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# Delaware Register of Regulations

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Photo by Joe Fulgham

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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, 2010.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

13 **DE Reg.** 24-47 (07/01/09)

Refers to Volume 13, pages 24-47 of the *Delaware Register* issued on July 1, 2009.

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to § 1134 of this title.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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

ISSUE DATE	CLOSING DATE	CLOSING TIME
March 1	February 15	4:30 p.m.
April 1	March 15	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 14	4:30 p.m.
July 1	June 15	4:30 p.m.

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3008 Reg. Docket No. 56: Rules and Procedures to Implement the Renewable Energy Portfolio Standards Act.....	13 DE Reg. 623(Prop.) 13 DE Reg. 952(Final)
3010 Reg. Docket No. 60: Integrated Resource Planning for the Provision of Standard Offer Service by Delmarva Power & Light Company.....	13 DE Reg. 395(Prop.) 13 DE Reg. 953(Final)
8000 Reg. Docket No. 61: Adoption of Rules to Establish an Intrastate Gas Pipeline Safety Compliance Program .....	13 DE Reg. 416(Final)

**DEPARTMENT OF TRANSPORTATION****Division of Motor Vehicles**

2201 Procedure for Re-licensing Investigations Character Background Review ....	13 DE Reg. 908(Prop.)
2217 Interim Identification Procedure for the Division of Motor Vehicles.....	13 DE Reg. 911(Prop.)
2287 Public Carrier Regulations.....	13 DE Reg. 405(Prop.) 13 DE Reg. 955(Final)

**Division of Planning and Policy**

2309 Standards and Regulations for Subdivision Streets and State Highway Access .....	13 DE Reg. 626(Prop.)
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**Division of Transportation Solutions**

2402 Delaware Manual on Uniform Traffic Control Devices, Parts 2, 6, and 9.. ..	13 DE Reg. 418(Final)
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**EXECUTIVE DEPARTMENT****Delaware Economic Development Office**

402 Procedures Governing The Delaware Strategic Fund.....	13 DE Reg. 489(Prop.)
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**Office of Management and Budget**

Freedom of Information Act Policy and Procedures.....	13 DE Reg. 493(Prop.)
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**STATE EMPLOYEE BENEFITS COMMITTEE**

2001 Group Health Care Insurance Eligibility and Coverage Rules.....	13 DE Reg. 126(Final) 13 DE Reg. 683(Final)
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**Symbol Key**

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

**Proposed Regulations**

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

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**DEPARTMENT OF AGRICULTURE**  
**THOROUGHBRED RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 4815(b)(3)(c)(3) (3 **Del.C.** §4815(b)(3)(c)(3))  
3 **DE Admin. Code** 1001

**PUBLIC NOTICE****1001 Thoroughbred Racing Rules and Regulations**

The Delaware Thoroughbred Racing Commission in accordance with 3 Del.C. §10103(c) has proposed changes to its rules and regulations. The proposed rule change amends Section 14.6 of the rules and regulations to allow a Jockey, if unseated during the parade to the post, to re-mount in the vicinity of where the Jockey was unseated, instead of having to return to the area at which thrown.

A public hearing will be held on March 16, 2010, at 10:00 a.m., in the second floor conference room of the Horsemen's Office, located on the grounds of Delaware Park, 777 Delaware Park Blvd., Wilmington, DE 19804, where members of the public may offer comments. Anyone wishing to receive a copy of the proposed regulations may obtain a copy from the Delaware Thoroughbred Racing Commission, 777 Delaware Park Blvd., Wilmington, DE 19804. Copies are also published online at the *Register of Regulations* website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml). Persons wishing to submit written comments may forward these to the attention of John F. Wayne, Executive Director, at the above address. The final date to receive written comments will be March 16, 2010, at the public hearing.

**1001 Thoroughbred Racing Rules and Regulations**

*(Break in Continuity of Sections)*

**14.0 Running of the Race**

14.1 Post Time:

## PROPOSED REGULATIONS

- 14.1.1 Post Time for the first race on each racing day shall be fixed by the Licensee. Post Time for subsequent races on the same program shall be fixed by the Pari-Mutuel Manager. (In Kent County and New Castle County, racing may be conducted during daylight or evening hours, but in Sussex County, no racing shall be held between the hours of sundown and sunrise.)
- 14.2 Horses in Paddock Not to be Touched:
- 14.2.1 No person shall touch a horse while in the paddock except its Jockey, its registered Owner, its registered Trainer, authorized stable personnel, the Paddock Judge, Horse Identifier, its assigned Valet, a Steward, Farrier or Outrider.
- 14.3 Trainer Responsibility:
- 14.3.1 The Trainer shall be responsible for arrival in the paddock, at the time prescribed by the Paddock Judge, of each horse entered by the Trainer and shall supervise the saddling of such horse. If a Trainer is to be absent from a track where his horses are participating in races, he must provide his own assistant Trainer or registered Trainer to substitute for him during his absence.
- 14.4 Withdrawal of a Horse:
- 14.4.1 Every horse whose starting is obligatory is expected to run the course, except that the Stewards may order the withdrawal of a horse at any time up to the actual start of a race.
- 14.5 Walkover:
- 14.5.1 If, at the time for saddling, only one horse or horses owned by only one stable shall have weighed out, such horse or horses of single ownership shall be ridden past the Stewards' stand, go to the post, and then move over the course before determination of the winner.
- 14.6 Parade to the Post; Time
- 14.6.1 All horses shall parade and carry their declared weight from the paddock to the starting post, such parade to pass the Stewards' stand. After passing the Stewards' stand once, horses may break formation and canter, warm up, or go as they please to the post. The parade to the post shall not exceed 12 minutes from the time the field enters upon the track, except in cases of unavoidable delay. ~~If a Jockey is thrown on the way to the post, such Jockey must remount at the point at which thrown.~~ In the event ~~the~~ a Jockey is so injured as to require a substitute Jockey to be named for the horse by the Stewards, the horse shall be returned to the paddock where the horse shall be mounted by a substitute Jockey.
- 14.6.2 The Stewards may allow the weight to be taken off a horse for safety reasons or any other reason as deemed necessary by the Stewards.
- 14.6.3 The Starter may allow the weight to be taken off a horse: (i) for safety reasons; (ii) so that the horse may be loaded in the starting gate; or (iii) to repair, replace, or adjust any equipment.
- 14.6.4 If a Jockey is unseated from the paddock to the post, said horse shall be re-mounted in the vicinity where the jockey was unseated, unless excused by the Stewards.
- 14.6.5 The Stewards or the Outriders may excuse a horse from the post parade whenever they deem necessary.
- 14.7 Lead Pony:
- 14.7.1 When, by permission of the Paddock Judge, a horse is led to the post by a pony, such horse may be excused from parading with the other horses, but must pass the Stewards' stand en route to the post. Lead ponies may be excluded from the saddling enclosure or walking ring, at the discretion of the Stewards and Paddock Judge.
- 14.8 Control of Horses and Jockeys by Starter:
- 14.8.1 The horses and Jockeys shall be under the control of the Starter from the moment they enter the track until the race is started. If an accident happens to any Jockey or his equipment, the Starter may grant a delay to permit the substitution of a Jockey or repair of equipment. During such delay, the Starter may permit any Jockey to dismount. Should a horse break through the gate or unseat its Jockey after any of the field is loaded in the starting gate and such horse is not immediately taken in hand by the Outrider and brought back for reloading, the Starter may unload the horses in the gate and reload such horses in their proper order when the runaway horse is brought back to position for reloading. All causes of delay shall be reported by the Starter to the Stewards. No

person other than the Jockey or Starter or assistant Starter shall be permitted to strike a horse or attempt, by shouting or other fashion, to assist such horse in getting a start.

**14.9 Starting Gate to be Used:**

14.9.1 A starting gate shall be used in starting all races on the flat except in cases permitted by the Stewards. When a race is started without a starting gate, there shall be no start until, and no recall after, the Assistant Starter has dropped his flag in answer to the Starter.

**14.10 Horses Left at Post:**

14.10.1 If a door at the front of the starting gate should fail to open timely when the Starter dispatches the field or if a horse inadvertently has not been loaded in his scheduled position in the starting gate when the field is dispatched, thereby causing such horse to be left at the post, the Starter shall immediately report such circumstance to the Stewards who shall immediately post the "Inquiry" sign on the infield results board and advise the public to hold all mutual tickets. After consulting with the Starter and viewing the patrol films or video tapes, the Stewards shall then determine whether such horse was precluded from obtaining a fair start.

14.10.2 If the Stewards find such horse was precluded from obtaining a fair start, the Stewards shall rule such horse a non-starter and shall order money wagered on such horse deducted from the pari-mutuel pool and refunded to holders of pari-mutuel tickets thereon; provided, however, if such horse so ruled a non-starter is part of a mutual entry and another horse in such entry is not left at the post, there shall be no pari-mutuel refund.

14.10.3 Stakes fees for such ruled non-starter shall be refunded to the Owner.

14.10.4 The Starter may, in his discretion, place an unruly or fractious horse on the outside of the starting gate. If such horse so stationed outside the starting gate by the Starter dwells or refuses to break with the field, and thereby is left at the post, there shall be no refund of pari-mutuel wagers thereon nor refund of stakes fees paid therefore.

**14.11 Leaving Course; Losing Jockey:**

14.11.1 If a horse leaves the course during the running of a race, such horse must turn back and run the course from the point at which it left the course, or such horse shall be ruled unplaced. Any horse which starts in a race, but does not cross the finish line, or is not ridden the distance of the race and across the finish line by the Jockey with whom it starts the race, shall be declared unplaced. Any portion of a purse that would normally accrue to such horse shall revert to Licensee.

**14.12 Remounting:**

14.12.1 In steeplechase and hurdle races, any horse losing his rider may be remounted by such rider in any part of the same field or enclosure in which the occurrence took place, but should such horse not be caught until he shall have entered another field, then he shall be ridden or brought back to the one in which he parted from his rider. Any rider so losing his horse may be assisted in catching him and remounting him without risk of disqualification.

Note. In artificially constructed steeplechase courses and in hurdle races, the spaces between the fences or hurdles and the space between the last fence and the finish are considered as fields or enclosures for the purposes of this Rule.

**14.13 Course Markers:**

14.13.1 In steeplechase and hurdle races, if any flag, post or boundary mark be placed in the course or displaced after the riders have been shown over the ground or have had the course pointed out to them, it shall not be considered binding or of any effect unless such addition or alteration shall have been particularly named, previous to starting, to all the riders in the race by one of the Stewards or their representative.

**14.14 Refusal of Fence:**

14.14.1 If a horse refuses any fence or hurdle in a jumping race and it can be proved to the satisfaction of the Stewards that he has been led or driven over it by any of the bystanders, or has been given a lead over it by anyone not riding in the race, such horse shall be disqualified.

**14.15 Fouls:**

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## PROPOSED REGULATIONS

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- 14.15.1 A leading horse, when clear, is entitled to any part of the track. If a leading horse or any other horse in a race swerves or is ridden to either side so as to interfere with or intimidate or impede any other horse or Jockey, it is a foul. If a Jockey strikes another horse or Jockey, it is a foul. If, in the opinion of the Stewards, a foul alters the finish of a race, any offending horse may be disqualified by the Stewards.
- 14.16 Stewards to Determine Foul Riding:
- 14.16.1 Every Jockey shall be responsible for making his best effort to control and guide his mount in such a way as not to cause a foul. The Stewards shall take cognizance of riding which results in a foul, irrespective of whether an objection is lodged and, if in the opinion of the Stewards a foul is committed as a result of a Jockey not making his best effort to control and guide his mount to avoid a foul, whether intentionally or through carelessness or in competence, such Jockey may be penalized at the discretion of the Stewards.
- 14.17 Horses to be Ridden Out:
- 14.17.1 Every horse in every race must be ridden so as to win or finish as near as possible to first and demonstrate the best and fastest performance of which it is capable at the time. No horse shall be eased up without adequate cause, even if it has no apparent chance to earn a portion of the purse money. A Jockey who unnecessarily causes a horse to shorten stride may be penalized at the discretion of the Stewards. Stewards shall take cognizance of marked reversal of form of all horses and shall conduct inquiries of the registered Owner, registered Trainer and all other persons connected with such horse suspected of unformful racing and, if the Stewards find that such horse was deliberately restrained or impeded in any way by any means so as not to win or finish as near as possible to first, any person found to have contributed to such circumstances may be penalized at the discretion of the Stewards.
- 14.18 Use of Whips, Other Means of Altering Performance:
- 14.18.1 Whips are to be used uniformly and the Stewards shall take cognizance of unusual use or non-use of a whip by a Jockey. No appliance, electrical or mechanical, other than the ordinary whip, shall be used to affect the speed of a horse in a race or workout. No sponge or other object may be used to interfere with the respiratory system of a horse. Use or non-use of ordinary racing equipment shall be consistent and any change thereof must be approved by the Stewards.
- 14.19 Official Order of Finish as to Pari-Mutuel Payoff:
- 14.19.1 If foul riding or other cause for disqualification of any horse in a race is brought to the attention of the Stewards by the time the last Jockey in a race has weighed in, the Stewards shall rule on the extent of disqualification, if any, and shall determine the placing of the horses in the official order of finish for purposes of pari-mutuel payoff. After the Stewards have caused the "Official" sign to be flashed on the infield result board, the order of finish so declared official shall be final and no right of appeal therefrom shall exist insofar as the pari-mutuel payoff is concerned. Any subsequent change in the order of finish or award of purse money after the result of a race has been so declared official by the Stewards shall in no way affect the pari-mutuel payoff.

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

**[1001 Thoroughbred Racing Rules and Regulations](#)**

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## DEPARTMENT OF EDUCATION

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 262

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

#### **262 General Administrative Appeal Procedures for National School Lunch Programs (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA) Fiscal Action**

#### **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 262 General Administrative Appeal Procedures for National School Lunch Programs (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA) Fiscal Action for a minor formatting change. This regulation was reviewed pursuant to the required five year review cycle.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before March 2, 2010 to Susan K. Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

#### **C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendments were limited to formatting only.

2. Will the amended regulation help ensure that all students receive an equitable education? The amendments were limited to formatting only.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments were limited to formatting only.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendments were limited to formatting only.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendments were limited to formatting only.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amendments were limited to formatting only.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amendments were limited to formatting only.

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 amendments were limited to formatting only.

9. Is there a less burdensome method for addressing the purpose of the regulation? The amendments were limited to formatting only.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The amendments were limited to formatting only.



## 262 General Administrative Appeal Procedures for National School Lunch Programs (NSLP), the School Breakfast Program (SBP) and the After School Snack Program (ASSP) of the United States Department of Agriculture (USDA) Fiscal Action

### 1.0 Institutions Participating in the Delaware NSLP, SBP and ASSP May Request an Administrative Appeal

- 1.1 Denial of all or a part of an institution's claim for reimbursement or withholding payment arising from a Coordinated Review Effort (CRE) or follow up review activity conducted by the Delaware State Agency under Volume 7 of the Code of Federal Regulations (7 CFR) 210.18; and,
- 1.2 Withholding of program payments resulting from a CRE.

### 2.0 Administrative Appeal Shall Apply as Set Forth Below, and Will be Conducted as Follows

- 2.1 The Department of Education ("Department") shall give written notice of the action being taken or proposed, the grounds upon which the action is based, and the procedures under which the school food authority (SFA) may request an appeal of the action. Notice shall be given to the SFA individuals by certified mail, return receipt requested. As used herein, "Petitioner" means a NSF A or its responsible individuals, as appropriate under the circumstances.
- 2.2 A request for administrative appeal shall be submitted to the Department in writing, postmarked within 10 calendar days after the date the notice of action is received. The Department shall acknowledge receipt of the request for appeal within 10 calendar days.
- 2.3 Any information on which the Department's action was based will be available to the petitioner for inspection from the date of receipt by the Department of the request for an administrative appeal; if alterations or adjustments can be developed that are agreeable to both the petitioner and the Department, such procedure shall be followed.
- 2.4 The petitioner may refute the findings contained in the notice of action in person or by submitting written documentation to the Department's review official. In order to be considered, written documentation must be submitted to the review official not later than 30 days after the petitioner submitted the appeal, shall clearly identify the State agency (SA) action being appealed, and shall include a photocopy of the notice of action issued by the SA.
- 2.5 A hearing must be held by the administrative appeal official in addition to, or in lieu of, a review of written information only if the petitioner requests a hearing in the written request for an administrative appeal. If the petitioner fails to appear at a scheduled hearing, the petitioner waives the right to a personal appearance before the administrative appeal official, unless the administrative appeal official agrees to reschedule the hearing. A representative of the Department may, but is not required, to attend the hearing to respond to the petitioner's testimony and written information and to answer questions posed by the administrative appeal official. If a hearing is requested, the petitioner and the Department must be provided with at least 10 days written notice, sent by certified mail, return receipt requested, of the time and place of the hearing.
- 2.6 The petitioner may retain legal counsel or may be represented by another person if permitted by law.
- 2.7 The administrative appeal official shall be independent and impartial, other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section. The administrative appeal official may be an employee of the Department, but shall not have been involved in the action that is the subject of the administrative review, or have a direct personal or financial interest in the outcome of the administrative review. The petitioner may contact the administrative appeal official directly, but all such contacts shall include the participation of a representative of the Department, if the Department chooses to participate.
- 2.8 The administrative appeal official shall make a determination based solely on the information provided by the Department, the petitioner, and based upon Program regulations, policies and procedures governing the NSBP and NSLP.
- 2.9 The decision of the administrative appeal official shall be issued to the Department and petitioner within 60 days of the Department's receipt of the request for review, by written notice, sent by certified mail, return receipt requested. If the last day on which the decision is to be issued shall fall on a

Saturday, Sunday, legal state holiday, or day when the Department is closed due to adverse weather conditions, the decision shall be issued on the next regular work day of the Department. The failure to issue a timely decision shall not constitute grounds for reversing the Department's action. The decision of the administrative appeal official is the final administrative determination to be afforded to the petitioner, unless the CRE or review included USDA officials. When USDA officials participate in the CRE or review leading to the fiscal actions taken, then an appeal may be made to the USDA as specified under 4.0 below.

- 2.10 The Department's action shall remain in effect during the appeal process.
- 2.11 The Department shall maintain a searchable record of all administrative reviews and the dispositions of the same. The record shall document the Department's compliance with these regulations and shall include the basis for its decision.

**3.0 When the CRE or Follow up Activity is Conducted by the State Agency only, the Appeal Shall be Made to the: Secretary of Education, Delaware Department of Education, 401 Federal Street, Suite 2, Dover, DE 19901-3639.**

**4.0 Filing an Appeal**

4.1 When the CRE is performed as a State assisted CRE with participation of USDA officials, at the discretion of the petitioner, the appeal may also be made to the: Chief, Administrative Review Branch, USDA-FNS, 3101 Park Center Drive, Alexandria, VA 22302.

4.1.1 Any appeal correspondence should be marked "Request for Review". The USDA Administrative Review Branch conducting an appeal will make a determination based on information provided by the Food and Nutrition Service, the appellant and the Program regulations.

**8 DE Reg. 1471 (4/1/05)**

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**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
**14 DE Admin. Code 264**

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

**264 General Administrative Appeal Procedures for the Summer Food Service Programs of the United States Department of Agriculture CACFP/USDA**

**A. Type of Regulatory Action Required**

Reauthorization of Existing Regulation

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

The Secretary of Education intends to readopt 14 DE Admin. Code 264 General Administrative Appeal Procedures for the Summer Food Service Programs CACFP/USDA. This regulation was reviewed pursuant to the five year review cycle.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before March 2, 2010 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? There are no amendments to this regulation.
2. Will the amended regulation help ensure that all students receive an equitable education? There are no amendments to this regulation.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? There are no amendments to this regulation.
4. Will the amended regulation help to ensure that all students' legal rights are respected? There are no amendments to this regulation.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? There are no amendments to this regulation.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? There are no amendments to this regulation.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? There are no amendments to this regulation.
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? There are no amendments to this regulation.
9. Is there a less burdensome method for addressing the purpose of the regulation? There are no amendments to this regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no amendments to this regulation.

## 264 General Administrative Appeal Procedures for the Summer Food Service Programs of the United States Department of Agriculture CACFP/USDA

### 1.0 Institutions Participating in the Delaware SFSP May Request an Administrative Appeal of the Following Actions

- 1.1 Denial of a new or renewing institution's application for participation;
- 1.2 Denial of a sponsor's request for an advance payment;
- 1.3 Denial of all or a part of a sponsor's claim for reimbursement (except for a denial based on a late submission under 7 CFR §225.9(d)(5);
- 1.4 Refusal to forward to FNS an exception request by the sponsor for payment of a late claim or request for an upward adjustment to a claim;
- 1.5 A claim against a sponsor for remittance of a payment;
- 1.6 Termination of the sponsor or site; and,
- 1.7 Denial of a sponsor's application for a site;

### 2.0 Notwithstanding the Provisions of Section 1.0 Above, Institutions Participating in the Delaware SFSP May Not Request an Administrative Review of Decisions Made by FNS with Respect to Late Claims or Upward Adjustments Under S 225.9(d)(5).

### 3.0 Administrative Appeal Procedures Shall Apply as Set Forth Below

- 3.1 The Department of Education ("Department") shall give written notice of the action being taken or proposed, the grounds upon which the action is based, and the procedures under which the sponsor or food service management company may request an appeal of the action. Notice shall be given to the institution's executive director or other responsible individuals by certified mail, return receipt requested. As used herein, "Petitioner" means a participating institution or agency, or its responsible individuals, as appropriate under the circumstances.

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- 3.2 A request for administrative appeal shall be submitted to the Department in writing not later than 15 days after the date the notice of action is received and the appeal shall meet the requirements specified in 3.5 below.
- 3.3 The petitioner shall make an appeal within ten (10) working days from the date on which the notice of action is received.
- 3.4 Any information on which the Department's action was based shall be available to the petitioner for inspection from the date of receipt by the Department of the request for an administrative appeal.
- 3.5 The petitioner may refute the findings contained in the notice of action in person or by submitting written documentation to the Department's review official. In order to be considered, written documentation shall be submitted to the review official not later than seven (7) days after the petitioner submitted the appeal, must clearly identify the Department action being appealed, and must include a photocopy of the notice of action issued by the Department.
- 3.6 A hearing shall be held by the administrative appeal official in addition to, or in lieu of, a review of written information only if the petitioner requests a hearing in the written request for an administrative appeal. If the petitioner fails to appear at a scheduled hearing, the petitioner waives the right to a personal appearance before the administrative appeal official, unless the administrative appeal official agrees to reschedule the hearing. A representative of the Department may, but is not required, to attend the hearing to respond to the petitioner's testimony and written information and to answer questions posed by the administrative appeal official. If a hearing is requested, the petitioner and the Department must be provided with at least 10 days written notice, sent by certified mail, return receipt requested, of the time and place of the hearing.
- 3.7 The petitioner may retain legal counsel or may be represented by another person if permitted by law.
- 3.8 The hearing shall be held within fourteen (14) days of the date of the receipt of the request for review, but, where applicable, not before the appellant's written documentation is received in accordance with paragraphs 3.4 to 3.7.
- 3.9 The administrative appeal official shall be independent and impartial. The administrative appeal official may be an employee of the Department, but shall not have been involved in the action that is the subject of the administrative review, or have a direct personal or financial interest in the outcome of the administrative review. The petitioner may contact the administrative appeal official directly, but all such contacts shall include the participation of a representative of the Department, if the Department chooses to participate.
- 3.10 The administrative appeal official shall make a determination based solely on the information provided by the Department, the petitioner, and based upon Program regulations, policies and procedures governing the SFSP.
- 3.11 The decision of the administrative appeal official shall be issued to the Department and petitioner within five (5) days of the petitioner's hearing, or within five (5) working days after receipt of the written documentation if no hearing is held, the appeal official shall make a determination based upon a full review of the administrative record and inform the petitioner of the determination of the review by certified mail, return receipt requested. If the last day on which the decision is to be issued shall fall on a Saturday, Sunday, legal state holiday, or day when the Department is closed due to adverse weather conditions, the decision shall be issued on the next regular work day of the Department. The failure to issue a timely decision shall not, constitute grounds for reversing the Department's action. The decision of the administrative appeal official is the final administrative determination to be afforded to the petitioner.
- 3.12 The Department's action shall remain in effect during the appeal process. However, participating sponsors and sites may continue to operate the Program during an appeal of termination, and if the appeal results in overturning the Department's decision, reimbursement shall be paid for meals during the appeal process. However, such continued Program operation shall not be allowed if the Department's action is based on imminent dangers to the health or welfare of children. If the sponsor or site has been terminated for this reason, the Department shall so specify in its notice of action.
- 3.13 The Department shall send written notification of the complete appeal procedures and of the actions which can be appealed, as specified in sections 1.1 to 1.7, to each potential sponsor applying to

participate and to each food service management company applying to register in accordance with 7 CFR 225.6(g).

- 3.14 The Department shall maintain a searchable record of all administrative reviews and the dispositions of the same. The record shall document the Department's compliance with these regulations and shall include the basis for its decision.

**8 DE Reg. 1473 (4/1/05)**

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 401

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

#### 401 Major Capital Improvement Programs

#### 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 401 Major Capital Improvement Programs to align with current practice and for clarifications. The amendments that include, but not limited to: 1) definitions, 2) changes to align to the Planning Land Use Service (PLUS) review process, 3) clarification of processes the local school district must take in regard to interaction with other State, Local and Municipal regulatory agencies, 4) recording of capital assets, 5) clarification on the Certificate of Necessity process and transfer of funds between projects within a Certificate of Necessity, and 6) addition of playground construction requirements.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before March 2, 2010 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 major capital projects and does not specifically address 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 major capital projects and does not specifically address that students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments should ensure that all students' health and safety are adequately protected with regard to major capital projects.

4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation is related to major capital projects and does not specifically address students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendments preserve the necessary authority and flexibility 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 amendments do not place any unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

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

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 major capital projects and is not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing major capital projects.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The amendments do not contemplate additional costs to the State or to the local school boards.

## 401 Major Capital Improvement Programs

### 1.0 Purpose and Definitions

1.01 Major Capital Improvement Programs are projects having a cost of \$500,000 or more.

1.1.1 The Secretary of Education shall annually review the current cost per square foot for construction and make needed adjustments as required.

1.1.2 Projects may be considered together to form a single Major Capital Improvement Project. However, the consolidated major capital project should be a consolidation of projects at one location.

1.1.3 Major Capital Improvement projects shall use standard bid and contract documents as developed by the Office of Management and Budget, Division of Facilities Management.

1.1.3.1 Districts may enhance the standard bid and contract documents with additional contractual or project specific requirements as long as the enhancements do not diminish and are not in conflict with the provisions of the standard documents.

1.1.3.2 The Department of Education, in consultation with the Office of Management and Budget, Division of Facilities Management shall approve any modifications or changes to the provisions of the standard bid and contract documents before a school district may use or enhance the modified documents.

### 1.2 Definitions

**“Certificate of Necessity”**: A document issued by the Department of Education which certifies that a construction project is necessary and sets the scope and cost limits for that project. The Certificate of Necessity authorizes the school district to: 1.) Hold a referendum for the capital construction program identified; 2.) Authorizes the school district to sell bonds to pay the local portion of the capital program in the event of a successful referendum; and 3.) Levy and collect local taxes to service the debt on the capital bonds sold.

**“Certificate of Occupancy”**: A document issued by a local code enforcement official/office attesting that a Facility meets building codes and is fit for human occupancy.

**“Change Orders”**: Documents which change the construction contract and are negotiated between the owner and contractor in order to correct design omissions, address unforeseen circumstances which arise during the construction process, and improve upon designs based on project progress.

**“Design Development Plans”**: Design documents that denote mechanical functions, placement of windows and doors, pedestrian traffic circulation both interior and exterior, utilities, service areas and structure. Design development documents are at a 40% to 60% completion stage.

**“Educational Specifications”**: A document which explains how the educational spaces relate to the educational programs as well as the requirements of an educational Facility to house and implement the educational philosophy and institutional program.

**“Facility”**: Long lived capital assets to include but not limited to school buildings; athletic buildings; athletic fields and appurtenances; playgrounds; maintenance, operations and storage structures; office

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buildings and all other buildings and capital assets associated with the operation and management of a school district and/or school system.

“Final Construction Plans”: Plans that show the complete Facility design including mechanical, electrical, water, sewer, site plans, storm water conveyance and structural systems, complete bid documents and specifications.

“Schematic Design Plans”: Documents that present a proposed Facility in its earliest stages denoting the approximate size and relationship of areas to each other. Detailed utilities or mechanical functions are not typically shown at this stage.

“Signed and Sealed Plans”: Plans that have the architect's and/or engineer's professional seal and signature affixed.

## 2.0 Procedures for Approval of a Site for School Construction

- 2.1 Local school districts shall notify the Department of Education by letter to schedule a site review when they propose to purchase a site for school purposes; or when they propose to use a currently owned site for school purposes; or when they propose to obtain a site through donation, gift or condemnation. ~~All prospective sites shall be reviewed at one time.~~
- 2.2 ~~The Department of Education will~~ local school board shall forward all prospective sites to the Office of State Planning Coordination for the ~~preapplication~~ consideration and comment through Planning Land use Service (PLUS) review process. ~~The Department of Education will review the responses of the other agencies in order to rank the prospective sites and list all reasons for approval or rejection. The Department shall then notify the school district concerning their final decision.~~
- 2.3 The acquisition of lands for school construction shall comply with 29 Del.C. §7525.

## 3.0 Approval of Educational Specifications, Schematic Design Plans, Design Development Plans, and Construction Drawings

- 3.1 Educational Specifications are defined as a document which presents to an architect what is required of an educational facility to house and implement the educational philosophy and instructional program in an effective way.
  - 3.1.1 ~~Educational Specifications shall be approved by the local school board and forwarded to the Department of Education for informational purposes. The Department will require a minimum of ten (10) working days for completion of the review and approval process may provide comments on Educational Specifications at its discretion.~~
- 3.2 ~~All Schematic Design Plans shall be approved by the local school board and the Department of Education. Schematic Design Plans should be sent to the county or city planning office for information purposes only.~~ The Department of Education requires one set of Schematic Design Plans.
- 3.3 All Design Development Plans shall be approved by the local school board and the Department of Education. The Department of Education requires one set of Design Development Plans.
- 3.4 All Final Construction Drawings shall be approved by the local school board and the Department of Education. The Department of Education requires one set of signed and sealed Final Construction Drawings and specifications.
- 3.5 ~~The local school district must involve the following groups~~ all applicable State, Local and Municipal regulatory agencies in reviewing Final Construction Drawings prior to the ~~final approval~~ start of construction. Copies of all ~~local and state~~ applicable State, Local and Municipal agency approvals shall be ~~submitted to the Department of Education for final approval.~~ maintained in the local school district construction files. Required State agency approvals include but may not be limited to:
  - 3.5.1 Fire Marshal to review the plans for fire safety.
  - 3.5.2 Division of Public Health, Bureau of Environmental Health, Sanitary Engineering for Swimming Pools, and the County Health Unit for information on Kitchens and Cafeterias.
  - 3.5.3 Division of Facilities Management, Chief of Engineering and Operations for compliance with building codes.

- 3.5.4 ~~Division of Highways~~ Delaware Department of Transportation for review of the Site Plan showing entrances and exits as well as required transportation infrastructure improvements.
  - 3.5.5 Architectural Accessibility Board ~~for access for persons with disabilities.~~
  - 3.5.6 Department of Natural Resources and Environmental Control for wastewater, storm water management and erosion control.
- 3.6 Exemptions: Major Capitol Projects that do not include structural changes or wall modifications such as, but not limited to, window replacement, HVAC, electrical or plumbing infrastructure upgrades do not require submission to the Department of Education.

## 4.0 Certificates of Necessity

- 4.1 The Certificate of Necessity is a document issued by the Department of Education which certifies that a construction project is necessary and sets the scope and cost limits for that project.
- 4.2 Certificates of Necessity shall be obtained sufficiently in advance to meet all prerequisites for the holding of a local referendum and shall be issued only at the written request of the local school district. The Certificate of Necessity shall be quoted in the advertisement for the referendum.
- 4.3 Projects proposing the construction of a new building Facility or for an addition to an existing building Facility shall be issued a separate Certificate of Necessity. Funds issued for the construction of a new building Facility or for an addition to an existing building Facility shall not be transferred between projects or to projects in a separate Certificate of Necessity.
- 4.4 Additions to existing buildings Facilities that are done in connection with other renovations may be issued a single Certificate of Necessity. However, when ~~the~~ such multiple project Certificate is issued, it shall identify each building Facility in the program and describe the work to be done ~~in~~ at that building Facility including the dollar amount for that work. Funds may be transferred between projects issued under ~~this~~ the same Certificate of Necessity in accordance with 8.0 below.
- 4.5 The Office of ~~School Plant Planning~~ Education Facilities Planning, Construction and Operations will complete the final Certificates of Necessity and forward the Certificate of Necessity to the local school district superintendent for his/her signature.
- 4.6 A copy of the final Certificate of Necessity will be returned to the district within ten working days following final approval by the Department of Education.

## 5.0 Notification, Start of Construction, Completion of Construction and Certificate of Occupancy

- 5.1 The local school district shall submit to the Department of Education and the ~~State Budget Director~~ Director, Office of Management and Budget a construction schedule, showing start dates, intermediate stages and final completion dates.
- 5.2 The local school district shall notify the Department of Education, the ~~State Budget Director,~~ Office of Management and Budget and the Insurance Coverage Office at the completion of the construction, which is defined as when the school district, with the concurrence of the architect, accepts the building Facility as complete, punch-list items are resolved, release of liens has been received and funds held in retainage have been released.
- 5.3 The local school district shall record capital assets (buildings) in accordance with the State of Delaware Capital Asset Manual which requires capital assets (buildings) to be recorded when the asset is ready for its intended use. As an example, the capital asset (building) should be recorded when it has received an occupancy certificate or the building is ready for its intended use.
- 5.34 The local school district shall notify the Department of Education, the State Auditor, and the ~~State Budget Director,~~ Office of Management and Budget upon approval of the Certificate of Occupancy.
- 5.45 Local school districts shall submit to the Department of Education a copy of the electronic autocad files. Electronic autocad files shall be submitted no later than 30 calendar days after the completion of any major renovation, addition to an existing ~~f~~Facility, new school or replacement school.



## 6.0 Purchase Orders

All purchase orders for any Major Capital Improvement Project shall be approved by both the Department of Education and the Director of Capital Budget and Special Projects Assistant Chief of Fiscal & Policy Analysis for Capital Projects prior to submission to the Division of Accounting.

## 7.0 Change Orders

- 7.1 Change Orders are changes in the construction contract negotiated with the contractor. The main purpose is to correct design omissions, ~~faults or~~ address unforeseen circumstances which arise during the construction process, and improve upon designs based on project progress.
- 7.2 All Change Orders must be agreed upon by the architect, the local school district and the contractor and shall be forwarded to the Department of Education.
- 7.2.1 Submission of a Change Order must include the following documents: Completed purchase order as applicable; local s\_chool board of education minutes identifying and approving the changes; completed AIA document G701, and correspondence which gives a breakdown in materials mark up and other expenses.

## 8.0 Percentage of Funds Transferable Between Projects within a Certificate of Necessity

- 8.1 The transfer of funds between projects during the bidding and construction process shall ~~have the be~~ only by written approval of request by the district to the Department of Education. Acceptability of the transfer of funds will meet the following criteria:
- 8.1.1 No project may have ~~more than 10%~~ any portion of its funding moved to another project without the approval of the Secretary of the Department of Education, the Director of the Office of Management and Budget and the Controller General.
- 8.1.2 No project may have ~~more than 10%~~ any funding added to its initial funding without the approval of the Secretary of the Department of Education, the Director of the Office of Management and Budget and the Controller General.
- 8.1.3 No transfer of funds shall be executed between projects authorized through and by separate Certificates of Necessity.

## 9.0 Educational Technology

All school ~~buildings-~~ facilities being constructed or renovated under the Major Capital Improvement Program shall include, wiring for technology that meets the ~~state standards~~ current Department of Technology and Information Wiring Standards and is appropriate to the ~~building grade level and~~ educational requirements of the Facility type, such as high school, administration, etc. The cost of such wiring shall be borne by project funds when no other technology funds are available.

## 40.0 Air Conditioning

All school buildings with ~~Certificates of Necessity for new school construction and major renovation and rehabilitation shall require the inclusion of air conditioning unless otherwise waived by the Secretary of Education.~~

## 10.0 Playground Construction:

Effective July 1, 2010, all playgrounds constructed or renovated pursuant to a major capital improvement project shall comply with the most current editions of: The American Society of Testing Materials (ASTM) Designation F-1487 and The Consumer Products Safety Commission (CPSC) Publication Number 325.

## 11.0 Administration of the New School

The principle administrator of a new school may be hired for up to one (1) year prior to student occupancy to organize and hire staff. The State portion of salary and benefits may be paid from Major Capital Improvement Programs.

## 12.0 Voluntary School Assessment

12.1 The funds generated as a result of the Voluntary School Assessment, as authorized by the provisions of 14 Del.C. §103(c) relating to land use planning and education, shall be applied exclusively to offsetting the required local share of major capital construction costs.

12.1.1 Districts receiving Voluntary School Assessment funds shall have full discretion in the use of those funds for any construction activities that increase school capacity.

2 DE Reg. 1380 (2/1/99)

4 DE Reg. 1252 (2/1/01)

4 DE Reg. 1949 (6/1/01)

6 DE Reg. 1669 (6/1/03)

8 DE Reg. 1295 (3/1/05)

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 609

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

### 609 District and School Based Intervention Services

#### 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 609 District and School Based Intervention Services. This regulation is part of the five-year review cycle. The Department recognizes the on-going work of the House Resolution 22 Task Force that is reviewing laws and regulations related to school discipline. The regulation was first published in the November 2009 *Register of Regulations* and is now being re-published. The Department received comments from the Governors Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. This republication reflects the addition of language requested by both councils regarding student population served and the membership of the school based intervention team.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before March 2, 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? The regulation addresses services for students whose behavior disrupts the classroom setting and creates distractions that impede the learning process which has an impact on student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation addresses services for disruptive behavior not equity issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation addresses disruptive student behavior which could be a safety issue.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses services for disruptive behavior not student's legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The regulation will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no additional cost to the State and to the local school board of compliance with the regulation.

## 609 District and School Based Intervention Services

### 1.0 Provision of Services

Each school district shall provide services for students whose behavior disrupts the classroom setting and creates distractions that impede the learning process, but who are not eligible for placement in an alternative program pursuant to 14 **DE Admin. Code** 611. School districts may offer such services based on the identified needs of the district and its individual schools, subject to the requirements of this regulation.

### 2.0 Application for Funding

- 2.1 Any school district requesting an incentive or supplemental grant to provide intervention services shall apply for such funds using the LEA Consolidated Application process provided by the Department of Education.
- 2.42 Any incentive or supplemental grant approved as part of the LEA Consolidated Application process shall be in the amount appropriated for that purpose by law.

### 3.0 Student Population to be Served

Services funded under this regulation may be provided to any student in grades K to 12, subject to the terms of the district's approved LEA Consolidated Application. Notwithstanding any of the provisions to the contrary, IDEA-identified students with disabilities shall be served pursuant to the provisions in 14 **DE Admin. Code** 925 and students with disabilities identified under Section 504 of the Rehabilitation Act shall be served in conformity with 34 C.F.R. Part 104.

### 4.0 School Based Intervention Programs

- 4.1 If a district, through its LEA Consolidated Application, provides a School Based Intervention Program as part of the services provided to disruptive students, such Program shall meet the following requirements:

- 4.42 A School Based Intervention Program shall include both short term and long term intervention strategies. Such strategies may include character education, short or long term counseling to improve behavior which impacts educational performance, and methods to identify the need to refer students for additional services either within the district or to other agencies. The Program shall also include support services to provide a smooth transition for students who are returning to their regular school from a Consortium Discipline Alternative Program or from a Department of Services to Children, Youth and their Families (DSCYF) setting.
- 4.23 The decision to place a student in the School Based Intervention Program shall be made by the student's Intervention Team. The Intervention Team shall include the building principal or assistant principal, school nurse, counselor, social worker (if the student receives social work services), and a teacher familiar with the student. Other individuals, including parents, guardians or Relative Caregivers, may be invited as appropriate.
- 4.3 When placing an IDEA-identified student with a disability in a School Based Intervention Program, the Intervention Team and a student's IEP team may be the same as long as the membership of the Intervention Team also meets the requirements of 14 **DE Admin. Code** 925. When placing a student with a disability identified under Section 504 of the Rehabilitation Act, the Intervention Team may be the same as a multidisciplinary team authorized to make placement decisions as long the Intervention Team also meets the requirements of 34 C.F.R. 104.35

**5.0 Evaluation of Services**

- 5.1 Any local school district receiving a grant pursuant to this regulation shall submit an annual evaluation report on the effectiveness of its District and School Based Intervention Services. Such report shall be submitted as part of the L EA Consolidated Application process and shall conform to content and format standards.

**8 DE Reg. 1008 (1/1/05)**

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**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 712

**Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)****712 Employee Leave****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 712 Employee Leave for formatting purposes only. This regulation was reviewed pursuant to the five year review cycle.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before March 2, 2010 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendments were limited to formatting only.

2. Will the amended regulation help ensure that all students receive an equitable education? The amendments were limited to formatting only.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments were limited to formatting only.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendments were limited to formatting only.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendments were limited to formatting only.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amendments were limited to formatting only.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amendments were limited to formatting only.
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 amendments were limited to formatting only.
9. Is there a less burdensome method for addressing the purpose of the regulation? The amendments were limited to formatting only.
10. What is the cost to the State and to the local school boards of compliance with the regulation? The amendments were limited to formatting only.

## 712 Employee Leave

### 1.0 Sick Leave

- 1.1 Sick leave accumulated by an employee of any state agency or school district shall be transferred when said employee begins subsequent employment in a school district. If there is a break in service the transfer can only occur if the break was for less than six (6) months.
- 1.42 Sick leave days are made available at the start of the fiscal year, but adjustments for employees who terminate service prior to the end of the school year shall be made in the final paycheck.

**8 DE Reg. 1479 (4/1/05)**

### 2.0 Annual Leave

Subject to any limitation imposed by statute, accumulated annual leave shall be paid upon termination of employment. The employee may either remain on the regular payroll until such time as all annual leave is exhausted, or a lump sum payment for all unused annual leave on the employee's final paycheck. The vacated position may be filled at any time provided that the two employees do not receive compensation for the same pay period. Accumulated annual leave shall not be transferred between different employing state agencies or school districts.

**3 DE Reg. 1392 (4/1/00)**

**8 DE Reg. 1479 (4/1/05)**

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1220(a) (14 Del.C. §1220(a))  
14 DE Admin. Code 1560

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

**1560 Art Teacher**

**A. Type of Regulatory Action Requested**

Amendment to Existing Regulation

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1560 Art Teacher. 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 bring the format up to the current Standard Certificate style. There have been no changes in the certification requirements. This regulation sets forth the requirements for an Art Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Friday, March 5, 2010 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.

## 1560 Art Teacher

## 1.0 Content

- 1.1 This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Art Teacher Comprehensive (grades K to12). This certification is required for grades K to12.
- 1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

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

10 DE Reg. 100 (7/1/06)

## 2.0 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

~~“Standards Board” means the Professional Standards Board established pursuant to 14 Del.C. §1204.~~

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

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

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

10 DE Reg. 100 (7/1/06)

## 3.0 Standard Certificate

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

- ~~3.1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:
  - ~~3.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or~~
  - ~~3.1.2 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in Art; or~~
  - ~~3.1.3 Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or~~
  - ~~3.1.4 Holding a bachelor's degree from a regionally accredited college or university in any content area and for applicants applying after June 30, 2006 for their first Standard Certificate, satisfactory completion of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) credits or their equivalent must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and~~~~
- ~~3.2 For applicants applying after December 31, 2005, where a Praxis™ II examination in the area of the Standard Certificate requested is applicable and available, achieving a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination; or~~
- ~~3.3 Meeting the requirements for licensure and holding a valid and current license or certificate from another state in Art;
  - ~~3.3.1 The Department shall not act on an application for certification if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution; or~~~~
- ~~3.4 Meeting the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C. §1203.~~
- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as an Art Teacher to an educator who has met the following:
  - 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
  - 3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto.

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

10 DE Reg. 100 (7/1/06)



## 4.0 ~~Multiple Certificates~~

Educators may hold certificates in more than one area.

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

~~10-DE-Reg. 100 (7/1/06)~~

## 5.0 ~~Application Requirements~~

An applicant for a Standard Certificate shall submit:

- 5.1 Official transcripts; and
- 5.2 Official scores on the Praxis II examination if applicable and available; or
- 5.3 Evidence of passage of the National Board for Professional Teaching Standards Certificate, if applicable; or
- 5.4 An official copy of the out of state license or certification, if applicable.
- 5.5 If applied for simultaneously with application for an Initial License, the applicant shall provide all required documentation for that application in addition to the documentation cited above.

~~10-DE-Reg. 100 (7/1/06)~~

## 6.0 ~~Application Procedures for License Holders~~

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

~~10-DE-Reg. 100 (7/1/06)~~

## 7.0 ~~Effect of Regulation~~

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

~~10-DE-Reg. 100 (7/1/06)~~

## 8.0 ~~Validity of a Standard Certificate~~

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

~~10-DE-Reg. 100 (7/1/06)~~

## 9.0 ~~Secretary of Education Review~~

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

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

~~10 DE Reg. 100 (7/1/06)~~

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

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1220(a) (14 Del.C. §1220(a))  
14 DE Admin. Code 1563

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

#### 1563 Music Teacher

#### A. Type of Regulatory Action Requested

Amendment to Existing Regulation

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1563 Music Teacher. 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 bring the format up to the current Standard Certificate style. There have been no changes in the certification requirements. This regulation sets forth the requirements for a Music Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Friday, March 5, 2010 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.

## 1563 Music Teacher

### 1.0 Content

~~This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Music Teacher Comprehensive (grades K to 12).~~

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Music Teacher. This certification is required for grades K to 12.

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

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

**10 DE Reg. 100 (7/1/06)**

### 2.0 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 DE Reg. 100 (7/1/06)

### 3.0 Standard Certificate

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

- 3.1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:
  - 3.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or
  - 3.1.2 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in Music; or
  - 3.1.3 Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or
  - 3.1.4 Holding a bachelor’s degree from a regionally accredited college or university in any content area and for applicants applying after June 30, 2006 for their first Standard Certificate, satisfactory completion of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) credits or their equivalent must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and
- 3.2 For applicants applying after December 31, 2005, where a Praxis™ II examination in the area of the Standard Certificate requested is applicable and available, achieving a passing score as established

by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination; or

3.3 Meeting the requirements for licensure and holding a valid and current license or certificate from another state in Music;

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

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

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

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

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

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

~~10 DE Reg. 100 (7/1/06)~~

#### 4.0 Multiple Certificates

Educators may hold certificates in more than one area.

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

~~10 DE Reg. 100 (7/1/06)~~

#### 5.0 Application Requirements

An applicant for a Standard Certificate shall submit:

5.1 Official transcripts; and

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

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

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

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

~~10 DE Reg. 100 (7/1/06)~~

#### 6.0 Application Procedures for License Holders

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

~~10 DE Reg. 100 (7/1/06)~~

#### 7.0 Effect of Regulation

This regulation shall apply to all requests for issuance of a Standard Certificate, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate issued on or before August 31, 2003 shall be issued a Continuing License upon the expiration of their current Professional Status Certificate or Standard Certificate. The Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate shall be listed on the Continuing

~~License or the Advanced License. The Department shall also recognize a Limited Standard Certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the prescription letter received with the Limited Standard Certificate. Requirements must be completed by the expiration date of the Limited Standard Certificate, but in no case later than December 31, 2008.~~

~~10 DE Reg. 100 (7/1/06)~~

**8.0 ~~Validity of a Standard Certificate~~**

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

~~10 DE Reg. 100 (7/1/06)~~

**9.0 ~~Secretary of Education Review~~**

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

~~10 DE Reg. 100 (7/1/06)~~

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

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**PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 1220(a) (14 Del.C. §1220(a))  
14 DE Admin. Code 1564

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

**1564 Physical Education Teacher**

**A. Type of Regulatory Action Requested**

Amendment to Existing Regulation

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1564 Physical Education Teacher. 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 bring the format up to the current Standard Certificate style. There have been no changes in the certification requirements. This regulation sets forth the requirements for a Physical Education Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Friday, March 5, 2010 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.

## 1564 Physical Education Teacher

### 1.0 Content

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

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Physical Education Teacher. This certification is required for grades K to 12.

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

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

**10 DE Reg. 100 (7/1/06)**

2.0 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 DE Reg. 100 (7/1/06)



**3.0 Standard Certificate**

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

- 3.1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:
- 3.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or
  - 3.1.2 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty or organization standards, offered by a regionally accredited college or university, with a major or its equivalent in Physical Education; or
  - 3.1.3 Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or
  - 3.1.4 Holding a bachelor's degree from a regionally accredited college or university in any content area and for applicants applying after June 30, 2006 for their first Standard Certificate, satisfactory completion of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) or their equivalent credits must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and
- 3.2 For applicants applying after December 31, 2005, where a Praxis™ II examination in the area of the Standard Certificate requested is applicable and available, achieving a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination; or
- 3.3 Meeting the requirements for licensure and holding a valid and current license or certificate from another state in Physical Education;
- 3.3.1 The Department shall not act on an application for certification if the applicant is under official investigation by a ny state or local authority with the power to is sue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in of fice, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution; or
- 3.4 Meeting the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 ~~Del.C.~~ §1203.
- 3.1 In accordance with 14 ~~Del.C.~~ §12 20(a), the Department shall issue a Standard Certificate as a Physical Education Teacher to an educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and.
  - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto.

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

**10 DE Reg. 100 (7/1/06)**

**4.0 Multiple Certificates**

Educators may hold certificates in more than one area.

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

**10 DE Reg. 100 (7/1/06)**

**5.0 Application Requirements**

An applicant for a Standard Certificate shall submit:

- 5.1 Official transcripts; and
- 5.2 Official scores on the Praxis II examination if applicable and available; or
- 5.3 Evidence of passage of the National Board for Professional Teaching Standards Certificate, if applicable; or
- 5.4 An official copy of the out-of-state license or certification, if applicable.
- 5.5 If applied for simultaneously with application for an Initial License, the applicant shall provide all required documentation for that application in addition to the documentation cited above.

~~10 DE Reg. 100 (7/1/06)~~

**6.0 Application Procedures for License Holders**

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

~~10 DE Reg. 100 (7/1/06)~~

**7.0 Effect of Regulation**

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

~~10 DE Reg. 100 (7/1/06)~~

**8.0 Validity of a Standard Certificate**

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

~~10 DE Reg. 100 (7/1/06)~~

**9.0 Secretary of Education Review**

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

~~10 DE Reg. 100 (7/1/06)~~

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

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# PROPOSED REGULATIONS

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 11 Delaware Code, Section 8564(g) (11 **Del.C.** §8564(g))  
16 **DE Admin. Code** 3101

### PUBLIC NOTICE

#### 3101 Adult Abuse Registry

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 11 of the Delaware Code, Chapter 85, Section 8564, (g), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend the regulation governing the Adult Abuse Registry.

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 Susan Del Pesco, Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-7291, February 28, 2010.

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 change will amend the regulation to accommodate recent statutory changes allowing for on-line electronic access to information contained in the AA. Additionally, it expands the authority of DLTCRP to remove a person from the AAR before the expiration of his/her registration period where equity requires.

#### Statutory Authority

Delaware Code, Title 11, Ch. 85 § 8564 (g).

#### Background

The Department supported a legislative initiative during the 2009 legislative session amending 11 **Del.C.** §8564 that permits employers to conduct mandated AAR checks of applicants for employment on-line. The legislation passed and was subsequently signed into law by Governor Markell.

#### Summary of Proposal

This proposal amends the regulation to accommodate the statutory amendment. Additionally, the current regulations authorize the Department to remove a person from the AAR before the expiration of his/her registration period when that person no longer poses a threat to any person receiving care. This change will also expand that authority to permit the removal of a person where equity requires.

#### 3101 Adult Abuse Registry

##### 1.0 Definitions

"**Abuse**" shall have the same meaning as contained in 16 **Del.C.** §1131, and shall include mistreatment, neglect and financial exploitation as defined therein.

"**Child Care Facility**" means any child care facility which is required to be licensed by the Department of Services for Children, Youth and Their Families.

**"Contractor"** means an entity under contract to provide services for more than 20 hours per week (aggregate) and for more than six weeks in a twelve month period for a health care service provider, and whose employees have the opportunity for direct access to persons receiving care. For purposes of these regulations, contractor does not include construction contractors.

**"Department"** means the Department of Health and Social Services.

**"Direct Access"** means the opportunity to have personal contact with persons receiving care during the course of one's assigned duties.

**"Division"** means the Division of Long Term Care Residents Protection.

**"Health Care Service Provider"** means any person or entity that provides services in a custodial or residential setting where health, nutritional or personal care is provided for persons receiving care, including but not limited to, hospitals, home health care agencies, adult care facilities, temporary employment agencies and contractors that place employees or otherwise provide services in custodial or residential settings for persons receiving care, and hospice agencies. Health Care Service Provider does not include any private individual who is seeking to hire a self-employed health caregiver in a private home.

**"Nursing Facility and Similar Facility"** means any facility required to be licensed under 16 Del.C. Ch. 11. This includes, but is not limited to, facilities commonly called nursing homes, assisted living facilities, intermediate care facilities for persons with mental retardation, neighborhood group homes, family care homes and residential care facilities. Also included are the Stockley Center, the Delaware Psychiatric Center and hospitals certified by the Department of Health and Social Services pursuant to 16 Del.C. §5001 or 5136.

**"Person Receiving Care"** means any person who, because of his/her physical or mental condition, requires a level of care and services suitable to his/her needs to contribute to his/her health, comfort and welfare.

**"Person Seeking Employment"** means any person applying for employment with or in a health care service provider, nursing facility or similar facility that may afford direct access to persons receiving care at such facility, or a person applying for licensure to operate a child care facility or nursing facility and similar facility. It shall also include a self-employed health caregiver who has direct access in any private home.

**"Substantiated Pending Appeal"** refers to a placement on the Registry based on an investigative finding prior to the subject exercising his/her right to appeal.

**"Substantiated Abuse"** means that, weighing the facts and circumstances, a reasonable person has concluded by a preponderance of evidence that the identified individual has committed adult abuse for the purpose of placement on the Adult Abuse Registry.

## **5 DE Reg. 1073 (11/1/01)**

### **2.0 Use of Registry**

- 2.1 No health care service provider, to include nursing and similar facilities, or child care facility shall hire any person seeking employment or retain any contractors without ~~requesting and receiving~~ conducting a check of the person through the on-line Adult Abuse Registry check for such person available at the Division's website. The provider shall maintain a copy of the results of the check to demonstrate compliance with this requirement
- 2.1.1 ~~Any employer who is required to request an Adult Abuse Registry check shall obtain a statement signed by the person seeking employment wherein the person authorizes a full release for the employer to obtain the information provided pursuant to such a check. Said authorization shall include the following language: "I hereby release the indicated employer to obtain from the Division of Long Term Care Residents Protection any information concerning me which may be on the Adult Abuse Registry pursuant to 11 Del.C. §8564."~~
- 2.1.2 ~~When exigent circumstances exist which require an employer to fill a position in order to maintain the required or desired level of service, the employer may hire a person seeking employment on a conditional basis after the employer has requested an Adult Abuse Registry check.~~

~~2.1.3 The person shall be informed in writing, and shall acknowledge in writing, that his or her employment is conditional, and contingent upon receipt of the Adult Abuse Registry check.~~

- 2.2 Private individuals seeking to hire an individual to provide health care services in a private residence may request the Division to determine if the potential employee is listed on the Adult Abuse Registry conduct a check of the on-line Adult Abuse Registry available at the Division's website. An individual who does not have access to the internet may submit short letter of request along with a release form signed by the prospective employee may be mailed or faxed to the Division of Long Term Care Residents Protection (DLTCRP) # 3 Mill Road, Suite 308, Wilmington, DE 19806, fax number (302) 577-6673 by mail or fax.

**5 DE Reg. 1073 (11/1/01)**

### 3.0 Investigation of Adult Abuse

- 3.1 The Division shall investigate any individual against whom an allegation of adult abuse has been made in accordance with the time frames delineated in 16 Del.C. §1134(d).
- 3.2 If the investigation substantiates pending appeal that the alleged abuse occurred, the Division's Investigations Unit Chief shall enter on the Adult Abuse Registry, with a finding of "Substantiated Pending Appeal," the individual's name, date/time of the incident, a description of same and the length of time the finding shall remain on the Registry.
- 3.3 The Division may accept preliminary investigations by a state agency or an entity contracted by a state agency. The Division will review and may revise the findings upon further investigation.
- 3.4 Upon placement of a person on the Adult Abuse Registry, the Division will notify the facility from which the complaint originated as well as the current employer, if different, and the victim that the person is on the Registry as "Substantiated Pending Appeal."

**5 DE Reg. 1073 (11/1/01)**

### 4.0 Administrative Hearings

- 4.1 An individual against whom an allegation is substantiated pending appeal shall be notified by certified mail at his/her home address, to be followed by written notice in care of his/her current employer at the discretion of the Division, that his/her name has been entered on the Adult Abuse Registry and shall be offered a right to an administrative hearing. The burden of proof in such hearing shall be on the Division. Individuals shall be informed upon completion of the investigation of the following:
- 4.1.1 The date and time of the incident if known.
- 4.1.2 The name and type of facility where the incident occurred.
- 4.1.3 A brief description of the incident.
- 4.1.4 Length of time the finding remains on the Adult Abuse Registry.
- 4.2 All requests for an administrative hearing must be received in writing, postmarked within 30 days of the date of the notice that a finding of abuse has been substantiated pending appeal. The Director or his/her designee shall dismiss untimely requests for hearing except when the individual submits evidence of good cause.
- 4.3 An individual who fails to request an administrative hearing as described above shall have his/her name and information regarding the incident changed from a finding of "Substantiated Pending Appeal" to a finding of "Substantiated Abuse" on the Adult Abuse Registry. At that time the Division shall notify the individual, the facility from which the complaint originated as well as the current employer, if different, and the victim that the individual is on the Registry with a finding of "Substantiated Abuse."
- 4.4 An individual who has entered a plea or who has been convicted by a court of law of a criminal offense based on the same conduct that resulted in placement on the Adult Abuse Registry shall have the right to an administrative hearing solely to challenge the proposed length of time of registration on the Adult Abuse Registry.

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- 4.5 The hearing officer shall have the power to compel the attendance of witnesses and the production of evidence. Under no circumstance shall the hearing officer order the release of the investigative report and documents attached thereto, provided however, the hearing officer may order the release of statements of witnesses.
- 4.6 The hearing officer should receive requests for witnesses and/or the production of evidence no less than ten business days prior to the hearing date.
- 4.7 The individual shall be afforded an opportunity to appear with or without an attorney, submit documentary evidence, present witnesses, and question any witness the Division presents. Limited continuances shall be granted for good cause.
- 4.8 If, at the conclusion of the hearing, the hearing officer concludes by a preponderance of evidence, that the identified individual has committed adult abuse, for the purpose of placement on the Adult Abuse Registry, a notice of "Substantiated Abuse" shall be placed on the Adult Abuse Registry. If, at the conclusion of the hearing, the hearing officer concludes that the individual has not committed adult abuse, the finding of "Substantiated Pending Appeal" shall be removed from the Adult Abuse Registry.
- 4.9 The hearing officer shall render a written decision within thirty working days of the hearing and will notify the individual, the Division, the facility and the victim of the decision. The notice will specify the reasons for the decision and, if the finding is substantiated, the length of time the finding of substantiated abuse shall remain on the Adult Abuse Registry.
- 4.10 Any person placed on the Adult Abuse Registry shall have the right to appeal the decision within thirty days of the finding. The decision of the hearing officer may be appealed on the record to Superior Court. Appeals of hearing officer decisions are governed by the Administrative Procedures Act, Title 29, Chapter 101.

**5 DE Reg. 1073 (11/1/01)**

**7 DE Reg. 82 (7/1/03)**

## **5.0 Length of Time on the Adult Abuse Registry**

- 5.1 The length of time on the Adult Abuse Registry shall be based on the seriousness of the incident and whether there exists a pattern of adult abuse. Evidence of mitigating circumstances may be considered.
- 5.2 The names of registrants with findings of abuse, neglect or misappropriation entered on the Registry of Nurse Aides created pursuant to 42 CFR §483 shall be entered on the Adult Abuse Registry with a finding of substantiated abuse. There shall be a right of appeal for findings entered on the Adult Abuse Registry under this section solely to challenge the proposed length of time of registration on the Adult Abuse Registry.
- 5.3 Upon final disposition of the allegation, the Division shall notify, in writing, the victim, the facility where the incident occurred as well as the current employer of the individual, if different, of the final disposition.

**5 DE Reg. 1073 (11/1/01)**

## **6.0 Removal of a Person from the Adult Abuse Registry**

- 6.1 The Department shall be authorized to remove a person from the Adult Abuse Registry before the expiration of his/her registration period when the Department deems that the person no longer poses a threat to any person receiving care in accordance with 11 Del.C. §8564(g) or where equity requires.
- 6.2 A person whose name has been placed on the Adult Abuse Registry shall have the right to petition the Division, in writing, for the removal of his/her name from the Registry. Said petitioner must demonstrate:
- 6.2.1 A minimum of twelve months has passed since his/her placement on the Registry.
- 6.2.2 Affirmative steps have been taken to correct behavior that led to placement on the Registry, i.e. anger management counseling, drug/alcohol treatment, sensitivity training, etc.
- 6.2.3 Demonstrated improved behavior through work references.

- 6.3 The Division will evaluate the information provided by the petitioner and respond in writing within 60 days of receipt of all information provided by the petitioner. The Division is authorized to grant or deny the removal based on the review of the information presented. If the Division denies the request, the petitioner may request a hearing to appeal the denial, or reapply for the removal after 6 months or when the petitioner can produce evidence of performance of the affirmative steps listed above.

**5 DE Reg. 1073 (11/1/01)**

## **7.0 Disclosure of Adult Abuse Registry Records**

Except as otherwise provided in these regulations, the dissemination of information contained in the Adult Abuse Registry shall be limited as follows:

- 7.1 Hearing Officer Opinions shall be released upon request to the following:
- 7.1.1 The subject of the hearing.
  - 7.1.2 A victim identified by name in the record or his/her legal representative.
  - 7.1.3 Law enforcement officials pursuant to an official investigation.
  - 7.1.4 The Long Term Care Ombudsman pursuant to a complaint from a victim identified in the record.
  - 7.1.5 The Medicaid Fraud Control Unit of the Department of Justice.
  - 7.1.6 The Division of Professional Regulation if a finding of substantiated abuse pertains to a licensed professional.
- 7.2 Investigative files shall be released upon request to:
- 7.2.1 Law enforcement officials pursuant to an official investigation.
  - 7.2.2 The Medicaid Fraud Control Unit of the Department of Justice.
  - 7.2.3 Rights protection agencies otherwise entitled under applicable federal or state law.

**5 DE Reg. 1073 (11/1/01)**

## **Addendum Reporting To Nurse Aide Registry**

In accordance with 42 CFR §483, the Division of Long Term Care Residents Protection will report findings of abuse to the Nurse Aide Registry under the following procedure:

1. When the Division has substantiated pending appeal a finding of abuse, neglect, mistreatment or financial exploitation against a certified nurse assistant, a determination will be made whether the substantiated findings meet the criteria required in the federal regulations or the criteria in state statute and regulations.
2. If the findings support the criteria for abuse, mistreatment or misappropriation of property in the federal regulations, the certified nurse assistant will be notified that his/her name is both reported to the Nurse Aide Registry and placed on the Adult Abuse Registry, and that he/she has a right to a hearing. The CNA will also be notified that, with regard to the Nurse Aide Registry, a substantiated finding will result in a lifetime prohibition against employment in a federally certified facility.
3. If the findings support the criteria for neglect in the federal regulations, the certified nurse assistant will be notified that his/her name is both reported to the Nurse Aide Registry and placed on the Adult Abuse Registry, and that he/she has a right to a hearing. The CNA will also be notified that, with regard to the Nurse Aide Registry, a substantiated finding of neglect will result in a lifetime prohibition against employment in a federally certified facility. However, the CNA will be further informed of his/her right to petition the Division to have the report removed from the Nurse Aide Registry in accordance with §1819(g)(1)(D) of the Social Security Act.
4. The notice to the certified nurse assistant will include an explanation that the hearing described in the Adult Abuse Registry regulations will also consider the placement of the CNA on the Nurse Aide Registry. The CNA will be informed that if the evidence presented at a hearing does not warrant a finding of abuse, neglect, mistreatment or misappropriation of property under the federal regulations, the evidence will be considered to determine whether it meets the criteria for abuse, neglect, mistreatment or financial exploitation under the state Adult Abuse statute.

**5 DE Reg. 1073 (11/1/01)**

## DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 16 Delaware Code, Section 1141(e) (11 Del.C. §1141(e))  
16 DE Admin. Code 3105

### PUBLIC NOTICE

#### **3105 Criminal History Record Checks and Pre-employment Drug Testing for Persons Working in Nursing Homes and Other Facilities Licensed Under 16 Del.C. Ch. 11.**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 16, Section 1141 (e), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend the regulation governing criminal history record checks and pre-employment drug testing for persons working in nursing homes and other facilities.

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 Susan Del Pesco, Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-7291, February 28, 2010.

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 proposal amends existing Regulation 3105 – Criminal History Record Checks and Pre-employment Drug Testing for Persons Working in Nursing Homes and Other Facilities. The proposal will amend the regulation to require facilities to submit on a quarterly basis a list of applicant hires.

#### **Statutory Authority**

Delaware Code, Title 16, Ch. 11 § 1141 (e).

#### **Background**

With the State no longer funding costs of fingerprinting for criminal record checks a need to ensure new hires are submitting to the criminal background check process was identified. Requiring the submission of these lists will provide DLTCRP with the ability to cross-check our records to ensure compliance.

#### **Summary of Proposal**

This regulatory proposal amends the existing regulations as outlined below:

- Requires nursing homes and other facilities licensed under 16 Del.C. Ch. 11 to submit lists of new hires to DLTCRP on a quarterly basis.

#### **3105 Criminal History Record Checks and Drug Testing**

*(Break in Continuity of Sections)*

#### **10.0 Employer Responsibilities**

- 10.1 Criminal history record checks and drug testing are to be completed on applicants who have been prescreened and to whom an offer of employment may be made. Payment for drug testing is the responsibility of the employer or the applicant.



- 10.2 Conditional employment cannot begin until the employer has received evidence that the applicant's State and Federal criminal history records have been requested, he/she has been fingerprinted, and he/she has requested the appropriate drug testing. Under no circumstances shall an applicant be employed on a conditional basis for more than 2 months if his/her employer has not received the test results.
- 10.3 An employer whose nursing home includes both licensed and unlicensed areas must ensure that all persons who perform services in the licensed areas comply with the law.
- 10.4 The employer shall ensure that every application for employment at a nursing home specifies that the applicant is required to provide any and all information necessary to obtain a report of the person's entire criminal history record from the State Bureau of Identification and a report of the person's entire Federal criminal history record pursuant to the Federal Bureau of Investigations appropriation of Title II of Public Law 92-544. In addition, every application for employment shall contain a statement that must be signed by the applicant in which the applicant grants full release for the employer to request and obtain any such records or information contained on a criminal history record.
- 10.5 The employer shall ensure that a *criminal history record request form* has been completed and that the employer copy is maintained in its files.
- 10.6 The employer shall also maintain a signed copy of a *verification of providing fingerprints to the Delaware State Police form*.
- 10.7 When exigent circumstances exist, and an employer must fill a position in order to maintain the required level of service, the employer may hire an applicant on a conditional basis when the employer receives evidence that the applicant has actually had the appropriate drug testing, as long as the person has also provided verification of fingerprinting. All persons hired shall be informed in writing and shall acknowledge, in writing, that his/her drug test results have been requested.
- 10.8 The employer must ensure that no applicant remains employed in conditional status for more than two months without receiving the results of the mandatory drug testing. If the drug testing results are not received within two months, the applicant must be terminated from employment, or in the case of an applicant who was conditionally promoted, the applicant can be returned to his/her prior position or removed from employment in the nursing home.
- 10.9 The employer must provide to the Department a copy of each applicant's final drug test results within 10 business days of their receipt.
- 10.10 When the employer is notified of conviction of one or more disqualifying crimes in either the State or Federal criminal history of an applicant, the employer shall terminate the applicant immediately.
- 10.11 If an employer wishes to have a criminal history record check conducted on an applicant who has been the subject of a qualifying State and Federal background check within the previous 5 years, the cost for this must be borne by the employer. Payment must be made directly to the State Police. The Department will, at no cost, provide the results of the Federal Bureau of Investigation information, just as it would for an applicant who had not had such a check conducted within the previous 5 years.
- 10.12 If a person is fingerprinted under the auspices of these regulations more than once during a five-year period, the cost of that fingerprinting will not be borne by the State. If billed, the Department will obtain payment from the employer specified on the *criminal history record request form*. Such employer may obtain payment from the applicant.
- 10.13 The employer will notify the Department if an applicant is separated from employment for any reason prior to completion of the criminal history check process.
- 10.14 The employer will have the responsibility for using the results of the criminal history record check and the drug testing as factors in making the determination of suitability for final employment, unless the State and/or Federal criminal history record check identifies the presence of a conviction of one or more disqualifying crimes, in which case the applicant is automatically disqualified for final employment and must be terminated.
- 10.15 The employer will notify the applicant of the findings.

10.16 The Department reserves the right to obtain data from employers on the employment status of applicants covered under these regulations, including but not limited to the requirement that facilities submit on a quarterly basis a list of applicants hired.

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

**[3105 Criminal History Record Checks and Drug Testing](#)**

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## **DIVISION OF LONG TERM CARE RESIDENTS PROTECTION**

Statutory Authority: 16 Delaware Code, Section 1145(f) (11 **Del.C.** §1145(f))  
16 **DE Admin. Code** 3110

### **PUBLIC NOTICE**

#### **3110 Regulations for Criminal History Record Checks and Drug Testing for Home Health Agencies**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 16, Section 1145 (f), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend the regulation governing criminal history record checks and pre-employment drug testing for persons working for home health agencies

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 Susan Del Pesco, Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-7291, February 28, 2010.

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 proposal amends existing Regulation 3110 - Criminal History Record Checks and Drug Testing for Home Health Agencies. This proposal will amend the regulation to require agencies to submit on a quarterly basis a list of applicant hires.

#### **Statutory Authority**

Delaware Code, Title 16, Ch. 11 § 1145 (f).

#### **Background**

A need to ensure new hires are submitting to the criminal background check process was identified. Requiring the submission of these lists will provide DLTCRP with the ability to cross-check our records to ensure compliance.

#### **Summary of Proposal**

This regulatory proposal amends the existing regulations as outlined below:

- Requires home health agencies to submit lists of new hires to DLTCRP on a quarterly basis.

## 3110 Criminal History Checks And Drug Testing For Home Health Agencies

### 1.0 Purpose

The purpose of these regulations is to ensure the safety and well-being of residents in this State who use the services of home health agencies licensed pursuant to 16 **Delaware Code**, §122(3)o, and/or self-employed healthcare givers in the resident's own home or home of residence. To this end, persons selected for employment by home health agencies shall be subject to pre-employment criminal history checks and pre-employment drug testing; persons selected for employment by private individuals may be subject to pre-employment criminal history checks and pre-employment drug testing at the discretion of the private individual selecting the person for employment.

### 2.0 Definitions

**“Conditional Employment”** pertains to the period of time during which an applicant is working while his/her employer has not received the results of (a) the state criminal history record, (b) the federal criminal history record, and (c) the results of the testing for illegal drugs. Conditional employment must end immediately if either the state or federal criminal history record contains disqualifying crime(s) as delineated in Section 3.1 of these regulations.

**“Department or DHSS”** means Department of Health and Social Services.

**“Employer”** is any person, business entity, management company, home health agency, temporary agency, or other organization that hires persons or that places persons in a private residence for the purposes of providing licensed nursing services, home health aide services, physical therapy, speech pathology, occupational therapy or social services.

**“Final Employment”** means employment upon the employer's receipt of the State Bureau of Identification criminal history record containing evidence of no disqualifying convictions, a report by the Department that there are no disqualifying convictions in such person's federal criminal record, and the results of the testing for illegal drugs.

**“Hire”** means to begin employment of an applicant, or to pay wages for the services of a person who has not worked for the employer during the preceding three-month period, or to refer a caregiver to a private residence in return for a finder or placement fee.

**“Home Health Agency”** is any business entity, public or private, which provides directly or through contract arrangements, to individuals in their home or private residence, either (a) two or more of the following services: licensed nursing, home health aide, physical therapy, speech pathology, occupational therapy, or social services where at least one of the services is licensed nursing or home health aide services or (b) home health aide services exclusively, provided under appropriate supervision.

**“Illegal drug”** for purposes of these regulations means marijuana/cannabis, cocaine, opiates including heroin, phencyclidine (PCP), amphetamines, barbiturates, benzodiazepene, methadone, methaqualone and propoxyphene.

**“Promotion”** means any change in job classification that results in additional responsibility and/or an increase in wages. It does not include a change in job status from part-time to full-time.

### 3.0 Criteria For Unsuitability For Employment

- 3.1 The following types of criminal convictions (or convictions in another jurisdiction which are comparable under Delaware law) automatically disqualify a person from providing home health services when such conviction occurred within the time periods specified:
- 3.1.1 Conviction of any act causing death as defined in 11 **Delaware Code**, Chapter 5, Subchapter II, Subpart B with no time limit;
  - 3.1.2 Conviction of any sexual offense designated as a felony in 11 **Delaware Code**, Chapter 5, Subchapter II, Subpart D with no time limit;
  - 3.1.3 Conviction of any violent felony as specified in 11 **Delaware Code**, Section 4201(c) within the last ten years;

- 3.1.4 Conviction of any felony involving a controlled substance, a counterfeit controlled substance, or a designer drug as specified in 16 **Delaware Code**, Chapter 47 within the last ten years;
  - 3.1.5 Conviction of any felony other than those specified above within the last five years;
  - 3.1.6 Conviction of any misdemeanor involving a controlled substance, a counterfeit controlled substance, or a designer drug as specified in 16 **Delaware Code**, Chapter 47 within the last five years;
  - 3.1.7 Conviction of any Class A misdemeanor included in 11 **Delaware Code**, Chapter 5, Subchapter II, Subpart A within the last five years;
  - 3.1.8 Conviction of any attempt to commit a crime, as defined in 11 **Delaware Code**, Section 531, with respect to any of the above listed offenses.
- 3.2 For other criminal convictions, the following criteria are to be used by the employer in determining whether a person is suitable for employment in home health care:
- 3.2.1 Type of conviction(s);
  - 3.2.2 Frequency of conviction(s);
  - 3.2.3 Length of time since conviction(s) occurred;
  - 3.2.4 Age at the time of the conviction(s);
  - 3.2.5 Record since the conviction(s);
  - 3.2.6 Relationship of conviction(s) to type of job assignment.
- 3.3 Employer Responsibilities
- 3.3.1 The employer shall ensure that a *Criminal History Record Request Form* has been completed and that the employer copy is maintained in the employer's files.
  - 3.3.2 The employer shall maintain a signed copy of the *Receipt/Verification of Providing Fingerprints Form* from the Delaware State Police.
  - 3.3.3 If an employer wishes to have a criminal history record check conducted on an applicant who has been the subject of a qualifying State and Federal background check within the previous 5 years, the costs shall be borne by the employer. Payment shall be made directly to the Delaware State Police. The Department shall, at no cost, provide the results of the Federal Bureau of Investigation information to the employer in the same manner as for any other applicant.
  - 3.3.4 If a person is fingerprinted under the auspices of these regulations more than once during a five-year period, the costs shall not be borne by the State. If the State is billed for such fingerprinting costs, payment shall be obtained from the employer specified on the *Criminal History Record Request Form*. Such employer may obtain payment from the applicant.
  - 3.3.5 If an applicant who has been conditionally hired is separated from employment for any reason prior to completion of the criminal history check process, the employer shall notify the Department upon such separation.
  - 3.3.6 Upon receipt of the results of the criminal history record check and the results of the testing for illegal drugs, the employer shall determine the suitability of an applicant for final employment using the criteria in Section 3.2 unless the state or federal criminal history record check has identified a conviction of one or more automatically disqualifying crimes. An applicant for final employment with a conviction of an automatically disqualifying crime shall be terminated immediately.
  - 3.3.7 The employer shall notify the applicant of the findings of the criminal history record check and the testing for illegal drugs.
  - 3.3.8 The employer may provide to the individual in need of care a statement that the applicant has satisfactorily completed the criminal history record check and the testing for illegal drugs.
  - 3.3.9 The Department reserves the right to obtain data from employers on the employment status of applicants covered under these regulations, including but not limited to the requirement that agencies submit on a quarterly basis a list of applicants hired.
- 3.4 Applicants' Responsibilities
- 3.4.1 Applicants are responsible for completing all information accurately and completely on the *Criminal History Record Request Form* and any form provided by the employer for use in obtaining

mandatory pre-employment testing for illegal drugs. Any applicant who refuses to complete one or more of these forms shall be deemed to have voluntarily withdrawn his/her application.

3.4.2 The applicant is responsible for having his/her fingerprints taken and for returning a *Receipt/Verification of Providing Fingerprints to the Delaware State Police Form* to the employer.

3.4.3 The applicant is responsible for informing any potential employer if he/she has already been fingerprinted in accordance with these regulations. The cost of additional fingerprinting, exceeding the one fingerprinting per five-year period required by these regulations, shall not be borne by the State.

3.4.4 The applicant is responsible for submitting to the required testing for illegal drugs and providing verification of the testing to the employer.

### 3.5 Department's Responsibilities

3.5.1 When the Department has received all necessary documentation, it shall perform a review and ensure that the employer receives a copy of the applicant's state criminal history report and issue a written summary of the federal criminal history report. If conviction of a disqualifying crime is included on the state or federal criminal history report, the Department shall notify the employer immediately, prohibiting either the hire or continued conditional employment of the applicant.

3.5.2 Upon notification that an employer intends to hire a person who has previously had the criminal history check conducted by the Department, the Department shall review the criminal history on file and shall review the applicant's criminal history via the Criminal Justice Information System for any subsequent criminal information. If the review reveals a disqualifying conviction subsequent to the original review, the applicant shall be disqualified from employment with the new employer and the previously listed employers shall be notified of the recent conviction and encouraged to make personnel decisions based on the new information.

### 3.6 Confidentiality

3.6.1 In accordance with 11 **Delaware Code**, Section 8513(c), the Department shall receive information from the State Bureau of Identification pertaining to the identification and conviction data of any person for whom the Bureau has a record solely for the purpose of determining suitability for employment of the person whose record is received.

3.6.2 The Department shall store written and electronically recorded criminal history record information in a secure manner to provide for the confidentiality of records and to protect against any possible threats to their security and integrity.

3.6.3 The Department shall not release to employers, as defined in Section 3 of these regulations, copies of actual written reports of criminal history records prepared by the Federal Bureau of Investigation.

3.6.4 The following procedure shall be used to permit the review of criminal history record files by any applicant:

3.6.4.1 An applicant shall submit a request in writing to the Department for the on-site review of his/her criminal history record file.

3.6.4.2 An applicant shall make an appointment to review the record at the Department in the presence of a Department employee. The applicant shall present photo identification at the time of the review.

3.6.4.3 Written documentation of the date and time of the review and the names of those present shall be filed in the criminal history record file of the applicant.

3.6.4.4 Upon completion of such a review, the Department shall return criminal history records (written or electronic) to secure storage.

3.6.5 Criminal history record information shall not be disseminated to any person(s) other than the applicant, his/her employer or subsequent employer(s) as defined in Section 3 of these regulations, or the Department.

3.6.6 All employers shall store criminal history record information in a secure manner to provide for the confidentiality of records and to protect against any possible threats to their security and integrity.

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3.6.7 Employers shall limit the use of criminal history record information to the sole purpose of determining suitability for employment.

**6 DE Reg. 1208 (3/1/03)**

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## **DIVISION OF LONG TERM CARE RESIDENTS PROTECTION**

Statutory Authority: 16 Delaware Code, Section 1145(f) (11 **Del.C.** §1145(f))  
**16 DE Admin. Code 3201**

### **PUBLIC NOTICE**

#### **3201 Skilled and Intermediate Care Facilities**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend the regulation governing Skilled and Intermediate Care Facilities.

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 Susan Del Pesco, Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-7291, February 28, 2010.

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 proposal amends the existing Regulation 3201 - Skilled and Intermediate Care Facilities. The proposed change will amend the regulation to incorporate updates deemed necessary by DLTCRP.

#### **Statutory Authority**

Delaware Code, Title 16, Ch. 11 § 1119C.

#### **Background**

DLCTRP identified the need to update the Skilled and Intermediate Care Facilities regulation to better address the quality of care and quality of life of residents residing in such facilities.

#### **Summary of Proposal**

This regulatory change amends the regulation in the following areas:

- Incorporates, by reference, 42 CFR Ch. IV Part 483, Subpart B where the existing regulation was less restrictive or duplicative.
- Adds language clarifying several definitions.
- Modifies the requirements for an AWSAM trained Certified Nursing Assistant.
- Requires facilities not providing skilled care to renew or revise physician's orders at least every 60 days.
- Updates the requirement for tuberculin testing to conform to the U.S. Health Department Centers for Disease Control recommendations.

- Upgrades various facility system requirements to conform to the American National Standards Institute (ANSI) standards.
- Allows for the electronic reporting of incidents to DLTCRP.

### **3201 Skilled and Intermediate Care Nursing Facilities**

**\*Please Note: Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:**

[3201 Skilled and Intermediate Care Nursing Facilities](#)

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## **DIVISION OF LONG TERM CARE RESIDENTS PROTECTION**

Statutory Authority: 16 Delaware Code, Section 3006A (16 Del.C. §3006A)  
16 DE Admin. Code 3220

### **PUBLIC NOTICE**

#### **3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 30A, Section 3006A, Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend the regulation governing the training and qualifications for nursing assistants and certified nursing assistants.

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 Susan Del Pesco, Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-7291, February 28, 2010.

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 proposal amends existing Regulation 3220 - Training and Certification of Certified Nursing Assistants. The proposed change will amend the regulation to relative the assessment of fees for reciprocal certification, add a requirement for continuing education, modify training program requirements and delete the Senior CNA Training Program Instructor component.

#### **Statutory Authority**

Delaware Code, Title 16, Ch. 30A§ 3006A.

#### **Background**

DLTCRP identified the need to update various components of the existing regulation governing the training and certification of Certified Nursing Assistants.

#### **Summary of Proposal**

This regulatory proposal amends the existing regulations as outlined below:

- Assesses a \$30 fee for the reciprocal certification of a nursing assistant from another state.
- Requires 24 hours of continuing education per year to maintain certification.

- Enhances training program requirements.
- Deletes Section 6.0, Senior CNA Training Program Instructor.

## 3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants

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

#### 2.0 General Training Requirements And Competency Test

Each Nursing Assistant/Certified Nursing Assistant employed by any nursing facility either as contract/agency or facility staff shall be required to meet the following:

- 2.1 An individual shall complete a nursing assistant training course approved by the Department on the recommendation of the CNA Training Curriculum Committee. The Committee shall consist of individuals with experience in the knowledge and skills required of CNAs.
- 2.2 Nursing Assistants are required to pass a competency test provided by the Department or by a contractor approved by the Department.
- 2.3 Nursing Assistants shall take the competency test within 30 days of completion of an approved program or when the nearest testing location is available to the nursing assistant, whichever is later. Nursing assistants who fail to obtain a passing score may repeat the test two additional times, but must obtain certification within 90 days of program completion. Nursing assistants who fail to obtain a passing score after testing three times must repeat the CNA training program before retaking the test, or they cannot continue to work as a nursing assistant.
- 2.4 ~~A Certified Nursing Assistant must~~ In order to qualify for recertification, a CNA must, during each 24 month certification period: 1) complete 24 hours of approved continuing education, and 2) perform at least 64 hours of nursing related services for pay under the supervision of a licensed nurse or physician. ~~during each 24 month certification period in order to qualify for recertification. A certified nursing assistant CNA who does not perform at least 64 hours of nursing related services in a certification period or fails to complete the required continuing education must complete and pass a new training course and the competency test again., or competency test. Nursing assistants who fail to obtain a passing score after testing three times must repeat the CNA training program before additional testing will be permitted.~~
- 2.5 A Certified Nursing Assistant trained and certified outside the State of Delaware in a program that equals or exceeds the federal nurse aide training program requirements in the Code of Federal Regulations §483.152 cannot work in Delaware without a Delaware certificate. Delaware certification is required prior to being employed as a CNA. The Department will grant reciprocity if the following conditions are met:
  - 2.5.1 The CNA Nursing Assistant must have a current certificate from the jurisdiction where he or she currently practices, except that candidates from the State of Maryland must hold a current Geriatric Nursing Assistant certificate.
  - 2.5.2 The CNA Nursing Assistant must have 3 months of full-time experience as a CNA performing nursing related services for pay under the supervision of a licensed nurse or physician, or have completed a training and competency evaluation program with the number of hours at least equal to that required by the State of Delaware.
  - 2.5.3 The CNA Nursing Assistant must be in good standing in the jurisdiction where he/she is currently certified.
  - 2.5.4 The Nursing Assistant submits \$30 to the Department to cover the costs associated with granting the reciprocity.
- 2.6 Employees hired as Nursing Assistants/Certified Nursing Assistants who are currently enrolled in a nursing program and have satisfactorily completed a Fundamentals/Basic Nursing course with a clinical component will be deemed to meet the training requirements. These individuals will be approved to take the competency test upon submission of a letter from their school of nursing attesting to current enrollment status and satisfactory course completion as described.



- 2.7 Individuals who have graduated from an RN or LPN program within 24 months prior to application for certification are deemed qualified to meet the Department's nurse aide training and competency evaluation program requirements and are eligible for certification upon submission of a sealed copy of their diploma. Individuals who have graduated from an RN or LPN program more than 24 months prior to application for certification are deemed qualified to meet the Department's nurse aide training program requirements and are eligible to take the competency test upon submission of a sealed copy of their diploma.
- 2.8 An individual who has satisfactorily completed a military nursing assistant training course or hospital-based nursing assistant training course of at least 150 hours with a curriculum comparable to the curriculum content of Section 69.303 of these regulations and who has performed nursing related services within 24 months prior to application for certification is deemed qualified to meet the Department's nurse aide training program requirements and is eligible to take the competency test upon submission of documentation of course completion.
- 2.9 For the purpose of calculating minimum staffing levels, any individual who has completed all of the classroom training and half of the clinical training in a facility sponsored training program may be considered as a member of such facility's staff while undergoing the last 37.5 hours of clinical training at such facility.
- 2.10 A nursing assistant who is employed by, or who has received an offer of employment from, a federally certified nursing facility on the date on which the aide begins a nurse aide training and competency evaluation program may not be charged for any portion of the program including tuition, any tests taken and fees for textbooks or other required course materials.
- 2.11 If a Certified Nursing Assistant who is not employed, or does not have an offer to be employed as a nurse aide becomes employed by, or receives an offer of employment from, a federally certified nursing facility not later than 12 months after completing a nurse aide training and competency evaluation program, the federally certified nursing facility shall reimburse all documented personally incurred costs in completing the program. Facilities shall accept as documentation canceled checks, paid receipts, written verification from a training program or other written evidence which reasonably establishes the CNA's personally incurred costs. Such costs include tuition, tests taken and fees for textbooks or other required course materials. Such costs shall be reimbursed in equal quarterly payments with full reimbursement to coincide with the CNA's completion of one year of employment including the orientation period.
- 2.12 Any nursing facility which reimburses a Certified Nursing Assistant for documented personally incurred costs of a nurse aide training and competency evaluation program shall notify the Division of Long Term Care Residents Protection of such reimbursement. Notice of such reimbursement shall be entered in the CNA Registry database and information regarding such reimbursement shall be available to facilities upon request.

**6 DE Reg. 1505 (5/1/03)**

**8 DE Reg. 1014 (1/1/05)**

### 3.0 CNA Training Program Requirements

#### 3.1 General

Program approval must be obtained from the Division prior to operating a CNA program. To obtain approval, the curriculum content for the Certified Nursing Assistant CNA training programs shall meet each of the following requirements:

- 3.1.1 The curriculum shall include material that will provide a basic level of both knowledge and demonstrable skills for each individual completing the program.
- 3.1.2 The program shall be a minimum of 150 hours in length, divided equally between clinical skills training and classroom instruction consisting of: 1) classroom instruction including laboratory time of 75 hours, and 2) clinical skills training of 75 hours. Additional hours may be added in either of these areas or both.

- 3.1.3 Classroom instruction and demonstrated proficiency in each skill shall be completed prior to students' performing direct resident care. Programs shall maintain documentation of required skills that each student has successfully demonstrated to the RN instructor.
- 3.1.4 All classroom instructors must have completed a course in teaching adults.
- 3.1.45 All classroom instruction must be done by a Registered Nurse. The Registered Nurse must possess a minimum of 2 years of full time (35 hours per week) nursing experience in the past 5 years, at least 1 year of which must be in the provision of long term care at a certified Skilled Nursing Facility or nursing facility as defined in 42 CFR § 483.5(a). Classroom ratios of student to RN instructor shall not exceed 24:1. Clinical and laboratory ratios of student to instructor shall not exceed 8:1.
- 3.1.6 Laboratory and clinical instruction may be provided by a qualified Registered Nurse or Licensed Practical Nurse. The Licensed Practical Nurse must have a minimum of three (3) years experience under the supervision of a Registered Nurse and must have the equivalent of 1 year full time (35 hours per week) experience in a licensed skilled or intermediate care nursing facility or hospital within the past 5 years. Clinical and laboratory ratios of student to Registered Nurse or Licensed Practical Nurse instructor shall not exceed 8:1.
- 3.1.57 The RN instructor shall directly supervise provide general supervision to students at all times during clinical instruction. Students shall remain in visual contact with a licensed nurse. A Registered Nurse or Licensed Practical Nurse shall provide direct supervision to students in the clinical setting while performing any skills in which proficiency has not been both demonstrated and documented.
- 3.1.68 Programs must notify the Division in writing (which may be faxed) when at least 60 days prior to implementing permanent and/or substantial changes to the program or the program's personnel are made. Examples of substantial changes include, but are not limited to, instructor(s), clinical or classroom site, major revision of course structure, change in textbook.

*(Break in Continuity Within Section)*

**6.0 Senior CNA Training Program Instructors**

- 6.1 ~~The Primary Instructor is an individual responsible for the overall coordination and implementation of the senior certified nursing assistant training program. The primary instructor is present and available during clinical training. The primary instructor and all who serve as instructors in the program must meet the following qualifications:~~
- 6.1.1 ~~RN licensure in the State of Delaware.~~
- 6.1.2 ~~Three (3) years nursing experience in caring for the elderly or chronically ill of any age.~~
- 6.1.3 ~~Instructors shall demonstrate:~~
- 6.1.3.1 ~~Successful completion of "Train the Trainer" program which provides preparation in teaching adult learners principles of effective teaching and teaching methodologies or;~~
- 6.1.3.2 ~~Successful completion of a college level course of at least one semester in length, that was related to education and the principles of adult learning.~~
- 6.1.4 ~~Waiver of the Train the Trainer and the college level education course requirement is made for those nurses who demonstrate at least one (1) year of continuous teaching experience at the nursing assistant or LPN or RN program level.~~
- 6.2 ~~Program Trainer(s) may provide assistance to instructors as resource personnel from the health field. They may provide instruction in their area(s) of expertise.~~
- 6.2.1 ~~Trainers shall be registered nurses, licensed practical nurses, pharmacists, dietitians, social workers, physical, speech or occupational therapists, environmental/fire safety specialists, activity directors, or other licensed health care professionals.~~
- 6.2.2 ~~One (1) year of current experience in caring for the elderly or have equivalent experience.~~
- 6.2.3 ~~Trainers shall be licensed or certified in their field, where applicable.~~

## 76.0 Train-the-trainer Program Requirements

Each train-the-trainer program shall ensure that an RN designated as primary instructor meets the following minimum requirements:

### 76.1 Training Course Content

- 76.1.1 Role of Trainer
- 76.1.2 Communication techniques
- 76.1.3 Demonstration skills
- 76.1.4 Teaching a process
- 76.1.5 Teaching techniques
- 76.1.5 Training techniques
- 76.1.6 Developing a formal training plan

### 76.2 Course Management Information

- 76.2.1 Training time shall consist of sixteen minimum hours.
- 76.2.2 The train-the-trainer instructor must have formal educational preparation or experience with skills of adult learning.

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

**[3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants](#)**

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## DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 16 Delaware Code, Section 1119C (16 Del.C. §1119C)  
16 DE Admin. Code 3225

### PUBLIC NOTICE

### 3225 Assisted Living Facilities

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend the regulation governing Assisted Living Facilities.

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 Susan Del Pesco, Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-7291, February 28, 2010.

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 proposal amends the existing Regulation 3225 - Assisted Living Facilities. The proposed change will amend the regulation to incorporate updates deemed necessary by DLTCRP.

#### Statutory Authority

Delaware Code, Title 16, Ch. 11 § 1119C.

## Background

DLCTRP identified the need to update the Assisted Living regulation to better address the quality of care and quality of life of residents residing in such facilities.

## Summary of Proposal

This proposal amends the regulation in the following areas:

- Requires a written application process and provides for applicant notification of the reason for a rejection of admission.
- Deletes Appendix A and incorporates, by reference, the Department of Public Health's List of Notifiable Diseases /Conditions.
- Updates the requirement for tuberculin testing to conform to the U.S. Health Department Centers for Disease Control recommendations.
- Replaces the requirement of a written application process with the requirement for a written contract.
- Deletes the requirement of semi-annual resident surveys.
- Allows for the electronic reporting of incidents to DLCTRP.
- More clearly defines an injury from an unknown source.

### 3225 Assisted Living Facilities

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

## 3.0 Glossary of Terms

**“Activities of Daily Living” (“ADLs”)** - Normal daily activities including but not limited to ambulating, transferring, range of motion, grooming, bathing, dressing, eating, and toileting.

**“Administration of Medication”** - The process whereby a single dose of a prescribed drug is given to a resident by an authorized licensed person, as described in 24 **Del.C.** Section 1902.

**“Assisted Living”** - A special combination of housing, supportive services, supervision, personalized assistance and health care designed to respond to the individual needs of those who need help with activities of daily living and/or instrumental activities of daily living.

**“Assisted Living Facility”** – A licensed entity that provides the services described in **Assisted Living**.

**“Assistive Technology”** - Any item, piece of equipment or product system whether acquired commercially off the shelf, modified, or customized that is used to increase or improve functional capabilities of adults with disabilities.

**“Assistance with Self-Administration of Medication” (“AWSAM”)** - Help with medication provided by facility personnel who are not nurses or nurse practitioners but who have successfully completed a Board of Nursing-approved medication training program in accordance with the Delaware Nurse Practice Act, 24 **Del.C.** Ch. 19, and applicable rules and regulations. Help with medication includes holding the container, opening the container, and assisting the resident in taking the medication, other than by injection, following the directions of the original container, and documenting in the medication log that each medication has been taken by the residents.

**“Communicable Disease”** - An illness caused by a microorganism or its toxin characterized by spread from host to victim by air, contact, blood, or bodily fluids.

**“Contract”** – A legally binding written agreement between the facility and the resident which enumerates all charges for services, materials, and equipment, as well as non-financial obligations of both parties, as specified in these regulations.

**“Cuing”** - The act of guiding residents, verbally or by gestures, to facilitate memory and/or organize verbal and/or behavioral responses.

**“Department”** - Department of Health and Social Services.

**“Division”** - Division of Long Term Care Residents Protection.

**“Durable Medical Equipment”** - Equipment capable of withstanding repeated use, primarily and customarily used to serve a medical purpose, generally not useful to a person in the absence of an illness or injury, and needed to maintain the resident in the facility, e.g., wheelchairs, hospital beds, oxygen tanks.

**“Homelike”** - Having the qualities of a home, including privacy, comfortable surroundings supported by the use of residential building materials and furnishings, and the opportunity to modify one's living area to suit one's individual preferences, in accordance with the facility's policies. A homelike environment provides residents with an opportunity for self-expression and encourages interaction with community, family, and friends.

**“Hospice”** - An agency licensed by the State of Delaware that provides palliative and supportive medical and other health services to terminally ill residents and their families.

**“Incident”** - An occurrence or event, a record of which must be maintained in facility files, which includes all reportable incidents and the additional occurrences or events listed in Section 19.5 of these regulations. (Also see Reportable Incident, 19.6 and 19.7)

**“Individual Living Unit”** - A separate dwelling area within an assisted living facility which has living and sleeping space for one or more residents, as prescribed in these regulations.

**“Instrumental Activities of Daily Living” (“IADLs”)** - Home management skills, such as shopping for food and personal items, preparing meals, or handling money.

**“Managed/Negotiated Risk Agreement”** – A signed document between the resident and the facility, and any other involved party, which describes mutually agreeable action balancing resident choice and independence with the health and safety of the resident or others.

**“Medication Log”** – A written document in which licensed personnel and unlicensed personnel who have completed AWSAM training record administration/ assistance with the resident's medications. The log shall list the resident's name; date of birth; allergies; reason the medication is given; ~~prescribing practitioner and phone number~~; special instructions; and the dosage, route(s), and time(s), for all medications received/taken with staff administration or staff assistance. The log is signed/ initialed by a staff member after each resident has received/taken the appropriate medication, or when the medication was not taken/given as prescribed.

**“Medication Management by an Adult Family Member/Support Person”** – Any help with prescription or non-prescription medication provided by an adult family member/support person, as identified in the resident's contract and service agreement.

**“Personal Care Supplies”** - Those supplies, often disposable, used by a resident, such as incontinence products and hygiene supplies.

**“Reportable Incident”** - An occurrence or event which must be reported immediately to the Division and for which there is reasonable cause to believe that a resident has been abused, neglected, mistreated or subjected to financial exploitation as those terms are defined in 16 Del.C. §1131. Reportable incident also includes an occurrence or event listed in Sections 19.6 and 19.7 of these regulations. (Also see Incident, 19.5.)

**“Representative”** - A person acting on behalf of the resident pursuant to Delaware law.

**“Resident”** - An individual 18 years old or older who lives in an assisted living facility. Where appropriate in the context of the regulations, “resident” as used herein includes an authorized representative as defined in 3.0.

**“Resident Assessment”** - Evaluation of a resident's physical, medical, and psychosocial status as documented in a Uniform Assessment Instrument (UAI), by a registered nurse.

**“Resident Assistant”** – Any unlicensed direct caregiver who, under the supervision of the assisted living director or director of health services, assists the resident with personal needs and monitors the activities of the resident while on the premises to ensure his/her health, safety, and well-being.

**“Secretary”** - Secretary of the Department of Health and Social Services.

**“Service Agreement”** - A written document developed with each resident which describes what services will be provided, who will provide the services, when the services will be provided, how the services will be provided, and, if applicable, the expected outcome.

**“Shared Responsibility”** - The concept that residents and assisted living facilities share responsibility for planning and decision-making affecting the resident.

**“Significant Change”** - A major deterioration or improvement in a resident’s health status or ability to perform ADLs; a major alteration in behavior or mood resulting in ongoing problematic behavior or the elimination of that behavior on a sustained basis. Significant change does not include ordinary, day-to-day fluctuations in health status, functioning, and behavior, or a short-term illness such as a cold, unless these fluctuations continue to recur, nor does it include deterioration that will normally resolve without further intervention.

**“Social Services”** - Services provided to assist residents in maintaining or improving their ability to manage their everyday physical, mental and psychosocial needs.

**“Third-Party Provider”** - Any party, including a family member, other than the assisted living facility which furnishes services/supplies to a resident.

**“Uniform Assessment Instrument” (“UAI”)** - A document setting forth standardized criteria developed by the Division to assess each resident’s functional, cognitive, physical, medical, and psychosocial needs and status. The assisted living facility shall be required to use the UAI to evaluate each resident on both an initial and ongoing basis in accordance with these regulations.

**8 DE Reg. 85 (7/1/04)**

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

**5.0 General Requirements**

- 5.1 All written information provided by the assisted living facility including the written application process shall be accurate, precise, easily understood and readable by a resident, and in compliance with all applicable laws. If an applicant is rejected the facility shall provide clear reasons for the rejection in writing.
- 5.2 All records maintained by the assisted living facility shall at all times be open to inspection and copying by the authorized representatives of the Department, as well as other agencies as required by state and federal laws and regulations. Such records shall be made available in accordance with 16 **Del.C.** Ch. 11, Subchapter I., Licensing by the State.
- 5.3 The assisted living facility shall adopt internal written policies and procedures pursuant to these regulations. No policies shall be adopted by the assisted living facility which are in conflict with these regulations.
- 5.4 The assisted living facility shall establish and adhere to written policies and procedures regarding the rights and responsibilities of residents, and these policies and procedures shall be made available to authorized representatives of the Department, facility staff, and residents.
- 5.5 The assisted living facility shall develop and adhere to policies and procedures to prevent residents with diagnosed memory impairment from wandering away from safe areas. However, residents may be permitted to wander safely within the perimeter of a secured unit.
- 5.6 The assisted living facility shall arrange for emergency transportation and care.
- 5.7 Inspection summaries and compliance history information shall be posted by the facility in accordance with 16 **Del.C.** Ch. 11, Subchapter I., Licensing by the State.
- 5.8 An assisted living facility shall recognize the authority of a representative acting on the resident’s behalf pursuant to Delaware law, as long as such representative does not exceed his/her authority. The facility shall request and keep on file any documents such as an advance directive, living will, do not resuscitate, and power(s) of attorney.

- 5.9 An assisted living facility shall not admit, provide services to, or permit the provision of services to individuals who, as established by the resident assessment:
- 5.9.1 Require care by a nurse that is more than intermittent or for more than a limited period of time;
  - 5.9.2 Require skilled monitoring, testing, and aggressive adjustment of medications and treatments where there is the presence of, or reasonable potential of, an acute episode unless there is an RN to provide appropriate care;
  - 5.9.3 Require monitoring of a chronic medical condition that is not essentially stabilized through available medications and treatments;
  - 5.9.4 Are bedridden for more than 14 days;
  - 5.9.5 Have developed stage three or four skin ulcers;
  - 5.9.6 Require a ventilator;
  - 5.9.7 Require treatment for a disease or condition which requires more than contact isolation;
  - 5.9.8 Have an unstable tracheostomy or have a stable tracheostomy of less than 6 months' duration;
  - 5.9.9 Have an unstable peg tube;
  - 5.9.10 Require an IV or central line with an exception for a completely covered subcutaneously implanted venous port provided the assisted living facility meets the following standards:
    - 5.9.10.1 Facility records shall include the type, purpose and site of the port, the insertion date, and the last date medication was administered or the port flushed.
    - 5.9.10.2 The facility shall document the presence of the port on the Uniform Assessment Instrument, the service plan, interagency referrals and any facility reports,
    - 5.9.10.3 The facility shall not permit the provision of care to the port or surrounding area, the administration of medication or the flushing of the port or the surgical removal of the port within the facility by facility staff, physicians or third party providers;
  - 5.9.11 Wander such that the assisted living facility would be unable to provide adequate supervision and/or security arrangements;
  - 5.9.12 Exhibit behaviors that present a threat to the health or safety of themselves or others, such that the assisted living facility would be unable to eliminate the threat either through immediate discharge or use of immediate appropriate treatment modalities with measurable documented progress within 45 days; and
  - 5.9.13 Are socially inappropriate as determined by the assisted living facility such that the facility would be unable to manage the behavior after documented, reasonable efforts such as clinical assessments and counseling for a period of no more than 60 days.
- 5.10 The provisions of section 5.9 above do not apply to residents under the care of a Hospice program licensed by the Department as long as the Hospice program provides written assurance that, in conjunction with care provided by the assisted living facility, all of the resident's needs will be met without placing other residents at risk.

**8 DE Reg. 85 (7/1/04)**

*(Break in Continuity of Sections)*

**8.0 Medication Management**

- 8.1 An assisted living facility shall establish and adhere to written medication policies and procedures which shall address:
- 8.1.1 Obtaining and refilling medication;
  - 8.1.2 Storing and controlling medication;
  - 8.1.3 Disposing of medication; and
  - 8.1.4 Administration of medication, self-administration of medication, assistance with self-administration of medication, and medication management by an adult family member/support person.

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- 8.1.5 Provision for a quarterly pharmacy review which shall include:
    - 8.1.5.1 Assisting the facility with the development and implementation of medication-related policies and procedures;
    - 8.1.5.2 Physical inspection of the medication storage areas;
    - 8.1.5.3 Review of each resident's medication regimen with written reports noting any identified irregularities or areas of concern.
  - 8.2 Each assisted living facility shall have a drug reference guide, with a copyright date no older than 2 years, available and accessible for use by employees.
  - 8.3 Medication stored by the assisted living facility shall be stored and controlled as follows:
    - 8.3.1 Medication shall be stored in a locked container, cabinet, or a reach that is only accessible to authorized personnel;
    - 8.3.2 Medication that is not in locked storage shall not be left unattended and shall not be accessible to unauthorized personnel;
    - 8.3.3 Medication shall be stored in the original labeled container;
    - 8.3.4 A bathroom or laundry room shall not be used for medication storage; and
    - 8.3.5 All expired or discontinued medication, including those of deceased residents, shall be disposed of according to the assisted living facility's medication policies and procedures.
  - 8.4 Residents who self-administer medication shall be provided with a ~~locked~~ lockable container. Facility policies must require that medications be secured in a locked container or in a locked room.
  - 8.5 A separate medication log must be maintained for each resident documenting administration of medication by staff and staff assistance with self-administration.
  - 8.6 Within 30 days after a resident's admission and concurrent with all UAI-based assessments, the assisted living facility shall arrange for an on-site review by an RN of the resident's medication regime if he or she self-administers medication. The purpose of the on-site review is to assess the resident's cognitive and physical ability to self-administer medication or the need for assistance with or staff administration of medication.
  - 8.7 The assisted living facility shall ensure that the review required by section 8.6 is documented in the resident's records, including any recommendations given by the reviewer.
  - 8.8 Concurrently with all UAI-based assessments, the assisted living facility shall arrange for an on-site medication review by a registered nurse, for residents who need assistance with self-administration or staff administration of medication, to ensure that:
    - 8.8.1 Medications are properly labeled, stored and maintained;
    - 8.8.2 Each resident receives the medications that have been specifically prescribed in the manner that has been ordered;
    - 8.8.3 The desired effect of each medication is achieved, and if not, that the appropriate authorized prescriber is so informed;
    - 8.8.4 Any undesired side effects, adverse drug reactions, and medication errors are identified and reported to the appropriate authorized prescriber; and
    - 8.8.5 Any unresolved discrepancy of controlled substances shall be reported to the Delaware Office of Narcotics and Dangerous Drugs.
  - 8.9 Records shall be kept on file at the facility for those who have completed the AWSAM course which is required by 24 **Del.C.** Ch. 19 for those who assist the residents with self-administration of medication.
  - 8.10 Each assisted living facility shall complete an annual AWSAM report on the form provided by the Board of Nursing. The report must be submitted pursuant to the Delaware Nurse Practice Act, 24 **Del.C.** Ch. 19.



## 9.0 Infection Control

- 9.1 The assisted living facility shall establish written procedures to be followed in the event that a resident with a communicable disease is admitted or an episode of communicable disease occurs. It is the responsibility of the assisted living facility to see that:
- 9.1.1 The necessary precautions stated in the written procedures are followed; and
- 9.1.2 All rules of the Delaware Division of Public Health are followed so the risk is minimal danger of transmission to staff and residents.
- 9.2 Any resident found to have active tuberculosis in an infectious stage may not continue to reside in an assisted living facility.
- 9.3 A resident, when suspected or diagnosed as having a communicable disease, shall be placed on the appropriate isolation or precaution as recommended for that disease by the Centers for Disease Control. Those with a communicable disease which has been determined by the Director of the Division of Public Health to be a health hazard to visitors, staff, and other residents shall be placed on isolation care until they can be moved to an appropriate room or transferred.
- 9.4 ~~The admission or occurrence of a resident with a notifiable disease within an assisted living facility shall be reported to the County Public Health Administrator. See Appendix A. The admission of a resident with or the occurrence of a disease or condition on the Division of Public Health List of Notifiable Diseases/Conditions within a nursing facility shall be reported to the resident's physician and the facility's medical director. The facility shall also report such an admission or occurrence to the Division of Public Health's Health Information and Epidemiology office.~~
- 9.5 ~~The assisted living facility shall have on file results of tuberculin tests: Minimum requirements for tuberculin testing:~~
- 9.5.1 ~~performed annually for all employees and~~ The facility shall have on file the results of tuberculin testing performed on all newly admitted residents.
- 9.5.2 ~~performed on all newly admitted residents. The tuberculin test to be used is the Mantoux test containing 5 TU PPD stabilized with Tween, injected intradermally, using a needle and syringe, usually on the volar surface of the forearm. Persons found to have a significant reaction (defined as 10 mm of induration or greater) to tests shall be reported to the Division of Public Health and managed according to recommended medical practice. A tuberculin test as specified, done within the twelve months prior to employment, or a chest x-ray showing no evidence of active tuberculosis shall satisfy this requirement for asymptomatic individuals. A report of this skin test shall be kept on file. Minimum requirements for pre-employment and annual tuberculosis (TB) testing are those currently recommended by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.~~
- 9.5.2.1 No person, including volunteers, found to have active tuberculosis in an infectious stage shall be permitted to give care or service to residents.
- 9.5.2.2 Any person having a positive skin test but a negative X-ray must complete a statement annually attesting that they have experienced no symptoms which may indicate active TB infection.
- 9.5.2.3 Persons with a prior BSG vaccination are required to be tested as set forth in 9.5.2.
- 9.5.2.4 A report of all test results and all attestations shall be kept on file at the facility of employment.
- 9.6 The assisted living facility shall have on file evidence of annual vaccination against influenza for all residents, as recommended by the Immunization Practice Advisory Committee of the Centers for Disease Control, unless medically contraindicated. All residents who refuse to be vaccinated against influenza must be fully informed by the facility of the health risks involved. The reason for the refusal shall be documented in the resident's medical record.
- 9.7 The assisted living facility shall have on file evidence of vaccination against pneumococcal pneumonia for all residents older than 65 years, or those who received the pneumococcal vaccine before they became 65 years and 5 years have elapsed, and as recommended by the Immunization Practice Advisory Committee of the Centers for Disease Control, unless medically contraindicated. All residents who refuse to be vaccinated against pneumococcal pneumonia must be fully informed by the

facility of the health risks involved. The reason for the refusal shall be documented in the resident's medical record.

- 9.8 The assisted living facility shall have policies and procedures for infection control as it pertains to staff, residents, and visitors.
- 9.9 All assisted living facility staff shall be required to use Standard Precautions.

#### **10.0 Resident Applications and Contracts**

- 10.1 The assisted living facility shall ~~have supply a written application process and provide clear reasons in writing if an applicant is rejected~~ contract that is precise, easily understood and readable by a resident, and in compliance with all applicable laws.

*(Break in Continuity Within Section)*

- 10.8 The contract shall be amended by the parties to reflect any applicable increase or decrease in charges. Modification may be done by an addendum to the contract.
- 10.9 All notices to be provided pursuant to an assisted living contract shall be in writing and mailed or hand-delivered to the resident.
- 10.10 No contract shall be signed before a full assessment of the resident has been completed and a service agreement has been executed. If a deposit is required prior to move-in, the deposit shall be fully refundable if the parties cannot agree on the services and fees upon completion of the assessment.

*(Break in Continuity of Sections)*

#### **15.0 Quality Assurance**

- 15.1 The assisted living facility shall develop, implement, and adhere to a documented, ongoing quality assurance program that includes an internal monitoring process that tracks performance and measures resident satisfaction.
- 15.2 ~~On at least a semi-annual basis, the assisted living facility shall survey each resident regarding his/her satisfaction with services provided.~~
- 15.2.1 ~~The assisted living facility shall retain all surveys for at least two years which shall be reviewed during inspection.~~
- 15.2.2 ~~The assisted living facility shall maintain documentation for at least one year which addresses what actions were taken as a result of the surveys.~~

*(Break in Continuity of Sections)*

#### **19.0 Records and Reports**

- 19.1 The assisted living facility shall be responsible for maintaining appropriate records for each resident. These records shall document the implementation of the service agreement for each resident.
- 19.2 Records shall be available, along with the equipment to read them if electronically maintained, at all times to legally authorized persons; otherwise such records shall be held confidential.
- 19.3 The assisted living facility resident clinical records shall be retained for a minimum of 5 years following discharge before being destroyed.
- 19.4 In cases in which facilities have created the option for an individual's record to be maintained by computer, rather than hard copy, electronic signatures shall be acceptable. In cases when such attestation is done on computer records, safeguards to prevent unauthorized access and reconstruction of information must be in place. The following is an example of how such a system may be set up:

- 19.4.1 There is a written policy, at the assisted living facility, describing the attestation policy(ies) in force at the facility;
- 19.4.2 The computer has built-in safeguards to minimize the possibility of fraud;
- 19.4.3 Each person responsible for an attestation has an individualized identifier;
- 19.4.4 The date and time is recorded from the computer's internal clock at the time of entry;
- 19.4.5 An entry is not to be changed after it has been recorded; and
- 19.4.6 The computer program controls what sections/ areas any individual can access/enter data based on the individual's personal identifier.
- 19.5 Incident reports, with a dequate docum entation, shall be completed for ea ch inc ident. Records of incident reports shall be retained in facility files for the following:
- 19.5.1 All reportable incidents.
- 19.5.2 Falls without injury and falls with injuries that do not require transfer to an acute care facility or do not require reassessment of the resident.
- 19.5.3 Errors or omissions in treatment or medication.
- 19.5.4 Injuries of unknown source.
- 19.5.5 Lost items, in accordance with facility policy, which are not subject to financial exploitation. Adequate documentation shall consist of the name of the resident(s) involved; the date, time and place of th e incide nt; a descrip tion of th e inci dent; a list of othe r p arties involved, inc luding witnesses and any accused persons; the nature of any injuries; resident outcome; and follow-up action, including notification of the re sident's representative or family, attending physicia n and licensing or law enforcement authorities when appropriate.
- 19.6 Reportable incidents shall be reported immediately, which shall be within 8 hours of the occurrence of the incident, to the Div ision. ~~of Long Term Care Resident s Pr otection, 3 Mill Road, Suite 308, Wilmington, DE 198 06; tele phone num ber: 1 877 453 0012; fax num ber: 1 8 77 264 8516. Th e immediate reporting of rep ortable incidents shall be by oral communication, for which a fa x may be substituted, followed within 48 ho urs by a writte n re port on a form provided by the Division. The method of reporting shall be as directed by the Division.~~
- 19.7 Reportable incidents include:
- 19.7.1 Abuse as defined in 16 **Del.C.** §1131.
- 19.7.1.1 Physical abuse.
- 19.7.1.1.1 Staff to resident with or without injury.
- 19.7.1.1.2 Resident to resident with or without injury.
- 19.7.1.1.3 Other (e.g., visitor, relative) to resident with or without injury.
- 19.7.1.2 Sexual abuse.
- 19.7.1.2.1 Staff to resident sexual acts.
- 19.7.1.2.2 Resident to resident non-consensual sexual acts.
- 19.7.1.2.3 Other (e.g., visitor, relative) to resident non-consensual sexual acts.
- 19.7.1.3 Emotional abuse.
- 19.7.1.3.1 Staff to resident.
- 19.7.1.3.2 Resident to resident.
- 19.7.1.3.3 Other (e.g., visitor, relative) to resident.
- 19.7.2 Neglect as defined in 16 **Del.C.** §1131.
- 19.7.3 Mistreatment as defined in 16 **Del.C.** §1131.
- 19.7.4 Financial exploitation as defined in 16 **Del.C.** §1131.
- 19.7.5 Resident elopement.
- 19.7.5.1 Any circumstance in which a resident's whereabouts are unknown to staff and the resident suffers harm.

- 19.7.5.2 Any circumstance in which a cognitively impaired resident, whose whereabouts are unknown to staff, exits the facility.
- 19.7.5.3 Any circumstance in which a resident cannot be found inside or outside a facility and the police are summoned.
- 19.7.6 Death of a resident in a facility or within 5 days of transfer to an acute care facility.
- 19.7.7 Significant injuries.
  - 19.7.7.1 Injury from an incident of unknown source in which the initial investigation concludes that there is reasonable suspicion basis to suspect that the injury was caused by abuse, neglect or mistreatment. An injury is suspicious based on: the extent of the injury, the location of the injury (e.g., the injury is located in an area not generally vulnerable to trauma), the number of injuries observed at one particular point in time or the incidence of injuries over time.
  - 19.7.7.2 Injury from a fall which results in transfer to an acute care facility for treatment or evaluation or which requires periodic reassessment of the resident's clinical status by facility professional staff for up to 48 hours.
  - 19.7.7.3 Injury sustained while a resident is physically restrained.
  - 19.7.7.4 Injury sustained by a resident dependent on staff for toileting, mobility, transfer and/or bathing.
  - 19.7.7.5 Significant error or omission in medication/treatment, including drug diversion, which causes the resident discomfort, jeopardizes the resident's health and safety or requires extensive monitoring for up to 48 hours.
  - 19.7.7.6 A burn greater than first degree.
  - 19.7.7.7 Choking resulting in transfer to an acute care facility.
  - 19.7.7.8 Areas of contusions or lacerations which may be attributable to abuse or neglect.
  - 19.7.7.9 Serious unusual and/or life-threatening injury.
- 19.7.8 Attempted suicide.
- 19.7.9 Poisoning.
- 19.7.10 Epidemic outbreak or quarantine.
- 19.7.11 Fire within a facility due to any cause.
- 19.7.12 Utility interruption lasting more than 8 hours in one or more major service including electricity, water supply, plumbing, heating or air conditioning, fire alarm, sprinkler system or telephone system.
- 19.7.13 Structural damage or unsafe structural conditions.
  - 19.7.13.1 Structural damage to a facility due to natural disasters such as hurricanes, tornadoes, flooding or earthquakes.
  - 19.7.13.2 Water damage which impacts resident health, safety or comfort.

**8 DE Reg. 85 (7/1/04)****20.0 Waivers and Severability**

- 20.1 Waivers may be granted by the Division for good cause.
- 20.2 Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

**6 DE Reg. 525 (10/1/02)**

## APPENDIX A

## Notifiable Diseases

Acquired Immune Deficiency Syndrome (S)	Anthrax (T), Botulism (T)
Brucellosis, Campylobacteriosis, Chaneroid (S);	Chlamydia trachomatis infections (S) g;
Cholera, Cryptosporidiosis, Cyclosporidiosis, Diphtheria (T);	
E. Coli 0157:H7 infection (T)	Encephalitis, Ehrlichiosis, Foodborne Disease Outbreaks (T)
Giardiasis, Gonococcal infections (S)	Granuloma Inguinale (S)
Hansen's Disease (Leprosy), Hantavirus infection (T)	Hemolytic uremic syndrome (HUS), Hepatitis A (T)
Hepatitis B (S), Hepatitis C & unspecified	Herpes (congenital) (S)
Herpes (genital) (N)	Histoplasmosis
Human Immunodeficiency Virus (HIV) (N)	Human papillomavirus (genital warts) (N)
Influenza (N)	Lead Poisoning
Legionnaires Disease	Leptospirosis
Lyme Disease	Lymphogranuloma Venereum (S)
Malaria	Measles (T)
Meningitis (all types other than meningococcal)	Meningococcal infections (all types) (T)
Mumps (T)	Pelvic Inflammatory Disease (resulting from gonococcal and /or chlamydial infections) (S)
	Plague (T)
Pertussis (T)	Psittacosis
Poliomyelitis (T)	Reye's Syndrome
Rabies (man, animal) (T)	Rubella (T)
Rocky Mountain Spotted Fever	Salmonellosis
Rubella (congenital)(T)	Smallpox (T)
Shigellosis	Streptococcal toxic shock syndrome (STSS)
Streptococcal disease (invasive group A)	Syphilis (congenital) (T)
Syphilis (S)	Toxic Shock Syndrome
Tetanus	Tuberculosis
Trichinosis	Typhoid Fever (T)
Tularemia	Varicella
Vaccine Adverse Reactions	Yellow Fever (T)
Waterborne Disease Outbreaks (T)	

Also, any unusual disease and adverse reaction to vaccine

## County Health Offices:

New Castle County 995-8632

Kent County 739-5305

Sussex County 856-5355

(T) report by rapid means

(N) report in number only when so requested

For all diseases not marked by (T) or (N):

(S) — sexually transmitted disease, report required in 1 day

Others — report required in 2 days

**6 DE Reg. 525 (10/1/02)**

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## DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Chapter 30D (16 Del.C. Ch 30D)

### PUBLIC NOTICE

#### 4454 Tanning Facilities Regulations

The Department of Health and Social Services is proposing regulations which establish the regulation of Tanning Facilities. 77 Del. Laws, c. 195, § 1. creates the Michelle Rigney Act requiring the regulation of indoor tanning facilities in the State. This Act creates a total ban on indoor tanning for any minors under the age of 14, unless it is medically necessary and prescribed by the specified practitioners. In addition, minors between the ages of 14 and 18 will be required to submit a consent form, signed by the parent or legal guardian in the presence of the tanning facility operator, before they are allowed to tan. This consent will need to be renewed annually. The Act also lays out record retention requirements for these consent forms. This law requires that the Department pass regulations to enforce compliance according to the provisions of Chapter 30D, Title 16 of Delaware Code relating to Regulatory Provisions Concerning Public Health, Tanning Facilities. On February 1, 2010, the Division plans to publish as proposed the Tanning Facilities regulations and hold them out for public comment per Delaware law.

### NOTICE OF PUBLIC HEARING

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services (DHSS), will hold a public hearing to discuss the proposed Delaware Regulations for Tanning Facilities. Delaware law mandates that a tanning facility may not allow a minor between the ages of 14 to 18 years to use a tanning device unless the minor provides a consent form signed by the parent or legal guardian at the time of first exposure and the signature of the consent form is witnessed by an operator. The proposed Regulations for Tanning Facilities will be added as a new chapter to the Division of Public Health regulations and will address the requirements of the consent form, compliance and enforcement procedures, and records retention.

The public hearing will be held on February 23, 2010 at 10:00 a.m. in the Third Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the February 1, 2010 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Systems Protection at (302) 744-4842.

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Deborah Harvey at (302) 744-4700 by February 20, 2010. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by March 2, 2010 to:

Deborah Harvey, Hearing Officer  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Fax (302) 739-6659

#### 4454 Tanning Facilities Regulations

#### **1.0 Definitions**

The following words and terms, when used in this regulation, shall have the meaning set forth in 16 Del.C. § 3002D: "**Customer**", "**Department**", "**Minor**", "**Operator**", "**Person**", "**Tanning equipment or device**", "**Tanning facility**".

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# PROPOSED REGULATIONS

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## **2.0 Requirements of a Consent Form:**

2.1 The consent form to be used by a tanning facility shall include the following model language:

WHAT YOU SHOULD KNOW ABOUT TANNING:

AVOID UNNECESSARY EXPOSURE:

Repeated exposure may cause skin cancer and premature aging of the skin. As with natural sunlight, overexposure to ultraviolet light can cause burns, eye and skin injury, and allergic reactions. A person with a family or past medical history of skin cancer should avoid the use of a tanning device.

ULTRAVIOLET RADIATION SENSITIVITY

Abnormal skin sensitivity or burning may be caused by reactions of ultraviolet light to certain cosmetics, foods or medications (including, but not limited to, tranquilizers, diuretics, antibiotics, high blood pressure medicines; or birth control pills). A person taking a prescription or over-the-counter drug should consult a physician before the use of a tanning device. A person with skin that burns easily in the sun or does not tan in the sun should avoid the use of a tanning device.

PROTECTIVE EYE WEAR

Failure to use protective eyewear may result in severe burns or long-term injury to the eye.

2.2 A model consent form that a tanning facility may use is found at Appendix A.

## **3.0 Records**

A tanning facility shall maintain at the facility records of consent forms for all minor customers for a period of at least 3 years from the date of signature on the consent form. The tanning facility shall make records of consent forms available, upon request, for review by the Department.

## **4.0 Compliance and Enforcement Procedures**

### 4.1 Administrative Penalties

Whoever violates a provision of these regulations shall be subject to an administrative penalty of \$250.00 for the first violation, \$500 for the second violation and \$1,000 for the third and all subsequent violations.

### 4.2 Right to Administrative Hearing

Upon due notice that the Department intends to assess a tanning facility an administrative penalty, as indicated in section 4.1, the facility may submit to the Department, within thirty (30) days of the date of the notice of intent, a written request for an administrative hearing.

### 4.3 Orders of the Department

Whoever refuses, fails or neglects to perform the duties required under these regulations or violates, neglects or fails to comply with the duly adopted regulations or orders of the Department, shall be fined not less than \$100.00 and not more than \$1,000.00, together with costs, unless otherwise provided by law.

## **5.0 Severability**

In the event a particular clause or section of these regulations should be declared invalid or unconstitutional by a court of competent jurisdiction, the remaining portions of these regulations shall remain in full force and effect.

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**Appendix A: Model Consent Form**  
**TANNING FACILITY**  
**PARENT/GUARDIAN CONSENT FORM**

**Delaware law states that a tanning facility may not allow a minor between the ages of 14 to 18 years to use a tanning device unless the minor provides a consent form signed by the parent or legal guardian at the time of first exposure, and the signature of the consent form is witnessed by an operator. (DE Code, Title 16, Chapter 30(D): Tanning Facilities).**

WHAT YOU SHOULD KNOW ABOUT TANNING:

AVOID UNNECESSARY EXPOSURE:

Repeated exposure may cause skin cancer and premature aging of the skin. As with natural sunlight, overexposure to ultraviolet light can cause burns, eye and skin injury, and allergic reactions. A person with a family or past medical history of skin cancer should avoid the use of a tanning device.

ULTRAVIOLET RADIATION SENSITIVITY

Abnormal skin sensitivity or burning may be caused by reactions of ultraviolet light to certain cosmetics, foods or medications (including, but not limited to, tranquilizers, diuretics, antibiotics, high blood pressure medicines; or birth control pills). A person taking a prescription or over-the counter drug should consult a physician before the use of a tanning device. A person with skin that burns easily in the sun or does not tan in the sun should avoid the use of a tanning device.

PROTECTIVE EYE WEAR

Failure to use protective eyewear may result in severe burns or long-term injury to the eye.

CONSENT

I have read and understood the above stated facts about tanning.

I am the \_\_\_\_\_ parent or \_\_\_\_\_ legal guardian (check one) of

\_\_\_\_\_ a minor between the ages of 14 and not yet 18 years of age.

(Please print name of minor)

My child and I have been given adequate instruction in the operation of tanning devices.

My child and I have read and understand the contents of this form.

I give consent for my child to use the tanning devices in this facility.

Signature of parent/legal guardian \_\_\_\_\_ Date \_\_\_\_\_

Print name of parent/legal guardian \_\_\_\_\_

Signature of operator \_\_\_\_\_ Date \_\_\_\_\_

Print name of operator \_\_\_\_\_

**The minor's parent or legal guardian may withdraw this consent form at any time. Unless so withdrawn, this consent form shall expire one year from the date of the signature.**



# PROPOSED REGULATIONS

## DIVISION OF SOCIAL SERVICES

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

### PUBLIC NOTICE

#### **DSSM: 3034 General Assistance Time Limits; 4007.1 Standards of Need/Payment Standard - GA**

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by Tuesday, March 2, 2010.

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 proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Delaware's General Assistance Program. The proposed change also adds new policy language to the Technical Eligibility for Cash Assistance section.

#### **Statutory Authority**

31 Del.C. §503, Eligibility for Assistance; Amount; Method of Payment; and,  
31 Del.C. §505, Categories of Assistance

#### **Summary of Proposed Changes**

DSSM 3034.1, Determining Time Limits for General Assistance Recipients and DSSM 4007.1, Standards of Need/Payment Standard - GA: The Division of Social Services (DSS) is making several changes to General Assistance (GA) policy to ensure that the limited funds available to the program may be used to provide assistance for the duration of the State fiscal year and is distributed to the neediest recipients.

Specifically, the proposed rule changes:

- 1) Takes the GA Payment Standard and Standard of Need amounts out of the DSS policy manual.
- 2) Creates a rule requiring annual notification by Administrative Notice of the GA Standard of Need and Payment Standard. Creates a rule requiring an administrative notice at least 30 days prior to a change in the Payment Standard and Standard of Need
- 3) Establishes policy allowing separate Payment Standards and Standards of Need for adults and children receiving GA.
- 4) Creates a 24 month time limit for adult recipients of GA after January 31, 2010.

#### **DSS PROPOSED REGULATIONS #10-01**

#### **NEW:**

#### **3034 General Assistance Time Limits**

3034.1 Determining Time Limits for General Assistance Recipients:

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This policy applies to General Assistance recipients who are 18 years old and older.

1. Effective to February 1, 2010 General Assistance is a time limited program for adult recipients.
2. After January 31, 2010 adults may only receive GA for up to 24 months.

Exception: GA recipients who have applied for SSI and whose SSI determination is pending may continue to receive GA past the 24 month time limit.

*(Break In Continuity of Sections)*

**REVISION:**

**4007.1 Standards of Need/Payment Standard - GA**

Number in Budget	Basic Personal Needs, Including Shelter and Utilities
1	\$123.00
2	166.00
3	224.00
4	263.00
5	324.00
6	371.00
7	416.00

This policy applies to all General Assistance applicants and recipients.

1. The Payment Standard is equal to the Standard of Need.
2. The Division of Social Services determines the Standard of Need.
3. The Division of Social Services may establish different Standards of Need for children and adults.
4. The Division of Social Services will issue an administrative notice detailing Standard of Need changes at least 30 days prior to an implementation of a Standard of Need change.
5. The Division of Social Services will issue an administrative notice annually detailing the current Standard of Need.

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**DIVISION OF SOCIAL SERVICES**

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

**PUBLIC NOTICE**

**DSSM: Food Benefit Employment & Training Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding provisions of the Food Benefit Employment & Training Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by March 2, 2010.

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 changes described below amend policies in the Division of Social Services Manual (DSSM) regarding the Food Benefit Employment & Training Program.

### Statutory Authority

7 CFR §273.7, Work provisions

### Summary of Proposed Changes

These revisions incorporate the most recent federal policy changes effected by the provisions of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5), enacted on February 17, 2009.

**DSSM 9018.1**, Work Registration Requirements; **DSSM 9021.1, 9021.2, 9021.3, 9021.4, Failure to Comply: and, DSSM 9026, 9026.1, 9026.2, 9026.3, 9026.4, 9026.5**, Voluntary Quit: Federal requirements no longer require the Food Benefit Employment and Training (E & T) program to be mandatory. DSS policy will change from mandatory participation in Food Benefit E & T activities to voluntary. The proposed amendments remove the penalties for those participants who choose not to comply with the program while still offering services to participants who need Employment and Training services.

## DSS PROPOSED REGULATIONS #10-05

### REVISIONS:

#### 9018.1 Work Registration Requirements

No physically and mentally fit individual over the age of 15 and under the age of 60 shall be eligible to participate in the food ~~stamp~~ supplement program if the individual:

- refuses, at the time of application and every 12 months thereafter, to register for employment;
- ~~refuses without good cause to participate in an employment and training program;~~
- refuses without good cause to accept an offer of employment at a site not subject to a strike or lockout at the time of refusal, at a wage not less than the higher of
  1. the applicable Federal or State minimum wage; or
  2. 80% of the wage that would have governed had the minimum hourly rate been applicable to the offer of employment.
- refuses without good cause to provide DSS with sufficient information to allow DSS to determine the employment status or the job availability of the individual;
- voluntarily and without good cause quits a job or reduces the hours of work so the individual is working less than 30 hours per week; or
- fails to comply with a work supplementation program.

*(Break In Continuity of Sections)*

#### 9021 ~~Failure to Comply~~ RESERVED

#### ~~9021.1 Non-Compliance with Food Stamp Work Requirements~~

~~If DSS determines that an individual other than the head of household as defined in DSSM 9014 has refused or failed without good cause to comply with the requirements imposed by this section, that individual is ineligible to~~

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participate in the Food Stamp Program according to the periods of ineligibility listed under DSSM 9021.1. The individual is treated as an ineligible household member per DSSM 9013.2.

Determine the income, resources, and deductions of these ineligible household members according to 9076.1. If the head of household fails to comply, the entire household is ineligible to participate.

**9021.2 Periods of Ineligibility (Sanction Periods)**

When an individual fails to comply with a work requirement, voluntarily quits a job or voluntarily reduces work hours to less than 30 hours per week and becomes ineligible to participate in the food stamp program, the periods of ineligibility are as follows:

- First violation, the individual will remain ineligible until the later date of when the individual complies with the work requirement or a one month period after the date of ineligibility.
- Second violation, the individual will remain ineligible until the later date of when the individual complies with the work requirement or a three month period after the date of ineligibility.
- Third violation, the individual will remain ineligible until the later date of when the individual complies with the work requirement or a six month period after the date of ineligibility.
- When the individual is the head of household and fails to comply with a work requirement, voluntarily quits a job or voluntarily reduces work hours to less than 30 hours per week, the entire household becomes ineligible to participate in the food stamp program. The periods of ineligibility are as follows:
  - First violation, the household will remain ineligible until the later date of when the head of household complies with the work requirement or a one month period after the date of ineligibility.
  - Second violation, the household will remain ineligible until the later date of when the head of household complies with the work requirement or a three month period after the date of ineligibility.
  - Third violation, the household will remain ineligible until the later date of when the head of household complies with the work requirement or a six month period after the date of ineligibility.

The periods of ineligibility are the minimum periods that must be served. If an individual complies before the end of the sanction period, the minimum period of ineligibility must be served. Individuals cannot cure the sanctions before the minimum sanction periods are served. After the minimum sanction periods are served, the individual must comply before they can receive benefits again, except for voluntary quit provisions, unless they become exempt from work registration through DSSM 9018.3, other than through exemption based on items (3) or (5) of that section. If any household member who failed to comply joins another household as head of household, that entire new household is ineligible for the remainder of the sanction period. If the member who failed to comply joins another household where (s)he is not head of household, the individual is ineligible for the appropriate period of ineligibility listed above.

Determine whether good cause for the job quit non-compliance exists, per DSSM 9025 and 9026.3. Within ten (10) days of the DSS determination that the non-compliance was without good cause, provide the individual or household with a notice of adverse action. The notice must contain the particular act of non-compliance committed, the proposed sanction period, and a statement that the individual or household may re-apply at the end of the sanction period. Include information describing the action which can be taken to end or avoid the sanction.

The sanction period begins with the first month following the expiration of the adverse notice period, unless a fair hearing is requested. Each individual or household has a right to a fair hearing to appeal a denial, reduction or termination of benefits due to a determination of non-exempt status, or a DSS determination of failure to comply with the work registration or employment and training requirements of this section. Individuals or households may appeal DSS actions such as exemption status, the type of requirement imposed, or DSS refusal to make a finding of good cause, if the individual or household believes that a finding of failure to comply has resulted from improper decisions on these matters.

DSS or its designee operating the relevant component should receive sufficient advance notice to either permit the attendance of a representative will be available for questioning over the phone during the hearing. Allow the household to examine its employment component case file at a reasonable time before the date of the fair hearing, except for confidential information (which may include test results) that the agency determines should be protected from release. Information not released to a household may not be used by either party at the hearing. The results of the fair hearing are binding on DSS.

### ~~9021.3 Failure to Comply With a Comparable TANF Employment and Training or Unemployment Compensation Work Requirement~~

A household containing a member who was exempt from work registration in accordance with because of registration for work under TANF Employment and Training or Unemployment Compensation (UC) and who fails to comply with a TANF Employment and Training or UC requirement comparable to a food stamp work registration or employment and training program requirement will be treated as though the member had failed to comply with the corresponding food stamp requirements.

If DSS learns that a household member has refused or failed without good cause to comply with an TANF Employment and Training or UC requirement, determine whether the requirement was comparable. Similarly, if the household reports the loss or denial of TANF or UC or if DSS otherwise learns of such loss or denial, determine whether the loss or denial was caused by a determination by the administering agency that a household member refused or failed without good cause to comply with the work requirement and, if so, whether the requirement was comparable to the work registration or employment and training requirement. The TANF Employment and Training or UC requirement is not comparable if it places responsibilities on the household which exceed those imposed by the food stamp work registration or FNS approved employment/training program requirements.

If DSS determines that the requirement is comparable, the individual or household (if the individual who committed the violation is the head of household) will be sanctioned in accordance with the following provisions. Provide the individual or household with a notice of adverse action per DSSM 9006 within ten (10) days of learning of the household member's noncompliance with the UC or TANF Employment and Training requirement. The notice must comply with the requirements of DSSM 9021.1.

An individual or household will not be sanctioned if the non-complying member meets one of the work registration exemptions provided in DSSM 9018.3 other than the exemptions provided in items 3 and 5 of that section. Household members who fail to comply with a comparable TANF Employment and Training or UC requirement will lose their exemption under items 3 and 5 of DSSM 9018.3 and must register for work if required to do so in DSSM 9018.1.

If the Division's determination of noncompliance with a comparable TANF Employment and Training or UC work requirement leads to a denial or termination of the individual's or household's food stamp benefits, the individual or household has a right to appeal the decision in accordance with the provisions of DSSM 9021.

A sanctioned individual or household may resume participation in the Program in accordance with DSSM 9021.4.

### ~~9021.4 Ending Disqualifications~~

Following the end of the period of ineligibility for non-compliance with the work registration or employment and training requirements, participation may resume if the ineligible individual or household applies again and is determined eligible. Eligibility may be reestablished during the sanction period and the individual or household may (if otherwise eligible) be permitted to resume participation if the individual or head of household becomes exempt from the work requirement or is no longer a member of the household. An individual who has been sanctioned for non-compliance may be permitted to resume participation during the period of ineligibility (if otherwise eligible) by becoming exempt from work registration.

Before the individual or household can resume getting benefits, the individual or head of household must become exempt from work registration or comply with the work requirements. The minimum sanction periods must be served regardless of when the individual or head of household complies with the following appropriate requirements:

- 1) Refusal to register—registration of the household member;
- 2) Refusal to report to an employer to whom referred—reporting to this employer if work is still available or to another employer to whom referred;
- 3) Refusal to respond to a request from the DSS or its designee requiring supplemental information regarding employment status or availability for work—compliance with the request;
- 4) Refusal to accept a bona fide offer of suitable employment to which referred—acceptance of the employment if still available to the participant, or securing other employment which yields earnings per week equivalent to the refused job, or securing any other employment of at least 30 hours per week or securing

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employment of less than 30 hours per week but with weekly earnings equal to the Federal minimum wage multiplied by 30 hours;

5) Refusal to comply with a DSS (or its designee) assignment as part of an FNS approved employment/training program compliance with the assignment or an alternative assignment

*(Break In Continuity of Sections)*

**9026 Voluntary Quit**

~~{273.7(n)}~~ 7 CFR 273.7

No individual who voluntarily quits his/her most recent job, or reduces work hours to less than 30 hours per week, without good cause will be eligible to participate in the Food Stamp Supplement Program (FSP) as specified below.

At the time of application, explain to the applicant the consequences of the individual quitting his or her job without good cause.

**9026.1 Application Processing**

1) When a household files an application for participation or when a participating household reports the loss of a source of income, determine whether any household member voluntarily quit a job. Benefits will not be delayed beyond the normal processing times specified in DSSM 9028 pending the outcome of this determination. This provision applies only if the employment involved 30 hours or more per week or provided weekly earnings at least equivalent to the Federal minimum wage multiplied by 30 hours; the quit occurred within ~~60~~ 30 days prior to the date of application or anytime thereafter; and the quit was without good cause. Changes in employment status that result from terminating a self-employment enterprise or resigning from a job at the demand of the employer will not be considered as a voluntary quit for the purpose of this subsection.

An employee of the Federal Government or of a state or local government, who participates in a strike against such government and is dismissed from his or her job because of participation in the strike, will be considered to have voluntarily quit a job without good cause.

2) In the case of an applicant household, determine whether any currently unemployed (i.e., employed less than 30 hours per week or receiving less than weekly earnings equivalent to the Federal minimum wage multiplied by 30 hours) household member who is required to register for work has voluntarily quit his or her most recent job within the last ~~60~~ 30 days. If DSS learns that a household has lost a source of income after the date of application but before the household is certified, determine whether a voluntary quit occurred.

3) In the case of a participating household, determine whether any household member voluntarily quit his or her job or reduced his or her hours, while participating in the ~~Program~~ FSP.

~~4) If the determination of voluntary quit is established, determine if that member is the head of the household per DSSM 9014 or another household member.~~

~~5) Upon a determination that the head of household/individual voluntarily quit employment, determine if the voluntary quit was with good cause as defined in DSSM 9026.3 4. In the case of an applicant household, if the voluntary quit was without good cause, the household's individual's application for participation will be denied and the appropriate period of ineligibility imposed per DSSM 9024-2 9026.2.~~

~~Provide the applicant household with a notice of denial informing the household of the following items:~~

- ~~• The proposed disqualification period,~~
- ~~• Its right to reapply at the end of the period of ineligibility, and~~
- ~~• Its right to a fair hearing.~~

If DSS determines that a n ~~the head of a participating household/individual~~ voluntarily quit his/her job or reduced his/her work hours while participating in the program or discovers a quit or reduction of work hours which occurred within ~~sixty (60)~~ thirty (30) days prior to application or between application and certification, provide a

notice of adverse action within ten (10) days after the determination of a voluntary quit is made. The notification must contain the proposed period of ineligibility and must specify that the household individual may reapply at the end of the sanction. The periods of ineligibility are imposed according to DSSM 9024.2 9026.2, and is are effective upon the issuance of the notice of denial.

If a voluntary quit or reduction in work effort occurs in the last month of a certification period, or it is determined in the last 30 days of the certification period, the individual must be denied recertification for a period equal to the appropriate mandatory disqualification period of ineligibility. The beginning of the disqualification sanction starts with the first day after the last certification period ends and continues for the length of the disqualification sanction period, regardless of whether the individual reapplies for food ~~stamps~~ benefits.

**Example:**

~~It is determined that a participating individual quit his job without good cause in the last month of the certification period. The individual does not reapply for benefits. The individual is disqualified for three months starting with the first day after the certification period ended.~~

- ~~• If the individual reapplies before the three month period ended, the individual is denied benefits due to the voluntary quit sanction.~~
- ~~• If the individual reapplies after the three month period has ended, the disqualification period has been served and eligibility can be determined.~~

~~Each household has a right to a fair hearing to appeal a reduction or termination of benefits due to a determination that the household's head voluntarily quit his/her job without good cause. If the participating household requests a fair hearing and the Division's determination is upheld, the disqualification period begins with the first month after the hearing decision is rendered.~~

~~Household heads who have been disqualified for quitting a job will carry their sanction with them if they join a new household as its head. The new household will be ineligible for the remainder of the sanction period unless the person who caused the disqualification ends it per DSSM 9021.4.~~

~~65) If an application for participation is filed in the third last month of disqualification the sanction period, use the same application for the denial of benefits in the remaining month of disqualification the sanction and certification for any subsequent month(s) if all other eligibility criteria are met.~~

**9026.2 Periods of Ineligibility (Sanction Periods)**

When an individual voluntarily quits a job or voluntarily reduces work hours to less than 30 hours per week and becomes ineligible to participate in the Food Supplement Program, the periods of ineligibility are as follows:

- First violation, the individual will remain ineligible for a one month period after the date of ineligibility.
- Second violation, the individual will remain ineligible for a three month period after the date of ineligibility.
- Third violation, the individual will remain ineligible for a six month period after the date of ineligibility.

Determine whether good cause for the job quit exists, per DSSM 9025 and 9026.4. Within ten (10) days of the DSS determination that the non-compliance was without good cause, provide the individual with a notice of adverse action. The notice must contain the particular act of non-compliance committed, the proposed sanction period, and a statement that the individual may reapply at the end of the sanction period. Include information describing the action that can be taken to end or avoid the sanction.

The sanction period begins with the first month following the expiration of the adverse notice period, unless a fair hearing is requested. Individuals may appeal DSS actions such as DSS refusal to make a finding of good cause.

If the individual with the job quit sanction moves to another food benefit household, the sanction would follow the person.

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**9026.23 Exemptions From Voluntary Quit Provisions**

Persons exempt from the full-time work registration provisions are also exempt from voluntary quit provisions (See DSSM 9018.3).

**9026.34 Good Cause**

Good cause for leaving employment includes the good cause provisions found in DSSM 9025 and resigning from a job that does not meet the suitability criteria specified at DSSM 9022. Good cause for leaving employment also includes:

- 1) Discrimination by an employer based on age, race, sex, color, disability, religious beliefs, national origin, or political beliefs;
- 2) Work demands or conditions that under continued employment would be unreasonable, such as working without being paid on schedule;
- 3) Acceptance by the head of household of employment, or enrollment at least half-time in a ny recognized school, training program o r institution of h igher e ducation, that r equires th e head of h ousehold to lea ve employment;
- 4) Acceptance b y a nother h ousehold mem ber of em ployment or e nrollment a t le ast half- time in a ny recognized sch ool, tr aining pr ogram, or i nstitution of higher e ducation in ano ther county which re quires the household to move and thereby requires the head of household to leave employment;
- 5) Resignations by persons under the age of 60 which are recognized by the employer as retirement;
- 6) Employment which be comes unsu itable by no t meeting th e criteria specified in DSSM 902 2 after the acceptances of such employment;
- 7) Acceptance of a bo na fide offer of emp loyment of more than 30 hours a week or i n wh ich the weekly earnings are equivalent to the federal minimum wage multiplied by 30 hours which, because of circumstances beyond the control of the head of household, subsequently either does not materialize or results in employment of less than 30 hours a week or weekly earnings of less than the federal minimum wage multiplied by 30 hours; and
- 8) Leaving a job in con nection with p atterns of emp loyment in wh ich worke rs fre quently move from one employer to another such as migrant farm labor or construction work. There may be some circumstances where households will appl y for food s -tamp benefits between job s, particularly in cases whe re work may not yet be available at the new job site. Even though employment at the new site h as not actually begun, the quitting of previous employment will be considered as with good cause if it is part of the pattern of that type of employment.

**9026. 45 Voluntary Quit Verification**

~~To the extent that~~ If the information given by the household is questionable as defined in DSSM 9033, request verification of the household's statements. The primary responsibility for providing verification as provided in DSSM 9035.1 rests with the household. If it is difficult or impossible for the household to obtain documentary evidence in a timely manner, offer assistance will be offered to the household to obtain the needed verification. Acceptable sources o f verification include b ut ar e n ot limited to the pr evious employer, emp loyee association s, u nion representatives, and grievance committees or organizations. Whenever DSS can not obtain documentary evidence ~~cannot be obtained~~, substitute a collateral contact.

The Divis ion is responsible for obt aining ver ification fro m accept able co llateral co ntacts pr ovided b y the household. If th e h ousehold and th e Divisio n ar e u nable to o btain r equested ver ification fro m these or o ther sources because the cause for the quit resulted from circumstances that for good reason cannot be verified, such as a resig nation from employment due to discrimination practices or unreasonable demands by an employer or because the employer cannot be located, the household will not be denied access to the Food Stamp Supplement Program.

**9026.56 Ending a Voluntary Quit or a Reduction in Work Hours ~~Disqualification~~ Sanction**

Following the end of the disqualification sanction period as defined in DSSM ~~9024-2~~ 9026.2, a household an individual may begin participation in the program if ~~he or she~~ he or she applies again and is determined eligible.



~~Eligibility may also be re-established during a disqualification period and the household will, if otherwise eligible, be permitted to resume participation, if the violator becomes exempt from the work registration requirements through DSSM 9018.3 other than through exemptions based on items (3) and (5) of that section. Should a household which has been determined to be non-compliant without good cause split into more than one household, the sanction will follow the member who caused the disqualification. If a head of household who committed the violation joins another food stamp household as head of the household, that household is ineligible for the balance of the period of ineligibility.~~

~~During the sanction period, if an individual is found exempt from work registration under DSSM 9018.3, the sanction would no longer apply.~~

## DIVISION OF SOCIAL SERVICES

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

### PUBLIC NOTICE

#### **DSSM: 9094 Cooperation with the Division of Child Support Enforcement (DCSE)**

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by Tuesday, March 2, 2010.

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 proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Delaware's Food Supplement Program.

#### **Statutory Authority**

7 CFR §271.2, *Definitions*; and,

7 CFR §273.11(o), *Custodial Parent's Cooperation with the State Child Support Agency*

#### **Summary of Proposed Changes**

**DSSM 9094:** *Redesignate DSSM 9094 from Cooperation with the Division of Child Support Enforcement to Definitions.* The Division of Social Services (DSS) is removing the current contents of DSSM 9094, *Cooperation with the Division of Child Support Enforcement (DCSE)* because DSS did not implement this according to our original plans and has decided not to implement this option in the Food Supplement Program. This section is not in DSSM policy, only in the Administrative Code. DSS is replacing this entire section with Definitions. The definitions compiled in DSSM 9094 are used throughout the Food Supplement Program rules found in Section 9000.

#### **DSS PROPOSED REGULATIONS #10-02**

#### **REVISIONS:**

Title 16

**9000 Food Stamp Program****~~9094 Cooperation with the Division of Child Support Enforcement (DCSE)~~****~~Cooperation as Condition of Eligibility~~**

~~In order to get food stamp benefits, all applicants must cooperate with the Division of Child Support Enforcement (DCSE) to receive child support for minor children in their care. Custodial parents/caretakers cannot get food stamps if they fail to cooperate with DCSE. A custodial parent is a natural or adoptive parent who lives with his or her child, or a person who is living with and exercises parental control over a child under the age of 18.~~

~~Both applicants and recipients must cooperate, unless they can show good cause, in:~~

- ~~1. Identifying and locating absent parents;~~
- ~~2. Proving paternity for minor children born out of wedlock; and~~
- ~~3. Getting support payments and/or other properties for the minor child(ren).~~

~~DCSE is the single State agency that:~~

- ~~• Establishes paternity of and secures support for children born out of wedlock;~~
- ~~• Gets support from parents who have abandoned or deserted their children; and~~
- ~~• Enters into cooperative arrangements with appropriate courts and law enforcement officials in order to get support.~~

~~Applicants and recipients will be told of this requirement in writing at the time of application and recertification for continued benefits. DSS will refer caretakers to DCSE based on the following:~~

- ~~• DSS will refer a person to DCSE who is receiving food stamps and the food stamp assistance unit has children under the age of 18 with an absent parent(s).~~
- ~~• DSS will refer a person to DCSE who is receiving TANF or Child Care and the food stamp assistance unit has children not included in the TANF or Child Care case.~~
- ~~• DSS will not refer a person who is receiving TANF or Child Care and has cooperated as long as the assistance units contain the same persons.~~
- ~~• DSS will not refer a person who had good cause for not cooperating or made a good faith effort to cooperate as long as the assistance units contain the same persons.~~

**~~Cooperation Responsibilities~~**

~~Clients must cooperate with DCSE to get food stamp benefits. All families are required to provide enough information to permit DCSE to get child support on behalf of the family.~~

~~DCSE can make exceptions when the caretaker can prove that trying to get child support would create a danger to the caretaker or the children. This is called a good cause claim. The client is responsible to get proof to verify good cause claims.~~

~~DCSE can also determine a caretaker has cooperated when he/she makes a good faith effort to provide all the information he/she can about the non-custodial parent.~~

~~To cooperate with DCSE, applicants or recipients of food stamps must participate in the following activities, if required:~~

- ~~• To appear at an office of DSS or DCSE to give verbal or written information or written documents known to or possessed by the applicant or recipient;~~
- ~~• To appear as a witness in court or other hearings or proceedings; or~~
- ~~• To provide information or to confirm to the lack of information under penalty of perjury.~~

**~~Penalties for Non-Cooperation~~**

~~When a caretaker fails to cooperate with DCSE without good cause or fails to make a good faith effort to cooperate, that person will not get food stamp benefits. The sanction applies only to the caretaker, not the entire household.~~

**Income, Expenses and Resources of Sanctioned Household Member**

All resources of the sanctioned caretaker count toward the food stamp benefits. Income and expenses are prorated and count toward the food stamp benefits. See policy under 9076.2.

**Curing the Child Support Sanction**

To cure the child support sanction, the caretaker will provide enough information to permit DCSE to pursue child support collections on behalf of the minor children in his/her care. Once it is determined that the caretaker has cooperated, DSS will add him/her to the case.

**Reopening the Sanctioned Person**

Once DCSE provides proof that the caretaker cooperated, DSS will reopen him/her. The caretaker will be added to the case effective the month after the month he/she cooperated. The household's certification period is not shortened or extended because of the sanction.

**Good Faith Effort**

If the applicant or recipient cannot provide the minimum information required about the absent parent, DCSE may still determine the person as cooperating if the person completes a Good Faith Affidavit. The Affidavit lists the steps the caretaker took to get the information and what barriers the person faced.

**Good Cause Determination**

DCSE is responsible to determine if good cause for refusing to cooperate exists. When good cause exists, the person may get food stamp benefits and will not have to cooperate in support collection activities. When DCSE does not determine there is good cause for refusing to cooperate, DSS will review the case to ensure good cause does not exist before sanctioning the individual.

**Claiming Good Cause for Non-Cooperation**

DSS will tell applicants and recipients, at application and recertification, of the right to good cause as an exception to the cooperation requirement. DSS will also tell applicants and recipients about the reasons they have to claim good cause.

Caretakers will not have to cooperate if they believe that their cooperation would not be in the best interest of their child. They must give proof to support their claim.

DCSE may decide that a person has good cause for refusing to cooperate if one or more of the following conditions exist:

- Cooperation is likely to result in serious physical or emotional harm to the child;
- Cooperation is likely to cause physical or emotional harm to the person which is so serious as to reduce his/her capacity to care for the child adequately;
- The child was conceived as a result of incest or forcible rape;
- Legal proceedings for adoption of the child are pending before a court;
- The person is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep his/her child or give the child up for adoption;
- Cooperating with DCSE would make it more difficult for the person to escape domestic violence or unfairly penalize the person who is or has been victimized by such violence, or the person is at risk of further domestic violence. (Domestic violence for purposes of this provision means that the person or child would be subject to physical acts that result in, or are threatened to result in, physical injury or sexual abuse.); sexual activity involving a dependent child; being forced as the caretaker relative of a dependent child to engage in nonconsensual acts or activities; threats of, or attempts at physical or sexual abuse; mental abuse; or neglect or deprivation of medical care.)
- The individual meets the good cause criteria outlined for the Temporary Assistance for Needy Families (TANF) policy outlined in DSSM 3010.2.2—3010.2.4

## **Proof of Good Cause Claim**

It is the custodial parent's or responsible persons' responsibility to provide DCSE with the proof needed to determine whether they have good cause for refusing to cooperate. If the reason for claiming good cause is a fear of physical harm and it is impossible to obtain proof, DCSE may still be able to make a good cause decision after reviewing the claim.

The following are examples of acceptable kinds of proof DCSE can use to decide if good cause exists:

A birth certificate or medical or law enforcement record which indicates that the child was conceived as the result of incest or forcible rape;

A court document or other record which indicates the legal proceedings for adoption are pending before a court;

A court, medical, criminal, psychological, child protection services, social services or law enforcement record which indicates that the putative father or absent parent might inflict physical or emotional harm on the child or person;

A medical record which indicates the emotional health history and present emotional health status of the person or the child; or, a written statement from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the person or child;

A written statement from a public or licensed private social agency that the person is being assisted by the agency to resolve the issue of whether to keep the child or give him/her up for adoption; and

Sworn statements from persons, including friends, neighbors, clergy members, social workers, and medical professionals who might know the conditions providing the basis of the good cause claim.

When requested, DCSE will try to help persons obtain necessary documents to support their claim.

## **Investigations of Good Cause Claim**

The caretaker must give the necessary proof to DCSE within 20 days after claiming good cause. DCSE will give the parent or person more time if they decide that more than 20 days are required because of the difficulty in getting the proof.

DCSE may decide on the claim based on the proof which is given, or conduct a review to verify the claim. If DCSE decides they need to review the claim, DCSE may require the person to give information, such as the absent parent's name and address, to help the review. The DCSE will not contact the absent parent without first telling the person.

## **Delayed finding of good cause**

DSS will not deny, delay, or discontinue assistance when DCSE has not made a decision on the good cause claim as long as the caretaker has given proof and other information needed by DCSE. DSS will follow the normal processing standards for these cases.

## **Administrative Hearings**

Applicants and recipients have the right to request an administrative hearing if they disagree with the decision of non-cooperation made by DCSE. When caretakers request an administrative hearing regarding the decision of non-cooperation or failure by DCSE to accept good cause claims, DCSE will schedule and conduct the administrative hearing.

The caretaker can ask for a hearing by sending in his or her request in writing within 20 days to:

Administrative Hearing Officer—DCSE

P.O. Box 11564

Wilmington, DE 19805

The request should include the caretaker's name, case number, social security number and daytime telephone number.

**9094 DEFINITIONS**

[7 CFR 271.2]

The following terms are used in the Food Supplement Program (FSP).

**Able-bodied Adults Without Dependent Children (ABAWD)** are individuals without children in their FSP household who must work and/or comply with certain work requirements for 20 hours a week in order to get food benefits.

**Adequate notice** means a written notice that includes:

- A. a statement of the action the agency has taken or intends to take;
- B. the reason for the intended action;
- C. the household's right to request a fair hearing;
- D. the name of the person to contact for additional information;
- E. the availability of continued benefits; and
- F. the liability of the household for any overissuances received while awaiting a fair hearing if the hearing official's decision is adverse to the household.

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

**Alien Status Verification Index (ASVI)** is the automated database used by States to verify immigration statuses from the Immigration and Naturalization Service (INS).

**Allotment** is the total dollar value of food benefits a household receives each month.

**Application** is the form completed by a household member or authorized representative to apply for food benefits, cash assistance, child care or medical assistance programs.

**ASSIST** is Delaware's electronic application. The acronym stands for Application for Social Services and Internet Screening Tool.

**Authorized Representative** is an individual the household authorizes to act on behalf of the household in the application process, in obtaining food benefits, and in using the EBT card. This individual has access to the household's EBT benefit account. This individual can be a nonhousehold member or a household member, like a spouse, who is a secondary cardholder.

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

**Boarders:** Individuals or groups of individuals residing with others and paying reasonable compensation to the others for lodging and meals.

**Card Number:** The card number is on the front of the EBT card. The first six digits are the same for all of Delaware's cards. This number is called 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.

**Categorically Eligible Household** is any household where all members receive or are authorized to receive TANF/GA/RCA and/or SSI benefits, or the household income is at or under 200% of the FPL for their household size. The household is considered categorically eligible for food stamps. These households meet the resource test.

**Certification period** means the period of time in which a household is eligible to receive benefits.

**Claim** is the amount owed due to an over-issuance of food benefits.

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

**Date of Entry (Date of admission)** means the date established by the Immigration and Naturalization Service as the date the sponsored alien was admitted for permanent residence.

**Deeming** means using a portion of an ineligible household member's income or resources for the remaining household members.

**Destitute Households** - Migrant or seasonal farm worker households that have little or no income at the time of application and are in need of immediate food assistance.

**Disaster (for Assistance)** - A major disaster is any natural catastrophe such as a hurricane or drought, fire, flood, or explosion, which the President declares the severity and magnitude warrants disaster assistance.

**Drug addiction or alcoholic treatment and rehabilitation program** means any drug addiction or alcoholic treatment and rehabilitation program conducted by a private, nonprofit organization or institution, or a publicly operated community mental health center, licenses by DHSS.

**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.

**Elderly or disabled member** means a member of a household who:

- A. Is 60 years of age or older;
- B. Receives Supplemental Security Income (SSI) benefits under title XVI of the Social Security Act or disability or blindness payments under titles I, II, X, XIV, or XVI of the Social Security Act;
- C. Receives federally or State-administered supplemental benefits under section 1616(a) of the Social Security Act provided that the eligibility to receive the benefits is based upon the disability or blindness criteria used under title XVI of the Social Security Act;
- D. Receives federally or State-administered supplemental benefits under section 212(a) of Pub. L. 93-66;
- E. Receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act.
- F. Is a veteran with a service-connected or non-service-connected disability rated by the Veteran's Administration (VA) as total or paid as total by the VA under title 38 of the United States Code;
- G. Is a veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under title 38 of the United States Code;
- H. Is a surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently housebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self-support under title 38 of the United States Code;
- I. Is a surviving spouse or surviving child of a veteran and considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a non-service-connected death under title 38 of the United States Code and has a disability considered permanent under section 221(i) of the Social Security Act. "Entitled" as used in this definition refers to those veterans' surviving spouses and surviving children who are receiving the compensation or pension benefits stated or have been approved for such payments, but are not yet receiving them; or
- J. Receives an annuity payment under: section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 and is determined to be eligible to receive Medicare by the Railroad Retirement Board; or section 2(a)(1)(v) of the Railroad Retirement Act of 1974 and is determined to be disabled based upon the criteria used under title XVI of the Social Security Act.
- K. Is a recipient of interim assistance benefits pending the receipt of Supplemental Security Income, a recipient of disability related medical assistance under title XIX of the Social Security Act, or a recipient of disability-based State general assistance benefits provided that the eligibility to receive any of these benefits is based upon disability or blindness criteria established by the State agency which are at least as stringent as those used under title XVI of the Social Security Act (as set forth at 20 CFR part 416, subpart I, Determining Disability and Blindness as defined in Title XVI).

**Electronic Benefit Transfer (EBT)** is the method used for issuing and accessing FSP benefits through the use of a card similar to a debit card.

**Eligible foods** mean:

- A. Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption;
- B. Seeds and plants to grow foods for the personal consumption of eligible households;
- C. Meals prepared and delivered by an authorized meal delivery service to households eligible to use EBT benefits to purchase delivered meals; or meals served by an authorized communal dining facility for the elderly, for SSI households or both, to households eligible to use coupons for communal dining;
- D. Meals prepared and served by a drug addiction or alcoholic treatment and rehabilitation center to narcotic addicts or alcoholics and their children who live with them;

- E. Meals prepared and served by a group living arrangement facility to residents who are blind or disabled as defined under Elderly or Disabled member;
- F. Meals prepared by and served by a shelter for battered women and children to its eligible residents; and
- G. Meals prepared for and served by an authorized public or private nonprofit establishment (e.g., soup kitchen, temporary shelter) that feeds homeless persons.

**Emergency (for Federal Assistance)** - An emergency is a ny occasion when the President determines that Federal assistance is needed to supplant State and local efforts to save lives, protect property, assure public health and safety, or to lessen the threat of a catastrophe.

**Expedited Service** means food benefits must be available to the household no later than the seventh calendar day following the date an applicant files an application.

**Expunged Benefits:** Benefits in client accounts not used for 365 days that are removed from the account forever.

**Filing Date** means the date DSS receives the application form as long as the form contains the applicant's name and address, and the signature of a responsible household member or the household's representative, a signed Request for Assistance, or an application from ASSIST.

**FNS** means the Food and Nutrition Service of the U.S. Department of Agriculture.

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

**Group Living Arrangement** means a public or private nonprofit residential setting, certified by the State, which serves no more than sixteen residents. To be eligible for food benefits, a resident of such a group living arrangement must be blind or disabled as defined under Elderly or Disabled member.

**Head of Household** is the individual who is an adult parent of children of any age selected by the household or the principal wage earner if selected by DSS.

**Hold Amount:** When an EBT manual voucher transaction is used, the retailer obtains an authorization number from eFunds. eFunds puts a hold on the participant's food benefit account. 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.

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

- A. A supervised shelter designed to provide temporary accommodations (such as a welfare hotel or congregate shelter);
- B. A halfway house or similar institution that provides temporary residence for individuals intended to be institutionalized;
- C. A temporary accommodation for not more than 90 days in the residence of another individual; or
- D. A place not designed for, or ordinarily used, as a regular sleeping accommodation for human beings (a hallway, a bus station, a lobby or similar places).

**Homeless Meal Provider** is a public or private nonprofit establishment (e.g., soup kitchens, temporary shelters) that feeds homeless persons.

**Ineligible Alien** means an undocumented alien or a documented alien who does not meet a qualified and eligible status.

**Intentional Program Violation (IPV)** occurs when an individual breaks a FSP rule and is found guilty by a court or an administrative disqualification hearing, or signs a waiver to be disqualified to avoid prosecution.

**Low-income Household** means a household whose annual income does not exceed 125 percent of the Office of Management and Budget poverty guidelines.

**Manual Entries:** If an EBT 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.

**Mass Changes** are certain changes initiated by the State or Federal government, which may affect the entire caseload or significant portions of the caseload such as annual cost-of-living adjustments, shelter/dependent care deduction and periodic cost-of-living adjustments to RSDI and SSI benefits.

**Meal Delivery Service** (like Meals on Wheels) is a service agencies contract with for the preparation and delivery of meals at low prices to elderly persons and the physically or mentally handicapped who are unable to adequately prepare all of their meals.

**Minimum Benefit** means the minimum monthly amount of food benefits that eligible one- and two-person households receive.

**Notice of Expiration** is a notice sent to a household at the end of its certification period notifying a household of what they need to do to continue to get benefits.

**Over-issuance** means the amount of benefits a household received that exceeded the amount the household was eligible to receive.

**PAN:** The Primary Account Number is the 16-digit number on the EBT card, also called the card number.

**PIN (Personal Identification Number):** A PIN is a four digit secret code that allows the user to access benefits when using the EBT card. No one can use the card but the participant as long as the participant does not give the PIN to anyone.

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

**Point-of-Sale (POS) Terminal:** A POS is the device a participant uses to make transactions at the stores. The POS machine reads the card and allows the participant to buy food with the food benefits.

**Prospective Budgeting** means the computation of a household's food benefit for an issuance month based on an estimate of income and circumstances which will exist in that month.

**Quality Control Review** means a review of a statistically valid sample of active and negative cases to determine the extent to which households are receiving the food benefit allotments to which they are entitled, and to determine the extent to which decisions to deny, suspend, or terminate cases are correct.

**Recertification** is a review conducted at the end of a person's certification period that requires an application, interview and verification of current circumstances.

**Residents of Institution** means an individual who resides in an institution where the institution provides him or her with the majority of his or her meals (over 50% of three meals daily) as part of the institution's normal services.

**Riverside Rule** is a rule that requires states to keep food benefits at the same level when a household's TANF/RCA benefits have been reduced or terminated due to the household's failure to perform an action required under the TANF/RCA program or fraud.

**Shelter for Battered Women and Children** means a public or private nonprofit residential facility that serves battered women and their children.

**Simplified FSP (SFSP)** is a program that permits a state to substitute certain FSP rules with TANF and RCA rules and procedures.

**Simplified Reporting** means the only reporting requirement for households is when their income exceeds the 130% FPL threshold for the household size established at the time of intake or recertification.

**Sponsored alien** means an alien for whom a person has executed an affidavit of support [INS Form I-864 or I-864A] on behalf of the alien according to section 213A of the INA.

**Sponsor** means a person who executed an affidavit(s) of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission into the United States as a permanent resident.

**Spouse** refers to either of two individuals: (1) Those defined as married to each other under applicable State law; or (2) Those living together and representing themselves as married to relatives, friends, neighbors, or employers.

**Stale Benefits:** Benefits not used by a household within 60, 90 or 230 days.



**State Income and Eligibility Verification System (IEVS)** is a system of information acquisition and exchange for purposes of income and eligibility verification that meets the requirements of section 1137 of the Social Security Act, generally referred to as the IEVS.

**Supplemental Nutrition Assistance Program (SNAP)** is the Federal name for the former Food Stamp Program.

**Supplemental Security Income (SSI)** is a means-tested monthly cash payment made under the authority of the Social Security Act for aged, blind and disabled individuals.

**Systematic Alien Verification for Entitlements (SAVE)** means the INS program whereby State agencies may verify the validity of documents provided by aliens applying for food benefits by obtaining information from a central data file.

**Thrifty Food Plan** means the diet required to feed a family of four persons consisting of a man and a woman 20 through 50, a child 6 through 8, and a child 9 through 11 years of age, determined in accordance with the USDA Secretary's calculations. The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition. In order to develop maximum food stamp allotments, the Secretary shall make household size and other adjustments in the Thrifty Food Plan taking into account economies of scale and other adjustments as required by law.

**Trafficking** means the buying or selling of food benefits for cash or consideration other than eligible food or the exchange of firearms, ammunition, explosives, or controlled substances.

**Under-issuance** means an amount of benefit that the household was entitled to receive that was less than the benefit the household actually received.

**Verification** is the use of third party information or documentation to establish the accuracy of statements on the application.

**Work for Your Welfare** is a work experience program in which participants work to earn their benefits.

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### **DIVISION OF SOCIAL SERVICES**

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

### **PUBLIC NOTICE**

#### **DSSM: 11003.2.1, TANF and Transitional Work Program Sanctions**

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 Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) regarding *TANF and Transitional Work Program Sanctions*.

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 2, 2010.

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 Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) regarding *TANF and Transitional Work Program Sanctions*.

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**Statutory Authority**

45 CFR §98.14, *Plan process*

**Summary of Proposed Change**

**DSSM 11003.2.1, TANF and Transitional Work Program Sanctions:** The policy on TANF Sanctions is updated to include sanctions that may be applied as a result of noncompliance with the Transitional Work Program. It also corrects policy to indicate that TANF E&T sanctions are full family sanctions which close the case.

**DSS PROPOSED REGULATION #10-04****REVISION:****11003.2.1 TANF and Transitional Work Program Sanctions**

~~See Administrative Notice: A-7-99 Child Care Issues-~~

Recipients who fail without good cause to meet requirements for the TANF Employment and Training or Transitional Work Program are sanctioned. ~~A sanction means that the recipient's needs are not considered in determining the family's need for assistance and the recipient loses her/his share of the TANF grant.~~

When these ~~TANF~~ recipients receive a full family sanctions, or fail to comply with the Transitional Work Program (TWP), they lose their TANF Child Care. This means their child care case will be closed. In order to retain TANF Child Care, the recipients will have to must cure the sanction, meaning they will have to must cooperate with their TANF or TWP requirements, or they will have to become exempt.

Clients curing their TANF sanction may be eligible for child care under Presumptive Child Care Services (DSSM 11004.8).

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**DIVISION OF SOCIAL SERVICES**

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

**PUBLIC NOTICE****DSSM: 11003.7.8, Special Needs**

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 Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) regarding *Families with Transitional Work Program Needs*.

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 2, 2010.

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 Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) regarding *Families with Transitional Work Program Needs*.

**Statutory Authority**

45 CFR §98.20, *A child's eligibility for child care services*

## Summary of Proposed Change

**DSSM 1 1003.7.8, *Special Needs*:** This policy is revised to add Transitional Work Program Childcare guidelines.

## DSS PROPOSED REGULATION #10-03

### REVISION:

### 11003.7.8 Special Needs

45 CFR 98.20

#### Eligibility

Families requesting Special Needs Child Care must be technically and financially eligible.

**EXCEPTION:** DFS referrals do not have to meet financial criteria.

If the parent/caretaker meets the need criteria as listed in 11003.8, the family will not be eligible for Special Needs Child Care unless the child under age 13 requires care that cannot be provided in a regular day care.

To be eligible for Special Needs care the parent/caretaker or child must meet the definition of need as explained below.

#### Children with Special Needs:

A child that is 13 through 18 years of age may be eligible for Special Needs Child Care if the child's physical, medical or emotional condition is such that he is unable to care for himself. Children under age 13 may qualify for Special Needs Child Care if they have a need that cannot be met in a regular daycare setting. Children 13 years of age and older are only eligible for Special Needs Childcare.

Documentation of the condition may be provided on the Special Needs Form or any other written correspondence submitted by a physician or medical professional with the authority to do so.

#### Adults with Special Needs:

A parent/caretaker may be eligible for Special Needs Child Care services if the parent has a condition which makes the parent/caretaker unable to care for his/her child.

Documentation of the condition may be provided on the Special Needs Form or any other written correspondence submitted by a physician or medical professional with the authority to do so.

#### Families with Protective Child Care Needs

Children referred by the Division of Family Services (DFS) may be eligible for Special Needs Child Care.

A child that is active with and referred by DFS for child care:

1. is considered to have met the need criteria;
2. does not have to meet the financial criteria;
3. may receive child care regardless of citizenship status.

#### Families with Transitional Work Program Needs:

Children referred by the Transitional Work Program (TWP) may be eligible for Special Needs Child Care.

A parent/caretaker that is active with and referred by TWP for child care:

1. is considered to have met the need criteria;
2. must have household income at or below 200% FPL;
3. is not required to provide a Medical Certification Form or a Special Needs Form.

DSS staff will authorize childcare for 5 days part time with extended care. Please refer to policy section 11004.9 Authorizing Service. Authorize care for additional time if the parent's/caretaker's activities with TWP require more than part time care.

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## DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Section 311 (18 **Del.C.** §311)  
18 **DE Admin. Code** 1310

### PUBLIC NOTICE

INSURANCE COMMISSIONER KAREN WELD IN STEWART, CIR-ML hereby gives notice of intent to adopt amendments to Department of Insurance Regulation 1310 relating to payment of claims for health care services. The docket number for this proposed amendment is 1329.

The purpose of the proposed amendment to regulation 1310 is to remove from the existing regulation the exception for claims involving Long Term Care and Medicare Supplement insurance. The text of the proposed amendment is reproduced in the February 2010 edition of the Delaware Register of Regulations. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:00 p.m., Monday March 1, 2010, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.736.7979 or email to [mitch.crane@state.de.us](mailto:mitch.crane@state.de.us).

### **1310 Standards for Prompt, Fair and Equitable Settlement of Claims for Health Care Services [Formerly Regulation 80]**

#### **1.0 Authority**

This regulation is adopted by the Commissioner pursuant to 18 **Del.C.** §§311, 2304(16), and 2312. It is promulgated in accordance with 29 **Del.C.** Ch. 101.

**7 DE Reg. 100 (7/1/03)**

#### **2.0 Scope**

This regulation shall apply to all carriers as defined herein. Exempted from the provisions of this regulation are policies of insurance that provide coverage for accident-only, credit, Medicaid plans, ~~Medicare supplement plans, long term care~~ or disability income insurance, coverage issued as a supplement to liability insurance, worker's compensation or similar insurance or automobile medical payment insurance.

**7 DE Reg. 100 (7/1/03)**

**9 DE Reg. 242 (8/1/05)**

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

#### **12.0 Effective Date**

This regulation, as amended shall become effective for all claims submitted for payment on or after ~~November 1, 2005~~ May 1, 2010. All claims for payment submitted for payment prior to ~~November 1, 2005~~ May 1, 2010 shall be governed by this regulation amended effective August 1, 2003.

**9 DE Reg. 242 (8/1/05)**

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

**[1310 Standards for Prompt, Fair and Equitable Settlement of Claims for Health Care Services](#)**

# PROPOSED REGULATIONS

## DEPARTMENT OF LABOR DIVISION OF INDUSTRIAL AFFAIRS

### 1101 Apprenticeship and Training Regulations

Statutory Authority: 19 Delaware Code, Section 202(a) (19 Del.C. §202(a))

#### PUBLIC NOTICE

The Governor's Council on Apprenticeship & Training will hold a public hearing beginning at 12:30 p.m., Monday, March 8, 2010 at the Delaware Department of Labor, Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802, where members of the public can offer comments.

The Council on Apprenticeship & Training proposes to recommend to the Secretary of Labor a change to Rule 6.4.2 of the Rules and Regulations Relating to Delaware Apprenticeship and Training Law. The proposal would change the ratio of apprentices to mechanics for the insulator and asbestos worker trades from its current 1 up to 4 to 1 up to 3. In addition, the ratios for the following trades will now be recognized: Construction Laborer, Dry Wall Finisher and Hard Tile Setter will be one apprentice up to three mechanics (1 up to 3). The trades of Child Care Worker and Elevator Constructor will be one apprentice up to one mechanic (1 up to 1).

The proposed rule is published in the *Delaware Register of Regulations* and two newspapers. Copies are available at the Department of Labor, Division of Industrial Affairs, 225 Corporate Blvd., Suite 104, Newark, DE 19702. A copy can be obtained by contacting Kevin Calio, Director of Apprenticeship & Training, at (302) 451-3419. Interested persons can submit written comment to the Council on Apprenticeship & Training c/o Kevin Calio at the above address until the time set for the public hearing.

### 1101 Apprenticeship and Training Regulations

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

#### 6.0 Standards of Apprenticeship

#### *(Break in Continuity Within Section)*

6.4 The ratio of Apprentices to Journeypersons should be consistent with proper supervision, training and continuity of employment or applicable provisions in collective bargaining agreements.

6.4.1 The ratio of Apprentices to Journeypersons shall be one Apprentice up to each five (5) Journeypersons employed by the prospective Sponsor unless a different ratio based on an industry standard is contained in the signed Standards of Apprenticeship Agreement.

6.4.2 The following have been recognized to be the industry standard for the listed trades:

Ratio of Apprentice Journeypersons\*

1 up to 4	Sheet Metal Worker
1 up to <u>4</u> <sub>3</sub>	Insulation Worker
1 up to <u>4</u> <sub>3</sub>	Asbestos Worker
1 up to 3	Industrial Maintenance Mechanic
1 up to 3	Plumbers/Pipefitters
1 up to 3	Electrician
1 up to 3	Precision Instrument Repairers
1 up to 3	Glaziers
<u>1 up to 3</u>	<u>Construction Laborer</u>
<u>1 up to 3</u>	<u>Dry Wall Finisher</u>
<u>1 up to 3</u>	<u>Hard Tile Setter</u>

1 up to 2	Roofers
1 up to 1	Sprinkler Fitters
<u>1 up to 1</u>	<u>Child Care Worker</u>
<u>1 up to 1</u>	<u>Elevator Constructor</u>

\* The ratio has no effect until the second apprentice is registered. Only one Journeyperson is necessary in any trade for the first Apprentice.

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

**[1101 Apprenticeship and Training Regulations](#)**

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## DIVISION OF INDUSTRIAL AFFAIRS

### OFFICE OF LABOR LAW ENFORCEMENT

Statutory Authority: 19 Delaware Code, Section 3512 (19 Del.C. §3512)

#### PUBLIC NOTICE

The Delaware Department of Labor, in accordance with 19 Del.C. § 3512, has proposed the following: Delaware Workplace Fraud Act Regulations ("Regulations") in accordance with 19 Del.C. §3512. This proposal sets forth the Regulations for implementation and enforcement of the Workplace Fraud Act.

A public hearing will be held before the Administrator of the Office of Labor Law Enforcement at 12:00 p.m. on March 8, 2010, at the Delaware Department of Labor, Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802 where members of the public can offer comments. Anyone wishing to receive a copy of the proposed Regulations may obtain a copy from Anthony J. DeLuca, Administrator, Department of Labor, Office of Labor Law Enforcement 225 Corporate Boulevard, Suite 104, Newark, DE 19702. Persons wishing to submit written comments may forward these to the Administrator at the above address. The final date to receive written comments will be at the public hearing.

### **[1326 Workplace Fraud Act Regulations](#)**

#### **1.0 General Provisions**

##### 1.1 Purpose and scope.

1.1.1 The regulations set forth in this part contain the procedures established by the Department of Labor for carrying out its responsibilities in the administration and enforcement of 19 Delaware Code, Ch 35.

##### 1.2 Address; office hours.

1.2.1 Questions may be addressed to "Office of Labor Law Enforcement - Administrator" at 225 Corporate Boulevard, Suite 104, Newark, DE 19702. The office is open daily from 8:00 a.m. to 4:30 p.m. except Saturdays, Sundays, and Legal Holidays.

##### 1.3 Definitions.

1.3.1 The terms "Construction services," "Debarment," "Department," "Employee," "Employer," "Exempt person," "Independent contractor," "Knowingly," "Public body," "Secretary," "Secretary of Labor," "Stop work order," "Violate," and "attempts to violate," when used in this regulation, shall have the meanings set forth in 19 Del.C. §3512.

1.3.2 The following words and terms, when used in this regulation, shall have the following meanings: "Administrator" means the Office of Labor Law Enforcement Administrator or his designee.

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# PROPOSED REGULATIONS

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"Corporate officer" or "officer of a corporation" means any person who fills an office provided for in the corporate charter or articles of incorporation. As to persons engaged in the construction industry, the term "officer of a corporation," includes a member owning at least 10 percent of a limited liability company.

"Day" means calendar day unless otherwise specified.

"Party" means any employee, employer or the Department of Labor.

## 1.4 Attorneys: form of appearance on behalf of parties.

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

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

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

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

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

## 1.6 Liberal construction of regulations.

1.6.1 These regulations shall be liberally construed by the administrator to permit the department to discharge its statutory duties under 19 Del.C. Ch. 35.

## 1.7 Practice where regulations do not govern.

1.7.1 In any circumstance that arises not governed by these regulations, the administrator shall exercise his discretion in order to permit the department to discharge its statutory duties under 19 Del.C. Ch. 35.

## 1.8 Validity of regulations if any portion declared invalid.

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

## 1.9 Amendment of regulations.

1.9.1 The administrator may rescind, amend or expand these regulations from time to time as necessary to comply with the purpose of the Workplace Fraud Act, 19 Del.C. Ch. 35, and such new regulations shall be submitted to the Registrar's office in accordance with the provisions of 29 Del.C. §10161(b).

## **2.0 Commencement of Actions**

### 2.1 Manner of commencing actions.

2.1.1 An action may be commenced by the filing of a complaint with the department's Office of Labor Law Enforcement.

### 2.2 Who may file a complaint.

2.2.1 An employee or the department on its own may file a complaint alleging a violation of the Workplace Fraud Act.

### 2.3 Preparation and contents of a complaint.

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

2.3.2 The department shall assist the employee in the completion of the complaint where necessary.

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

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

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

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

2.3.3.4 The specific prohibited basis or bases that gave rise to the filing of the complaint;

2.3.3.5 A brief statement of the facts deemed to constitute the alleged violation;

**2.4** Filing a complaint.

2.4.1 The filing of a complaint is perfected when received by an official of the Office of Labor Law Enforcement.

**3.0** **Investigation**

**3.1** Timing of investigations.

3.1.1 The department shall promptly initiate an investigation into alleged violations when:

3.1.1.1 The department received a complaint; or

3.1.1.2 The department, on its own motion, determines to initiate an investigation.

3.1.2 The department shall complete its investigation as promptly as possible.

**3.2** Investigatory procedures.

3.2.1 All investigatory powers granted by 19 Del.C. §3504 shall be available to the department. In its discretion, the department may conduct investigations using, among other things, written requests for information, investigatory conferences, subpoenas, on-site visits, interviews, and depositions as provided by these regulations.

3.2.2 In connection with an investigation, the department may require the submission of information relating to:

3.2.2.1 The employer's books and records;

3.2.2.2 The employment records of employees;

3.2.2.3 The employer's accounts and payroll records;

3.2.2.4 The employer's procedures for hiring and selecting employees; and

3.2.2.5 Such other information as the department determines to be reasonably necessary to carry out the provisions of the Workplace Fraud Act.

**3.3** Requests for Information.

3.3.1 The department may serve requests for information to assist the department in its investigation. Unless otherwise specified in a request for information, the response shall be due to the department within 15 days from the date of the request.

**3.4** On-Site Visits.

3.4.1 The department may conduct on-site visits to assist in the investigatory process for the purpose of gathering evidence, interviewing witnesses, observing a employer's place of business or work site, and reviewing documents.

3.4.2 The department is not required to provide the employer with any notice prior to its on-site visit.

3.4.3 The employer shall grant access to its premises, documents, and employees during the department's on-site visit.

**3.5** Subpoenas

3.5.1 The administrator may issue a subpoena as he deems necessary to assist the investigatory process. The administrator shall issue a subpoena in the name of the department, and the subpoena shall direct the person designated to personally appear and bring any books, records, documents and any other evidence that relates to any violation under investigation, or, in lieu of personal appearance, to produce any books, records, documents and any other evidence which relates to any violation under investigation.

3.5.2 A subpoena shall state the time and place where the person designated is directed to appear.

3.5.3 A subpoena shall be served either by personal service by any person 18 or more years of age by delivery of a copy thereof to the person named therein, by overnight delivery by commercial courier, or by registered or certified mail, return receipt requested.



**3.6** Depositions.

**3.6.1** The department may take depositions of witnesses under oath as part of any investigation when, in the discretion of the administrator, such depositions will aid the investigatory process.

**3.7** Enforcement of subpoenas.

**3.7.1** If any person fails to comply with a subpoena issued by the department, he shall be subject to the appropriate enforcement provisions of 19 Del.C. §3505.

**3.8** Investigatory conferences.

**3.8.1** Investigatory conferences, as part of the department's investigation, are subject to the following:

**3.8.1.1** As part of its investigation and at the discretion of the administrator, the department may convene an investigatory conference for the purpose of obtaining evidence, identifying the issues in dispute, and ascertaining the positions of the parties. The investigatory conference is not an adjudication of the merits of the charge.

**3.8.1.2** The department shall provide the parties with written notice of the investigatory conference at least 30 days prior to the conference. The notice shall specify the date, time and location of the conference and shall identify the individuals requested to attend, and any documents that a party is requested to provide at the conference.

**3.8.2** The conference shall be conducted as follows:

**3.8.2.1** A department employee shall conduct and control the proceedings.

**3.8.2.2** With prior notice to the department, the parties may request to bring witnesses to the conference in addition to those whose attendance may be specifically requested by the department. The department employee has discretion over which witnesses shall be heard and the order in which they are heard. The department employee may exclude any witness or other person from the conference, except that one representative of each party and counsel shall be permitted to remain throughout.

**3.8.2.3** The department may request that the parties provide affidavits from witnesses who intend to appear at the conference.

**3.8.2.4** A party may be accompanied at the conference by his attorney, and by a translator, if necessary.

**3.8.2.5** An attorney for a party who has not previously entered his appearance shall do so at the onset of the conference.

**3.8.2.6** Because the investigatory conference is part of the department's investigation and not a hearing on the merits of a case, the parties shall not be entitled to cross-examine witnesses. All questioning shall be conducted by the department employee, unless in his discretion the department employee permits questions to be asked by other persons present at the conference.

**3.8.3** Postponement of a conference.

**3.8.3.1** Except in extraordinary circumstances, requests for postponements must be made by notice to all parties at least 15 days prior to the conference.

**3.8.3.2** Any opposition to a request for postponement must specifically state the basis for the opposition and must be received by the department at least seven days prior to the conference.

**3.8.3.3** If a party or witness fails to appear at a scheduled conference, the department may proceed with the conference without the party or witness.

**3.8.4** If a party refuses or fails to attend a scheduled conference, the department may in its discretion schedule an alternate conference date. The department may subpoena any party or witness who failed or refuses to attend a scheduled conference. The department may also subpoena any documents that either party was requested to bring to the conference, but failed to bring to the conference.

## **4.0 Administrative Dismissal**

- 4.1 The administrator may in his discretion administratively dismiss a complaint for reasons including but not limited to the following:
  - 4.1.1 Lack of jurisdiction;
  - 4.1.2 The employee is unavailable or unwilling to participate in the investigation, or to attend a scheduled conference;
  - 4.1.3 Relief is precluded by the respondent's bankruptcy or other special circumstances as determined by the administrator;
  - 4.1.4 The complaint on its face fails to state a claim under the Workplace Fraud Act.
- 4.2 Prior to administratively dismissing a complaint, the administrator shall notify the employee of the reason for the proposed dismissal and shall offer the employee the opportunity to respond.
  - 4.2.1 The administrator shall make his final determination, considering all responses received within 15 days of the date of notice to the employee.

## **5.0 Final Determinations**

- 5.1 Issuance of findings.
  - 5.1.1 Following the completion of an investigation, the administrator shall determine whether or not the employer violated or committed an unlawful employment practice in violation of, 19 Del.C. Ch. 35.
  - 5.1.2 If the administrator determines after completion of an investigation that the employer has violated one (1) or more of the provisions of 19 Del.C. Ch. 35, the administrator will issue a violation determination.
  - 5.1.3 If the administrator determines after completion of an investigation that no violation(s) of the provisions of 19 Del.C. Ch. 35, have occurred the administrator will issue a no violation determination.
  - 5.1.4 If the administrator determines after completion of an investigation that the employer has violated some but not all of the alleged violations, the administrator will issue a violation determination as to those violations which the department has determined has occurred, and a no violation determination as to those violations which the department determines no violation has occurred.
  - 5.1.5 The department's initial determination is final when issued.
  - 5.1.6 The initial determination will be sent to the parties by certified mail, return receipt, and shall include notice to the employer of the opportunity to appeal in accordance with the Administrative Procedures Act, 29 Del.C. Ch. 101.

## **6.0 Enforceability of settlement agreements.**

- 6.1 A settlement agreement reached during an investigation shall be set forth in writing and signed by the parties.
- 6.2 Allegations of breach of a settlement agreement shall be brought to the attention of the administrator. The administrator shall review and investigate the allegations of breach of a settlement agreement to determine whether a breach has occurred.
- 6.3 The administrator shall issue written findings to the parties with regard to the allegation of breach of a settlement agreement.
- 6.4 The administrator in his discretion will determine whether to forward allegations of breach of the settlement agreement to the Attorney General for review.

## **7.0 Access to Department's Investigatory Files**

- 7.1 Confidentiality of department's investigatory files.
  - 7.1.1 The department's investigatory records are confidential and exempt from public access under 29 Del.C. Ch 100.
- 7.2 Discovery of department's investigatory files by non-parties.

7.2.1 Non-parties to an investigation shall not have access to the material in the department's investigatory file(s).

7.3 Copying Costs.

7.3.1 The department's fee for copying documents requested under this section shall be the same fee as is applicable to requests granted pursuant to 29 Del.C. Ch 100. The administrator may waive or modify this fee in the case of an indigent party or in other extraordinary situations for good cause.

## **8.0 Retention of Investigatory Files**

8.1 The department shall retain investigatory files for three years after the end of the administrative process.

## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

100 Delaware Gaming Control Board

Statutory Authority: 28 Delaware Code, Section 1122 (28 Del.C., §1122)  
10 DE Admin. Code 103 and 104

### PUBLIC NOTICE

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

Amendment to Existing Regulations

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

The Delaware Gaming Board will seek public comments on the issue of whether its current Rule 3.1.1 and Rule 3.1.5 in 10 DE Admin. Code 103 should be amended. The rules relate to requirements concerning members of charitable organizations.

The Board also proposes to add a new section to 10 DE Admin. Code Part 104 to require that only members of the charitable organization may handle money during a Texas Hold 'Em Tournament.

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

#### **C. Summary of Proposal**

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

Currently, Rule 3.1.1 requires that a charitable organization designate a bona fide active member as the Member in Charge primarily responsible for each function. The proposed amendment would prohibit the Member in Charge from working for a third party vendor or performing any service during the function for a third party vendor.

Rule 3.1.5 concerns the handling of funds at a function. The proposed amendment would state that any organization member handling the money at a function may not be employed by or assist a third party vendor in performing its duties.

##### **104 Regulations Governing Texas Hold 'Em Poker**

The Board wishes to add a new section requiring that funds taken in a tournament be handled exclusively by members of the charitable organization and not by a third party vendor.

**103 Regulations Governing Charitable Gambling Other Than Raffles*****(Break in Continuity of Sections)*****3.0 Conduct of Games****3.1 Workers.**

- 3.1.1 Member in Charge. Every Licensed Organization shall designate a bona fide, active member of the licensee to be in charge of and primarily responsible for each Function. The member-in-charge shall have been a member in good standing of the Sponsoring Organization for at least two (2) years. The member-in-charge shall supervise all activities and be responsible for the conduct of all games during the Function of which he or she is in charge, including the preparation of any financial reports required by law or these regulations. The member-in-charge or his qualified designee shall be present on the premises continually during the Function and shall be familiar with the provisions of these Regulations, and the terms of the license. Neither the member-in-charge nor his or her designee may be employed by or in any way assist a third party vendor in performing its duties during the function.
- 3.1.2 List of Workers. A Sponsoring Organization conducting a Function shall prepare and have available on the premises a list of all persons taking part in the management or operation of the Function. Such list shall be maintained as part of the licensee's records of the Function and shall be made available to any member or agent of the Board or law enforcement officer.
- 3.1.3 Bona Fide Member. For the purposes of eligibility to participate in managing or otherwise assisting in the operation of a Function, a person is a bona fide member of the Sponsoring Organization only when he or she:
- 3.1.3.1 Has become a member prior to the commencement of the Function and such membership was not dependent upon, or in any way related to the payment of consideration to participate in, any gambling activity; and,
  - 3.1.3.2 Has held full and regular membership status in the Sponsoring Organization for a period of not less than three (3) consecutive months prior to the subject Function; and,
  - 3.1.3.3 Has paid any reasonable initiation or admission fees for membership, and/or any dues, consistent with the nature and purpose of the Sponsoring Organization and with the type of membership obtained and is not in arrears in payment of any such fees or dues; and,
  - 3.1.3.4 Has met all other conditions required by the Sponsoring Organization for membership and in all respects is a member in good standing at the time of the subject Function; and,
  - 3.1.3.5 Has met all of the standards set out above respecting his or her own organization, and he or she is a bona fide member of a bona fide charitable or bona fide nonprofit organization affiliated with or auxiliary to his or her Sponsoring Organization, or to which his or her own Sponsoring Organization is auxiliary; and,
  - 3.1.3.6 Has met all of the standards set out above respecting his or her own organization, and this organization has prior to July 6, 1984, assisted the Sponsoring Organization to conduct charitable gambling; and,
  - 3.1.3.7 Has met all of the standards set out above respecting his or her own Sponsoring Organization, and this organization is assisting another similar Sponsoring Organization (i.e. fire company assisting another fire company; fraternal society assisting another fraternal society; charitable, religious or veterans organization assisting another charitable, religious, or veterans organization) to conduct charitable gambling.
- 3.1.4 Identification Required. The member-in-charge and those assisting him in any capacity shall possess and display identification.
- 3.1.5 ~~Officer Member Responsible for Gross Receipts. The Sponsoring Organization shall duly designate an officer of said organization to be in full charge and primarily responsible for the proper accounting, use and disposition of all Gross Receipts. Such officer's name shall appear on the list required under §3.03(1)(b) and such officer shall be a person other than the person~~

~~designated member in charge pursuant to §3.03(l)(a). The member responsible for gross receipts shall not be employed by or perform any duties for a third party vendor during the function.~~

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

**13 DE Reg. 107 (07/01/09)**

*(Break in Continuity of Sections)*

## 104 Regulations Governing Texas Hold'em Poker

### 1.0 Reports After the Function

- 1.1 Within 30 days of the last day of the function, the member-in-charge shall submit a report to the Board that includes all information required by 28 **Del.C.** §1140(a).
- 1.2 When no function is held on a date a licensee is authorized to hold such a function, a report to that effect shall be filed with the Board.
- 1.3 If a licensee fails to timely file a report or if a report is not properly verified, no further license shall be issued to the licensee and any existing license shall be suspended until such time as the deficiency has been corrected.

### 2.0 Limitation of Texas Hold'em Tournaments

- 2.1 The Board interprets the phrase "with each tournament by the sponsoring organization to be held at least 70 days apart" in 28 **Del.C.** §1827 to mean that no sponsoring organization may conduct a subsequent tournament less than 70 days from the date of their immediately prior tournament.

**12 DE Reg. 357 (9/01/08)**

**13 DE Reg. 107 (07/01/09)**

### 3.0 Re-buys

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

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

### 4.0 Application

- 4.1 An application must be submitted sufficiently in advance of the proposed date of the function as to allow the Board to consider the application at two consecutive board meetings before deciding whether to approve or deny the application.

**12 DE Reg. 357 (9/01/08)**

### 5.0 Prize Amount

No prize greater in amount or value than \$5,000 shall be offered or given in any single tournament and the aggregate amount or value of all prizes offered or given in any single tournament shall not exceed \$13,000.

13 DE Reg. 412 (09/01/09)

**6.0** Only a member of the sponsoring organization may touch any money during the tournament and no third party vendor may touch any money during the tournament.

**\*Please Note: As the rest of the sections are not being amended, they are not being published here. Copies of both regulations in their entirety are available at:**

**[Delaware Gaming Control Board Regulations 103 and 104](#)**

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## DIVISION OF PROFESSIONAL REGULATION

### Board of Veterinary Medicine

Statutory Authority: 24 Delaware Code, Section 3306(a)(1) (24 Del.C. §3306(a)(1))  
24 DE Admin. Code 3300

### PUBLIC NOTICE

Pursuant to 24 Del.C. §3306(a)(1), the Board of Veterinary Medicine has proposed revisions to its rules and regulations.

A public hearing will be held on March 9, 2010 at 1:15 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 Board of Veterinary Medicine, 861 Silver Lake Boulevard, Dover, Delaware 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 proposes amendments to Rule 2.0, addressing Unprofessional Conduct for Veterinarians. Specifically, Rule 2.1.1.1 is revised to set forth additional requirements for the labeling of prescription drugs. Pursuant to the revisions, labels must be legible, must identify the prescribing veterinarian and the patient's name and must set forth the specific medication usage directions. The proposed revisions will serve to protect the public by ensuring that clear and complete information is included on all prescriptions.

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

### 3300 Board of Veterinary Medicine

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

## 2.0 Unprofessional Conduct for Veterinarians (24 Del.C. §3313(a)(1))

- 2.1 Unprofessional conduct in the practice of veterinary medicine shall include, but not be limited to, the following:
  - 2.1.1 Allowing support personnel to perform the acts forbidden under Section 1.2 or allowing licensed veterinary technicians to perform the acts forbidden under Section 1.3 of the Rules and Regulations.
  - 2.1.2 Allowing support personnel to perform tasks in Section 1.5 of the Rules and Regulations without the specified supervision or allowing veterinary technicians to perform the tasks in Section 1.6 without the specified supervision.
  - 2.1.3 Failing to be accessible to support or veterinary technician personnel by electronic means in a reasonable timeframe to provide off-site supervision for activities requiring indirect supervision as required by Section 1.4 of the Rules and Regulations.

- 2.1.4 Failing to arrange for supervision by another licensed veterinarian when not able to provide supervision as required by Section 1.4 of the Rules and Regulations.
- 2.1.5 Representation of conflicting interests except by express consent of all concerned. A licensee represents conflicting interests if while employed by a buyer to inspect an animal for soundness he or she accepts a fee from the seller. Acceptance of a fee from both the buyer and the seller is prima facie evidence of fraud.
- 2.1.6 Use by a veterinarian of any certificate, college degree, license, or title to which he or she is not entitled.
- 2.1.7 Intentionally performing or prescribing treatment, which the veterinarian knows to be unnecessary, for financial gain.
- 2.1.8 Placement of professional knowledge, attainments, or services at the disposal of a lay body, organization or group for the purpose of encouraging unqualified groups or individuals to perform surgery upon animals or to otherwise practice veterinary medicine on animals that they do not own.
- 2.1.9 Destruction of any part of a patient's records before a minimum of three (3) years have elapsed from the last entry in the medical record shall be considered unprofessional conduct. Records are to include, but are not limited to, information such as written or electronic documentation, rabies records, radiographs, ultrasounds, laboratory, and histopathological results.
- 2.1.10 Cruelty to animals. Cruelty to animals includes, but is not limited to, any definition of cruelty to animals under 11 **Del.C.** §1325.
- 2.1.10.1 Animal housing (such as cages, shelters, pens and runs) should be designed with maintaining the animal in a state of relative thermal neutrality, avoiding unnecessary physical restraint, and providing sanitary conditions and convenient access to appropriate food and water. If animals are group housed, they should be maintained in compatible groups without overcrowding.
- 2.1.10.2 Housing should be kept in good repair to prevent injury to the animal.
- 2.1.10.3 Precautions should be taken to prevent the spread of communicable diseases in housing animals.
- 2.1.11 Improper labeling of prescription drugs. The package or label must contain the following information, either typed or in legible handwriting:
- 2.1.11.1 Name and address of the prescribing veterinarian;
- 2.1.11.2 Patient's first name and owner's last name;
- 2.1.11.3 Name, strength and quantity of the drug, and date dispensed;
- 2.1.11.4 Specific usage directions, describing the exact method by which the drug must be administered. A prescription without specific directions, or a prescription bearing the notation "as directed" without specific directions, may not be prepared or dispensed.
- 2.1.12 Failure to make childproof packaging available for prescription drugs upon the request of a client.
- 2.1.13 Misrepresenting continuing education hours to the Board.
- 2.1.14 Failure to obey a disciplinary order of the Board.
- 2.1.15 Prescribing medication without examining the animal(s) within a period of one year.
- 2.1.16 Advertising an emergency hospital or clinic or emergency services without including in the advertisement the hours during which such emergency services are provided and the availability of the veterinarian who is to provide the emergency services, or failing to provide such services during the hours advertised. The availability of the veterinarian who is to provide emergency service shall be specified as either "veterinarian on premises" or "veterinarian on call" The phrase "veterinarian on call" shall mean that a veterinarian is not present at the hospital, but is able to respond within a reasonable time to requests for emergency services and has been designated to so respond.

**5 DE Reg. 1897 (4/1/02)**

**5 DE Reg. 1962 (5/1/02)**

6 DE Reg. 273 (9/1/02)

6 DE Reg. 950 (2/1/03)

10 DE Reg. 884 (11/01/06)

12 DE Reg. 1233 (03/01/09)

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

[3300 Board of Veterinary Medicine](#)



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**Symbol Key**

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

**Final Regulations**

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

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

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**DEPARTMENT OF AGRICULTURE  
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 November 3, 2009, the Commission makes the following findings and conclusions:

**Summary of the Evidence**

The Commission posted public notice of the proposed amendments to DHR C Rule 10 in the April 1, 2009 *Register of Regulations* (Volume 13, Issue 3) and for two consecutive weeks in September in *The News Journal* and *Delaware State News*. The Commission proposed to update Rule 10 in its entirety after Rules Committee review. The Commission received no written comments. The Commission held a public hearing on December 1, 2009, 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, 2010.

**IT IS SO ORDERED** this 12th day of January, 2010.

Robert (Breezy) Brown, Commissioner

Beverly H. (Beth) Steele, Chairman

George P. Staats, Commissioner

Larry Talley, Commissioner

## **501 Harness Racing Rules and Regulations (Break in Continuity of Sections)**

### 10.3.13 Orders

- 10.3.13.1 Except as otherwise provided by these rules, the Commission shall issue a final order not later than **[thirty sixty]** days after the conclusion of the hearing. A final order of the Commission must be in writing and be signed by a majority of the members of the Commission who voted in favor of the action taken by the Commission. A final order must comply with the requirements of §10128 of the Administrative Procedures Act, and include a brief summary of the evidence, findings of fact based upon the evidence, conclusions of law, and other conclusions required by the Act or by these Rules, and a concise statement of the Commission's determination or action on the matter.

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the April 2009 issue of the *Register* at page 1256 (12 DE Reg. 1256). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[501 Harness Racing Rules and Regulations](#)

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## **DEPARTMENT OF EDUCATION**

### **OFFICE OF THE SECRETARY**

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

**14 DE Admin. Code 103**

### **REGULATORY IMPLEMENTING ORDER**

#### **103 Accountability for Schools, Districts and the State**

#### **I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 103 Accountability for Schools, Districts and the State to make additional changes from what was proposed in the June 2009 Register of Regulations. At that time, the amendments focused on: 1) corrections and updates to align with the State Accountability Plan provided to the U.S. Department of Education for NCLB; 2) amendments to reflect changes to the DSTP; and 3) alignment with the budget language. These changes include, but are not limited to, options and requirements for schools and districts in school improvement.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Thursday, December 3, 2009, in the form hereto attached as Exhibit "A". Comments were received from the Governor's Advisory Council for Exceptional Citizens, and the State Council for Persons with Disabilities. In addition, the NCLB Stakeholder Committee met to review the proposed changes. Comments were also made by members of the State Board of Education.

This final order reflects amendments made to the proposed that incorporate several of the comments. Amendments include:

- 1) Definition clarifications and additions;
  - 2) Language changes in 7.0 and 10.0 to clarify and align with federal language;
  - 3) Additional language as suggested by Councils
  - 4) Addition of qualitative measures for Partnership Zone selection.
-

In addition, the Councils also commented on the elimination of recalculating of the authorization to use a student's highest score to calculate AYP if a student retakes a portion of the DSTP after school. This authorization was removed because summer school retests were eliminated by action of the General Assembly. The Councils and State Board also were concerned with the non-aggregable scores used for AYP calculations and the authorization for districts to assign the intra-district intensive learning centers, special schools or special programs as accountability schools. The Department intends to revisit these concerns with the new statewide assessment system (DCAS).

## **II. FINDINGS OF FACTS**

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 103 Accountability for Schools, Districts and the State to make additional changes from what was proposed in the June 2009 Register of Regulations. At that time, the amendments focused on: 1) corrections and updates to align with the State Accountability Plan provided to the U.S. Department of Education for NCLB; 2) amendments to reflect changes to the DSTP; and 3) alignment with the budget language. These changes include, but are not limited to, options and requirements for schools and districts in school improvement. Additional changes have been made based on comments received during the comment period.

## **III. DECISION TO AMEND THE REGULATION**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 103 Accountability for Schools, Districts and the State. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 103 Accountability for Schools, Districts and the State attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 103 Accountability for Schools, Districts and the State hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## **IV. TEXT AND CITATION**

The text of 14 DE Admin. Code 103 Accountability for Schools, Districts and the State amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 DE Admin. Code 103 Accountability for Schools, Districts and the State in the Administrative Code of Regulations for the Department of Education.

## **V. EFFECTIVE DATE OF ORDER**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del.C. §122 on January 14, 2010. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 14th day of January 2010.

### **DEPARTMENT OF EDUCATION**

Lillian M. Lowery, Ed. D., Secretary of Education  
Approved this 14th day of January 2010

### **STATE BOARD OF EDUCATION**

Teri Quinn Gray, President  
G. Patrick Heffernan  
Jorge L. Melendez  
Barbara B. Rutt

Dennis J. Savage  
Dr. Terry M. Whittaker  
Dr. James L. Wilson

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**\*Please Note: Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:**

[103 Accountability for Schools, Districts and the State](#)

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 106

### REGULATORY IMPLEMENTING ORDER

#### 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II)

#### 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 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II). The amendments include an effective date and a cross reference to a new proposed regulation designed to replace this regulation with the 2011-2012 school year. Other technical amendments have been made.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Thursday, December 3, 2009, in the form hereto attached as Exhibit "A". No comments were received.

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) in order to include an effective date and a cross reference to a new proposed regulation designed to replace this regulation with the 2011-2012 school year. Other technical amendments have been made.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II). Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) 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 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 DE Admin. Code 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) 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 14, 2010. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 14th day of January 2010.

**DEPARTMENT OF EDUCATION**

Lillian M. Lowery, Ed. D., Secretary of Education

Approved this 14th day of January 2010.

**STATE BOARD OF EDUCATION**

Teri Quinn Gray, President

G. Patrick Heffernan

Jorge L. Melendez

Barbara B. Rutt

Dennis J. Savage

Dr. Terry M. Whittaker

Dr. James L. Wilson

**\*Please note that no changes were made to the regulation as originally proposed and published in the December 2009 issue of the *Register* at page 725 (13 DE Reg. 725). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[106 Teacher Appraisal Process Delaware Performance Appraisal System \(DPAS II\)](#)

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**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 106A

**ORDER**

**106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised**

**I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to adopt a new regulation 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. This regulation will become effective July 1, 2011 and will replace 14 DE Admin. Code 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II). The changes from the current teacher appraisal process include re-defining the Student Improvement component of DPAS II to require a showing of Student Growth. Changes were also made to the Summative Evaluation ratings, adding a new "Highly Effective" rating and amending the means of determining the Summative rating. The amendments also change some of the appraisal cycles and the improvement plan components.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Thursday, December 3, 2009, in the form hereto attached as *Exhibit "A"*. Comments were received from Delaware administrators. One concern was related to the additional announced observation of novice teachers without additional administrative support. There were also comments on the need for clear criteria related to Student Achievement. The Department plans to engage in the development of clear criteria related to Student Achievement and Student Growth over the next several months. The Department also made technical changes based on the comments.

**II. Findings of Facts**

The Secretary finds that it is appropriate to add a new regulation 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised that reflects the additional rating of "Highly Effective" and emphasizes Student Improvement in a teacher's evaluation.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to add a new regulation 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised 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** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised 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 14, 2010. 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 14<sup>th</sup> day of January 2010.

#### DEPARTMENT OF EDUCATION

Lillian M. Lowery, Ed. D., Secretary of Education

Approved this 14<sup>th</sup> day of January 2010

#### STATE BOARD OF EDUCATION

Teri Quinn Gray, President

G. Patrick Heffernan

Jorge L. Melendez

Barbara B. Rutt

Dennis J. Savage

Dr. Terry M. Whittaker

Dr. James L. Wilson

### 106A Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

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

### **3.0 Appraisal Cycles**

- 3.1 Experienced teachers who have earned a rating of "Highly Effective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at least once every two (2) years. The Student Improvement component for Highly Effective teachers shall be evaluated each year, regardless of whether or not a Summative Evaluation is conducted. If a Highly Effective teacher does not achieve a Satisfactory rating on the Student Improvement Component, the teacher shall receive a Summative Evaluation the following year, regardless of whether the teacher would otherwise be due for a Summative Evaluation pursuant to this section.
- 3.2 Experienced teachers who have earned a rating of "Effective" and have earned "Satisfactory" ratings on [at least] four (4) of the components found in 5.0, including Student Improvement, on his or her most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at least once every two (2) years.

- 3.3 Experienced teachers who are not otherwise included in 3.1 or 3.2 shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one (1) year period. These teachers shall have an Improvement Plan which may require additional observations and other types of monitoring as outlined in the DPAS II Revised Guide for Teachers.
- 3.4 Novice teachers shall receive a minimum of two (2) Announced Observations and one (1) Unannounced Observation with a Summative Evaluation every year. Novice teachers who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observations or other types of monitoring as outlined in the DPAS II Revised Guide for Teachers.

#### **4.0 DPAS II Guide for Teachers**

- 4.1 All school districts and charter schools shall use the manual entitled DPAS II Guide Revised for Teachers as developed and as may be amended by the Department of Education in collaboration with DASA and DSEA to implement the appraisal system.
- 4.2 The manual shall contain, at a minimum, the following:
- 4.2.1 Specific details about each of the five (5) components listed in 5.1.
- 4.2.2 All forms or documents needed to complete the requirements of the appraisal process.
- 4.2.3 Specific procedures to implement the appraisal system.

#### **5.0 Appraisal Components and Appraisal Criteria**

- 5.1 The following five (5) Appraisal Components, including any Appraisal Criteria specified for each, shall be the basis upon which the performance of a teacher shall be evaluated by a credentialed evaluator:
- 5.1.1 Planning and Preparation
- 5.1.1.1 Selecting Instructional Goals: Teacher selects instructional goals that are aligned with the DE content standards and the district or charter school's curricula. Goals are appropriate for the learners and reflect high expectations for all students, consistent with State Assessment levels of performance where applicable.
- 5.1.1.2 Designing Coherent Instruction: Teacher plans for learning activities that align with the instructional goals and support student learning. Instructional planning shows a structure and selection of materials and activities that support student learning relative to the district or charter school's curricula.
- 5.1.1.3 Demonstrating Knowledge of Content and Pedagogy: Teacher shows his or her knowledge of content and how to teach it to a variety of learners. The teacher's plans include natural connections among content areas that deepen student learning. The content that he or she teaches is aligned to the district or charter school's curricula.
- 5.1.1.4 Demonstrating Knowledge of Students: Teacher shows his or her knowledge of student developmental characteristics; approaches to learning, knowledge, and skills; interests; cultural heritage; and, where applicable, State Assessment performance levels.
- 5.1.2 Classroom Environment
- 5.1.2.1 Managing Classroom Procedures: Teacher has clearly defined procedures for managing learning time, transitions between learning events, and routines that maximize learning time.
- 5.1.2.2 Managing Student Behavior: Teacher establishes behavioral expectations and consequences and monitors student conduct. Teacher responds to student behavior in appropriate and effective ways to minimize disruptions.
- 5.1.2.3 Creating an Environment to Support Learning: Teacher creates an atmosphere in which learning is valued. Teacher-to-student and student-to-student interactions show rapport that is grounded in mutual respect.

5.1.2.4 Organizing Physical Space: Teacher organizes, allocates, and manages physical space to create a safe learning environment. Teacher uses physical resources to contribute to effective instruction and makes resources accessible to all students.

## 5.1.3 Instruction

5.1.3.1 Engaging Students in Learning: Content is appropriate, clear, and linked to student knowledge and experience. Content is aligned with the district or charter school's curricula. Activities and assignments engage all students. Instructional materials are suitable to the instructional goals. The instruction is coherent and paced appropriately for all students.

5.1.3.2 Demonstrating Flexibility and Responsiveness: Teacher has a repertoire of instructional strategies and makes use of them to make modifications to lessons as needed. Teacher differentiates instruction based on learner characteristics and achievement data.

5.1.3.3 Communicating Clearly and Accurately: Verbal and written communication is clear and appropriate to students' ages, backgrounds, and levels of understanding.

5.1.3.4 Using Questioning and Discussion Techniques: Questions are appropriate to the content and level of students' understanding. Teacher encourages students to pose their own questions and is responsive to student questions. Teacher facilitates student-led discussions.

## 5.1.4 Professional Responsibilities

5.1.4.1 Communicating with Families: Teacher shares information about the school's educational program and expectations for student performance. Teacher develops a mechanism for two-way communication with families about student progress, behavior, and personal needs or concerns.

5.1.4.2 Developing a Student Record System: Teacher keeps records of attendance, disciplinary actions, emergency contact information, and personal information. Teacher shares relevant information with appropriate school personnel.

5.1.4.3 Growing and Developing Professionally: Teacher chooses and participates in professional development that is aligned with his or her professional needs and aligned with the needs of the school, district or charter school, or students.

5.1.4.4 Reflecting on Professional Practice: Teacher engages in reflective thinking as an individual, as a team participant, or as a school community member with the goal of improving instruction and learning for all students.

## 5.1.5 Student Improvement

5.1.5.1 Measuring Student Improvement: Teacher's [students] collectively demonstrate appropriate levels of Student Growth as benchmarked against standards to be set by the Secretary based on input from stakeholder groups.

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the December 2009 issue of the *Register* at page 732 (13 DE Reg. 732). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**[106A Teacher Appraisal Process Delaware Performance Appraisal System \(DPAS II\) Revised](#)**

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 108

### REGULATORY IMPLEMENTING ORDER

**108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II)**

#### 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** 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II). The amendments include an effective date and a cross reference to a new proposed regulation designed to replace this regulation with the 2011-2012 school year. Other technical amendments have been made.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Thursday, December 3, 2009, in the form hereto attached as *Exhibit "A"*. No comments were received.

## II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II). The amendments include an effective date and a cross reference to a new proposed regulation designed to replace this regulation with the 2011-2012 school year. Other technical amendments have been made.

## III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II). Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) 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** 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) 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 14, 2010. 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 14<sup>th</sup> day of January 2010.

### DEPARTMENT OF EDUCATION

Lillian M. Lowery, Ed. D., Secretary of Education

Approved this 14<sup>th</sup> day of January 2010

### STATE BOARD OF EDUCATION

Teri Quinn Gray, President

G. Patrick Heffernan

Jorge L. Melendez

Barbara B. Rutt

Dennis J. Savage

Dr. Terry M. Whittaker

Dr. James L. Wilson

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\*Please note that no changes were made to the regulation as originally proposed and published in the December 2009 issue of the *Register* at page 738 (13 DE Reg. 738). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[108 Administrator Appraisal Process Delaware Performance Appraisal System \(DPAS II\)](#)

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 108A

### REGULATORY IMPLEMENTING ORDER

#### 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised

##### I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to adopt a new regulation 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. The regulation will become effective July 1, 2011 and will replace 14 DE Admin. Code 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II). The changes from the current administrator appraisal process include re-defining the Student Improvement component of DPAS II for demonstration of Student Growth. Changes were also made to the Summative Evaluation ratings, adding a new "Highly Effective" rating and amending the means of determining the Summative rating. The amendments also change some of the appraisal cycles and the improvement plan components.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Thursday, December 3, 2009, in the form hereto attached as *Exhibit "A"*. Comments were received from Delaware administrators. One concern was related to determining which students are assigned to the administrator for purposes of the Student Improvement component. Additionally, a comment was received related to clear and consistent measures in determining student growth. It was also commented that the local collective bargaining unit may not be the appropriate entity in determining the alternative measures for student achievement in regard to the administrator's evaluation since administrators are not part of a collective bargaining unit. Another comment related to the Improvement Plan and that it be consistent with the changes in the revised Teacher DPAS II Revised regulation related to multiple opportunities for observation and feedback. The Department plans to engage in the development of clear criteria related to Student Achievement and Student Growth over the next several months and also address additional observations for administrators.

##### II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised in order to that reflects the additional rating of "Highly Effective" and emphasizes Student Improvement in a administrator's evaluation.

##### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised 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** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised 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 14, 2010. 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 14<sup>th</sup> day of January 2010.

## DEPARTMENT OF EDUCATION

Lillian M. Lowery, Ed. D., Secretary of Education

Approved this 14<sup>th</sup> day of January 2010

## STATE BOARD OF EDUCATION

Teri Quinn Gray, President

G. Patrick Heffernan

Jorge L. Melendez

Barbara B. Rutt

Dennis J. Savage

Dr. Terry M. Whittaker

Dr. James L. Wilson

**108A Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) Revised**  
(Break in Continuity of Sections)

2.0 **Definitions**

The following definitions shall apply for purposes of this regulation:

**"Board"** shall mean the local board of education or charter school board of directors.

**"Credentialed Evaluator"** shall mean the individual, usually the supervisor of the administrator, who has successfully completed the evaluation training in accordance with 10.0. A superintendent shall be evaluated by member(s) of the local school board of education who shall also have successfully completed the evaluation training in accordance with 10.0. The Credentialed Evaluator may also be referred to as "Evaluator".

**"DASA"** shall mean the Delaware Association of School Administrators.

**"DPAS II Revised Guide for Administrators"** shall mean the manual that contains the prescribed forms, detailed procedures, evaluation criteria and other relevant documents that are used to implement the appraisal process.

**"DSEA"** shall mean the Delaware State Education Association.

**"Experienced Administrator"** shall mean an administrator who has three (3) or more years of service as an administrator.

**"Formative Process"** shall consist of the Goal Setting Conference, self evaluation, a survey of staff that are supervised by the administrator, and formative conferences and reports as outlined in the DPAS II Guide for Administrators.

**"Improvement Plan"** shall be the plan that an administrator and evaluator mutually develop in accordance with 8.0.

"Inexperienced Administrator" shall mean an administrator who has less than three (3) years of service as an administrator.

"Satisfactory Component Rating" shall mean the administrator's performance demonstrates an understanding of the concepts of the component.

"Satisfactory Evaluation" shall be equivalent to the overall "Effective" or "Needs Improvement" rating on the Summative Evaluation.

"State Assessment" shall mean the Delaware Student Testing Program (DSTP) or its successor.

"Student Achievement" shall mean

(a) For tested grades and subjects:

(1) Students scores on the DSTP or successor statewide assessment; and, as appropriate,

(2) Other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms.

(b) For non-tested grades and subjects: alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measure of student achievement that are rigorous and comparable across classrooms.

Such alternative measures shall be approved by the Department and developed in partnership with the ~~local collective bargaining representatives~~ Delaware Association of School Administrators (DASA) and the Delaware School Boards Association (DSBA)].

"Student Growth" shall mean the change in achievement data for an individual student between two points in time. Growth may also include other measures that are rigorous and comparable across classrooms.

"Summative Evaluation" shall be the final evaluation at the conclusion of the appraisal cycle.

"Unsatisfactory Component Rating" shall mean the administrator's performance does not demonstrate an understanding of the concepts of the component.

"Unsatisfactory Evaluation" shall be the equivalent to the overall "Ineffective" rating on the Summative Evaluation.

"Working Day" shall mean a day when the employee would normally be working in that district or charter school.

\*Please note that no additional changes were made to the regulation as originally proposed and published in the December 2009 issue of the *Register* at page 745 (13 DE Reg. 745). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[108A Administrator Appraisal Process Delaware Performance Appraisal System \(DPAS II\) Revised](#)

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**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 252

**REGULATORY IMPLEMENTING ORDER**

**252 Required Educational Records and Transfer and Maintenance of Educational Records**

**I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to amend 14 DE Admin. Code 252 Required Educational Records and Transfer and Maintenance of Educational Records as a result of the five year review cycle. The amendments make changes to the definition of Discipline Records to align with federal reporting; references to the state student

assessment program; a cross regulatory reference because of changes to the Children with Disabilities regulations; and outlines a charter schools responsibility in regard to Delaware Public Archives.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Thursday, December 3, 2009, in the form hereto attached as Exhibit "A". Comments were received by the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The Department has incorporated one of the recommendations provided by the Councils. First, section 2.1.3 has been revised to require the Cumulative Record File to include records related to the identification, evaluation, placement and provision of FAPE to student identified under Section 504 and provided with accommodation plans. The second proposed revision is deemed unnecessary as section 3.1 relates to a new school's authority to request transfer of records and section 3.2 relates to the original schools obligation to transfer records to a new school.

## II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records as a result of the five year review cycle. The amendments make changes to the definition of Discipline Records to align with federal reporting; references to the state student assessment program; a cross regulatory reference because of changes to the Children with Disabilities regulations; and outlines a charter schools responsibility in regard to Delaware Public Archives.

## III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records 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** 252 Required Educational Records and Transfer and Maintenance of Educational Records amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records 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 14, 2010. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

**IT IS SO ORDERED** the 14th day of January 2010.

### DEPARTMENT OF EDUCATION

Lillian M. Lowery, Ed. D., Secretary of Education

Approved this 14<sup>th</sup> day of January 2010

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## 252 Required Educational Records and Transfer and Maintenance of Educational Records

### 1.0 Definitions

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

“**Court Orders**” shall mean any written direction from a court of competent jurisdiction directed to the student or affecting the student’s care or custody.

“**Discipline Record**” shall mean information about any and all periods of ~~out-of-school~~ suspension or of expulsion from the regular school setting imposed on a student as a result of an infraction of the school or district’s code of conduct or other rules.

“**Emergency Treatment Card**” shall mean the card containing the general emergency information and procedures for the care of a student when the student becomes sick or injured in school as required in 14 **DE Admin Code** 811.

“**Identifying Data**” shall mean the name of the student, date of birth, sex, race and ethnicity, address, telephone number, Delaware student identification number and the name of the parent(s), guardian(s) or Relative Caregiver.

“**Progress Report**” shall mean a single record maintained for each student in kindergarten through grade 8 that contains end of year and up to date grades; standardized test(s) scores such as the DSTP or successor state student assessment; and attendance data for each year of the student’s attendance.

“**School Health Record**” shall mean the form required by 14 **DE Admin Code** 811 for Delaware public school students.

“**Student Transcript**” shall mean a single record maintained for each student in grades 9 and above that contains the following: end of year and up to date grades; credits earned; class rank; Grade Point Average (GPA); withdrawal or graduation date; standardized test(s) scores such as the DSTP or successor state student assessment, SAT, PSAT, ACT; attendance data and school activities. If applicable, a list of the career technical competencies achieved by a student enrolled in a specific career technical program shall also be included.

### 2.0 Education Records Required by Schools in Delaware

- 2.1 Each Delaware school shall maintain a Cumulative Record File either as an electronic or paper file for each student enrolled.
  - 2.1.1 The student Cumulative Record File shall contain the Emergency Treatment Card, Identifying Data, School Health Record, Progress Report, Student Transcript (for students in grades 9 and above) and Discipline Record.
  - 2.1.2 The student Cumulative Record File shall also contain any Court Orders in the school or district’s possession, to the extent the school or district maintains such documents for an individual student.
  - 2.1.3 In addition, the Cumulative Record File for a child with a disability as defined in 14 **DE Admin Code** 925 [or for a child identified under **Section 504**] shall contain any records related to the identification, evaluation, placement, and provision of a free appropriate public education. Such documents may be collected and maintained separately.

### 3.0 Transfer of the Records of Public School and Private Schools Students

- 3.1 When a student transfers from a public school, private school or an educational program operated by the Department of Services for Children Youth and Their Families to any other school in Delaware, the receiving school shall immediately request the Cumulative Record File from the sending school or program.
- 3.2 The Cumulative Record File shall follow each student transferred from one school to another including files for each student with disabilities transferred from one school to another.

- 3.2.1 Public schools, school districts, private schools and educational programs operated by the Department of Services for Children Youth and Their Families shall promptly transfer a student's Cumulative Record File upon the request of a receiving school.
- 3.2.2 Unpaid student fees or fines shall not be a basis for a public school, school district or an educational program operated by the Department of Services for Children Youth and Their Families to deny or to delay transfer of the Cumulative Record File.
- 3.2.3 Students shall not be denied enrollment into a public school on the grounds that the student's Cumulative Record File has not been received.
- 3.3 Before transferring student records, a public school, school district or private school shall specifically confirm that the Cumulative Record File contains the student's Discipline Record.
- 3.4 When students transfer to a Delaware school from any other school including a school in a foreign country the receiving school is responsible for having the transcripts evaluated.

#### 4.0 Maintenance of the Education Records of Public Schools

- 4.1 The *Delaware School District General Records Retention Schedule* published by the Delaware Public Archives shall be followed as to the length of time and special considerations for the maintenance of education records.
- 4.2 Contracts for storage of student records of graduates, withdrawals and special education students for district storage, shall be initiated between the school district or charter school and the Delaware Public Archives.
- 4.3 The Cumulative Record Files for students who have graduated from or who left school prior to graduation from high school shall be stored at the school or district of last attendance or in the Delaware Public Archives.

#### 5.0 Destruction of Education Records of Public Schools

- 5.1 The *Delaware School District General Records Retention Schedule* published by the Delaware Public Archives shall be followed as to the length of time and special considerations for the destruction of any education records.
- 5.2 The destruction of educational records of children with disabilities shall also comply with the requirements of 14 DE Admin Code 925 927.

8 DE Reg. 1112 (2/1/05)

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 714

#### REGULATORY IMPLEMENTING ORDER

### 714 Professional Employee Work Stoppage or Strike

#### I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 DE Admin. Code 714 Professional Employee Work Stoppage or Strike for formatting purposes only. This regulation has been reviewed as a result of the 5 year mandatory review cycle.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Thursday, December 3, 2009, in the format attached as *Exhibit "A"*. The Department did not receive comments on this regulation.

**II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 714 Professional Employee Work Stoppage or Strike in order for formatting purposes only. This regulation has been reviewed as a result of the 5 year mandatory review cycle.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 714 Professional Employee Work Stoppage or Strike. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 714 Professional Employee Work Stoppage or Strike attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 714 Professional Employee Work Stoppage or Strike 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** 714 Professional Employee Work Stoppage or Strike amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 714 Professional Employee Work Stoppage or Strike 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 14, 2010. 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 14<sup>th</sup> day of January 2010.

**DEPARTMENT OF EDUCATION**

Lillian M. Lowery, Ed. D., Secretary of Education

Approved this 14<sup>th</sup> day of January 2010

**STATE BOARD OF EDUCATION**

Teri Quinn Gray, President

G. Patrick Heffernan

Jorge L. Melendez

Barbara B. Rutt

Dennis J. Savage

Dr. Terry M. Whittaker

Dr. James L. Wilson

**714 Professional Employee Work Stoppage or Strike****1.0 Work Stoppage or Strike**

**1.1** If it is determined that illegal activity such as a work stoppage or strike has taken place, the local Board of Education or charter school shall:

**1.1.1** Adopt a resolution informing the exclusive negotiating representative that the employee organization has violated the terms of 14 **Del.C.** §4016, and such organization as the exclusive



- representative will be revoked at a time to be determined by the local Board of Education or charter school;
- 1.1.2 Refrain from making payroll deductions for the dues of any employee organization, which violated the law unless such dues are deducted pursuant to a court order entered for the purpose of securing the payment of a contempt fine;
- 1.1.3 Deduct salary for unexcused absence in accordance with 14 **Del.C.** §1320;
- 1.1.4 Execute items 1.1.2 and 1.1.3 above in the preparation of the next regular payroll;
- 1.1.5 Require a medical certificate for each employee absent claiming sick leave during the period of the strike.

## 2.0 School Days Lost

- 2.1 As a part of any settlement following a strike or work stoppage, the local Board of Education or charter school shall not enter into any direct or implied agreement, which would permit school days lost because of the strike to be rescheduled.
- 2.2 Similarly, the local Board of Education or charter school shall not agree to extend the school year or to request such an extension from the Secretary of Education.

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

**8 DE Reg. 1132 (2/1/05)**

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
**14 DE Admin. Code 725**

### REGULATORY IMPLEMENTING ORDER

#### 725 School Administrator Contracts and Agreements

#### I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 DE **Admin. Code 725** School Administrator Contracts and Agreements. This regulation has been reviewed pursuant to the five year review cycle.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Thursday, December 3, 2009, in the form hereto attached as Exhibit "A". The Department did not receive comments on this regulation.

#### II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE **Admin. Code 725** School Administrator Contracts and Agreements. This regulation has been reviewed pursuant to the five year review cycle.

#### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE **Admin. Code 725** School Administrator Contracts and Agreements. Therefore, pursuant to 14 **Del.C.** §122, 14 DE **Admin. Code 725** School Administrator Contracts and Agreements attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 DE **Admin. Code 725** School Administrator Contracts and Agreements

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** 725 School Administrator Contracts and Agreements amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 DE **Admin. Code** 725 School Administrator Contracts and Agreements 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 14, 2010. 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 14<sup>th</sup> day of January 2010.

#### **DEPARTMENT OF EDUCATION**

Lillian M. Lowery, Ed. D., Secretary of Education

Approved this 14<sup>th</sup> day of January 2010

#### **STATE BOARD OF EDUCATION**

Teri Quinn Gray, President

G. Patrick Heffernan

Jorge L. Melendez

Barbara B. Rutt

Dennis J. Savage

Dr. Terry M. Whittaker

Dr. James L. Wilson

### **725 School Administrator Contracts and Agreements**

#### **1.0 Duties of a School Administrator**

The Administrator shall faithfully perform those duties which may be assigned by the local Board of Education and shall serve the School District in a professional manner. The Administrator shall observe and comply with the laws of the State of Delaware and with the regulations of the State Department of Education and the local Board of Education as currently in force and as from time to time amended, enacted or promulgated.

#### **2.0 Non Renewal of the Existing Contract and Agreements**

Failure on the part of the local Board of Education or the Administrator to notify the other in writing by certified mail, no later than six (6) months prior to the expiration of the Agreement, of either party's intent not to renew the Agreement, will automatically result in a one year extension of the existing Agreement.

#### **3.0 Termination of a Contract with a School Administrator Prior to Expiration of the Agreement**

3.1 The Administrator shall not vacate his or her position during the term of this Agreement without the written consent of the local Board of Education.

- 3.2 The local Board of Education shall not terminate the Contract, prior to the expiration date, except for good and just cause and shall provide the opportunity for a fair hearing before the local Board of Education or before a Hearing Officer designated by the local Board of Education. Prior to any hearing in regard to the termination of the Administrator, the local Board of Education shall serve the Administrator with a written statement of the reasons for termination.
- 3.3 If the local Board of Education designates a Hearing Officer to conduct such a hearing, a majority of the local Board of Education shall convene to review the record of the proceedings before the Hearing Officer and the Hearing Officer's report and recommendation to the local Board of Education, and within fifteen (15) days of the hearing before the Hearing Officer, shall submit to the Administrator its decision in writing.
- 3.4 If the Administrator chooses to be represented by legal counsel, all legal expenses incurred by the Administrator in connection with any termination hearing shall be borne by the Administrator.
- 3.5 Appeal from a decision of the local Board of Education concerning the provisions of the Agreement may be made to the State Board of Education.

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

**8 DE Reg. 1133 (2/1/05)**

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**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 738

**REGULATORY IMPLEMENTING ORDER**

**738 Financial Goals for Instruction and Instruction-related Expenditures**

**I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to amend 14 DE Admin. Code by adding 738 Financial Goals for Instruction and Instruction-related Expenditures. This regulation is a result of legislation from the 145<sup>th</sup> General Assembly, House Substitute 1 to House Bill No. 119.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Thursday, December 3, 2009, in the form hereto attached as *Exhibit "A"*. Comments were received by the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The Department has incorporated several of the recommendations provided by the Councils. The changes included clarification language and the removal of the term "agency transaction" as it appeared in the definition of "expenditures". This deletion was done after consultation with NCES since they are removing this term from their definition. There were two suggestions that were not included, specifically a reference to "middle school" and an explicit reporting by the districts and charter schools of the data. The suggested revisions were deemed unnecessary because (1) secondary and elementary are dichotomous references and middle school is included by reference to elementary school; and (2) the Department collects data directly from the National Center of Education Statistics NCES therefore a separate report from districts and charter schools is not needed.

**II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 DE Admin. Code by adding 738 Financial Goals for Instruction and Instruction-related Expenditures. This regulation is a result of legislation from the 145<sup>th</sup> General Assembly, House Substitute 1 to House Bill No. 119.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 738 Financial Goals for Instruction and Instruction-related Expenditures. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 738 Financial Goals for Instruction and Instruction-related Expenditures attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 738 Financial Goals for Instruction and Instruction-related Expenditures 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** 738 Financial Goals for Instruction and Instruction-related Expenditures amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 738 Financial Goals for Instruction and Instruction-related Expenditures 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 14, 2010. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 14th day of January 2010.

**DEPARTMENT OF EDUCATION**

Lillian M. Lowery, Ed. D., Secretary of Education

Approved this 14<sup>th</sup> day of January 2010

**738 Financial Goals for Instruction and Instruction-related Expenditures****1.0 Purpose**

The purpose of this regulation is to outline goals for Delaware's local school districts and charter schools with respect to the percentage of cumulative revenues that shall be used for instruction and instruction-related expenditures, as those terms are used by the National Center for Educational Statistics or its successor organization, as required pursuant to 14 **Del.C.** §1510.

**2.0 Definitions**

"**Charter School**" shall mean a school pursuant to 14 **Del.C.**, Chapter 5.

"**Expenditures**" shall mean all amounts of money paid out by a school system, net of recoveries and other correcting transactions, other than for retirement of debt, purchase of securities, **[and]** extension of loans, ~~and agency transactions~~. Expenditures include only external transactions of a school system and exclude noncash transactions such as the provision of pre requisites or other in-kind payments. Definition from the National Center for Education Statistics NCES 2009-338 Sept 2009.

"**Instruction and Instruction-related expenditure**" shall mean payments for instruction and instruction staff support services. These are expenditures that are directly related to providing instruction and for activities that assist with classroom instruction. These include salaries and benefits for teachers, teaching assistants, librarians and library aides, in-service teacher trainers, curriculum development, student assessment, technology (for students but outside the classroom), and supplies

and purchased services related to these activities. Definition from the National Center for Education Statistics NCES 2009-338 Sept. 2009.

"Local Educational Agency" or "LEA" means a public board of education or other public authority legally constituted within Delaware for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a school district, or for a combination of school districts. The term includes an educational service agency, as defined in this section, and any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

"Local School District" shall mean a reorganized school district or vocational technical school district established pursuant to 14 Del.C., Chapter 10.

"Total revenues" is the sum of revenue contributions emerging from local, state, and federal sources. Revenue received from bond sales or the sale of property or equipment is not included. Definition from the National Center for Education Statistics NCES 2009-338 Sept. 2009.

### **3.0 Goals for Instruction and Instruction-Related Expenditures**

- 3.1 Each local school district shall increase Instruction and Instruction-related expenditures as a percentage of Total Revenues to exceed the national average by at least 5% from the most current data available from the U. S. Department of Education, National Center for Education Statistics, Institute of Education Sciences. The baseline shall be 54.9%. This represents data from FY07 which is the latest information available from the National Center for Education Statistics.
- 3.2 Each charter school shall increase Instruction and Instruction-related expenditures as a percentage of Total Revenues to meet the national average from the most current data available by the U.S. Department of Education, National Center for Education Statistics, Institute of Education Sciences. The baseline for the 2010-2011 school year shall be 52.3%. This represents data from FY07 which is the latest information available from the National Center for Education Statistics.
- 3.3 Beginning with the 2009-2010 school year, local school districts and charter schools shall provide data as required by NCES for that current school year to the Department as required by timelines imposed by NCES, but no later than July 15th [following the end of the school year].
- 3.4 Beginning with the 2010-11 school year, the goal for each local school district and charter school shall be to budget to reflect 3.1 and 3.2.

### **4.0 Department Review and Oversight**

- 4.1 By December 1st of each year, the Department shall notify the local school district and charter schools the goals, based the latest NCES data, for 3.1 and 3.2.
- 4.2 By March 1, 2010 for the 2008-2009 school year, and December 31st following the end of each school year thereafter, the Department shall provide a report on its website describing each local school district[’s] and charter school[’s] status with respect to the goals in 3.1 and 3.2. For charter schools, the description shall at a minimum include any expenses associated with facilities.

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## **PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))  
14 DE Admin. Code 1511

### **REGULATORY IMPLEMENTING ORDER**

#### **1511 Issuance and Renewal of Continuing License**

#### **I. Summary of the Evidence and Information Submitted**

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1511 Issuance and Renewal of Continuing License. Delaware Code mandates that the Professional Standards Board shall review the professional development requirements within the regulation on a n ongoing basis. Upo n review, the Board has amended many sections to reflect research-based best practice and to align the Options with a more current definition of professional development. Other requisite amendments address expired licenses, educators coming from other jurisdictions or who have been out of the profession for an extended period of time and renewal details.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on Tuesday December 1, 2009 in the form hereto attached as Exhibit "A". The notice invited written comments. No written comments were received.

## **II. Findings of Facts**

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

## **III. Decision to Amend the Regulation**

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## **IV. Text and Citation**

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1511 of the *Administrative Code of Regulations* of the Department of Education.

## **V. Effective Date of Order**

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 7<sup>TH</sup> DAY OF JANUARY, 2010**

Kathleen Thomas, Chair  
Michael Casson  
Joanne Christian  
Samtra Devard  
Marilyn Dollard  
Karen Gordon  
Cristy Greaves  
Lori Hudson

David Kohan  
Jill Lewandowski  
Wendy Murray  
Gretchen Pikus  
Whitney Price  
Shelley Rouser  
Karen Schilling-Ross  
Juanita Wilson

**IT IS SO ORDERED THE 14<sup>th</sup> DAY OF JANUARY, 2010**

**DEPARTMENT OF EDUCATION**

Lillian M. Lowery, Ed. D., Secretary of Education

Approved this 14<sup>th</sup> day of January, 2010.

**STATE BOARD OF EDUCATION**

Teri Quinn Gray, President  
G. Patrick Heffernan  
Jorge L. Melendez  
Barbara B. Rutt

Dennis J. Savage  
Dr. Terry M. Whittaker  
Dr. James L. Wilson

**1511 Issuance and Renewal of Continuing License**

\*Please note that no changes were made to the regulation as originally proposed and published in the December 2009 issue of the *Register* at page 762 (13 DE Reg. 762). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[1511 Issuance and Renewal of Continuing License](#)

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF SOCIAL SERVICES**

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

**ORDER****Food Supplement Program: DSSM 9068 & 9085 - Certification Periods Reporting Changes****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Food Supplement Program policies in the Division of Social Services Manual (DSSM) related to *Certification Periods* and *Reporting Changes*. 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 2009 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2009 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 proposal amends the Division of Social Services Manual (DSSM) regarding the Food Supplement Program (FSP).

**Statutory Authority**

7 CFR §273.10(f), *Certification Periods*; and,  
7 CFR §273.12, *Requirement for Change Reporting Households*

## Summary of Proposal

The purpose of the proposed amendments at DSSM 9068, *Certification Periods* and DSSM 9085, *Reporting Changes* is to extend the food benefit certification periods from 6 and 12 months to **12 and 24 months**. The changes allow DSS to give simplified reporting households a 12-month certification period, with a 6-month interim report; and, elderly or disabled households with no earned income a 24-month certification period with a 12<sup>th</sup> month interim report.

These changes will benefit households by allowing more time between applications and reducing staff workload. The households are required to submit an interim report in month 6 and month 12 of their respective certification periods in order to continue benefits for the 12 and 24 month periods. Failure to return the interim reports will result in the food benefit case closing.

Also, removed language requiring clients to report changes that occur between the interview and before their certification notice is received. This no longer applies due to simplified reporting.

## Summary of Comments Received with Agency Response and Explanation of Changes

The Governor's Advisory Council for Exceptional Citizens (GAC EC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Social Services (DSS) has considered each comment and responds as follows.

The Councils endorse the proposed regulation subject to two recommendations.

**Agency Response:** DSS appreciates your endorsement of the proposed changes.

First, in §9085, first line, DSS may wish to delete or modify the outdated reference to "food stamp".

**Agency Response:** DSS agrees. Correction made to the final order regulation.

Second, while recognizing that the federal regulations [e.g. 7 C.F.R. 273.10(f)] explicitly use the term "elderly or disabled", DSS may wish to consider whether it could adopt conforming standards while using "people-first" language in §§9068.1 and 9068.2.

**Agency Response:** DSS reviewed your second recommendation and feel we need to keep the references to 'elderly or disabled' consistent throughout the whole FSP policy manual. Food and Nutrition Service uses the terms elderly or disabled through their regulations. Their definition of disabled for certification purposes is defined as someone who receives certain disability payments as defined in 7 CFR 271.2. No change to the regulation was made as a result of this comment.

## Findings of Fact:

The Department finds that the proposed changes as set forth in the December 2009 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding *Certification Periods* and *Reporting Changes* is adopted and shall be final effective February 10, 2010.

Rita M. Landgraf, Secretary, DHSS

**\*Please note that no changes were made to the regulations as originally proposed and published in the December 2009 issue of the Register at page 779 (13 DE Reg. 779). Therefore, the final regulations are not being republished. Copies of the final regulations are available at:**

[DSSM 9068 & 9085 - Certification Periods Reporting Changes](#)



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# FINAL REGULATIONS

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## DIVISION OF SOCIAL SERVICES

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

### PUBLIC NOTICE

#### DSSM: 11000 Child Care Subsidy Program

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to the Child Care Subsidy Program regarding *Definition and Explanation of Terms, Income Eligible/Loss of Employment or Job Transition, Income Eligible/Training, Explanation of Certificates and Loss of Need Transition*. The Department's proceedings were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of public comment pursuant to 29 Delaware Code Section 10115 in the December 2009 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2009 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 Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) to increase the period of extended child care for the purpose of job search from one month to **three** months.

#### Statutory Authority

- 45 CFR Part 98, *Child Care and Development Fund*
- 45 CFR §98.20, *A child's eligibility for child care services*

#### Summary of Proposed Changes

1) **DSSM 1 1002.9**, *Definition and Explanation of Terms*, **DSSM 1 1003.7.3**, *Income Eligible/Loss of Employment or Job Transition*, **DSSM 11003.7.4**, *Income Eligible/Training*; and, **DSSM 11004.12.1**, *Loss of Need Transition* are being amended as the child care extension for job search has increased from one month to **three** months for child care recipients who:

- lost a job and need to look for another job;
- have a gap in employment because of a transition between jobs;
- ended an education/training program and need to look for work; or,
- have a break in an education/training program.

Definitions are being revised throughout to coincide with the amended policy. Additionally, other revisions are made to clarify existing definitions.

2) **DSSM 11004.4.1**, *Explanation of Certificates*, is being amended to correct a misnomer in the policy. Group homes, as used in child care policy, are actually large family homes. All instances of group home, erroneously used in lieu of large family home, are being removed from the child care policy.

Also, the term "Food Stamp" has been replaced with "Food Benefit" throughout, as appropriate.

#### Summary of Comments Received with Agency Response and Explanation of Changes

The Governor's Advisory Council for Exceptional Citizens (GAC EC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Social Services (DSS) has considered each comment and responds as follows.

First, the most significant amendment is to increase the period of extended child care for the purpose of job search from one month to three months. Both Councils endorse this amendment.

**Agency Response:** The Division of Social Services wishes to thank you for your endorsement of the amendment to increase the period of extended care for job search from one month to three months.

Second, §11002.9AC is amended as follows:

~~Large Family Child Care Home - A place where licensed care is provided for more than six but less than twelve children. A private residence other than the child's residence, where child care services are provided by a caregiver for fewer than 24 hours per day per child.~~

DSS may wish to consider whether the first sentence should be retained. Without it, there is considerable overlap with the definition of "Family Child Care Home" in §11002.9S. For example, a family child care home with one to six children would qualify under each definition.

**Agency Response:** The Division of Social Services agrees with your recommendation to retain the first sentence in DSSM 11002.9 AC. We are amending the policy as follows, including removing the 24 hour criteria to make it consistent with the definition of a family child care home.

~~AC. Large Family Child Care Home - A place where licensed care is provided for more than six but less than twelve children. A private residence other than the child's residence, where child care services are licensed care is provided by a caregiver for fewer than 24 hours per day per child for more than six but less than twelve children who are not related to the caregiver].~~

Third, there is an anomaly in the regulation insofar as a family child care home (§11002.9S) can provide care in excess of twenty-four hours if necessitated by the parent's work. However, a large family child care home (§11002.9AC) does not have this option. It is difficult to identify a logical rationale for the distinction. DSS may wish to adopt the same authorization for both types of homes.

**Agency Response:** The Division of Social Services appreciates your comment. Thank you for pointing out the inconsistency in the two definitions. This was an oversight on our part. We have revised the definition as follows:

~~S. Family Child Care Home - A place private residence **[other than the child's residence,]** where licensed care is provided for one to six children who are not related to the caregiver. **[in some instances, care may be provided in excess of 24 hours if warranted due to the nature of the parents/caretakers work.]**~~

### Findings of Fact:

The Department finds that the proposed changes as set forth in the December 2009 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Child Care Subsidy Program policies regarding *Definition and Explanation of Terms, Income Eligible/Loss of Employment or Job Transition, Income Eligible/Training, Explanation of Certificates and Loss of Need Transition* are adopted and shall be final effective February 10, 2010.

Rita M. Landgraf, Secretary, DHSS

## DSS FINAL ORDER #10-07

## REVISIONS:

## 11002.9 Definitions and Explanation of Terms

The following words and terms, when used in the context of these policies will, unless clearly indicated otherwise, have the following meanings.

- A. TANF - Temporary Assistance for Needy Families, a program established by Title IV-A of the Social Security Act and authorized by Title 31 of the Delaware Code to provide benefits to needy children who are deprived of parental support and care. While on TANF, families are eligible for child care only as long as they are working or participating in a TANF Employment and Training activity (Categories 11 and 12).
- B. Authorization - Form 618d is the parents/caretakers authority to receive subsidized child care services and is the provider's authority to provide subsidized child care services to eligible parents/caretakers. The authorization informs providers how much care a parent is authorized to receive, what DSS will pay the provider, and what parents/caretakers must pay as part of their fee.
- C. Caregiver/Provider - The person(s), other than the parent/caretaker, whom DSS approves to provide child care services or the approved place where care is provided.
- D. Caretaker - The adult responsible for the primary support and guardianship of the child. As used here, this adult is someone other than the child's parent who acts in place of the parent. If a caretaker is unrelated to the child and has not been awarded custody by Family Court or guardianship, the caretaker is referred to the Division of Family Services to make a determination to either approve the non-relative placement or remove the child.
- E. CCDBG - Child Care and Development Block Grant. 45 CFR Parts 98 and 99 created by the Omnibus Budget Reconciliation Act of 1990 to provide federal funds without State match to:
  - 1. provide child care to low income families,
  - 2. enhance the quality and increase the supply of child care,
  - 3. provide parents the ability to choose their provider, and
  - 4. increase the availability of early childhood programs and before and after school services.
 Under the Division's DCIS II Child Care Sub system, CCDBG is part of Categories 31 and 41.
- F. CFR - Code of Federal Regulations. These are the rules the Federal Government writes to implement federal legislation. Once written and approved, they have the force of law.
- G. CCMIS - Child Care Management Information System, the name used to describe the Division's payment system for child care.
- H. Child - A person under the age of 13, or children 13 through 18 years of age if they are physically or mentally incapable of caring for themselves or in need of protective services.
- I. Child Care Category - The DCIS II Child Care Sub system code for the child care funding source. Case Managers choose category codes based on the parents/caretaker's technical eligibility for service. The codes are:
  - 11 - Participants receiving TANF and not working, but participating in TANF E&T;
  - 12 - Participants receiving TANF and working;
  - 21 - Participants receiving Food Stamps Benefits who are mandatory or voluntary participants in E&T and not receiving TANF;
  - 31 - SSBG, CCDBG, and State funds: Income eligible participants. Participants who receive FS and are not E&T mandatory or voluntary;
  - 41 - A participant who is a qualified alien or U.S. citizen is coded as a category 41 when his or her eligibility allows a non U.S. citizen or nonqualified alien to receive child care services. (Example: One child is a citizen and one is not. The citizen child is a 41.)
  - 51 - A participant is coded category 51 when s/he is not a U.S. citizen or legal alien but receives Child Care services due to a family member in category 41.

- J. Child Care Certificate - A form issued to a parent/caretaker which allows a parent/caretaker to choose a child care provider who does not have a contract with DSS. A certificate is not an authorization for child care, but a parent who wishes to select a non-contracted provider of their choice cannot get care unless the provider completes one.
- K. Child Care Parent Fee - The amount the parent/ caretaker must pay toward the cost of child care. The fee is based on the income of the parent(s) and children, or the child if the child lives with a caretaker, family size and a percentage of the cost of care based on type of care requested.
- L. Child Care Services - Those activities that assist eligible families in the arrangement of child care for their children.
- M. Child Care Centers - A place where licensed or license-exempt child care is provided on a regular basis for periods of less than 24 hours a day to 12 or more children, who are unattended by a parent or guardian.
- N. Child Care Type - Refers to the setting or place where child care is provided. The four types of care are:
1. Center based (under DCIS II Child Care Sub system Site #17 or 18),
  2. ~~Group~~ Large Family Home (under DCIS II Child Care Sub system Site #16),
  3. Family Home (under DCIS II Child Care Sub system Site #15), and
  4. In-Home (under DCIS II Child Care Sub system Site #19).
- O. DCIS II - Delaware Client Information System, the automated client information system for the Department of Health and Social Services.
- P. Educational Program - A program of instruction to achieve:
1. a basic literacy level of 8.9;
  2. instruction in English as a second language;
  3. a GED, Adult Basic Education (ABE), or High School Diploma;
  4. completion of approved special training or certificate courses; or
  5. a post-secondary degree where the degree is part of an approved DSS Employment and Training program.
- The above definition excludes the pursuit of a graduate degree or second four-year college degree. A second ~~associate's~~ associate's degree may be attained if it leads to a ~~bachelors~~ bachelor's degree. The completion of a second associate's degree can be authorized only if it has a significant chance of leading to employment.
- Q. Employment - Either part-time or full time work for which the parent/caretaker receives wages equal to the federal minimum wage or an equivalent. It also includes periods of up to ~~one month~~ three months of continued child care services when parents/caretakers lose one job and need to search for another, or when one job ends and another job has yet to start.
- R. Family Size - The total number of persons whose needs and income are considered together. This will always include the parent(s) (natural, legal, adoptive, step, and unmarried partners with a child in common) and all their dependent children under 18 living in the home.
- S. Family Child Care Home - A place— private residence [other than the child's residence,] where licensed care is provided for one to six children who are not related to the caregiver. ~~In some instances, care may be provided in excess of 24 hours if warranted due to the nature of the parents/caretakers work.~~
- T. TANF Child Care - The name of the child care program for TANF recipients who work or who are participating in a TANF Employment and Training program. Under the DCIS II Child Care Sub system, this is Category 11 and 12.
- U. Food ~~Stamp~~ Benefit Employment and Training - The program by which certain unemployed mandatory and/ or voluntary Food ~~Stamp~~ Benefit recipients participate in activities to gain skills or receive training to obtain regular, paid employment. Persons can receive child care if they need care to participate. This is referred to as Food ~~Stamp~~ Benefit Employment & Training (FS E&T). Under the Division's DCIS II Child Care Sub system, this is Category 21.

- V. In-Home Care - Care provided for a child in the child's own home by either a relative or non-relative, other than the parent/caretaker where such care is exempt from licensing requirements. It also refers to situations where care is provided by a relative in the relative's own home. This care is also exempt from licensing requirements.
- W. Income - Any type of money payment that is of gain or benefit to a family. Examples of income include wages, social security pensions, public assistance payments, child support, etc.
- X. Income Eligible - A family is financially eligible to receive child care services based on the family's gross income. It also refers to child care programs under Category 31.
- AA. Income Limit - The maximum amount of gross income a family can receive to remain financially eligible for child care services. Current income limit is 200 percent of the federal poverty level.
- AB. Job Training/Training - A program which either establishes or enhances a person's job skills. Such training either leads to employment or allows a person to maintain employment already obtained. Such training includes, but is not limited to: Food Stamp Benefit Employment & Training (FS FB E&T) contracted programs, WIA sponsored training programs, recognized school vocational programs, and on-the-job training programs.
- AC. Large Family Child Care Home - ~~A place where licensed care is provided for more than six but less than twelve children. A private residence other than the child's residence, where [child care services are licensed care is] provided [by a caregiver for fewer than 24 hours per day per child for more than six but less than twelve children who are not related to the caregiver].~~
- AD. Legal Care - Care which is either licensed or exempt from licensing requirements.
- AE. Parent - The child's natural mother, natural legal father, adoptive mother or father, or step-parent.
- AF. Parental Choice - The right of parents/caretakers to choose from a broad range of child care providers, the type and location of child care.
- AG. Protective Services - The supervision/ placement of a child by the Division of Family Services in order to monitor and prevent situations of abuse or neglect.
- AH. Physical or Mental Incapacity - A dysfunctional condition which disrupts the child's normal development patterns during which the child can not function without special care and supervision. Such condition must be verified by either a doctor or other professional with the competence to do so.
- AI. Reimbursement Rates - The maximum dollar amount the State will pay for child care services.
- AJ. Relative - Grandparents, aunts, uncles, brothers, sisters, cousins, and any other relative as defined by TANF policy, as they are related to the child.
- AK. Residing With - Living in the home of the parent or caretaker.
- AL. SSBG - Social Services Block Grant. Under the DCIS II Child Care Subsystem, this is Category 31 child care.
- AM. Seamless Services - To the extent permitted by applicable laws, a family is able to retain the same provider regardless of the source of funding, and providers are able to provide services to children regardless of the basis for the family's eligibility for assistance or the source of payment.
- AN. Self-Arranged Care - Child care which either parents or caretakers arrange on their own between themselves and providers. In this instance, the parents/caretakers choose to use a child care certificate, but the provider does not accept the State reimbursement rate for child care services. DSS limits payment for self-arranged care to its regular provider rates. Parents/caretakers, in addition to any parent fee they pay, must also pay the difference between DSS' reimbursement rates and the providers' charge.
- AO. Self-Initiated - Clients who enter an education or training program on their own. The education or training program must be comparable to a Food Stamp Benefit Employment & Training (FS FB E&T) - TANF education or training component. Self-initiated clients must receive child care services if there is a child care need.
- AP. Special Needs Child - A child under 19 years of age whose physical, emotional, or developmental needs require special care. Both the need and care must be verified by a doctor or other professional with the competence authority to do so.

- AQ. Special Needs Parent/Caretaker - An adult, who because of a special need, is unable on his/her own to care for children. The need must be verified by a doctor or other professional with the ~~competence~~ authority to do so.
- AR. Technical Eligibility - Parents/caretakers meet requirements, other than financial, to receive child care services based on need and category.
- AS. Verification - Written or oral documentation, demonstrating either need for service or sources of income.
- AT. Purchase of Care Plus (POC+) - Care option that allows providers to charge most DSS clients the difference between the DSS reimbursement rate up to the provider's private fee for service. The provider receives DSS rate, the DSS determined child care parent fee if applicable, and any additional provider-determined co-pay.
- AU. Work Force Investment Act (WIA) - Federal Legislation that consolidates Employment and Training programs and funding streams. This legislation embodies the One Stop Employment and Training Service system under DOL.

**8 DE Reg. 1154 (02/1/05)**

**9 DE Reg. 572 (10/01/05)**

**10 DE Reg. 564 (09/01/06)**

**11 DE Reg. 1488 (05/01/08)**

*(Break in Continuity of Sections)*

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the December 2009 issue of the Register at page 782 (13 DE Reg. 782). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**[DSSM: 11000 Child Care Subsidy Program](#)**

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## **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 1301**

**Secretary's Order No.: 2009-A-0045**

**Amendments to the Delaware Regulations Governing Solid Waste 7 DE Admin. Code 1301**

**Date of Issuance: January 13, 2010**

**Effective Date of the Amendment: February 21, 2010**

#### **I. Background:**

A public hearing was held on Thursday, August 20, 2009, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the Delaware Regulations Governing Solid Waste (hereinafter referred to as "RGSW"). Delaware is proposing these amendments to correct existing errors, add clarification, and/or otherwise enhance its current solid waste regulations. Specifically, the Department is proposing amendments to the following sections of its existing Regulations Governing Solid Waste: (1) strike one

redundant requirement for siting new industrial landfill cells; (2) update an exclusion for the Delaware Emergency Management Agency (hereinafter referred to as "DEMA") temporarily storing debris at transfer stations; (3) update and clarify financial assurance criteria, as well as adding Appendices A through G to enhance the same; and (4) clarify one exception with regard to transporters.

A public workshop was held by Department personnel on June 4, 2009 to further promote understanding with regard to the proposed amendments to Delaware's RGSW. Comments were received from the public in this matter, both prior to and at the time of the public hearing on August 20, 2009. 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 Report to the Secretary dated December 28, 2009, which is expressly incorporated herein.

## II. Findings:

The Department has provided sound reasoning with regard to the revised proposed amendments to Delaware's Regulations Governing Solid Waste, as reflected in the Hearing Officer's Report. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority, 7 D el.C., Chapter 60, 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 considered all timely and relevant public comments in making its determination;
5. The Department has reviewed these proposed amendments in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
6. Promulgation of these revised proposed amendments (with the exception of proposed Amendment # 1 concerning the deletion of Section 6.1.3.8) will eliminate existing duplicative and vague language, and will provide better clarity and a fuller understanding of the regulatory language contained within these regulations to the general public and the regulated community;
7. Amendment # 1 as contained within the originally proposed promulgation is hereby withdrawn by the Department. Section 6.1.3.8 of Delaware's existing RGSW will not be deleted as proposed, but will instead remain in effect as set forth in the Department's current regulations at this time;
8. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
9. The Department's proposed amendments to these regulations, as published in the August 1, 2009 Delaware Register of Regulations and then revised for final publication in said Register, and as set forth within Attachment "A" of the Report, are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulation amendments, which shall go into effect twenty days after their publication in the next available issue of the *Delaware Register of Regulations*;
10. The Department shall submit the proposed revised regulation amendments as final 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 Report dated December 28, 2009 and expressly incorporated herein, it is hereby ordered that the revised proposed amendments to Delaware's Regulations Governing Solid Waste be promulgated in final form in the customary manner and established rule-making procedure required by law.

**IV. Reasons:**

The promulgation of these amendments to the State of Delaware's Regulations Governing Solid Waste will eliminate existing duplicative and vague language, and will provide better clarity and a fuller understanding of the regulatory language contained within these regulations to the general public and the regulated community. Additionally, as noted above, the retention of Section 6.1.3.8 as set forth in Delaware's existing RGSW will solidify the public's perception of the Department's steadfast efforts and desires to continue to protect the precious natural resources of the State of Delaware for future generations.

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., Chapter 60.

Collin P. O'Mara, Secretary

ID #	
1	<del>Strike "unique or valuable" new cell requirement</del> <i>Proposal Withdrawn</i>
2	Transfer Station Exclusion §10.1.2.6
3	Financial Assurance §4.1.11
4	Financial Assurance Appendices A-G
5	Transportation §7.2.1

**\*Please Note: Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:**

[1301 Regulations Governing Solid Waste](#)

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**DEPARTMENT OF STATE****DIVISION OF PROFESSIONAL REGULATION**

Statutory Authority: 24 Delaware Code, Section 2006(a)(1) (24 Del.C. §2006(a)(1))  
24 DE Admin. Code 2000

**ORDER****2000 Board of Occupational Therapy Practice**

The Board of Occupational Therapy Practice ("the Board") was established to protect the general public from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered by the profession under its purview. The Board was further established to maintain minimum standards of practitioner competence in the delivery of services to the public. The Board is authorized, by 24 Del.C. §2006(a)(1), to make, adopt, amend and repeal regulations as necessary to effectuate those objectives.

Pursuant to 24 Del.C. §2006(a)(1), the Board has proposed a new Rule 4.0, which addresses licensee competence to administer various treatment modalities. Pursuant to this amendment, at the request of the Board or a member of the public, a licensee will be required to provide documentation of training or education to demonstrate competence.

In addition, Rule 1.3.3 is amended to clarify the parameters of an occupational therapist's supervision of an occupational therapy assistant. A new Rule 3.1.2.4 gives the Board authority to conduct hearings and impose sanctions regarding licensees' failure to comply with the Board's continuing education requirements.



Pursuant to 29 Del.C. § 10115, notice of the public hearing and a copy of the proposed regulatory changes were published in the Delaware Register of Regulations, Volume 13, Issue 5 on November 1, 2009.

### **Summary of the Evidence and Information Submitted**

A public hearing on the proposed rule revisions was held on January 6, 2010. No written comment was submitted. Further, there was no public comment.

### **Findings of Fact**

The Board carefully reviewed and considered the proposed rule revisions.

The Board addressed the issue of licensee competence to perform various treatment modalities. The Board determined that requiring a licensee to produce evidence of education or training, upon request, would prevent licensees from practicing beyond the scope of their competence.

Rule 1.3.3 is amended to clarify that the determination of whether an occupational therapist is supervising too many occupational therapy assistants is evaluated on a day by day basis. This revision acknowledges the circumstance that, due to part-time work status, and other factors, the individuals supervised may change on a daily basis.

Finally, the new Rule 3.1.2.4 gives the Board express authority to sanction licensees who do not meet the continuing education requirements.

The Board concluded that the proposed amendments will serve to protect the public from unsafe practices and enhance practitioner competence.

Therefore, the Board finds that adopting the amended rules and regulations as proposed is in the best interests of the citizens of the State of Delaware and is necessary to protect the health and safety of the general public.

### **Decision and Effective Date**

The Board hereby adopts the proposed amendments to the rules and regulations to be effective 10 days following final publication of this Order in the *Register of Regulations*.

### **Text and Citation**

The text of the revised rules and regulations remains as published in the *Delaware Register of Regulations*, Volume 13, Issue 5 on November 1, 2009.

**IT IS SO ORDERED** this 6th day of January 2010 by the Delaware Board of Occupational Therapy Practice.

Nancy Broadhurst, Chairperson  
Wendy Mears, Vice-Chairperson

Kimberly Pierson  
Rosemarie Vanderhoogt

### **2000 Board of Occupational Therapy Practice**

**\*Please note that no changes were made to the regulations as originally proposed and published in the November 2009 issue of the *Register* at page 606 (13 DE Reg. 606). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**[2000 Board of Occupational Therapy Practice](#)**

**DIVISION OF PROFESSIONAL REGULATION**

Statutory Authority: 24 Delaware Code, Section 3706(a)(1) (24 **Del.C.** §3706(a)(1))  
24 **DE Admin. Code** 3700

**ORDER****3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers**

The Delaware Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers ("the Board") was established to protect the general public from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered by the profession under its purview. The Board was further established to maintain minimum standards of practitioner competence in the delivery of services to the public. The Board is authorized, by 24 Del.C. §3706(a)(1), to make, adopt, amend and repeal regulations as necessary to effectuate those objectives.

Pursuant to 24 Del.C. §3706(a)(1), the Board has proposed a number of revisions to its rules and regulations.

The Board proposes revisions to ensure that the rules are consistent with recent changes to the Board's licensing law, Chapter 37 of Title 24 of the Delaware Code. Specifically, the rules are amended to state that an audiologist must have a doctoral degree and is no longer required to complete a practicum and clinical fellowship. Further, Rule 3.1 is added to state that audiologists are authorized to dispense hearing aids, and the amended Rule 3.2.2.2 states that an audiologist may supervise a hearing aid dispenser trainee.

Rule 2.2.1, addressing the clinical practicum for speech/language pathologists, has been amended to state that the applicant must complete 400, rather than 375, hours. This revision will ensure that Delaware's standards are consistent with those of the American Speech-Language-Hearing Association ("ASHA").

The rules concerning reciprocity are revised to ensure compliance with 24 Del.C. §3710.

Rule 2.5.2, pertaining to temporary licensure, is amended to provide that a licensee must take the examination at least once prior to requesting a renewal of the temporary license.

Rule 8.2.7, concerning requirements for compliance with the continuing education audit, states that the licensee must submit documentation of completion of the courses.

Finally, certain sections are reorganized for greater clarity, and certain grammatical and typographical errors are corrected.

Pursuant to 29 Del.C. § 10115, notice of the public hearing and a copy of the proposed regulatory changes were published in the *Delaware Register of Regulations*, Volume 13, Issue 6 on December 1, 2009.

**Summary of the Evidence and Information Submitted**

A public hearing on the proposed rule revisions was held on January 13, 2010. No written or verbal comments were submitted.

**Findings of Fact**

The Board carefully reviewed and considered the proposed rule revisions.

As noted herein, the proposed revisions are necessary to implement changes to the Board's licensing law and to ensure consistency with ASHA.

Pursuant to the amended Rule 2.5.2, a licensee must take the examination at least once prior to requesting renewal of a temporary license. This revision will ensure that individuals holding temporary licenses are actively working towards meeting the requirements of permanent licensure. The revised Rule 8.2.7 will require licensees selected for the continuing education audit to submit documentation of completion of the courses, rather than just attendance. This amendment will enable the Board to verify that licensees have actually met the continuing

education requirements. In short, these proposed revisions will serve to protect the public from unsafe practices and enhance practitioner competence.

The Board finds that adopting the amended rules and regulations as proposed is in the best interest of the citizens of the State of Delaware and is necessary to protect the health and safety of the general public.

### Decision and Effective Date

The Board hereby adopts the proposed amendments to the rules and regulations to be effective 10 days following final publication of this Order in the *Register of Regulations*.

### Text and Citation

The text of the revised rules and regulations remains as published in the *Delaware Register of Regulations*, Volume 13, Issue 6 on December 1, 2009.

**IT IS SO ORDERED** this 13th day of January 2010 by the Delaware Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers.

Illene Courtright, President  
 Dr. Mary Ann Connolly-Gaskin, Secretary  
 Regina Bilton  
 Maisha Britt

George Christensen  
 Carol Guilbert  
 Dr. Michael Michelli  
 Dr. Jennifer Xenakes

### 3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers

**\*Please note that no changes were made to the regulations as originally proposed and published in the December 2009 issue of the *Register* at page 826 (13 DE Reg. 826). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**[3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers](#)**

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### DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 4416(b)(1) (24 **Del.C.** §4416(b)(1))  
 24 **DE Admin. Code** 4400

### ORDER

### 4400 Delaware Manufactured Home Installation Board

The Delaware Manufactured Home Installation Board (“the Board”) was established to protect the general public from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered by the profession under its purview. The Board was further established to maintain minimum standards of practitioner competence in the delivery of services to the public. The Board is authorized, by 24 **Del.C.** §4416(b)(1), to make, adopt, amend and repeal regulations as necessary to effectuate those objectives.

Pursuant to 24 **Del.C.** §4416(b)(1), the Board has proposed several revisions to its rules. A number of the proposed revisions implement recent amendments to the Board’s licensing law, Chapter 44 of Title 24 of the Delaware Code. Specifically, Rule 3.1.4 is amended to clarify that either the applicant, or the applicant’s employer,

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must hold a surety bond or an irrevocable letter of credit in an amount equal to or greater than \$10,000 and that original documentation must be submitted to the Board by the provider of the bond or letter of credit. Rule 3.1.5 is amended to clarify that either the applicant or the applicant's employer must carry liability insurance in an amount equal to or greater than \$100,000 and that a notarized certificate of insurance must be submitted to the Board by the insurance carrier. Rule 12.0 is revised to provide that the designation to be displayed on work vehicles may include the abbreviation "Lic. Mfd. Home Installer" and that the designation must be displayed in not less than two inch, rather than three inch, letters and numbers.

Finally, a new Rule 8.5.3 is added to give the Board the express authority to impose the full range of available sanctions on licensees who are found to be in violation of the CE requirements.

Pursuant to 29 Del.C. §10115, notice of the public hearing and a copy of the proposed regulatory changes were published in the Delaware *Register of Regulations*, Volume 13, Issue 6 on December 1, 2009.

### **Summary of the Evidence and Information Submitted**

A public hearing on the proposed rule revisions was held on January 11, 2010. No written comment was submitted. Further, there was no public comment.

### **Findings of Fact**

The Board carefully reviewed and considered the proposed rule revisions.

As noted herein, Rules 3.1.4, 3.1.5 and 12.0 are revised to implement changes to the Board's licensing law. A new Rule 8.5.3 gives the Board express authority to sanction licensees who do not meet the continuing education requirements.

The Board concluded that the proposed amendments will serve to protect the public from unsafe practices and enhance practitioner competence.

Therefore, the Board finds that adopting the amended rules and regulations as proposed is in the best interests of the citizens of the State of Delaware and is necessary to protect the health and safety of the general public.

### **Decision and Effective Date**

The Board hereby adopts the proposed amendments to the rules and regulations to be effective 10 days following final publication of this Order in the *Register of Regulations*.

### **Text and Citation**

The text of the revised rules and regulations remains as published in the Delaware *Register of Regulations*, Volume 13, Issue 6 on December 1, 2009.

**IT IS SO ORDERED** this 11th day of January 2010 by the Delaware Manufactured Home Installation Board.

James Brockton, President  
Kathleen Bartron, Vice-President  
Charlie Eggleston  
Jill Fuchs, Secretary

Victor Kennedy  
Kevin Reinike  
Keith Rudy

**4400 Delaware Manufactured Home Installation Board**

\*Please note that no changes were made to the regulations as originally proposed and published in the December 2009 issue of the *Register* at page 834 (13 DE Reg. 834). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[4400 Delaware Manufactured Home Installation Board](#)

**PUBLIC SERVICE COMMISSION**

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))

IN THE MATTER OF THE CONSIDERATION OF RULES,		
STANDARDS AND INDICES TO ENSURE RELIABLE		
ELECTRIC SERVICE BY ELECTRIC DISTRIBUTION		
COMPANIES (OPENED SEPTEMBER 26, 2000;		<b>PSC REGULATION DOCKET NO. 50</b>
REOPENED OCTOBER 11, 2005;		
REOPENED NOVEMBER 19, 2009		

**ORDER NO. 7725**

This 7th day of January, 2010, the Commission determines and Orders the following:

**WHEREAS**, the Commission has promulgated Rules Governing Electric Service Reliability and Quality Standards (the "Rules"). See 26 Del. Admin. C. § 3007; and

**WHEREAS**, by Order No. 7689, the Commission (i) proposed a revision to Section 9 of the Rules, changing the deadline for an annual stakeholder meeting from March 31 to May 31 of each year, (ii) caused a notice regarding the revised Rules to be published in the *Delaware Register of Regulations*, as well as *The News Journal* and the *Delaware State News*, (iii) solicited public comments to the revised Rules, and (iv) noticed a public hearing on the revised Rules for January 7, 2010; and

**WHEREAS**, the notice described above was published as required by Order No. 7689 and the revised Rules were published in the *Delaware Register of Regulations*; and

**WHEREAS**, the Commission has not received any comments regarding the revised Rules, and the comment period has expired; and

**WHEREAS**, the Commission held a public hearing on the revised Rules on January 7, 2010;

**NOW THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. That, pursuant to 26 Del. C. §§ 209(a) and 29 Del. C. §§ 10111 et seq., the Commission hereby promulgates the revised Rules Governing Electric Service Reliability and Quality Standards (the "Rules"), a true and correct copy of which is attached hereto as Exhibit A, as official regulations as defined by 29 Del. C. § 1132. The revised Rules replace the regulations existing at 26 Del. Admin. C. § 3007.

2. That, pursuant to 26 Del. C. §§ 10113 and 10118, the Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the *Delaware Register of Regulations* a copy of this Order (with the attached Rules). An exact copy of the Rules attached hereto shall be published as final, official regulations in the *Delaware Register of Regulations*.

3. That the effective date of this Order shall not be less than ten days from the date this Order is published in its final form in the *Delaware Register of Regulations*. Within ten days of the effective date of the Rules, Delmarva Power & Light Company shall file any appropriate revisions to its Tariff reflecting changes implemented by the revised Rules.

4. That the Commission Secretary shall serve a copy of this Order upon Delmarva Power & Light Company.

5. 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:**

Arnetta McRae, Chair  
Joann T. Conaway, Commissioner  
Jeffrey J. Clark, Commissioner  
Jaymes B. Lester, Commissioner  
Dallas Winslow, Commissioner

**ATTEST:**

Alisa Carrow Bentley, Secretary

**3007 Electric Service Reliability and Quality Standards**

EFFECTIVE DATE: September 10, 2006

**\*Please note that no changes were made to the regulations as originally proposed and published in the December 2009 issue of the *Register* at page 837 (13 DE Reg. 837). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[3007 Electric Service Reliability and Quality Standards](#)

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## DEPARTMENT OF TRANSPORTATION DIVISION OF PLANNING AND POLICY

Statutory Authority: 17 Delaware Code Sections 131, 146 and 508; Chapters 1 and 5  
(17 **Del.C.** §§131, 146, 508)  
2 **DE Admin. Code** 2309

**ORDER****Revisions to 2309 Standards and Regulations for Subdivision Streets and State Highway Access**

Proposed changes to the Delaware Department of Transportation's Standards and Regulations for Subdivision Streets and State Highway Access were previously advertised in the State *Register of Regulations*, at Vol. 13, page 693 (November 2009), seeking public comments on the proposed changes. Comments were accepted from November 1, 2009 through December 17, 2009.

**Summary of the Evidence and Information Submitted**

The comments received, the Department's reactions to those comments, and the Department's reconsiderations of the proposed revisions, are summarized in the accompanying table. These comments caused certain changes to be made in the proposed revisions to the Standards and Regulations. The Department considers none of these changes to be substantive in nature, and thus causing the need for a new comment period.

The following summarizes the changes to the Revisions since the November 1 publication, based on the public comments and the Department's own review.

## 2309 Standards and Regulations for Subdivision Streets and State Highway Access

## Chapter 2

## p. 3

Was: ~~{THE TABLE BELOW ADDRESSES ONLY VOLUME BASED WARRANTS REFER TO SECTION 2.3 FOR OTHER WARRANTS THAT MAY APPLY}~~

Now: {THE TABLE BELOW IS INTENDED AS A QUICK REFERENCE. IT IS NOT A SUBSTITUTE FOR THE WARRANTS IN SECTION 2.3.1.}

## p. 4

Added below Figure 2-1-~~{This table was compiled using the 8<sup>th</sup> edition of the ITE Trip Generation Report. It is valid only to the extent that the rates and equations in that report remain applicable.}~~

## p. 5

Was: 2.4.1.4-If the Applicant wishes to proceed with this option, they shall provide a check in accordance with Section 2.5.3. The estimated time for DeIDOT to review a draft Final TIS under Option A after the Applicant's engineer has submitted the Final TIS is 20 business days with the final TIS completion approximately 20 business days after that date.

Now: 2.4.1.4-If the Applicant wishes to proceed with this option, they shall provide a check in accordance with Section 2.5.3. The estimated time for DeIDOT to review ~~{a Final}~~ **{the}** TIS under Option A after the Applicant's engineer has submitted the Final TIS is 20 business days ~~{with the final TIS completion}~~. **{Completion of a draft TIS review letter in a form suitable for discussion with the Applicant can be expected}** approximately 20 business days after that date **{for a total of 40 business days}**.

## p.8

Was: 2.5.2-DeIDOT will schedule the Scoping Meeting.

Now: 2.5.2-DeIDOT will schedule the Scoping Meeting. **{At the Scoping Meeting the following TIS topics shall be discussed:}**

Was: After 2.5.2.10-Within 20 business days DeIDOT will supply a Memorandum of the Scoping Meeting Minutes and an estimate for Option B. The cost estimate for the Option B proposal will expire after 40 business days.

Now: After 2.5.2.10-Within 20 business days, DeIDOT will supply a Memorandum of the Scoping Meeting Minutes and, **{if requested by the Applicant,}** an estimate for Option B. The cost estimate for the Option B proposal will expire after 40 business days.

Was: 2.5.3.2-If after the Applicant chooses Option A...An estimated time for a draft Final TIS under Option A after the Applicant's engineer has submitted the Final TIS is 20 business days with Final TIS completion approximately 20 business days after that date.

Now: 2.5.3.2-If after the Applicant chooses Option A...An estimated time for **{review of a TIS a draft Final TIS}** under Option A after the Applicant's engineer has submitted the Final TIS is 20 business days. ~~{with Final TIS}~~ **{Completion of a draft TIS review letter in a form suitable for discussion with the Applicant can be expected}** approximately 20 business days after that date, **{for a total of 40 business days}**.

Was: 2.5.3.3- If the Applicant chooses Option B...An estimated time for a draft Final TIS under Option B is approximately 40 business days with final TIS completion approximately 20 business days after that date.

Now: 2.5.3.3-If the Applicant chooses Option B...An estimated time for a draft Final TIS **{and comment letter in a form suitable for discussion with the Applicant under Option B}** is approximately 40 business days with final TIS **{and comment letter}**. Completion approximately 20 business days after that date.

p. 17

Was: 2.9.12.9 Peak Hour Calculations-The Applicant's engineer shall calculate the peak hour factors for existing conditions. Except where directed otherwise by DeIDOT to account for an unusual condition, the Applicant's engineer shall use the total entering volume to determine the peak 15-minute interval and the peak hour and then compute an overall intersection peak hour factor (PHF). Where the traffic counts are agreed to be a poor indicator of future PHF's e.g. where the counts are very low and significant growth is expected, a PHF of 0.92 should be assumed, except that for intersections where the total intersection volume is between 501 and 1,000 vph, a PHF of 0.88 should be used and where the total intersection volume is 500 vph or less, a PHF of 0.80 should be used.

Now: 2.9.12.9 Peak Hour Calculations-The Applicant's engineer shall calculate the peak hour factors for existing conditions. Except where directed otherwise by DeIDOT to account for an unusual condition, the Applicant's engineer shall use the total entering volume to determine the peak 15-minute interval and the peak hour and then compute an overall intersection peak hour factor (PHF). **{Generally, existing PHFs shall be applied to future conditions as well. Where the Applicant's Engineer and DeIDOT agree that the existing traffic counts are a poor indicator of future PHFs, one of the following three PHFs shall be selected according to the total intersection volume in the future conditions. For a total intersection volume of 500 vph or less, use 0.80. For a total intersection volume of 501 vph to 1,000 vph, use 0.88. For a total intersection volume over 1,000 vph, use 0.92.}** ~~{Where the traffic counts are agreed to be a poor indicator of future PHF's e.g. where the counts are very low and significant growth is expected, a PHF of 0.92 should be assumed, except that for intersections where the total intersection volume is between 501 and 1,000 vph, a PHF of 0.88 should be used and where the total intersection volume is 500 vph or less, a PHF of 0.80 should be used.}~~

Was: 2.9.12.11 Percentage of Heavy Vehicles-The percentage of heavy vehicles should be determined from traffic counts and should be calculated separately for each turning movement. Where the traffic counts are agreed to be a poor indicator of future heavy vehicle percentages, e.g...

Now: 2.9.12.11 Percentage of Heavy Vehicles-The percentage of heavy vehicles should be determined from traffic counts. ~~{and should be calculated separately for each turning movement.}~~ **{ For unsignalized intersections, the percentage of heavy vehicles should be calculated separately for each turning movement. For signalized intersections, the percentage of heavy vehicles should be calculated separately for each lane group.}** Where the traffic counts are agreed to be a poor indicator of future heavy vehicle percentages, e.g...

p. 18

Was 2.9.13.1.4 Development in Areas Designated for Re-Development-If a proposed development is located in an area, or on a land parcel or parcels designated as a "re-development" site by either state or local government with local government concurrence DeIDOT may consider accepting the existing Level of Service provided that the proposed development makes sufficient improvements to retain the existing measured Level of Service.

Now 2.9.13.1.4 Development in Areas Designated for Re-Development-If a proposed development is located in an area, or on a land parcel or parcels **{of land}** designated as a "re-development" site by either state or local government, with local government concurrence, DeIDOT **{may accept}** ~~{consider accepting}~~ the existing Level of Service provided that the proposed development makes sufficient improvements, **{to DeIDOT's satisfaction}**, to retain the existing measured Level of Service.

Chapter 3

p. 24

- Was: 3.2.2.2.5-Sewer.
- Now: 3.2.2.2.5-Sewer **{Provider}**.
- Was: 3.2.2.2.6-Water.
- Now: 3.2.2.2.6-Water **{Provider}**.



Was: 3.3-If a property owner/developer is seeking to subdivide their property into six or more residential lots and are construction internal subdivision streets or are developing a commercial site through the local land use process...

Now: 3.3- If a property owner/developer is seeking to subdivide their property into six or more residential lots **{or and}** are construction internal subdivision streets or are developing a commercial site through the local land use process...

**p. 25**

Was: 3.4.5.1 Traffic Information-existing and proposed school bus routes and volumes.

Now: 3.4.5.1 Traffic Information-**{Coordination with School districts regarding}** existing and proposed school bus routes **{and volumes}**.

**p. 27**

Was: 3.5.2 2<sup>nd</sup> paragraph-Applications for parcels of less than 5 acres shall include on their site plan any road proposed as part of an approved Local Transportation Circulation Plan. Proposed development parcels less than 5 acres shall be designed to connect to existing linkages on adjacent parcels.

For all residential mixed-use, or commercial developments or redevelopments 5 acres or larger, the Applicant shall submit as part of a complete application to DelDOT, a "Site Street Plan" (SSP) as provided for in Section 3.5.3.

Now: 3.5.2 2<sup>nd</sup> paragraph-Applications for parcels of less than 5 acres **{and generating less than 200 ADT}** shall include on their site plan any road proposed as part of an approved Local Transportation Circulation Plan. Proposed development parcels less than 5 acres shall be designed to connect to existing linkages on adjacent parcels.

For all residential mixed-use, or commercial developments or redevelopments **{5 acres or larger}** **{generating 200 ADT or greater}**, the Applicant shall submit as part of a complete application to DelDOT, a "Site Street Plan" (SSP) as provided for in Section 3.5.3.

**p. 29**

Was: 3.5.3.2.6 First bullet-The Applicant shall be required to provide direct connection to all Local or higher order roads identified in Section 3.5.3.2.2 that abut or traverse the Applicant's property.

Now: 3.5.3.2.6 First bullet-The Applicant **{may shall}** be required **{at DelDOT's discretion}** to provide direct connection to all Local or higher order roads identified in Section 3.5.3.2.2 that abut or traverse the Applicant's property.

Was: 3.5.3.2.7 First bullet-The subdivision street system shall allow multi-modal access and multiple routes from each development to existing or planned neighborhood centers, parks and schools, without requiring the use4 of Local and higher order roads, unless DelDOT has made an Infeasibility Determination.

Now: 3.5.3.2.7 First bullet-The subdivision street systems shall **{provide allow}** multi-modal access and multiple routes from each development to existing or planned neighborhood centers, parks and schools, without requiring the use4 of Local and higher order roads, unless DelDOT has made an Infeasibility Determination.

**p. 30**

Was: 3.5.3.2.11-Local concurrence with an SSP that calls for future connection or construction of local or higher order roads.

For DelDOT to approve an Applicant's site access or provide a Letter of the local land use agency is in agreement with the provisions of the site street plan. The local land use agency approval must be sufficient to deem the SSP an Approved Local Transportation Circulation Plan or an acceptable amendment to an existing Circulation plan.

Now: ~~**{3.5.3.2.11 Local concurrence with an SSP that calls for future connection or construction of local or higher order roads.}**~~

~~For DeIDOT to approve an Applicant's site access or provide a Letter of the local land use agency is in agreement with the provisions of the site street plan. The local land use agency approval must be sufficient to deem the SSP an Approved Local Transportation Circulation Plan or an acceptable amendment to an existing Circulation plan.}~~

**p. 31**

Was: 3.5.4.2.5 Sidewalks shall be constructed in accordance with Chapter 5 DeIDOT standards and shall meet Americans with Disabilities Act requirements.

Now: 3.5.4.2.5 Sidewalks shall be constructed in accordance with Chapter 5 **{of this manual}** and shall meet Americans with Disabilities Act requirements.

## Chapter 5

**p. 33**

Figure 5-23 Subdivision Street Typical Section (With Curb) replaced.

**p. 34**

Figure 5-24 Subdivision Street Typical Section (Without Curb) replaced.

**p. 35**

Figure 5-25 Industrial Streets Typical Section (With and Without Curb) replaced.

## Chapter 6

**p. 4**

Was: 6.4.2.1 Sixth paragraph-Construction of the entrance to the subdivision shall be started prior to the 1<sup>st</sup> building permit or 25% of the subdivision whichever is less. Once construction has started on the roadway it must remain active until completed up to the final lift of asphalt. The entrance may be required to be built sooner at the discretion of the Public Works Engineer.

Now: 6.4.2.1 Sixth paragraph-Construction of the entrance to the subdivision shall be started prior to the 1<sup>st</sup> ~~{building permit certificate of occupancy or 25% of the subdivision whichever is less}~~. Once construction has started on the roadway it must remain active until completed up to the final lift of asphalt. The entrance may be required to be built sooner at the discretion of the Public Works Engineer.

**p. 6**

Was: 6.4.4 Maintenance

Upon acceptance of the streets into the State maintenance system, DeIDOT agrees to the following-limited maintenance responsibilities:

6.4.4.1 DeIDOT agrees to maintain the following elements within the dedicated right-of-way or easements:

6.4.4.1.1 The paved portion of the roadway.

6.4.4.1.2 Curbing and gutters.

6.4.4.1.3 Closed drainage system including inlets and pipes that conveys roadway runoff.

6.4.4.1.4 Open ditch systems, including entrance pipes, located within the right-of-way and easements that conveys roadway runoff.

6.4.4.1.5 Guardrails.

6.4.4.2 While retaining all controls over the dedicated right-of-way, DeIDOT assumes no responsibility for:-

6.4.4.2.1 Maintenance of grass and plantings in any portion of the right-of-way, including landscaped islands and medians.

6.4.4.2.2 Removal of silt and debris that have a minimal impact on the drainage system in open swales, gutters and inlet openings.

6.4.4.2.3 Removal and maintenance of future improvements by residents, such as landscaping, underground sprinklers, signs, etc. not shown on the as-built plans.

6.4.4.2.4 Maintenance of sidewalks, lighting, and entrance amenities.

6.4.4.2.5 Actual removal of snow and ice. DeIDOT offers reimbursement of snow removal expenses through the "Snow Reimbursement Program."

Now: 6.4.4 Maintenance

**{Upon Prior to}** acceptance of the streets into the State maintenance system, **{DeIDOT the developer}** agrees to the following **{limited}** maintenance responsibilities:

6.4.4.1 **{DeIDOT The developer}** agrees to maintain the following elements within the dedicated right-of-way or easements:

6.4.4.1.1 The paved portion of the roadway.

6.4.4.1.2 Curbing and gutters.

6.4.4.1.3 Closed drainage system including inlets and pipes that conveys roadway runoff.

6.4.4.1.4 Open ditch systems, including entrance pipes, located within the right-of-way and easements that conveys roadway runoff.

6.4.4.1.5 Guardrails.

**{6.4.4.2 While retaining all controls over the dedicated right-of-way, DeIDOT assumes no responsibility for: }**

6.4.4. **{2-41.6}** Maintenance of grass and plantings in any portion of the right-of-way, including landscaped islands and medians.

6.4.4. **{2-21.7}** Removal of silt and debris that have a minimal impact on the drainage system in open swales, gutters and inlet openings.

6.4.4. **{2-31.8}** Removal and maintenance of future improvements by residents, such as landscaping, underground sprinklers, signs, etc. not shown on the as-built plans.

6.4.4. **{2-41.9}** Maintenance of sidewalks, lighting, and entrance amenities.

6.4.4. **{2-51.10}** Actual removal of snow and ice **{ - DeIDOT offers reimbursement of snow removal expenses through the "Snow Reimbursement Program." }**

**{Upon acceptance of the streets into the State maintenance system, DeIDOT agrees to the following limited maintenance responsibilities:**

**6.4.4.2 DeIDOT agrees to maintain the following elements within the dedicated right-of-way or easements:**

**6.4.4.2.1 The paved portion of the roadway.**

**6.4.4.2.2 Curbing and gutters.**

**6.4.4.2.3 Closed drainage system including inlets and pipes that conveys roadway runoff.**

**6.4.4.2.4 Open ditch systems, including entrance pipes, located within the right-of-way and easements that conveys roadway runoff.**

**6.4.4.2.5 Guardrails.**

**6.4.4.3 While retaining all controls over the dedicated right-of-way, DeIDOT assumes no responsibility for:**

**6.4.4.3.1 Maintenance of grass and plantings in any portion of the right-of-way, including landscaped islands and medians.**

**6.4.4.3.2 Removal of silt and debris that have a minimal impact on the drainage system in open swales, gutters and inlet openings.**

**6.4.4.3.3 Removal and maintenance of future improvements by residents, such as landscaping, underground sprinklers, signs, etc. not shown on the as-built plans.**

**6.4.4.3.4 Maintenance of sidewalks, lighting, and entrance amenities.**

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**6.4.4.3.5 Actual removal of snow and ice – DeIDOT offers reimbursement of snow removal expenses through the “Snow Reimbursement Program.”}**

**p. 7**

Was: 6.5.1-The application process for industrial streets follows the same procedures as subdivision streets presented in Section 6.4.1.

Now: 6.5.1-The application process for industrial streets follows the same procedures as subdivision streets presented in Section 6.4.1. **{See Appendix G for related forms and agreements.}**

**p. 9**

Was: 6.6.1.4-Prior to DeIDOT issuing a NTP for the construction of the offsite improvements the developer shall provide DeIDOT with a security in the amount of 100% of the estimated construction cost as approved by DeIDOT.

Now: 6.6.1.4-Prior to DeIDOT issuing a NTP for the construction of the offsite improvements the developer shall provide DeIDOT with a security in the amount of **{150% 100%}** of the estimated construction cost as approved by DeIDOT.

**p. 12**

Was: 6.7 Third bullet-The entrance improvements for a commercial site must be complete prior to the issuance of the certificate of occupancy by the local land use agency.

Now: 6.7 Third bullet-The entrance improvements for a commercial site must be complete **{and accepted}** prior to the issuance of the certificate of occupancy by the local land use agency.

## **Chapter 9**

**p. 1**

Was: 9.2.1 Fourth paragraph-Any site being considered by DeIDOT...These programs include, but are not limited to, the Corridor Capacity Preservation Program (CCPP), the Capital Transportation Program, the Transportation Enhancement (TE) Program, the Highway Safety Improvement Program (HSIP), Pavement Rehabilitation Program, and Community Transportation Fund Program.

Now: 9.2.1 Fourth paragraph-Any site being considered by DeIDOT...These programs include, but are not limited to, the Corridor Capacity Preservation Program (CCPP), the Capital Transportation Program, the Transportation Enhancement (TE) Program, the **{Highway Safety Improvement Hazard Elimination Program (HSIP)(HEP)}**, Pavement Rehabilitation Program, and Community Transportation Fund Program.

## **Appendix J**

General Notes for Commercial Construction Plan replaced with **Subdivision Streets and Commercial Construction Plan General Notes** and **General Notes for Record Plans**.

### **Findings of Fact**

Based on the record in this docket, I make the following findings of fact:

1. The proposed revisions to the Standards and Regulations for Subdivision Streets and State Highway Access are useful and proper, as amended pursuant to the comment period process required under the Administrative Procedures Act.

2. The adoption of these proposed changes to the Standards and Regulations for Subdivision Streets and State Highway Access is in the best interests of the State of Delaware.

## Decision and Effective Date

Based on the provisions of Delaware law and the record in this docket, I hereby adopt the amended Delaware Standards and Regulations for Subdivision Streets and State Highway Access, as set forth in the version attached hereto, to be effective on February 15, 2009.

**IT IS SO ORDERED** this 22<sup>nd</sup> day of January, 2009.

Carolann Wicks, Secretary  
Delaware Department of Transportation

**Notes regarding Section references:** In some areas, there are differences in Section numbering between the version published online and the version used in the public workshop. Where they exist and are relevant, the number in the version published online is cited first and the number in the version used in the workshop follows in parentheses. In other instances, persons commenting have referenced Section numbers that appear to be simply incorrect. Those references are shown in brackets.

No.	By:	Associated with Section	Comment	Response / Action
1 T	Jim Anderson, P.E. Karins & Associates, Inc.	2.9.12.10 (2.9.11.7) [2.9.11.6]	It should be permissible to base lane utilization factors on actual traffic data.	We agree. The words "Except as directed by DeIDOT" allows us to permit it. A change to the proposed regulations is not necessary.
2 T	Jim Anderson, P.E. Karins & Associates, Inc.	3.4.5.1 (3.4.1.1)	Regarding the minimum projected 10-year volumes, engineers should be permitted to provide data to substantiate lower volumes than the proposed regulation specifies.	We agree. As written, the regulations provide general rules. Where special circumstances exist they can be recognized and exceptions can be made. A change to the proposed regulations is not necessary.
3 T	Jim Anderson, P.E. Karins & Associates, Inc.	3.5.8.2	The requirement for a minimum connectivity ratio of 1.4 should be removed because it could present significant difficulty with achieving protection of environmental resources.	We disagree. Our requirements regarding connectivity are relatively new and untested in Delaware but similar requirements have been implemented elsewhere. If they create problems here, those problems can be addressed in a subsequent revision of the regulations.
4 T	Jim Anderson, P.E. Karins & Associates, Inc.	4.5.1 [4.5.1.1]	A section should be added to require a design review coordination meeting with mandatory attendance by all relevant offices within DeIDOT.	This section specifies that coordination must occur and we agree that a meeting is an appropriate means of achieving coordination. A change to the regulations is not necessary.
5 T	Jim Anderson, P.E. Karins & Associates, Inc.	5.1.4.1	The 200-foot maximum length for a permanent dead end street is too short. There should be a provision to allow longer dead end streets to protect environmental resources.	We disagree. Section 5.1.1 provides for design exceptions in the best interest of the traveling public. To the extent that exceptions are warranted, we believe this language is sufficient.

6	Dehn is J. Hughes, II, P.E. Davis, Bowen & Friedel, Inc.	2.2.5	The first paragraph appears to be a sunset provision without a specified term. Sunset provisions are generally good but whether projected future conditions have changed "significantly" is very subjective.	We acknowledge that whether projected future conditions have changed "significantly" is inherently subjective. This section was written as it is in recognition of the broad range of possible changes that can occur and the effects that those changes might have. A change to the regulations is not necessary.
7	Dehn is J. Hughes, II, P.E. Davis, Bowen & Friedel, Inc.	2.2.5	In the second paragraph, I suggest changing "necessitates a new record plan" to "increases projected traffic such that the increase exceeds TIS warrants" or something to that effect. TOA should only be required if projected traffic increases such that entrance design or analysis of adjacent intersections may be significantly affected.	The threshold of "necessitates a new record plan" was selected in recognition of the fact that a recorded plan grants a property owner certain rights. When they seek to amend that plan, we will evaluate both the effects of the change they seek and how conditions surrounding the site may have changed since the plan was recorded to determine whether to require a new TIS or TOA. A change to the regulations is not necessary.
8	Dehn is J. Hughes, II, P.E. Davis, Bowen & Friedel, Inc.	2.3.1.1.1 (2.3.1.a)	Pass-by trip data should be included in addition to internal trip capture for determining if a TIS is warranted. Pass-by trips only affect the site access and will be accounted for in the access design. Trips that are already traveling through off-site intersections and not created by the site should not determine whether off-site intersections should be studied. Pass-by trips likely may affect whether a project is eligible for the Area Wide Study fee rather than whether a TIS is warranted.	Thank you for your comment. As you point out, pass-by trips do affect the site access. We will continue to include them in evaluating whether a TIS is warranted.
9	Dehn is J. Hughes, II, P.E. Davis, Bowen & Friedel, Inc.	2.3.1.3	Deleting "at or" is a good change.	Thank you for your comment.

10	Dennis J. Hughes, II, P.E. Davis, Bowen & Friedel, Inc.	Figure 2-1	Will this figure be updated when ITE <u>Trip Generation</u> is? While the table seems helpful, my calculations disagree with some of the units listed. Is this set in stone, or in the rare case where the number of units may make a difference can trip generation calculations be provided contrary to the figure?	This figure is intended as a quick reference, not a substitute for the warrants in Section 2.3.1. We intend to update it as necessary when we revise the <u>Standards and Regulations</u> , which may sometimes lag after revisions to the ITE <u>Trip Generation</u> report. We have added text on the figure to explain these points.
11	Dennis J. Hughes, II, P.E. Davis, Bowen & Friedel, Inc.	2.3.4	There is a typo. (TIS) should be (TID).	We have corrected this error. Note: This error was not present in the version published on-line.
12	Dennis J. Hughes, II, P.E. Davis, Bowen & Friedel, Inc.	2.4.1.3	I understand this change is due to some consultants not properly drafting a scope of work. If DelDOT prefers to change the responsibility back to DelDOT, I don't have a problem with it but the consultant drafting the scope of work seemed to work ok for my projects. I don't mind the responsibility being placed on the consultants.	Thank you for your comment.
13	Dennis J. Hughes, II, P.E. Davis, Bowen & Friedel, Inc.	2.4.1.4	What is meant by draft Final TIS and final TIS completion? Does draft refer to the report and completion refer to the review letter/ recommendations? Otherwise, why is the Final TIS referenced as a draft?	We have revised this paragraph to make it clearer.
14	Dennis J. Hughes, II, P.E. Davis, Bowen & Friedel, Inc.	2.4.2	Option B – I disagree with this option as it is currently done and presented in the manual. I feel it should be removed. Option B TIS are not reviewed and scrutinized the same as Option A TIS.	Option B TIS receive the same level of review and scrutiny from DelDOT staff as Option A TIS. A change to the proposed regulations is not necessary.
15	Dennis J. Hughes, II, P.E. Davis, Bowen & Friedel, Inc.	2.4.2	There is no incentive for the Option B consultant to present cost effective solutions that are in the developers' best interest as opposed to a wish list of ideal improvements assuming an unlimited budget. A developer cannot trust an Option B TIS will recommend improvements that should be required of their development versus improvements that should not be the responsibility of their development.	Developers choosing this option have the ability to retain their own engineers to monitor the work of the Option B consultant as closely as they wish, or to look at the consultant's work products themselves.

16	Dennis J. Hughes, II, P.E. Davis, Bowen & Friedel, Inc.	2.4.2	Why are Option B consultants guaranteed a 100% upfront retainer fee for the entire TIS without guarantee of a timeframe? If Applicants are required to pay 100% upfront, the timeframes should be guaranteed using shall instead of will. Otherwise, once paid upfront there is not necessarily an incentive for the consultant to meet the timeframe or work with the Applicant. There is no guarantee the process will be quicker than if done as Option A.	Option B consultants are not guaranteed a 100% upfront retainer fee for the entire TIS. The public, i.e. DelDOT, is guaranteed that fee. Payments to the consultant are based on work performed. We acknowledge that there is no guarantee that a particular TIS will be done quicker under Option B than under Option A, but generally we would expect that to be the case.
17	Dennis J. Hughes, II, P.E. Davis, Bowen & Friedel, Inc.	2.5.1	The proposed revisions to the required information for a scoping meeting are good.	Thank you for your comment. A change to the proposed regulations is not necessary.
18	Dennis J. Hughes, II, P.E. Davis, Bowen & Friedel, Inc.	2.5.2	Trip generation, distribution, and assignment should be discussed and at least generally agreed upon in the scoping meeting. While determining which intersections should be studied, they should be determined in part by how much traffic a project will generate through particular intersections. I suggest adding language requiring at least a discussion or even an agreed upon distribution.	We agree that discussion of trip generation, distribution and assignment at the scoping meeting can be helpful. However, the present revisions are proposed in part to address requests to eliminate the need for the Applicant to have a traffic engineer at the meeting. A change to the proposed regulations is not necessary.
19	Dennis J. Hughes, II, P.E. Davis, Bowen & Friedel, Inc.	2.5.2.10 (2.5.2.j)	Why would an Option B estimate be provided if the Applicant does not request it?	We intend to supply an estimate for Option B only when the Applicant requests one. We have revised this section to make that clear.
20	Dennis J. Hughes, II, P.E. Davis, Bowen & Friedel, Inc.	2.5.3	Same comment as on Section 2.4.1.4.	See the above response regarding Section 2.4.1.4.



21	Dennis J. Hughes, II, P.E. Davis, Bowen & Friedel, Inc.	2.9.12.9 (2.9.11.6.6)	The PHF language seems somewhat confusing. PHFs by intersection is a good change. What if counts are not "very low" but traffic is project >1,000 vph? Is the PHF 0.92? How is "very low" defined? Can it be quantified? The current practice of keeping the existing PHF if it is higher than the corresponding future PHF is not mentioned. Is that practice being changed or just omitted by mistake?	The intent of the questioned text is to say that the Applicant's engineer should base future-year PHFs on the existing counts except where they and DelDOT agree that counts are not a good indicator of the future PHF. In that event, one of three values should be used, based on the total intersection volume. We have revised this paragraph to make it clearer.
22	Dennis J. Hughes, II, P.E. Davis, Bowen & Friedel, Inc.	2.9.12.11 (2.9.11.6.8) [2.9.11.8]	The change in heavy vehicle percentage calculations is ok for unsignalized intersections. However, based on the signalized methodology provided in the <u>HCM2000</u> , unsignalized and signalized intersection HV%'s should be calculated differently. For signalized intersections, the delay and capacity calculations are based upon the lane group and not the movement.	Thank you for your comment. We made the suggested change in the previously proposed changes.

23	Dennis J. Hughes, II, P.E. Davis, Bowen & Friedel, Inc.	2.9.12.12 (2.9.11.6.9) [2.9.11.9]	Using geography to determine the base saturation flow rates used to determine developer improvements seems too arbitrary. Certainly there are areas below the canal with "above the canal-like" traffic conditions. That is especially true in the beach and municipal areas. Additionally, many of the drivers whose comfort level is measured above the canal are the same drivers being measured below the canal at intersections with similar volumes yet the intersections will be treated as if traffic flows differently. Required improvements may or may not occur due to the base 1,750 rate. It seems as if the amount of traffic traveling through an intersection would be better to determine the saturation flow rate used, similar to how the PHF values are proposed to be determined based upon volumes. It is suggested that volumes should be used as criteria if different saturation flow rates are to be used.	The available guidance we have from NCHRP Report 599 regarding base saturation flow rates is that 1,900 pcphgpl is appropriate in urban areas and 1,750 pcphgpl is appropriate in rural areas. The intent of the regulation is to define an area where the urban value can be used without a study to support it. As we obtain saturation flow rate data on areas below the canal, we expect to expand that area. Your suggestion that volumes be used as an indicator of base saturation flow rate is understandable in that where volumes are approaching saturation, there is necessarily some correlation. However, where volumes are lower that correlation disappears. A change to the proposed regulations is not necessary.
24	Danielle McMullin-Powell State Council for Persons with Disabilities	5.1.5.3	Statement of support for requirement of five-foot wide landings at top and bottom of curb ramps	Thank you for your support.
25	Robert Overmiller, Governor's Advisory Council for Exceptional Citizens	5.1.5.3	Statement of support for requirement of five-foot wide landings at top and bottom of curb ramps	Thank you for your support.
26	Roger P. Roy	2.9.13.1.4 (2.9.12.1.3)	The language that reads "in an area or on a land parcel or parcels" is confusing. Add "of land" after the word "parcels."	We will make this change.
27	Roger P. Roy	2.9.13.1.4 (2.9.12.1.3)	Replace language that reads "with local government concurrence" with "after consulting with the local government."	We disagree. A change to the proposed regulations is not necessary.
28	Roger P. Roy	2.9.13.1.4 (2.9.12.1.3)	Replace "DeIDOT may consider accepting" with "DeIDOT may, in its sole discretion, accept"	Replaced with "DeIDOT may accept"

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29	Roger P. Roy	2.9.13.1.4 (2.9.12.1.3)	After "proposed development makes sufficient improvements," add "to DeIDOT's satisfaction"	We will make this change.
30	Betty H. Tustin, P.E., P.T.O.E. The Traffic Group, Inc.	Chapter 4	We especially appreciate the development of the "Share Point" system for tracking plan reviews, which will not only expedite the land review process but will also enable stakeholders to review their project's status via the web.	Thank you.
31	Betty H. Tustin, P.E., P.T.O.E. The Traffic Group, Inc.	2.2.5	Please provide more specific reasons for requiring an update to a TIS other than "changed significantly".	We are aware of the capital investment involved in the preparation of a TIS and have no intention of requiring unnecessary revisions. However, we do not believe we can reasonably foresee all the possible circumstances that might warrant revisions. A change to the proposed regulations is not necessary.
32	Betty H. Tustin, P.E., P.T.O.E. The Traffic Group, Inc.	2.5.3.2 (2.5.3)	The \$5,000 review fee is excessive for Option A. The level of detail required in the review of an applicant's TIS is excessive.	The \$5,000 review fee for Option A has been in our <u>Standards and Regulations</u> since 2007 and is not proposed to be changed. We have not collected it because the fee does not have Legislative approval. The fee is far lower than the cost of a typical DeIDOT TIS review. The suggested change in our level of review might be appropriate in a situation without an Adequate Public Facilities Ordinance or similar requirement. However, given that two out of three counties in Delaware have such an ordinance, we believe our current level of review is appropriate.

33	Betty H. Tustin, P.E., P.T.O.E. The Traffic Group, Inc.	2.7	The submission of traffic counts and trip distributions for review should be applicable to both Option A and Option B. Furthermore, submissions by DelDOT's engineer should be provided to the Applicant for review using the same timeline as is used for Option A.	Traffic counts and trip distributions are submitted to DelDOT for review under both Options A and B. The Option B submissions are not addressed in the <u>Standards and Regulations</u> because they are addressed in our consultants' task proposals. The Option B consultant's analyses are subject to review by DelDOT staff. To the extent that an Applicant wants to review their Option B consultant's interim work products, they may do so. A change to the proposed regulations is not necessary.
34	Betty H. Tustin, P.E., P.T.O.E. The Traffic Group, Inc.	2.8	The submission of a PTIS for review should be applicable to both Option A and Option B.	While a bound report is not always submitted under Option B, materials equivalent to a PTIS are submitted to DelDOT for review under both Options A and B. See our response to Comment 33. A change to the proposed regulations is not necessary.
35	Betty H. Tustin, P.E., P.T.O.E. The Traffic Group, Inc.	3.4.5.1 (3.4.1.1)	The minimum projected 10-year volumes are specified based on a 2% annual growth rate, which seems excessive in today's economy. The 10-year volumes should be based on historical data for either the roadways affected or for roadways of the same classification.	We believe that over 10 years two percent annual growth is a reasonable assumption in most cases, recognizing that in some years the rate will be higher and in some years the rate will be lower. If an applicant believes that their site is unusual in that respect we will consider arguments for an exception. A change to the proposed regulations is not necessary.

36	Betty H. Tustin, P.E., P.T.O.E. The Traffic Group, Inc.	5.4 (5.2.2)	The method of calculating 10-year volumes seems excessive and the applicant should be required to accommodate projected volumes for a future year when the proposed development is constructed and operational, which will be, in most cases, less than 10 years.	We believe that over 10 years two percent annual growth is a reasonable assumption in most cases, recognizing that in some years the rate will be higher and in some years the rate will be lower. If an applicant believes that their site is unusual in that respect we will consider arguments for an exception. Because most developments are expected to remain at least 10 years, we believe a requirement to design for 10 years into the future is reasonable. A change to the proposed regulations is not necessary.
37	Betty H. Tustin, P.E., P.T.O.E. The Traffic Group, Inc.	Appendix R	The flow chart for Option B should be revised to depict DeIDOT and Applicant review of counts and distributions as well as review of the PTIS.	See our response to Comments 33 and 34. A change to the proposed regulations is not necessary.
38	Betty H. Tustin, P.E., P.T.O.E. The Traffic Group, Inc.	General	Comments received by DeIDOT on this matter should be made public by posting on a website as they are received. Announcement of this posting should be made using the same methods by which the announcement of the workshop was made.	That will occur, as we will comply with the requirements of the Registrar of Regulations.
39	Betty H. Tustin, P.E., P.T.O.E. The Traffic Group, Inc.	PLOT Meeting	Clarification is requested regarding the "PLOT" meeting identified on the "FYI" prototype brochure on display at the workshop. Also, how will this meeting be coordinated with the PLUS process?	We encourage developers and their engineers to meet with us when they have a boundary survey and information on how the site drains (topographic survey, while helpful is not necessary) but before beginning their site design. The purpose is to identify potential issues in the development of the site. DeIDOT is represented in the PLUS process and the results of the PLOT meetings can be referenced at the PLUS meetings if they are germane.
40	Laura J. Waterland, Esq. Community Legal Aid Society, Inc.	3.5.4.2.5	To which standards does "Chapter 5 DeIDOT standards" refer?	Replaced "DeIDOT standards" with "of this manual."

Internal Review	2.5.2	Topics for discussion within Scoping meetings are listed but not given any introduction or heading.	Clarification added by providing an introductory heading in advance of 2.5.2.1 : “At the Scoping Meeting the following TIS topics shall be discussed”
Internal Review	2.11.1 (2.11)	Public Workshop Copy included a fragmented paragraph was errantly inserted in advance of 2.11.1.1 “Recommendation Narrative”	Clerical update to remove: “shall be illustrated at a scale of no more than 1" = 100', with 1" = 50' or 1" = 30' preferred. The drawing(s) shall show both existing and the recommended improvement conditions. In cases where improvement conditions repetitively extend, the improvements may be shown with line extensions between the end” NO CHANGE to the Registrar’s on-line version.
Internal Review	2.11.2 (2.11.1)	Within the Public Workshop Copy a fragmented paragraph was omitted between “...all site entrance(s)” and “points of the improvement”	Clerical update to insert: “shall be illustrated at a scale of no more than 1" = 100', with 1" = 50' or 1" = 30' preferred. The drawing(s) shall show both existing and the recommended improvement conditions. In cases where improvement conditions repetitively extend, the improvements may be shown with line extensions between the end” NO CHANGE to the Registrar’s on-line version.
Internal Review	3.2.2.2.5	Format of requested data block entry for “Sewer” is unclear	Clarification given by adding: “Provider”
Internal Review	3.2.2.2.6	Format of requested data block entry for “Water” is unclear	Clarification given by adding: “Provider”
Internal Review	3.3	Conditions requiring coordination of access with DeIDOT is not clear	Clarification added by replacing: “and” with “or” between “Six or more residential lots” and “constructing internal subdivision streets”
Internal Review	3.4.5.1	Appropriate source and nature of required data is unclear	Clarification given by adding: “Coordination with School Districts regarding” and deleting “and volumes”
Internal Review	Figure 5-23	Type I Subdivision Street with curbs: Lane widths labeled as 11 Feet in the on-line version.	Clerical error: red-line to amended figure was omitted in the on-line version of this Figure. Type I Subdivision Street with curbs: Lane widths re-labeled as 12 Feet

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	Internal Review	Figure 5-24	Type I Subdivision Street without curbs: Lane widths labeled as 11 Feet	Updated lane widths to be uniform with the Type I Subdivision Street with curbs: Lane widths re-labeled as 12 Feet
	Internal Review	Figure 5-24	Cross-slopes shown as ¼" per foot	Cross-slopes re-labeled in equivalent Percentage: 2% to be uniform with the cross-slopes shown in Figure 5-23
	Internal Review	Figure 5-25	Cross-slopes shown as ¼" per foot	Cross-slopes re-labeled in equivalent Percentage: 2% to be uniform with the cross-slopes shown in Figure 5-23
	Internal Review	6.4.2.1	Section reads: "prior to the 1 <sup>st</sup> building permit or 25% of the subdivision whichever is less."	Clerical update to remove "or 25% of the subdivision whichever is less." Which no longer applies, and is residual language from the previous 50 <sup>th</sup> building permit version.
	Internal Review	6.4.4	Pre-acceptance maintenance responsibilities are unclear.	Inserted a clarification that the maintenance criteria described in 6.4.4.2.1,2,3,4,5 (alternate reference: 6.4.4.2.a,b,c,d,e) are retained by the Developer prior to acceptance into the State maintenance system.
	Internal Review	6.5.1	Procedures for Industrial Street applications are directed to follow the procedures listed in 6.4.1 however the specific appendix for industrial streets forms and agreements is not listed	Inserted a clarification that industrial street applications: "...shall reference Appendix G for related forms and agreements."
	Internal Review	6.5.4	Pre-acceptance maintenance responsibilities are unclear.	Inserted a clarification that the maintenance criteria described in 6.5.4.2.1,2,3,4,5 (alternate reference: 6.5.4.2.a,b,c,d,e) are retained by the Developer prior to acceptance into the State maintenance system.
	Internal Review	6.6.1.4	Surety Agreement references 100% which is an out of date security value basis, and is not consistent with 6.3.1.7	Clerical update to replace "100 percent" with corrected reference "150 percent".
	Internal Review	6.7 (6.7_#3)	Requirement which must be met for commercial sites prior to issuance of certificate of occupancy is not clear.	Clerical update to clarify that the entrance improvements must be complete "and accepted" prior to certificate of occupancy.

Internal Review	6.7 (6.7_#3)	Requirement which must be met for subdivision sites prior to issuance of "certificate of occupancy" is not consistent with 6.4.2.1.	Clerical update to replace "certificate of occupancy" with "building permit" to match 6.4.2.1.
Internal Review	Appendix E	Surety Agreement references 100% which is an out of date security value basis, and is not consistent with 6.3.1.7	Clerical update to replace "100 percent" with corrected reference "150 percent".
Internal Review	Appendix F	Surety Agreement references 10% which is an out of date security value basis, and is not consistent with 6.4.1	Clerical update to replace "10 percent of the total price" with corrected reference to the "total value of security" as set forth in the "value of security table within" the Subdivision Street Construction Agreement.
Internal Review	Appendix F	Escrow Agreement references 10% which is an out of date security value basis, and is not consistent with 6.4.1	Clerical update to replace "10 percent of the total price" with corrected reference to the "total value of security" as set forth in the "value of security table within" the Subdivision Street Construction Agreement.
Internal Review	Appendix G	Construction Agreement references security "in the amount of 10%" which is an out of date security value basis, and is not consistent with 6.5.1	Clerical update to replace "10 percent of the estimated construction" with an industrial street version of the "value of security table" provided within the Subdivision Street Construction Agreement. This maintains consistency with 6.5.1 and the referenced intent of 6.4.1.4 and 6.4.1.5
Internal Review	Appendix G	Surety Agreement references 10% which is an out of date security value basis.	Clerical update to replace "10 percent of the total price" with corrected reference to the "total value of security" as set forth in the "value of security table within" the Industrial Street Construction Agreement.
Internal Review	Appendix G	Escrow Agreement references 10% which is an out of date security value basis.	Clerical update to replace "10 percent of the total price" with corrected reference to the "total value of security" as set forth in the "value of security table within" the Industrial Street Construction Agreement.
Internal Review	Appendix H	Surety Agreement references 100% which is an out of date security value basis, and is not consistent with 6.3.1.7	Clerical update to replace "100 percent" with corrected reference "150 percent".



	Internal Review	Appendix R	Three separate overlapping TIS Flow Charts are provided.	Clerical update to remove the original TIS Flow Chart which has been replaced by the Option A and Option B Flow Charts.
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**\*Please Note: Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:**

[\*\*2309 Standards and Regulations for Subdivision Streets and State Highway Access\*\*](#)

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**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER****EXECUTIVE ORDER  
NUMBER FOURTEEN**

**TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES**  
**RE: INCREASING SUPPLIER DIVERSITY INITIATIVES WITHIN STATE GOVERNMENT**

**WHEREAS**, the State is committed to assuring that all practices in all areas of State procurement provide suppliers equal access to procurement opportunities; and

**WHEREAS**, the State benefits from an inclusive business environment that includes the creation and expansion of minority and/or women business enterprises; and

**WHEREAS**, in a December 2007 report titled Economic Development State Policies for Minority and Women Business Development, the Insight Center for Community Economic Development noted that business inclusive initiatives have been recognized by the Federal Government and a majority of states in our nation as strategic and good for sustained economic growth; and

**WHEREAS**, the State of Delaware benefits from a successful Women and Minority Business community as a part of the general public, in addition to being a procurer of goods and services from a competitive marketplace wherein successful Women and Minority Businesses prosper; and

**WHEREAS**, the State has made significant advances in transparency through the online posting of bid opportunities as well as the establishment of the online checkbook; and

**WHEREAS**, publishing awarded advertised contracts will further increase transparency, accountability and competitiveness in State procurement; and

**WHEREAS**, the coordinated efforts of the public and private sectors are necessary to significantly increase the participation of minority and/or women business enterprises in all aspects of State contracting and procurement.

**NOW THEREFORE, I JACK A. MARKELL**, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby DECLARE and ORDER the following:

1. Definition. As used in this order "minority and/or women business enterprise" means a for profit business which is at least 51 percent owned and at least 51 percent managed by a minority and/or woman certified by the Office of Minority and Women Business Enterprise or DeIDOT's Disadvantaged Business Enterprise ("DBE") Program.

2. The Executive Branch will provide leadership and support to ensure that all minority and/or women business enterprises are afforded full, equitable and fair opportunities to compete for State purchasing dollars.

3. The Office of Minority and Women Business Enterprise within the Office of Management and Budget shall have, as its mission, to assist minority and/or women business enterprises in competing for the provision of commodities, services, and construction to State departments, agencies, authorities, school districts, higher education institutions and all businesses.

4. The Office of Minority and Women Business Enterprise shall have the following powers, duties and functions:

(a) The Executive Director of the Office of Minority and Women Business Enterprise will be responsible for providing strategic advice to the Director of the Office of Management and Budget and the Governor pertaining to supplier diversity;

(b) Monitor and evaluate each respective Executive Branch Agency Supplier Diversity Action Plan;

(c) Certify minority and/or women business enterprises and create and maintain a State directory of minority and/or women business enterprises that have been certified; and

(d) Educate minority and/or women business enterprises on how to conduct business with the State of Delaware.

5. Each Department and Agency within the Executive Branch (collectively "Executive Branch Agencies") shall designate, within thirty (30) days of the issuance of this Order, a Minority and Women Business Enterprise Liaison, who shall have direct access to his or her Secretary, department head, or similar cabinet-level official concerning minority and/or women business enterprise program matters.

6. Minority and Women Business Enterprise Liaisons shall:

## GOVERNOR'S EXECUTIVE ORDERS

(a) Assist the Executive Director of the Office of Minority and Women Business Enterprise and the Governor's Supplier Diversity Council, as created in this Executive Order, in their efforts to maximize supplier diversity among State agencies;

(b) Direct and coordinate supplier diversity initiatives within their respective agency, including but not limited to discussing best practices and educating staff;

(c) Assist in the development and implementation of their agency's Supplier Diversity Action Plan, as identified in this Executive Order;

(d) Prepare reports for the Governor's Supplier Diversity Council; and

(e) Undertake such additional tasks relating to this Executive Order as required from time to time by the Governor.

7. The Office of Minority and Women Business Enterprise, in conjunction with Government Support Services of the Office of Management and Budget, shall develop the format and best practices content of a Supplier Diversity Action Plan. The goal of the Supplier Diversity Action Plan shall be to maximize the contracting opportunities for minority and/or women business enterprises, as well as increase transparency for subcontracting opportunities. Each Executive Branch Agency is responsible for expanding upon this framework for a agency-specific interests and fulfilling the tasks within its respective finalized plan. Agencies' completed plans shall be submitted to the Office of Minority and Women Business Enterprise and Government Support Services in the Office of Management and Budget for final approval no later than July 30th of each calendar year. Agencies' approved Supplier Diversity Action Plans shall be filed annually with the Governor no later than September 30th of each calendar year.

8. In an effort to further increase transparency in State procurement practices, the Director of the Office of Management and Budget and the Secretary of State shall develop policies and procedures that provide for a central, online publication of all advertised and awarded State contracts, including information on whether such contracts were awarded to minority and/or women owned businesses.

9. The Governor's Public Works and Procurement Opportunity Council is abolished, and the Governor's Supplier Diversity Council (hereinafter "Council") is hereby created.

10. The purpose of the Council shall be to:

(a) Advocate for the State of Delaware's supplier diversity initiatives;

(b) Offer training and information on the tools necessary for successfully doing business with the State of Delaware as a minority and/or women business enterprises;

(c) Help maximize supplier diversity among the State agencies, and help increase contracting opportunities for qualified minority and/or women business enterprises;

(d) Develop criteria for evaluation of supplier diversity initiatives pursuant to this Executive Order.

(e) Identify potential impediments if any, concerning supplier diversity within State government, and develop strategies to eliminate these impediments;

(f) Provide advice and recommendations to the Governor concerning supplier diversity strategies; and

(g) Research and report back to the Governor no later than December 31, 2010 on the feasibility of conducting a disparity study to evaluate the buying practices of the State of Delaware, focusing on the use of minority and/or women business enterprises.

11. The Council shall consist of 11 members who shall be citizens of the State and shall be appointed by the Governor. The Governor shall appoint a Chairperson from among its members who shall serve at the Governor's pleasure. The members of the Council shall be appointed subject to the following qualifications:

(a) Two members of the Council shall be representatives of local, private or federal minority and/or women business assistance programs or community development programs;

(b) Five members of the Council shall be representatives of the minority and/or women private business sector, among whom at least two shall be women and at least two shall be minority persons;

(c) One representative shall be from a private sector company located in the State of Delaware that administers a supplier diversity program;

(d) The Executive Director of the Office of Management and Budget ("OMB") or his/her designee;

(e) The Executive Director of the Delaware Economic and Development Office ("DEDO") or his/her designee; and

(f) One representative of the Governor's Office.

12. Each appointed Council member shall serve for a term of 4 years from the date of appointment. Vacancies on the Council for any cause shall be filled by the Governor for the unexpired term and until a successor shall

qualify. The Governor may appoint members for terms shorter than 4 years where that is necessary to ensure that no more than three Council members' terms expire in one given year. The Council shall adopt internal procedures or bylaws necessary for efficient operations.

13. OMB shall provide technical assistance and strategic support, as may be necessary. OMB shall provide an Executive Director for the Council who shall be the Executive Director for the Office of Minority and Women Business Enterprise.

14. These directives are not intended in any way to limit the application of additional creativity at the agency level. They are designed to promote economic growth and eliminate any potential impediments to an equitable procurement process. Each cabinet secretary shall evaluate the performance of his or her agency in implementing these directives. Accordingly, the Office of Minority and Women Business Enterprise, in cooperation with each cabinet secretary and through the Director of the Office of Management and Budget, shall provide semiannual reports to the Governor regarding the State of Delaware's progress in enhancing opportunities for minority and/or women business enterprises. The reports shall delineate the State of Delaware's spending in detail by gender, ethnicity, industry classification, and agency.

15. Executive Order No. twenty-three (23) dated December 10, 2001 is hereby rescinded.

16. No provision of this Order shall be intended to create any individual right or legal cause of action, which does not currently exist under State or Federal law.

**APPROVED this 22nd day of December, 2009**

Jack A. Markell,  
Governor

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**EXECUTIVE ORDER  
NUMBER FIFTEEN**

**TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES**  
**RE: FOSTERING SCIENCE, TECHNOLOGY, ENGINEERING AND MATHEMATICS ("STEM") EDUCATION  
IN OUR SCHOOLS AND CREATING A STEM COUNCIL TO LEAD THOSE EFFORTS**

**WHEREAS**, today's economy demands that Delaware students leave our schools ready to compete in international markets and prepared for the careers of tomorrow, which increasingly will require strong abilities in science, technology, engineering and mathematics, or "STEM" subjects; and

**WHEREAS**, Delaware has a long tradition, dating back more than 200 years, as a home of innovation in the sciences and technology, and those capabilities have fueled economic growth in Delaware for generations; and

**WHEREAS**, Delaware employers continue to be national leaders in the innovation economy, and seek out employees with strong backgrounds in science, technology, engineering and mathematics who can strengthen their research and development, make their workplaces more efficient and ensure their business practices are environmentally-sensitive; and

**WHEREAS**, to ensure Delaware students are sought after employees in the world economy, Delaware schools need to effectively prepare them for post-secondary education and careers in STEM fields; and

**WHEREAS**, because STEM education programs cover numerous disciplines, including agricultural sciences, biological sciences, physical sciences, psychology, economics, engineering, computer sciences and earth, atmospheric and ocean sciences, STEM education can foster diverse interests among numerous students and prepare them to make a difference in many different sectors of Delaware's workforce; and

**WHEREAS**, the Delaware Department of Education, through its Innovative Action Team Strategic Plan, recognizes that STEM education programs need to be prioritized in Delaware's schools to prepare students for college and careers; and

**WHEREAS**, the Innovative Action Team Strategic Plan establishes a goal of increasing student enrollment in STEM career pathways by 50% over the 2010 to 2013 period, and accomplishing that goal will require collaboration among the Department, school leaders, educators, the business community, museums, research centers, non-profits, and institutions of higher education; and

**WHEREAS**, a council that can coordinate STEM-related efforts would (a) strengthen cross-disciplinary

dialogue between teachers and stakeholders in STEM subjects; and (b) leverage the members' collective expertise regarding the STEM-based initiatives currently underway to identify the most effective programs and curricula.

**NOW, THEREFORE, I, JACK A. MARKELL**, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby DECLARE and ORDER that:

1. The Delaware STEM Education Council (the "Council") is hereby created.
1. The Council shall be composed of no less than 16 members, who shall be appointed by, and serve at the pleasure of, the Governor. The membership of the Council shall reflect the demographic and geographic diversity of the State and shall be composed of:
  - (a) The Secretary of Education or his or her designee appointed by the Secretary;
  - (b) The Secretary of Labor or his or her designee appointed by the Secretary;
  - (c) The Secretary of the Department of Technology and Information and Chief Information Officer or his or her designee appointed by the Secretary;
  - (d) At least three educators presently teaching in the science, technology, engineering or mathematics or related fields, at least one of whom should be a secondary school teacher and at least one of whom should be an elementary school teacher;
  - (e) At least two curriculum specialists with experience in the science, technology, engineering, mathematics or related fields;
  - (f) A superintendent of a Delaware school district;
  - (g) A representative of a Delaware charter school;
  - (h) At least two representatives of Delaware employers, with a particular emphasis on employers active in the science, technology, engineering or mathematics fields;
  - (i) At least two representatives of Delaware institutions of higher education;
  - (j) A representative of the Delaware Foundation for Science and Mathematics Education; and
  - (k) A representative of the Delaware Business Industry Education Alliance.
  - (l) Such other persons who can contribute to the efforts of the Council.
3. The Governor shall designate one or more members of the Council to serve as Chairperson(s). Members of the Council shall receive no compensation but shall be reimbursed for customary and usual expenses directly incurred in the performance of their duties. The Council shall adopt and make public procedures and standards for the conduct of its affairs, consistent with this Order.
  1. The Council shall have the following powers, duties and functions:
    - (a) Advise the Department of Education on issues relating to STEM education and work with the Department on plans to accomplish the Department's specific goals and objectives for STEM education in Delaware;
    - (b) Review and evaluate STEM education programs being implemented in Delaware schools or elsewhere, and work with districts and charter schools on incorporating proven STEM instruction programs that offer a rigorous course of study into their curricula;
    - (c) Review and evaluate federal sources of funding for STEM-related programs at the state, district, and school level, and assist the Department, districts, or charter schools in the application process for grants to create STEM-related programs;
    - (d) Advise the Department of Education on strategies to improve student test scores in mathematics, science and other areas subject to standardized testing, and on alignment of STEM programs with science and mathematics common standards;
    - (e) Collaborate with institutions of higher education on college-readiness standards for students seeking to pursue STEM educational pathways, and work with the Department, school districts and charter schools on strategies to increase the number of students who are college-ready in STEM fields;
    - (f) Meet with educators and school leaders on how to improve professional development in STEM-related areas, including review of STEM-related professional development programs and STEM alternative certification programs, and promote the state-wide use of effective programs;
    - (g) Promote collaboration and partnerships on STEM education issues between schools and local employers;
    - (h) Study the demographic distribution of students taking STEM education programs or choosing STEM career pathways, including the representation of women and minorities, and develop strategies to address those disparities and promote STEM education and careers in high-needs, high-minority or low-performing school environments; and

(i) Pursue strategies for increasing the recognition among students, teachers, parents and educators of the importance of STEM education.

5. The Department of Education, through the Secretary, shall provide reasonable staff support to assist the Council in performing its duties and shall, upon request, provide the Council with reports and data helpful to the Council's ability to perform its assigned duties. All other executive branch state agencies and departments shall cooperate with the Council when requested. The Council may call and rely upon the expertise of individuals and entities outside of its membership for research, advice, support or other functions necessary and appropriate to accomplish its mission.

6. The Council shall report any recommendations to the Secretary of the Department of Education on a periodic basis, and may report any recommendations for legislation, regulation or other significant policy proposals to the Governor and the Chairpersons of the Education Committees of the State Senate and House of Representatives at such times determined by the Chairperson.

APPROVED this 18th day of January, 2010

Jack A. Markell, Governor

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**DEPARTMENT OF AGRICULTURE**  
**THOROUGHBRED RACING COMMISSION**  
**PUBLIC NOTICE**

The Delaware Thoroughbred Racing Commission in accordance with 3 Del.C. §10103(c) has proposed changes to its rules and regulations. The proposed rule change amends Section 14.6 of the rules and regulations to allow a Jockey, if unseated during the parade to the post, to re-mount in the vicinity of where the Jockey was unseated, instead of having to return to the area at which thrown.

A public hearing will be held on March 16, 2010, at 10:00 a.m., in the second floor conference room of the Horsemen's Office, located on the grounds of Delaware Park, 777 Delaware Park Blvd., Wilmington, DE 19804, where members of the public may offer comments. Anyone wishing to receive a copy of the proposed regulations may obtain a copy from the Delaware Thoroughbred Racing Commission, 777 Delaware Park Blvd., Wilmington, DE 19804. Copies are also published on line at the *Register of Regulations* website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml). Persons wishing to submit written comments may forward these to the attention of John F. Wayne, Executive Director, at the above address. The final date to receive written comments will be March 16, 2010, at the public hearing.

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**DEPARTMENT OF EDUCATION**  
**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, February 18, 2010 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF LONG TERM CARE RESIDENTS PROTECTION**  
**PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 11 of the Delaware Code, Chapter 85, Section 8564, (g), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend the regulation governing the Adult Abuse Registry.

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 Susan Del Pesco, Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-7291, February 28, 2010.

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

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**DIVISION OF LONG TERM CARE RESIDENTS PROTECTION**  
**PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 16, Section 1141 (e), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend the regulation governing criminal history record checks and pre-employment drug testing for persons working in nursing homes and other facilities.

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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 Susan Del Pesco, Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-7291, February 28, 2010.

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

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**DIVISION OF LONG TERM CARE RESIDENTS PROTECTION**  
**PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 16, Section 1145 (f), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend the regulation governing criminal history record checks and pre-employment drug testing for persons working for home health agencies

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 Susan Del Pesco, Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-7291, February 28, 2010.

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

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**DIVISION OF LONG TERM CARE RESIDENTS PROTECTION**  
**PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend the regulation governing Skilled and Intermediate Care Facilities.

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 Susan Del Pesco, Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-7291, February 28, 2010.

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

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**DIVISION OF LONG TERM CARE RESIDENTS PROTECTION**  
**PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 30A, Section 3006A, Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend the regulation governing the training and qualifications for nursing assistants and certified nursing assistants.

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 Susan Del Pesco, Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-7291,



February 28, 2010.

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

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**DIVISION OF LONG TERM CARE RESIDENTS PROTECTION**  
**PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 11, Section 1119C, Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend the regulation governing Assisted Living Facilities.

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 Susan Del Pesco, Director, Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-7291, February 28, 2010.

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

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**DIVISION OF PUBLIC HEALTH**  
**PUBLIC NOTICE**

The Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services (DHSS), will hold a public hearing to discuss the proposed Delaware Regulations for Tanning Facilities. Delaware law mandates that a tanning facility may not allow a minor between the ages of 14 to 18 years to use a tanning device unless the minor provides a consent form signed by the parent or legal guardian at the time of first exposure and the signature of the consent form is witnessed by an operator. The proposed Regulations for Tanning Facilities will be added as a new chapter to the Division of Public Health regulations and will address the requirements of the consent form, compliance and enforcement procedures, and records retention.

The public hearing will be held on February 23, 2010 at 10:00 a.m. in the Third Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review in the February 1, 2010 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Health Systems Protection at (302) 744-4842.

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Deborah Harvey at (302) 744-4700 by February 20, 2010. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by March 2, 2010 to:

Deborah Harvey, Hearing Officer, Division of Public Health  
417 Federal Street, Dover, DE 19901  
Fax (302) 739-6659

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**DIVISION OF SOCIAL SERVICES**  
**PUBLIC NOTICE**

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

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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 Tuesday, March 2, 2010.

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

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**DIVISION OF SOCIAL SERVICES**  
**PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding provisions of the Food Benefit Employment & Training Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by March 2, 2010.

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

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**DIVISION OF SOCIAL SERVICES**  
**PUBLIC NOTICE**

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by Tuesday, March 2, 2010.

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

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**DIVISION OF SOCIAL SERVICES**  
**PUBLIC NOTICE**

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

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 2, 2010.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the

results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

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**DIVISION OF SOCIAL SERVICES**  
**PUBLIC NOTICE**

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

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 2, 2010.

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

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**DEPARTMENT OF INSURANCE**  
**PUBLIC NOTICE**

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt amendments to Department of Insurance Regulation 1310 relating to payment of claims for health care services. The docket number for this proposed amendment is 1329.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:00 p.m., Monday March 1, 2010, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.736.7979 or email to [mitch.crane@state.de.us](mailto:mitch.crane@state.de.us).

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**DEPARTMENT OF LABOR**  
**DIVISION OF INDUSTRIAL AFFAIRS**  
**PUBLIC NOTICE**

The Governor's Council on Apprenticeship & Training will hold a public hearing beginning at 12:30 p.m., Monday, March 8, 2010 at the Delaware Department of Labor, Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802, where members of the public can offer comments.

The Council on Apprenticeship & Training proposes to recommend to the Secretary of Labor a change to Rule 6.4.2 of the Rules and Regulations Relating to Delaware Apprenticeship and Training Law. The proposal would change the ratio of apprentices to mechanics for the insulator and asbestos worker trades from its current 1 up to 4 to 1 up to 3. In addition, the ratios for the following trades will now be recognized: Construction Laborer, Dry Wall Finisher and Hard Tile Setter will be one apprentice up to three mechanics (1 up to 3). The trades of Child Care Worker and Elevator Constructor will be one apprentice up to one mechanic (1 up to 1).

The proposed rule is published in the Delaware Register of Regulations and two newspapers. Copies are available at the Department of Labor, Division of Industrial Affairs, 225 Corporate Blvd., Suite 104, Newark, DE 19702. A copy can be obtained by contacting Kevin Calio, Director of Apprenticeship & Training, at (302) 451-3419. Interested persons can submit written comment to the Council on Apprenticeship & Training c/o Kevin Calio at the above address until the time set for the public hearing.

**DIVISION OF INDUSTRIAL AFFAIRS**  
**OFFICE LABOR LAW ENFORCEMENT**  
**PUBLIC NOTICE**

The Delaware Department of Labor, in accordance with 19 Del.C. § 3512, has proposed the following: Delaware Workplace Fraud Act Regulations ("Regulations") in accordance with 19 Del.C. § 3512. This proposal sets forth the Regulations for implementation and enforcement of the Workplace Fraud Act.

A public hearing will be held before the Administrator of the Office of Labor Law Enforcement at 12:00 p.m. on March 8, 2010, at the Delaware Department of Labor, Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802 where members of the public can offer comments. Anyone wishing to receive a copy of the proposed Regulations may obtain a copy from Anthony J. DeLuca, Administrator, Department of Labor, Office of Labor Law Enforcement 225 Corporate Boulevard, Suite 104, Newark, DE 19702. Persons wishing to submit written comments may forward these to the Administrator at the above address. The final date to receive written comments will be at the public hearing.

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**Delaware Gaming Control Board**  
**PUBLIC NOTICE**

The Delaware Gaming Board will seek public comments on the issue of whether its current Rule 3.1.1 and Rule 3.1.5 in 10 DE Admin. Code 103 should be amended. The rules relate to requirements concerning members of charitable organizations.

The Board also proposes to add a new section to 10 DE Admin. Code Part 104 to require that only members of the charitable organization may handle money during a Texas Hold 'Em Tournament.

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

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**DIVISION OF PROFESSIONAL REGULATION**  
**Board of Veterinary Medicine**  
**PUBLIC NOTICE**

Pursuant to 24 Del.C. § 3306(a)(1), the Board of Veterinary Medicine has proposed revisions to its rules and regulations.

A public hearing will be held on March 9, 2010 at 1:15 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 Board of Veterinary Medicine, 861 Silver Lake Boulevard, Dover, Delaware 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 proposes amendments to Rule 2.0, addressing Unprofessional Conduct for Veterinarians. Specifically, Rule 2.1.1 is revised to set forth additional requirements for the labeling of prescription drugs. Pursuant to the revisions, labels must be legible, must identify the prescribing veterinarian and the patient's name and must set forth the specific medication usage directions. The proposed revisions will serve to protect the public by ensuring that clear and complete information is included on all prescriptions.

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

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