exotic animals in the Herbivore and Reptile Classes that are prohibited from being bred by Sales Permit Holders. This list will be available to the public and is subject to change in keeping with current animal and human health and safety concerns.
- 4.5 The State Veterinarian is charged with preventing the introduction and spread of contagious and infectious diseases into and within the domestic animal population of the state, therefore:
 - 4.5.1 The State Veterinarian can prohibit activities by any Permit class if there is a threat to domestic animals in the state.
 - 4.5.2 The State Veterinarian can prohibit Accredited Zoo Permit holders from breeding exotics if there is a threat to domestic animals in the state.
 - 4.5.3 The State Veterinarian expects any exotic animal health concern to be communicated immediately to the Department by all other governmental agencies as well as by the owners or custodians of exotics.

5.0 Permit Requirement; Permit Prerequisites; Renewals; Waivers

- 5.1 Unless specifically exempted by the Department from the permitting requirement (see Regulation 4.3), all persons who would own or have custody of an exotic animal must first obtain a permit issued by the Department.
- 5.2 To obtain the required permit from the Department, the prospective owner or custodian of an exotic animal must:
 - 5.2.1 Provide the Department with satisfactory proof that the exotic animal will be confined within two enclosures, designated herein as primary and secondary.
 - 5.2.1.1 The primary enclosure shall be a pen, cage or other structure where the exotic will be kept and which must be of sturdy and escape-proof construction. The

primary enclosure must be consistent in size, structure, lighting, temperature control, and ventilation according to the welfare standards prescribed in the scientific literature or in the USDA regulations for the species being enclosed. The permit applicant is required to demonstrate knowledge of enclosure and welfare standards for the species under consideration with the application.

5.2.1.2 The secondary enclosure must be sufficient to prevent the exotic animal from escaping from the property of the owner or custodian should it be set free or escape from its primary enclosure. The secondary enclosure must ensure there will be no physical contact between members of the public and the exotic. The secondary enclosure must prevent the exotic from escaping the premises if it is out of its primary enclosure.

5.2.1.3 The holder of an Exhibitor or Accredited Zoo permit issued in accordance with Regulations 6.2 and 6.3 may request in writing that the State Veterinarian consider waiving the enclosure requirements set forth at 5.2.1.1 and/ or 5.2.1.2 because the exotic animal has unique enclosure requirements.

5.2.1.4 Shared enclosures:

5.2.1.4.1 The holders of Sales permits are permitted to breed exotic animals in the Herbivore and Reptile class in the State of Delaware in accordance with Regulations 4.4 and 10.4.2.; therefore exotics in these classes may share enclosures.

5.2.1.4.2 The holders of Accredited Zoo permits are permitted to breed exotic animals in the State of Delaware in accordance with Regulations 4.5.2 and 10.4.3; therefore exotics permitted by the Accredited Zoo Permit may share enclosures.

5.2.1.4.3 All other Permit class holders are not permitted to breed exotic animals; hence any shared enclosures are only for sterile animals or animals unable to reproduce.

5.2.2 Provide the Department with a copy of an emergency evacuation plan upon request.

5.2.3 Provide the Department with a copy of an animal attack protocol upon request.

5.3 To obtain the renewal of an exotic animal permit, exotic animal owners or custodians must confirm the ongoing existence of all the requirements set forth at 5.2 and must, in addition, allow Department employees access to inspect the premises where exotics are located to confirm the health and humane treatment of the exotic.

5.4 Any existing permits issued by the Delaware Department of Agriculture will become void sixty (60) days after the effective date of these proposed regulations and must be renewed in accordance with Regulations 5.3 and 8.0 at no additional cost to the owner or custodian.

6.0 Permit Classes

6.1 Individual Permit

6.1.1 When exotics are kept as pets, the owner or custodian of the exotic must apply to the Department for an Individual Permit on a form supplied by the Department. Individual Permits granted by the Department shall become null and void when the owner or custodian transfers ownership or possession of the exotic to another. The owner or custodian must obtain a separate Individual Permit for each exotic animal kept as a pet. A background check of an owner or custodian applying for an Individual Permit may be completed by the Department.

6.2 Accredited Zoo Permit

6.2.1 All zoos in Delaware must obtain an Accredited Zoo Permit every five (5) years or other time period that is in keeping with the AZA accreditation process.

6.3 Exhibitor Permit

6.3.1 All owners or custodians (with the exception of permitted Accredited Zoos located in Delaware) that wish to present exotic animals for public viewing must obtain an Exhibitor Permit from the Department annually.

6.3.2 A background check of an owner or custodian applying for an Exhibitor Permit may be completed by the Department.

6.3.3 Exotic Animal Exhibitors Duties:

- 6.3.3.1 Notify the Department within the 60 day period prior to exhibiting exotic animals in Delaware;
- 6.3.3.2 Provide the Department with an annual inventory which includes an Accurate Description of each exotic animal to be exhibited.
- 6.3.3.3 Provide the Department with the dates of exhibition;
- 6.3.3.4 Provide the Department with a list of exhibition activities;
- 6.3.3.5 Provide the Department with a public health and safety plan, an animal attack protocol, and an animal health plan upon request.
- 6.3.3.6 Show proof of exotic animal permits or licenses from their states of origin upon request;
- 6.3.3.7 Provide valid health certificates upon request;
- 6.3.3.8 Have a valid business license; and
- 6.3.3.9 Provide proof of knowledge of exotics' health, safety and proper care upon request.

6.4 Rehabilitator Permit

- 6.4.1 The Rehabilitator Permit must be obtained from the Department by an owner or a custodian who provides short term care and rehabilitation of exotic animals.
- 6.4.2 The applicant for the Rehabilitator Permit must provide documentation that he/she holds a Wildlife Rehabilitator Permit from DNREC.
- 6.4.3 A background check of an owner or custodian applying for a Rehabilitator Permit may be completed by the Department.
- 6.4.4 Rehabilitator Permit Holder's Duties:
 - 6.4.4.1 Notify the Department of acquiring an exotic animal to rehabilitate by the first of every month.
 - 6.4.4.2 By December 31st of each calendar year the Exotic Animal Rehabilitator must:
 - 6.4.4.2.1 Provide the Department with a yearly inventory of every exotic currently being rehabilitated. The inventory must include an Accurate Description of each exotic.
 - 6.4.4.2.2 Request in writing permission from the State Veterinarian or his/her designee for an extension of the exotic's rehabilitation time when the exotic is carried over from the prior year's inventory.
 - 6.4.4.3 Provide the Department with a public health and safety plan, an animal attack protocol, an emergency evacuation plan and an animal health, proper care and rehabilitation plan upon request.
 - 6.4.4.4 Be limited to a maximum of ten (10) exotic animals per Class of Exotic.
 - 6.4.4.5 Send a list of relocated exotics to the Department by the first of every month.
 - 6.4.4.6 The rehabilitator must require at the time of the exotic's relocation that the adopter has obtained the appropriate class of Exotic Animal Permit from the Department.
 - 6.4.4.7 The rehabilitator must verify at the time of the exotic's relocation that the adopter's name and address on a Valid Identification card is the same as noted on the appropriate class of Exotic Animal Permit presented.
 - 6.4.4.8 Provide the adopter with written information regarding the exotic's enclosure, proper care and welfare requirements.
 - 6.4.4.9 The rehabilitator must inform the adopter that there may be county, city, local laws, rules and regulations that may govern or proscribe the possession of exotics in their area.
 - 6.4.4.10 If the adopter resides outside the State of Delaware, the rehabilitator must maintain a record of the interstate transfer of ownership, including adopter's address; and must notify the appropriate state veterinarian's office or applicable state agency.
 - 6.4.4.11 Keep a record of the adopter's name, address and when available, telephone and e-mail, for three years.

PROPOSED REGULATIONS

6.4.5 Adopters of Rehabilitated Exotics; Duties: When an adopter proposes to become an owner or custodian of an exotic that requires permitting by the Department the following conditions prior to becoming an owner/custodian must be met:

6.4.5.1 The adopter must obtain the appropriate class of Exotic Animal Permit from the Department prior to the time of the exotic's relocation.

6.4.5.2 The adopter must present to the rehabilitator at the time of the exotic's relocation a Valid ID with the same name and address that are on the Exotic Animal Permit.

6.5 Sales Permit

6.5.1 Owners or custodians that sell exotics in Delaware must have a valid Delaware business license and must obtain a Sales Permit from the Department. Sales Permits granted by the Department must be renewed annually and are not transferable.

6.5.1.1 Accredited Zoo Permit holders are not required to hold a Sales Permit.

6.5.1.2 Individual Permit holders, Exhibitor Permit holders, and Rehabilitator Permit holders engaged in the sale of exotics are required to hold a Sales Permit in accordance with sections 6.5, 7.5 and 8.2 of these regulations. All of the aforementioned Permit holders who apply for a Sales Permit must have a valid Delaware business license.

6.5.1.3 A background check of an owner or custodian applying for a Sales Permit may be completed by the Department.

6.5.2 Seller's Duties- When an owner or custodian proposes to sell an exotic that requires permitting by the Department the following conditions of sale must be met:

6.5.2.1 The seller must require at the time of the sale that the purchaser has obtained the appropriate class of Exotic Animal Permit from the Department.

6.5.2.2 The seller must verify at the time of the sale that the purchaser's name and address on a Valid Identification card is the same as noted on the appropriate class of Exotic Animal Permit presented.

6.5.2.3 The seller must provide the purchaser with written information regarding the exotic's enclosure and welfare requirements.

6.5.2.4 The seller must notify the purchaser that there may be county, city, and local laws, rules and regulations within the State of Delaware that may proscribe or govern the possession of exotics in their area.

6.5.2.5 The seller must notify the Department of the purchaser's name and address, and when available, e-mail address or telephone number and an Accurate Description of the Exotic after the sale of an Exotic by the first of every month.

6.5.2.6 If the purchaser resides outside the State of Delaware, the seller must maintain a record of the interstate sale, including purchaser's address, and must notify the appropriate state veterinarian's office or applicable state agency.

6.5.2.7 A legible copy of the purchaser's sale record must be maintained by the seller for 3 years after the sale of the exotic animal.

6.5.2.8 The seller must guarantee that all exotic animals put up for sale are in good health at the time of sale.

6.5.3 Purchaser's Duties- When a purchaser proposes to become an owner or custodian of an exotic that requires permitting by the Department the following conditions prior to purchase must be met:

6.5.3.1 The purchaser must obtain the appropriate class of Exotic Animal Permit from the Department prior to the time of purchase.

6.5.3.2 The purchaser must present to the seller at the time of the sale a Valid ID with the same name and address that are on the Exotic Animal Permit.

7.0 Initial Permit Applications

7.1 Individual Permit. Initial applications must be filed with the Department prior to acquiring the exotic and prior to relocating the exotic into the State of Delaware. The State Veterinarian, for good causes

shown, and upon written request of the owner/custodian may grant an extension of time to apply for an initial permit. The pre-purchase or pre-adoption fees required to obtain an Individual Permit for an exotic are non refundable.

- 7.2 Rehabilitator Permit. Initial applications must be filed with the Department prior to rehabilitating an exotic animal. A single Rehabilitator Permit covers every exotic animal housed or kept by the rehabilitator.
- 7.3 Accredited Zoo Permit. Initial applications must be filed with the Department upon accreditation by the Association of Zoos and Aquariums, or its successor association. The Accredited Zoo Permit covers every exotic animal housed or kept at the Zoo. The Accredited Zoo Permit application must include a current copy of the Zoo's on-going accreditation document and identify an inventory of every exotic animal by Accurate Description kept at the Zoo at the time of application.
- 7.4 Exhibitor Permit. Initial applications must be filed with the Delaware Department of Agriculture prior to exhibiting exotic animals in the State of Delaware. A single Exhibitor Permit covers every exotic animal housed or kept by the exhibitor.
- 7.5 Sales Permit. Initial applications must be filed with the Department prior to the sale of any exotic animal by a business. Sales Permits must be obtained for each Class of exotic sold. If an exotic animal can be placed in more than one Class, the applicant need only apply for one class per exotic animal. The yearly Sales Permit request must include an inventory of each exotic animal per Class of Exotic animal identified on the Permit Application. The inventory must identify every exotic animal by Accurate Description of the Exotic stocked at the business at the time of application for the yearly Permit.

8.0 Permit Renewal

- 8.1 Individual Permits are valid for 3 years and must be renewed by March 31st of the fourth year.
- 8.2 Sales Permits are required to be renewed on an annual basis and renewal must occur by December 31st of each year. An updated inventory must be submitted with each permit renewal application.
- 8.3 Accredited Zoo permits are required to be renewed every fifth year by March 31st in keeping with the AZA accreditation schedule. An updated inventory must be submitted with each permit renewal application.
- 8.4 Exhibitor Permits are required to be renewed stipulated in 8.4.1 and 8.4.2. An updated inventory must be submitted with each permit renewal application.
- 8.4.1 Holders of Exhibitor permits who exhibit in Delaware more than 180 days per calendar year must renew by December 31st of each year or by the first of the month after exhibition activities in Delaware have exceeded 180 days.
- 8.4.2 Holders of Exhibitor permits who exhibit in Delaware less than or equal to 180 days per calendar year must renew annually on an "as needed" basis.
- 8.5 Rehabilitator Permits are valid for three years and renewal must occur by March 31st of the fourth year. The renewal application must include proof of an active Wildlife Rehabilitator Permit issued by DNREC and an updated inventory.

9.0 Possessing or Owning an Exotic Animal Without a Permit

When the Department has reason to believe that an owner or custodian of an exotic animal has not obtained the required permit, or has failed to timely renew a permit, the Department shall inform the owner or custodian by mailing a letter to the owner or custodian's last known address of the legal requirements to obtain a permit. The owner or custodian will then have ten (10) business days from the date the Department's letter was mailed to obtain the required permit. No permit will be issued if possession of an exotic animal is prohibited by other applicable statutes. The State Veterinarian may grant additional time to obtain a permit for good cause.

10.0 Transporting; Relocation of Exotic Animals; Transfer of Ownership; Births and Deaths

- 10.1 If an exotic is to be moved from one location to another for any reason, the exotic shall be transported in a cage or other container that will be strong enough to prevent its escape while in transport, that will protect the public from physical contact with the exotic and that meets the exotic's welfare requirements. If an owner or custodian is transporting an exotic because of zoonotic or animal disease concerns, the State Veterinarian is to be notified immediately. Violation of this regulation is grounds for evoking an otherwise valid permit.
- 10.2 All permit holders are required to notify the Department in writing within thirty (30) business days if they change their name, permanent address or other contact information.
- 10.3 All permit holders are required to immediately notify the Department of any change of ownership or custodianship of an exotic animal.
- 10.4 Births and Deaths
- 10.4.1 All permit holders must notify the Department of the birth or death of each Exotic by the first of every month.
- 10.4.2 Sales permit holders are limited to breeding the following classes: Reptile and Herbivore and must stay current with State Veterinarian's list of exotic animals that are prohibited from being bred by Sales Permit holders as referenced in 4.4 of these regulations.
- 10.4.3 Accredited Zoo Permit holders may breed exotics in keeping with 4.5.2 of these regulations.
- 10.4.4 Exotics on the State Veterinarian's current list of exotic animals exempt from these regulations (see regulation 4.3) may be bred.

11.0 Nuisances Prohibited

The exotic must not become a nuisance. Any exotic animal that is an immediate threat and/or poses a risk of danger to the public may be subject to seizure and destruction in accordance with regulation 4.2 and without the administrative hearing contemplated by regulation 13.2.

12.0 Escape

The owner or custodian of an exotic who learns of its escape from its enclosures must immediately notify the Department and the appropriate animal control agency of the escape. The owner or custodian of an escaped exotic has a duty to offer assistance to recapture the exotic and must reimburse the Department for any expenses it incurs associated with recapturing the exotic including damage to persons, animals or property.

13.0 Permit Denials and Revocations; Administrative Hearings; Appeals

- 13.1 The State Veterinarian or his/her designee may deny or revoke an initial application, renewal application, or a permit for good cause. Reasons for denials may include, but are not limited to the following: a zoo losing its accreditation; an exotic animal biting, maiming, or injuring a human; an exotic animal escaping from its enclosures; failure to require and verify that a purchaser/adopter has obtained the appropriate class of Exotic Animal Permit from the Department prior to the time of purchase/relocation of the Exotic; failure to notify the Department of the transfer or sale of any exotic animal; exotic animals being bred or reproducing by Permit class holders not permitted to breed exotics; failure to notify the Department of the birth or death of an exotic; failure to keep copies of sales records for three years; failure to perform the duties stated in these regulations; any zoonotic or animal disease concerns; prior animal cruelty violations; and the applicant/permit holder fails to maintain welfare standards.
- 13.2 Administrative Hearing: The owner or custodian of an exotic animal may appeal from the State Veterinarian's determinations pursuant to regulation 13.1 by requesting an Administrative Hearing before the Secretary or his or her designee.
- 13.2.1 Whenever the State Veterinarian proposes to revoke a permit or deny an application for any reason other than that the exotic poses an immediate and unreasonable risk of harm to the public, the Department shall first give written notice to the permit holder or applicant of the State

Veterinarian's determination. The written notice shall inform the permit holder or applicant that he or she has the right to challenge the determination and to request a hearing before the Secretary of the Department or his or her designee. A request for an administrative hearing must be made in writing and must be received by the Department within ten (10) business days of the date of the written notice to such permit holder or applicant; otherwise, the State Veterinarian's determination becomes final. The hearing shall be informal, and the technical rules of evidence shall not apply. The administrative hearing shall be scheduled by the Department as soon as practical, but in no event more than thirty (30) business days after receiving the written request for an administrative hearing.

13.2.2 Whenever the State Veterinarian determines that an exotic animal poses an immediate and unreasonable risk of harm to public health and safety or domestic animal health, the exotic animal is subject to immediate seizure and possible destruction. In such circumstances no administrative hearing is available to the applicant/permit holder to challenge the State Veterinarian's determination.

13.2.3 Administrative hearings shall be recorded. The Secretary or his or her designee shall render his or her decision in writing to all interested parties within sixty (60) days of the date of the administrative hearing.

13.3 Appeals shall be on the record to the Superior Court of the State of Delaware.

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 14 Delaware Code, Chapter 16
(14 Del.C. §122(b) & 14 Del. C. Ch. 16))
14 DE Admin. Code 746

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

746 Criminal Background Check for Student Teaching

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 DE Admin. Code 746 Criminal Background Check for Student Teaching to change the date for which criminal background checks are required for student teachers in Delaware public schools. The date is being changed because current state law does not enable the Delaware Bureau of Identification to submit a request for a federal background check (28 CFR 50.12A and 28 CFR 20.33A3). The Department will pursue a legislative change to accommodate the federal requirement. The Department continues to work with the district personnel directors, Delaware's higher education institutions, the State Police and State Bureau of Identification to ensure consistent implementation of this new requirement.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before March 5, 2009 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 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 ensure 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 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 regulation is related to criminal background checks for student teachers and makes changes so as not to place 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 regulation is related to criminal background checks for student teachers and allows the higher education institutions to make the first level to determine 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 regulation has been proposed with input from the higher education institutions, districts, State Police and State Bureau of Identification 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? There is not a cost to the state or local school boards for compliance with this regulation.

746 Criminal Background Check for Student Teaching

This regulation shall apply to candidates for a Student Teaching Assignment in a Delaware public school. Refer to 14 **DE Admin. Code** 745 Criminal Background Check for Public School Related Employment for the requirements and procedures related to criminal background checks for public school related employment in a Delaware public school.

(Break in Continuity of Sections)

2.0 Criminal Background Check Requirements and Procedures for Student Teaching Position Candidates

- 2.1 Effective ~~July 1, 2009~~ January 1, 2010, any candidate for a Student Teaching Position in a public school district or charter school shall be required to have a criminal background check as prescribed through this regulation.

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- 2.2 The higher education institution where candidates for Student Teaching Positions are enrolled shall require all candidates to complete a Release for Criminal Background Check Information form approved by the Department of Education as a part of the assignment process for a Student Teaching Position in a Delaware public school district or charter school.
- 2.3 The candidate for a Student Teaching Position in a Delaware public school district or charter school shall be subject to the following procedures:
- 2.3.1 After notification by the higher education institution that he/she is a candidate for a Student Teaching Position, the candidate shall present him/herself to State Bureau of Identification personnel at one of the Delaware State Police Troops that processes such criminal background checks or at an on site appointment arranged by the higher education institution.
- 2.3.2 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 the candidate's placing higher education institution as proof that the candidate has completed the procedure. The candidate should retain the Verification Form of Processing for his/her records.
- 2.3.3 The candidate shall request the State Bureau of Identification send original versions of the criminal background check to both the candidate and higher education institution.
- 2.4 All costs associated with obtaining a criminal background check shall be paid for by the person seeking a student teaching position placement.

***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the proposed regulation is available at: [746 Criminal Background Check for Student Teaching](#)**

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) 14 **Del.C.** §1205(b)
14 **DE Admin. Code** 1506

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

1506 Emergency Certificate

A. Type of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1506 Emergency Certificate. This regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation in order to clarify the application process and to set forth appropriate timelines. This regulation sets forth the requirements for an Emergency Certificate.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Friday, March 6, 2009 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

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

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

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

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

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

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

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

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

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

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

1506 Emergency Certificate**1.0 Content**

This regulation shall apply to the issuance of an Emergency Certificate, pursuant to 14 **Del.C.** §1221.
7 DE Reg. 161 (8/1/03)

2.0 Definitions

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

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

“**Certified**” means holding a certificate in a specific content area at designated grade levels.

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

~~“Educator” means a person licensed and certified by the State under 14 Del.C., Chapter 12, to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board. For purposes of 14 Del.C., Chapter 12, the term ‘educator’ does not include substitute teachers.~~

“Emergency Certificate” means a certificate temporary credential issued to an educator individual who has obtained employment or an offer of employment with an employing district and holds a valid Delaware Initial, Continuing, or Advanced License, but lacks necessary skills and knowledge to immediately meet certification requirements in a specific content area. The temporary credential provides the individual with a limited time to meet the requirements for certification in the specific content area.

“Employing District” means a school district, charter school, or other employing authority that proposes to employ an educator individual under an Emergency Certificate and has reviewed the individual’s credentials and established that the individual is competent and that the employing district is committed to support and assist the individual in achieving the skills and knowledge necessary to meet the certification requirements.

“Exigent Circumstances” means unanticipated circumstances or circumstances beyond the educator’s control, including, but not limited to, expiration of a license during the school year, serious illness of the educator or a member of his/her immediate family, activation to active military duty, and other serious emergencies which necessitate the educator’s temporarily leaving active service.

“Satisfactory Evaluation” means an overall rating of “basic” or higher on an annual DPAS summative evaluation or “effective” on an annual DPAS II summative evaluation.

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

7 DE Reg. 161 (8/1/03)

9 DE Reg. 555 (10/1/05)

3.0 Issuance of Emergency Certificate

Upon request from the employing district, the Department may issue an Emergency Certificate, valid for up to three years, to an educator individual who holds a valid Delaware Initial, Continuing, or Advanced License, or a valid Standard or Professional Status Certificate, but who is not eligible for certification in the area of need. An Emergency Certificate is only valid for the individual during their tenure with the employing district requesting the Certificate. Provided, however, upon application by a new employing district, the Department may approve the transfer as specified in this section. The new employing district that hires an individual with an valid pre-existing Emergency Certificate may request the continued approval of the Emergency Certificate through the remainder of the original three year term. The new employing district shall assume the commitments and responsibilities of the employing district within this regulation, review and amend as necessary the individual’s Emergency Certificate written plan, and submit the revised written plan and transfer request for Department approval. An Emergency Certificate may not be renewed or extended for a leave of absence or an exigent circumstance other than specified in Section 3.3.1. Notwithstanding the foregoing, an Emergency Certificate issued to an educator individual in a vocational trade and industry Skilled and Technical Sciences specific career area is valid for up to six (6) years to provide time for completion of specified college level course work or professional development required for certification.

3.1 In its request for the issuance of an Emergency Certificate, the employing district ~~must~~ shall:

3.1.1 Submit to the Department in writing the need for this individual to receive an Emergency Certificate.

~~3.1.2~~ 3.1.2 Establish that the proposed recipient of an Emergency Certificate is competent by submitting evidence of the educator’s individual’s license and other considerations, which may include, but is not limited to, evidence of course work or work experience in the area for which the Emergency

Certificate is requested, which the employing district applied in determining the proposed recipient's competence.

3.1.3 Apply for the Emergency Certificate within sixty (60) days of the individual's hire or new job assignment.

~~3.1.2~~ 3.1.4 Set forth a written plan with the application of the Emergency Certificate, verified by the individual and the employing district designed to support and assist the proposed recipient individual in achieving the skills and knowledge necessary to meet the applicable certification requirements. The written plan shall contain at a minimum the following:

3.1.4.1 A listing of all the outstanding certification requirements necessary to obtain the standard certificate in the area for which the Emergency Certificate is requested including but not limited to the specific examination of content knowledge such as Praxis II and any required course work, professional development, education or experience; and

3.1.4.2 The specific course work or professional development including the educational institution or provider the individual intends to use to fulfill the requirements; and

3.1.4.3 The anticipated timeframe for the completion of the requirements; and

3.1.4.4 A specific listing of how the employing district shall assist the individual in completing the requirements.

3.2 Failure by the employing district to fulfill the conditions set forth in 3.1 above ~~will~~ shall result in denial of the Emergency Certificate.

3.3 The Emergency Certificate ~~shall be in effect for~~ may be valid for up to three (3) years from the month in which the ~~applicant~~ individual is employed until the last day of the month of issuance three (3) years later, except in the case of an Emergency Certificate issued to a ~~vocational trades and industry~~ Skilled and Technical Sciences teacher, which shall expire on the last day of the month of issuance six (6) years later.

3.3.1 A certificate holder whose Emergency Certificate expires during the school year may have the Emergency Certificate extended until the last day of the current fiscal year. This extension shall be considered an exigent circumstance and shall not exceed one (1) year in length.

7 DE Reg. 161 (8/1/03)

9 DE Reg. 544 (10/1/05)

4.0 Employing District Report

At the end of each school year during which an Emergency Certificate is in effect, the employing district shall file a written status report detailing the individual's progress completing the written plan with the Department, which shall:

4.1 Establish that the recipient of the Emergency Certificate has demonstrated competence through receiving a satisfactory evaluation on the annual Delaware Performance Appraisal System.

4.2 Document the progress made by the recipient of the Emergency Certificate toward fulfilling the written plan established by the employing district to meet the applicable certification requirements and any amendments to the written plan including but not limited to change in courses, providers, or timeframes.

4.3 Failure by the employing district to fulfill the conditions set forth in 4.1 and 4.2 above ~~will~~ shall result in suspension of the Emergency Certificate. A suspension may be lifted upon fulfillment by the employing district of the conditions set forth in 4.1 and 4.2 above.

7 DE Reg. 161 (8/1/03)

5.0 Expiration of Emergency Certificate

Prior to the expiration of an Emergency Certificate, the ~~recipient must~~ individual shall meet the requirements for issuance of a Standard Certificate (See 14 **Del.C.** §1505).

7 DE Reg. 161 (8/1/03)

6.0 Secretary of Education Review

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

7 DE Reg. 161 (8/1/03)

7.0 Revocation of Emergency Certificate

An Emergency Certificate shall be revoked in the event the educator's Initial, Continuing, or Advanced License or Limited Standard, Standard, or Professional Status Certificate is revoked in accordance with 14 **DE Admin. Code** 1505. An educator is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearings Procedures and Rules.

7 DE Reg. 161 (8/1/03)

9 DE Reg. 555 (10/1/05)

Renumbered effective 6/1/07 - see Conversion Table

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) 14 **Del.C.** §1205(b)
14 **DE Admin. Code** 1513

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

1513 Denial of Licenses**A. Type of Regulatory Action Requested**

Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1513 Denial of Licenses. This regulation sets forth the criteria for the denial of Delaware educator licensure, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation due to recent changes in the **DE Admin. Code**.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Friday, March 6, 2009 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

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

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

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

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

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

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

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

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

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

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

1513 Denial of Licenses

1.0 Content

This regulation shall apply to the denial of an Initial License, Continuing License or Advanced License for educators pursuant to 14 **Del.C.** §1210, 1211, 1212, 1213, 1214, and 1217; and to the denial of a Standard or Emergency Certificate pursuant to 14 **Del.C.** §§1220 and 1221.

7 DE Reg. 161 (8/1/03)

9 DE Reg. 138 (7/1/05)

2.0 Definitions

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

"Advanced License" means a license issued as part of the three tiered licensure system set forth in 14 **Del.C.** §1213 and §1214.

"Continuing License" means a license issued as part of the three tiered licensure system set forth in 14 **Del.C.** §1211 and §1212.

"Department" means the Delaware Department of Education.

"Educator" means a public school employee who holds a license issued under the provisions of 14 **Del.C.** Ch. 12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board, pursuant to 14 **Del.C.** §1203, but does not include substitute teachers.

"**Good Moral Character**" means conduct which is consistent with the rules and principles of morality expected of an educator.

"**Immorality**" means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of his or her unfitness or otherwise.

"**Initial License**" means a license issued as part of the three tiered licensure system set forth in 14 **Del.C.** §1210.

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

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

"**Standards Board**" means the Professional Standards Board established pursuant to 14 **Del.C.** §1205.

"**State**" means the State of Delaware.

"**Unfit**" means lack of good moral character, misconduct in office, incompetence, a pattern of ineffective teaching, wilful neglect of duty, disloyalty or falsification of credentials, or any conduct that would be grounds for revocation of an educator's license.

7 DE Reg. 161 (8/1/03)

9 DE Reg. 138 (7/1/05)

3.0 Failure to Meet Licensure Requirements

~~The Department may refuse to issue an Initial License, Continuing License, Advanced License or a Standard or Emergency Certificate to an applicant upon a finding that the applicant fails to meet the statutory or regulatory requirements for a license or certificate.~~

The Department may refuse to issue an Initial License, Continuing License, Advanced License or a Standard or Emergency Certificate and deny an applicant's request for a license for failure to meet the statutory or regulatory qualifications for a license.

7 DE Reg. 161 (8/1/03)

9 DE Reg. 138 (7/1/05)

4.0 ~~Finding that Applicant is Unfit~~ Denial of Unfit Applicants

~~Upon a finding that an applicant is unfit to be licensed or certified in the State, the Department may refuse to issue an Initial License, Continuing License or an Advanced License or a Standard or Emergency Certificate to an applicant who otherwise meets the requirements set forth in 14 **DE Admin. Code** 1510, 1511, 1512, 1515 and 1516.~~

4.1 The Department may refuse to issue an Initial License, Continuing License, Advanced License or a Standard or Emergency Certificate and deny a license to an applicant who otherwise meets the requirements for a license because the applicant is unfit.

4.2 The Department may refuse to issue an Initial License, Continuing License, Advanced License or a Standard or Emergency Certificate and deny a license to an applicant who otherwise meets the requirements for a license because the applicant has engaged in any misconduct or conduct that would be a basis for revocation under 14 **DE Admin. Code** 1514 Revocation, Limitation or Suspension of Licenses.

7 DE Reg. 161 (8/1/03)

9 DE Reg. 138 (7/1/05)

6.5.0 Right to Hearing, Burden of Proof, and Procedures

5.1 The Secretary shall give written notice to the applicant of the denial and the reasons therefore. The Department shall not take action to deny a license under this section without providing the applicant

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with written notice of the reasons for denial and with an opportunity for a full and fair hearing before the Standards Board.

5.2 The notice of denial shall be sent by certified mail, return receipt requested to the applicant's last known mailing address and shall give notice that a full and fair hearing may be requested before the Standards Board within ten (10) days.

5.2.1 The applicant shall report any address changes to the Department and the Standards Board.

6.4 5.3 An applicant who is denied an Initial, Continuing, or Advanced License or a Standard or Emergency Certificate may appeal the decision, and is entitled to a full and fair hearing before the Standards Board.

5.3.1 The applicant's request for a hearing before the Standards Board shall be received by the Standards Board's Executive Director within twenty (20) calendar days of the date the denial notice was mailed.

5.4 In any hearing before the Standards Board to challenge action taken under this regulation, the Standards Board shall have the power to administer oaths, order the taking of depositions, issue subpoenas and compel attendance of witnesses and the production of books, accounts, papers, records, documents and testimony.

5.5 Unless otherwise provided for in this Section, the burden of proof in a license denial action shall be on applicant to show by a preponderance of the evidence that he or she should not be denied a license because he or she meets the qualification for licensure pursuant to the applicable laws and regulations.

5.5.1 Provided however, if the denial of the license is on the basis that the applicant is unfit or otherwise committed conduct or misconduct that would be the basis for revocation of a license, the Department shall specify the particular conduct and circumstances giving rise to the denial.

5.5.1.1 Prior to a hearing for a license denial under Section 4.0, the Department shall provide full disclosure of the basis of the denial.

5.5.2 Whenever the basis for an action described within this regulation is a guilty plea, a plea of nolo contendere with respect to, or a conviction of a crime, a copy of the record of the plea, nolo contendere or conviction certified by the Clerk of the Court entering the plea, nolo contendere or conviction shall be conclusive evidence thereof.

6.4 5.6 Hearings shall be conducted in accordance with the Standard Board's Hearing Procedures and Rules.

7 DE Reg. 161 (8/1/03)

9 DE Reg. 138 (7/1/05)

56.0 Revocation in Another State

Notwithstanding any other provisions stated herein or in 14 **DE Admin. Code** 1510, 1511, and 1512, no license or certificate shall be issued to an applicant for an Initial, Continuing or Advanced License or Standard or Emergency Certificate if:

56.1 There is legal evidence that the applicant is not of good moral character; or

56.2 The applicant has had a certificate or license revoked in another state for immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

9 DE Reg. 138 (7/1/05)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) 14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1514

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

1514 Revocation of Licenses and Certificates

A. Type of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1514 Revocation of Licenses and Certificates. This regulation sets forth the criteria for the suspension, limitation and revocation of Delaware educator licenses, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation due to recent changes in the **DE Admin. Code**.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Friday, March 6, 2009 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

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

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

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

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

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

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

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

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

educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

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

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

1514 Revocation, Limitation, or Suspension of Licenses and Certificates

4.0 Content

This regulation shall apply to the revocation of an Initial License, Continuing License or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued prior to August 31, 2003 for educators, pursuant to 14 **Del.C.** §1218.

~~7-DE Reg. 161 (8/1/03)~~

~~7-DE Reg. 627 (11/1/03)~~

2.0 Definitions

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

"Advanced License" means a license issued as part of the three tiered licensure system set forth in 14 **Del.C.** §1213 and 1214.

"Continuing License" means a license issued as part of the three tiered license system set forth in 14 **Del.C.** §1211 and 1212.

"Department" means the Delaware Department of Education.

"Educator" means a person licensed and certified by the State under 14 **Del.C.**, Chapter 12, to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board. For purposes of 14 **Del.C.**, Chapter 12, the term 'educator' does not include substitute teachers.

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

"Initial License" means a license issued as part of the three tiered licensure system set forth in 14 **Del.C.** §1210.

"License Holder" or **"Licensee"** means any individual who holds an Initial License, Continuing License or Advanced License, and until a Continuing License is issued, a limited standard, standard, or Professional Status certificate.

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

"Standards Board" means the Professional Standards Board established pursuant to 14 **Del.C.** §1205.

"State" means the State of Delaware.

~~7-DE Reg. 161 (8/1/03)~~

~~7-DE Reg. 627 (11/1/03)~~

~~9-DE Reg. 542 (10/1/05)~~

3.0 Revocation of License or Certificate

An Initial, Continuing or Advanced License; or a Limited Standard, Standard, or Professional Status Certificate issued prior to August 31, 2003 may be revoked upon the dismissal of the license holder for

immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty, or upon the license holder's resignation or retirement pending dismissal for immorality, provided that clear and convincing evidence establishes the underlying misconduct, and must be revoked upon a finding that the license or certificate holder made a materially false or misleading statement in his or her license or certificate application.

3.1 Revocation Requested by a School District or Charter School

- 3.1.1 When any license or certificate holder is dismissed by a school board, or board of directors, or other employing authority for immorality, the board making such a determination pursuant to Title 14 of the ~~Delaware Code~~ shall, upon final decision, give written notice to the Secretary.
- 3.1.2 When any license or certificate holder is dismissed by a school board or board of directors or other employing authority for misconduct in office, incompetence, willful neglect of duty or disloyalty, the board making such a determination pursuant to Title 14 of the ~~Delaware Code~~ may, upon final decision, give written notice to the Secretary of its desire to request the revocation of that individual's license.
- 3.1.3 When a license or certificate holder employed by a school board or board of directors or other employing authority resigns employment or retires pending dismissal for immorality, the board shall, upon accepting the resignation or retirement, give written notice to the Secretary.
- 3.1.4 Upon receipt of written notification from the school board or board of directors or other employing authority, the Secretary shall give written notice to the license or certificate holder of the intended revocation and the reasons therefore. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Standards Board within thirty (30) days. Hearings shall be conducted in accordance with the Standard Board's Hearing Procedures and Rules.
- 3.1.5 If the licensee fails to request a formal hearing before the Standards Board within thirty (30) days of the notice of revocation, the Secretary shall send written notification by certified mail to the individual revoking his/her license.

3.2 Revocation by the Secretary of Education

- 3.2.1 The Secretary may initiate proceedings to revoke a license or certificate holder's license or certificate when she/he has good reason to believe that clear and convincing evidence establishes that any of the following circumstances exist:
 - 3.2.1.1 The license or certificate holder has been convicted of a crime which is evidence of immorality;
 - 3.2.1.2 The license or certificate holder who is not employed by a public school district or charter school or other employing authority has resigned his/her employment or retired pending dismissal for immorality; or
 - 3.2.1.3 The license or certificate holder has had a certificate or license revoked in another state for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty or falsification of credentials.
- 3.2.2 The Secretary shall give written notice to the license or certificate holder of the intended revocation and the reasons therefor. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Standards Board within thirty (30) days. Hearings shall be conducted in accordance with the Standard Board's Hearing Procedures and Rules.
- 3.2.3 If the licensee fails to request a formal hearing before the Standards Board within thirty (30) days of the notice of revocation, the Secretary shall send written notification by certified mail to the individual revoking his/her license or certificate.

~~7-DE Reg. 161 (8/1/03)~~

~~7-DE Reg. 627 (11/1/03)~~

~~9-DE Reg. 553 (10/1/05)~~

4.0 ~~Duty of License or Certificate Holder to Report~~

- 4.1 ~~Notwithstanding any other provisions stated herein, a license or certificate holder shall send written notification to the Secretary within thirty (30) days of the happening of any of the following events:~~
- 4.1.1 ~~The license or certificate holder is dismissed by a school board, board of directors, or other employing authority for immorality;~~
 - 4.1.2 ~~The license or certificate holder resigns employment or retires pending dismissal for immorality;~~
 - 4.1.3 ~~The license or certificate holder is convicted of a crime which is evidence of immorality; or~~
 - 4.1.4 ~~The license or certificate holder has had a certificate or license revoked in another state for immorality, misconduct in office, incompetency, willful neglect of duty, disloyalty or falsification of credentials.~~
- 4.2 ~~The failure of the license or certificate holder to report any of the above events to the Secretary of Education shall be grounds for revoking a license or certificate provided that clear and convincing evidence establishes the underlying misconduct.~~

~~7-DE Reg. 161 (8/1/03)~~

~~7-DE Reg. 627 (11/1/03)~~

~~9-DE Reg. 542 (10/1/05)~~

5.0 ~~Right to Hearing~~

~~When a license or certificate is revoked, all certificates held by the license or certificate holder shall be revoked. Educators are entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.~~

~~7-DE Reg. 161 (8/1/03)~~

~~7-DE Reg. 627 (11/1/03)~~

~~9-DE Reg. 542 (10/1/05)~~

1.0 ~~Content~~

~~This regulation shall apply to the revocation, limitation, or suspension of an Initial License, Continuing License or Advanced License issued pursuant to 14 **Del.C.** Ch. 12; or a Limited Standard, Standard or Professional Status Certificate issued prior to August 31, 2003 for educators, pursuant to 14 **Del.C.** §1218.~~

2.0 ~~Definitions~~

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

~~"**Advanced License**" means a license issued as part of the three-tiered licensure system set forth in 14 **Del.C.** §1213 and §1214.~~

~~"**Continuing License**" means a license issued as part of the three-tiered license system set forth in 14 **Del.C.** §1211 and §1212.~~

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

~~"**Educator**" means a person licensed and certified by the State under 14 **Del.C.**, Chapter 12, to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board. For purposes of 14 **Del.C.** Chapter 12, the term 'educator' does not include substitute teachers.~~

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

"Initial License" means a license issued as part of the three-tiered licensure system set forth in 14 **Del.C.** §1210.

"License Holder" or "Licensee" means any individual who holds an Initial License, Continuing License or Advanced License, and until a Continuing License is issued, a Limited Standard, Standard, or Professional Status Certificate.

"Nolo Contendere" means a plea by the defendant in a criminal prosecution that without admitting guilt subjects him to conviction but does not preclude him from denying the truth of the charges in a collateral proceeding.

"Nollo Prosequi" means an entry on the record of a legal action denoting that the prosecutor or plaintiff will proceed no further in his action or suit either as a whole or as to some count or as to one or more of several defendants.

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

"Standards Board" means the Professional Standards Board established pursuant to 14 **Del.C.** §1205.

"State" means the State of Delaware.

3.0 Revocation of License

3.1 Discretionary Revocations

The Secretary may revoke an Initial, Continuing or Advanced License that has been issued, for the following causes if the license holder:

- 3.1.1 Obtained or attempted to obtain or renew a license or certificate by fraudulent means or through misrepresentation of material facts; or
- 3.1.2 Falsified official school records, documents, statistics or reports; or
- 3.1.3 Knowingly violated any of the provisions of the Student Testing Program set forth in 14 **Del.C.** §172; or
- 3.1.4 Plead guilty or nolo contendere with respect to, or is convicted of, any crime against a child constituting a misdemeanor, except for Unlawful Sexual Conduct in the Third Degree; or
- 3.1.5 Plead guilty or nolo contendere with respect to, or is convicted of, possession of a controlled substance or a counterfeit controlled substance classified as such in 16 **Del.C.** Chapter 47, Schedule I, II, III, IV, or V; or
- 3.1.6 Was terminated or dismissed for immorality, incompetence, misconduct in office, willful neglect of duty, disloyalty or misconduct involving any cause for suspension or revocation of a license; or
- 3.1.7 Resigned or retired pending dismissal for immorality, provided that clear and convincing evidence established the underlying misconduct occurred; or
- 3.1.8 Had a license or certificate revoked or voluntarily surrendered in another jurisdiction for cause which would be grounds for revocation; or
- 3.1.9 Failed to comply with any of the mandatory notice provisions of this regulation.
- 3.1.10 Failed to comply with any of the statutory or regulatory requirements for maintaining a license.

3.2 Mandatory Revocations

The Secretary shall revoke a license if the license holder:

- 3.2.1 Pleads guilty or nolo contendere with respect to, or is convicted of:
 - 3.2.1.1 Any crime constituting the manufacture, delivery, possession with intent to manufacture or deliver a controlled substance or a counterfeit controlled substance classified as such in 16 **Del.C.** Chapter 47, Schedule I, II, III, IV or V; or
 - 3.2.1.2 Any crime constituting a violent felony as defined in 11 **Del.C.** §4201(c); or
 - 3.2.1.3 Any crime against a child constituting a felony, or Unlawful Sexual Contact in the Third Degree; or
 - 3.2.1.4 Any crime constituting a felony sexual offense; or

3.2.1.5 Any crime constituting a felony offense against public administration involving bribery, improper influence or abuse of office; or

3.2.2 Is terminated or dismissed for a sexual offense against a child; or

3.2.3 Resigns or retires after official notice of allegations of a sexual offense against a child, provided that clear and convincing evidence establishes the underlying misconduct occurred.

4.0 Limitation of Licenses

The Secretary may limit an Initial, Continuing or Advanced License that has been issued, for any of the grounds for revocation.

5.0 Suspension of Licenses

5.1 The Secretary may suspend an Initial, Continuing or Advanced License that has been issued, for any of the grounds for revocation.

5.2 A license may be suspended for a period of time not to exceed five (5) years.

5.2.2 The license may be reinstated by the Secretary, upon written request, with verification that all requirements for license renewal have been satisfied.

5.2.3 If the license expired during the period of suspension, the holder of the former license may reapply for the same tier license that was suspended but shall meet the license requirements that are in effect at the time of the application for the license.

6.0 Automatic Suspension After Arrest or Indictment

The Secretary may automatically suspend any license without a prior hearing if the license holder is arrested or indicted by a Grand Jury for a violent felony as defined in 11 **Del.C.** §4201(c). A suspension under this subsection is effective on the date of the arrest or Grand Jury indictment.

6.1 Temporary Order

6.1.1 For a suspension under this sub section, the Secretary shall issue a written temporary order of suspension to the license holder at his or her last known address.

6.1.1.1 The chief school officer or head of school, on behalf of the local board of education or charter school board of directors, shall report to the Secretary the name and last known address of any license holder employed by the district or charter school who it knows to have been arrested or indicted by a Grand Jury for a violent felony as defined in 11 **Del.C.** §4201(c).

6.1.1.2 An order of suspension under this Section shall remain in effect until the final order of the Secretary or the Standards Board becomes effective.

6.2 Expedited Hearing

6.2.1 A license holder whose license has been suspended pursuant to this Section may request an expedited hearing before the Standards Board within 20 calendar days from the date the notice of the Secretary's decision to temporarily suspend the license holder's license was mailed. The request shall be sent to the Standards Board's Executive Director.

6.2.2 In the event that the license holder requests an expedited hearing, the Standards Board shall convene a hearing within 90 calendar days of the receipt of such a request.

6.2.3 The order of suspension is temporary pending resolution of the criminal charges. Therefore, an expedited hearing under this subsection shall be limited to whether the license holder had been arrested or indicted for a violent felony.

6.3 Revocation after Conviction

6.3.1 If the license holder pleads guilty or nolo contendere with respect to, or is convicted of, a violent felony as defined in 11 **Del.C.** §4201(c), the Secretary shall proceed with revocation.

6.4 Resolution of Charges without Conviction

- 6.4.1 If the license holder is found not guilty of the underlying criminal charges, a nollo prosequi is entered on the record by the State, or the charges are otherwise dismissed by the Court, the license holder may file a written request for license reinstatement, including documentation of the final status of the judicial proceeding, and their license shall be reinstated if still valid.
- 6.4.2 If the license expired during the period of suspension, the holder of the former license may reapply for the same tier license that was suspended, but shall meet the license requirements that are in effect at the time of the application for license.
- 6.4.3 The Secretary may however, continue to pursue revocation under any alternative ground including but not limited to termination of employment for immorality, incompetence, misconduct in office, willful neglect of duty, disloyalty, or misconduct; or resignation or retirement pending dismissal for immorality under the standards provided herein.

7.0 Substantially Comparable Conduct

The Secretary may take any action under this regulation on the basis of substantially comparable conduct occurring in a jurisdiction outside this State or occurring before a person applies for or receives any license.

8.0 Mandatory Notification Requirements

8.1 License Holder

- 8.1.1 Any license holder who has pled guilty or nolo contendere to, or has been convicted of, a crime in a court of law which would constitute grounds for revocation, limitation or suspension of license under this regulation or has been arrested or indicted by a Grand Jury for a violent felony as defined in 11 Del.C. §4201(c), shall notify the Secretary of such action in writing within twenty (20) calendar days of such conviction, arrest or indictment, whether or not a sentence has been imposed. Failure to do so shall be grounds on which the Secretary may revoke, limit or suspend the holder's license.
- 8.1.2 Any license holder who has surrendered an educator license or any professional license or certificate or who has had such a license or certificate revoked, limited or suspended in any jurisdiction or by any agency shall notify the Secretary of such action in writing within thirty (30) calendar days of such action. Failure to do so shall be grounds on which the Secretary may revoke, limit or suspend the holder's license.

8.2 Chief School Officer, Head of School, Local Board or Charter School Board of Directors Responsibilities

- 8.2.1 The chief school officer or head of school, on behalf of the local board of education or charter school board of directors, shall report to the Secretary the name and last known address of any license holder who is dismissed, resigns, retires or is otherwise separated from employment with that district or charter school after having received notice of misconduct that constitutes grounds for revocation or suspension this regulation.
 - 8.2.1.1 Such report shall be made within fifteen (15) calendar days of the dismissal, resignation, retirement or other separation from employment and is required notwithstanding any termination agreement to the contrary that the local board of education or charter school board of directors may enter into with the license holder.
 - 8.2.1.2 The reasons for the license holder's dismissal, resignation, retirement or other separation from employment with the district or charter school shall also be provided along with all evidence that was reviewed by or is in the possession of the district or charter school relating to the dismissal, resignation, retirement or other separation from employment.
 - 8.2.1.3 The Department shall give written notice to any license holder of any notification received under this subsection to the license holder's last known address. Such notification shall be made with fifteen (15) calendar days of receipt of the district or charter school's report to the Department of misconduct under this Section.

PROPOSED REGULATIONS

8.2.1.4 The obligation to report also applies when a chief school officer or head of school acquires relevant information after a license holder's dismissal, resignation, retirement or other separation from employment.

8.2.2 The chief school officer or head of school, on behalf of the local board of education or charter school board of directors, shall report to the Secretary the name and last known address of any license holder employed by the district or charter school who it knows to have been arrested or indicted by a Grand Jury for a violent felony as defined in 11 **Del.C.** §4201(c).

8.2.3 All information obtained from the chief school officer or head of school shall be confidential and shall not be considered public records under Delaware's Freedom of Information Act.

8.2.4 Failure to make the mandatory reports shall be grounds on which the Secretary may limit, suspend or revoke the chief school officer's or head of school's license.

8.3 Notice of Action

The Secretary shall not take action against a person under Sections 3, 4 or 5 without providing the person with written notice of the charges and with an opportunity for a full and fair hearing before the Standards Board.

8.3.1 Notice shall be sent to the person's last known address.

8.3.2 The license holder shall have thirty (30) calendar days from the date the notice of the charges was mailed to make a written request for a hearing.

8.3.3 If no written request for a hearing is received by the Standards Board within thirty (30) calendar days of receipt of notification, the license holder's license shall be deemed to be revoked, limited or suspended and the holder shall be so notified.

8.3.4 Notice of the revocation, limitation, suspension or reinstatement of a license shall be made by the Secretary, or his or her designee, to all chief state school officers of the other states and territories of the United States.

8.4 All communications between a license holder and the Department or Standards Board provided for in this Section shall be by certified mail, with a return receipt requested.

9.0 Investigations

9.1 The Secretary may investigate any information received about a person that reasonably appears to be the basis for action under this regulation.

9.1.1 The Secretary shall not investigate anonymous complaints.

9.1.2 The Department shall give written notice within a reasonable period of time to a license holder of any investigation initiated hereunder to the license holder's last known address.

9.1.3 All information obtained during an investigation is confidential and shall not be considered public records under Delaware's Freedom of Information Act.

9.1.4 The Secretary shall review the results of each investigation conducted pursuant to this regulation and shall determine whether the results warrant initiating action under this regulation.

10.0 License Reinstatement

10.1 Subject to the limitation contained herein, an individual whose license has been revoked under Section 3.1 Discretionary Revocation of this regulation may petition the Secretary for reinstatement of the license no sooner than five (5) years from the date of revocation. The individual shall submit to the Secretary a written petition showing credible evidence, by affidavit or otherwise, of the factors set forth in subsection 10.1.1.

10.1.1 The Secretary shall consider all of the following criteria in evaluating a petition for reinstatement and shall only grant such a petition if it is in the best interest of the public schools of the State of Delaware:

10.1.1.1 The nature and circumstances of the individual's original misconduct;

10.1.1.2 The individual's subsequent conduct and rehabilitation;

10.1.1.3 The individual's present character; and

10.1.1.4 The individual's present qualifications and competence to engage in the practice of instruction, administration or other related professional support services.

10.1.2 A former license holder is entitled to a full and fair hearing before the Standards Board to challenge a denial of reinstatement pursuant to this subsection.

10.2 A license revoked under Section 3.2 Mandatory Revocations or suspended under Section 6.0 of this regulation may not be reinstated under this subsection.

10.2.1 A license suspended under Section 6.0 may only be reinstated pursuant to that section.

10.2.2 A license revoked under Section 3.2 Mandatory Revocation may only be reinstated under Section 10.3.

10.3 If a decision of license revocation, limitation or suspension is solely based on the conviction of a crime enumerated within this regulation, and if the plea or conviction is overturned and there is no subsequent proceeding leading to a plea or conviction, the individual whose license is revoked, limited or suspended may file a written request for reinstatement, including documentation of the final status of the judicial proceeding, and the license shall be reinstated.

10.3.1 The Secretary may continue to pursue revocation under an alternative basis.

11.0 License Limitations

11.1 If any of the causes listed in Sections 3, 4, 5, or 6 are determined, the Secretary or the Standards Board after a hearing, may put limitations on a license that may include but are not limited to:

11.1.1 Restrictions on the ages of students with whom the license holder may work; or

11.1.2 Additional supervision requirements; or

11.1.3 Education, counseling or psychiatric examination requirements.

12.0 Standards Board Hearings and Procedures

12.1 In any hearing before the Standards Board to challenge action taken under this regulation, the Standards Board shall have the power to administer oaths, order the taking of depositions, issue subpoenas and compel attendance of witnesses and the production of books, accounts, papers, records, documents and testimony.

12.2 Unless otherwise provided for in this Section, the burden of proof in a license disciplinary action shall be on the agency taking official action to establish by preponderance of the evidence that the license holder has engaged in misconduct as defined by Sections 3, 4 and 5 or otherwise has failed to comply with the applicable laws and regulations relating to the retention of the license.

12.3 Whenever the basis for an action described within this regulation is a guilty plea, a plea of nolo contendere with respect to, or a conviction of a crime, a copy of the record of the plea, nolo contendere or conviction certified by the Clerk of the Court entering the plea, nolo contendere or conviction shall be conclusive evidence thereof.

12.4 After a hearing, the Standards Board may take any action and impose any limitation or suspension that could have been taken by the Secretary.

12.5 Hearings shall be conducted in accordance with the Standard Board's Hearing Procedures and Rules.

13.0 Resolution by Consent Agreement

The Secretary may enter into a written consent agreement with a person against whom action is being taken under this regulation.

14.0 Certification

All Standard Certificates issued to the license holder shall also be revoked upon the revocation of the license.

PROPOSED REGULATIONS

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

15120.2 Financial Eligibility; Self-Employment Income

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid & Medical Assistance is proposing to amend policies in the Division of Social Services Manual (DSSM) to comply with the CMS-approved Medicaid state plan amendment regarding the use of a self-employment standard deduction to determine eligibility.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulations must submit same to Sharon L. Summers, Policy, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by March 4, 2009.

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

SUMMARY OF PROPOSAL

The proposed changes described below amends policies in the Division of Social Services Manual (DSSM) to comply with the CMS-approved Medicaid state plan amendment regarding the use of a self-employment standard deduction to determine eligibility.

Statutory Authority

Section 1902(r)(2) of the Social Security Act, More Liberal Methods of Treating Income

Summary of Proposal

Title XIX Medicaid State Plan, SPA #411, regarding self-employment income, was approved on March 9, 2006 and effective October 1, 2005. Policy addressing actual self-employment expenses was inadvertently omitted in the final regulation as published in the Delaware Register at **9 DE Reg. 567** (October 1, 2005 issue). The Centers for Medicare & Medicaid Services (CMS) approved SPA #411 provided agency policy indicates that actual expenses are used if the application of the standard deduction results in a finding of ineligibility.

DSSM 15120.2, Financial Eligibility; DSSM 16230.1.2, Self-Employment Income: The proposed rule will amend existing rules to reflect the policy of the state plan to allow actual self-employment expenses to be used when the application of the self-employment standard deduction results in a finding of ineligibility.

There will be no change in practice or procedure as staff has been applying this policy about actual self-employment expenses.

15120.2 Financial Eligibility

TANF rules on income standards and methodologies (disregards, exclusions, allocations) apply to Section 1931 Medicaid except as provided in this section.

For Section 1931 Medicaid, there are two income tests to determine financial eligibility. The first test is a gross income test and the second is a net income test. For the gross income test, compare the family's gross income to

185% of the applicable standard of need. For the net income test, compare the family's net income to the applicable standard of need.

Financial eligibility for both applicant and recipient families will be calculated using the 30 and 1/3 disregard if applicable. This disregard allows the deduction of \$30 plus 1/3 of the remaining earned income after the standard allowance for work connected expenses is subtracted.

The \$30 plus 1/3 disregard is applied to earned income for four (4) consecutive months. If Medicaid under Section 1931 or employment ends before the fourth month, the earner is eligible for the disregard for four (4) additional months upon reapplication or re-employment.

When an earner's wages are so low (\$90 or less in the month) that the income is zero before any part of the \$30 plus 1/3 disregard can be applied, that month does not count as one of the four (4) consecutive months and the earner is eligible for the disregard for four (4) additional months.

After the \$30 plus 1/3 disregard has been applied for four (4) consecutive months, the 1/3 disregard is removed from the budget. The \$30 disregard continues to be deducted from earned income for eight (8) consecutive months. The \$30 disregard is not repeated if an individual stops working or 1931 Medicaid ends before the completion of the eight (8) consecutive months. If 1931 Medicaid ends and the family reapplies, the \$30 disregard from earned income is continued until the end of the original eight (8) consecutive months.

Unlike the \$30 plus 1/3 disregard which is dependent upon the family having sufficient earned income and being 1931 Medicaid recipients, the \$30 disregard is for a specific time period. This time period begins when the \$30 plus 1/3 disregard ends and is not dependent upon the family having earned income or 1931 Medicaid.

When an earner has received the \$30 and 1/3 disregard in four (4) consecutive months and the \$30 deduction has been available for eight (8) consecutive additional months, neither disregard can be applied to earned income until the individual has not received Medicaid under Section 1931 for twelve (12) consecutive months.

All earned income is disregarded for the second and third months of eligibility.

All earned income is disregarded for 12 months after employment causes ineligibility.

A self-employment standard deduction is used to calculate self-employment income. The self-employment standard deduction is considered the cost to produce income. The self-employment standard deduction is a percentage that is determined annually and announced in the Cost-of-Living Adjustment (COLA) Administrative Notice each October.

To calculate self-employment income, use the gross proceeds and subtract the self-employment standard deduction. The result is the amount included in the gross income test (185% of the applicable standard of need). Standard earned income deductions are then applied to the self-employment income for the net income test (the applicable standard of need).

To receive the self-employment standard deduction, the individual must provide verification that costs are incurred to produce the self-employment income. Verification can include, but is not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The individual does not have to verify all business costs to receive the standard deduction.

If the individual does not claim or verify any costs to produce the self-employment income, the self-employment standard deduction will not be applied.

When the application of the standard deduction results in a finding of ineligibility, the applicant or recipient will be given an opportunity to show that actual self-employment expenses exceed the standard deduction. If the actual expenses exceed the standard deduction, they will be used to determine net income from self-employment.

Actual self-employment expenses must be directly related to producing the goods or services. Actual self-employment expenses for the eligibility determination do not include all expenses that are allowed by the Internal Revenue Service. Actual self-employment expenses that are not allowed for the eligibility determination include depreciation, personal and entertainment expenses, personal transportation, purchase of capital equipment, payments on the principal of loans for capital assets or durable goods, and rent or mortgage payments when the business is in the home.

Any diversion assistance provided does not count as income.

Resources are not counted for Medicaid under Section 1931.

9 DE Reg. 564 (10/01/05)

10 DE Reg. 143 (07/01/06)

(Break in Continuity of Sections)

16230.1.2 Self-Employment Income

A self-employment standard deduction is used to calculate self-employment income. The self-employment standard deduction is considered the cost to produce income. The self-employment standard deduction is a percentage that is determined annually and announced in the Cost-of-Living Adjustment (COLA) Administrative Notice each October.

To calculate self-employment income, use the gross proceeds and subtract the self-employment standard deduction. The result is the amount included in the individual's gross income. Standard earned income deductions are then applied to the individual's gross income.

To receive the self-employment standard deduction, the individual must provide verification that costs are incurred to produce the self-employment income. Verification can include, but is not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The individual does not have to verify all business costs to receive the standard deduction.

If the individual does not claim or verify any costs to produce the self-employment income, the self-employment standard deduction will not be applied.

When the application of the standard deduction results in a finding of ineligibility, the applicant or recipient will be given an opportunity to show that actual self-employment expenses exceed the standard deduction. If the actual expenses exceed the standard deduction, they will be used to determine net income from self-employment.

Actual self-employment expenses must be directly related to producing the goods or services. Actual self-employment expenses for the eligibility determination do not include all expenses that are allowed by the Internal Revenue Service. Actual self-employment expenses that are not allowed for the eligibility determination include depreciation, personal and entertainment expenses, personal transportation, purchase of capital equipment, payments on the principal of loans for capital assets or durable goods, and rent or mortgage payments when the business is in the home.

9 DE Reg. 564 (10/01/05)

10 DE Reg. 143 (07/01/06)

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Family Planning

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) / is proposing to amend the Division of Social Services Manual (DSSM) regarding the eligibility requirements for Family Planning.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 March 4, 2009.

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

SUMMARY OF PROPOSAL

Statutory Authority

Social Security Act §1115, Demonstration Projects

Background

Family Planning is a category of eligibility created under the Section 1115 Demonstration Waiver that was approved by CMS on May 17, 1995. Family Planning services are extended 24 months to women who lose Medicaid (categorical or expanded population) for non-fraudulent reasons.

The intention is to promote the reduction of unintended pregnancies, low birth weight infants, fetal death, and improve women's health and strengthen family functioning by spacing children and tracking related gynecological problems and sexually transmitted diseases. Coverage for this group of eligibles became effective January 1, 1996.

Summary of Proposal

In the latest renewal of the Demonstration Waiver under Section 1115 of the Social Security Act, CMS required a reduction of the income standard from 300% Federal Poverty Level (FPL) to 200% FPL and requires the woman to be uninsured. The waiver renewal was effective January 1, 2007.

DMMA PROPOSED REGULATION #09-02**REVISIONS:****16500 Family Planning**

Family Planning is a category of eligibility created under the Section 1115 Demonstration Waiver that was approved by CMS on May 17, 1995. Family Planning services are extended 24 months to women who lose Medicaid (categorical or expanded population) for non-fraudulent reasons. The intention is to promote the reduction of unintended pregnancies, low birth weight infants, fetal death, and improve women's health and strengthen family functioning by spacing children and tracking related gynecological problems and sexually transmitted diseases. Coverage for this group of eligibles is effective January 1, 1996.

16500.1 Eligibility Requirements

Women may receive Family Planning services if they meet the following conditions:

1. age 16 through age 50
2. were receiving Medicaid but lost Medicaid eligibility on or after 12/31/95 for non fraudulent reasons. ~~Females~~ Women who lose eligibility as a QMB, SLMB, or QI or who were eligible for emergency services and labor and delivery only, are not eligible for the family planning extension. Fraud is defined by Section 1128B of the Social Security Act. The individual must be convicted of fraud by a court of competent jurisdiction.
3. continue to meet Delaware residency requirements
4. do not have comprehensive health insurance coverage. Comprehensive health insurance covers hospital, physician, laboratory, and radiology services.
45. are not inmates of a public institution such as a correctional facility or mental health institution
56. for the second year of the extension, have countable family income at or below ~~300%~~ 200% of the Federal Poverty Level.

Family income will be determined using the methodology of the Federal Poverty Level related programs. Resources are not counted.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE**FOOD SUPPLEMENT PROGRAM
9008 Residency**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and

Social Services (DHSS) / Division of Social Services is proposing to amend Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding *Residency*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program and Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by March 4, 2009.

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

Summary of Proposed Change

The proposed change described below amends Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding *Residency*.

Statutory Authority

7 CFR §273.3, *Residency*

Summary of Proposed Change

DSSM 9008, *Residency*: The proposed rule is amended to be easier to read and understand. The change clarifies that residents can leave the state and remain eligible for food benefits during temporary absences when they intend to return to the state.

DSS PROPOSED REGULATION #09-01

REVISION:

9008 Residency

[7 CFR 273.3]

~~A household shall live in the State in which it files an application for participation. Households will file applications for participation in specified office locations according to zip codes. However, an application filed at any office within the State will be considered filed the same day. No individual may participate as a member of more than one household or in more than one project area, in any month, unless an individual is a resident of a shelter for battered women and children, and was a member of a household containing the person who had abused him or her. Residents of shelters for battered women and children will be handled in accordance with DSSM 9080. Do not impose any durational residency requirements. A fixed residence is not required. Nor will residency require an intent to reside permanently in the State or project area. Persons in a project area solely for vacation purposes will not be considered residents. Migrant campsites satisfy the residency requirement.~~

~~When a household moves within the State, DSS will transfer the household's casefile to the new office and continue the household's certification without reapplication. The current office shall act on changes in household circumstances resulting from the move before transferring the casefile to the new office.~~

Individuals must live in Delaware to get food benefits from this state.

Filing Applications in Local Offices

Individuals will file applications for benefits at local offices based on zip codes. Any office will accept an application and consider it filed the same day.

No Duplication of Benefits

An individual cannot participate as a member of more than one household in any month. There is an exception for individuals who are residents of shelters for battered women and children. Refer to DSSM 9080 for the rules for residents of shelters for battered women and children.

No Durational Requirements

There is no requirement for an individual to live in Delaware for any specific length of time. A fixed residence is not required. Residency rules do not require intent to reside permanently in Delaware. Migrant campsites meet the residency requirements.

Non-Residents

Individuals vacationing in Delaware are not considered as residents of this state.

Moving Within the State

When a household moves within the state, DSS will transfer the household's case file to the new office. The household's certification period continues without having to reapply. The current office will act on changes in household circumstances resulting from the move before transferring the case file to the new office.

Temporary Absences Out of State

Households that temporarily leave the state, maintain their Delaware residency and intend to return can continue to receive benefits. This includes, but is not limited to, households on vacation or taking care of a sick family member in another state. This does not include households that leave for military deployment or hospitalizations that will exceed 30 days.

Homeless Households

Homeless individual means an individual who lacks a fixed and regular nighttime residence or an individual whose primary nighttime residence is:

- A supervised shelter designed to provide temporary accommodations (such as a welfare hotel or congregate shelter);
 - A halfway house or similar institution that provides temporary residence for individuals intended to be institutionalized (applied to individuals released from institutions who still need supervision, not prisoners considered to be detained under a Federal or State law while in a halfway house);
 - A temporary accommodation in the residence of another individual if the accommodation is for no more than 90 days.
 - The 90-day period starts at application or when the household reports a change.
 - The 90-day period starts over when a household moves from one residence to another.
 - If a homeless household leaves, for whatever reason, and returns to the same residence, the 90-day period will start over again.
 - If a household has a break in receiving food benefits, the 90-day period will not start over if the household remains in the same residence. The 90-day period will start over if the household moved to another residence.
-

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

FOOD SUPPLEMENT PROGRAM

Anticipating Expenses, Calculating Net Income and Benefit Levels and Mass Changes

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding Anticipating Expenses, Calculating Net Income and Benefit Level, and Mass Changes.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by March 4, 2009.

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

SUMMARY OF PROPOSED CHANGES

The proposed changes described below amend Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding Anticipating Expenses, Calculating Net Income and Benefit Levels, and Mass Changes.

Statutory Authority

- "7 CFR §273.2, Office operations and application processing;
- "7 CFR §273.10(d)(4), Anticipating expenses;
- "7 CFR §273.10(e), Calculating net income and benefit levels; and,
- "7 CFR §273.12(e), Mass changes

Summary of Proposed Changes

DSSM 9064.4, 9065, and 9086: The Division of Social Services (DSS) is removing previously overlooked language related to the dependent care cap.

DSS PROPOSED REGULATIONS #09-08

REVISIONS:

9064.4 Anticipating Expenses

[273.10(d)(4)]

Calculate household expenses based on the expenses a household expects to be billed for during the certification period.

Anticipation of the household expenses will be based on the most recent month's bills, unless the household is reasonably certain a change will occur. When the household is not claiming the utility standard, anticipate changes during the certification period based on last year's bills from the same period updated by overall price increases; or, if only the most recent bill is available, utility cost increases or decreases over the months of the certification period may be based on utility company estimates for the type of dwelling and utilities used by the household. Do not

average past expenses, such as utility bills for the last several months as a method of anticipating utility costs for the certification period.

At certification and recertification, the household shall report and verify all medical expenses. The household's monthly medical deduction for the certification period shall be based on the information reported and verified by the household, and any anticipated changes in the household's medical expenses that can be reasonably expected to occur during the certification period. Reasonably anticipated changes are based on available information about the recipient's medical condition, public or private insurance coverage, and current verified medical expenses. The household shall not be required to file reports about its medical expenses during the certification period. If the household voluntarily reports a change in its medical expenses, DSS shall verify the change in accordance with DSSM 9038 and act on the change in accordance with DSSM 9085.

~~If a child in the household reaches his or her second birthday during the certification period, the maximum dependent care deduction shall be adjusted to the lower deduction in accordance with this section not later than the household's next regularly scheduled recertification.~~

(Break in Continuity of Sections)

9065 Calculating Net Income and Benefit Levels

[273.10(e)]

To determine a household's net monthly income:

A. Add the gross monthly income earned by all household members and the total monthly unearned income of all household members, minus income exclusions, to determine the household's total gross income. Net losses from the self employment income of a farmer will be offset in accordance with DSSM 9074.

B. Multiply the total gross monthly earned income by 20 percent and subtract the amount (or multiply the total gross monthly earned income by 80 percent) and add that to the total monthly unearned income, minus income exclusions.

C. Subtract the standard deduction, as specified in DSSM 9060(A).

D. If the household is entitled to a medical deduction as provided in DSSM 9060 (C), subtract that portion of the allowable medical costs that exceeds \$35.

E. Subtract monthly dependent care expenses paid, if any, ~~up to the maximum amount allowed for each dependent based on the age of the dependent,~~ as specified in DSSM 9060(D).

F. Subtract monthly legally obligated child support payments made to children living outside of the household.

If the household is entitled to an excess shelter deduction, compute the household's excess shelter deduction in accordance with the next paragraph (G).

G. Total the allowable shelter expenses to determine shelter costs. Subtract from total shelter costs 50 percent of the adjusted income (the household's monthly income after all the above deductions have been subtracted). The remaining amount, if any, is the excess shelter cost. If there is no excess shelter cost, the net monthly income has been determined. If there is excess shelter cost, compute the shelter deduction in sub paragraph (H) of this section.

H. Subtract from the adjusted income in sub paragraph (F) of this section the excess shelter cost up to the maximum amount allowed unless the household is entitled to the full amount of its excess shelter expenses. Households not subject to the excess shelter deduction limitation will have the full amount exceeding 50 percent of their income after other applicable deductions subtracted. The household's net monthly income has been determined.

Individual shelter and, where applicable, medical costs will be totaled and then rounded to the nearest dollar (i.e., \$.01 \$.49, round down and \$.50 \$.99 round up) before continuing on with the benefit calculation. The income conversion procedures in DSSM 9064 will also apply to medical and shelter expenses billed on a weekly or bi weekly basis.

In calculating net monthly income, round down each calculation that ends in 1 through 49 cents and round up for calculations that end in 50 through 99 cents. For example, gross weekly wages would be converted to the monthly amount and then rounded to the nearest dollar prior to the computation of the earned income deduction. Cents will be rounded from this calculation before being subtracted from the earned income.

(Break in Continuity of Sections)

9086 Mass Changes

[273.12(e)]

Certain changes are initiated by the State or Federal government which may affect the entire caseload or significant portions of the caseload. These changes include adjustments to income eligibility standards and the shelter/dependent care deduction; adjustments to the maximum food stamp allotment and standard deduction; annual and seasonal adjustments to utility standards, periodic cost of living adjustments to RSDI, SSI, and other Federal benefits; periodic adjustments to TANF, RCA or GA payments; and other changes in the eligibility and benefit criteria based on legislative or regulatory changes.

See Administrative Notice:

A-15-99 October 1999 Cost of Living Adjustments

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1700 BOARD OF MEDICAL PRACTICE**

Statutory Authority: 24 Delaware Code, Section 1713(a)(12) (24 **Del.C.** §1713(a)(12))
24 **DE Admin. Code** 1700

PUBLIC NOTICE

The Delaware Board of Medical Practice in accordance with 24 **Del.C.** §1713(a)(12) has proposed changes to its rules and regulations as mandated by HB 236 (codified at 24 **Del.C.** §1761). The proposal creates a new regulation establishing a schedule of the maximum fees that may be charged by a physician when a patient requests a copy of their records to be transferred to another physician and/or wishes to obtain a copy of their own medical records directly from the physician.

A public hearing will be held on March 3, 2009 at 3:00 p.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 Board of Medical Practice, 861 Silver Lake Blvd., Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

**1700 Board of Medical Practice
(Break in Continuity of Sections)**

30.0 Patient Records: Fee Schedule for Copies

30.1 A patient requesting of a copy of his or her own medical records to be transferred to another physician or to be obtained on their own behalf may be charged a reasonable fee not to exceed the fees set forth in the schedule below, excluding the actual cost of postage or shipping if the records are mailed:

PROPOSED REGULATIONS

Up to 10 pages - \$25.00 (\$2.50 per page)

11-50 pages - \$51.00 (\$25.00 for the first 10 pages, plus \$26.00 for pages 11-50 at \$0.65 per page)

Above 50 pages - \$51.00 maximum charge

- 30.2 The fees set forth in section 30.1 above shall apply whether the records are produced in paper or electronic format.
- 30.3 The full cost of reproduction may be charged for copies of records not susceptible to photostatic reproduction, such as radiology films, models, photographs or fetal monitoring strips.
- 30.4 Payment of all costs may be required in advance of release of the records except for records requested to make or complete an application for a disability benefits program.

***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the proposed regulation is available at:**

1700 Board of Medical Practice

DIVISION OF PROFESSIONAL REGULATION

8800 BOXING, SPARRING MATCHES AND EXHIBITIONS

Statutory Authority: 28 Delaware Code, Chapter 1 (28 Del.C. Ch. 1)
28 DE Admin. Code 8800

PUBLIC NOTICE

8800 Boxing, Sparring Matches and Exhibitions

Consistent with a recent statutory amendment, by passage of HB 501, which updated the authority of the Division of Professional Regulation, the Department of State, in accordance with 28 Del. C. Ch. 1, proposes to strike the existing regulations related to boxing, sparring matches and exhibitions in their entirety and establish new combative sports rules and regulations governing boxing and mixed arts.

A public hearing was held on December 8, 2008, James L. Collins, Director of the Division of Professional Regulation, conducted the hearing. As a result of the public comment and the Director has determined to make both substantive and non-substantive revisions to the proposed amendments originally published in the *Delaware Register of Regulations* on November 1, 2008 at 12 DE Reg. 637.

A second public hearing is scheduled for March 2, 2009 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, The Director will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Office of the Director, Division of Professional Regulation, Cannon Building, 861 Silver Lake Blvd. Suite 203, 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 the Director's office at the above address or by calling (302) 744-4500.

The Director will consider promulgating the proposed regulations immediately following the public hearing.

*** Please Note: The existing regulation is being repealed in its entirety, therefore, it is not being published.**

8800 Boxing, Sparring Matches and Exhibitions and Combative Sports Entertainment Rules and Regulations

Part A Professional Boxing Rules and Regulations

1.0 Professional Boxing

- 1.1 All boxers, managers, seconds, officials and promoters shall follow the rules and regulations for the jurisdiction of the approved designated agent.
- 1.2 All boxers, managers, seconds, officials and promoters shall make application for licensure and permits to the approved designated agent.
- 1.3 Based on the requirements set forth in Title 28 §105 (a) (7), the following criteria for determining physical and mental fitness shall include but is not limited to: blood pressure, pulse, respiration, heart rhythm, heart murmurs, ears, nose, throat, extremities, medications taken, negative pregnancy test results, and mental assessment, which must meet acceptable standards as determined by the examining physician prior to the event.

Part B Amateur Boxing Rules and Regulations

1.0 Amateur Boxing

- 1.1 All amateur bouts must have the sanction of an amateur boxing association recognized by the Director before a permit will be granted by the Division.
- 1.1 The application for permit must be submitted to the Division at least fifteen full working days prior to the scheduled event.
- 1.3 All amateur boxing events will be conducted in accordance with USA Boxing Rules or other approved sanctioning body's rules.
- 1.4 All boxers, coaches, assistant coaches, officials, physicians, administrators and clerks/inspectors shall be registered members of the approved sanctioning organization.
- 1.5 A physician licensed to practice in Delaware must examine a contestant before they enter the ring and the physician must also be at the ringside during the progress of the contest.
- 1.6 All protective gear shall comply with USA Boxing Rules or other approved sanctioning body's rules.
- 1.7 A representative from the Division may be in attendance at amateur events to observe the sanctioning body's compliance to the USA Boxing Rules or other approved sanctioning body's rules.
- 1.8 The representative from the Division shall have the authority to halt any part of the event at any time in the interest of public safety.
- 1.9 Nothing in these rules shall be applicable to any bouts or events conducted as an extracurricular activity by any educational institution or public safety training program in the State.
- 1.10 Based on the requirements set forth in Title 18 §105 (b) (5), the following criteria for determining physical and mental fitness shall include but is not limited to: blood pressure, pulse, respiration, heart rhythm, heart murmurs, ears, nose, throat, extremities, medications taken, negative pregnancy test results, and mental assessment, which must meet acceptable standards as determined by the examining physician prior to the event.

Part C Professional Mixed Martial Arts

1.0 Weight Classes

- 1.1 Men's Division
 - 1.1.1 Flyweight up to 125 lbs.
 - 1.1.2 Bantamweight over 125 - 135 lbs.
 - 1.1.3 Featherweight over 135 - 145 lbs.

- 1.1.4 Lightweight over 145 - 155 lbs.
- 1.1.5 Welterweight over 155 - 170 lbs.
- 1.1.6 Middleweight over 170 -185 lbs.
- 1.1.7 Light Heavyweight over 185 - 205 lbs.
- 1.1.8 Heavyweight over 205 -265 lbs. and
- 1.1.9 Super Heavyweight over 265 lbs.
- 1.2 Women's Division
 - 1.2.1 Flyweight up to 105 lbs.
 - 1.2.2 Bantamweight over 105-114 lbs.
 - 1.2.3 Featherweight over 114-123 lbs.
 - 1.2.4 Lightweight over 123-132 lbs.
 - 1.2.5 Welterweight over 132-141 lbs.
 - 1.2.6 Middleweight over 141-150 lbs.
 - 1.2.7 Light Heavyweight over 150-159 lbs.
 - 1.2.8 Cruiserweight over 159-168 lbs.
 - 1.2.9 Heavyweight over 168 lbs.
- 1.3 Should a fighter be a no-show, that bout shall be canceled. Should a fighter not make weight, they shall be given one (1) hour to make weight but shall not be permitted to lose more than two (2) pounds in that time. There shall be a one (1) pound allowance in non-championship fights. In some instances, fighters that are cleared for the same event may be approved to fight another fighter on the card pending approval of the Division or the Division's Designated Agent (hereafter referred to as the Division). Fighters may fight up or down one Weight Division; however, weight differences between opposing fighters cannot exceed seven pounds, except for the following:
 - 1.3.1 Weight differences between men fighters weighing over 185 pounds, fighting up or down one Weight Division, shall not be more than 15 pounds.
 - 1.3.2 Weight differences between women fighters weighing over 168 pounds, fighting up or down one Weight Division, shall not be more than 15 pounds.

2.0 Fighting Area

- 2.1 All mixed martial arts events must be held in a ring or cage.
- 2.2 A cage used in an event of mixed martial arts must meet the following requirements:
 - 2.2.1 The cage shall be no smaller than 18 feet by 18 feet and no larger than 32 feet by 32 feet. The fighting surface shall be covered with a minimum one inch layer of foam padding. Vinyl or other plastic rubberized covering shall be permitted.
 - 2.2.2 The fighting surface shall not be more than four feet above the floor of the building and shall have suitable steps or ramp for use by the participants. Posts shall be made of metal not more than six inches in diameter, extending from the floor of the building to a minimum height of 58 inches above the fighting surface and shall be properly padded.
 - 2.2.3 The fighting surface area shall be enclosed by a fence made of such material as will not allow a fighter to fall out or break through it onto the floor or spectators, including, but not limited to, vinyl coated chain link fencing. All metal parts shall be covered and padded and shall not be abrasive to the contestants.
 - 2.2.4 The fence shall provide two separate entries onto the fighting surface.
- 2.3 A ring used in an event of mixed martial arts must meet the following requirements:
 - 2.3.1 The ring must be no smaller than 18 feet square and no larger than 32 feet square within the ropes.
 - 2.3.2 The ring floor must extend at least 18 inches beyond the ropes and must have at least a 1-inch layer of foam padding. Padding must extend beyond the ring ropes and over the edge of the

platform, with a top covering of canvas, duck or similar material tightly stretched and laced to the ring platform. Material that gathers in lumps or ridges may not be used.

- 2.3.3 The ring platform must not be more than 4 feet above the floor of the building and must have suitable steps for the use of contestants.
- 2.3.4 Rings posts must be four in number and made of metal, extending from the floor of the building to a minimum height of 58 inches above the ring floor, and must be properly padded. Ring posts must be at least 18 inches away from the ring ropes.
- 2.3.5 There must be 5 ring ropes, not less than 1 inch in diameter and wrapped in soft material. The lowest ring rope must be 12 inches above the ring floor.
- 2.3.6 There may not be any obstruction or object, including, without limitation, a triangular border, on any part of the ring floor.

3.0 Equipment and Clothing

- 3.1 Ring stool for each contestant. An appropriate number of stools or chairs shall be available for each contestant's seconds. They shall be located near each contestant's corner.
- 3.2 For each bout, the promoter is to provide a clean water bucket and clean plastic water bottle in each corner.
- 3.3 Contestants shall wear mma shorts, biking shorts, boxing shorts, Muay Thai shorts or kick-boxing shorts.
- 3.4 Gi's or shirts are prohibited during competition.
- 3.5 Females shall wear rash guards.
- 3.6 Shoes are not permitted.
- 3.7 No clothing that is made of hard plastic or metallic surface is permitted.
- 3.8 No jewelry or piercing accessories is permitted during competition.

4.0 Bandage Wraps

- 4.1 Bandages shall be restricted to soft gauze cloth not more than 15 yards in length and two inches in width, held in place by not more than 6 feet of surgeon's tape, one inch in width.
- 4.2 Surgeon's adhesive tape shall be placed directly on each hand for protection near the wrist. The tape may cross the back of the hand twice and extend to cover and protect the knuckles.
- 4.3 The bandages and tape shall be placed on the contestant's hands in the dressing room in the presence of the inspector and in the presence of the manager or chief second of his or her opponent. It shall be signed off by the inspector with his/her initials and the date.
- 4.4 Under no circumstances are gloves to be placed on the hands of the contestant without the approval of the inspector.

5.0 Mouth Pieces

- 5.1 All contestants are required to wear a mouthpiece during competition. The mouthpiece shall be subject to examination and approval by the attending physician.
- 5.2 The round cannot begin without the mouthpiece in place.
- 5.3 If the mouthpiece is involuntarily dislodged during competition, the referee shall call time, clean the mouthpiece and reinsert the mouthpiece at the first opportune moment, without interfering with the immediate action.

6.0 Protective Equipment

- 6.1 Male mixed martial artists shall wear a groin protector of their own selection.
- 6.2 Female mixed martial artists shall wear a chest protector during competition.

7.0 Gloves

- 7.1 The gloves shall be new for all bouts.
- 7.2 All contestants shall wear open finger minimum 4 ounce gloves and shall be supplied by the promoter. No contestant shall supply their own gloves. All gloves are subject to approval by the Division.

8.0 Appearance/hygiene

- 8.1 Hair shall be trimmed or tied back in such a manner as not to interfere with the vision of either contestant or cover any part of a contestant's face.
- 8.2 There shall be no oil or grease on any part of the body. A light coating of petroleum jelly may be applied to the contestants face in the presence of an inspector.
- 8.3 Fingernails and toenails must be cut and trimmed.
- 8.4 The use of BenGay, IcyHot, and other such sports crèmes is prohibited.

9.0 Round Length

- 9.1 For non-championship bouts, the rounds will consist of three 5-minute rounds with one minute of rest in between rounds.
- 9.2 For championship bouts, the rounds may consist of five 5-minute rounds with one minute of rest in between rounds.

10.0 Stopping a Contest

The referee is the sole arbiter of a bout and is the only individual authorized to enter the fighting area at any time during competition to stop a contest except that referee shall stop a bout at the direction of the ringside physician or the Division. The contestant's chief second may signify to referee in an approved manner by the Division to stop the bout.

11.0 Judging and Scoring

- 11.1 All bouts will be evaluated and scored by three judges.
- 11.2 The 10-Point Must System will be the standard system of scoring. Under the 10 Point Must Scoring System, 10 points must be awarded to the winner of the round and nine points or less must be awarded to the loser, except for a rare even round, which is scored 10-10.
- 11.3 Judges shall evaluate MMA techniques, such as effective striking, effective grappling, control of the fighting area, effective aggressiveness and defense.
- 11.4 Evaluations shall be made in the order in which the techniques appear in 11.3 above, giving the most weight in scoring to effective striking, effective grappling, control of the fighting area and effective aggressiveness and defense.
- 11.5 Effective striking is judged by determining the total number of legal heavy strikes landed by a contestant.
- 11.6 Effective grappling is judged by considering the amount of successful executions of legal takedowns and reversals. Examples of factors to consider are take downs from standing position to mount position, passing the guard to mount position, and bottom position fighter using an active, threatening guard.
- 11.7 Control of fighting is judged by determining who is dictating the pace, location and position of the bout. Examples of factors to consider are countering a grappler's attempt at takedown by remaining standing and legally striking; taking down an opponent to force a ground fight; creating threatening submission attempts, passing the guard to achieve mount, and creating striking opportunities.
- 11.8 Effective aggressiveness means moving forward and landing a legal strike.
- 11.9 Effective defense means avoiding being struck, taken down or reversed while countering with offensive attacks.
- 11.10 The following objective scoring criteria shall be utilized by the judges when scoring a round;
- 11.11 A round is to be scored as a 10-10 Round when both contestants appear to be fighting evenly and neither contestant shows clear dominance in a round;

- 11.11.1 A round is to be scored as a 10-9 Round when a contestant wins by a close margin, landing the greater number of effective legal strikes, grappling and other maneuvers;
- 11.11.2 A round is to be scored as a 10-8 Round when a contestant overwhelmingly dominates by striking or grappling in a round.
- 11.11.3 A round is to be scored as a 10-7 Round when a contestant totally dominates by striking or grappling in a round.
- 11.12 Judges shall use a sliding scale and recognize the length of time the fighters are either standing or on the ground, as follows:
 - 11.12.1 If the mixed martial artists spent a majority of a round on the canvas, then:
 - 11.12.1.1 Effective grappling is weighed first; and
 - 11.12.1.2 Effective striking is then weighed.
 - 11.12.2 If the mixed martial artist spent a majority of a round standing, then:
 - 11.12.2.1 Effective striking is weighed first; and
 - 11.12.2.2 Effective grappling is then weighed.
 - 11.12.3 If a round ends with a relatively even amount of standing and canvas fighting, striking and grappling are weighed equally.

12.0 Warnings

- 12.1 The referee may issue a warning for the following infractions. After the initial warning, if the prohibited conduct persists, a penalty may be issued at the sole discretion of the referee. The penalty may result in a deduction of points or disqualification.
 - 12.1.1 Holding or grabbing the fence;
 - 12.1.2 Holding opponent's shorts or gloves; or
 - 12.1.3 The presence of more than two seconds on the fighting area perimeter.

13.0 Fouls and Violations:

- 13.1 If a fighter flagrantly breaks any rule, the official ring referee shall immediately disqualify him; however, if the foul is not severe or intentional, the referee may issue a warning or point deductions(s) from the offending fighter. The following are fouls and may result in penalties if committed:
 - 13.1.1 Downward pointing elbow strikes;
 - 13.1.2 Butting with the head;
 - 13.1.3 Eye gouging of any kind;
 - 13.1.4 Biting or spitting at an opponent;
 - 13.1.5 Hair pulling;
 - 13.1.6 Fish hooking;
 - 13.1.7 Groin attacks of any kind;
 - 13.1.8 Intentionally placing a finger in any opponent's orifice, cut or laceration;
 - 13.1.9 Small joint manipulation;
 - 13.1.10 Strikes to the spine or back of the head or back of neck;
 - 13.1.11 Heel kicks to the kidney;
 - 13.1.12 Attacking an opponent on or during the break;
 - 13.1.13 Kicks to the head of a grounded fighter;
 - 13.1.14 Kneeing the head of a grounded fighter;
 - 13.1.15 Stomping of a grounded fighter;
 - 13.1.16 Throat strikes of any kind;
 - 13.1.17 Clawing, pinching, twisting the flesh or grabbing the clavicle;
 - 13.1.18 The use of abusive language in fighting area;

- 13.1.19 Any unsportsmanlike conduct that causes an injury to opponent;
- 13.1.20 Attacking an opponent who is under the referee's care at the time;
- 13.1.21 Timidity (avoiding contact, or consistent dropping of mouthpiece, or faking an injury);
- 13.1.22 Interference from a mixed martial artists seconds;
- 13.1.23 Throwing an opponent out of the fighting area;
- 13.1.24 Flagrant disregard of the referee's instructions;
- 13.1.25 Spiking/slamming an opponent to the fighting surface on his or her head or neck;
- 13.2 Disqualification occurs after any combination of three of the fouls listed in 13.1 above. Disqualification will occur after a referee determines that a foul was intentional and flagrant.
- 13.3 Only a referee can assess a foul. If the referee does not call the foul, judges shall not make that assessment on their own and cannot factor such into their scoring calculations.
- 13.4 A fouled fighter has up to five minutes to recuperate.
- 13.5 If a foul is committed, the referee shall:
 - 13.5.1 Call time;
 - 13.5.2 Send the opponent to a neutral corner;
 - 13.5.3 Check the fouled mixed martial artist's condition and safety; and
 - 13.5.4 Assess the foul to the offending contestant, deduct points, and notify each corner's seconds, judges and the official scorekeeper.
- 13.6 If a bottom contestant commits a foul, unless the top contestant is injured, the fight shall continue, so as not to jeopardize the top contestant's superior positioning at the time.
 - 13.6.1 The referee shall verbally notify the bottom contestant of the foul.
 - 13.6.2 When the round is over, the referee shall assess the foul and notify both corners' seconds, the judges and the official scorekeeper.
 - 13.6.3 The referee may terminate a bout based on the severity of a foul. For such a flagrant foul, a contestant shall lose by disqualification.
- 13.7 Any point or points to be deducted for any foul must be deducted in the round in which the foul occurred.
- 13.8 Fighters cannot win by intentionally or accidentally fouling another fighter.

14.0 Legal Strikes

- 14.1 While Standing
 - 14.1.1 Closed hand strikes to the body and head.
 - 14.1.2 Kicking techniques to body, legs and head.
 - 14.1.3 Knees to the body, legs and head.
 - 14.1.4 Takedowns, Throws and Sweeps.
 - 14.1.5 Chokes, Armbars and Shouldering.
 - 14.1.6 Standing Submissions.
- 14.2 While on the Ground
 - 14.2.1 Closed hand strikes and elbows to body, legs and head.
 - 14.2.2 Submissions.

15.0 Injuries

- 15.1 If an injury sustained during competition as a result of a legal maneuver is severe enough to terminate a bout, the injured contestant loses by technical knockout.
- 15.2 If an injury sustained during competition as a result of an intentional foul is severe enough to terminate a bout, the contestant causing the injury loses by disqualification.

- 15.3 If an injury is sustained during competition as a result of an intentional foul and the bout is allowed to continue, the referee shall notify the scorekeeper to automatically deduct two points from the contestant who committed the foul.
- 15.4 If an injury sustained during competition as a result of an intentional foul causes the injured contestant to be unable to continue at a subsequent point in the contest, the injured contestant shall win by technical decision, if he or she is ahead on the score cards. If the injured contestant is even or behind on the score cards at the time of stoppage, the outcome of the bout shall be declared a technical draw.
- 15.5 If a contestant injures himself or herself while attempting to foul his or her opponent, the referee shall not take any action in his or her favor, and the injury shall be treated in the same manner as an injury produced by a fair blow.
- 15.6 If an injury sustained during competition as a result of an accidental foul is severe enough for the referee to stop the bout immediately, the bout shall result in a no decision if stopped before two rounds have been completed in a three round bout or if stopped before three rounds have been completed in a five round bout.
- 15.7 If an injury sustained during competition as a result of an accidental foul is severe enough for the referee to stop the bout immediately, the bout shall result in a technical decision awarded to the contestant who is ahead on the score cards at the time the bout is stopped only when the bout is stopped after two rounds of a three round bout, or three rounds of a five round bout have been completed.
- 15.8 All partial rounds will be scored after the second round has been completed in a non-championship bout or the third round of a championship bout.

16.0 Types Of Bout Results:

- 16.1 Submission by:
 - 16.1.1 Tap Out: When a contestant physically uses his hand to indicate that he or she no longer wishes to continue; or
 - 16.1.2 Verbal tap out: When a contestant verbally announces to the referee that he or she does not wish to continue;
- 16.2 Technical knockout by:
 - 16.2.1 Referee or a representative of Division of Professional Regulation stops bout;
 - 16.2.2 Ringside physician directs the referee to stop the bout;
 - 16.2.3 When an injury as a result of a legal maneuver is severe enough to terminate a bout;
 - 16.2.4 If second concedes on behalf of the fighter.
- 16.3 Knockout by failure to rise from the fighting surface;
- 16.4 Decision via score cards:
 - 16.4.1 Unanimous: When all three judges score the bout for the same contestant;
 - 16.4.2 Split Decision: When two judges score the bout for one contestant and one judge scores for the opponent; or
 - 16.4.3 Majority Decision: When two judges score the bout for the same contestant and one judge scores a draw;
- 16.5 Draws:
 - 16.5.1 Unanimous - When all three judges score the bout a draw
 - 16.5.2 Majority - When two judges score the bout a draw; or
 - 16.5.3 Split - When all three judges score differently and the score total results in a draw;
- 16.6 Disqualification: When an injury sustained during competition as a result of an intentional foul is severe enough to terminate the contest;
- 16.7 Forfeit: When a contestant fails to begin competition or prematurely ends the contest for reasons other than injury or by indicating a tap out;

- 16.8 Technical Draw: When an injury sustained during competition as a result of an intentional foul causes the injured contestant to be unable to continue and the injured contestant is even or behind on the score cards at the time of stoppage;
- 16.9 Technical Decision: When the bout is prematurely stopped due to injury and a contestant is leading on the score cards; and
- 16.10 No Decision: When a contest is prematurely stopped due to accidental injury and a sufficient number of rounds have not been completed to render a decision via the score cards.

17.0 Matchmaking:

The matchmaking of the contestants is subject to the approval of the Division.

18.0 Physical Exams and Other Testing:

- 18.1 Contestants must complete and submit the following in writing to the Division:
- 18.1.1 A physical completed within six months of the event. HIV exam with negative results is required in order to compete in an event and test must be dated within six months of event.
- 18.1.2 Complete Hepatitis B Surface AG testing & Hepatitis C AB (must be tested within six months of event.)
- 18.1.3 Complete Blood Count (CBC) and Bleed & Coagulation (PT/PTT Pro Time)
- 18.1.4 Original EKG report, read by a physician (dated within six months of the event.)
- 18.1.5 Original CT/MRI Brain Scan report (without contrast), read by a physician (dated within three years of event.)
- 18.1.6 Original EYE examination by an ophthalmologist-ophthalmological dilation (dated within six months of the event.)
- 18.1.7 Serum Pregnancy test for female contestants (dated within 7 days of event.)
- 18.1.8 Annual Physical/clinical Gynecological and Breast Exam for female contestants.
- 18.1.9 If contestant's injuries result in broken bones or concussion, the contestant shall be suspended for the length of the recovery time according to physician's orders.
- 18.1.10 Based on the requirements set forth in Title 28 §105 (a) (7), the following criteria for determining physical and mental fitness shall include but is not limited to: blood pressure, pulse, respiration, heart rhythm, heart murmurs, ears, nose, throat, extremities, medications taken, negative pregnancy test results, and mental assessment, which must meet acceptable standards as determined by the examining physician prior to the event.

19.0 Requirements of the Division:

- 19.1 Require promoter to provide proof of sufficient liability insurance for the officials.
- 19.2 Require promoter to provide proof of sufficient medical insurance including Accidental Death and Dismemberment insurance for contestants per application requirements.
- 19.3 Require promoter to provide an ambulance with life saving equipment and 2 EMTs, one of which is a paramedic, to be present and on site at all times and have a Delaware licensed physician onsite and at ringside. The paramedic will maintain a supply of life saving medicines available as needed.
- 19.4 Verify the matchmaking done by the promoter by confirming the fight records.
- 19.5 The Division shall not have any direct or indirect interest of any kind in the fighters, the promoter or the event.
- 19.6 Oversee the weigh-ins, the hand wrapping and glove placement after inspecting the gloves.
- 19.7 Must inspect and approve the fighting area prior to the start of the contests.
- 19.8 Follow all Delaware laws and rules governing Professional Mixed Martial Arts Events.
- 19.9 Report results of each bout and suspensions to the Association of Boxing Commissions data base within seven days of the event.

- 19.10 Agree not to hold the event if the promoter has not obtained adequate security to maintain control over the event and provide safety to the public during and after the event.
- 19.11 Oversee drug testing to be performed on the day of the event on all contestants for illegal drugs, banned substances and performance enhancers.

20.0 **Responsibilities of the Promoter:**

- 20.1 Follow all Delaware rules and laws governing Professional Mixed Martial Arts Events.
- 20.2 Obtain verbal approval from the Division before applying in writing to the Division for the permit to hold a Mixed Martial Arts Event.
- 20.3 Submit an application to the Division at least thirty days in advance of the event for a permit to hold an MMA event along with the required fee.
- 20.4 Receive permit before holding the MMA event.
- 20.5 Coordinate matchmaking to be approved by the Division.
- 20.6 Cooperate fully with the Division:
 - 20.6.1 Fees
 - 20.6.2 Match Making approval of the Division.
 - 20.6.3 Engage services and provide evidence to the Division that an ambulance with life saving equipment and at least 2 EMTs, one of which is a paramedic, will be on-site during competition. The paramedic will maintain a supply of life saving medicines available as needed.
 - 20.6.4 Engage services and provide evidence to the Division that a Delaware licensed physician will be on site during and directly after the competition.
 - 20.6.5 Engage contract and provide to the Division proof that medical insurance and an accidental death insurance policy has been purchased per application requirement
 - 20.6.6 Engage contract and provide to the Division proof that liability insurance has been purchased per the amount required by the venue.
- 20.7 Agree to not officiate at their own events. Cannot have interest of any kind in the Division.
- 20.8 Cannot be involved or interfere in the oversight of the referee, judging, weighing-in, drug testing, post and pre-fight physicals, and glove inspections.
- 20.9 Provide the required gloves, gauze and adhesive tape for fighter wraps, disposable gloves for corner persons, water for all fighters and officials, stools for each contestant, and clean water bucket.
- 20.10 Provide the fight card that indicates the weight of the fighters and the weight division that the fighters will be in.
- 20.11 Ensure that there will be NO exhibition bouts.
- 20.12 Provide hand sanitizer to the fighters to be kept at the equipment table.
- 20.13 Sanitize all equipment before and after each fight.
- 20.14 Provide adequate security personnel to maintain order and provide safety during and after the event.
- 20.15 Obtain a Delaware business license.
- 20.16 Execute and file a surety bond with the State of Delaware for not less than \$10,000.
- 20.17 Pay for drug testing to be performed on day of event on all contestants for illegal drugs, banned substances and performance enhancers. The Division shall oversee the testing.

21.0 **Requirements of Fighter:**

- 21.1 Attend pre-fight meeting. Failure to attend will result in disqualification of the fighter.
- 21.2 Be 18 years or older to participate.
- 21.3 Pass drug testing completed the day of the event and the pre-fight physical.
- 21.4 Agree not to use any illegal drug, narcotic, stimulant, depressant, analgesic of any description, or alcohol substance either before or during a match.
- 21.5 Obtain National MMA ID number prior to the event.

- 21.6 Follow all Delaware laws, Rules and Regulations and requirements of the Division.
- 21.7 Obtain a pre-fight and post-fight physical by the physician assigned to the event.
- 21.8 If fighter should be a no-show, that bout shall be canceled. Under no circumstances shall a fighter be permitted to cut more than two pounds to make weight.
- 21.9 Fighter shall not fight a minimum of tens days from last fight.

22.0 Requirements of Seconds/Cornermen:

- 22.1 Each fighter may have three seconds, but only two seconds at a time are permitted in the fighting area and only when given permission by the referee. The Division may authorize an additional cornerman for championship fights at their discretion.
- 22.2 Permitted to use such general anti-coagulants such as Thrombin, Adrenaline Hydrochloride and Aventine or any other first aid medicine approved by the Division to cuts.
- 22.3 Must dry the corner area before the next round continues.
- 22.4 Follow all Delaware laws, Rules and Regulations and requirements of the Division.

Part D Amateur Mixed Martial Arts**1.0 Weight Classes:****1.1 Men's Division**

- 1.1.1 Flyweight up to 112 lbs.
- 1.1.2 Bantamweight over 112-118 lbs.
- 1.1.3 Super Bantamweight over 118-122 lbs.
- 1.1.4 Featherweight over 122-126 lbs.
- 1.1.5 Super Featherweight over 126-130 lbs.
- 1.1.6 Lightweight over 130-135 lbs.
- 1.1.7 Super Lightweight over 135-140 lbs.
- 1.1.8 Welterweight over 140-147 lbs.
- 1.1.9 Super Welterweight over 147-154 lbs.
- 1.1.10 Middleweight over 154-160 lbs.
- 1.1.11 Super Middleweight over 160-167 lbs.
- 1.1.12 Light Heavyweight over 167-175 lbs.
- 1.1.13 Super Lt. Heavyweight over 175-183 lbs.
- 1.1.14 Cruiserweight over 183-190 lbs.
- 1.1.15 Super Cruiserweight over 190-195 lbs.
- 1.1.16 Heavyweight over 195-210 lbs.
- 1.1.17 Super Heavyweight over 210 lbs.

1.2 Women's Division

- 1.2.1 Flyweight up to 105 lbs.
- 1.2.2 Bantamweight over 105-114 lbs.
- 1.2.3 Featherweight over 114-123 lbs.
- 1.2.4 Lightweight over 123-132 lbs.
- 1.2.5 Welterweight over 132-141 lbs.
- 1.2.6 Middleweight over 141-150 lbs.
- 1.2.7 Light Heavyweight over 150-159 lbs.
- 1.2.8 Cruiserweight over 159-168 lbs.
- 1.2.9 Heavyweight over 168 lbs.

1.3 Should a fighter be a no-show, that bout shall be canceled. Should a fighter not make weight, they shall be given one (1) hour to make weight but shall not be permitted to lose more than two (2) pounds in that time. There shall be a one (1) pound allowance in non-championship fights. In some instances, fighters that are cleared for the same event may be approved to fight another fighter on the card pending approval of the sanctioning body. Fighters may fight up or down one Weight Division; however, weight differences between opposing fighters cannot exceed seven pounds, except for the following:

1.3.1 Weight differences between men fighters weighing over 210 pounds, fighting up or down one Weight Division, shall not be more than 15 pounds.

1.3.2 Weight differences between women fighters weighing over 168 pounds, fighting up or down one Weight Division, shall not be more than 15 pounds.

2.0 Fighting Area:

2.1 All mixed martial arts events must be held in a ring or cage.

2.2 A cage used in an event of mixed martial arts must meet the following requirements:

2.2.1 The cage shall be no smaller than 18 feet by 18 feet and no larger than 32 feet by 32 feet. The fighting surface shall be covered with a minimum one inch layer of foam padding. Vinyl or other plastic rubberized covering shall be permitted.

2.2.2 The fighting surface shall not be more than four feet above the floor of the building and shall have suitable steps or ramp for use by the participants. Posts shall be made of metal not more than six inches in diameter, extending from the floor of the building to a minimum height of 58 inches above the fighting surface and shall be properly padded.

2.2.3 The fighting surface area shall be enclosed by a fence made of such material as will not allow a fighter to fall out or break through it onto the floor or spectators, including, but not limited to, vinyl coated chain link fencing. All metal parts shall be covered and padded and shall not be abrasive to the contestants.

2.2.4 The fence shall provide two separate entries onto the fighting surface.

2.3 A ring used in an event of mixed martial arts must meet the following requirements:

2.3.1 The ring must be no smaller than 18 feet square and no larger than 32 feet square within the ropes.

2.3.2 The ring floor must extend at least 18 inches beyond the ropes and must have at least a 1-inch layer of foam padding. Padding must extend beyond the ring ropes and over the edge of the platform, with a top covering of canvas, duck or similar material tightly stretched and laced to the ring platform. Material that gathers in lumps or ridges may not be used.

2.3.3 The ring platform must not be more than 4 feet above the floor of the building and must have suitable steps for the use of contestants.

2.3.4 Rings posts must be four in number and made of metal, extending from the floor of the building to a minimum height of 58 inches above the ring floor, and must be properly padded. Ring posts must be at least 18 inches away from the ring ropes.

2.3.5 There must be 5 ring ropes, not less than 1 inch in diameter and wrapped in soft material. The lowest ring rope must be 12 inches above the ring floor.

2.3.6 There may not be any obstruction or object, including, without limitation, a triangular border, on any part of the ring floor.

3.0 Equipment and Clothing:

3.1 Ring stool for each contestant. An appropriate number of stools or chairs shall be available for each contestant's seconds. They shall be located near each contestant's corner.

3.2 For each bout, the promoter is to provide a clean water bucket and clean plastic water bottle in each corner.

- 3.3 Contestants shall wear mma shorts, biking shorts, boxing shorts, Muay Thai shorts or kick-boxing shorts.
- 3.4 Gi's or shirts are prohibited during competition.
- 3.5 Females shall wear rash guards.
- 3.6 Shoes are not permitted.
- 3.7 No clothing that is made of hard plastic or metallic surface is permitted.
- 3.8 No jewelry or piercing accessories is permitted during competition.

4.0 Bandage Wraps:

- 4.1 Bandages shall be restricted to soft gauze cloth not more than 13 yards in length and two inches in width, held in place by not more than 10 feet of surgeon's tape, one inch in width.
- 4.2 Surgeon's adhesive tape shall be placed directly on each hand for protection near the wrist. The tape may cross the back of the hand twice and extend to cover and protect the knuckles.
- 4.3 The bandages and tape shall be placed on the contestant's hands in the dressing room in the presence of the inspector and in the presence of the manager or chief second of his or her opponent. It shall be signed off by the inspector with his/her initials and the date.
- 4.4 Under no circumstances are gloves to be placed on the hands of the contestant without the approval of the inspector.

5.0 Mouth Pieces:

- 5.1 All contestants are required to wear a mouthpiece during competition. The mouthpiece shall be subject to examination and approval by the attending physician.
- 5.2 The round cannot begin without the mouthpiece in place.
- 5.3 If the mouthpiece is involuntarily dislodged during competition, the referee shall call time, clean the mouthpiece and reinsert the mouthpiece at the first opportune moment, without interfering with the immediate action.

6.0 Protective Equipment:

- 6.1 Male mixed martial artists shall wear a groin protector of their own selection.
- 6.2 Shin/instep protectors are required.
- 6.3 Female mixed martial artists shall wear a chest protector during competition.

7.0 Gloves:

- 7.1 The gloves shall be new for all bouts.
- 7.2 All contestants shall wear open finger minimum 7 ounce gloves and shall be supplied by the promoter. No contestant shall supply their own gloves. All gloves are subject to the approval of the sanctioning body.

8.0 Appearance/hygiene:

- 8.1 Hair shall be trimmed or tied back in such a manner as not to interfere with the vision of either contestant or cover any part of a contestant's face.
- 8.2 There shall be no oil or grease on any part of the body. A light coating of petroleum jelly may be applied to the contestants face in the presence of an inspector.
- 8.3 Fingernails and toenails must be cut and trimmed.
- 8.4 The use of BenGay, IcyHot, and other such sports crèmes is prohibited.

9.0 Round Length:

- 9.1 For non-championship bouts, the rounds will consist of three 3-minute rounds with one minute of rest in between rounds.
- 9.2 For championship bouts, the rounds may consist of five 3-minute rounds with one minute of rest in between rounds.

10.0 Stopping A Contest:

The referee is the sole arbiter of a bout and is the only individual authorized to enter the fighting area at any time during competition to stop a contest except that referee shall stop a bout at the direction of the ringside physician or the Division. The contestant's chief second may signify to referee in an approved manner by the sanctioning body to stop the bout.

11.0 Judging And Scoring:

- 11.1 All bouts will be evaluated and scored by three judges.
- 11.2 The 10-Point Must System will be the standard system of scoring. Under the 10-Point Must Scoring System, 10 points must be awarded to the winner of the round and nine points or less must be awarded to the loser, except for a rare even round, which is scored 10-10.
- 11.3 Judges shall evaluate MMA techniques, such as effective striking, effective grappling, control of the fighting area, effective aggressiveness and defense.
- 11.4 Evaluations shall be made in the order in which the techniques appear in 11.3 above, giving the most weight in scoring to effective striking, effective grappling, control of the fighting area and effective aggressiveness and defense.
- 11.5 Effective striking is judged by determining the total number of legal heavy strikes landed by a contestant.
- 11.6 Effective grappling is judged by considering the amount of successful executions of legal takedowns and reversals. Examples of factors to consider are take downs from standing position to mount position, passing the guard to mount position, and bottom position fighter using an active, threatening guard.
- 11.7 Control of fighting is judged by determining who is dictating the pace, location and position of the bout. Examples of factors to consider are countering a grappler's attempt at takedown by remaining standing and legally striking; taking down an opponent to force a ground fight; creating threatening submission attempts, passing the guard to achieve mount, and creating striking opportunities.
- 11.8 Effective aggressiveness means moving forward and landing a legal strike.
- 11.9 Effective defense means avoiding being struck, taken down or reversed while countering with offensive attacks.
- 11.10 The following objective scoring criteria shall be utilized by the judges when scoring a round:
 - 11.10.1 A round is to be scored as a 10-10 Round when both contestants appear to be fighting evenly and neither contestant shows clear dominance in a round;
 - 11.10.2 A round is to be scored as a 10-9 Round when a contestant wins by a close margin, landing the greater number of effective legal strikes, grappling and other maneuvers;
 - 11.10.3 A round is to be scored as a 10-8 Round when a contestant overwhelmingly dominates by striking or grappling in a round.
 - 11.10.4 A round is to be scored as a 10-7 Round when a contestant totally dominates by striking or grappling in a round.
- 11.11 Judges shall use a sliding scale and recognize the length of time the fighters are either standing or on the ground, as follows:
 - 11.11.1 If the mixed martial artists spent a majority of a round on the canvas, then:
 - 11.11.1.1 Effective grappling is weighed first; and
 - 11.11.1.2 Effective striking is then weighed.

11.11.2 If the mixed martial artist spent a majority of a round standing, then:

11.11.2.1 Effective striking is weighed first; and

11.11.2.2 Effective grappling is then weighed.

11.11.3 If a round ends with a relatively even amount of standing and canvas fighting, striking and grappling are weighed equally.

12.0 Warnings:

12.1 The referee may issue a warning for the following infractions. After the initial warning, if the prohibited conduct persists, a penalty may be issued at the sole discretion of the referee. The penalty may result in a deduction of points or disqualification.

12.1.1 Holding or grabbing the fence;

12.1.2 Holding opponent's shorts or gloves; or

12.1.3 The presence of more than two seconds on the fighting area perimeter.

13.0 Fouls And Violations:

13.1 If a fighter flagrantly breaks any rule, the official ring referee shall immediately disqualify him; however, if the foul is not severe or intentional, the referee may issue a warning or point deductions(s) from the offending fighter. The following are fouls and may result in penalties if committed:

13.1.1 No elbows of any kind;

13.1.2 Butting with the head;

13.1.3 Eye gouging of any kind;

13.1.4 Biting or spitting at an opponent;

13.1.5 Hair pulling;

13.1.6 Fish hooking;

13.1.7 Heel hooks;

13.1.8 Finger locks;

13.1.9 Toe locks;

13.1.10 Spine locks;

13.1.11 Hammer locks to grounded opponent;

13.1.12 Smothering of grounded opponent (hand over mouth);

13.1.13 Groin attacks of any kind;

13.1.14 Intentionally placing a finger in any opponent's orifice, cut or laceration;

13.1.15 Small joint manipulation;

13.1.16 Strikes to the spine or back of the head or back of neck;

13.1.17 Any striking to head of grounded opponent;

13.1.18 Heel kicks to the kidney;

13.1.19 Throat strikes of any kind;

13.1.20 One or two-handed chokes applied directly to the throat/windpipe;

13.1.21 Clawing, pinching, twisting the flesh or grabbing the clavicle;

13.1.22 Kicking the head of a grounded fighter;

13.1.23 Kicks to the head of a standing fighter;

13.1.24 Knees to head of standing opponent;

13.1.25 Kneeing the head of a grounded fighter;

13.1.26 Stomping of a grounded fighter;

13.1.27 The use of abusive language in fighting area;

13.1.28 Any unsportsmanlike conduct that causes an injury to opponent;

13.1.29 Attacking an opponent on or during the break;

- 13.1.30 Attacking an opponent who is under the referee's care at the time;
- 13.1.31 Timidity (avoiding contact, or consistent dropping of mouthpiece, or faking an injury);
- 13.1.32 Interference from a mixed martial artists seconds;
- 13.1.33 Throwing an opponent out of the fighting area;
- 13.1.34 Flagrant disregard of the referee's instructions;
- 13.1.35 Spiking/slaming an opponent to the fighting surface on his or her head or neck;
- 13.1.36 Neck cranks;
- 13.2 Disqualification occurs after any combination of three of the fouls listed in 13.1 above. Disqualification will occur after a referee determines that a foul was intentional and flagrant.
- 13.3 Only a referee can assess a foul. If the referee does not call the foul, judges shall not make that assessment on their own and cannot factor such into their scoring calculations.
- 13.4 A fouled fighter has up to five minutes to recuperate.
- 13.5 If a foul is committed, the referee shall:
 - 13.5.1 Call Time;
 - 13.5.2 Send the opponent to a neutral corner;
 - 13.5.3 Check the fouled mixed martial artist's condition and safety; and
 - 13.5.4 Assess the foul to the offending contestant, deduct points, and notify each corner's seconds, judges and the official scorekeeper.
- 13.6 If a bottom contestant commits a foul, unless the top contestant is injured, the fight shall continue, so as not to jeopardize the top contestant's superior positioning at the time.
 - 13.6.1 The referee shall verbally notify the bottom contestant of the foul.
 - 13.6.2 When the round is over, the referee shall assess the foul and notify both corners' seconds, the judges and the official scorekeeper.
 - 13.6.3 The referee may terminate a bout based on the severity of a foul. For such a flagrant foul, a contestant shall lose by disqualification.
- 13.7 Any point or points to be deducted for any foul must be deducted in the round in which the foul occurred.
- 13.8 Fighters cannot win by intentionally or accidentally fouling another fighter.

14.0 Legal Strikes:

- 14.1 While Standing
 - 14.1.1 Closed hand strikes to the body and head.
 - 14.1.2 Kicking techniques to body.
 - 14.1.3 Knees to the body and legs.
 - 14.1.4 Takedowns, Throws and Sweeps.
 - 14.1.5 Chokes, Armbars and Shouldering.
 - 14.1.6 Standing Submissions.
- 14.2 While on the Ground
 - 14.2.1 Closed hand strikes to body and legs.
 - 14.2.2 Submissions (chokes, armbars, straight leg locks only).

15.0 Injuries:

- 15.1 If an injury sustained during competition as a result of a legal maneuver is severe enough to terminate a bout, the injured contestant loses by technical knockout.
- 15.2 If an injury sustained during competition as a result of an intentional foul is severe enough to terminate a bout, the contestant causing the injury loses by disqualification.

- 15.3 If an injury is sustained during competition as a result of an intentional foul and the bout is allowed to continue, the referee shall notify the scorekeeper to automatically deduct two points from the contestant who committed the foul.
- 15.4 If an injury sustained during competition as a result of an intentional foul causes the injured contestant to be unable to continue at a subsequent point in the contest, the injured contestant shall win by technical decision, if he or she is ahead on the score cards. If the injured contestant is even or behind on the score cards at the time of stoppage, the outcome of the bout shall be declared a technical draw.
- 15.5 If a contestant injures himself or herself while attempting to foul his or her opponent, the referee shall not take any action in his or her favor, and the injury shall be treated in the same manner as an injury produced by a fair blow.
- 15.6 If an injury sustained during competition as a result of an accidental foul is severe enough for the referee to stop the bout immediately, the bout shall result in a no decision if stopped before two rounds have been completed in a three round bout or if stopped before three rounds have been completed in a five round bout.
- 15.7 If an injury sustained during competition as a result of an accidental foul is severe enough for the referee to stop the bout immediately, the bout shall result in a technical decision awarded to the contestant who is ahead on the score cards at the time the bout is stopped only when the bout is stopped after two rounds of a three round bout, or three rounds of a five round bout have been completed.
- 15.8 There will be no scoring of an incomplete round. However, if the referee penalizes either contestant, then the appropriate points shall be deducted when the scorekeeper calculates the final score.

16.0 Types of Bout Results:

- 16.1 Submission by:
- 16.1.1 Tap Out: When a contestant physically uses his hand to indicate that he or she no longer wishes to continue; or
- 16.1.2 Verbal tap out: When a contestant verbally announces to the referee that he or she does not wish to continue;
- 16.2 Technical knockout by:
- 16.2.1 Referee or a representative of Division of Professional Regulation stops bout;
- 16.2.2 Ringside physician directs the referee to stop the bout;
- 16.2.3 When an injury as a result of a legal maneuver is severe enough to terminate a bout;
- 16.2.4 If second concedes on behalf of the fighter.
- 16.3 Knockout by failure to rise from the fighting surface;
- 16.4 Decision via score cards:
- 16.4.1 Unanimous: When all three judges score the bout for the same contestant;
- 16.4.2 Split Decision: When two judges score the bout for one contestant and one judge scores for the opponent; or
- 16.4.3 Majority Decision: When two judges score the bout for the same contestant and one judge scores a draw;
- 16.5 Draws:
- 16.5.1 Unanimous - When all three judges score the bout a draw
- 16.5.2 Majority - When two judges score the bout a draw; or
- 16.5.3 Split - When all three judges score differently and the score total results in a draw;
- 16.6 Disqualification: When an injury sustained during competition as a result of an intentional foul is severe enough to terminate the contest;
- 16.7 Forfeit: When a contestant fails to begin competition or prematurely ends the contest for reasons other than injury or by indicating a tap out;

- 16.8 Technical Draw: When an injury sustained during competition as a result of an intentional foul causes the injured contestant to be unable to continue and the injured contestant is even or behind on the score cards at the time of stoppage;
- 16.9 Technical Decision: When the bout is prematurely stopped due to injury and a contestant is leading on the score cards; and
- 16.10 No Decision: When a contest is prematurely stopped due to accidental injury and a sufficient number of rounds have not been completed to render a decision via the score cards.

17.0 Matchmaking:

The matchmaking of the contestants is subject to the approval of the approved sanctioning body.

18.0 Physical Exams and other Testing

- 18.1 All Contestants must complete a physical within 90 days of the event and submit completed physical form to the sanctioning body including negative blood results from a lab that has consulted with a physician for HIV, Hep B and C tests. The results shall be faxed from the lab to the sanctioning body.
- 18.2 All contestants are subject to pre-fight and post-fight physicals. Failure to have a Pre-Fight physical will result in disqualification. Failure to have a Post-Fight Medical will result in a minimum 90 day suspension of contestant.
- 18.3 If contestant's injuries result in broken bones or concussion, the contestant shall be suspended for the length of the recovery time according to physician's orders.
- 18.4 All female contestants must complete a pregnancy test the day of the event and the results must be negative.
- 18.5 Based on the requirements set forth in Title 28 §105 (b) (5), the following criteria for determining physical and mental fitness shall include but is not limited to: blood pressure, pulse, respiration, heart rhythm, heart murmurs, ears, nose, throat, extremities, medications taken, negative pregnancy test results, and mental assessment, which must meet acceptable standards as determined by the examining physician prior to the event.

19.0 Requirements Of The Sanctioning Body:

- 19.1 Require promoter to provide proof of sufficient liability insurance for the officials.
- 19.2 Require promoter to provide proof of sufficient medical insurance including Accidental Death and Dismemberment insurance for contestants per application requirements.
- 19.3 Require promoter to provide an ambulance with life saving equipment and 2 EMTs, one of which is a paramedic, to be present and on site at all times and have a Delaware licensed physician onsite and at ringside. The paramedic will maintain a supply of life saving medicines available as needed.
- 19.4 Verify the matchmaking done by the promoter by confirming the fight records.
- 19.5 Sanctioning body shall not have any direct or indirect interest of any kind in the fighters, the promoter or the event.
- 19.6 Oversee the weigh-ins, the hand wrapping and glove placement after inspecting the gloves.
- 19.7 Must inspect and approve the fighting area prior to the start of the contests.
- 19.8 Follow all Delaware laws and rules governing Amateur Mixed Martial Arts Events.
- 19.9 Report results of each bout and suspensions to the Association of Boxing Commissions data base within seven days of the event.
- 19.10 Agree not to hold the event if the promoter has not obtained adequate security to maintain control over the event and provide safety to the public during and after the event.
- 19.11 Oversee random drug testing to be performed on the day of the event on randomly selected contestants, if deemed necessary for illegal drugs, banned substances and performance enhancers.

20.0 Responsibilities of the Promoter:

- 20.1 Follow all Delaware rules and laws governing Amateur Mixed Martial Arts Events.
- 20.2 Obtain approval from a sanctioning body approved by the Director before applying to the State of Delaware for the permit to hold a Mixed Martial Arts Event.
- 20.3 Submit an application to the State of Delaware at least thirty days in advance of the event for a permit to hold an MMA event along with the required fee.
- 20.4 Receive permit before holding the MMA event.
- 20.5 Coordinate matchmaking to be approved by the approved sanctioning body.
- 20.6 Cooperate fully with the approved Sanctioning Body:
 - 20.6.1 Fees
 - 20.6.2 Match Making approval of the sanctioning body.
 - 20.6.3 Engage services and provide evidence to the sanctioning body that an ambulance with life saving equipment and at least 2 EMTs, one of which is a paramedic, will be on-site during competition. The paramedic will maintain a supply of life saving medicines available as needed.
 - 20.6.4 Engage services and provide evidence to the sanctioning body that a Delaware licensed physician will be on site during and directly after the competition.
 - 20.6.5 Engage contract and provide to the sanctioning body proof that medical insurance and an accidental death insurance policy has been purchased per application requirement
 - 20.6.6 Engage contract and provide to the sanctioning body proof that liability insurance has been purchased per the amount required by the venue.
- 20.7 Agree to not officiate at their own events. Cannot have interest of any kind in the sanctioning organization.
- 20.8 Cannot be involved or interfere in the oversight of the referee, judging, weighing-in, drug testing, post and pre-fight physicals, and glove inspections.
- 20.9 Provide the required gloves, shin/instep guards, grey/silver duct tape, gauze and adhesive tape for fighter wraps, disposable gloves for corner persons, water for all fighters and officials, stools for each contestant, and clean water bucket.
- 20.10 Provide the fight card that indicates the weight of the fighters and the weight division that the fighters will be in.
- 20.11 Agree that there will be NO exhibition bouts.
- 20.12 Provide hand sanitizer to be kept at the equipment table.
- 20.13 Sanitize all equipment before and after each fight.
- 20.14 Provide adequate security personnel to maintain order and provide safety during and after the event.
- 20.15 Obtain a Delaware business license.
- 20.16 Execute and file a surety bond with the State of Delaware for not less than \$5,000.
- 20.17 Pay for random drug testing to be performed on day of event on randomly selected contestants, if deemed necessary, for illegal drugs, banned substances and performance enhancers. The sanctioning body shall oversee the testing.

21.0 Requirements of Fighter

- 21.1 Attend pre-fight meeting. Failure to attend will result in disqualification of the fighter.
- 21.2 Be 18 years or older to participate.
- 21.3 Pass the pre-fight physical.
- 21.4 Agree not to use any illegal drug, narcotic, stimulant, depressant, analgesic of any description, or alcohol substance either before or during a match. A random drug test may be performed on the day of the event if deemed necessary. Any positive results with disqualify the contestant and may subject contestant to a suspension by the Division.
- 21.5 Obtain National MMA ID number prior to the event.
- 21.6 Follow all Delaware laws, Rules and Regulations and requirements of the sanctioning body.

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- 21.7 Contestants must provide a signed statement to the sanctioning body that they have never engaged in a professional style MMA event or any other professional martial arts sports and have never accepted payment for their participation in any combative sports event or fighting art. The contestant's trainer must attest in writing to the contestant's skill.
 - 21.8 Obtain a pre-fight and post-fight physical by the physician assigned to the event.
 - 21.9 If fighter should be a no-show, that bout shall be canceled. Under no circumstances shall a fighter be permitted to cut more than two pounds to make weight.
 - 21.10 Fighter shall not fight a minimum of tens days from last fight.

22.0 Requirements of Seconds/Cornermen

- 22.1 Each fighter may have three seconds, but only two seconds at a time are permitted in the fighting area and only when given permission by the referee. The Sanctioning Body may authorize an additional cornerman at their discretion for championship fights.
 - 22.2 Permitted to use such general anti-coagulants such as Thrombin, Adrenaline Hydrochloride and Aventine or any other first aid medicine approved by the sanctioning body to cuts.
 - 22.3 Must dry the corner area before the next round continues.
 - 22.4 Follow all Delaware laws, Rules and Regulations and requirements of the sanctioning body.
-

Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. **[Bracketed Bold language]** indicates text added at the time the final order was issued. ~~**[Bracketed stricken through]**~~ indicates language deleted at the time the final order was issued.

Final Regulations

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

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

**DEPARTMENT OF AGRICULTURE
HARNESS RACING COMMISSION**

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

ORDER

Pursuant to 29 **Del.C.** § 10118 and 3 **Del.C.** §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on December 16, 2008, the Commission makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

The Commission posted public notice of the proposed amendments to DHRC Rule 7.1.6.1.2 and 10.2.8.3 in the November 1, 2008 and December 1, 2008 *Register of Regulations* (Volume 12, Issue 5 and Volume 12, Issue 6, respectively,) and for two consecutive weeks in November and December in *The News Journal* and *Delaware State News*. The Commission proposed to update Rule 7.1.6.1.2 (preference date) and insert the new Rule 10.2.8.3 (trainer transfers.)

The Commission received no written comments. The Commission held a public hearing on December 16, 2008, in which no public comments were made.

FINDINGS OF FACT AND CONCLUSIONS

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.

After considering the rule changes as proposed, the Commission 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 policy and procedures.

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, 2009

IT IS SO ORDERED this 13th day of January, 2009.

Beverly H. (Beth) Steele, Chairman

Robert (Breezy) Brown, Commissioner

George P. Staats, Commissioner

Mary Ann Lambertson, Commissioner

Kenneth Williamson, Commissioner

501 Harness Racing Rules and Regulations

***Please note that no changes were made to the regulation as originally proposed and published in the November 2008 issue of the *Register* at page 554 (12 DE Reg. 554). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

501 Harness Racing Rules and Regulations

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 14 Delaware Code, Chapter 16
(14 **Del.C.** §122(b) & 14 **Del. C.** Ch. 16))
14 **DE Admin. Code** 611

REGULATORY IMPLEMENTING ORDER

611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems by clarifying eligibility for placement in the Consortium Discipline Alternative Programs; clarifying the district's responsibility for providing a written decision if a student is not placed; and to delineate the requirement for Student Success Plans as required by 14 **DE Admin. Code** 505. The amendments are intended to be congruent with the requirements of House Bill No. 326 of the 144th General Assembly and other sections of Delaware Code.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on December 4, 2008, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens, the State Council for Persons with Disabilities and the Delaware Developmental Disabilities Council. The comments were similar. The first comment related to the issue of charter schools and the requirement for placement of such students into the Consortium Discipline Alternative Programs. With regards to charter schools, HB 326 must be read in conjunction with the limitations set forth in 14 **Del.C.**, Section 504A(8). The Department has revised the language to address the concern to the extent possible. The second set of

comments related to Section 1.2 and the provisions for a student placed into the Consortium Discipline Alternative Programs and included comments for placement of students covered under IDEA and Section 504 of the Rehabilitation Act. To the extent possible, the Department has made changes to be consistent with the comments presented. The third comment suggested the decision of non-placement be submitted rather than just provided to the Department with a copy sent to the parent. The Department has made revisions to reflect these comments. The fourth comment requested the Department annually evaluate the reasons for non-placement. The regulation has been amended to require a review of reasons for non-placement. The Department appreciates the time each of the Councils provided in reviewing the proposed amended regulation.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems in order to clarify eligibility for placement in the Consortium Discipline Alternative Programs; clarify the district's responsibility for providing a written decision if a student is not placed; and to delineate the requirement for Student Success Plans as required by 14 **DE Admin. Code** 505. The amendments are intended to be congruent with the requirements of House Bill No. 326 of the 144th General Assembly and other sections of Delaware Code.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Programs in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on January 15, 2009. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of January 2009.

Department of Education

Valerie A. Woodruff, Secretary of Education

Approved this 15th day of January 2009

611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems

1.0 Eligible Students

- 1.1 Except as otherwise provided in this regulation, any student who is expelled by a local school district, who is subject to expulsion or who otherwise seriously violates the district discipline code shall be eligible for placement at a Consortium Discipline Alternative Program site.
- 1.42 **[Subject to Section 11.0, L]** local school districts ~~may~~ shall place a student at a Consortium Discipline Alternative Program site ~~only~~ if the district board:
- 1.42.1 Has expelled the student for a violation of the district's discipline code or, ~~[Determines that the student has engaged in conduct that permits the board to expel the student determined that the student has been suspended for engaging in conduct that could result in expulsion and has not required the student to participate in other options such as behavioural contracts or counseling]~~ or, determine[sd] that the student has exhibited such severe discipline problems that expulsion is imminent; and
- 1.2.2 Determine[sd] the student is not [in]eligible for placement at a Consortium Discipline Alternative Placement pursuant to the conditions in 2.0.
- 1.23 School districts may place a student in a Consortium Discipline Alternative Program site for classroom or school environment disruptions only if:
- 1.23.1 Such disruptions are chronic and repetitive; and
- 1.23.2 The student has participated in all available School Based Intervention Programs pursuant to 14 **DE Admin. Code** 609 and continues to routinely and seriously disrupt the classroom and impede the learning of other students.

2.0 Ineligible Students

- 2.1 Any student expelled or suspended pending expulsion for behavior equivalent to a violation of the following is not eligible for, and may not be placed at a Consortium Discipline Alternative Program site.
- 2.1.1 11 **Del.C.** §613 Assault in the First Degree; class C felony; or
- 2.1.2 11 **Del.C.** §1457 Possession of a Weapon in a Safe School and Recreation Zone; class D, E, or F: class A or B misdemeanor; or
- 2.1.3 11 **Del.C.** §802 Arson in the Second Degree affirmative defense; class D felony; or
- 2.1.4 11 **Del.C.** §803 Arson in the first degree; class C felony; or
- 2.1.5 11 **Del.C.** §770 Rape in the fourth degree; class C felony; or
- 2.1.6 11 **Del.C.** §771 Rape in the third degree; class B felony; or
- 2.1.7 11 **Del.C.** §772 Rape in the second degree class B felony; or
- 2.1.8 11 **Del.C.** §773 Rape in the first degree class A felony; or
- 2.1.9 16 **Del.C.** §4753A Trafficking in marijuana, cocaine, illegal drugs, methamphetamine, LSD, or designed drugs or
- 2.1.10 Any behavior equivalent to or greater than the offenses in 2.1.1 through 2.1.9.
- 2.2 Provided further, any student expelled or suspended pending expulsion may not be placed at a Consortium Discipline Alternative Program if the school district determines, by a preponderance of the evidence, the student is inappropriate for such placement. When determining whether a student is inappropriate for placement in a Consortium Discipline Alternative Program, the school district shall consider the availability of space in the program to serve the student, and the student's age.

3.0 Written Decision Required

When a school board expels a student but determines the student shall not be placed at a Consortium Discipline Alternative Program ~~under subsections 2.1.1 to 2.1.10 of this regulation~~, the school district's ~~written~~ decision shall be in writing and address with specificity the reason for non placement and the evidence in support thereof. Such decisions shall be ~~[reported submitted]~~ to the Delaware

Department of Education's Office of School Climate and Discipline within five working days of such decision [with a copy to the student's parent, guardian, or Relative Caregiver].

4.0 Informing the Parents, Guardians, Relative Caregiver or Students (If the Student is Age 18 or Older)

Districts shall inform the parents, guardians, Relative Caregiver or students (if the student is age 18 or older) of the alternative education options that are then currently available to them if the students have been expelled or expulsion is being considered. These options may include, but are not be limited to, the Consortium Discipline Alternative Program, a GED Program, James H. Groves High School and continued special education and related services for children with disabilities as determined by the student's individual eligibility for participation in such programs. A student's eligibility for such alternative education options is determined by the requirements of such programs.

5.0 Grade Level to be Served

Eligible students in the Consortium Discipline Alternative Program shall be primarily those who are enrolled in grades 6 through 12, however students in the lower grades may also be served through Alternative Program funds.

6.0 Placement at Consortium Discipline Alternative Program Sites

6.1 Each district shall establish an Alternative Placement Team to review each case and prescribe the appropriate placement for students. The Placement Team, in concert with the Consortium Discipline Alternative Program staff, shall design an Individual Service Plan (ISP) for each student that will include educational goals, behavioral goals, and services needed by both students and their families. The ISP shall include a tentative transition plan.

6.1.1 The Alternative Placement Team shall be composed of a representative of the Consortium Discipline Alternative Program staff; a district level coordinator who will be designated by the superintendent; the building level principal, assistant principal or other person as appropriate; the student's custodial adult; guidance counselor or school social worker; and a representative from the Department of Services for Children Youth and Their Families (DSCYF) with knowledge of the student's and family's needs as appropriate. Other individuals may be invited as determined by the placement team.

6.1.1.1 Students who are being placed at a Consortium Discipline Alternative Program site as a transition from DSCYF facilities shall have an ISP developed in concert with the DSCYF facility team, the Alternative Placement Team, and the student's custodial adult.

6.1.2 If students from either a school district or DSCYF facility are children with disabilities, appropriate special education staff shall be included in placement considerations. The Alternative Placement Team and the Individual Education Program (IEP) Team may be the same so long as the membership of the IEP Team meets the requirements of 14 **DE Admin. Code** 925.

7.0 September 30 Enrollment Count

7.1 Students enrolled at a Consortium Discipline Alternative Programs site shall be counted in the enrollment of the sending school.

7.2 Students shall be reported for the level of special education service as defined by the current IEP.

7.3 If a student was enrolled the previous year in a Career and Technical Program in the reporting school, the students shall be reported as enrolled in the next Career and Technical course in the program series.

8.0 Consortium Discipline Alternative Program Setting

8.1 The Consortium Discipline Alternative Program setting shall be apart from the regular school setting, however, a part of a school building may be used for these programs if the students do not interact with the regular school population or use any school facility at the same time as the regular school population.

- 8.1.1 Use of other agency facilities (Boys and Girls Club, YMCA, YWCA, etc.) is encouraged. Consortium Discipline Alternative Program settings shall meet all applicable health and safety laws and regulations for student occupancy.

9.0 Consortium Discipline Alternative Program Design

- 9.1 The Consortium Discipline Alternative Program shall include an educational program designed to maintain and improve skills aligned to the Delaware State Content Standards that will allow students to reenter the regular school program with a reasonable chance and expectation for success. Opportunities for academic acceleration shall also be provided.
- 9.1.1 The academic program shall include applied learning activities that encourage students' active participation in the learning process as opposed to work sheets and other "seat oriented" drill exercises. Study skills, test taking strategies for academic confidence building, and Character Education shall be integrated with the Delaware State Content Standards.
- 9.1.1.1 Credit for work accomplished in the Consortium Discipline Alternative Program setting shall be automatically transferred to the sending school.
- 9.1.2 All students enrolled in Consortium Discipline Alternative Programs shall participate in the Delaware Student Testing Program (DSTP) or successor statewide student assessment program, and Student Success Plans (SSP) as required by 14 DE Admin. Code 505.

10.0 Staffing

Instructional staff shall include educators who are licensed and certified in the content areas of English language arts, mathematics, science and social studies.

11.0 Children With Disabilities

- 11.1 ~~Notwithstanding any of the provisions to the contrary, children with disabilities shall be served pursuant to the provisions of 14 DE Admin. Code 925-922 through 929. Nothing in this regulation shall alter a district's or charter school's duties under the Individual with Disabilities Act (IDEA) or 14 DE Admin. Code 922 through 929. Nor shall this regulation prevent a district or charter school from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and Department regulations.~~
- 11.2 Nothing in this regulation shall alter a district's or charter schools's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a district or charter school from providing supportive instruction to such students.

12.0 Charter School Students

- 12.1 ~~[A charter school may refer a student to a Consortium Discipline Alternative Programs pursuant to provisions of chapter 16 of Title 14 of the Delaware Code, subject to the conditions set forth in 14 Del. C. 505A(8). A charter school, subject to the limitations of 14 Del.C. 504A(8), shall pursue referral of any student meeting the requirements of Section 1.2 into a Consortium Discipline Alternative Program pursuant to the provisions of Chapter 16 of Title 14 of the Delaware Code.]~~
- 12.2 To the extent applicable, a charter school placing a student in a Consortium Discipline Alternative Program shall be subject to the provisions of this regulation.

4213.0 Evaluation

The Department of Education shall annually evaluate the effectiveness of the Consortium Discipline Alternative Programs using criteria that includes student demographic data, types of interventions employed, and prior versus subsequent behavioral and academic patterns, parent involvement, agency involvement and recidivism. In addition, the Department of Education shall annually

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review the decisions acquired pursuant to Section 3.0 to assess the reasons for non-placement of students in the alternative programs, including lack of space and number, age, race and special education status of excluded students by district and charter school.] Grantees shall compile and submit data based on uniform standards and format established by the Department.

8 DE Reg. 1008 (01/01/05)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 618

REGULATORY IMPLEMENTING ORDER

618 School Safety Audit

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to repeal 14 **DE Admin. Code** 618 School Safety Audit and replace it with a new regulation 621 District and School Emergency Preparedness Policy.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Thursday, December 4, 2008, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. Findings of Facts

The Secretary finds that it is appropriate to repeal 14 **DE Admin. Code** 618 School Safety Audit in order to replace it with a new regulation 621 District and School Emergency Preparedness Policy.

III. Decision to Repeal the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 **DE Admin. Code** 618 School Safety Audit. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 618 School Safety Audit attached hereto as *Exhibit "B"* is hereby repealed.

IV. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on January 15, 2009. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of January 2009.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

~~618 School Safety Audit~~

~~4-0 Required School Safety Audit~~

~~Each school year every Delaware public school including Charter Schools and Alternative Schools shall conduct a School Safety Audit. Such audit shall be conducted using guidelines provided by the Department of Education. Districts and heads of charter schools shall ensure that a corrective plan of action to address identified needs is developed within sixty (60) days of the School Safety Audit. The corrective plan of action shall be made available to the Department of Education's Quality Review Team at the time of their visit.~~

~~8 DE Reg. 344 (8/1/04)~~

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 620

REGULATORY IMPLEMENTING ORDER

620 School Crisis Response Plans

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to repeal 14 **DE Admin. Code** 620 School Crisis Response Plans and replace it with a new regulation 621 District and School Emergency Preparedness Policy.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Thursday, December 4, 2008, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. Findings of Facts

The Secretary finds that it is appropriate to repeal 14 **DE Admin.** 620 School Crisis Response Plans in order to replace it with a new regulation 621 District and School Emergency Preparedness Policy.

III. Decision to Repeal the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 **DE Admin. Code** 620 School Crisis Response Plans. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 620 School Crisis Response Plans attached hereto as *Exhibit "B"* is hereby repealed.

IV. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on January 15, 2009. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of January 2009.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 15th day of January 2009

~~620 School Crisis Response Plans~~

~~4.0 Required School Crisis Response Plan~~

~~Every Delaware public school including Charter Schools and Alternative Program sites shall develop a School Crisis Response Plan and shall conduct at least one practice drill annually. Following practice drills, the districts and heads of charter schools shall ensure that the school safety teams conduct meetings to assess readiness and determine the effectiveness of the existing plans. School Crisis Response Plans shall be developed using guidelines provided by the Department of Education and shall be made available to the Department of Education's Quality Review Team at the time of their visit.~~

~~8-DE Reg. 344 (8/1/04)~~

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 621

REGULATORY IMPLEMENTING ORDER

621 District and School Emergency Preparedness Policy

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to adopt a new regulation 14 DE Admin. Code 621 District and School Emergency Preparedness Policy to replace 14 DE Admin Code 618 School Safety Audit and 14 DE Admin. Code 620 School Crisis Response Plan which were repealed. This regulation incorporates the requirements for the school crisis plans as well as practice and auditing of the emergency preparedness plan.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Thursday, December 4, 2008, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. Findings of Facts

The Secretary finds that it is appropriate to adopt 14 DE Admin. Code 621 District and School Emergency Preparedness Policy in order to more clearly delineate the requirements, practicing and auditing of emergency preparedness plans at the district and school level.

III. Decision to Adopt the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to adopt 14 DE Admin. Code 621 District and School Emergency Preparedness Policy. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 621 District and School Emergency Preparedness Policy attached hereto as *Exhibit "B"* is hereby adopted. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 621 District and School Emergency Preparedness Policy hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 621 District and School Emergency Preparedness Policy adopted hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 621 District and School Emergency Preparedness Policy in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on January 15, 2009. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of January 2009.

Department of Education

Valerie A. Woodruff, Secretary of Education

Approved this 15th day of January 2009

621 District and School Emergency Preparedness Policy**1.0 Definitions**

"Charter School" shall mean a charter school board established pursuant to Chapter 5 of Title 14 of the **Delaware Code**.

"District" shall mean a reorganized school district or vocational technical school district established pursuant to Chapter 10 of Title 14 of the **Delaware Code**.

"Emergency Preparedness Guidelines" means the Department of Education developed documents that outline the steps, processes, procedures, audits and actions a school, local school district or charter school shall use to develop a plan to respond to an emergency event or crisis situation, including a major communicable disease event such as a Pandemic Influenza Outbreak that may occur in the school community. These documents may be revised from time to time. The documents shall be available on the Department of Education website.

"School Safety Team" means the individuals identified in the district or charter school emergency preparedness or crisis response plan responsible for the planning and implementation of the plan at the school level or district level.

2.0 District and Charter School Written Policy Required

2.1 Each school district and charter school shall have a written policy that outlines an emergency preparedness plan that is consistent with the Emergency Preparedness Guidelines. In addition, the district policy shall state how the emergency preparedness plan shall be implemented at each school within the district. The emergency preparedness plan shall be reviewed with students and staff annually.

2.2 The district policy shall describe how each school within the district shall plan and conduct at least one emergency event or crisis situation exercise annually. In addition, each district shall conduct at least one tabletop exercise on a major communicable disease event such as a Pandemic Influenza Outbreak every two years.

- 2.3 The charter school policy shall describe how the charter school will plan and conduct at least one emergency event or crisis situation exercise annually and at least one tabletop exercise on a major communicable disease event such as a Pandemic Influenza Outbreak every two years.

3.0 Reporting Requirements and Timelines

- 3.1 Each public school district and charter school shall have an electronic copy of its current Emergency Preparedness policy on file with the Department of Education. In addition, following the practice exercise(s) outlined in 2.0 of this regulation, the district superintendent or designee, or charter school administrator shall document the practice exercise(s) and the school safety team(s) meeting(s) to assess readiness and determine the effectiveness of the existing plans. The documentation of such practice exercise(s) and School Safety Team meeting(s) shall be provided to the Department upon request.
- 3.2 Each school district and charter shall provide an electronic copy of the its Emergency Preparedness policy within thirty (30) days of any revision(s) regardless of whether said revisions were made as a result of changes to Federal, state or local law, regulations, guidance, policies or recommendations from the School Safety Team.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 3110 (14 Del.C. §3110)
14 DE Admin. Code 925

REGULATORY IMPLEMENTING ORDER

925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs to: 1) add a new subsection 20.6 that requires a parental notice and acknowledgement section in IEP forms that both identifies students eligible for 12 month programs and documents the parental option to accept a 12 month program, and 2) makes changes to subsection 20.4 related to the use of the appropriate IEP form for children eligible for special education services. The amendments were made at the request of, and in consultation, with the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Monday, November 3, 2008, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities strongly endorsing the amendment.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs as per paragraph 1 of Section I of this order.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on January 15, 2009. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 15th day of January 2009.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 15th day of January 2009

STATE BOARD OF EDUCATION

Jean W. Allen, President

G. Patrick Heffernan

Barbara Rutt

Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President

Jorge L. Melendez

Dennis J. Savage

925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs

*Please note that no changes were made to the regulation as originally proposed and published in the November 2008 issue of the *Register* at page 569 (12 DE Reg. 569). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs](#)

FINAL REGULATIONS

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1105

1105 School Transportation

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 1105 School Transportation.

The amendments include the following: 1) adds definitions; 2) updates and adds responsibilities for School District Superintendents/charter School Heads of School or their designated school transportation supervisors; 3) updates and adds conditions for school bus contractors; 4) describes school bus training courses; 5) adds qualifications and responsibilities of Certified Delaware School Bus Driver Trainers; 6) expands qualifications and responsibilities of school bus drivers and aides; 7) updates procedures for operating school buses; 8) updates funding procedures for districts and charter schools; 9) changes school bus replacement schedules; and 10) streamlines the non-public school parent stipend procedures.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Thursday, December 4, 2008, in the form hereto attached as Exhibit "A". The State Board of Education requested a change in wording to clarify Section 17.3.6.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 1105 School Transportation as per the paragraph 2 of Section I of this order.

II. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 1105 School Transportation. Therefore, pursuant to 14 **Del.C.** §122, 14 DE Admin. Code 1105 School Transportation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1105 School Transportation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 1105 School Transportation amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1105 School Transportation in the Administrative Code of Regulations for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on January 15, 2009. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of January 2009.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 15th day of January 2009

State Board of Education

Jean W. Allen, President

G. Patrick Heffernan

Barbara Rutt

Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President

Jorge L. Melendez

Dennis J. Savage

1105 School Transportation

(Break in Continuity of Sections)

44-0 17.0 Transportation Formulas for ~~Public~~ Local School Districts Operating District, Lease, or Lease Purchase Buses

~~Items which are not on this list must be approved by the State Department of Education. Any purchase, commitment, or obligation exceeding the transportation allocation to the district is the responsibility of the district.~~

- 44.1 17.1 A District shall not use transportation funds for items which are not on the following list without approval by the DOE. Any purchase, commitment, or obligation exceeding the transportation allocation to the District is the responsibility of the District. The following items may be used for the purpose of providing pupil transportation in accordance with the regulations of the Department of Education.
- 44.1.1 17.1.1 Advertising including equipment, routes, supplies, and ~~employees~~ employment.
 - 44.1.2 17.1.2 Communication systems including two way radios, cellular phones, and AM-FM radio.
 - 44.1.3 17.1.3 Fuel including gasoline, diesel, propane, kerosene, storage tanks, pumps, additives, and oil.
 - 44.1.4 17.1.4 Leasing and rental including tools, equipment, storage facilities, buses, garage space, and office space.
 - 44.1.5 17.1.5 Office supplies and materials including computer hardware, computer software, data processing, maps, postage, printing, subscription, and measuring devices.
 - 44.1.6 17.1.6 Safety materials including audio visual aids, restraining vests, belts, safety awards, pins, patches, certificates, wheelchair ramps, wheelchair retainers, printing, handout materials, pamphlets, training materials, subscriptions, and bus seats.
 - 44.1.7 17.1.7 Salary and wages including attendants (aide) as approved by the Department of Education when required in a ~~student's~~ pupil's IEP, dispatchers, drivers, maintenance helpers, mechanics, mechanics helpers, office workers, secretarial, substitute drivers, supervisory (other than State supported supervisor or manager), and State provided employee benefits.
 - 44.1.8 17.1.8 Shop facilities including heat, electric, water, sewer, security, fences, lights, locks, guards, bus storage, janitorial supplies, brushes, mops, buckets, soap, tools, maintenance vehicles, grease, service vehicles, and work uniforms for maintenance staff.
 - 44.1.9 17.1.9 Sidewalks including construction of sidewalks, footbridges, etc. that would be offset in reduced busing costs in 5 years or less, with prior approval of Supervisors of Transportation and School Plant Planning.
- 44.2 17.2 Special 01-60 state funds are provided to local school districts for training supplies. This account may also be used for reimbursements for state provided equipment and services.
- 44.3 17.3 Examples of Programs Excluded from State Reimbursement:
- 44.3.1 17.3.1 Extracurricular Field trips

- 14.3.2 ~~17.3.2~~ Transportation of pupils from one school to another for special programs (e.g., music festivals, ~~Christmas Holiday~~ programs, etc.)
- 14.3.3 ~~17.3.3~~ Transportation of pupils to and from athletic contests, practices, tutoring, band events, etc.
- 14.3.4 ~~17.3.4~~ Post secondary classes
- 14.3.5 ~~17.3.5~~ Federal programs
- 14.3.6 ~~17.3.6~~ ~~[Alternative school transportation when not using a shuttle concept that is as efficient as a shuttle concept. Alternative school transportation when using a direct to and from school route that is less efficient than a shuttle concept. A shuttle concept means transporting students to one school and then to the alternative school.]~~
- 14.3.7 ~~17.3.7~~ Choice school transportation outside of the local school district or outside of the attendance area of school that the bus normally serves.
- 14.3.8 ~~17.3.8~~ Charter school transportation (if being provided by a local school district) outside of the local school district.

***Please Note:** As the rest of the sections were not amended since the proposal in the December 2008 issue, they are not being published here. A copy of the regulation is available at:

[1105 School Transportation](#)

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

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

ORDER

DSSM 20700.6 - 20700.6.7- Delaware's Attendant Services 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 Attendant Services Waiver Program. 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 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The proposed amends the Division of Social Services Manual (DSSM) to repeal rules related to the Attendant Services Waiver Program, which was not implemented.

Statutory Authority

31 **Del.C.** §107, Rules and Regulations

Background

On October 31, 2006, the Division of Medicaid & Medical Services (DMMA) submitted a §1915(c) waiver application to the Centers for Medicaid & Medicaid Services (CMS) for approval. The DMMA announced a thirty-day comment period for this Waiver application in the December 1, 2006 issue.

DMMA withdrew its proposed regulation published on December 1, 2006 at **10 DE Reg. 954** as of February 1, 2007. Please note that eligible clients continue to be placed in the State's Attendant Services Program. This option offers more services to the client population than would be available under the Waiver.

Summary of Proposal

DSSM 20700.6 - DSSM 20700.6.7: This repeal is being undertaken to remove the eligibility regulations for the Attendant Services Waiver (ASW) Program from the Division of Social Services Manual (DSSM). Since the ASW Program was not implemented, the rules at DSSM 20700.6 through DSSM 20700.6.7 are unnecessary. Therefore, to be consistent with the agency's withdrawal of the above-referenced Attendant Services Waiver application sections 20700.6 through 20700.6.7 are being repealed.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The State Council for Persons with Disabilities (SCPD) offered the following observation. DMMA has considered each comment and responds as follows.

As background, the Division published proposed standards in the Fall of 2006 to implement a proposed attendant services waiver. Unfortunately, DMMA identified some "downsides" to the waiver. After a meeting with representatives of the SCPD and Developmental Disabilities Council (DDC), it was decided to abandon the waiver in favor of eliminating the waiting list with an infusion of "Tobacco" funds. This was accomplished in July 2007. Although a new waiting list now exists, SCPD endorses the proposed regulation which is essentially a "housekeeping" measure to conform to the waiver withdrawal effected in February 2007.

Agency Response: DMMA thanks the Council for their endorsement.

Findings of Fact:

The Department finds that the proposed changes as set forth in the December 2008 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the repeal of sections DSSM 20700.6 through 20700.6.7 of the Division of Social Services Manual (DSSM) regarding the Attendant Services Waiver Program is adopted and shall be final effective February 10, 2009.

Vincent P. Meconi, Secretary, DHSS

DMMA FINAL ORDER REGULATION #09-05

REPEAL:

*Please note that no changes were made to the regulation as originally proposed and published in the December 2008 issue of the *Register* at page 740 (12 DE Reg. 740). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/february2009/final/12 DE Reg 1088 02-01-09.htm>

FINAL REGULATIONS

DIVISION OF SOCIAL SERVICES

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

ORDER

DSSM 9046, Countable Resources; 9049 Excluded Resources

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding Countable Resources and Excluded Resources. 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 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGES

The proposed changes described below amend Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding Countable Resources and Excluded Resources.

Statutory Authority

- "Food, Conservation, and Energy Act of 2008, Title IV, Section 4104, Asset Indexation, Education, and Retirement Accounts;
- "7 CFR §273.8, Resource eligibility standards.

SUMMARY OF PROPOSED CHANGES

DSSM 9046, Countable Resources **and DSSM 9049**, Excluded Resources: The proposed changes amend the Food Supplement Program rules to implement the mandatory provisions of Section 4104 of the Food, Conservation, and Energy Act of 2008 (the Farm Bill) that excludes retirement savings and pension plans and, educational savings plans from countable resources for the Food Supplement Program, effective October 1, 2008.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The State Council for Persons with Disabilities (SCPD) offered the following observations and recommendation summarized below. DSS has considered the comment and responds as follows.

For background, attached please find an excerpt from a Center on Budget and Policy Priorities publication, "Implementing New Changes to the Food Stamp Program: A Provision By Provision Analysis of the 2008 Farm Bill". As it indicates, Section 4104 is designed to have three (3) effects: 1) adjust the Food Stamp asset limit to reflect inflation; 2) exclude all tax-preferred retirement accounts from countable assets; and 3) exclude educational savings accounts from countable income. With the exception of the inflationary adjustment, the Federal law mandates the changes by October 1, 2008 and the proposed regulation, though published in December, has an October 1, 2008 effective date.

The proposed DSS regulation excludes retirement accounts and educational savings accounts at Section 9049P. SCPD did not identify any concerns with the proposed standards which appear to correspond to the table in the Center on Budget and Policy Priorities guidance (p. 22).

The inflation adjustment will take effect over several years and is not addressed in the current regulation. As the Center guidance indicates, the current asset limits (\$2,000 per household; \$3,000 per household with member over 60 or with disability) have not changed since 1986. Applying their "real 1986 values", the asset limits in 2008 should be \$3,700 and \$5,500 respectively. Center Guidance at 19.

SCPD has the following recommendation in the context of the overall regulation.

Section 9046A8 includes the following as a countable resource per household: "the portion of the equity value of a funeral agreement that exceeds \$1,500". In contrast, Section 9049E contains the following exclusion from resources per household: "value of one bona fide funeral agreement (not exceeding \$1,500) per household member." If spouses in a household each had a funeral agreement for \$1,500, or a combined spousal funeral agreement with \$1,500 coverage apiece, Section 9046 would arguably result in a countable resource of 1,500. Under Section 9049, there would be 0 countable resources. It would be preferable to clarify in Section 9046 that the standard is "per household member".

SCPD endorses the regulation subject to the aforementioned recommendation.

Agency Response: DSS agrees. The final order regulation shows the clarification as indicated in the recommendation. Thank you for the endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the December 2008 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulations to amend the Division of Social Services Manual (DSSM) as it relates to the Food Supplement Program regarding Countable Resources and Excluded Resources are adopted and shall be final effective February 10, 2009.

Vincent P. Meconi, Secretary, DHSS

DSS FINAL ORDER REGULATIONS #09-07

REVISIONS:

9046 **Countable Resources**

[7 CFR 273.8(c)]

Count the following resources when determining eligibility for food benefit purposes for non-categorical eligible households:

A. Liquid Resources

1. Cash on hand
2. Money in checking or savings accounts
3. Savings certificates
4. Stocks
5. Bonds
6. Lump sum payments
7. Non-deferred business or personal loans in month of receipt
8. The portion of the equity value of a funeral agreement that exceeds \$1,500 [per household member]

B. Non-Liquid Resources, not specifically excluded under 9049.

1. Personal property
2. Licensed and unlicensed vehicles
3. Buildings, land, recreational properties and any other property

The value of non-exempt resources is the equity value, except for licensed vehicles per DSSM 9051. The equity value is the fair market value minus encumbrances.

C. Deemed Resources of the sponsor (and sponsor's spouse) for sponsored aliens per DSSM 9081.2.

***Please Note: As the rest of the sections were not amended since the proposal in the December 2008 issue, they are not being published here.**

(Break in Continuity of Sections)

9049 Excluded Resources

[7 CFR 273.8(e)]

***Please note that no changes were made to the regulation as originally proposed and published in the December 2008 issue of the Register at page 744 (12 DE Reg. 744). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

<http://regulations.delaware.gov/register/february2009/final/12 DE Reg 1090 02-01-09.htm>

DIVISION OF SOCIAL SERVICES

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

ORDER

FOOD SUPPLEMENT PROGRAM

Electronic Benefit Transfer

Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding Electronic Benefit Transfer. 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 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Changes

The proposed changes described below amend Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding Electronic Benefit Transfer.

Statutory Authority

Food, Conservation, and Energy Act of 2008, Title IV, Part III, Section 4114, Accrual of Benefits

Summary of Proposed Changes

Effective October 1, 2008, the Food Supplement Program (FSP) is the new name for Delaware's food program.

The proposed changes amend the Food Supplement Program (FSP) rules to implement the federally mandated provisions of Section 4114 of the Food, Conservation, and Energy Act of 2008 (the Farm Bill), effective October 1, 2008. The change requires states to only expunge stale benefits if the benefits have not been accessed for 12 months. Therefore, the only policy manual change being made is to remove all references to 270 days and replace with 365 days.

Summary of Comments Received With Agency Response

No public comments were received.

Findings of Fact:

The Department finds that the proposed changes as set forth in the December 2008 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to the Food Supplement Program regarding Electronic Benefit Transfer is adopted and shall be final effective February 10, 2009.

Vincent P. Meconi, Secretary, DHSS

9093.1 Definitions/Acronyms

Administrative Terminal: This is the eFunds system through which DSS staff can obtain EBT card and account information.

Authorized Representative: This is an individual outside the household designated to have access to the household's benefit account. This can also be a household member, for example, a spouse, who is a secondary card holder.

Benefit Status: This is a code which indicates the current status of the benefit in the Administrative Terminal.

Card Number: The card number is printed on the front of the EBT card. The first six digits are the same for all of Delaware's cards. This is known as the Primary Account Number (PAN).

Card Status: An EBT card may be active or inactive. The card status for a replacement card can indicate stolen, lost, payee changed, name changed, damaged, undelivered, deactivated/cancelled or bad address.

Date Available: Benefits are available at 6:00 a.m. on the date specified in the Administrative Terminal. Regular monthly food **[stamp supplement]** benefits are available according to a seven day staggered schedule based on the last name. Benefits start staggering on the fifth calendar day of each month.

eFunds Customer Support: The Customer Support Unit receives phone calls from participants to check balances, report lost or stolen cards, report problems with a retailer, and request new PINs. The CSU number is 1-800-526-9099.

Expunged Benefits: Benefits in client accounts not used for ~~270~~ 365 days are expunged (removed) from the account forever.

FNS Number: A unique number is assigned to retailers by FNS indicating that the retailer is eligible to accept food stamp benefits.

Hold Amount: When a food stamp manual voucher transaction is used, an authorization number must be obtained by phoning eFunds. A hold is put on the participant's food stamp benefits balance equal to the amount of the transaction until the voucher is cleared by the retailer. Once an accept reason is assigned to the voucher, the hold amount is deducted from the participant's benefit balance and this field becomes blank.

Manual Entries: If a card or POS machine is damaged, the card number can be keyed manually to complete the transaction.

Manual Voucher: Retailers use paper vouchers when the eFunds system is not available. Retailers who are not eligible to have POS terminals also use these vouchers. A voucher has a unique number which identifies the voucher. This field is completed only if the transaction displayed in the Administrative Terminal is an off-line voucher.

PAN: The Primary Account Number is the 16 digit number on the card. This is also called the card number.

PIN (Personal Identification Number): A PIN is a four number secret code that must be used when the EBT card is used. No one can use the card but the participant as long as the participant does not give the PIN out to anyone.

PIN Info: The Card Maintenance screen in the Administrative Terminal displays whether or not a PIN has been selected and the method. Yes indicates that a PIN has been selected. Fails is the number of times the PIN entered has failed that day. Chg Count is the number of times the PIN has been changed. Method is how the PIN was selected.

Point-of-Sale (POS) Terminal: A POS is a device on which transactions are made by the food stamp participant. The POS machine reads the card and allows the participant to buy food with the food stamp benefits.

Stale Benefits: Benefits not used by a household within 60, 90 or 230 days are called stale benefits.

(Break in Continuity of Sections)

9093.8 EBT Benefits and Claim Issues

When eFunds posts the EBT benefits to the household's account, the household is considered in receipt of those benefits. If the household receives benefits they were not entitled to, DSS/ARMS will establish a claim. DSS/ARMS establishes a claim even if the household has not used the benefits in the EBT account. As long as the benefits are in the account, the household has access to those benefits and owes the State the amount of the claim.

ARMS must allow a household to pay its claim using benefits from its EBT benefit account according to DSSM 7004.3.

Benefits not used for 230 days are stale and ARMS can use the stale benefits to credit a household's claim with the consent of the household.

eFunds will expunge benefits not used for ~~270~~ 365 days from the household's account and credit the amount to a household's outstanding claim.

9093.9 Aging Periods and Expungement Process

Benefits remain available to the household for ~~270~~ 365 days from the date of availability. eFunds sends reports to DSS that show accounts with no activity.

eFunds provides DSS with a report for the following periods of time:

- Period 1: 60 days
- Period 2: 90 days

- Period 3: 230 days
- Period 4: ~~270~~ 365 days

A household will get a notice at Periods 1, 2 and 3 if the household has not used benefits for 60, 90 or 230 days. Stale benefits are benefits not used by these time periods. The notice will tell the household the following information:

- The account has not been used in the past 60, 90 or 230 days;
- To call the eFunds customer service unit to get the balance on the account;
- Stale food [~~stamp~~] benefits not used for 230 days can be applied to any existing claim with the client's permission;
- Food [~~stamp~~] benefits that are not used by day ~~270~~ 365 will be removed from the account forever; and
- Food [~~stamp~~] benefits removed from the account on day ~~270~~ 365 will be applied to any remaining food [~~stamp benefit~~] claim."

On day 230, DSS will generate notices to clients with outstanding claims. The notice tells the household that ARMS will apply benefits not used for 230 days to the outstanding claim unless the household contacts ARMS within ten days.

On day 250, households who do not contact ARMS to stop the repayment will have their stale benefits applied to the outstanding claim. On day ~~270~~ 365, the eFunds system will expunge (remove from the account) any remaining stale benefits and send DSS a report of those benefits expunged.

DCIS II and ARMS accounting systems will credit any expunged benefits to household accounts with an outstanding claim. ARMS and the Payments Unit will receive a report of benefits posted to household's claims so ARMS can update the benefit recovery screens. ARMS will send the client a credit slip indicating the credit made on their claim and the existing balance.

DIVISION OF SOCIAL SERVICES

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

ORDER

DSSM 1003.4 Court Appointed Special Advocate (CASA or guardian ad litem)

Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Court Appointed Special Advocate. 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 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Change

The proposed change described below amends policy in the Division of Social Services Manual (DSSM) regarding the Court Appointed Special Advocate.

Statutory Authority

31 **Delaware Code** Ch. 36, Court-Appointed Special Advocate Program

Summary of Proposed Changes

DSSM 1003.4, Court Appointed Special Advocate (CASA or guardian ad litem): This section is being revised to clarify the responsibilities of Division of Social Services (DSS) staff. Text is being deleted that indicates DSS staff will notify the CASA of staffing, investigations, or proceedings regarding the child. DSS staff do not have this information.

Summary of Comments Received With Agency Response

The State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DSS has considered each comment and responds as follows.

SCPD did not identify any concerns with the proposed revision and has the following observations.

Title 31, Chapter 36 establishes a CASA program in which the Family Court appoints individuals to represent a child's interests in Family Court proceedings. See Title 31 Del.C. §§3602(5) and 3606. The CASA is entitled to have access to all records related to the child. See Title 31 Del.C. §§3606(f) and 3610. The DSS regulation implements these statutes by allowing a CASA to access DSS records. However, DSS proposes to delete the following sentence: "The CASA must also be notified of any staffing, investigations or proceedings regarding the child, so that they may participate and represent the child." DSS proposes the deletion since "DSS staff do not have this information." This sentence may "date back" to the period pre-dating the establishment of the DSCY&F when DSS was responsible for activities now conducted by DFS. The enabling statute does contemplate that the "Division" (defined as DFS) notify the CASA of placement changes and complaints regarding a child.

Agency Response: Thank you for your concurrence.

Findings of Fact:

The Department finds that the proposed changes as set forth in the December 2008 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to the Court Appointed Special Advocate is adopted and shall be final effective February 10, 2009.

Vincent P. Meconi, Secretary, DHSS

DSS PROPOSED REGULATION #09-06**REVISIONS:****1003.4 Court Appointed Special Advocate (CASA or guardian ad litem)**

A Court Appointed Special Advocate (CASA) is given permission to inspect and/or copy any records relating to the child and his or her family/guardian without their consent. The CASA has the authority to interview all parties having significant information relating to the child. ~~The CASA must also be notified of any staffing, investigations or proceedings regarding the child, so that they may participate and represent the child.~~

If information is released under the procedures applying to CASA, pertinent details of the reasons for the release shall be documented and written notification of this release shall be sent to the last known address of the individual to whom the record refers.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)
7 DE Admin. Code 1138

Secretary's Order No.: 2009-A-0004

1138 Emission Standards for Hazardous Air Pollutants for Source Categories, Section 9.0: Hospital Ethylene Oxide Sterilizers

Date of Issuance: January 14, 2009

Effective Date of the Amendment: February 11, 2009

I. Background:

A public hearing was held on Wednesday, December 3, 2008, at 6:00 p.m. at the DNREC Air Quality Management Office, 715 Grantham Lane, New Castle, Delaware, to receive public comment on the proposed amendment to existing Delaware Regulation 1138, *Emission Standards for Hazardous Air Pollutants for Source Categories*. To serve as a brief background for this promulgation, it should be noted that Congress sought to reduce cancer and non-cancer health risks due to the exposure to hazardous air pollutants (HAPs) in the 1990 Amendments to the Clean Air Act. Under Section 112(k) – Area Source Program, Congress mandated that the EPA identify 30 or more HAPs that posed the greatest threat to public health in urban areas, and to identify the small (i.e., “area”) sources that emit any of those pollutants.

In 1999, the EPA identified 33 HAPs that posed the greatest threat to public health. Since that time, the EPA has identified over 60 area source categories for which standards are to be promulgated. The EPA promulgated its first of these area source standards in 2006, and they are under Court-ordered deadlines to complete all promulgations by June 2009. In December 2007, the EPA promulgated another area source standard affecting a Delaware source: the hospital ethylene oxide sterilizer standard under 40 CFR Part 63 Subpart WWWW.

The purpose of this proposed amendment to Regulation 1138 (Section 9.0) is to provide increased protection for Delaware citizens against a variety of adverse health effects, which includes problems in the proper functioning of the brain and nerves and the irritation to the eyes, skin, and mucous membranes as a result of exposure to ethylene oxide. In addition, ethylene oxide is classified as a probable human carcinogen based on cancer data, which shows increased incidences of leukemia, stomach cancer, and cancers of the pancreas. The proposed amendment will provide greater consistency between Delaware's air toxics standards and the recently promulgated federal standard (Subpart WWWW), on which this proposed amendment is heavily based. Moreover, this amendment proposes to include several more protective requirements that either currently exist in Delaware air permits, or are in similar air toxic standards found in Regulations 1138.

Of note is the fact that no members of the public attended this hearing on December 3, 2008 to voice concerns with regard to the aforementioned amendment to Delaware's existing Regulation 1138. Neither were there any comments, either written or oral, received from the public during either the pre-hearing or post-hearing phase of this proceeding. Proper notice of the hearing was provided as required by law.

After the hearing, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated January 12, 2009, and that Report in its entirety is expressly incorporated herein by reference.

II. Findings:

The Department has provided a reasoned analysis and a sound conclusion with regard to this proposed regulatory action, as reflected in the Hearing Officer's Memorandum of January 12, 2009, which again is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and has determined it to be lawful, feasible and desirable, and that the revisions as proposed should be applied to all Delaware citizens and members of the regulated community equally in order to provide increased public health to Delaware's citizens, as well as to provide greater consistency between current state air toxics standards and the recently promulgated federal standard on which this proposed amendment is based;
5. Promulgation of this proposed amendment would update Delaware's requirements to be consistent with the federal requirements, thus bringing Delaware into compliance with EPA standards;
6. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
7. The Department's proposed regulatory amendment to Delaware's existing Regulation 1138, as published in the November 1, 2008 *Delaware Register of Regulations* and set forth within Attachment "A" hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and
8. The Department shall submit the proposed regulation as a final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated January 12, 2009, and expressly incorporated herein, it is hereby ordered that the proposed amendments to existing Delaware Regulation 1138, *Emission Standards for Hazardous Air Pollutants for Source Categories*, be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the aforementioned amendments to existing State of Delaware Regulation 1138 will bring Delaware into compliance with Federal standards by updating Delaware's requirements, where appropriate, to be consistent with the same, and will also result in better public health standards for Delaware's citizens.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 Del.C., Ch. 60.

John A. Hughes, Secretary

1138 Emission Standards for Hazardous Air Pollutants for Source Categories

(Break in Continuity of Sections)

9.0 ~~[Reserved]~~ Emission Standards for Hospital Ethylene Oxide Sterilizers

9.1 Applicability.

9.1.1 The provisions of 9.0 of this regulation apply to each ethylene oxide sterilization facility at a hospital that is an area source of hazardous air pollutant emissions.

9.1.2 The provisions of 9.0 of this regulation apply to each new or existing affected source. The affected source is each ethylene oxide sterilization facility.

9.1.2.1 An affected source is existing if the owner or operator commenced construction or reconstruction of the affected source before November 6, 2006.

9.1.2.2 An affected source is new if the owner or operator commenced construction or reconstruction of the affected source on or after November 6, 2006.

9.1.3 The owner or operator of an area source subject to 9.0 of this regulation is exempt from the obligation to obtain a Title V operating permit under 7 DE Admin. Code 1130 of State of Delaware "Regulations Governing the Control of Air Pollution", if the owner or operator is not required to obtain a Title V operating permit under 3.1 of 7 DE Admin. Code 1130 for a reason other than the owner or operator's status as an area source under 9.0. Notwithstanding the previous sentence, the owner or operator shall continue to comply with the provisions of 9.0.

9.2 Definitions.

Unless defined below, all terms in 9.0 of this regulation have the meaning given them in the Act or in 3.0 of this regulation.

"Aeration process" means any time when ethylene oxide is removed from the aeration unit through the aeration unit vent or from the combination sterilization unit through the sterilization unit vent, while aeration or off-gassing is occurring.

"Aeration unit" means any vessel that is used to facilitate off-gassing of ethylene oxide.

"Air pollution control device" means a catalytic oxidizer, acid-water scrubber, or any other air pollution control equipment that reduces the quantity of ethylene oxide in the effluent gas stream from sterilization and aeration processes.

"Combination sterilization unit" means any enclosed vessel in which both the sterilization process and the aeration process occur within the same vessel, i.e., the vessel is filled with ethylene oxide gas or an ethylene oxide/inert gas mixture for the purpose of sterilizing and is followed by off-gassing of ethylene oxide.

"Common aeration time" means that items require the same length of time to off-gas ethylene oxide.

"Full load" means the maximum number of items that does not impede proper air removal, humidification of the load, or sterilant penetration and evacuation in the sterilization unit.

“Hospital” means a facility that provides medical care and treatment for patients who are acutely ill or chronically ill on an inpatient basis under supervision of licensed physicians and under nursing care offered 24 hours per day. Hospitals include diagnostic and major surgery facilities but exclude doctor’s offices, clinics, or other facilities whose primary purpose is to provide medical services ~~[to humans or animals]~~ on an outpatient basis.

“Hospital central services staff” means a healthcare professional, including manager and technician, who is either directly involved in or responsible for sterile processing at a hospital.

“Medically necessary circumstances” means circumstances that a hospital central services staff, a hospital administrator, or a physician concludes, based on generally accepted medical practices, necessitate sterilizing without a full load in order to protect human health.

“Sterilization facility” means the group of ethylene oxide sterilization units at a hospital using ethylene oxide gas or an ethylene oxide/inert gas mixture for the purpose of sterilizing.

“Sterilization process” means any time when ethylene oxide is removed from the sterilization unit or combination sterilization unit through the sterilization unit vent.

“Sterilization unit” means any enclosed vessel that is filled with ethylene oxide gas or an ethylene oxide/inert gas mixture for the purpose of sterilizing. As used in 9.0 of this regulation, the term includes combination sterilization units.

9.3 Compliance Dates.

9.3.1 The owner or operator of an existing affected source shall be in compliance with the applicable provisions of 9.0 of this regulation by no later than February 11, 2009.

9.3.2 The owner or operator of a new or reconstructed affected source that has an initial startup on or before December 28, 2007 shall be in compliance with the applicable provisions of 9.0 of this regulation by no later than February 11, 2009.

9.3.3 The owner or operator of a new or reconstructed affected source that has an initial startup after December 28, 2007 shall be in compliance with the applicable provisions of 9.0 of this regulation immediately upon startup or February 11, 2009, whichever is later.

9.4 Standards.

9.4.1 The owner or operator of an affected source subject to 9.0 of this regulation shall comply with either 9.4.1.1 or 9.4.1.2 of this regulation[, whichever is applicable].

9.4.1.1 The owner or operator of an aeration unit or sterilization unit that is not equipped with an air pollution control device shall only sterilize full loads of items having a common aeration time, except under medically necessary circumstances, as that term is defined in 9.2 of this regulation.

9.4.1.2 The owner or operation of an aeration unit or sterilization unit that is equipped with an air pollution control device shall reduce the ethylene oxide emissions discharged to the atmosphere in accordance with the applicable requirements in 9.4.1.2.1 or 9.4.1.2.2 of this regulation.

9.4.1.2.1 The air pollution control device for a sterilization unit shall reduce the emissions of ethylene oxide to the atmosphere by 99 percent or greater.

9.4.1.2.2 The air pollution control device for an aeration unit shall reduce the emissions of ethylene oxide to the atmosphere by 95 percent or greater.

9.4.2 The owner or operator of an affected source complying with 9.4.1.1 of this regulation shall also provide a permanent, legible, conspicuous label summarizing the sterilization unit loading and operating requirements.

9.4.3 The owner or operator of an affected source subject to 9.0 of this regulation shall develop and implement a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the affected source during periods of startup, shutdown, and malfunction and a program of corrective actions for malfunctioning process, control devices, and monitoring equipment used to comply with 9.0. At a minimum, this plan shall include the following:

9.4.3.1 Operating instructions for the proper loading, processing, venting, unloading and aeration of the sterilization facility.

9.4.3.2 The routine maintenance schedule and procedures in accordance with the manufacturer's recommendations.

9.4.3.3 The operational plan that describes, in detail, a program of corrective actions to be taken when equipment or process malfunctions occur.

9.4.3.4 The proper storage of ethylene oxide.

9.5 Initial compliance demonstration.

9.5.1 ~~[For affected sources electing to comply with~~ **The owner or operator of an affected source subject to] 9.4.1.1 of this regulation [shall comply with 9.5.1.1 through 9.5.1.3 of this regulation].**

9.5.1.1 The owner or operator shall demonstrate initial compliance with 9.4 of this regulation by submitting an initial notification of compliance status certifying that the owner or operator is sterilizing full loads of items having a common aeration time, except under medically necessary circumstances, and is in compliance with all other applicable requirements in 9.4.

9.5.1.2 The owner or operator [of a new or reconstructed affected source] shall demonstrate initial compliance with 9.4 of this regulation [~~immediately upon startup or~~] no later than **[February 11, 2009 or ~~120~~ 180]** calendar days after the compliance date of the affected source, whichever is later.

[9.5.1.3 The owner or operator of an existing affected source shall demonstrate initial compliance with 9.4 of this regulation no later than June 27, 2009.]

9.5.2 ~~[For affected sources electing to comply with~~ **The owner or operator of an affected source subject to] 9.4.1.2 of this regulation[. ~~The owner or operator~~] shall conduct a performance test to demonstrate initial compliance with the applicable emission limitations in 9.4.1.2 of this regulation. The owner or operator shall conduct the performance testing in accordance with the requirements in 3.7 of this regulation and permit conditions established in 9.11.2 of this regulation.**

9.5.3 [Reserved]

9.5.4 [Reserved]

9.6 Monitoring requirements.

9.6.1 ~~[For affected sources electing to comply with 9.4.1.1 of this regulation]~~ **The owner or operator of an affected source subject to 9.4.1.1 of this regulation** ~~shall demonstrate ongoing compliance with the requirements of 9.4.1.1 of this regulation by recording the date and time of each sterilization cycle, whether each sterilization cycle contains a full load of items, and if not, a statement from a hospital central services staff, a hospital administrator, or a physician that it was medically necessary.~~

9.6.2 ~~[For affected sources electing to comply with 9.4.1.2 of this regulation]~~ **The owner or operator of an affected source subject to 9.4.1.2 of this regulation** ~~shall demonstrate ongoing compliance with the requirements of 9.4.1.2 of this regulation by recording the date and time of each sterilization cycle and by conducting monitoring in accordance to the permit conditions established under 9.11.2 of this regulation.~~

9.6.3 On the first day of each month, the owner or operator of an affected source subject to 9.0 of this regulation shall calculate and record the previous month ethylene oxide consumption and the rolling 12-month total ethylene oxide consumption.

9.7 Notification requirements.

9.7.1 ~~[For affected sources electing to comply with 9.4.1.1 of this regulation]~~ **The owner or operator of an affected source subject to 9.4.1.1 of this regulation** ~~[shall comply with 9.7.1.1 through 9.7.1.3 of this regulation].~~

9.7.1.1 The owner or operator shall submit an initial notification of compliance status, signed by a responsible official who shall certify its accuracy, providing the information required in 9.7.1.1.1 through 9.7.1.1.7 of this regulation.

9.7.1.1.1 The name and address of the owner or operator.

9.7.1.1.2 The address (i.e., physical location) of the affected source.

9.7.1.1.3 An identification of the standard and other applicable requirements in 9.0 of this regulation that serve as the basis of the notification and the source's compliance date.

9.7.1.1.4 A brief description of the sterilization facility, including the number of ethylene oxide sterilizers, the size (volume) of each, the number of aeration units, if any, the amount of annual ethylene oxide usage at the facility, the control technique used for each sterilizer, if any, and typical number of sterilization cycles per year.

9.7.1.1.5 A statement that the affected source is an area source.

9.7.1.1.6 A statement certifying that the owner or operator is sterilizing full loads of items having a common aeration time, except under medically necessary circumstances, and is in compliance with all other applicable requirements in 9.4 of this regulation.

9.7.1.1.7 A statement that all information contained in the notification is true and accurate.

9.7.1.2 The owner or operator [of a new or reconstructed affected source] shall submit the initial notification of compliance status to the Department no later than **February 11, 2009 or 120 180** calendar days after the compliance date of the affected source[, whichever is later].

9.7.1.3 The owner or operator of an existing affected source shall submit the initial notification of compliance status to the Department no later than June 27, 2009.]

9.7.2 ~~[For affected sources electing to comply with~~ The owner or operator of an affected source subject to] 9.4.1.2 of this regulation [shall comply with 9.7.2.1 and 9.7.2.2 of this regulation].

9.7.2.1 The owner or operator shall submit an initial notification of compliance status no later than 60 calendar days following completion of the compliance demonstration required in 9.5.2 of this regulation in accordance with 3.9.8 of this regulation. The initial notification of compliance status shall be signed by the responsible official who shall certify its accuracy, attesting to whether the source is in compliance with applicable provisions of 9.4 of this regulation.

9.7.2.2 The owner or operator shall submit a notification of a performance test in accordance with 3.9.5 of this regulation.

9.7.3 In addition to submitting the initial notification of compliance status to the Department, the owner or operator of an affected source subject to 9.0 of this regulation shall submit the initial notification of compliance status to the EPA [~~Regional Office specified in 3.13.1 of this regulation.~~

~~**9.7.4** The owner or operator shall also submit a copy of the initial notification of compliance status to EPA's Office of Air Quality Planning and Standards. The owner or operator shall send this notification via either of the following:~~

~~**9.7.4.1** Electronic mail to CCG-ONG@EPA.GOV or~~

~~**9.7.4.2** U.S. mail or other mail delivery service to U.S. EPA, Sector Policies and Programs Division, Coatings and Chemicals Group (E143-01), Attn: Hospital Sterilizers Project Leader, Research Triangle Park, NC 27711].~~

9.8 Recordkeeping requirements.

9.8.1 The owner or operator of an affected source subject to 9.0 of this regulation shall keep the records specified in 9.8.1.1 through 9.8.1.9 of this regulation.

9.8.1.1 A copy of the initial notification of compliance status that the owner or operator submitted to comply with 9.7 of this regulation.

9.8.1.2 Records required by 9.6.1 of this regulation, if applicable, for each sterilization unit not equipped with an air pollution control device.

9.8.1.3 Records required by 9.6.2 of this regulation, if applicable, for each sterilization unit equipped with an air pollution control device.

9.8.1.4 Records associated with the calculation and results of the rolling 12-month total ethylene oxide consumption determined on the first day of each month as specified in 9.6.3 of this regulation.

9.8.1.5 Records to document that the inspection and maintenance required by the startup, shutdown, and malfunction plan in 9.4.3 of this regulation have taken place. The record can take the form of a checklist and should identify the equipment inspected, the date of inspection, a brief description of the working condition, and any actions taken to correct deficiencies found during the inspection.

- 9.8.1.6 Records of all maintenance performed on the affected source.
- 9.8.1.7 Records of the occurrence, duration, and cause (if known) of each malfunction of the equipment.
- 9.8.1.8 Records of actions taken during periods of malfunction when such actions are inconsistent with the startup, shutdown, and malfunction plan.
- 9.8.1.9 Other records, which may take the form of checklists, necessary to demonstrate conformance with the provisions of the startup, shutdown, and malfunction plan in 9.4.3 of this regulation.
- 9.8.2 The owner or operator shall keep records in a form suitable and readily available for expeditious review.
- 9.8.3 The owner or operator shall keep each record for 5 years following the date of each record.
- 9.8.4 The owner or operator shall keep each record onsite for at least 2 years after the date of each record. The owner or operator may keep the records offsite for the remaining 3 years.
- 9.9 Reporting requirements.
- 9.9.1 The owner or operator of each affected source subject to 9.0 of this regulation shall fulfill all reporting requirements outlined in 3.0 and 9.9 of this regulation, according to the applicability of 3.0 of this regulation, as identified in Table 9-1 of this regulation. All reports shall be submitted to the Department and to the EPA Regional Office specified in 3.13.1 of this regulation.
- 9.9.2 At a minimum, the owner or operator of an affected source subject to 9.0 of this regulation shall submit in writing the following reports.
- 9.9.2.1 Startup, shutdown, and malfunction reports in accordance with 3.10.4.5 of this regulation.
- 9.9.2.2 No later than the first day of February of each year the consumption of ethylene oxide for the previous calendar year as determined in 9.6.3 of this regulation.
- 9.9.3 At a minimum, the owner or operator of an affected source~~[- which elected to comply with subject to]~~ 9.4.1.2 of this regulation~~[;]~~ shall submit in writing the following reports.
- 9.9.3.1 The results of performance tests in accordance with 3.10.4.2 of this regulation.
- 9.9.3.2 The excess emissions and continuous monitoring system performance report and summary report in accordance with 3.10.5 of this regulation.
- 9.10 Applicability of general provisions.
- The owner or operator of an affected sources subject to the provisions of 9.0 of this regulation shall also be in compliance with the provisions in 3.0 of this regulation, that are applicable to 9.0 as specified in Table 9-1 of this regulation.
- 9.11 Additional compliance requirements.
- 9.11.1 ~~[If +T]~~he owner or operator of an affected source ~~[elects to comply with subject to]~~ 9.4.1.2 of this regulation~~[- the owner or operator]~~ shall:

- 9.11.1.1 Submit to the Department a startup, shutdown and malfunction plan consistent with the requirements of 9.4.3 of this regulation.

- 9.11.1.2 Submit to the Department recommended performance testing procedures and protocols necessary to demonstrate compliance with the requirements of 9.4.1.2 of this regulation.

- 9.11.1.3 Submit to the Department an application under 7 **DE Admin. Code** 1102 of State of Delaware “Regulations Governing the Control of Air Pollution” that proposes monitoring, recordkeeping and reporting requirements needed to demonstrate ongoing compliance with the provisions of 9.0 of this regulation.

- 9.11.2 The operation of the control technology shall be made federally enforceable in a permit issued pursuant to 7 **DE Admin. Code** 1102 or 1130 of State of Delaware “Regulations Governing the Control of Air Pollution.”

9.12 [Reserved]

Table 9-1 – Applicability of 3.0 to 9.0 of this Regulation

<u>General</u> <u>Provisions</u> <u>Reference</u>	<u>Applies</u> <u>to</u> <u>9.0</u>	<u>Comments</u>
<u>3.1.1.1-3.1.1.4</u>	<u>Yes</u>	
<u>3.1.1.5</u>	<u>No</u>	
<u>3.1.1.6</u>	<u>Yes</u>	
<u>3.1.1.7-3.1.1.9</u>	<u>No</u>	
<u>3.1.1.10-3.1.1.12</u>	<u>Yes</u>	
<u>3.1.1.13-3.1.1.14</u>	<u>No</u>	
<u>3.1.2.1</u>	<u>Yes</u>	
<u>3.1.2.2</u>	<u>Yes</u>	
<u>3.1.2.3</u>	<u>Yes</u>	
<u>3.1.3.1-3.1.3.2</u>	<u>Yes</u>	<u>9.1.3 of this regulation exempts affected sources from the obligation to obtain Title V operating permits for purposes of being subject to this regulation.</u>
<u>3.1.3.3-3.1.3.4</u>	<u>No</u>	
<u>3.1.3.5</u>	<u>No</u>	
<u>3.1.4</u>	<u>No</u>	
<u>3.1.5</u>	<u>Yes</u>	
<u>3.2</u>	<u>Yes</u>	
<u>3.3</u>	<u>Yes</u>	
<u>3.4.1-3.4.1.2</u>	<u>Yes</u>	
<u>3.4.1.3-3.4.1.5</u>	<u>No</u>	
<u>3.4.2-3.4.2.2</u>	<u>Yes</u>	
<u>3.4.2.3</u>	<u>No</u>	
<u>3.4.3</u>	<u>Yes</u>	
<u>3.5.1-3.5.2.1</u>	<u>Yes</u>	
<u>3.5.2.2</u>	<u>No</u>	
<u>3.5.2.3-3.5.2.4</u>	<u>Yes</u>	

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<u>3.5.2.5</u>	No	
<u>3.5.2.6</u>	Yes	
<u>3.5.3</u>	No	
<u>3.5.4.1-3.5.4.1.2.8</u>	Yes	
<u>3.5.4.1.2.9</u>	No	
<u>3.5.4.1.2.10-3.5.6.1.1</u>	Yes	
<u>3.5.6.1.2-3.5.6.1.4</u>	No	
<u>3.5.6.2</u>	Yes	
<u>3.6.1-3.6.2.5</u>	Yes	
<u>3.6.2.6</u>	No	
<u>3.6.2.7-3.6.3</u>	Yes	
<u>3.6.3.1</u>	Yes	Except that 9.3.1 of this regulation provides the compliance date for existing sources.
<u>3.6.3.2</u>	Yes	
<u>3.6.3.3-3.6.3.4</u>	No	
<u>3.6.3.5</u>	Yes	
<u>3.6.4</u>	No	
<u>3.6.5-3.6.5.1</u>	Yes	
<u>3.6.5.2</u>	No	
<u>3.6.5.3</u>	Yes	
<u>3.6.6</u>	Yes	Except 3.6.6 [that] does not apply to affected sources [which elected to comply with subject to] 9.4.1.1 of this regulation
<u>3.6.7-3.6.8</u>	No	
<u>3.6.9-3.6.9.6.1.2.1</u>	Yes	
<u>3.6.9.6.1.2.2</u>	No	
<u>3.6.9.6.1.2.3-3.6.9.6.1.2.4</u>	Yes	
<u>3.6.9.6.1.3-3.6.9.6.1.4</u>	No	
<u>3.6.9.6.2-3.6.9.14</u>	Yes	
<u>3.6.9.15</u>	No	
<u>3.6.9.16-3.6.10</u>	Yes	
<u>3.7.1.1-3.7.1.2</u>	Yes	Except [3.6.6 that 3.7.1.1 - 3.7.1.2] does not apply to affected sources [which elected to comply with subject to] 9.4.1.1 of this regulation
<u>3.7.1.2.1-3.7.1.2.8</u>	No	
<u>3.7.1.3-3.7.5</u>	Yes	
<u>3.7.6</u>	No	
<u>3.7.7-3.7.7.1</u>	Yes	
<u>3.7.7.2</u>	No	
<u>3.7.7.3-3.7.8</u>	Yes	
<u>3.8.1.1-3.8.1.2</u>	Yes	
<u>3.8.1.3</u>	No	
<u>3.8.1.4-3.8.5</u>	Yes	
<u>3.8.6</u>	No	
<u>3.8.7</u>	Yes	
<u>3.9.1-3.9.1.3</u>	Yes	

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<u>3.9.1.4.1</u>	<u>No</u>	
<u>3.9.1.4.2</u>	<u>Yes</u>	
<u>3.9.2-3.9.2.2.5</u>	<u>Yes</u>	
<u>3.9.2.3</u>	<u>No</u>	
<u>3.9.2.4-3.9.2.4.1</u>	<u>Yes</u>	
<u>3.9.2.4.2-3.9.2.4.4</u>	<u>No</u>	
<u>3.9.2.4.5-3.9.2.5</u>	<u>Yes</u>	
<u>3.9.3</u>	<u>Yes</u>	
<u>3.9.1.4.2</u>	<u>Yes</u>	
<u>3.9.2-3.9.2.2.5</u>	<u>Yes</u>	
<u>3.9.2.3</u>	<u>No</u>	
<u>3.9.2.4-3.9.2.4.1</u>	<u>Yes</u>	
<u>3.9.2.4.2-3.9.2.4.4</u>	<u>No</u>	
<u>3.9.2.4.5-3.9.2.5</u>	<u>Yes</u>	
<u>3.9.3</u>	<u>Yes</u>	
<u>3.9.4-3.9.5</u>	<u>Yes</u>	
<u>3.9.6</u>	<u>No</u>	
<u>3.9.7-3.9.8.3</u>	<u>Yes</u>	
<u>3.9.8.4</u>	<u>No</u>	
<u>3.9.8.5-3.9.10</u>	<u>Yes</u>	
<u>3.10.1-3.10.1.3</u>	<u>Yes</u>	
<u>3.10.1.4.1</u>	<u>No</u>	
<u>3.10.1.4.2</u>	<u>Yes</u>	
<u>3.10.1.5-3.10.1.7</u>	<u>Yes</u>	
<u>3.10.2.1</u>	<u>Yes</u>	
<u>3.10.2.2-3.10.3.1</u>	<u>Yes</u>	
<u>3.10.3.2-3.10.3.4</u>	<u>No</u>	
<u>3.10.3.5-3.10.3.8</u>	<u>Yes</u>	
<u>3.10.3.9</u>	<u>No</u>	
<u>3.10.3.10-3.10.5.3.1.2</u>	<u>Yes</u>	
<u>3.10.5.3.1.3</u>	<u>No</u>	
<u>3.10.5.3.2-3.10.6.6</u>	<u>Yes</u>	
<u>3.11</u>	<u>No</u>	<u>9.0 of this regulation does not require flares.</u>
<u>3.12-3.15</u>	<u>Yes</u>	

FINAL REGULATIONS

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
3500 BOARD OF EXAMINERS OF PSYCHOLOGISTS

Statutory Authority: 24 Delaware Code, Section 3506(a)(1) (24 Del.C. 3506(a)(1))
24 DE Admin. Code 3500

ORDER

The Delaware Board of Examiners of Psychologists, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §3506(a)(1), proposed amendments to its regulation section 7.0. Specifically, the proposed changes eliminate the limitation of qualifying experience to 60% direct service. This change would allow licensure of candidates who have spent more than 60% of their postdoctoral training in direct service to clients. Other 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 12, Issue 5, at page 636 on November 1, 2008.

Summary of the Evidence and Information Submitted

No written or verbal comments were received at the hearing.

Findings of Fact

1. The Board made 3 minor non-substantive changes to the proposed regulations for clarification purposes as noted in Exhibit A attached hereto based its own reconsideration of the proposed language.
2. The Board finds that adoption of the proposed amendments is necessary to eliminate the limitation of direct service for qualifying experience.

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 5th day of January 2009, by the Board of Examiners of Psychologists of the State of Delaware.

Dr. Gary Johnson, President
Joan McDonough
Dr. Marcia Halperin
Andrew Slater

Dr. Gordon DiRenzo, Vice President
Dr. Steve K.D. Eichel
Dr. Mark Fleming

3500 Board of Examiners of Psychologists

(Break in Continuity of Sections)

7.0 Supervised Experience

The types of supervision pertinent to licensure as a psychologist or registration as a psychological assistant are comprised of three types of supervisory experiences:

- 7.1 Predoctoral internship supervision as required by doctoral programs in psychology. The predoctoral internship consists of a minimum of 1,500 hours of actual work experience completed in not less than 48 weeks, nor more than 104 weeks. At least 50% of the predoctoral supervised experience must be in clinical services such as treatment, consultation, assessment, and report writing, with at least 25% of that time devoted to face-to-face direct patient/client contact. No more than 25% of time shall be allocated for research.
- 7.2 ~~Supervised P~~postdoctoral supervision experience is required for initial licensure ~~as a psychologist~~. Postdoctoral experience must consist of 1,500 hours of actual work experience. This experience ~~is to~~ must be completed in not less than one calendar year and not more than three calendar years, save for those covered under 24 **Del.C.** §3519(e). For those individuals the accrual of 1,500 hours of supervised postdoctoral experience must take place within six calendar years from the time of hire. ~~[There is to must be one hour of face-to-face supervision for every one to 1 to 10 hours of clinical work.] At least 25% of the [1500 hours of]~~ This experience shall consist of at least twenty-five percent and not more than sixty percent of the time be devoted weekly to direct service per week in the area of the applicant's academic training. "Direct service" consists of any activity defined as the practice of psychology or the supervision of graduate students engaging in activities defined as the practice of psychology. **[There must be one hour of face-to-face supervision for every one to 10 hours of clinical work.]** Not more than 25% of this supervision can be done by other licensed mental health professionals besides psychologists.
- The purpose of the postdoctoral supervision is to train psychologists to practice at an independent level. This experience should be an organized educational and training program with explicit goals and a clear plan to meet those goals. There should be regular written evaluations based on this program.
- 7.3 Supervision of psychological assistants is required at the frequency of one hour of face-to-face supervision for every 1-10 hours of clinical work by the psychological assistants, as required by Section 9 of the Rules and Regulations. An individual registered as a psychological assistant may or may not be receiving supervision in pursuit of independent licensure as a psychologist.
- 7.4 A psychologist providing either postdoctoral supervision or supervision of psychological assistants must have been in practice for two years post licensure in this or any other **[state jurisdiction]** without having been subject to any disciplinary actions. He/she must provide 24-hour availability to both the supervisee and the supervisee's clients, or ensure that adequate alternative coverage is provided in the supervisor's absence. The supervising psychologist shall have sufficient knowledge of all clients including face-to-face contact when necessary and must be employed or under contract in the setting where the clinical service takes place and the supervision must occur within that setting.

2 DE Reg. 776 (11/1/98)

6 DE Reg. 1338 (4/1/03)

***Please Note:** As the rest of the sections were not amended they are not being published here. A copy of the regulation is available at:

<http://regulations.delaware.gov/register/february2009/final/12 DE Reg 1108 02-01-09.htm>

FINAL REGULATIONS

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))

ORDER

IN THE MATTER OF THE ADOPTION OF		
RULES TO IMPLEMENT THE RENEWABLE ENERGY		
PORTFOLIO STANDARDS ACT, 26 DEL.C. §§ 351- 363,		
AS APPLIED TO RETAIL ELECTRICITY SUPPLIERS		PSC REGULATION DOCKET NO. 56
(OPENED AUGUST 23, 2005; RE-OPENED		
SEPTEMBER 4, 2007; RE-OPENED		
AUGUST 5, 2008)		

ORDER NO. 7494

AND NOW, this 16th day of December, 2008;

WHEREAS, in PSC Order No. 7422 (Aug. 5, 2008, the Commission re-opened this docket to consider promulgating revisions to the "Rules and Procedures to Implement the Renewable Energy Portfolio Standard," necessitated by amendments to "The Renewable Energy Portfolio Standards Act"¹ (the "Act"). The statutory amendments to the Act became effective on July 3, 2008. Pursuant to PSC Order No. 7422, the Commission Staff submitted a set of proposed rules entitled "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" (hereinafter referred to as "the RPS Rules"); and

WHEREAS, in PSC Order No. 7422, the Commission directed publication in the Delaware Register (among other places) of Staff's revised, proposed RPS Rules, and directed a Hearing Examiner to conduct proceedings regarding the proposed RPS Rules; and

WHEREAS, after holding a duly-noticed public evidentiary hearing, the Hearing Examiner has now submitted his Findings and Recommendations (Dec. 5, 2008), in which the Hearing Examiner recommends Commission approval of Staff's final proposed RPS Rules that do not include any substantive or non-substantive changes made after the initial publication in the Delaware Register; and

WHEREAS, the Commission finds that the proposed revisions to the RPS Rules are just and reasonable and that adoption of the Hearing Examiner's Report is in the public interest. The RPS Rules are attached as Exhibit "B" to the original of this Order.

Now, therefore, IT IS ORDERED:

1. That, by and in accordance with the affirmative vote of a majority of the Commissioners, the Commission hereby adopts the Findings and Recommendations of the Hearing Examiner (Dec. 5, 2008) as set forth as Exhibit "A" to the original of this Order.
2. That the Commission hereby adopts and approves the proposed "Rules and Procedures to Implement the Renewable Energy Portfolio Standard," attached to the Hearing Examiner's Findings and Recommendations as Exhibit "A." The Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the Delaware Register the exact text of the "Rules and Procedures to Implement the Renewable Energy Portfolio Standard," attached to the original hereof as Exhibit "B" for publication on February 1, 2009.
3. The effective date of this Order shall be the later of February 10, 2009 or ten (10) days after the date of publication in the Delaware Register of the "Rules and Procedures to Implement the Renewable Energy Portfolio Standard," attached to the original hereof as Exhibit "B."

1. See 26 Del. C. § 356(c) (as amended by 76 Del. Laws ch. 248 §§ 1-2 (June 25, 2008)); See Senate Bill No. 328, effective June 25, 2008. The Governor signed the bill into law effective July 3, 2008.

3. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Joann T. Conaway, Commissioner
Dallas Winslow, Commissioner
Jaymes B. Lester, Commissioner
Jeffrey J. Clark, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

Findings and Recommendations of the Hearing Examiner

Mark Lawrence, duly appointed Hearing Examiner in this Docket pursuant to 26 Del. C. ch. 101, by Commission Order No. 7422, dated August 5, 2008, reports to the Commission as follows:

I. APPEARANCES

On behalf of the Public Service Commission Staff ("Staff"):

ASHBY & GEDDES

By: Brooke Leach, Esquire

On behalf of Delmarva Power & Light Company:

Todd L. Goodman, Esquire

Wesley L. McNealy, Manager of Corporate, Environmental Services

Vicki Land, Senior Environmental Engineer

On behalf of the Division of the Public Advocate:

G. Arthur Padmore, Public Advocate

Michael Sheehy, Deputy Public Advocate

Kent Walker, Esquire, Deputy Attorney General

II. BACKGROUND

A. A BRIEF HISTORY OF THE RENEWABLE ENERGY PORTFOLIO STANDARD ("RPS")

1. In 2005, the Delaware General Assembly enacted the "Renewable Energy Portfolio Standards Act," 26 Del. C. §§ 351-363 (2006 Supp.) ("the Act"). The Act requires each electric supplier to accumulate a portfolio of "renewable energy credits" on an annual basis, equivalent to a specified percentage of its retail electric supply sales within this State. The obligation began in 2007 and the percentages increase each year. In 2006, exercising the authority granted it under 26 Del. C. § 362 (2006 Supp.), the Commission promulgated "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" ("RPS Rules"). See PSC Order No. 6931 (June 6, 2006).¹

1. Municipal electric utilities and the now self-regulated Delaware Electric Cooperative, Inc. can choose to be exempt from the Act's requirements by pursuing an alternative regime for supporting "renewable energy" resources. See 26 Del. C. §§ 353(a), 363.

2. On July 27, 2007, the General Assembly and Governor enacted significant changes to various provisions in the Act. See 76 Del. Laws ch. 165 §§ 1-9 (July 24, 2007). The Act was modified: (a) to increase the percentages of retail sales which electric suppliers must meet with renewable energy credits; (b) to require that electric suppliers acquire solar renewable energy credits (or make solar alternative compliance payments); and (c) to provide for the statutory increases to the dollar amounts of alternative compliance payments for renewable credits. See 26 Del. C. §§ 352(22)-(23), 354(a), 356(a), 358(d) and (e) as amended.

3. On September 4, 2007, by PSC Order No. 7276, the Commission re-opened Regulation Docket No. 56. Thereafter, the Commission promulgated revised "Rules and Procedures to Implement the Renewable Energy Portfolio Standard." See PSC Order No. 7377 (Apr. 17, 2008). After conducting a rulemaking proceeding, the Commission adopted amendments to its RPS Rules to reflect the statutory changes.

4. On July 3, 2008, the General Assembly and the Governor again enacted changes and additions to the "Renewable Energy Portfolio Standards Act" ("the Act"). See 76 Del. Laws ch. 248 §§ 1-2 (June 25, 2008); see also Senate Bill No. 328, effective June 25, 2008. The 2008 legislation contained additional changes to the Act which will impact treatment of REC's derived from anticipated off-shore wind energy installations and will affect cost recovery of contracts entered into under 26 Del. C. § 1007(d), which section is being implemented at this time pursuant to PSC Docket No. 06-241. See 76 Del. Laws ch. 248 §§ 1-2 (June 25, 2008). The Commission then proposed to adopt revisions and amendments to its April 2008 RPS Rules to incorporate and assure consistency with the July 2008 statutory amendments.

5. On August 5, 2008, the Commission entered Order No. 7422 directing that the Secretary transmit to the Delaware Registrar of Regulations for publication in the Delaware Register a copy of Staff's revised RPS Rules and a Notice of Proposed Rule-Making ("the revised RPS Rules"). The Registrar of Regulations published these proposed revised RPS Rules in September 2008. See Delaware Register, September 1, 2008; Volume 12, Issue 3, p. 291. These revised RPS Rules are attached hereto as Exhibit "A." Pursuant to the Secretary's instructions, a copy of the rule-making notice was published on September 2, 2008 in The News Journal and the Delaware State News newspapers advising the public that comments on the proposed Rules should be submitted on or before September 30, 2008. No public comments were received.

6. Pursuant to the Commission's direction, the Commission's Secretary forwarded a copy of the Notice of Proposed Rule-Making to the Division of the Public Advocate, the State Energy Office, Delmarva Power & Light Company ("Delmarva"), all certificated electric suppliers, and each person or entity who requested notice of the rule-making proceeding. See PSC Order No. 7422, ¶ 3. Of those who were noticed concerning this proceeding Delmarva was the only certificated carrier who chose to participate.

B. THE EVIDENTIARY HEARING

7. PSC Order No. 7422 set a date for an evidentiary hearing for consideration of any comments received on the revised RPS Rules. Further, this hearing examiner was charged with organizing, classifying, and summarizing the comments submitted by the public and interested persons and to submit a report with his findings to the Commission.

8. After duly advertised public notice, an evidentiary hearing was held on November 13, 2008 at the Commission's offices in Dover. See Public Notice; composite Exhibit "1" of Hearing Exhibits. There were a total of two (2) hearing exhibits: (a) the notice of the evidentiary hearing; and (b) Staff offered into evidence the pre-filed direct testimony of one (1) witness, Public Utilities Analyst Pamela R. Knotts.

9. Ms. Knotts, who testified live at the hearing, stated that the July 2008 statutory amendments to the Act necessitated revising the Commission's April 2008 RPS Rules. See Exhibit 2, T-671. Ms. Knotts testified that, following the publication of Staff's proposed revisions to the Rules in the Delaware Register of Regulations, Staff did not make any additional changes to the Rules. T-672. Therefore, the final version of the proposed Rules can be found at Exhibit "A" of her pre-filed testimony. T-672.

10. Ms. Knotts testified that the Staff's revisions to its "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" ("RPS Rules") were necessary to incorporate, and assure consistency with, 2008 statutory changes to 26 Del. C. §§ 356 and 364.¹

1. The Commission continues to retain the authority to issue rules to implement the Act. See 26 Del. C. § 362. As noted, the proposed revisions are intended to basically mirror the 2008 statutory amendments

C. REVISIONS CONTAINED IN THE JULY 2008 RPS RULES

11. The revisions to the April 2008 RPS Rules are as follows:

1. Proposed RPS Rule 3.2.9

12. In July 2008, the Delaware Legislature amended the Renewable Energy Portfolio Standards Act to provide that before May 31, 2017, a Commission-regulated electric company could receive a three hundred and fifty percent (350%) credit toward its renewable energy portfolio by using off-shore wind energy from an installation situated off the Delaware coast. See 26 Del. C. § 356(c). In addition, these utilities are entitled to multiple credits for the length of the power contracts. See 26 Del. C. § 356(c)(2).

13. Reflecting the statutory changes, proposed RPS Rule 3.2.9 incorporates a new statutory 350% credit for a Commission-regulated electric company toward meeting the Renewable Energy Portfolio Standards for energy derived from off-shore wind energy installations sited off the Delaware coast on or before May 31, 2017. See Exhibit 2; see also page 7 of the Proposed Rules at Exhibit "A" and 26 Del. C. § 356(c) T-671.

14. Mirroring the statutory amendment of 26 Del. C. § 356(c)(1), proposed RPS Rule 3.2.9.1 requires that, in order to be entitled to the statutory 350% credit, contracts for energy and renewable energy credits from such off-shore wind energy installations must be executed by Commission-regulated electric companies prior to commencement of construction of such installations. See Exhibit 2; see also page 7 of the Proposed Rules; T-671.

15. Proposed RPS Rule 3.2.9.2 further provides, as codified in 26 Del. C. § 356(c)(2), that Commission-regulated electric companies shall be entitled to such multiple credits for the life of the contracts for renewable energy derived from off-shore wind installations. See Exhibit 2; see also page 7 of the Proposed Rules; T-671.

2. Proposed RPS Rule 4.4

16. Further, Ms. Knotts testified that Proposed RPS Rule 4.4, which is intended to implement 26 Del. C. § 364, provides that, as to customers of Public Service Commission-regulated electric companies, all costs arising out of standard offer service contracts entered into by Commission-regulated electric companies pursuant to 26 Del. C. §§ 1007(d) shall be distributed among the entire Delaware customer base of such companies through an adjustable non-bypassable charge that will be established by the Commission. See Exhibit 2; see also page 8 of the Proposed Rules; T-671-72.

17. In addition, Proposed Rule 4.4 further provides that such costs shall be recovered if incurred as a result of such contracts unless, after Commission review, any such costs are determined by the Commission to have been incurred in bad faith, are the product of waste or an abuse of discretion, or in violation of law. See also 26 Del. C. § 364.

III. DISCUSSION

18. The Commission has jurisdiction in this matter pursuant to 26 Del. C. § 362.

19. As testified to by Staff's witness, Public Utilities Analyst Pamela Knotts, the Commission was compelled to conform its own rules to the statutory amendments passed by the legislature on July 3, 2008. The revised RPS Rules closely track the amended legislation. Further, as Ms. Knotts testified, the revised RPS Rules are reasonable, are in the public interest, and necessary because they implement the new statutory requirements which the Commission is bound to enforce.

20. Further, no members of the public submitted written comments in response to the September 2, 2008 published notice or attended the evidentiary hearing on November 13, 2008.

21. I have considered all of the record evidence and, based thereon, I submit for the Commission's consideration these Findings and Recommendation.

IV. RECOMMENDATION

22. In summary, and for the reasons discussed above, I propose and recommend to the Commission that it adopt as just, reasonable, and in the public interest, Staff's proposed revised RPS Rules attached hereto as Exhibit "A."

23. A form of Order implementing the foregoing recommendation is attached as Exhibit "B" for the Commission's consideration.

Respectfully submitted,
Mark Lawrence, Hearing Examiner
Dated: December 5, 2008

3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005)

*Please note that no changes were made to the regulation as originally proposed and published in the September 2008 issue of the *Register* at page 291 (12 DE Reg. 291). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

PUBLIC SERVICE COMMISSION

DEPARTMENT OF TRANSPORTATION
Division of Motor Vehicles

Statutory Authority: 21 Delaware Code, Sections 302, 2603, 2611 and 2621 (21 **Del.C.** §§302, 2603, 2611 and 2621)
21 DE Admin. Code 2213

ORDER

2213 Emergency Vehicle Operators, Age of EVO Permit Holders

Regulation 2213, which replaces current Regulation 2213, relates to the issuance of non-commercial driver licenses and emergency vehicle operator documents. This regulation incorporates changes due to the passage of Senate Bill 208 during the 144th General Assembly. The proposed regulation was published in the *Delaware Register of Regulations* on December 1, 2008. The comment period remained open until December 31, 2008. There was no public hearing on proposed Regulation 2213.

Summary of the Evidence and Information Submitted

The Department received no public comments on the proposed regulation. The Division did not make any changes to the proposed regulation.

Findings of Fact

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. The proposed regulation meets the requirements of the Administrative Procedures Act and is not in conflict with Delaware law.

Decision and Effective Date

Based on the provisions of 21 **Del.C.** §302 and the record in this docket, I hereby adopt Regulation 2213 and as may more fully and at large appear in the version attached hereto to be effective February 10, 2009.

Text and Citation

IT IS SO ORDERED THIS 13TH day of January 2009.

Carolann Wicks, Secretary of Transportation

2213 ~~Emergency Vehicle Operators, Age of EVO Permit Holders~~ Issuance of Non-Commercial Driver Licenses and Emergency Vehicle Operators Documents (Formerly Regulation No. 81)

*Please note that no changes were made to the regulation as originally proposed and published in the December 2008 issue of the *Register* at page 777 (12 DE Reg. 777). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[2213 Issuance of Non-Commercial Driver Licenses and Emergency Vehicle Operators Documents](#)

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Advisory Council to the Division of Substance Abuse and Mental Health	Ms. Monica File-Williams Ms. Mary S. Wicks	04/29/2011 12/19/2011
Advisory Council on Planning Coordination	Mr. Joseph J. Corrado, Sr.	11/03/2011
Architectural Accessibility Board	Mr. Griff Campbell	01/24/2010
Authority on Radiation Protection	Donald C. Tilton, D.O.	10/12/2010
Board of Chiropractic	Mr. Jay R. Galloway	09/05/2009
Board of Clinical Social Work Examiners	Mr. Joseph M. McDonough	10/19/2010
Board of Electrical Examiners	Mr. Robert Jerald Craig Mr. Richard B. Millar, Jr. Mr. Gary D. Thompson	12/19/2011 11/19/2011 02/26/2010
Board of Examiners of Nursing Home Administrators	Mr. Timothy M. Ballas Ms. Hope E. Squier	12/19/2011 10/19/2010
Board of Examiners of Private Investigators and Private Security Agencies	Ms. Sandra C. Mifflin	12/19/2011
Board of Medical Practice	Sophia N. Kotliar, M.D. Daryl Sharman, M.D.	10/19/2010 04/06/2010
Board of Professional Counselors of Mental Health and Chemical Dependency Professionals	Ms. Mary W. Davis	04/18/2011
Child Placement Review Board Executive Committee	Mr. Donald F. Schneck	12/19/2011
Child Placement Review Board - Kent	Ms. Candice B. Swetland	12/19/2011
Child Placement Review Board - New Castle	Ms. Judith A. Miller Ms. Lisa C. Seel	12/19/2011 12/19/2011
Child Placement Review Board - Sussex	Ms. Patricia R. Lyons	12/19/2011
Community Involvement Advisory Council	Mr. Brian E. Lewis	11/19/2011
Council on Manufactured Housing	Mr. James M. Tormey, Sr.	12/19/2010
Council on Real Estate Appraisers	Mr. Stephen R. Huston	12/19/2011

GOVERNOR'S APPOINTMENTS

1117

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Council on Soil and Water Conservation	Mr. Bangalore T. Lakshman	12/19/2011
Council on the Blind	Ms. Janet K. Brown	12/19/2011
Delaware Center for Education Technology	Ms. Sharon K. Baker	12/10/2011
Delaware College Investment Plan Board	Mr. A. Glenn Barlow	12/19/2011
Delaware Heritage Commission	Mr. Walton A. Johnson, Jr.	01/30/2009
Delaware Institute of Medical Education and Research, Board of Directors	Anthony D. Alfieri, D.O.	12/19/2011
Delaware Open Space Council	Mr. Mark T. Brainard	12/11/2012
Delaware Police Accreditation Commission	The Honorable John L. Mitchell, Jr.	At the Pleasure of the Governor
Delaware State Arts Council	Ms. Lise Monty Leary	At the Pleasure of the Governor
Governor's Council on Lifestyles and Fitness	Avron Abraham, Ph.D.	11/24/2010
	The Honorable John C. Carney, Jr.	12/19/2010
	Ms. Marianne B. Carter	12/19/2010
	Ms. Debbie I. Chang, MPH	12/19/2010
	Mr. Eric D. Jacobson	12/19/2010
Interagency Coordinating Council	Michael Gamel-McCormick, Ph.D.	12/19/2011
Interagency Council on Adult Literacy	Ms. Sonia Aguilar	At the Pleasure of the Governor
	Ms. Linda Carmichael	At the Pleasure of the Governor
	Mr. Robert J. Clarkin	At the Pleasure of the Governor
	Ms. Linda Eklund	At the Pleasure of the Governor
	Mr. Ronald G. Hosterman	At the Pleasure of the Governor
	Mr. William T. McLain	At the Pleasure of the Governor
	Mr. John J. Ryan	At the Pleasure of the Governor

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Interagency Council on Adult Literacy	Ms. Mary P. Whelan	At the Pleasure of the Governor
	Ms. Barbara J. Wright	At the Pleasure of the Governor
Interstate Compact for Juveniles, Compact Commissioner	Ms. Susan Totten Burns	At the Pleasure of the Governor
Newark Housing Authority	Mr. Lloyd Harris	11/18/2014
	Mr. Thomas D. Runnels	07/26/2010
Organ and Tissue Donor Awareness Board	Mr. Michael O. McCann	11/18/2011
State Committee of Dietetics/Nutrition	Ms. Christy A. Vanderwende	04/18/2011
State Rehabilitation Council	Mr. Charles D. Moore	04/25/2011
Tourism Advisory Board	Ms. Megan M. McGlinchey	12/19/2011
	Ms. Danielle Rice	12/19/2011
	Ms. F. Kay Wheatley	12/19/2011
Unemployment Compensation Advisory Council	Mr. Harry Gravell, Jr.	12/19/2011
	Mr. Daniel W. Wolfensberger	12/15/2011
Vocational Rehabilitation Advisory Council for DVI	Ms. Lexie S. McFassel	12/19/2011
Violence Against Women Act Implementation	Ms. Stephanie R. Hamilton	At the Pleasure of the Governor

**DEPARTMENT OF AGRICULTURE
DIVISION OF ANIMAL HEALTH AND FOOD PRODUCTS INSPECTION****PUBLIC NOTICE****304 Exotic Animal Regulations**

The Delaware Department of Agriculture repropose these regulations in accordance with the General Assembly's mandate to enforce Chapter 72 of Title 3 of the **Delaware Code** and to specify the means by which citizens of the State of Delaware may obtain a permit from the Delaware Department of Agriculture to possess, sell, or exhibit, exotic animals within the state.

These proposed regulations will be considered at a public hearing scheduled for February 20, 2009 at 10:00 a.m. at the Department of Agriculture Building, Conference Room 1.

The Delaware Department of Agriculture solicits written comments from the public concerning these proposed regulations. Any such comments should be submitted to the Assistant State Veterinarian, Caroline Hughes, VMD, at Delaware Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901 on or before March 2, 2009. Copies of the proposed regulations are available on request.

DEPARTMENT OF EDUCATION**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, February 19, 2009 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****15120.2 Financial Eligibility****Self-Employment Income**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid & Medical Assistance is proposing to amend policies in the Division of Social Services Manual (DSSM) to comply with the CMS-approved Medicaid state plan amendment regarding the use of a self-employment standard deduction to determine eligibility.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulations must submit same to Sharon L. Summers, Policy, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by March 4, 2009.

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**PUBLIC NOTICE****Family Planning**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) / is proposing to amend the Division of Social Services Manual (DSSM) regarding the eligibility requirements for Family Planning.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 March 4, 2009.

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

DIVISION OF SOCIAL SERVICES**PUBLIC NOTICE****FOOD SUPPLEMENT PROGRAM****9008 Residency**

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program and Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by March 4, 2009.

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

DIVISION OF SOCIAL SERVICES**PUBLIC NOTICE****FOOD SUPPLEMENT PROGRAM****Anticipating Expenses, Calculating Net Income and Benefit Levels and Mass Changes**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding Anticipating Expenses, Calculating Net Income and Benefit Level, and Mass Changes.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy,

Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by March 4, 2009.

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

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1700 BOARD OF MEDICAL PRACTICE
PUBLIC NOTICE

The Delaware Board of Medical Practice in accordance with 24 **Del.C.** §1713(a)(12) has proposed changes to its rules and regulations as mandated by HB 236 (codified at 24 **Del.C.** §1761). The proposal creates a new regulation establishing a schedule of the maximum fees that may be charged by a physician when a patient requests a copy of their records to be transferred to another physician and/or wishes to obtain a copy of their own medical records directly from the physician.

A public hearing will be held on March 3, 2009 at 3:00 p.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 Board of Medical Practice, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

DIVISION OF PROFESSIONAL REGULATION
PUBLIC NOTICE
2930 Council on Real Estate Appraisers

Pursuant to 24 **Del.C.** §4006(a)(1), the Council on Real Estate Appraisers has proposed revisions to its rules and regulations.

The public hearing has been rescheduled for March 17, 2009 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 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 proposes amendments to Rule 2.5, which addresses the Council's continuing education audit. The Council will audit a minimum of 25% of the licensees during each renewal period. In addition, Rule 2.5.4 is added to expressly give the Board authority to conduct hearings and impose the full range of sanctions available under 24 **Del.C.** §4016 when licensees fail to comply with continuing education requirements.

Several Rules concerning the specific continuing education requirements are also revised. Rule 2.5.4.2 is amended to state that, beginning on November 1, 2009, during each renewal period, all licensees must complete **three** hours of education on Delaware Law, Rules and Regulations. Currently, only two hours of education in this subject matter are required. Rule 2.5.10 is amended to clarify that the requirement that 14 hours of education per licensure period must be taken in a traditional classroom setting begins November 1, 2009. The provision that the

seven hour USPAP update course must be taken in a classroom is stricken. Rule 2.5.11 is revised to state that all courses must be approved by the Council to qualify as continuing education.

Pursuant to the new Rule 2.5.13, a hardship provision is added, which will give the Council discretion to grant an extension for completion of continuing education in certain specified circumstances.

Finally, Rule 4.2.4 is amended for greater clarity. This Rule provides that, for a certain period of time, a licensee who has been sanctioned by the Council is prohibited from supervising trainees. The revisions clarify the parameters of this prohibition and add an exemption for licensees who were sanctioned prior to July 1, 2009.

The proposed amendments strengthen continuing education standards. Further, pursuant to the revisions, the Council will be given the authority to impose a full range of sanctions on licensees who do not comply with continuing education requirements. The Rule prohibiting licensees with disciplinary histories from supervising trainees is clarified. Therefore, the proposed revisions will serve to protect the public from unsafe practices and enhance practitioner competence.

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