
Delaware Register of Regulations

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IN THIS ISSUE:

Regulations:
Proposed
Final

Calendar of Events &
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before December 17, 2012.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

681

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

15 **DE Reg.** 1728 - 1759 (06/01/12)

Refers to Volume 15, pages 1728 - 1759 of the *Delaware Register* issued on June 1, 2012.

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
February 1	January 15	4:30 p.m.
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 15	4:30 p.m.

DIVISION OF RESEARCH STAFF

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TABLE OF CONTENTS

683

Cumulative Tables..... 685

PROPOSED

DEPARTMENT OF EDUCATION

Office of the Secretary

540 Driver Education..... 691
624 School District/Charter School Policy Prohibiting Cyberbullying..... 694
817 Administrator of Medications and Treatments..... 696

Professional Standards Board

1550 AgriScience Teacher..... 701
1551 Business Education Teacher..... 703
1554 Family and Consumer Sciences Teacher..... 704
1555 Marketing Education Teacher..... 706
1557 Technology Education Teacher..... 708

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Long Term Care Residents Protection

3102 Long Term Care Transfer, Discharge and Readmission Procedures..... 710
3105 Criminal History Record Checks and Drug Testing..... 716
3110 Criminal History Checks and Drug Testing for Home Health Agencies..... 717

Division of Social Services

DSSM: 11003 Eligibility Requirements - Providing Child Care for Food Benefit Volunteers. 717

DEPARTMENT OF JUSTICE

Victims' Compensation Assistance Program Advisory Council

301 Victims' Compensation Assistance Program Rules and Regulations..... 719

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air Quality

1147 CO₂ Budget Trading Program..... 720

Division of Fish and Wildlife

3214 Horseshoe Crab Annual Harvest Limit..... 722
3900 Wildlife, Sections 2.0, Method of Take; 5.0 Wild Turkeys; 10.0 Nuisance Game Animals;
..... 14.0 Falconry and 16.0 Endangered Species..... 723

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Division of State Police

2400 Board of Examiners of Constables..... 728

DEPARTMENT OF STATE

Division of Professional Regulation

Gaming Control Board

..... 101 Regulations Governing Bingo..... 730

500 Board of Podiatry..... 733

1900 Board of Nursing..... 736

2500 Board of Pharmacy..... 739

Public Service Commission

3007 Electric Service Reliability and Quality Standards..... 741

EXECUTIVE DEPARTMENT

Office of Management and Budget

Environmentally Preferred Purchasing Policy..... 743

TABLE OF CONTENTS

FINAL

DELAWARE RIVER BASIN COMMISSION

Amendments to the Water Code and Comprehensive Plan to Implement a Revised Water Audit Approach to Identify and Control Water Loss.....	750
---	-----

DEPARTMENT OF AGRICULTURE

Harness Racing Commission

501 Harness Racing Rules and Regulations, Section 6.0, Types of Races.....	754
--	-----

DEPARTMENT OF EDUCATION

Professional Standards Board

1520 Early Childhood Teacher.....	755
1521 Elementary Teacher.....	757
1522 Elementary School Counselor.....	759
1539 Health Education Teacher.....	761
1545 Secondary School Counselor.....	763
1571 Exceptional Children Special Education Teacher.....	766
1573 Teacher of Students With Autism or Severe Disabilities.....	767
1581 School Reading Specialist.....	770

DEPARTMENT OF ELECTIONS

Office of the Commissioner of Elections for the State of Delaware

Campaign Finance Regulations.....	771
-----------------------------------	-----

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Medicaid and Medical Assistance

Title XIX Medicaid State Plan, Reimbursement Methodology for ICF/MR Facilities.....	781
---	-----

DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL

Division of Waste and Hazardous Substances

Delaware's Regulations Governing Hazardous Waste (DRGHW).....	784
1353 Boiler Safety.....	786

Division of Fish and Wildlife

Non Tidal Finfish Regulations	788
-------------------------------------	-----

DEPARTMENT OF STATE

Public Service Commission

3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard.....	790
---	-----

CALENDAR OF EVENTS/HEARING NOTICES

Dept. of Education, Notice of Monthly Meeting.....	798
Dept. of Health and Social Svcs., Div. of Long Term Care Residents Protection, Div. of Social Services, Notices of Public Comment Periods.....	798
Dept. of Justice, Victims' Compensation Assistance Program Advisory Council, Notice of Public Comment Period.....	799
Dept. of Natural Resources and Environmental Control, Div. of Air Quality; Div. of Fish and Wildlife, Notices of Public Hearings.....	799 - 800
Dept. of Safety and Homeland Security, Div. of State Police, Board of Examiners of Constables....	800
Dept. of State, Div. of Professional Regulation; Public Service Commission, Notices of Public Hearings	800 - 802
Executive Dept., Office of Mgmt. and Budget, Notice of Public Hearing.....	803

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

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

DELAWARE STATE FIRE PREVENTION COMMISSION

701 Administration and Enforcement.....	16 DE Reg.	16 (Prop.)
	16 DE Reg.	620 (Final)
702 Fire Protection in Building Construction.....	16 DE Reg.	16 (Prop.)
	16 DE Reg.	620 (Final)
703 Installation, Operation, Maintenance, Testing and Sales of Signaling Systems, Fire Protection Systems and Fire Extinguishers.....	16 DE Reg.	16 (Prop.)
	16 DE Reg.	620 (Final)
704 Hazardous Processes and Operations.....	16 DE Reg.	16 (Prop.)
	16 DE Reg.	620 (Final)
705 General Fire Safety.....	16 DE Reg.	16 (Prop.)
	16 DE Reg.	620 (Final)
706 Specific Occupancy Requirements.....	16 DE Reg.	16 (Prop.)
	16 DE Reg.	620 (Final)

DEPARTMENT OF AGRICULTURE

Food Products Inspection Section

301 Food Products Inspection.....	16 DE Reg.	196 (Final)
-----------------------------------	------------	-------------

Harness Racing Commission

501 Harness Racing Rules and Regulations, Rule 3.5.1.....	16 DE Reg.	65 (Final)
501 Harness Racing Rules and Regulations, Section 6.0.....	16 DE Reg.	475 (Prop.)
501 Harness Racing Rules and Regulations, Rules 6.2.2.1.10, 6.2.2.2 & 8.2.2.4	16 DE Reg.	17 (Prop.)
	16 DE Reg.	282 (Final)

Plant Industries

801 Regulations for Noxious Weed Control.....	16 DE Reg.	66 (Final)
---	------------	------------

DEPARTMENT OF EDUCATION

Office of the Secretary

275 Charter Schools.....	16 DE Reg.	197 (Final)
294 Data Governance.....	16 DE Reg.	67 (Final)
601 Schools and Law Enforcement Agencies.....	16 DE Reg.	564 (Prop.)
624 School District/Charter School Policy Prohibiting Cyberbullying.....	16 DE Reg.	351 (Prop.)
804 Immunizations.....	16 DE Reg.	157 (Prop.)
	16 DE Reg.	411 (Final)
815 Health Examinations and Screening.....	16 DE Reg.	20 (Prop.)
	16 DE Reg.	283 (Final)
930 Supportive Instruction (Homebound).....	16 DE Reg.	160 (Prop.)
	16 DE Reg.	412 (Final)
1101 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998.....	16 DE Reg.	162 (Prop.)
	16 DE Reg.	415 (Final)
1102 Standards for School Bus Chassis and Bodies Placed in Production on or After March 1, 2002 and on or After March 1, 2003 with Specific Changes for Buses Placed in Production After January 1, 2004.....	16 DE Reg.	164 (Prop.)
	16 DE Reg.	416 (Final)
1103 Standards for School Bus Chassis and Bodies For Buses Placed in Production on or After January 1, 2007.....	16 DE Reg.	65 (Prop.)

1103 Standards for School Bus Chassis and Bodies For Buses Placed in Production on or After January 1, 2007.....	16 DE Reg. 418 (Final)
Professional Standards Board	
1501 Knowledge, Skills and Responsibility Based Supplements for Educators	16 DE Reg. 353 (Prop.)
1508 Special Institute for Teacher Licensure and Certification.....	16 DE Reg. 623 (Final)
	16 DE Reg. 354 (Prop.)
1509 Meritorious New Teacher Candidate Designation.....	16 DE Reg. 624 (Final)
	16 DE Reg. 355 (Prop.)
1520 Early Childhood Teacher.....	16 DE Reg. 625 (Final)
1521 Elementary Teacher.....	16 DE Reg. 478 (Prop.)
	16 DE Reg. 480 (Prop.)
Professional Standards Board	
1522 Elementary School Counselor.....	16 DE Reg. 481 (Prop.)
1531 Middle Level English Language Arts Teacher.....	16 DE Reg. 567 (Prop.)
1532 Middle Level Mathematics Teacher.....	16 DE Reg. 568 (Prop.)
1533 Middle Level Science Teacher.....	16 DE Reg. 570 (Prop.)
1534 Middle Level Social Studies Teacher.....	16 DE Reg. 571 (Prop.)
1539 Middle Level / Secondary Health Education Teacher.....	16 DE Reg. 484 (Prop.)
1540 Secondary English Language Arts Teacher.....	16 DE Reg. 573 (Prop.)
1542 Secondary Mathematics Teacher.....	16 DE Reg. 575 (Prop.)
1543 Secondary Science Teacher.....	16 DE Reg. 356 (Prop.)
	16 DE Reg. 627 (Final)
1544 Secondary Social Studies Teacher.....	16 DE Reg. 576 (Prop.)
1545 Secondary School Counselor.....	16 DE Reg. 485 (Prop.)
1549 Dance Teacher.....	16 DE Reg. 578 (Prop.)
1553 Driver Education and Traffic Safety Education Teacher.....	16 DE Reg. 359 (Prop.)
	16 DE Reg. 628 (Final)
1558 Theater Teacher.....	16 DE Reg. 580 (Prop.)
1570 Early Childhood Special Education Teacher.....	16 DE Reg. 286 (Final)
1571 Exceptional Children Special Education Teacher.....	16 DE Reg. 488 (Prop.)
1573 Teacher of Students With Autism or Severe Disabilities.....	16 DE Reg. 489 (Prop.)
1574 Teacher of Students Who Are Deaf or Hard of Hearing.....	16 DE Reg. 582 (Prop.)
1575 Teacher of Students with Visual Impairments.....	16 DE Reg. 587 (Prop.)
1581 School Reading Specialist.....	16 DE Reg. 493 (Prop.)
1591 School Principal and Assistant Principal.....	16 DE Reg. 362 (Prop.)
1592 School Leader I.....	16 DE Reg. 499 (Prop.)
1593 School Leader II.....	16 DE Reg. 502 (Prop.)
1594 Special Education Director.....	16 DE Reg. 506 (Prop.)
1595 Certification Programs For Leaders in Education.....	16 DE Reg. 365 (Prop.)
1597 Delaware Professional Teaching Standards.....	16 DE Reg. 70 (Final)

DEPARTMENT OF ELECTIONS**Office of the Commissioner of Elections for the State of Delaware**

Campaign Finance Regulations.....	16 DE Reg. 510 (Prop.)
-----------------------------------	------------------------

DEPARTMENT OF FINANCE**Division of Unclaimed Property**

Abandoned or Unclaimed Property Examination Guidelines.....	16 DE Reg. 630 (Final)
102 Regulation on Practices and Procedures for Records Examinations by the State Escheator.....	16 DE Reg. 22 (Prop.)
	16 DE Reg. 530 (Final)

Office of the State Lottery

204 Sports Lottery Rules and Regulations.....	16 DE Reg. 24 (Prop.)
	16 DE Reg. 155 (Emer)
	16 DE Reg. 291 (Final)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Long Term Care Residents Protection

3102 Long Term Care Transfer, Discharge and Readmission Procedures.....	16 DE Reg. 24 (Prop.)
3201 Skilled and Intermediate Care Nursing Facilities.....	16 DE Reg. 296 (Final)
3210 Nursing Homes Admitting Pediatric Residents.....	16 DE Reg. 592 (Prop.)
3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants.....	16 DE Reg. 593 (Prop.)
3225 Assisted Living Facilities.....	16 DE Reg. 371 (Prop.)
3230 Rest (Residential) Home Regulations.....	16 DE Reg. 632 (Final)
	16 DE Reg. 595 (Prop.)
	16 DE Reg. 34 (Prop.)
	16 DE Reg. 637 (Final)

Division of Medicaid and Medical Assistance

DSSM: 20320.7B & 20320.7E Medicaid Long-Term Care Services-HomeEquity.....	16 DE Reg. 377 (Prop.)
20500 Estate Recovery and Civil Unions and Medicare Cost Sharing	16 DE Reg. 639 (Final)
20775 Program of All-Inclusive Care for the Elderly (PACE).....	16 DE Reg. 166 (Prop.)
	16 DE Reg. 423 (Final)
	16 DE Reg. 170 (Prop.)
	16 DE Reg. 532 (Final)
Fair Hearing Practice and Procedures - Expedited Fair Hearings.....	16 DE Reg. 6 (Emer.)
	16 DE Reg. 30 (Prop.)
	16 DE Reg. 419 (Final)

Title XIX Medicaid State Plan:

Medicaid Eligibility Conditions and Requirements.....	16 DE Reg. 72 (Final)
Nursing Facility Quality Assessment.....	16 DE Reg. 38 (Prop.)
	16 DE Reg. 309 (Final)
General Program Administration, Survey & Certification Process, Long-Term Care Ombudsman.....	16 DE Reg. 42 (Prop.)
	16 DE Reg. 312 (Final)
Reimbursement Methodology for ICF/MR Facilities.....	16 DE Reg. 517 (Prop.)
Reimbursement Methodologies for Inpatient Psychiatric Hospital Services and Outpatient Hospital Services.....	16 DE Reg. 597 (Prop.)
Telemedicine Services.....	16 DE Reg. 44 (Prop.)
	16 DE Reg. 314 (Final)

Division of Public Health

4102 School-Based Health Centers.....	16 DE Reg. 600 (Prop.)
4459 Lead Based Paints Hazards.....	16 DE Reg. 238 (Prop.)
	16 DE Reg. 537 (Final)
4462 Public Drinking Water Systems.....	16 DE Reg. 73 (Final)

Division of Social Services

Child Care Subsidy Program Proposed Phase-Out of Purchase of Care Plus	16 DE Reg. 603 (Prop.)
DSSM: 1009 - 1010; Case Administration Provisions.....	16 DE Reg. 605 (Prop.)
2022 General Information.....	16 DE Reg. 607 (Prop.)
3034 General Assistance Time Limits.....	16 DE Reg. 378 (Prop.)
	16 DE Reg. 641 (Final)
6001 Legal Base; 6002 Eligibility; 6003 Vendor Payments; 6004 Payment Limitation: Time Restriction; 6005 Scope of Coverage; 6006 Classification of Emergency Assistance Services-Content of Services; 6007 Accountability Reports.....	16 DE Reg. 173 (Prop.)
	16 DE Reg. 426 (Final)
6100 through 6111- Transitional Resources to Relative Caregivers....	16 DE Reg. 211 (Final)
9072 Identification Cards.....	16 DE Reg. 607 (Prop.)
11002.9 Definitions and Explanation of Terms.....	16 DE Reg. 78 (Final)
11003 Eligibility Requirements.....	16 DE Reg. 47 (Prop.)
	16 DE Reg. 213 (Final)
	16 DE Reg. 314 (Final)

11003.2.1 TANF and Transitional Work Program Sanctions.....	16 DE Reg. 379 (Prop.)
11006.4 Child Care Subsidy Program, Provider Reimbursement.....	16 DE Reg. 643 (Final)
Division of Substance Abuse and Mental Health	
6002 Credentialing Mental Health Screeners & Pmt. for Voluntary Admissions	16 DE Reg. 609 (Prop.)
DEPARTMENT OF INSURANCE	
700 Policies and Procedures Regarding FOIA Requests.....	16 DE Reg. 87 (Final)
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL	
Office of the Secretary	
104 Regulations for the Green Energy Program.....	16 DE Reg. 381 (Prop.)
Division of Air Quality	
1120 New Source Platform Standards.....	16 DE Reg. 181 (Prop.)
1125 Requirements for Preconstruction Review.....	16 DE Reg. 644 (Final)
Sections 1.9 and 2.0.....	16 DE Reg. 214 (Final)
1138 Emission Standards for Hazardous Air Pollutants for Source Categories.	16 DE Reg. 239 (Prop.)
	16 DE Reg. 182 (Prop.)
	16 DE Reg. 646 (Final)
Division of Fish and Wildlife	
Non-Tidal Finfish Regulations 3301, 3303, 3304, 3305, 3306, 3307, 3308, 3309 and 3310.....	16 DE Reg. 245 (Prop.)
3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas.....	16 DE Reg. 184 (Prop.)
	16 DE Reg. 431 (Final)
3521 Weakfish Size Limits; Possession Limits, Seasons.....	16 DE Reg. 382 (Prop.)
3531 Tautog; Size Limits, Creel Limits and Seasons.....	16 DE Reg. 216 (Final)
3552 Spanish Mackerel Size Limit and Creel Limit.....	16 DE Reg. 94 (Final)
Division of Waste and Hazardous Substances	
1302 Regs. Governing Hazardous Waste, Parts 261, 262, 265, 266 & 268.....	16 DE Reg. 383 (Prop.)
1353 Boiler Safety.....	16 DE Reg. 251 (Prop.)
1375 Delaware Regulations Governing Hazardous Substance Cleanup.....	16 DE Reg. 218 (Final)
Division of Water	
7101 Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems.....	16 DE Reg. 395 (Prop.)
7201 Regulations Governing the Control of Water Pollution.....	16 DE Reg. 14 (Emer.)
	16 DE Reg. 50 (Prop.)
	16 DE Reg. 322 (Final)
Division of Watershed Stewardship	
7431 Total Maximum Daily Load (TMDL) for the Lums Pond Sub-Watershed	16 DE Reg. 186 (Prop.)
	16 DE Reg. 538 (Final)
DEPARTMENT OF SAFETY AND HOMELAND SECURITY	
Alcoholic Beverage Control Commission	
Regulations Governing Wholesale and Supply Operation, The "At Rest" Requirement.....	16 DE Reg. 252 (Prop.)
Division of State Police	
2300 Pawn Brokers, Secondhand Dealers and Scrap Metal Processors.....	16 DE Reg. 255 (Prop.)
	16 DE Reg. 540 (Final)
DEPARTMENT OF STATE	
Division of Professional Regulation	
Gaming Control Board	
101 Regulations Governing Bingo;.....	16 DE Reg. 219 (Final)
101 Regulations Governing Bingo.....	16 DE Reg. 520 (Prop.)
102 Regulations Governing Raffles;.....	16 DE Reg. 219 (Final)

103 Regulations Governing Charitable Gambling Other Than Raffles;.....	16 DE Reg. 219 (Final)
104 Regulations Governing Texas Hold'em Poker.....	16 DE Reg. 219 (Final)
200 Board of Landscape Architecture.....	16 DE Reg. 324 (Final)
700 Board of Chiropractic.....	16 DE Reg. 96 (Final)
1100 Board of Dentistry & Dental Hygiene, Section 7.0 Anesthesia Regulations	16 DE Reg. 257 (Prop.)
	16 DE Reg. 328 (Final)
1400 Board of Electrical Examiners.....	16 DE Reg. 188 (Prop.)
	16 DE Reg. 648 (Final)
1700 Board of Medical Licensure and Discipline.....	16 DE Reg. 617 (Prop.)
	16 DE Reg. 651 (Final)
Section 31.0, Use of Controlled Substances for the Treatment of Pain	16 DE Reg. 260 (Prop.)
	16 DE Reg. 330 (Final)
1770 Respiratory Care Practice Advisory Council.....	16 DE Reg. 97 (Final)
1790 Acupuncture Advisory Council.....	16 DE Reg. 434 (Final)
1799 Genetic Counselor Advisory Council.....	16 DE Reg. 652 (Final)
2500 Board of Pharmacy	16 DE Reg. 654 (Final)
2700 Board of Registration for Professional Land Surveyors.....	16 DE Reg. 436 (Final)
	16 DE Reg. 543 (Final)
2900 Real Estate Commission.....	16 DE Reg. 99 (Final)
2925 Real Estate Commission Education Committee.....	16 DE Reg. 104 (Final)
2930 Board of Real Estate Appraisers.....	16 DE Reg. 221 (Final)
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals.....	16 DE Reg. 105 (Final)
3100 Board of Funeral Services.....	16 DE Reg. 106 (Final)
	16 DE Reg. 264 (Prop.)
	16 DE Reg. 655 (Final)
3600 Board of Registration of Geologists	16 DE Reg. 51 (Prop.)
	16 DE Reg. 437 (Final)
3900 Board of Clinical Social Work Examiners.....	16 DE Reg. 108 (Final)
5200 Board of Examiners of Nursing Home Administrators.....	16 DE Reg. 397 (Prop.)
5300 Board of Massage and Bodywork.....	16 DE Reg. 222 (Final)
Uniform Controlled Substances Act Regulations.....	16 DE Reg. 267 (Prop.)
Office of the State Banking Commissioner	
905 Loan Limitations: Credit Exposure to Derivative Transactions.....	16 DE Reg. 523 (Prop.)
1109 Instructions for Calculation of Employment Tax Credits (5 Del.C. §1105)	16 DE Reg. 656 (Final)
2210 Short-Term Consumer Loans.....	16 DE Reg. 398 (Prop.)
	16 DE Reg. 658 (Final)
Public Service Commission	
3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard.....	16 DE Reg. 402 (Prop.)
DEPARTMENT OF TRANSPORTATION	
Division of Motor Vehicles	
2222 School Bus Driver Qualifications and Endorsements.....	16 DE Reg. 405 (Prop.)
Division of Planning and Policy	
2309 Standards and Regulations for Subdivision Streets and State Highway Access.....	16 DE Reg. 192 (Prop.)
	16 DE Reg. 618 (Prop.)
Division of Technology and Support Services	
2501 External Equal Employment Opportunity Complaint Procedure.....	16 DE Reg. 270 (Prop.)
Division of Transportation Solutions	
2402 Delaware Manual on Uniform Traffic Control Devices.....	16 DE Reg. 274 (Prop.)
	16 DE Reg. 660 (Final)
2404 Traffic Calming Manual.....	16 DE Reg. 194 (Prop.)
	16 DE Reg. 544 (Final)

EXECUTIVE DEPARTMENT

Delaware Economic Development Office

402 Procedures Governing The Delaware Strategic Fund.....	16 DE Reg. 194 (Prop.)
	16 DE Reg. 662 (Final)
451 Matching Grants Program.....	16 DE Reg. 194 (Prop.)
	16 DE Reg. 662 (Final)
452 Direct Grants Program.....	16 DE Reg. 194 (Prop.)
	16 DE Reg. 662 (Final)
453 Co-Op Advertising Program.....	16 DE Reg. 194 (Prop.)
	16 DE Reg. 662 (Final)
454 Procedures Governing Delaware Tourism Grant Program.....	16 DE Reg. 194 (Prop.)
	16 DE Reg. 662 (Final)

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 540

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

540 Driver Education

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 540 Driver Education to allow for students with Individual Education Programs (IEPs) additional time to complete driver education pursuant to House Bill No. 264 as amended by House Amendment No. 1 of the 146th General Assembly. Additionally, changes were made to reflect the elimination of fees for driver education for nonpublic school students who are Delaware residents.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before March 5, 2013 to Susan Haberstroh, Regulation Review, Department of Education 35 Commerce Way, Suite 1, Dover, Delaware 19904. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is related to driver education and does not specifically address the state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure all students receive and equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected?

The amendments to the regulation do not specifically address the health and safety of students.

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

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

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amendments do 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 amendments do not change the decision making authority and accountability.

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 are consistent with other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing 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 are no anticipated new costs to the local school boards for compliance.

540 Driver Education

1.0 Eligibility for Driver Education

- 1.1 A student enrolled in a Delaware public school or nonpublic school (private and homeschool) and who is a resident of Delaware is entitled to free driver education one time only. Delaware nonpublic school (private and homeschool) students are entitled to tuition based driver education at rates approved by co-chairs of the Joint Finance Committee, Delaware General Assembly. Students who are not successful in their initial driver education course may register in any of the adult driver education programs for a fee.
- 1.21.1 For a student with an active Individual Education Program (IEP), the Individualized Education Program Team, in consultation with the Driver Education teacher, may make accommodations to the Driver Education program, including but not limited to, allowing multiple opportunities to take the driver education course, delaying the course until the 11th or 12th grade and offering specialized instruction for special education students through the student's Individual Education Program (I.E.P. IEP).
- 1.1.2 A student who is receiving special education services under an active Individual Education Program (IEP) shall be authorized until the age of 21 to complete the driver education certification.
- 1.1.3 A student with an active IEP retaking the driver education course because of failing the initial driver education course shall not be required to pay a fee for taking the course one additional time.
- 1.32 Nothing in this regulation shall alter a school's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a school from providing driver education to such students.
- 1.43 Delaware students who are residents attending public schools who are attending school out of state as 10th graders, students in excess of the September 30th unit allotment, students attending private schools in the state with 10th grade enrollments of less than twenty-five homeschooled students and any student approved by the Secretary as an exceptional case are entitled to attend summer driver education without charge. Students attending private schools in state with 10th grade enrollments of less than twenty five, homeschooled students, and eligible Delaware residents attending schools out of state shall be entitled to attend tuition based summer driver education at rates approved by the co-chairs of the Joint Finance Committee, Delaware General Assembly. Districts shall notify all nonpublic and public high schools in their district by May 1st annually as to the location of the nearest summer driver education program. Summer Driver Education shall be offered between June 10 and August 31

and each request for free tuition must be approved by the Secretary of Education through the ~~Office of the Director of Career & Technical Education and School Climate~~ Director overseeing driver education.

- 1.54 Adult Driver Education programs, when offered, shall follow the same regulations established for the high school and the summer programs. The adult programs are available to any individual for a fee through a local school district in each county. The cost per student for adult driver education will be determined by the Department of Education.

2.0 Requirements for Class Time

- 2.1 The driver education course shall include a minimum of forty four (44) class hours of instruction consisting of thirty (30) class hours of classroom instruction, seven (7) class hours of in the car behind the wheel laboratory instruction and seven (7) hours of actual observation in the car. The class hours must not be less than forty five (45) minutes each. For those schools with varying class schedules the minimum classroom instruction must be no less than one thousand three hundred fifty (1350) minutes and behind the wheel laboratory instruction no less than three hundred fifteen (315) minutes.
- 2.2 Driving simulators may be substituted for the required hours of behind the wheel laboratory instruction but only up to three (3) hours of time at the ratio of four (4) hours of driving simulation to one (1) hour of actual behind the wheel laboratory instruction.
- 2.3 Off the street driving ranges or multiple driving ranges that are off the street may be substituted for actual behind the wheel laboratory instruction up to three (3) hours time at the ratio of two (2) hours of range instruction time to one (1) hour of actual behind the wheel laboratory instruction time.
- 2.4 Driving simulation and off the street driving range time shall not be taken from or cause a reduction of classroom instruction time.
- 2.5 Driving simulation and off the street driving range time shall not be substituted for more than one half (1/2) of the total required seven (7) hours of actual behind the wheel laboratory instruction and only at the ratios defined in 2.0. This includes individually or in any combination.

3.0 Curriculum

The Driver Education teachers shall use the statewide curriculum for driver education developed by the Department of Education for classroom instruction and behind the wheel laboratory instruction time. Teachers should include student activities requiring reading, writing and research as part of the Driver Education curriculum.

4.0 Final Grades

- 4.1 Final grades for the forty four hour driver education course shall be either pass or fail. Schools may grant one fourth (1/4) credit for successful completion of the minimum hours in both the classroom and the behind the wheel laboratory experience. The one fourth of a credit for driver education may be included as part of the elective credits counted toward graduation.
- 4.2 Pass or Fail grades must be received by the Department of Education no later than June 30th for Regular Driver Education Programs and August 31st for Summer Driver Education Programs. Final grades will be maintained by the Department for a seven year period.

5.0 Use of Driver Education Cars

Automobiles purchased, leased from Fleet Services or leased directly from a dealership using state funds allocated for driver education shall be used solely for the instruction of students enrolled in Driver Education; except that a school district or charter school may permit a driver education teacher to drive such automobile to and from the teacher's place of residence when the school district or charter school determines that it would be unsafe to store the automobile overnight at the school. The ~~Director of Career & Technical Education and School Climate~~ overseeing driver education shall assign private school driver education teachers a state parking location to store the vehicle overnight when it appears that it would be unsafe to store the automobile overnight at the school.

6.0 Scheduling of Driver.

All public and nonpublic private high schools with twenty five or more enrolled 10th grade students shall offer Driver Education as part of the curriculum.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 624

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

624 School District/Charter School Policy Prohibiting Cyberbullying

A. TYPE OF REGULATORY ACTION REQUIRED

New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

The Secretary of Education seeks to establish a new regulation 14 DE Admin. Code 624 School District/Charter School Policy Prohibiting Cyberbullying. This regulation is a result of Senate Bill 193 of the 146th General Assembly, which requires that the Delaware Department of Education shall collaborate with the Delaware Department of Justice to develop a model cyberbullying policy. This legislation and this subsequent regulation expands upon the policy found in 14 Del.C. §4112D and also explicitly prohibits cyberbullying by students directed at other students. Incidents of cyberbullying shall be treated by each school district and charter school in the same manner as incidents of bullying, and notice of each school district and charter school's policy against cyberbullying shall be provided to students, staff, and faculty in the same manner as notice of the school district and charter school's policy against cyberbullying. The proposed regulation was published in the October *Register of Regulations*. Section 2.1 and 2.4 of the regulation were amended subsequent to public comments received.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before February 5, 2013 to Susan Haberstroh, Regulation Review, Department of Education, 35 Commerce Way, Suite 1, Dover, Delaware 19904. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation is intended to improve the school climate thus resulting in helping to improve student achievement.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation is intended to help ensure all students receive and equitable education.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation is intended to ensure all students' health and safety are adequately protected, specifically in the area of cyberbullying.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation is intended to help ensure all students' legal rights are respected.

5. Will the new regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The new regulation is intended to preserve the necessary authority and flexibility of decision making at the local board and school level, but does provide for more specificity of actions required in instances of bullying.

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The legislation and this subsequent regulation does require additional reporting.

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 bullying and cyberbullying does not change because of 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? The regulation is consistent with other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? The regulation is aligned with the legislation.

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

624 School District/Charter School Policy Prohibiting Cyberbullying

1.0 Cyberbullying Forbidden

In addition to the policy prohibiting bullying put in place by school districts and charter schools pursuant to 14 Del.C. §4112D(b)(2), each school district and charter school shall also prohibit cyberbullying (as defined herein) by students directed at other students. Incidents of cyberbullying shall be treated by each school district and charter school in the same manner as incidents of bullying, and notice of each school district's and charter school's policy against cyberbullying shall be provided to students, staff, and faculty in the same manner as notice of the school district's and charter school's policy against bullying.

2.0 Definition of Cyberbullying

- 2.1 Cyberbullying means the use of uninvited and unwelcome electronic communication directed at an identifiable student or group of students, through means other than face-to-face interaction, which (1) interferes with a student's physical well-being; or (2) is threatening or intimidating; or (3) is so severe, persistent, or pervasive that it is reasonably likely to limit a student's ability to participate in or benefit from the educational programs of the school district or charter school. Communication shall be considered to be directed at an identifiable student or group of students if it is sent directly to that student or group, or posted in a medium that the speaker knows is likely to be available to a broad audience within the school community.
- 2.2 Whether speech constitutes cyberbullying will be determined from the standpoint of a reasonable student of the same grade and other circumstances as the victim.
- 2.3 The place of origin of speech otherwise constituting cyberbullying is not material to whether it is considered cyberbullying under this policy, nor is the use of school district or charter school materials.
- 2.4 Upon implementation of this policy, and again at the beginning of each academic year, each school district and charter school shall inform students in writing of mediums where posting of speech will be presumed to be available to a broad audience within the school community, regardless of privacy settings or other limitations on those postings. From implementation of this policy through the end of the 2013-2014 school year, postings on Facebook, Twitter, MySpace, YouTube, and Pinterest shall be included in each district's list of mediums where posting of speech will be presumed to be available to a broad audience within the school community, regardless of privacy settings or other limitations on those postings.
- 2.5 Nothing in this policy shall limit in any way a school district's or charter school's ability to regulate student conduct, including bullying, in any manner provided for by existing law, regulation, or policy.

PROPOSED REGULATIONS

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 817

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

817 Administration of Medications and Treatments

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 817 Administration of Medications and Treatments. The amendments include the addition of definitions, clarification of the process for the administration of medications and treatments, and also changes that reflect recent amendments to 24 Del.C., Section 1921(a)(17) relating to who may assist students with medications and when they may do so.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before February 5, 2013 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, 35 Commerce Way, Suite 1, Dover, Delaware 19904. 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 are related to the administration and assistance of medications and treatment and not specifically related to improving student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amendments are related to the administration and assistance of medications and treatments and is not specifically related to all students receiving an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments should help ensure all students' health and safety are adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendments should help ensure all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendments preserve any necessary authority or flexibility at the local board and school levels.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amendments are not intended to 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 does not change because of 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? The amendments are consistent with the 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 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 are no added costs to the State or to the local boards for compliance with the amendments.

~~817 Administration of Medications and Treatments~~

~~4.0 Administration of Medications and Treatment~~

- 1.1 Medications, in their original container, and treatments may be administered to a public school student by the school nurse when a written request to administer the medication or treatment is on file from the parent, guardian or Relative Caregiver or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a). The school nurse shall check the student health records and history for contra indications and all allergies, especially to the medications, and shall provide immediate medical attention if an allergic reaction is observed or make a referral if symptoms or conditions persist. The school nurse shall also document the student's name, the name of medication and treatment administered, the date and time it was administered and the dosage if medication was administered.

~~40 DE Reg. 1807 (06/01/07)~~

~~2.0 Licensed Health Care Provider~~

- 2.1 Any prescribed medication administered to a student, in addition to the requirements in 1.0, shall be prescribed by a licensed health care provider. Treatment, including specialized health procedures, shall be signed by a licensed health care provider with directions relative to administration or supervision.

~~40 DE Reg. 1807 (06/01/07)~~

~~3.0 Prescription Medications~~

- 3.1 Prescription medication shall be properly labeled with the student's name; the licensed health care provider's name; the name of the medication; the dosage; how and when it is to be administered; the name and phone number of the pharmacy and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia National Formulary standards.
- 3.2 Medications and dosages administered by the school nurse shall be limited to those recommended by the Federal Drug Administration (FDA), peer review journal that indicates doses or guidelines that are both safe and effective or guidelines that are specified in regional or national guidelines.
- 3.2.1 The prescription and the medication shall be current and long term prescriptions shall be re authorized at least once a year.
- 3.2.2 All medications classified as controlled substances shall be counted and reconciled each month by the school nurse and kept under double lock. Such medications should be transported to and from school by an adult.

~~40 DE Reg. 1807 (06/01/07)~~

~~4.0 Non-Prescription Medications~~

- 4.1 Non prescription medications may be given by the school nurse after the nurse assesses the complaint and the symptoms to determine if other interventions can be used before medication is administered and if all requirements in 1.0 have been met.

~~40 DE Reg. 1807 (06/01/07)~~

~~5.0 IEP Team~~

- 5.1 For a student who requires significant medical or nursing interventions, the Individual Education Program (IEP) team shall include the school nurse.

~~40 DE Reg. 1807 (06/01/07)~~

~~6.0 Assistance With Medications on Field Trips~~

- 6.1 Definitions
- "Assist a Student with Medication"** means assisting a student in the self administration of a medication, provided that the medication is in a properly labeled container as hereinafter provided. Assistance may include holding the medication container for the student, assisting with the opening of the container, and assisting the student in self administering the medication. Lay assistants shall not assist with

PROPOSED REGULATIONS

injections. The one exception is with emergency medications where standard emergency procedures prevail in lifesaving circumstances.

"Field Trip" means any off campus, school sponsored activity.

"Medication" means a drug taken orally, by inhalation, or applied topically, and which is either prescribed for a student by a physician or is an over the counter drug which a parent, guardian or Relative Caregiver has authorized a student to use.

"Paraeducator" mean teaching assistants or aides.

6.2 Teachers, administrators and paraeducator employed by a student's local school district are authorized to assist a student with medication on a field trip subject to the following provisions:

6.2.1 Assistance with medication shall not be provided without the prior written request or consent of a parent, guardian or Relative Caregiver (or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a). Said written request or consent shall contain clear instructions including: the student's name; the name of the medication; the dose; the time of administration; and the method of administration. At least one copy of said written request or consent shall be in the possession of the person assisting a student with medication on a field trip.

6.2.2 The prescribed medication, in addition to the requirements in 1.0, shall be prescribed by a licensed health care provider. The medication shall be properly labeled with the student's name; the licensed health care provider's name; the name of the medication; the dosage; how and when it is to be administered; the name and phone number of the pharmacy and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia National Formulary standards.

6.2.3 A registered nurse employed by the school district in which the student is enrolled shall determine which teachers, administrators and paraeducators are qualified to safely assist a student with medication. In order to be qualified, each such person shall complete a Board of Nursing approved training course developed by the Delaware Department of Education, pursuant to 24 Del.C. §1921. Said nurse shall complete instructor training as designated by the Department of Education and shall submit a list of successful staff participants to the Department of Education. No person shall assist a student with medication without written acknowledgment that he/she has completed the course and that he/she understands the same, and will abide by the safe practices and procedures set forth therein.

6.2.4 Each school district shall maintain a record of all students receiving assistance with medication pursuant to this regulation. Said record shall contain the student's name, the name of the medication, the dose, the time of administration, the method of administration, and the name of the person assisting.

6.2.5 Except for a school nurse, no employee of a school district shall be compelled to assist a student with medication. Nothing contained herein shall be interpreted to otherwise relieve a school district of its obligation to staff schools with certified school nurses.

Nonregulatory note: 14 ~~DE Admin. Code~~ 612, *Possession, Use and Distribution of Drugs and Alcohol* addresses student self administration of a prescribed asthmatic quick relief inhaler and student self administration of prescribed autoinjectable epinephrine.

817 Medications and Treatments

1.0 Medication

1.1 Medication may be administered to a public school student by the school nurse when a written request to administer the medication or treatment is on file from the parent, guardian or Relative Caregiver or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a).

1.1.1 The school nurse shall check the student health records and history for contraindications and all allergies, especially to the medications, and shall provide immediate medical attention if an allergic reaction is observed or make a referral if symptoms or conditions persist.

- 1.1.2 The school nurse shall also document the student's name, the name of medication and treatment administered, the date and time it was administered and the dosage if medication was administered.
- 1.2 In addition to the requirements set forth in 2.1 below, in the case of a Prescription Medication, the requirements set forth below in 2.2.1 through 2.2.4 shall also apply.
- 1.2.1 Prescription medication shall be provided to the school in the original container and properly labeled with the student's name; the prescribing licensed health care provider's name; the name of the medication; the dosage; how and when it is to be administered; the name and phone number of the pharmacy and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia National Formulary standards.
- 1.2.2 Medications and dosages administered by the school nurse shall be limited to those recommended by the Federal Drug Administration (FDA), peer review journal that indicates doses or guidelines that are both safe and effective, or guidelines that are specified in regional or national guidelines.
- 1.2.3 The prescription and the medication shall be current and long term prescriptions shall be re authorized at least once a year.
- 1.2.4 All medications classified as controlled substances shall be counted and reconciled each month by the school nurse and kept under double lock. Such medications should be transported to and from school by an adult.
- 1.3 Non-prescription Medication must be in an original container with full label and may be given by the school nurse after the school nurse assesses the complaint and the symptoms to determine if other interventions can be used before medication is administered.

2.0 Definitions

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

"Assist with Medication" means assisting a student in kindergarten through grade 12 in the self-administration of a medication taken orally, by inhalation, or applied topically, provided that the medication is in a properly labeled container. Assistance may include holding the medication container for the student, assisting with the opening of the container, and assisting the student in self-administering the medication. Assistance does not include making nursing judgments. Lay assistants shall not assist with injections. The one exception is with emergency medications where standard emergency procedures prevail in lifesaving circumstances.

"Controlled Medication" means those prescribed drugs regulated by Federal (CSA of 1970) and/or State Controlled (dangerous) Substances Act.

"Educators" means teachers, administrators, and paraeducators employed by a school serving students in Pre-Kindergarten through Grade 12.

"Field Trip" means any off campus, school sponsored activity.

"Licensed Health Care Provider" means anyone lawfully authorized to prescribe medications and treatments.

"Medication" means a drug, which has been authorized for a student to use and includes both prescription and non-prescription drugs.

"Non-prescription Medication" means any over-the-counter medication that can be sold legally without a prescription.

"Other school employees" means coaches or persons hired or contracted by schools serving students in Kindergarten through Grade 12.

"Paraeducators" mean teaching assistants or aides.

"Prescription Medication" means a legal drug that has a written order for an individual student by a licensed health care provider licensed to prescribe medication.

PROPOSED REGULATIONS

“School Nurse” means a Registered Nurse licensed to practice in the State of Delaware, who is employed by a school district, charter school, or private school.

“Traditional School Day” means the hours within the days counted to meet the state minimum number of school days each year and summer school.

3.0 Treatments

Treatments including specialized health procedures, shall be prescribed by a licensed health care provider with directions relative to administration or supervision.

4.0 IEP Team

For a student who requires significant medical or nursing interventions, the Individual Education Program (IEP) team shall include the school nurse.

5.0 Assistance With Self-Administration of Medications at Approved School Activities

5.1 Educators and other school employees are authorized by 24 Del.C. §1921(a)(17) to assist a student with self-administration of medication on a field trip or approved school activity outside of the traditional school day or off-campus are subject to the following provisions:

5.1.1 Assistance with medication shall not be provided without the prior written request or consent of a parent, guardian or Relative Caregiver, or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 USC 11434a). Said written request or consent shall contain clear instructions including: the student's name; the name of the medication; the dose; the time(s) and date(s) of administration; and the method of administration. At least one copy of said written request or consent shall be in the possession of the person assisting a student with medication on a field trip or approved school activity outside of the traditional school day or off-campus.

5.1.1.1 Medications shall be prescribed by a licensed health care provider and are ones that cannot be rescheduled for times when a person, who may legally administer medication, is available.

5.1.1.1.1 Doses may be provided for up to one week and shall be maintained in a secure location.

5.1.1.2 Prescription medications shall be provided to the school nurse and shall be properly labeled with the student's name; the licensed health care provider's name; the name of the medication; the dosage; how and when it is to be administered; the name and phone number of the pharmacy; and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia National Formulary standards.

5.1.1.2.1 Controlled medications must be stored on the person assisting or in a secure location under double lock. Maintaining multiple doses is not permitted except in the case of an overnight activity.

5.1.1.3 Non-prescription medications shall be provided to the school nurse by the parent in an original container along with a current, written directive from the student's licensed health care provider and shall include the student's name; the licensed health care provider's name; the name of the medication; the dosage; and how and when it is to be administered.

5.1.2 In order to be qualified to assist with medications, each such person shall complete a Board of Nursing approved training course developed by the Delaware Department of Education, pursuant to 24 Del.C. §1921(a)(17). Training shall be renewed minimally every five years. No person shall assist a student with medication without written acknowledgment that he/she has completed the course and that he/she understands the same, and will abide by the safe practices and procedures set forth therein. A school nurse employed by the public or private district or charter in which the student is enrolled shall:

- 5.1.2.1 Complete instructor training as designated by the Department of Education and shall submit a list of educators and other school employees, who have completed the training, to the Department of Education.
- 5.1.2.2 Provide the training for educators and other school employees.
- 5.1.2.3 Coordinate the collection and review of the written parental consent.
- 5.1.2.4 Provide the appropriately labeled medication, copy of the consent, and directions on assistance to the trained educator or other school employee.
- 5.1.3 Each school district shall maintain a record of all students receiving assistance with medication pursuant to this regulation. Said record shall contain the student's name; the name of the medication; the dose; the time of administration; the method of administration; and the name of the person assisting.
- 5.1.4 Except for a school nurse, no educator or other school employee shall be compelled to assist a student with medication. If a facility is otherwise required to have a school nurse, nothing contained here shall be interpreted to relieve the school of such obligation.

Nonregulatory note: 14 DE Admin. Code 612, *Possession, Use and Distribution of Drugs and Alcohol* addresses student self-administration of a prescribed asthmatic quick relief inhaler and student self-administration of prescribed autoinjectable epinephrine.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 1550

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

1550 AgriScience 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 1550 AgriScience Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). This regulation is being reviewed under a five year cycle. One small change has been deemed necessary to update language and to delete the reference to the Limited Standard Certificate which no longer is valid. This regulation sets forth the requirements for an AgriScience Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday February 4, 2013 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. IMPACT CRITERIA

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

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

instruct a particular category of students.

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

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

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

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

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

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

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

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

1550 AgriScience Teacher

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for AgriScience Teacher. This certification is required for grades 9 to 12, and in grades 6 to 8 in a Middle Level school.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by

2.0 Definitions

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

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as an AgriScience Teacher to an educator who has met the following:
 - 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a ~~Limited Standard~~, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
 - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 1551

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

1551 Business Education Teacher

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1551 Business Education Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). This regulation is being reviewed under a five year cycle. One small change has been deemed necessary to update language and to delete the reference to the Limited Standard Certificate which no longer is valid. This regulation sets forth the requirements for a Business Education Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday February 4, 2013 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. IMPACT CRITERIA

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

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

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

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

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

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

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

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

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

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

1551 Business Education Teacher

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Business Education Teacher. This certification is required for grades 9 to 12, and in grades 6 to 8 in a Middle Level school.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

- 2.1 The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.
- 2.2 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
“Major in Business” means a major in business administration or management, or a related field, including, but not limited to, accounting, economics, finance or marketing.

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Business Education Teacher to an educator who has met the following:
 - 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a ~~Limited Standard~~, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
 - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
 14 **DE Admin. Code** 1554

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

1554 Family and Consumer Sciences Teacher

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1554 Family and Consumer Sciences Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). This regulation is being reviewed under a five year cycle. Small changes have been deemed necessary to update language and to delete the reference to the Limited Standard Certificate which no longer is valid. This regulation sets forth the requirements for a Family and Consumer Sciences Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday February 4, 2013 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. IMPACT CRITERIA

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

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

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

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

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

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

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

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

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

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

1554 Family and Consumer Sciences Teacher**1.0 Content**

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Family and Consumer Sciences Teacher. This certification is required for grades 9 to 12, and in grades 6 to 8 in a Middle Level school.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

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

PROPOSED REGULATIONS

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Family and Consumer Sciences Teacher to an educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a ~~Limited Standard~~, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
 - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto; and,
 - 3.1.3 Has satisfied the additional requirements in this regulation.

4.0 Additional Requirements

- 4.1 ~~If an examination of content knowledge such as Praxis II is not applicable and available, in the area the Standard Certificate is requested, an educator must also meet the following:~~
- 4.1.1 ~~If the educator is applying for their second Standard Certificate pursuant to 14 **DE Admin. Code** 1505 Standard Certificate 3.1.5, the satisfactory completion of fifteen (15) credits or their equivalent in professional development related to Family and Consumer Sciences, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department.~~

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1555

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

1555 Marketing Education Teacher

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1555 Marketing Education Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). This regulation is being reviewed under a five year cycle. Small changes have been deemed necessary to update language and to delete the reference to the Limited Standard Certificate which no longer is valid. This regulation sets forth the requirements for a Marketing Education Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday February 4, 2013 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. IMPACT CRITERIA

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

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

instruct a particular category of students.

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

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

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

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

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

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

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

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

1555 Marketing Education Teacher

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Marketing Education Teacher. This certification is required for grades 9 to 12, and in grades 6 to 8 in a Middle Level school.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

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

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Marketing Education Teacher to an educator who has met the following:
 - 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a ~~Limited Standard~~, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
 - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto; and,
 - 3.1.3 Has satisfied the additional requirements in this regulation.

4.0 Additional Requirements

PROPOSED REGULATIONS

- 4.1 ~~If an examination of content knowledge such as Praxis II is not applicable and available, in the area the Standard Certificate is requested, an educator must also meet the following:~~
- 4.1.1 ~~If the educator is applying for their second Standard Certificate pursuant to 14 DE Admin. Code 1505 Standard Certificate 3.1.5, the satisfactory completion of fifteen (15) credits or their equivalent in professional development related to Marketing Education, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department.~~

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 1557

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

1557 Technology Education Teacher

A. TYPE OF REGULATORY ACTION REQUESTED

Reauthorization of 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 1557 Technology Education Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). This regulation is being reviewed under a five year cycle. Small changes have been deemed necessary to update language and to delete the reference to the Limited Standard Certificate which no longer is valid. This regulation sets forth the requirements for a Technology Education Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday February 4, 2013 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will decision making authority and accountability for addressing the subject to be regulated be placed in

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

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

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

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

1557 Technology Education Teacher

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Technology Education Teacher. This certification is required for grades 9 to 12, and in grades 6 to 8 in a Middle Level school.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

- 2.1 The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.
- 2.2 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:
“**Technology Education**” means a study of technology, which provides an opportunity for students to learn about the processes and knowledge related to technology that are needed to solve problems and extend human capabilities. This study includes the application of the Design Process, the Systems Model, technological resources, engineering design and Design Briefs. Technology Education is not a curricular area defined by the study and application of computer-based skills e.g., keyboarding, word processing, spreadsheets, data bases and/or multi-media presentations.

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Technology Education Teacher to an educator who has met the following:
 - 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a ~~Limited Standard~~, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
 - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto; and,
 - 3.1.3 ~~Has satisfied the additional requirements in this regulation.~~

4.0 Additional Requirements

- 4.1 ~~If an examination of content knowledge such as Praxis II is not applicable and available, in the area the Standard Certificate is requested, an educator must also meet the following:~~
 - 4.1.1 ~~If the educator is applying for their second Standard Certificate pursuant to 14 **DE Admin. Code** 1505 Standard Certificate 3.1.5, the satisfactory completion of fifteen (15) credits or their equivalent in professional development related to Technology Education, selected by the applicant~~

PROPOSED REGULATIONS

~~with the approval of the employing school district or charter school which is submitted to the Department.~~

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

Statutory Authority: 31 Delaware Code, Section 1101 (31 Del.C. §1101)
16 DE Admin. Code 3102

PUBLIC NOTICE

3102 Long Term Care Transfer, Discharge and Readmission Procedures

The Division of Long Term Care Residents Protection (DLTCRP) is proposing a revision to Regulation 3102 - Long Term Care Transfer, Discharge and Readmission Hearing Procedures.

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 Tom Murray, Deputy Director, DHSS/DLTCRP, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-6661 by Thursday January 31, 2013.

The action concerning the determination of whether to adopt the revision to the 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

Background

DLTCRP is proposing revisions to this regulation after receiving additional comments.

Summary of Proposal

This revision amends the sections regarding the filing of appeals of discharges from the facility to the Division, includes a statement that the resident has the opportunity for other remedies through the Medicare Quality Improvement Organization, re-numbers Section 4 and includes a 30 day time limit during which an appeal must be filed.

Statutory Authority

16 Del.C. §1124, "Staff training; issuance of regulations."

29 Del.C. §7971(d)(1) "Division of Long Term Care Residents Protection."

3102 Long Term Care Transfer, Discharge and Readmission Procedures

1.0 Purpose

This regulation applies to decisions by licensed facilities to transfer or discharge a resident. It prescribes the process for providing an impartial hearing to a resident.

This regulation does not extend to decisions of DHSS, or any of its Divisions, to deny, suspend, delay, reduce, or terminate benefits. The regulation governing appeals related to benefit eligibility are found at 16 DE Admin. Code §5000. Be aware that the appeal requirements are different from the requirements in this regulation.

2.0 Definitions

"DHSS" means the Department of Health and Social Services

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

“Legal representative” or “representative” includes a resident’s: guardian; agent pursuant to a power of attorney, advanced health care directive, or similar document; or authorized representative pursuant to Title 16 **Del.C.** §§1121(34) and 1122.

“Party” means the resident or resident’s representative and the facility.

“Resident” means resident or patient.

“Transfer and discharge” ~~is defined separately in Section 3.0 and 4.0~~ includes movement of a resident to a location outside of the licensed facility.

3.0 Transfer, discharge and readmission rights of residents in a certified skilled nursing facility or a certified nursing facility as defined in 42 CFR §483.5 or an Intermediate Care facility (ICF/MR) as defined in 42 CFR §440.150.

- 3.1 Transfer and discharge requirements. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless—
 - 3.1.1 The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility. If the resident appeals a notice of discharge based on this section, the facility will not be cited during the pendency of the appeal for housing a resident whose needs exceed the permitted level of care in that facility.
 - 3.1.2 The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
 - 3.1.3 The safety of individuals in the facility is endangered;
 - 3.1.4 The health of individuals in the facility would otherwise be endangered;
 - 3.1.5 The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or
 - 3.1.6 The facility ceases to operate.
- 3.2 Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs 3.1.1 through 3.1.5 of this section, the resident's clinical record must be documented. The documentation must be made by;
 - 3.2.1 The resident's physician when transfer or discharge is necessary under paragraph 3.1.1 or paragraph 3.1.2 of this section; and
 - 3.2.2 A physician when transfer or discharge is necessary under paragraph 3.1.4 of this section.
- 3.3 Notice before transfer. Before a facility transfers or discharges a resident, the facility must:
 - 3.3.1 Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.
 - 3.3.2 Provide a copy of the notice to the Division; the State LTC ombudsman; the resident's Delaware Medicaid managed care organization (MCO), if any; any DHSS agency involved in the resident's placement in the facility, including APS; and the protection and advocacy agency as defined in Title 16 **Del.C.** §1102 if the resident is an individual with a developmental disability or mental illness.
 - 3.3.3 Record the reasons in the resident's clinical record; and
 - 3.3.4 Include in the notice the items described in paragraph 3.5 of this section.
- 3.4 Timing of the notice.
 - 3.4.1 Except as specified in paragraphs 3.4.2 and 3.8 of this section, the notice of transfer or discharge required under paragraph 3.3 of this section must be made by the facility at least 30 days before the resident is transferred or discharged.
 - 3.4.2 Notice may be made as soon as practicable before transfer or discharge when:
 - 3.4.2.1 The safety of individuals in the facility would be endangered under paragraph 3.1.3 of this section;

PROPOSED REGULATIONS

- 3.4.2.2 The health of individuals in the facility would be endangered, under paragraph 3.1.4 of this section;
- 3.4.2.3 The resident's health improves sufficiently to allow a more immediate transfer or discharge, under paragraph 3.1.2 of this section;
- 3.4.2.4 An immediate transfer or discharge is required by the resident's urgent medical needs under paragraph 3.1.1 of this section.
- 3.5 Contents of the notice. The written notice specified in paragraph 3.3 of this section must include the following:
 - 3.5.1 A detailed individualized explanation of the reason(s) for the action being taken which includes, in terms understandable to the resident:
 - 3.5.1.1 A statement of what action the agency intends to take;
 - 3.5.1.2 The reasons for the intended action, including any information needed for the resident to determine from the notice alone the accuracy of the facility's intended action. When the reason is non-payment, an itemized statement of the resident's account for the preceding 12 months.
 - 3.5.1.3 The specific policy or regulation supporting such action.
 - 3.5.2 The effective date of transfer or discharge;
 - 3.5.3 The location to which the resident will be transferred or discharged;
 - 3.5.4 A statement of the resident's right to a fair hearing ~~as provided in this section;~~ which includes the following:
 - 3.5.4.1 Notice that the request for a fair hearing must be sent to the Division by U.S. mail, e-mail, or fax at 3 Mill Rd, Suite 308, Wilmington, DE 19806 or fax (302) 577-6673. Call (302) 577-6661 to secure e-mail address.
 - 3.5.4.2 Notice that the Division must receive the notice within 30 days from the date the notice of discharge is received.
 - ~~3.5.5 The method by which the resident may request a fair hearing;~~
 - ~~3.5.6~~ 3.5.4.3 A statement that the resident may represent him or herself or may be represented by counsel or by another person.
 - ~~3.5.7~~ 3.5.4.4 The name, address and telephone number of the State long term care ombudsman;
 - 3.5.4.5 A fair hearing request does not preclude or limit the resident's pursuit or other remedies or review systems authorized by law, including Medicare beneficiary complaints to a Medicare Quality Improvement Organization (QIO) consistent with 42 C.F.R. §476.71(a)(2).
- 3.6 Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.
- 3.7 Notice in advance of facility closure. In the case of facility closure, the individual who is the administrator of the facility must provide written notification prior to the impending closure to the Secretary, the State LTC ombudsman, residents of the facility, and the legal representatives of the residents or other responsible parties, as well as the plan for the transfer and adequate relocation of the residents, as required at 42 CFR §483.75(r).
- 3.8 Room changes in a composite distinct part. Room changes in a facility that is a composite distinct part (as defined in 42 CFR §483.5(c)) must be limited to moves within the particular building in which the resident resides, unless the resident voluntarily agrees to move to another of the composite distinct part's locations. A facility's discretion to transfer residents to another room is limited by Title 16 **Del.C.** §§121 (13) and (28).
- 3.9 Notice of bed-hold policy and readmission.
 - 3.9.1 Notice before transfer. Before a nursing facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the nursing facility must provide written information to the resident and a family member or legal representative that specifies;

- 3.9.1.1 Notice of State bed-hold. The duration of the bed-hold policy under the State plan, if any during which the resident is permitted to return and resume residence in the nursing facility, See DHSS Long Term Care Institutional Provider Specific Policy Manual at Section 4.5; and
- 3.9.1.2 Facility policies. The nursing facility's policies regarding bed-hold periods, which must be consistent with paragraph 3.9.3 of this section, permitting a resident to return.
- 3.9.2 Bed-hold notice upon transfer. At the time of transfer of a resident for hospitalization or therapeutic leave, a nursing facility must provide to the resident and a family member or legal representative written notice which explains the bed-hold policy described in paragraph 3.9.1.1 of this section.
- 3.9.3 Permitting resident to return to facility. A nursing facility must establish and follow a written policy under which a resident, whose hospitalization or therapeutic leave exceeds the bed-hold period under the State plan, is readmitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident:
 - 3.9.3.1 Requires the services provided by the facility; and
 - 3.9.3.2 Is eligible for Medicaid nursing facility services.
 - 3.9.3.3 Additional protection for readmission is found at 16 **Del.C.** §1121 (18).
- 3.10 Readmission to a composite distinct part. When the nursing facility to which a resident is readmitted is a composite distinct part (as defined in 42 CFR§483.5(c)), the resident must be permitted to return to an available bed in the particular location of the composite distinct part in which he or she resided previously. If a bed is not available in that location at the time of readmission, the resident must be given the option to return to that location upon the first availability of a bed there.

4.0 Transfer, discharge and readmission rights of residents of a Nursing Facility and Similar Facility as defined in 16 Del.C. 1102(4). See 16 Del.C. 1121.

- 4.1 ~~“Transfer and discharge” includes movement of a resident to a location outside of the licensed facility.~~
- 4.21 Transfer and discharge requirements. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility except for:
 - 4.21.1 Medical needs which cannot be met in the facility;
 - 4.21.2 The resident's own welfare;
 - 4.21.3 The welfare of the other individuals in the facility;
 - 4.21.4 Nonpayment of justified charges, after appropriate notice;
 - 4.21.5 Termination of facility operation.
- 4.32 Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs 4.1.1 or 4.1.2 of this section, the resident's clinical record must be documented. The documentation must be made by:
 - 4.32.1 The resident's physician when transfer or discharge is necessary under paragraph 4.1.1 or paragraph 4.1.2 of this section; and
 - 4.32.2 A physician when transfer or discharge is necessary under paragraph 4.1.3 of this section.
- 4.43 Notice before transfer. Before a facility transfers or discharges a resident, the facility must:
 - 4.43.1 Notify the resident and, if known, a family member or legal representative, of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.
 - 4.43.2 Record the reasons in the resident's clinical record; and
 - 4.43.3 Include in the notice the items described in paragraph 4.5 of this section.
- 4.54 Timing of the notice. (i) Except as specified in paragraphs 4.4.2 and 4.8 of this section, the notice of transfer or discharge required under paragraph 4.3 of this section must be made by the facility at least 30 days before the resident is transferred or discharged.
 - 4.54.1 Notice may be made as soon as practicable before or after transfer or discharge when:

PROPOSED REGULATIONS

- 4.54.1.1 The welfare of individuals in the facility would be endangered under paragraph 3.1.3 of this section;
- 4.54.1.2 An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph 3.1.1. of this section; or
- 4.65 Contents of the notice. The written notice specified in paragraph 3.3 of this section must include the following:
- 4.65.1 The reason for transfer or discharge; A detailed individualized explanation of the reason(s) for the action being taken which includes, in terms understandable to the resident:
- 4.65.1.1 A statement of what action the agency intends to take;
- 4.65.1.2 The reasons for the intended action, including any information needed for the resident to determine from the notice alone the accuracy of the facilities intended action. When the reason is non-payment, an itemized statement of the resident's account for the preceding 12 months; and
- 4.65.1.3 The specific policy or regulation supporting such action.
- 4.65.2 The effective date of transfer or discharge;
- 4.65.3 A description of and the address of ~~t~~The location to which the resident will be transferred or discharged;
- 4.65.4 A statement of the resident's right to a fair hearing ~~as provided in this section:~~
- 4.65.4.1 The method by which the resident may request a fair hearing; ~~and~~ which includes the following:
- 4.5.4.1.1 Notice that the request for a fair hearing must be sent to the Division by U.S. mail, e-mail, or fax at 3 Mill Rd, Suite 308, Wilmington, DE 19806 or fax (302) 577-6673. Call (302) 577-6661 to secure e-mail address.
- 4.5.4.1.2 Notice that the Division must receive the notice within 30 days from the date the notice of discharge is received.
- ~~4.6.4.2~~ 4.5.4.1.3 A statement that the resident may represent him or herself or may be represented by counsel or by another person.
- 4.65.5 The name, address and telephone number of the State long term care ombudsman;
- 4.65.6 For nursing facility residents with a developmental disability or mental illness, the mailing address and telephone number of the Delaware protection and advocacy agency as defined in Title 16 **Del.C.** §1102.
- 4.76 Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.
- 4.87 Notice in advance of facility closure. In the case of facility closure, the individual who is the administrator of the facility must provide written notification prior to the impending closure to Division, the State LTC ombudsman, residents of the facility, and the legal representatives of the residents or other responsible parties, as well as the plan for the transfer and adequate relocation of the residents. The notice shall be provided as far in advance of closure as possible.
- 4.98 Room changes.
- 4.98.1 Room changes in a facility must be limited to moves within the particular building in which the resident resides, unless the resident voluntarily agrees to move to another location. A facility's discretion to transfer residents to another room is limited by Title 16 **Del.C.** §§1121 (13) and (28).
- 4.98.2 The facility must give reasonable notice before the resident's room or roommate is changed, except in emergencies.
- 4.98.3 The facility shall endeavor to honor roommate requests whenever possible.
- 4.409 Notice of bed-hold policy and readmission:
- 4.409.1 Notice before transfer. When a nursing facility transfers a resident out of a facility to an acute care facility it must provide written information to the resident and a family member or legal representative that specifies that the facility must accept the patient or resident back into the

facility when the resident no longer needs acute care and there is space available in the facility. If no space is available, the resident shall be accepted into the next available bed.

- 4.409.2 Permitting resident to return to facility. A nursing facility must establish and follow a written policy for implementing its obligation to immediately offer the first available bed to a resident who is entitled to be readmitted to the facility when acute care is no longer required.

5.0 Fair Hearing Practice and Procedures which pertain to grievances under either Section 3.0 or 4.0 of this regulation.

- 5.1 Right to hearing. An impartial hearing may be requested by a resident who believes a facility has erroneously determined that he or she must be transferred or discharged.
- 5.1.1 The hearing request must:
- 5.1.1.1 Be in writing;
- 5.1.1.2 Be received by the ~~facility~~ Division within 30 days from the date that the discharge notice is received by the resident or the resident's legal representative;
- 5.1.1.3 Be copied to the ~~Division facility~~ and the State LTC ombudsman.
- 5.2 No facility which has received a timely hearing request shall take any steps to discharge or transfer a resident then on site until a fair hearing has been provided or the request, denied or dismissed pursuant to 5.3. The Division has discretion to suspend admissions at a facility as a means of maintaining bed availability and/or to impose civil money penalties for noncompliance with 16 Del.C. ch. 11.
- 5.23 DHSS may deny or dismiss a request for a hearing if:
- 5.23.1 The resident withdraws the request in writing; or
- 5.23.2 The resident or his or her legal representative fails to appear at a scheduled hearing without good cause.
- 5.34 Impartial hearing must be conducted:
- 5.34.1 At a reasonable time, date and place;
- 5.34.2 After adequate written notice of the hearing;
- 5.34.3 By an impartial fact-finder who has not been directly involved in the initial determination of the action in question;
- 5.34.4 With appropriate translation services available to parties or witnesses as needed to be provided at State expense.
- 5.45 If the hearing involves medical issues as the basis for the transfer or discharge and if the impartial fact finder considers it necessary to have a medical assessment other than that of the facility involved in making the transfer or discharge decision, such a medical assessment must be obtained at State expense and made part of the record.
- 5.56 Procedural rights. The parties must be given the opportunity to:
- 5.56.1 Examine at a reasonable time before the date of the hearing and during the hearing all documents and records to be used by either party at the hearing;
- 5.56.2 Bring witnesses;
- 5.56.3 Establish all pertinent facts and circumstances;
- 5.56.4 Present an argument without undue interference; and
- 5.56.5 Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.
- 5.56.6 Residents within the scope of 3.0 have additional rights to as provided in 42 CFR §483.10(b)(2). All residents have additional rights under 16 Del.C. §1121(19).
- 5.67 Hearing decisions must be based exclusively on evidence introduced at the hearing.
- 5.78 The record must consist only of:
- 5.78.1 The transcript or recording of testimony and exhibits;
- 5.78.2 All papers and requests filed in the proceeding; and

PROPOSED REGULATIONS

- 5.78.3 The decision of the hearing officer.
- 5.89 The parties must have the access to the record at a convenient place and time in order to review or to secure a transcript at the party's expense.
- 5.910 The impartial decision must:
- 5.910.1 Summarize the facts; and
 - 5.910.2 Identify the statutes and/or regulations pertinent to the decision
 - 5.910.3 Specify the reasons for the decisions; and
 - 5.910.4 Identify the supporting evidence and apply the relevant legal principles.
- 5.4011 The impartial fact-finder must:
- 5.4011.1 Notify the parties of the decision, in writing.
 - 5.4011.2 Notify the parties that this is the final decision of DHSS with the right to an appeal pursuant to the Administrative Procedures Act, Title 29, Chapter 101.

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 31 Delaware Code, Sections 1145 and 1146 (31 Del.C. §§1145 & 1146)
16 DE Admin. Code 3105

PUBLIC NOTICE

3105 Criminal History Record Checks and Drug Testing

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 29 of the **Delaware Code**, Section 7971(d) (1), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend Regulation 3105 Criminal History Record Checks and Drug Testing.

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 Tom Murray, Deputy Director, DHSS/ DLTCRP, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-6661 by Thursday, January 31, 2013.

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

This regulatory proposal revises the existing regulations to comport with the electronic background system and Federal EEOC guidelines.

Statutory Authority

29 Del.C. §7971(d)(1), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection

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

3105 Criminal History Record Checks and Drug Testing

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 31 Delaware Code, Sections 1145 and 1146 (31 **Del.C.** §§1145 & 1146)
16 **DE Admin. Code** 3110

PUBLIC NOTICE

3110 Criminal History 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 29 of the **Delaware Code**, Section 7971(d)(1), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend Regulation 3110 Criminal History Record Checks and Drug Testing 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 Tom Murray, Deputy Director, DHSS/DLTCRP, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-6661 by Thursday, January 31, 2013.

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

This regulatory proposal revises the existing regulations to comport with the electronic background system and Federal EEOC guidelines.

Statutory Authority

29 **Del.C.** §7971(d)(1), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection

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

3110 Criminal History Checks and Drug Testing for Home Health Agencies

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Child Care Subsidy Program; Providing Child Care for Food Benefit Volunteers

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

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 January 31, 2013.

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 described below amends policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, Providing Child Care for Food Benefit Volunteers.

Statutory Authority

45 CFR §98.44, Priority for child care services

Background

Effective October 1, 1996, Congress enacted the Child Care Development Fund (CCDF) which consolidated funding for child care for low-income working families and families reentering the workforce. The Child Care Subsidy Program provides support for families with young children to enable the caretaker to hold a job, obtain training or meet special needs of the child. Child care may also be provided in child abuse cases to help protect the child.

Summary of Proposed Changes

DSSM 11003.3, The intent of the proposed amendment is to consolidate, reformat and clarify language to make the rules easier to understand and follow.

Additionally, the name of the section is changed to more accurately reflect the content of the policy.

The applicable federal citation is also added to the policy section.

DSS PROPOSED REGULATION #12-59

REVISION:

11003.3 Parent/Caretaker on Food Stamps Providing Child Care for Food Benefit Volunteers

45 CFR 98.44

~~A. DSS provides child care for a dependent child when a parent/caretaker receives Food Stamps and the parent/caretaker needs to:~~

- ~~1. participate in Food Stamp Employment and Training activities, or~~
- ~~2. volunteer to participate in Employment and Training activities (both are Category 21).~~

~~B. Persons can volunteer to participate in E&T Food Stamps activities only as long as the activity for which they volunteer is a component activity of E&T Food Stamps. Acceptable E&T Food Stamps component activities are:~~

- ~~1. Independent Job Search,~~
- ~~2. One-Stop-Delivery System,~~
- ~~3. Adult Education, and Training,~~
- ~~4. Workfare Program (ABAWD only),~~
- ~~5. Post Secondary Education (first degree only), and~~
- ~~6. Refugee and Asylee Services.~~

~~Mandatory participants who fail to participate receive a sanction. Persons who receive a sanction lose their child care while the sanction remains in effect.~~

This policy applies to parents/caretakers who volunteer for Food Benefit Employment and Training and receive child care assistance.

1. DSS provides child care for parents/caretakers who volunteer to participate in the Food Benefit Employment and Training Program.

2. Clients may only participate in DSS approved Food Benefit Employment and Training components.

3. Food Benefit Employment and Training components are:

- A. Independent Job Search
- B. Job Search Training
- C. Adult Education and Training
- D. Workfare (ABAWD only)
- E. Post Secondary Education (first degree only)

F. Refugee and Asylee Services

The DSS Worker will close the child care case of recipients of who stop volunteering with the E&T vendor or are dis-enrolled due to unsatisfactory participation in the program

Exception: The Worker will not close the case if the recipient has another need for child care that will allow the benefit to remain open.

Refer to DSSM 10000 for further discussion of Food Benefit Employment & Training (FB E&T). Refer to DSSM 10000 for further discussion of Food Benefit Employment & Training (FB E&T).

9 DE Reg. 572 (10/01/05)

41003.3.1 Food Stamp Guarantee

~~To the extent that child care is necessary for an eligible Food Stamp recipient to participate in Food Stamp Employment & Training Food Stamps, DSS guarantees the recipient's child care. Note, however, that parent/caretakers responsible for a child under the age of six are exempt from participation in E&T Food Stamps activities unless they choose to volunteer. DSS considers parent/caretakers receiving Food Stamp Employment & Training Food Stamps Child Care a priority, and will typically provide service when DSS has a waiting list. Again, because DSS provides E&T Food Stamps Child Care as an entitlement, recipients are to receive timely and adequate notice requirements before any termination or reduction in benefits.~~

~~Refer to DSSM 9200, 9201, 9202, and 9203 for further discussion of Food Stamp Employment & Training Food Stamps.~~

DEPARTMENT OF JUSTICE

VICTIMS' COMPENSATION ASSISTANCE PROGRAM ADVISORY COUNCIL

Statutory Authority: 11 Delaware Code, Section 9004(a) (11 Del.C. §9004(a))

1 DE Admin. Code 301

PUBLIC NOTICE

301 Victims' Compensation Assistance Program Rules and Regulations

Brief Synopsis of the Subject, Substance and Issues

The Department of Justice Victims Compensation Assistance Program proposes to amend existing Rule 25.0 by deleting "\$8,500" and substituting therefor "\$5,000". This amendment would reduce the ceiling on payment for funeral and burial expenses. The Victims' Act provides at 29 Del.C. §9002(9) that "pecuniary loss" in instances of death of the victim shall include funeral and burial expenses.

The Victims Compensation Advisory Council reviewed existing claims for funeral and burial expenses, national data regarding funeral and burial costs, and the limits placed by other state compensation programs on such awards. The Council concluded that funeral/burial claims at or near the present \$8,500 limit seemed excessive in many cases, and constitute a significant drain on limited resources. Further, the Council found that the national average funeral cost is approximately \$5,500. Finally, the median ceiling placed on such awards by other state compensation programs is \$5,000. New Jersey and Maryland have ceilings of \$5,000 for such costs.

Notice of Public Comment:

Interested persons may submit comments in writing to Lisa Ogden, Director, VCAP, 900 King Street, Suite 4, Wilmington Delaware. The comment period will close on January 31, 2013.

PROPOSED REGULATIONS

301 Victims' Compensation Assistance Program Rules and Regulations

(Break in Continuity of Sections)

25.0 Burial Awards

The aggregate award for funeral and burial shall not exceed ~~\$8,500.00~~ \$5,000.00.

Please Note: As the rest of the sections were not amended they are not being published. The complete proposal for Victim's Compensation Assistance Program is available at:

301 Victims' Compensation Assistance Program Rules and Regulations

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF AIR QUALITY**

Statutory Authority: 7 Delaware Code, Chapter 60; (7 **Del.C.**, Ch. 60)
7 **DE Admin. Code** 1147

REGISTER NOTICE SAN # 2012-25**1. TITLE OF THE REGULATIONS:**

Amendment to 7 **DE Admin. Code** 1147 - *CO₂ Budget Trading Program*

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The proposed amendments require that petroleum refinery units purchase Carbon Dioxide (CO₂) allowances to cover its reported emissions each year that are directly associated with the electricity generated and exported to the electrical grid. Petroleum refinery units participating in the CO₂ Budget Trading Program will be required to report emissions, as required by other Electric Generating Units, and accept enforceable permit conditions.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.**, Ch. 60, Environmental Control

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Wednesday, January 23, 2013 beginning at 6:00 PM at the Delaware City Library located at 250 Fifth Street, Delaware City, DE. Interested parties may submit comments in writing to: Valerie Gray, DNREC Division of Air Quality, 655 South Bay Road, Suite 5N, Dover, DE 19901.

7. PREPARED BY:

Valerie Gray, 302.739.9402, December 7, 2012

1147 CO₂ Budget Trading Program

44/11/08 xx/11/2013

1.0 CO₂ Budget Trading Program General Provisions

(Break in Continuity Within Section)

1.2.3 Requirements for any CO₂ Budget Source that is a petroleum refinery.

1.2.3.1 Applicability. Notwithstanding 1.2.1 of this regulation, a CO₂ budget source under 1.2.1 of this regulation that is a petroleum refinery may elect to participate in the CO₂ budget trading program by securing a permit issued pursuant to 7 DE Admin. Code 1102 or 1130 that contains practically enforceable conditions that require compliance with all of the provisions of this regulation, except "CO₂ budget emissions limitation" shall mean for a CO₂ budget source, the tonnage equivalent, in CO₂ emissions associated with the annual gross electrical generation output to the electric grid in a control period from all CO₂ Budget Units at the CO₂ Budget Source, of the CO₂ allowances available for compliance deduction for the source for a control period.

1.2.3.2 Effective date. The requirements of 1.2.3.1 of this regulation shall become effective as of January 1 of the year that the permit required under 1.2.3.1 of this regulation becomes final.

1.2.2.3 Compliance. For the purpose of applying permitting requirements under 3.0 of this regulation, and applying monitoring requirements under 8.0 of this regulation, the unit shall be treated as commencing operation on the date the permit required under 1.2.3.1 of this regulation becomes final.

1.2.2.4 Deduction of tons from State of Delaware CO₂ Budget Trading Program limited industrial exemption set-aside account. In the event that the Department grants an exemption under 1.2.2 or approval to comply under 1.2.3 of this regulation to a CO₂ source, with one or more units that on January 1, 2005, serves an electricity generator with a nameplate capacity equal to or greater than 25 MWe, the Department shall retire the number of CO₂ allowances from the set-aside established for such purpose under 5.3 of this regulation.

(Break in Continuity of Sections)

11/11/08

5.0 CO₂ Allowance Allocations

(Break in Continuity Within Section)

5.3 CO₂ allowance allocations.

(Break in Continuity Within Section)

5.3.4 Limited industrial exemption set-aside allocation. The limited industrial exemption set-aside allocation will consist of 1,207,544 tons from the State of Delaware CO₂ Budget Trading Program base budget set forth in 5.1 of this regulation. For each control period, the Department will determine CO₂ allowance allocations in accordance with the following procedures.

5.3.4.1 The Department will open and manage a general account for the limited exemption set-aside for each control period.

5.3.4.2 As of the January 1 that is after the date that an exemption under 1.2.2 or approval to comply under 1.2.3 has been granted, for each allocation year the Department will retire CO₂ allowances in the limited industrial exemption set-aside general account.

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

1147 CO₂ Budget Trading Program

PROPOSED REGULATIONS

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 2701 (7 Del.C. §2701)
7 DE Admin. Code 3214

REGISTER NOTICE #2012 - 23**3214 Horseshoe Crab Annual Harvest Limit****1. TITLE OF THE REGULATION:**

3214 Horseshoe Crab Annual Harvest Limit

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUE:

The purpose of this action is to establish Delaware's annual sex-specific horseshoe crab harvest limits (quota) in accordance with Addendum VII to the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan for Horseshoe Crabs (FMP). This action also provides a mechanism to close the fishery in a manner that minimizes the likelihood of exceeding the annual sex-specific quota allocation(s).

Addendum VII to the FMP instituted an Adaptive Resource Management (ARM) framework for establishing annual horseshoe crab sex-specific quotas in the Delaware Bay Region. The ARM Framework transparently incorporates the views of stakeholders along with predictive modeling to assess the potential consequences of multiple, alternative management actions in the Delaware Bay Region. The annual specification process determines the following year's (t + 1) harvest using horseshoe crab data from the previous year (t - 1) and shorebird data from the current year (t). State-by-state allocations within the region are apportioned based on Addendum VI quotas; the proportion of state landings of Delaware Bay origin; and, harvest caps for Maryland and Virginia (to protect horseshoe crabs of non- Delaware Bay-origin). Harvest caps in Maryland and Virginia can only be exceeded through a 2:1 (M:F) female offset when a female harvest moratorium is specified. Should data be unavailable to populate the ARM model, quotas may be set at the Addendum VI levels or the previous year's ARM framework.

This action would also establish measures for closing the horseshoe crab fishery. Presently, the Department lacks the ability to close the horseshoe crab fishery until landings reach the exact annual harvest limit. This method of closing the fishery fails to adequately consider the timeliness of harvest reporting and delinquent reporting. This has resulted in quota overages in some years. Overages pose a potential risk to horseshoe crab and shorebird resources. Further, overages must be deducted from the following year's quota and, therefore, may disadvantage harvesters or segments of the fishery the following year. Using the most recent landings data upon reaching 95% of the annual sex-specific quota will minimize the risk of exceeding allocations.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 27 §2701 (7 Del.C. §2701)

5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to the 3214 Horseshoe Crab Annual Harvest Limit regulation will be open January 1, 2013. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on January 23, 2013 beginning at 6 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Stewart Michels Stewart.Michels@state.de.us (302) 739-9914

David E. Saveikis, Director

3214 Horseshoe Crab Annual Harvest Limit

(Penalty Section 7 Del.C. §2705(b))

- 1.0 The annual harvest limits for horseshoe crabs taken and/or landed in the State shall be ~~400,000 male horseshoe crabs for a period extending from November 1, 2010 through April 30, 2013, or whatever the Atlantic States Marine Fisheries Commission has approved as Delaware's current annual quota. No female horseshoe crabs may be taken/landed at any time determined in accordance with the annual sex-specific allocations identified in Addendum VII to the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Horseshoe Crab.~~
- 2.0 When the Department has determined that ~~the 95% of an annual sex-specific horseshoe crab quota allocation has been met~~ landed, the Department shall ~~establish, based on recent fishery performance and landings, a date and time to order that component of the horseshoe crab fishery closed, and no further horseshoe crabs of the component specified may not be taken during the remainder of the calendar year once closed by the Department.~~
- 3.0 Any overage in the State's annual horseshoe crab quota will be subtracted from the following year's horseshoe crab quota allocation.

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 102 and 103 (7 Del.C. §§102 & §103)
7 DE Admin. Code 3900

3900 Wildlife

REGISTER NOTICE SAN #2012-19

1. TITLE OF THE REGULATIONS:

3900 Wildlife

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

2.0 Method of Take

This action will expand the trap tagging option for snapping turtle traps by allowing traps to be marked with a tag bearing only the current year's trapping license number. License numbers are available electronically whereby Enforcement agents can obtain the trapper's name and address. Trappers can get the same license number from year to year making this the easiest method for marking traps.

5.0 Wild Turkeys

This action will change the requirements for mandatory participation in a turkey hunter education class. Rather than everyone needing a class regardless of age, hunters under 13 years of age will not have to take the turkey hunting class provided they hunt with a person 21 years of age or older who has taken a Division approved turkey hunting safety course.

This action also clarifies the requirement for a turkey hunter to carry written authorization with him/her while hunting. It also clarifies what constitutes written authorization.

10.0 Nuisance Game Animals

This action changes the name of the regulation from Nuisance Game Animals to Nuisance Wildlife to be more all-encompassing as to what animals are included in the nuisance control permits. This action also establishes a training/certification program for permitted Nuisance Wildlife Control Agents.

14.0 Falconry

This action is being done to meet new Federal standards related to falconry.

16.0 Endangered Species

This action establishes that the Division may remove species from the State Endangered Species list in addition to adding species to the list. It further adds criteria that can be used to add species to the list. This action

removes and adds species to the current list.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

There is no sunset date for these regulations.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Delaware Code**, Chapter 1, Sections 102 and 103.

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

The changes to regulation 3900 Wildlife will be presented in a series of public hearings February 6, 2013 beginning at 6:00 p.m. in the DNREC Auditorium, 89 Kings Highway, Dover, Delaware. The hearing record for the proposed regulatory changes will remain open until 4:30 p.m. February 21, 2013. The hearing order is as follows:

3900.2 – Method of Take

3900.5 – Wild Turkeys

3900.10 – Nuisance Game Animals

3900.14 – Falconry

3900.16 – Endangered Species

7. PREPARED BY:

Kenneth M. Reynolds (302) 735-3600 December 3, 2012

3900 Wildlife

(Break in Continuity of Sections)

2.0 Method of Take

(Break in Continuity within Section)

2.8 Red Fox.

2.8.1 Red foxes may be killed in accordance with § 788 of Title 7 with the following: longbow and crossbow, shotgun, rimfire rifle or centerfire rifle up to .25 caliber, or a muzzle-loading rifle.

2.8.2 Notwithstanding subsection 2.8.1 of this section, during any deer firearms season, it shall be unlawful to hunt red fox with any firearm that is not also legal for deer hunting.

2.8.3 Notwithstanding subsection 2.8.1 of this section, it shall be unlawful to kill a red fox that is being pursued by dogs.

2.9.1 Turtle traps must have either an escape hole below water measuring a minimum of 7.5" in all directions or floats inserted inside the trap or attached to the trap or be set in such a way so that the trap provides sufficient breathing space for all captured turtles at all times.

2.9.2 Each trap shall be marked with a metallic tag bearing the trapper's name and address or current year's trapping license number. The tag shall be attached to the trap in a manner that allows it to remain visible, at all times.

2.9.3 All turtle traps must be lifted and emptied of catch at least once every 24 hours.

2.9.4 An annual permit must be obtained from the Division in order to trap snapping turtles. This permit is free.

(Break in Continuity of Sections)

5.0 Wild Turkeys

(Penalty Section 7 **Del.C.** §103(d))

5.1 Possession of Wild Turkey Prohibited; Exceptions.

It shall be unlawful for any person, other than authorized representatives of the Division, to release or possess *Meleagris gallopavo* (wild turkey) in Delaware without a permit from the Division. The prohibition to possess and/or release *Meleagris gallopavo* shall include both birds taken from the wild and birds bred in captivity.

5.2 Instruction Requirement.

5.2.1 It shall be unlawful for any person 13 years of age or older to hunt wild turkeys in Delaware before passing a Division approved course of instruction in turkey hunting. In addition to official Delaware Division of Fish and Wildlife sponsored courses, official NRA Wild Turkey Hunting Clinics, official NWF Turkey Hunting Courses and out-of-state Turkey Hunting Courses (minimum of 4 hours) officially sponsored and sanctioned by other state or provincial Hunter Education Programs shall be recognized as being Division approved courses of instruction in turkey hunting. This includes Division approved internet courses.

5.2.2 Youth hunters under the age of 13 must be accompanied by an adult 21 years of age or older who has had a Division approved course of instruction in turkey hunting. The adult must have a valid hunting license or license exempt number (LEN).

5.3 Method of Take.

5.3.1 It shall be unlawful for any person to use any firearm to hunt wild turkeys, except a 10, 12, 16, or 20 gauge shotgun loaded with size 4, 5, or 6 shot or a longbow, compound bow or crossbow with a broadhead arrow, 7/8 inches in minimum width. Notwithstanding the foregoing, 7 or 7 1/2 shot may be used in shotguns if it is part of a duplex or triplex load that also contains 4, 5 or 6 shot.

5.3.2 It shall be unlawful for any person to use bait or dogs to hunt wild turkeys.

5.3.3 It shall be unlawful for any person to "drive" wild turkeys.

5.3.4 It shall be unlawful for any person to shoot any wild turkey that is in a roost tree.

5.3.5 It shall be unlawful for any person to hunt wild turkeys unless said person is wearing camouflage clothing.

5.3.6 It shall be unlawful for any person to hunt wild turkeys if said person is wearing any garment with the colors white, red, or blue.

5.3.7 It shall be unlawful for any person to hunt wild turkeys and use artificial turkey decoys of either sex that are wholly or partially made from any part of a turkey that was formerly alive.

5.3.8 It shall be unlawful for any person to hunt wild turkeys using an electronic calling device.

5.4 Season and Limit.

5.4.1 The Division may establish a season for hunting bearded wild turkeys. The Division will determine the season length and bag limit. Except for persons 12 years of age or younger, it shall be unlawful for any person to hunt wild turkey ~~except as permitted by the written authorization of the Division.~~ without the written authorization of the Division in their possession. Proof of course completion referenced in 5.2 of this section shall serve as written authorization for private land hunters. Public land hunters must have both an annual permit from the Division as well as proof of course completion in their possession while turkey hunting.

5.4.2 It shall be unlawful for any person to hunt wild turkeys, except from one-half hour before sunrise to 1:00 p.m.

5.4.3 It shall be unlawful for any person to not check a wild turkey at an authorized checking station by 2:30 p.m. on the day of kill.

5.4.4 It shall be unlawful for any person to take or attempt to take more than one bearded wild turkey per season.

5.5 Special Season for Young and Disabled Hunters

5.5.1 Turkeys may be hunted on private land and selected public land on the Saturday prior to the opening of the regular spring turkey hunting season by disabled (non-ambulatory) hunters using a wheelchair for mobility, and hunters 10 years of age or older but less than 16 years of age (10-15 years inclusive). Hunters 13-15 years of age must have completed an approved course in hunter training as well as a Division approved turkey hunter safety class and possess a Delaware Resident or Non-Resident Junior Hunting License. Young hunters must be accompanied by a licensed non-hunting adult who is 21 years of age or older who has also completed a Delaware

PROPOSED REGULATIONS

approved turkey hunter safety class. Young hunters must be of sufficient size, physical strength and emotional maturity to safely handle a shotgun.

(Break in Continuity of Sections)

10.0 Nuisance ~~Game Animals~~ Wildlife

(Penalty Section 7 **Del.C.** §103(d))

- 10.1 Incorporated Cities or Towns. Within the limits of residential or commercial areas of incorporated cities or towns, or within residential or commercial structures, the following game animals may be controlled (killed) without a permit when they are causing damage: gray squirrel, raccoon and opossum. Methods used to control said animals must be consistent with the laws of this State and the regulations of the Department and only live traps may be used (without a depredation permit) outside of established trapping seasons.
- 10.2 ~~Pest Control~~ Commercial Nuisance Wildlife Control Operators. The Division may ~~designate licensed pest-~~ certify and permit commercial nuisance wildlife control operators as operators to control nuisance wild animals resolve human/wildlife conflicts. ~~Said operators must agree to follow guidelines for control as determined by the Division and notify potential clients of their fees.~~

10.2.1 Certification. To be permitted, all operators must complete and satisfactorily pass a nuisance wildlife control certification program designated by the Division. The certification will be for the owner/operator or proprietor of the business. Re-certification must occur every five years. Once permitted, the operator will be responsible for training all users under their permit. Operators must abide by all Division policies and notify potential clients of their fees. Failure to follow Division policies may result in the revocation of the Nuisance Wildlife Control Operator permit.

(Break in Continuity of Sections)

14.0 Falconry

(Penalty Section 7 **Del.C.** §103(d))

- 14.1 Federal Regulations Adopted.
It shall be unlawful for any person to practice the sport of falconry, except in such a manner as prescribed by regulations promulgated under provisions of 50 CFR (Code of Federal Regulations) §§ ~~24.28, 21.29 and 21.30.~~ The Federal regulations are hereby made part of the regulations of the Department as prescribed in § 725 of Title 7. Notwithstanding the foregoing, the federal regulations governing falconry shall be superseded by more stringent restrictions prescribed by law or regulation of the Department.
- 14.2 Permits.
- 14.2.1 ~~A Residents~~ resident wishing to practice falconry shall apply to the Division for a falconry permit. To be issued a falconry permit, the person shall successfully pass a written test and have their facilities and equipment inspected by Division staff or an appointed Master Falconer to ensure that they meet the standards as prescribed by the federal regulations.
- 14.2.2 ~~A Nonresidents~~ nonresident falconer must ~~purchase a nonresident hunting license and be properly permitted to practice falconry in the state in which he or she resides.~~ who possesses a valid falconry permit issued by any other state listed in 50CFR21.29 may possess, import, export, or transport migratory birds of the orders Accipitriformes, Falconiformes, and/or Strigiformes held under the authority of such a permit in Delaware.
- 14.2.3 ~~Falconry permits shall be effective, unless revoked, for a period of up to three years and coincide with the license period for the hunting license. The Division shall participate in any joint state/federal permit system available. No additional falconry permit shall be required for a non-resident falconry permit holder to practice falconry in Delaware.~~
- 14.2.4 ~~The issuance of Apprentice Class permits shall be limited to persons 15 years of age or older. Falconers who take up residence in Delaware shall have 60 days to obtain a Delaware falconry~~

permit. During this interim period, a current falconry permit issued by the previous state of residence shall be recognized for the purposes of legally practicing falconry in Delaware.

14.2.5 Falconry permits shall be effective, unless revoked, for a period of up to three years and coincide with the license period for the hunting license.

14.3 Taking of Raptors.

14.3.1 It shall be unlawful for any person to take any birds of prey from the wild without a permit from the Division. The Director shall establish a an annual limit on the number of raptors which may be taken ~~each year from the wild~~ and shall appear before the Council on ~~Game~~ Wildlife and Freshwater Fish to receive input on such limit before its adoption or revision.

14.3.2 In 2000, and each year thereafter until changed, the Division may ~~issue up to twelve (12) permits for the taking of twelve (12) birds of prey from the wild in Delaware, except that no more than three (3) permits shall be issued for the taking of three (3) nestling red-tailed hawks or three (3) nestling great horned owls, or any combination thereof. Nonresident falconers may apply for available permits to take nestling raptors, provided the state in which the nonresident resides allows Delaware residents the reciprocal opportunity to remove nestling raptors.~~ allow the taking of a total of 12 birds of prey from the wild in Delaware. Each capture permit will be limited to the taking of one bird of prey.

14.3.3 ~~The taking of nestling (eyas) birds shall be limited to red-tailed hawks and great horned owls on Thursdays, Fridays and Saturdays from March 18 through June 30. Falconers may possess wild caught raptors identified as state threatened or endangered under Regulation 16.0 and §602 of Title 7, provided they were acquired in Delaware prior to the species being listed, or if they were acquired from a state in which their take was legal.~~

14.3.4 The taking of eyas (nestling) birds shall be limited to red-tailed hawks and great horned owls on Thursdays, Fridays and Saturdays from February 1 through July 15. No more than three (3) eyas red-tailed hawks or three (3) nestling great horned owls, or any combination thereof, may be taken during this period each year. Nonresident falconers may apply for available permits to take eyas raptors, provided the state in which the nonresident resides allows Delaware residents the reciprocal opportunity to remove eyas raptors.

14.3.5 Apprentices may only possess wild caught red-tailed hawks and red shouldered hawks. Apprentices may not possess captive reared birds or hybrids.

14.3.6 The season for the taking of passage birds shall be from August 15 through March 31. Raptors in adult plumage must be released immediately at the site of capture. Nonresident falconers may apply to obtain any available permits to take passage raptors in Delaware, provided the state in which the nonresident resides has a reciprocal arrangement that permits Delaware residents to take passage raptors.

14.3.57 It shall be unlawful to remove raptors from private property without the express consent of the landowner. It shall also be unlawful for any person to remove raptors from State parks, State forests, State wildlife areas, State owned wetland mitigation sites, national wildlife refuges, nature preserves, natural areas, and county or local parks without ~~the advance~~ written approval of the agency administering the property. The permit to remove a raptor from the wild must be in possession of the falconer when attempting to capture a raptor. Apprentice falconers must be under the direct supervision of ~~their~~ the Apprentice's sponsor or a Master or General class falconer when removing raptors from the wild.

14.4 Hunting.

14.4.1 Resident and nonresident falconers shall be properly licensed to hunt game in the State of Delaware as described under Chapter 5 of Title 7.

14.4.2 Falconry shall be a legal method of take for all game birds and game animals in Delaware. The hunting season for resident game shall be from September 1 through February 28.

14.4.3 A falconer whose raptor accidentally kills wildlife during a closed season for such wildlife shall leave the dead wildlife where it lies, except the raptor may feed upon the wildlife before leaving the site of the kill, provided that the wildlife shall not be reduced to possession by the falconer. The

PROPOSED REGULATIONS

falconer shall cease hunting with the raptor that makes the accidental kill for the remainder of the day.

- 14.5 ~~Marking. Any raptor possessed under a Delaware falconry permit must be banded with a permanent, non-reusable numbered band issued by the U.S. Fish and Wildlife Service or the Division. Captive reared raptors may be marked with either a permanent, non-reusable numbered band or, if sold, a numbered seamless band. Markers shall be removed from birds that die or are intentionally released into the wild and must be forwarded to the Division within ten days along with a report that documents the fate of the bird.~~
- 14.5 Transition period. These regulations shall take effect on January 1, 2014. Until that time, falconers shall abide by regulation 3914 as it existed on January 1, 2013. On and after January 1, 2014, all permitted falconers shall comply with these new regulations as they appear here.
- 14.6 ~~Release. Raptors, including hybrid raptors, which are not indigenous to Delaware shall not be permanently released into the wild. Raptors released in Delaware must be released within the appropriate season in which that species naturally occurs within the State.~~

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

3900 Wildlife

DEPARTMENT OF SAFETY AND HOMELAND SECURITY DIVISION OF STATE POLICE

2400 BOARD OF EXAMINERS OF CONSTABLES

Statutory Authority: 10 Delaware Code, Chapter 27 (10 Del.C. Ch. 27)

PUBLIC NOTICE

2400 Board of Examiners of Constables

Notice is hereby given that the Board of Examiners of Constables, in accordance with 10 Del.C. Ch. 27 proposes to amend Rule 5.0 - Firearms Policy. This amendment clarifies the requirements for a constable to carry a weapon while on duty. If you wish to view this amendment, contact Ms. Peggy Anderson at 302-672-5304. Any persons wishing to present views may submit them in writing, by March 1, 2013, to Delaware State Police, Professional Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold a special meeting on February 14, 2013, Room 105, Tatnall Building, 150 William Penn Street, Dover, Delaware.

2400 Board of Examiners of Constables

1.0 Experience

- 1.1 A constable must meet the minimum training standards as established by the Board.

2.0 Appeal

- 2.1 Any applicant who is rejected for a commission as a constable may, within 30 days of such notice of rejection, submit a written notice of appeal.
- 2.2 A hearing date, to be determined by the Board, will be convened to take relevant evidence on the appeal.
- 2.3 Such proceedings shall be conducted in accordance with the administrative procedures act (Title 29).
- 2.4 The Board decision, in writing, will be mailed to the applicant within ten working days after the hearing.

3.0 Law Enforcement Exemption

-
- 3.1 Applicants, who were prior law enforcement officers in any jurisdiction and have been away from police work for not more than five (5) years, will be considered for commissions on a case-by-case basis.
 - 3.2 Applicants, who have been law enforcement officers in the past but have been away from active law enforcement for more than five (5) years, will be required to take either the MMPI (Minnesota Multiphasic Personality Inventory) or the PAI (Personal Assessment Inventory), under the conditions noted in Rule 4.0, and a comprehensive, multiple-choice examination of the minimum standards established by the Board to demonstrate their knowledge of the duties of a Constable. Once those shortcomings have been identified, the individual officer will be required to take the requisite training where the deficiency was noted.

4.0 Employment

- 4.1 All applicants must submit written testimony from five (5) reputable citizens attesting to good character, integrity, and competency.
- 4.2 All applicants must submit to either the MMPI (Minnesota Multiphasic Personality Inventory) or the PAI (Personal Assessment Inventory) evaluation performed by a licensed psychologist who has knowledge of the requirements of the duties of the Constable position, that the applicant is psychologically fit to function as a competent Constable.
- 4.3 All applicants shall be required to submit an application and their fingerprints to the Director of Detective Licensing on the appropriate forms. The Director of the State Bureau of Identification shall set the processing fee.
- 4.4 No full-time police officer may apply for a commission as a constable.
- 4.5 All applicants seeking a new commission as a constable shall be required to submit a \$100.00 application fee.
- 4.6 A \$50.00 annual renewal fee shall be required to accompany the renewal application each year thereafter.
- 4.7 A constable shall not be a member or employee of any Delaware law enforcement organization, as defined by the council on Police Training, or a member or employee of a law enforcement organization of any other state or federal jurisdiction.

5.0 Firearm's Policy

- 5.1 No person licensed under ~~Title 24 Chapter 13 Sections 1315 & 1317~~ 10 Del.C. §2703 shall carry a firearm unless that person has first passed an approved firearms course ~~given of instruction and an initial qualification administered~~ by a Board approved certified firearms instructor. ~~which~~ The course of instruction shall include a minimum 40 hours course of instruction of training. The Professional Licensing Section may waive the 40 hour training requirement depending upon the applicant's professional credentials, training and/or work experience (i.e. prior law enforcement).
- 5.2 Individuals licensed to carry a firearm must shoot a minimum of three (3) qualifying shoots per constable year, scheduled on at least two (2) separate days, with a ~~recommended~~ minimum 90 days between scheduled shoots. Of these three (3), there will be one (1) mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot. The initial qualification shot may be used to fulfill one day and one low light requirement during the first year.
 - 5.2.1 A constable year shall be June 1st to May 31st.
 - 5.2.2 An individual not meeting the minimum qualifications set forth in 5.2. may have their firearms license suspended until such time that they meet the minimum three (3) qualifying shoots within the constable year.
- 5.23 Firearms - approved ~~type~~ caliber of weapons
 - 5.23.1 9mm
 - 5.23.2 .357
 - 5.23.3 .38
 - 5.23.4 .40

PROPOSED REGULATIONS

- 5.34 All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.
- 5.45 Under no circumstances will anyone be allowed to carry any type of shotgun or rifle or any type of weapon that is not described herein.
- 5.56 All individuals must qualify with the same ~~type~~ make/model/caliber of weapon that he/she will carry.
- 5.67 All ammunition will be factory fresh (no re-loads).
- 5.78 The minimum passing score is 80%.
- 5.9 All licenses are valid for a period of one (1) constable year.
- 5.10 Firearms Instructors
- 5.10.1 Firearms instructors must be certified by the National Rifle Association, a law enforcement training and standards commission (i.e. C.O.P.T.), and/or another professional firearms training institution as a "certified firearms instructor".
- 5.10.2 Firearms instructors are restricted to teaching and qualifying individuals according to the type of firearm matching their certification. (For example, a certified shotgun instructor may only instruct and qualify individuals with the shotgun.)
- 5.10.3 All firearms instructors must be approved by the Board before they are authorized to instruct or qualify individuals licensed under 10 Del.C. Ch. 27.
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DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Gaming Control Board

Statutory Authority: 28 Delaware Code, Section 1122 (28 Del.C. §1122)
10 DE Admin. Code 101

PUBLIC NOTICE

101 Regulations Governing Bingo

A. Type of Regulatory Action Required

Amendment to Existing Regulations

B. Synopsis of Subject Matter of the regulation

The Delaware Board of Charitable Gaming will seek public comments on the issue of whether a certain amendment to its current rules should be adopted.

The proposed amendment is to Rule 4.11 in 10 **DE Admin. Code** 101. The amendment would provide that when there are multiple winners in a game, the organization may in its own house rules determine how one winner will be declared.

Persons wishing to present their views regarding this matter may do so by appearing at a public hearing on Thursday, February 7, 2013 at the meeting of the Delaware Board of Charitable Gaming, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904. Persons may also submit written comments by the close of business on or before February 22, 2013 at the same address. 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

The amendment would change the current rule, which provides that when there are multiple winners, the prize should be divided as evenly as possible. When the prize is not a monetary prize, but rather a pocketbook, basket, or other type of non-monetary prize, dividing the prize is not practical. The Board therefore wishes to allow the organization holding the event to determine in its own house rules, how one winner will be declared. For example, an organization may call an extra number, or have some other method of determining a single winner.

The other players qualifying to win may be given a chance to win a prize at a subsequent drawing during the event, provided the value of that prize appears in the application for the event and is counted toward the maximum permissible prize.

101 Regulations Governing Bingo

(Break in Continuity of Sections)

4.0 Conduct of Bingo

- 4.1 The officers of a licensee shall designate a bona fide, active member to be in charge of and primarily responsible for the conduct of the game of chance on each occasion. The member in charge shall supervise all activities on the occasions for which he is in charge and shall be responsible for the making of the required report thereof. The member in charge shall be familiar with the provisions of the Bingo Statute, and these rules and regulations.
- 4.2 The room where any game is being held, operated, or conducted, or where it is intended that any game shall be held, operated, or conducted, or where it is intended that any equipment be used, shall at all times be open to inspection by the appropriate law enforcement officers and agents of the District in which the premises are situated, and to the Board and its agents and employees. Bingo games shall not be commenced prior to 1:30 p.m. and the operation of a function shall be limited to six hours. Instant bingo is permitted during any event sponsored by the organization that is licensed to conduct it, regardless of the day or time.
- 4.3 No person under the age of eighteen (18) may participate in any bingo game. No person under the age of 18 shall be permitted to participate in any instant bingo game. Persons between the ages of 16 through 18 may conduct or assist in conducting the bingo game and persons over the age of fourteen (14) may act as waiters and waitresses in the handling of food or drinks at an occasion on which a licensee conducts bingo.
- 4.4 No organization licensed prior to enactment of 71 **Del. Law** 444 (July 14, 1998), may hold, operate, or conduct bingo more often than ten (10) days in any calendar month. No bingo licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998) shall conduct more than one bingo event per week. A bingo licensee licensed prior to the enactment of 71 **Del. Laws** 444 (July 14, 1998), whose license lapses for six (6) months or more due to nonrenewal or suspension or any other reason shall, upon licensing thereafter, be considered a licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998).
- 4.5 The Board and its duly authorized agents and employees may examine the books and records of any licensee, so far as those books and records relate to any transaction connected with the holding, operating, and conducting of the game of bingo, and may examine any manager, officer, director, agent, member, employee, or assistant of the licensee under oath in relation to the conduct of the game of bingo.
- 4.6 No prize in an amount or value greater than \$250 shall be offered or given in any single game and the aggregate amount or value of all prizes offered or given in all games played on a single occasion shall not exceed \$1,250. All winners shall be determined and all prizes shall be awarded in any game played on any occasion within the same calendar day as that upon which the game is played. The value of any promotional giveaways, which shall be no more than \$500 per annum to be distributed at an organizational anniversary date and no more than three (3) holiday dates per year, shall not be counted towards the dollar amounts described in this section. However, a licensee may offer inducements, including but not limited to cookie-jar bingo games that do not exceed \$1,000 per game per night, free refreshments, and free transportation of players to and from bingo events, to attract bingo players to the bingo event, provided that the fair market value of inducements is limited to 15% of the total amount of all other prizes offered or given during the bingo event.
- 4.7 Two or more organizations may not hold games of bingo at the same place on the same day. Unless a bingo licensee has been licensed prior to the enactment of 71 **Del. Laws** 444 (July 14, 1998), only one

PROPOSED REGULATIONS

- licensed organization may hold bingo games in a licensed organization's building during any given week.
- 4.8 No alcoholic beverages shall be permitted in the room from the time the bingo hall opens until the conclusion of the last bingo game of the occasion.
- 4.9 All games shall be conducted with equipment that is owned absolutely by the licensee or that is leased for fees not in excess of those allowable under the Schedule of Rental for leasing of equipment on file with the Board. Equipment shall include playing cards. If the licensee uses cards that are for more than one session of playing bingo, these cards should be identified as the property of the licensee.
- 4.10 All winners shall be determined and all prizes shall be awarded in any game played on any occasion within the same calendar day as that upon which the game is played.
- 4.11 When more than one player is found to be the winner on the call of the same number in the same game, the designated prize, if monetary, shall be divided equally as possible; and when division is not possible, substitute prizes, whose aggregate value shall not exceed that of the designated prize, shall be awarded; but such substitute prizes shall be of equal value to each other. When the prize is not a monetary prize, a single winner may be determined in accordance with the organization's own house rules. The other players who qualified to win the game may be given a chance in a drawing to be held later during the same event, with the winner of that drawing receiving the prize offered in the drawing. The value of the prize at the subsequent drawing shall be counted toward the maximum allowable prizes for the entire event.
- 4.12 The equipment used in the playing of bingo and the method of play shall be such that each card shall have an equal opportunity to be a winner. The objects drawn shall be essentially equal as to size, shape, weight, and balance, and as to all other characteristics that may control their selection, and all shall be present in the receptacle before each game is begun. All numbers shall be announced so as to be visible or audible to all players present.
- 4.13 The particular arrangement of numbers required to be covered in order to win the game shall be clearly described and announced to the players immediately before each game is begun.
- 4.14 No arrangement of numbers shall be required to be covered in order to win the game other than the following:
- 4.14.1 one unspecified horizontal row;
 - 4.14.2 one unspecified vertical row;
 - 4.14.3 one unspecified full diagonal row;
 - 4.14.4 one unspecified row (horizontal, vertical, or diagonal);
 - 4.14.5 Two or more of the foregoing, forming a specified arrangement;
 - 4.14.6 The entire card;
 - 4.14.7 Four corners;
 - 4.14.8 Eight spaces surrounding the free space.
 - 4.14.9 Any other configuration or shape on the card established by an organization, provided the players are informed of the shape needed to win before play commences.
- 4.15 Within the limits contained in 28 **Del.C.** §1132(b), alternate prizes may be offered depending upon the number of calls within which bingo is reached, provided the application for the bingo license and the license so specify.
- 4.16 Any player shall be entitled to call for a verification of all numbers drawn at the time a winner is determined, and for a verification of the objects remaining in the receptacle and not yet drawn. The verification shall be made in the immediate presence of the member designated to be in charge on the occasion, but if such member is also the announcer, then in the immediate presence of an officer of the licensee.
- 4.17 No licensee shall conduct more than forty (40) games on a single occasion.
- 4.18 In the playing of bingo, no person who is not physically present in the room where the game is actually conducted shall be allowed to participate as a player in the game.

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- 4.19 Within the limits contained in 28 **Del.C.** §1132(6), the prizes offered may be varied depending upon the number of people who attend the occasion, provided the application for bingo license and license so specify. If a licensee avails itself of the provisions of this rule, it must announce at the beginning of each game the number of people present and the prizes to be awarded.
- 4.20 The entire proceeds of the games of bingo must be used solely for the promotion or achievement of the purposes of the licensee.
- 4.21 Any local rules adopted by the licensee that affect the conduct of the players or the awarding of prizes shall be prominently posted in at least four locations within the area where the bingo games are conducted.
- 4.22 The licensee shall be permitted to reserve seats within the area where the bingo games are conducted to provide for the special needs of handicapped persons, and the licensee shall ensure that the remaining seats are made available to the players on an equal basis.
- 4.23 A licensee may charge an admission fee to a game event in any room or area in which a game is to be conducted. The admission fee shall entitle the game player (a) to a card enabling the player to participate without additional charge in all regular games to be played under the license at the event, or (b) to free refreshments. The licensee may charge an additional fee to a game player for a single opportunity to participate in a special game to be played under license at the event.
- 4.24 No person shall conduct or assist in conducting any game except an active member of the organization to which the license is issued.
- 4.25 No item of expense shall be incurred or paid in connection with the conduct of the game except shall be incurred or paid in connection with the conduct of the game except such as are bona fide items of a reasonable amount for merchandise furnished or services rendered which are reasonably necessary for the conduct of the game.

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

101 Regulations Governing Bingo

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 506(a)(1) (24 **Del.C.** §506(a)(1))
24 **DE Admin. Code** 500

PUBLIC NOTICE

500 Board of Podiatry

The Delaware Board of Podiatry in accordance with 24 **Del.C.** §506(a)(1) has proposed amendments to Rules 5.0 and 6.0. The proposed revisions to the rules are an attempt to clarify the timing of when the Podiatric Medical Licensing Exam for States (PM Lexis) exam needs to be satisfactorily completed for licensure in the State of Delaware. The proposed revisions also clarify that licensees must complete their continuing education credits for licensure renewal on or before June 30 of even numbered years.

A public hearing will be held on February 14, 2013, at 5:15 p.m. in the second floor conference room B 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 Meaghan Jerman, Administrative Assistant for the Delaware Board of Podiatry, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be fifteen (15) days after the public hearing.

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

500 Board of Podiatry*(Break in Continuity of Sections)***5.0 Licenses (In-Training, Lapse/Renewal, Inactive)****5.1 In-Training License.**

- 5.1.1 Pursuant to 24 **Del.C.** §513(d), the Board will issue, without examination, an In-Training license to podiatric physicians who are (1) participating in this State in a residency program accredited by the Council on Podiatric Medical Education and (2) are otherwise qualified for licensure.
- 5.1.2 A podiatric physician who will be employed by a hospital as a resident or fellow in an accredited residency or fellowship program may apply for an In-Training license. Application shall be made on forms provided by the Board. Such applications shall include:
 - 5.1.2.1 An affidavit of the employer hospital's residency program director certifying that the podiatric physician will be employed by the hospital and meets all requirements for licensure specified in 24 **Del.C.** §508(a)(1) through (a)(7), excluding 24 **Del.C.** §508(a)(2).
 - 5.1.2.2 An affidavit of the podiatric physician seeking licensure certifying that he meets all the requirements for licensure specified in 24 **Del.C.** §508(a)(1) through (a)(7), excluding 24 **Del.C.** §508(a)(2). Parts I and II of the Podiatric Medical Licensing Examination for States (PM Lexis) exam must be satisfactorily completed prior to residency. Satisfactory completion of Part III of the PM Lexis exam will have to be completed by the end of the first year of residency.
 - 5.1.2.3 An affidavit of the podiatric physician seeking licensure certifying that he intends to limit himself solely to practice within the hospital or the performance of such medical duties outside the hospital which may be assigned to him as part of the residency program.
- 5.1.3 Residents employed by accredited hospitals who have been granted In-Training licenses shall be specifically limited to the practice of medicine within the hospital where they are employed, except for any medical duties which may be assigned as part of the residency program as long as those outside duties are performed under the supervision of a fully licensed podiatric physician.
- 5.1.4 An In-Training license is required for all podiatric physicians who will spend 45 or more consecutive days in a Delaware institution as part of a rotation for an out-of-state residency program.
- 5.1.5 The licensee and the employer hospital shall notify the board not later than three (3) days after the licensee's completion of or withdrawal from the residency program.
- 5.1.6 Valid In-Training licenses may be renewed by the licensee by paying the renewal fee set by the Division of Professional Regulation.

5.2 Lapse/Renewal

- 5.2.1 A licensee whose license lapses for non-renewal may renew within one year by paying the late fee required by 24 **Del.C.** §511 and having completed all continuing education required for renewal. Late renewals shall be audited for satisfactory completion of the continuing education requirement.
- 5.2.2 If a licensee allows his or her license to lapse for over one year and has not been granted inactive status, that licensee must reapply for licensure in the same manner as a new applicant.
- 5.2.3 It shall be the responsibility of all licensees, active or inactive, to keep the Board informed of any change in name, home or business address.
- 5.2.4 License renewal may be accomplished online at <http://dpr.delaware.gov>.

5.3 Inactive Status

- 5.3.1 A licensee may be placed on inactive status by the Board for a period of no more than five (5) years. Requests for inactive status shall be made, in writing, to the Board and requests which exceed one (1) year shall be renewed biennially at the time of regular license renewals. After application to the Board and payment of a renewal fee, an inactive licensee may obtain a new license and re-enter active practice after completion of the continuing education requirements below.

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- 5.3.1.1 Inactive status for one (1) year or less: 16 CE hours.
 - 5.3.1.2 Inactive status for more than one (1) year: 32 CE hours, completed within 24 months prior to reapplication.

(Break in Continuity of Sections)

6.0 Continuing Education

- 6.1 “Continuing medical education (CME),” as that term is herein applied by the Board, includes any and all continuing education requirements, as herein below provided, which must be satisfied biennially by all licensed practitioners as a condition for licensure renewal. Each licensed practitioner shall complete, ~~on or before the last day in April every two (2) years,~~ on or before June 30 of even numbered years at least 32 hours of continuing education as a condition of license renewal.
- 6.2 Each practitioner shall be exempt from the continuing education requirement in the first biennial licensing period, or any portion thereof, in which he is licensed to practice in Delaware. During the renewal process, a practitioner shall attest to his satisfactory completion of the continuing education requirements for the previous two (2) years. Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted. Each licensee must maintain a Podiatry CME log, on a form to be supplied by the Board, indicating the date, title, sponsor, and number of hours the licensee attended, for each continuing education program submitted for credit. Random audits will be performed by the Board to ensure compliance with the continuing education requirement. Licensees selected for the random audit shall submit validated documents which evidence satisfactory completion of the continuing education requirements for the previous two (2) years. The Board reserves the right to request additional documentation, such as copies of program materials, to verify CME compliance in the course of a random audit.
- 6.3 Only approved courses will be counted toward the 32 hour biennial continuing education requirement. A practitioner may gain approval of any course or program by written application to the Board, stating the title, sponsor and summary of course content. The Board may act upon all such requests at the next regularly scheduled meeting, may act upon such requests at any intervening special meeting convened to consider other issues, or may delegate to any member of the Board the authority to approve continuing education courses on behalf of the Board. Any practitioner who attends and/or completes a course which has not yet been approved by the Board does so at his own risk that the Board may not approve the said course nor allow it to be counted toward completion of the annual requirement of 32 hours of continuing education.
- 6.4 Content. The overriding consideration in determining if a specific program qualifies for continuing education is that it be a formal program of learning which contributes directly to the professional competence of the licensee. No credit shall be given for business or practice seminars.
 - 6.4.1 Computer, television or video based courses and other independent study courses may be submitted to the Board for approval, however no such course will be approved for credit unless it includes successful completion of a final examination or paper.
 - 6.4.2 The following programs will be deemed to qualify for continuing education without prior Board approval:
 - 6.4.2.1 Any program approved by the American Podiatric Medical Association (APMA), and approved affiliates.
 - 6.4.2.2 Any seminar sponsored by the Delaware Podiatric Medical Association (DMPA).
 - 6.4.2.3 Any podiatric program sponsored by a hospital or clinic as part of a CPME approved residency program.
- 6.5 Hardship. The Board has the authority to make exceptions to the continuing education requirements upon written request of the licensee and a showing of good cause. “Good cause” may include, but is not limited to, disability, illness, military service, foreign residency, and retirement. Upon application,

PROPOSED REGULATIONS

the Board shall set the time in which the licensee must complete the continuing education requirement. No extension shall be granted for more than 120 days after the end of the licensing period.

6.6 Self-directed activity

6.6.1 The Board may, upon request, review and approve credit for self-directed activities, including research, preparation and/or presentation of professional papers and articles, to a maximum of eight (8) hours per biennial licensing period. A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity. Any self-directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants (e.g. research) and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee.

6.6.2 The Board may award up to a maximum of eight (8) continuing education hours for the first-time preparation and presentation of an approved podiatric clinical course, in-service training, workshop, or seminar. A copy of the course syllabus and verification that the course was presented is required for Board approval.

Statutory authority: 24 **Del.C.** §§506(a)(7).

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

500 Board of Podiatry

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 1904(c) (24 **Del.C.** §1904(c))
24 **DE Admin. Code** 1900

PUBLIC NOTICE

1900 Board of Nursing

The Delaware Board of Nursing, pursuant to 24 **Del.C.** §1904(c), proposes to revise regulations 14.2.1.5 and 14.2.1.6. The proposed revisions to these regulations allow a nurse changing her primary state of residence from one Compact state to another to continue to practice under her home state license for 90 days. This is an increase in time from the prior regulation, which only allowed a nurse to work under her home state license for 30 days before requiring a new home state license. This change was prompted by the same change made in the Nurse Licensure Compact Administrators' Model Rules and Regulations.

The Board will hold a public hearing on the proposed regulation change on February 13, 2013 at 09:00 AM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until February 28, 2013.

1900 Board of Nursing

(Break in Continuity of Sections)

14.0 Nurse Licensure Compact Rules and Regulations

24 **Del.C.**, Ch. 19A, Articles 6D and 8C of the Nurse Licensure Compact grant authority to the Compact Administrators to develop uniform rules to facilitate and coordinate implementation of the Compact.

14.1 Definition of terms in the Compact:

14.1.1 For the Purpose of the Compact:

- 14.1.1.1 **“Board”** means party state’s regulatory body responsible for issuing nurse licenses.
- 14.1.1.2 **“Information System”** means the coordinated licensure information system.
- 14.1.1.3 **“Primary State Of Residence”** means the state of a person’s declared fixed permanent and principal home for legal purposes; domicile.
- 14.1.1.4 **“Public”** means any individual or entity other than designated staff or representatives of party state Boards or the National Council of State Boards of Nursing, Inc.

14.1.2 Other terms used in these rules are to be defined as in the Interstate Compact.

14.2 Issuance of a license by a Compact party state.

14.2.1 For the purpose of this Compact:

As of July 1, 2005, no applicant for initial licensure will be issued a compact license granting a multi-state privilege to practice unless the applicant first obtains a passing score on the applicable NCLEX examination or any predecessor examination used for licensure.

- 14.2.1.1 A nurse applying for a license in a home party state shall produce evidence of the nurse’s primary state of residence. Such evidence shall include a declaration signed by the licensee. Further evidence that may be requested may include but is not limited to:

- 14.2.1.1.1 Driver’s license with a home address;
- 14.2.1.1.2 Voter registration card displaying a home address; or
- 14.2.1.1.3 Federal income tax return declaring the primary state of residence.
- 14.2.1.1.4 Military Form No. 2058 – state of legal residence certificate; or
- 14.2.1.1.5 W2 from US Government or any bureau, division or agency thereof indicating the declared state of residence.

- 14.2.1.2 A nurse on a visa from another country applying for licensure in a party state may declare either the country of origin or the party state as the primary state of residence. If the foreign country is declared the primary state of residence, a single state license will be issued by the party state.

- 14.2.1.3 A license issued by a party state is valid for practice in all other party states unless clearly designated as valid only in the state which issued the license.

- 14.2.1.4 When a party state issues a license authorizing practice only in that state and not authorizing practice in other party states – a single state license, the license shall be clearly marked with words indicating that it is valid only in the state of issuance.

- 14.2.1.5 A nurse changing primary state of residence, from one party state to another party state, may continue to practice under the former home state license and multi-state licensure privilege during the processing of the nurse’s licensure application in the new home state for a period not to exceed ~~thirty(30)~~ ninety days. (Statutory basis: 24 **Del.C.**, Ch. 19A, Articles 4B, 4C, and 4D[1])

- 14.2.1.6 The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance and the ~~thirty(30)~~ ninety day processing period in section 2b shall be stayed until resolution of the pending investigation.

- 14.2.1.7 The former home state license shall no longer be valid upon the issuance of a new home state license. (Statutory basis: 24 **Del.C.**, Ch. 19A, Article 4D[1])

- 14.2.1.8 If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten (10) business days and the former home state may take action in accordance with that state’s laws and rules.

14.3 Limitations on multi-state licensure privilege.

Home state Boards shall include in all licensure disciplinary orders and/or agreements that limit practice and/ or require monitoring the requirement that the licensee subject to said order and/or agreement will agree to limit the licensee’s practice to the home state during the pendency of the disciplinary order and/or agreement. This requirement may, in the alternative, allow the nurse to

practice in other party states with prior written authorization from both the home state and such other party state Boards. (Statutory basis: 24 **Del.C.**, Ch. 1902A)

An individual who had a license which was surrendered, revoked, suspended, or an application denied for cause in a prior state of primary residence, may be issued a single state license in a new primary state of residence until such time as the individual would be eligible for an unrestricted license by the prior state(s) of adverse action. Once eligible for licensure in the prior state(s), a multistate license may be issued.

14.4 Information System.

14.4.1 Levels of access

14.4.1.1 The Public shall have access to nurse licensure information limited to:

14.4.1.1.1 the nurse's name,

14.4.1.1.2 jurisdiction(s) of licensure,

14.4.1.1.3 license expiration date(s),

14.4.1.1.4 licensure classification(s) and status(es),

14.4.1.1.5 public emergency and final disciplinary actions, as defined by contributing state authority, and

14.4.1.1.6 the status of multi-state licensure privileges.

14.4.1.2 Non-party state Boards shall have access to all Information System data except current significant investigative information and other information as limited by contributing party state authority.

14.4.1.3 Party state Boards shall have access to all Information System data contributed by the party states and other information as limited by contributing non-party state authority. (Statutory basis: 24 **Del.C.**, Ch. 19A, Article 7G)

14.4.2 The licensee may request in writing to the home state Board to review the data relating to the licensee in the Information System. In the event a licensee asserts that any data relating to him or her is inaccurate, the burden of proof shall be upon the licensee to provide evidence that substantiates such claim. The Board shall verify and within ten (10) business days correct inaccurate data to the Information System. (Statutory basis: 24 **Del.C.**, Ch. 19A, Article 7G)

14.4.3 The Board shall report to the Information System within ten (10) business days

14.4.3.1 disciplinary action, agreement or order requiring participation in alternative programs or which limit practice or require monitoring (except agreements and orders relating to participation in alternative programs required to remain nonpublic by contributing state authority),

14.4.3.2 dismissal of complaint, and

14.4.3.3 changes in status of disciplinary action, or licensure encumbrance. (Statutory basis: 24 **Del.C.**, Ch. 19A, Article 7B)

14.4.4 Current significant investigative information shall be deleted from the Information System within ten(10) business days upon report of disciplinary action, agreement or order requiring participation in alternative programs or agreements which limit practice or require monitoring or dismissal of a complaint. (Statutory basis: 24 **Del.C.**, Ch. 19A, Articles 7B, 7F)

14.4.5 Changes to licensure information in the Information System shall be completed within ten (10) business days upon notification by a Board. (Statutory basis: 24 **Del.C.**, Ch. 19A, Articles 7B, 7F)

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

1900 Board of Nursing

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 2506(a)(1) (24 **Del.C.** §2506(a)(1))
24 **DE Admin. Code** 2500

PUBLIC NOTICE

2500 Board of Pharmacy

The Delaware Board of Pharmacy, pursuant to 24 **Del.C.** §2506(a)(1), proposes to revise its rules and regulations. The proposed addition to the rules require pharmacists to take, as part of their biennial renewal required continued education, at least two hours in the area of medication safety/errors. The proposed addition also adds to the list of crimes deemed substantially related to the practice of pharmacy a list of sexual offenses not previously included in the list of substantially related crimes.

The Board will hold a public hearing on the proposed rule change on January 16, 2013 at 10:00 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Catherine Simon, Administrator of the Delaware Board of Pharmacy, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until February 11, 2013.

2500 Board of Pharmacy

1.0 Pharmacist Licensure Requirements

(Break in Continuity Within Section)

1.4 Continuing Education Requirements

1.4.1 A pharmacist must acquire 3.0 C.E.U.'s (30 hours) per biennial licensure period. No carry over of credit from one registration period to another period is permitted.

1.4.1.1 At least 2 hours of continuing education per biennial licensure period must be in the area of medication safety/errors.

(Break in Continuity of Sections)

17.0 Crimes substantially related to the practice of pharmacy.

17.1 For the purposes of this section the following definitions shall apply:

17.1.1 "**Conviction**" means a verdict of guilty entered by a judge or jury, or a plea of guilty or a plea of *nolo contendere* or other similar plea such as a "**Robinson**" or "**Alford**" plea unless the individual has been discharged under 11 **Del.C.** §4218 (probation before judgment) or under 10 **Del.C.** §1024 (domestic violence diversion program) or under 16 **Del.C.** §4764 (first offenders controlled substances diversion program).

17.2 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal the following crimes, is deemed to be a crime substantially related to the practice of pharmacy in the State of Delaware without regard to the place of conviction:

17.2.1 Unlawfully administering drugs. 11 **Del.C.** §625.

17.2.2 Unlawfully administering a controlled substance or counterfeit substance or narcotic drugs. 11 **Del.C.** §626.

17.2.3 Prohibited acts as to substances releasing vapors or fumes; unclassified misdemeanor. 11 **Del.C.** §627.

17.2.4 Use of illegitimate retail sales receipt or UPC. 11 **Del.C.** §840A.

17.2.5 Theft. 11 **Del.C.** §841.

17.2.6 Forgery. 11 **Del.C.** §861.

17.2.7 Possession of forgery devices. 11 **Del.C.** §862.

17.2.8 Falsifying business records. 11 **Del.C.** §871.

- 17.2.9 Deceptive business practices. 11 **Del.C.** §906.
- 17.2.10 Insurance fraud. 11 **Del.C.** §913.
- 17.2.11 Health care fraud. 11 **Del.C.** §913A.
- 17.2.12 Unauthorized access to computer systems. 11 **Del.C.** §932.
- 17.2.13 Theft of computer services. 11 **Del.C.** §933.
- 17.2.14 Interruption of computer services. 11 **Del.C.** §934.
- 17.2.15 Misuse of computer system information. 11 **Del.C.** §935.
- 17.2.16 Unlawful delivery of noncontrolled substance. 16 **Del.C.** §4752A.
- 17.2.17 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs. 16 **Del.C.** §4753A.
- 17.2.18 Failure to keep drugs in original containers 16 **Del.C.** §4758.
- 17.2.19 Sexual harassment; unclassified misdemeanor. 11 **Del.C.** §763
- 17.2.20 Indecent exposure in the second degree; unclassified misdemeanor. 11 **Del.C.** §764
- 17.2.21 Indecent exposure in the first degree; class A misdemeanor. 11 **Del.C.** §765
- 17.2.22 Incest; class A misdemeanor. 11 **Del.C.** §766
- 17.2.23 Unlawful sexual contact in the third degree; class A misdemeanor. 11 **Del.C.** §767
- 17.2.24 Unlawful sexual contact in the second degree; class G felony. 11 **Del.C.** §768
- 17.2.25 Unlawful sexual contact in the first degree; class F felony. 11 **Del.C.** §769
- 17.2.26 Rape in the fourth degree; class C felony. 11 **Del.C.** §770
- 17.2.27 Rape in the third degree; class B felony 11 **Del.C.** §771
- 17.2.28 Rape in the second degree; class B felony. 11 **Del.C.** §772
- 17.2.29 Rape in the first degree; class A felony. 11 **Del.C.** §773
- 17.2.30 Sexual extortion; class E felony. 11 **Del.C.** §776
- 17.2.31 Bestiality. 11 **Del.C.** §777
- 17.2.32 Continuous sexual abuse of a child; class B felony. 11 **Del.C.** §778
- 17.2.33 Dangerous crime against a child, definitions, sentences. 11 **Del.C.** §779
- 17.2.34 Sex offender unlawful sexual conduct against a child. 11 **Del.C.** §779A
- 17.2.35 Female genital mutilation. 11 **Del.C.** §780
- 17.2.4936 Any conviction under Title 18 or Title 21 of the United States Code Annotated including, but not limited to Federal Health Care offenses.
- 17.3 Crimes substantially related to the practice of pharmacy shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

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

2500 Board of Pharmacy

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 **Del.C.** §209(a))
26 **DE Admin. Code** 3007

IN THE MATTER OF THE CONSIDERATION OF
RULES, STANDARDS AND INDICES TO ENSURE
RELIABLE ELECTRIC SERVICE BY ELECTRIC
DISTRIBUTION COMPANIES (OPENED
SEPTEMBER 26, 2000; REOPENED
OCTOBER 11, 2005; REOPENED
NOVEMBER 19, 2009)

PSC REGULATION DOCKET NO. 50

ORDER NO. 8270

AND NOW, this 18th day of December, 2012:

WHEREAS, by Order No. 7002 dated August 8, 2006, the Delaware Public Service Commission (the "Commission") approved proposed revisions to the Rules on "Electric Service Reliability and Quality Standards," 26 **Del. Admin.Code** §3007 (the "Rules") for electric distribution companies subject to the Commission's jurisdiction; and

WHEREAS, Section 3007.1.9 of the Rules provides as follows: "This Electric Service Reliability and Quality regulation shall be effective through 2012 and may be reviewed, revised or extended as necessary to ensure the maintenance of electric reliability and quality service in Delaware;" and

WHEREAS, the Commission believes that it is in the public interest to extend the Rules to apply beyond 2012;

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NO FEWER THAN THREE COMMISSIONERS:

1. That, for the reason set forth in the body of this Order, and pursuant to 26 **Del.C.** §§201, 1002, and 1003 and 29 **Del.C.** §10115, the Commission proposes to revise its Rules regarding "Electric Service Reliability and Quality Standards" (the "Rules"), originally adopted by PSC Order No. 6745 (October 11, 2005) and revised by PSC Order No. 7002 (Aug. 8, 2006). The proposed revised Rules, which include the revision now being proposed for adoption, are attached to this Order as Exhibit "A". A copy of the Rules in their current form as previously approved by the Commission is attached to this Order as Exhibit "B".

2. That, pursuant to 29 **Del.C.** §§1133 and 10115(a), the Secretary of the Commission ("Secretary") shall transmit to the Registrar of Regulations for publication in the Delaware Register of Regulations a copy of this Order, and a copy of the revised Rules now being proposed for adoption (Exhibit "A"), and a copy of the current Rules (Exhibit "B").

3. That, in addition, the Secretary shall transmit to the Registrar of Regulations for publication in the Delaware *Register of Regulations* the Notice of Proposed Rule-Making attached to this Order as Exhibit "C". In addition, the Secretary shall cause such Notice of Proposed Rule-Making to be published in The News Journal and the Delaware State News newspapers on or before December 21, 2012. The Secretary shall include proof of such publication in the docket file before the public hearing in this matter. Further, the Secretary shall serve (by regular mail or by electronic e-mail) a copy of such Notice on: (a) the Division of the Public Advocate; (b) the Delaware Energy Office; (c) Delmarva Power & Light Company; (d) all certificated electric suppliers; and (e) each person or entity that has made a timely request for advance notice of regulation-making proceedings.

4. That, pursuant to 29 **Del.C.** §§10115(a) and 10116, the Commission encourages the public to submit written comments on or before January 4, 2013, but the last date to submit written comments will be on February 22, 2013. Pursuant to 29 **Del.C.** §10117, the Commission will conduct a public hearing on the proposed revision and resulting new Rules on February 7, 2013, beginning at 1:00 P.M. at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

5. That, for the time being, the Commission will defer referring this matter to a Hearing Examiner under 26 **Del.C.** §502 and 29 **Del.C.** §10116. Depending on what, if any, comments are received to the proposed revision to

the Rules, the Commission may determine at a later time that it is necessary to appoint a Hearing Examiner.

6. 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:

Dallas Winslow, Chair

Jeffrey J. Clark, Commissioner

Joann T. Conaway, Commissioner

Jaymes B. Lester, Commissioner

ATTEST:

Alisa Carrow Bentley, Secretary

TO: ALL ELECTRIC SUPPLIERS, ELECTRIC UTILITIES, ELECTRIC GENERATORS USING RENEWABLE RESOURCES, AND OTHER INTERESTED PERSONS

By Order No. 8270 dated December 18, 2012, the Delaware Public Service Commission (the "Commission") approved reopening PSC Regulation Docket No. 50 to consider a proposed revision to Section 1.9. of the Rules Governing Electric Service Reliability and Quality Standards (the "Rules") for electric distribution companies subject to its jurisdiction. Currently, that section provides that the Rules shall be effective through 2012 and may be reviewed, revised, or extended as necessary to ensure the maintenance of electric reliability and quality service in Delaware. The Commission seeks to modify Section 1.9 of the Rules to extend the application of the Rules beyond the end of 2012.

The Commission encourages the public to submit written comments on or before January 4, 2013, but the last date to submit written comments will be on February 22, 2013. If you wish to file any written comments, please submit an original and ten copies of such written comments to the Commission at the following address:

Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware, 19904
Attn: Regulation Docket No. 50

The Commission will conduct a public hearing on the proposed revision and resulting new Rules on February 7, 2013, beginning at 1:00 P.M. at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

You may review PSC Order No. 8270 and the proposed revised Rules in the February 2012 issue of the Delaware Register of Regulations or on the PSC's Internet website located at <http://depssc.delaware.gov/default.shtml>. If you wish to obtain copies of the Order and proposed revised Rules, please contact the Commission at (302) 736-7500. If you would like to review documents at the Commission's offices, please contact Monica Hall at monica.hall@state.de.us to arrange a time for your review.

If you wish to request copies of documents in this matter, please submit a Freedom of Information Act Request Form. This form may be found at <http://smu.portal.delaware.gov/cgi-bin/mail.php?foia-request&subj=DOS>. There is also a link to the Freedom of Information Act Request Form on the Commission's website at <http://depssc.delaware.gov/default.shtml>. The Commission will respond to your request in accordance with the Delaware Freedom of Information Act, 29 **Del.C.** ch. 100.

If you have a disability and wish to participate or to review the materials in this matter, please contact the Commission to discuss any auxiliary aids or services you might need to help you. You may contact the Commission in person, by writing, by telephone (including text telephone), by Internet e-mail, or other means. If you have questions about this matter, you may call the Commission at 1-800-282-8574 (toll-free in Delaware) or (302) 736-7500 (voice and text telephone).

3007 Electric Service Reliability and Quality Standards

EFFECTIVE DATE: September 10, 2006

1.0 Purpose and Scope

- 1.1 Reliable electric service is of great importance to the Delaware Public Service Commission ("Commission"), because it is an essential service to the citizens of Delaware. This regulation, in support of 26 **Del.C.**, §1002, sets forth reliability standards and reporting requirements needed to assure the continued reliability and quality of electric service being delivered to Delaware customers and is applicable to all Delaware Electric Distribution Companies ("EDCs") and Delaware Generation Companies.
- 1.2 Nothing in this regulation relieves any utility or generation company from compliance with any requirement set forth under any other regulation, statute or order. This regulation is in addition to those required under PSC Docket No. 58, Order No. 103, Regulations Governing Service Supplied by Electrical Utilities.
- 1.3 Compliance with this regulation is a minimum standard. Compliance does not create a presumption of safe, adequate and proper service. Each EDC needs to exercise their professional judgment based on their systems and service territories. Nothing in this regulation relieves any utility from the requirement to furnish safe, adequate and proper service and to keep and maintain its property and equipment in such condition as to enable it to do so. (26 **Del.C.**, §209)
- 1.4 Each EDC shall maintain the reliability of its distribution services and shall implement procedures to require all electric suppliers to deliver energy to the EDC at locations and in amounts which are adequate to meet each electric supplier's obligations to its customers. (26 **Del.C.**, §1008)
- 1.5 Each generation company operating in the state is required to provide the Commission with an annual assessment of their electric supply reliability as specified in Section 10.
- 1.6 This regulation requires the maintenance and retention of reliability data and the reporting of reliability objectives, planned actions and projects, programs, load studies and actual resulting performance on an annual basis, including major events as specified in section 11.
- 1.7 EDCs are responsible for maintaining the reliability of electric service to all their customers in the state of Delaware. Pursuant to this requirement, EDCs may be subject to penalties as described in Section 13 or 26 **Del.C.**, §1019.
- 1.8 EDCs are required to explore the use of proven state of the art technology, to provide cost effective electric service reliability improvements.
- ~~1.9 This Electric Service Reliability and Quality regulation shall be effective through 2012 and may be reviewed, revised or extended as necessary to ensure the maintenance of electric reliability and quality service in Delaware.~~

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

3007 Electric Service Reliability and Quality Standards

EXECUTIVE DEPARTMENT OFFICE OF MANAGEMENT AND BUDGET

29 Delaware Code, Section 6303A(16) and 6913 (29 **Del.C.** §§6303A and 6913)

PUBLIC NOTICE

Environmentally Preferred Purchasing Policy

In accordance with procedures set forth in 29 **Del.C.** ch. 11, Subch. III and 29 **Del.C.**, ch. 101, the Director of

the Office of Management and Budget is proposing to adopt a regulation setting forth the State of Delaware Environmentally Preferred Purchasing Policy.

On April 1, 2012 (Volume 15, Issue 10), OMB published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It was requested that written materials and suggestions from the public concerning the proposed regulations be delivered to OMB by May 1, 2012, or be presented at a public hearing on May 2, 2012, after which time OMB would review information, factual evidence and public comment to the proposed regulations. Considerable public comment was received by individuals representing the following groups:

- Chemical Industry Council of Delaware
- American Chemistry Council
- Diamond Pest Control
- Delaware Pest Control Association
- Consumer Specialty Products Association
- IVM Partners
- Royal Pest Solutions

The comments that were received have been considered and resulted in substantive changes to the form and content of the initially proposed regulation. In accordance with 29 **Del.C.** §10118(c), the amended regulation is hereby proposed as a newly proposed regulation.

The Director of the Office of Management and Budget, or an employee of the Office of Management and Budget designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed regulation on February 5, 2013 at 11:00 a.m. at the Office of Management and Budget, Haslet Building, room 219, 122 William Penn St., Dover, DE 19901. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. Robert Scoglietti, Delaware Office of Management and Budget, 122 William Penn Street, Dover, DE, 19901. Written comments must be received on or before February 4, 2013. Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing Mr. Robert Scoglietti at the address of the Delaware Office of Management and Budget set forth above.

Environmentally Preferred Purchasing Policy

1.0 Purpose

The purpose of this Regulation is to set forth the policy and procedures for establishing environmentally preferred purchasing standards. This regulation is applicable to all Delaware state executive branch agencies, departments, and offices.

Delaware state government seeks to further reduce the environmental and human health impacts of its operations by integrating environmental consideration into its procurement process. Although Government Support Services - Contracting Unit is responsible for maintenance and oversight of the EPP regulation, implementing green procurement at the state agency level through delegated purchasing offices is necessary to achieve compliance. Therefore, it is vital that each delegated agency develop and maintain internal EPP procedures and practices reflecting goals, priorities and strategies provided within this policy

This regulation is adopted to strengthen environmental outcomes through purchasing decisions that reduce the amount of toxic substances used, consumed or disposed, improve air quality, conserve resources and minimize waste, conserve energy and water, minimize local and global climate impact, lessen the impact to employee and public health and contribute to sustainable economic growth within the State of Delaware.

This regulation is not intended to mandate the purchase of certain products or services but rather to provide a framework for those Executive branch agencies, departments and offices to procure environmentally preferred products and services at their discretion.

This regulation shall not, nor is intended to, create a legal cause of action or any legal or equitable right, privilege, or duty which is capable of judicial enforcement. This regulation is advisory only and does not bind or dictate procurement choices for any entity required to comply with Chapter 69 of Title 29 of the Delaware Code to accept or reject bids or proposals.

2.0 Enabling Legislation

Pursuant to 29 Del.C. §6301A, the Office was established. The Office has authority to make regulations pursuant to 29 Del.C. §6303A(16) and 6913. The Regulation is established in compliance with 29 Del.C. §6913 and Executive Order 18 (February 17, 2010).

3.0 Definitions

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

“Biodegradable” means capable of being broken down by microorganisms into simple, stable compounds such as carbon dioxide and water.

“Composting” means the conversion of organic material to compost by microorganisms. Compost is organic material that can be used as a soil amendment or as a medium to grow plants. Composting reducing the organic portion of garbage include yard trimmings, leave and food scrapes.

“DfE” means the U.S EPA Design for the Environment Formulator/Labeling Program.

“Director” means the Director of the Delaware Office of Management and Budget.

“DNREC” means the State of Delaware Department of Natural Resources and Environmental Control.

“DTI” means the State of Delaware Department Technology and Information.

“Electronic Product Environmental Assessment Tool (EPEAT)” means a system that helps the purchaser evaluate, compare and select electronic products based on their environmental attributes. The system currently covers desktop and laptop computers, thin clients, workstations and computer monitors.

“Energy Star” means EPA’s energy efficiency product labeling program.

“Energy Efficient” means a product that is in the upper 25 percent of energy efficiency for all similar products, or that is at least 10 percent more efficient than the minimum level that meets Federal standards.

“Environmental Performance” means considerations including the use of renewable resources, improved energy and water efficiency, the reduction of air contaminants and greenhouse gas emissions, increased reuse and recycling, and the reduction of hazardous waste and toxic pollutants.

“Environmentally Preferred” means products and services that perform effectively and have a less or reduced effect on human health and the environment over the life cycle of the products and services when compared with competing products or services that serve the same purpose.

“GSS” means the Delaware Office of Management and Budget, Government Support Services.

“Hardscape” means part of the building’s grounds made with hard materials such as patios, retaining walls and walkways.

“Green Building Council/Leadership in Energy and Environmental Design (LEED)” means an internationally recognized green building certification system, providing third-party verification that a building or community was designed and built using strategies aimed at improving performance across all the metrics that matter most: energy savings, water efficiency, CO₂ emissions reduction, improved indoor environmental quality, and stewardship of resources and sensitivity to their impacts

“Heat-Island Effect” means warmer temperatures in urban areas compared to the adjacent rural areas as a result of solar energy retention on constructed surfaces such as streets, sidewalks, parking lots and buildings.

“Impervious” means the condition of surfaces that do not permit the passage of liquids.

“Integrated Pest Management (IPM)” includes (a) communication and educating customers about pests, pest management and the parties’ responsibilities; (b) thorough inspections and monitoring to identify pest problems and conditions that might be contributing to pest problems; (c) preventive actions such as pest-proofing and trash management to keep pests from becoming a problem; (d) physical pest management tools and tactics such as trapping, vacuuming, and using heat or cold to control pests; (e) low impact use of pesticides; and (f) follow up and evaluation of pest management actions.

"Integrated Vegetation Management (IVM)" A system of managing plant communities in which compatible and incompatible vegetation is identified, action thresholds are considered, control methods are evaluated and selected control(s) are implemented to achieve a specific objective. Choice of control methods is based on effectiveness, environmental impact, site characteristics, safety, security and economics. Control options, which include biological, chemical, cultural, manual, and mechanical methods, are used to prevent or remedy unacceptable, unreliable, or unsafe conditions.

"Life-cycle Cost analysis" means the study of the costs associated with a product through its life cycle – from acquisition to its end-of-life management.

"Office" means the Delaware Office of Management and Budget.

"Permeable" means the condition of surfaces permitting the passage of liquids.

"Post-Consumer Material" means a finished material which would normally be disposed of as a solid waste, having reached its intended end-use and completed its life cycle as a consumer item, and does not include manufacturing or converting wastes.

"Recycled Content" means the percentage of recovered material, including pre-consumer and post-consumer materials, in a product that otherwise would have been discarded.

"Reused Product" means any product designed to be used many times for the same or other purposes without additional processing except for specific requirements such as cleaning, painting or minor repairs.

"Source Reduction" means products that result in a net reduction in the generation of waste compared to their previous or alternate version and includes durable, reusable, and remanufactured products.

"State" means the State of Delaware.

"Surfactant" means an agent that, when dissolved in water, breaks surface tension and allows cleaning agents a more effective removal of dirt from surfaces.

"Sustainable" means the needs of the present are met without compromising the ability of future generations to meet their own needs.

"Water-Saving Products" means products that are in the upper 25 percent of water conservation for all similar products, or at least 10 percent more water conserving than the minimum level that meets the Federal standards.

"WaterSense" means a partnership program sponsored by EPA, to help Americans save water and protect the environment.

4.0 Third Party Certification

- 4.1** To prevent unsubstantiated claims of environmental benefit or reduced impact, any product deemed to be approved or considered under this policy shall be certified by the U.S. EPA Design for the Environment (DfE) Formulator Program or recognized by the State, DNREC or DTI as consistent with environmental goals with claims verified through independent 3rd party certification. 4.2The costs of any certification required under this Regulation shall be solely at the expense of the vendor/supplier and no costs above the product/services price shall be permitted.
- 4.2** Suppliers may still seek environmentally preferable recognition for products that are not so certified or recognized by the above certifications by submitting an affidavit from a certified laboratory or accredited third-party stating that the products meet or exceed the performance and health and environmental criteria as defined in 4.1 and demonstrating a cost benefit of these products over established certified products or a comparative life-cycle assessment (LCA) which demonstrates life cycle impact benefits associated with the environmentally preferable product when compared to traditional products.
- 4.3** Those agencies pursuing LEED certification shall comply with the appropriate rating system published by the US Green Building Council.
- 4.4** The costs of any certification required under this Regulation shall be solely at the expense of the vendor/supplier and no costs above the product/services price shall be permitted.

5.0 Source Reduction

- 5.1 Wherever feasible, transition to environmentally and health-friendly products and services shall occur in a manner that avoids wasting of existing inventories, accommodates establishment of supply chains for new products, enables the training of personnel in appropriate work practices, and allows the phase-out of products and practices inconsistent with this Regulation.
- 5.2 Purchase products that are durable, long lasting, reusable or refillable.
- 5.3 Purchase remanufactured products such as toner cartridges, tires, furniture, equipment and automotive parts, but without reducing safety, quality, effectiveness or the warranty that supports the original product.
- 5.4 Consider short-term and long-term costs in comparing product choices. This includes an evaluation of the total costs expected during the time the product is owned including, but not limited to, acquisition, extended warranties, operation, maintenance and end-of-life management.
- 5.5 Request vendors reduce packaging or use the minimum amount necessary for product protection.
- 5.6 Require that surplus or outdated electronic equipment, including but not limited to, computers, monitors, printers and copiers, be designated for reuse or recycled under the requirement of 29 Del.C. §7002(b).

6.0 Recycled-content Products

- 6.1 Apply, as a general rule, the 5 percent price preference for purchasing recycled-content products as specified in 29 Del.C. §6938. Specify and purchase products that contain the highest percentage of post-consumer recycled-content practicable.
- 6.2 Specify that all printed materials (e.g., reports, brochures, letters, forms, business cards) that are purchased or produced must be printed on recycled-content paper and contain a statement on the material that the paper contains recycled-content. The statement should also indicate the percentage of post-consumer recycled content it contains.
- 6.3 Specify and purchase recycled-content transportation products such as signs, traffic cones, barricades, parking stops and delineators.
- 6.4 Specify the use of recycled, reusable, or reground materials for paved constructions projects.

7.0 Energy And Water Savings

- 7.1 Purchase energy efficient equipment including, but not limited to, high-efficiency heating and cooling equipment, high-efficiency motors and equipment controls.
- 7.2 Purchase appliances and equipment that meets or exceeds the EPA's EnergyStar standards and have the EnergyStar label (www.energystar.gov) as specified in 29 Del.C. §6939.
- 7.3 Replace non-energy efficient lighting, including interior and exterior lightning, street lighting and traffic signal lights with energy-efficient equipment and bulbs.
- 7.4 Replace incandescent light bulbs with compact fluorescent or light emitting diode (LED) bulbs when the incandescent bulbs need to be replaced.
- 7.5 Purchase water-saving products, including but not limited to, high-performance fixtures like low-flow, waterless urinals, tankless water heaters, low-flow faucets and aerators as well as faucets with motion-activated sensors. When possible, purchase products receiving EPA's WaterSense designation (www.epa.gov/WaterSense).

8.0 Pollution Prevention And Toxics Reduction

- 8.1 When procuring or contracting for cleaning services, require such contracted services to use environmentally preferable cleaning products and services, wherever practical. All chemical cleaning products and services purchased should be recognized by the U.S. EPA Design for the Environment (DfE) Formulator Program or recognized by the State, DNREC or DTI as consistent with environmental goals with claims verified through independent 3rd party certification.

PROPOSED REGULATIONS

- 8.2 For purposes of this policy, "cleaning product" does not include any disinfectant, disinfecting cleaner, sanitizer or any other antimicrobial product regulated by the Federal Insecticide, Fungicide and Rodenticide Act, 7 USC 136 et seq.
- 8.3 Products shall not be toxic or highly toxic as defined by the OSHA Hazard Communication Standard, (29 CFR 1910.1200). Require that all surfactants and detergents be biodegradable and meet DfE criteria for surfactants.
- 8.4 Products should not have the potential to release substances that are recognized by US EPA as known carcinogens at points above US EPA risk levels.
- 8.5 Purchase building products such as paint, carpet, adhesives, furniture and casework with the highest recycled content and are consistent with federal volatile organic component limits.
- 8.6 Purchase paper products that are unbleached or that utilize elemental chlorine-free technologies or other technologies that achieve environmentally compatible benefits.
- 8.7 Purchase soy-based ink for printing. Include the use of soy-based ink in printing contracts.
- 8.8 Purchase rechargeable instead of single use batteries.
- 8.9 Specify that desktop computers, notebooks and monitors purchased or leased meet, at a minimum, the bronze standard of the Electronic Product Environmental Assessment Tool (EPEAT) criteria (www.epeat.net).
- 8.10 Employ Integrated Pest Management and Integrated Vegetation Management techniques for pest management.

9.0 **Green Landscaping**

- 9.1 Purchase environmentally friendly landscape services that includes design, construction, renovation and maintenance. These services may include grasscycling, composting and the reduction of hazardous products.
- 9.2 Purchase recycled-content materials when constructing hardscape and landscape structures.
- 9.3 Reduce water used for irrigation by purchasing plants that are native to the area and drought-tolerant that require minimal or no watering once established.
- 9.4 Reduce water pollution and heat-island effect by reducing the amount of impervious surfaces in the landscape. Permeable substitutes such as pervious concrete or pavers are preferred for walkways, patios, driveways and low-volume traffic areas.

10.0 **End-of-life Management**

- 10.1 Require that all surplus or outdated equipment/facilities/materials be identified as surplus, and, as required by 29 Del.C. §7002, be considered to have no remaining useful life and available for disposal.
- 10.2 Focus on in-state reuse by State agencies, towns, municipalities and other State supported agencies to avoid duplicate procurement and encourage reuse of resources throughout every level of State government.
- 10.3 Preplan projects with one-time contracting to remove items considered surplus property and deliver to other state agencies or sell to the general public.
- 10.4 Consider buying material that at the end-of-life can be reutilized as-is or recycled, such as aluminum signs, metal fencing and metal shelving.

11.0 **Agricultural Products**

- 11.1 Procurement of Agricultural Goods and Services shall consider the environmental impact as follows:
 - 11.1.1 Above threshold spend shall allow points of the total award that considers:
 - 11.1.1.1 Reduced fuel consumed to reach market/ Agency recipient.
 - 11.1.1.2 Products and/or Services that are provided by Agricultural Businesses which are certified for Best Management Practices (BMP), Good Food Handling Practices (GHP) and Good

Agricultural Practices (GAP) through the Delaware Department of Agriculture or surrounding State's equivalent program.

11.1.1.3 The consideration given for environmental impact shall not exceed 10% of the total points awarded or costs of the goods/ services.

11.1.1.4 Fruit and vegetable consumption is an important component of a balanced diet consistent with the *Dietary Guidelines for Americans* and the Food Guide Pyramid. In order to maximize the nutritional value and reduce the use of carbon fuels, fresh produce to support the Farm to School Initiative should be required to be delivered within 2 days of harvest.

11.2 Under Threshold.

11.2.1 State Agencies shall obtain 3 quotes from local distributors, one of which must be a supplier or farmer within 25 miles of need to reduce the impact of transportation to market and the consumption of fossil fuels.

11.3 If a product or service is available by an agricultural business that is certified by the Delaware Department of Agriculture for Best Management Practices (BMP), Good Food Handling Practices (GHP) and Good Agricultural Practices (GAP) or an equivalent surrounding states program, they shall receive consideration equal to 10% of the total decision criteria.

12.0 Implementation

12.1 GSS will oversee the statewide implementation of this Regulation.

12.2 GSS will establish an Environmentally Preferable Purchasing (EPP) Workgroup of no less than seven members to be selected from State agencies that will meet at least quarterly. The State GSS Director will chair the workgroup. The mission of the workgroup will be to enhance and facilitate the coordination and implementation of this Regulation as follows.

12.2.1 Identify immediate priorities, establish a process for identifying additional priorities and set deadlines for implementation.

12.2.2 Develop and implement an education and outreach program on this Regulation that may include workshops, conferences training, media events and electronic newsletters

12.2.3 Research and recommend recycled-content products for consideration on State contracts.

12.2.4 Develop, implement and assist State agencies in tracking their environmentally preferred purchasing progress.

12.2.5 Review and revise, if necessary, the standards of this Regulation on at least an annual basis.

12.3 The procurement solicitations for goods and services shall afford prospective vendors with an opportunity to quote prices for environmentally preferred products and non-preferred products, leaving the opportunity to purchase the preferred products to the State agency's discretion.

12.4 New purchasing contracts for the purchase of such products or cleaning services shall include an appropriate requirement consistent with this Regulation and guidelines provided by the Office.

12.5 This Regulation will become effective 10 days after being published as a final regulation.

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 bold 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.

DELAWARE RIVER BASIN COMMISSION

ORDER

Amendments to the Water Code and Comprehensive Plan to Implement a Revised Water Audit Approach to Identify and Control Water Loss

Proposed: Delaware *Register of Regulations* (12 DE Reg. 275-278(09/01/2008)) on September 1, 2008.
Adopted: March 11, 2009 by the Delaware River Basin Commission, Pamela M. Bush, Esq., Secretary.
Filed: December 13, 2012 as a final regulation.
Authority: 53 Delaware Laws, Chapter 71, Approved May 26, 1961 (*Delaware River Basin Compact*).

Effective Date:

Upon publication in the *Delaware Register*. The rule was incorporated by reference into the *Code of Federal Regulations* effective November 20, 2009 (74 FR 60154).

Applicability Date:

The amendments to the Comprehensive Plan and Article 2 of the Water Code finalized by the Delaware River Basin Commission on March 11, 2009 phase in a program requiring water purveyors to perform a water audit and report their findings in accordance with a new audit structure established by the American Water Works Association (AWWA) and the International Water Association (IWA). Effective January 1, 2012, the owners of water supply systems serving the public with sources or service areas located in the Delaware River Basin must implement an annual calendar year water audit program conforming to the IWA/AWWA Water Audit Methodology and corresponding AWWA guidance. Effective January 1, 2013, reported "non-revenue water" must be computed in accordance with the new methodology and guidance. During the period between the effective date of the rule, November 20, 2009, and December 31, 2011 water purveyors were encouraged to implement the new methodology and guidance on a voluntary basis.

Expiration Date: N/A

The Delaware River Basin Commission (DRBC or Commission) is a federal-interstate regional agency charged with managing the water resources of the Delaware River Basin without regard to political boundaries. Its members are the governors of the four basin states – Delaware, New Jersey, New York, and Pennsylvania – and the North Atlantic Division Commander of the U.S. Army Corps of Engineers, representing the federal government. The DRBC is not subject to the requirements of the Delaware Administrative Procedure Act. The purpose of this notice is to advise the public that duly adopted regulations of the Commission have been filed with the State of Delaware in accordance with Section 14.2 of the Delaware River Basin Compact.

Summary:

By Resolution No. 2009-01 on March 11, 2009, the Commission approved amendments to its Water Code and Comprehensive Plan to implement a requirement for water purveyors to follow an updated water audit approach to identify and control water loss in the Delaware River Basin.

Supplemental Information:

An estimated 150 million gallons of treated and pressurized water is physically lost from public water supply distribution systems in the Delaware River Basin per day and current methods to account for, track and reduce this loss are inadequate. Water suppliers are experiencing real water losses due to physical infrastructure failures and apparent losses resulting from inaccurate meter readings and erroneous billing practices. As demand for water increases, it is essential to ensure that water supplies and the infrastructure delivering water are dependable and efficiently move water from source to customer.

The purpose of the proposed amendments is to phase in a program requiring water purveyors to perform water audits and report their findings in accordance with a new audit structure established by the AWWA and the IWA. These new methods are widely regarded as superior to the existing approach, which entails tracking “unaccounted for water,” which is no longer considered best practice.

The new water audit methodology provides a rational approach that will facilitate more consistent tracking and reporting than the existing approach allows. It will help water managers and regulators, including the Commission, state agencies, and utility managers, target their efforts to improve water supply efficiency, thereby reducing water withdrawals. Improving water accountability will contribute to achieving objective 1.3.C of the *Water Resources Plan for the Delaware River Basin*, which calls for ensuring maximum feasible efficiency of water use across all sectors.

The Commission’s Water Management Advisory Committee (WMAC), which has taken primary responsibility for reviewing the proposed audit methodology and developing these amendments, is composed of representatives from a wide range of public and private sector organizations. Six water purveyors from the Delaware River Basin were identified to participate in the nationwide pilot study. The comments and feedback provided to AWWA led to improvements in the software. The software was approved by the AWWA Water Loss Control Committee and is available on the AWWA website, at no charge to all users.

The WMAC and its subcommittee determined that the IWA/AWWA water audit methodology represents an improvement to the Commission’s current practices and can lead to multiple benefits for water utilities and other stakeholders. It is anticipated that adoption of the IWA/AWWA approach will:

- Improve upon the traditional approach for identifying “unaccounted for water,” which lacks standardized terminology and a clearly defined water audit structure.
- Provide a rational water audit structure to help identify water losses and improve water supply system efficiency.
- Provide meaningful performance indicators to help identify systems with the greatest losses. These indicators allow water utility managers to make reliable comparisons of performance and to identify best practices to control water loss in an economical way.
- Identify ways to improve water supply efficiency and thereby reduce water withdrawals that have no beneficial end use.
- Help to target efforts to reduce the estimated 150 million gallons per day that is physically lost from public water supply distribution systems in the Delaware River Basin.
- Enhance utility revenues by enabling utility managers to recover the significant revenue that is otherwise lost due to *apparent losses* such as theft of service, unbilled connections, meter discrepancies and data errors.

- Help utility managers and regulators identify *real losses* (such as leakage) that waste treated and pressurized water and increase operating costs. Significant real losses indicate opportunities for improved asset management that can reduce the vulnerability of utilities to disruptive water main breaks, other service disruptions and water quality upsets.

Because the water audit approach is relatively new in a regulatory context, the amendments called for phased implementation. Information was gathered from within the Delaware River Basin and nationwide to assist in the establishment of performance indicators for water loss, which ultimately will replace the “unaccounted for water” targets. The amendments require water purveyors to perform an annual water audit conforming to the IWA/AWWA methodology and require changes in the way data pertaining to water loss is collected by the state agencies and shared with DRBC.

Notice of the proposed amendments appeared in the Delaware Register of Regulations (12 DE Reg. 275-278 (09/01/2008)) on September 1, 2008, as well as in the Federal Register (73 FR 44945) on August 1, 2008, the New Jersey Register (40 N.J.R. 4499) on August 4, 2008, the New York State Register (p. 2) on August 20, 2008, and the Pennsylvania Bulletin (38 Pa. B. 4373) on August 9, 2009. A public hearing was held on September 25, 2008 and written comments were accepted through October 3, 2008. The Commission received one written submission and no oral testimony on the proposed changes. The Commission made minor revisions to the proposed amendments on its own initiative for clarification. A comment and response document setting forth the Commission’s responses and revisions in detail was approved by the Commission simultaneously with adoption of the final rule.

The final form of the rule differs from the proposed rule in the following respects: For purposes of clarity, a definition of “non-revenue water” consistent with the AWWA definition was added to Section 2.1.6.A. of the rule. The definition of “unaccounted-for-water” in the same section was amended to include a definition of “unaccounted-for water percent.” This change was made because the computation must return a percentage value so that it can be measured against the performance target of less than 15% unaccounted-for water.

The Commission also added language to establish that until January 1, 2012, Drib’s regulatory standards for leak detection and repair (*i.e.*, measurement and control of unaccounted-for-water), set forth in Section 2.1.6 of the Water Code, remained in force. System operators who voluntarily submitted audits in a form consistent with the new methodology prior to January 1, 2012, were advised in the Commission’s comment and response document that non-revenue water volume expressed as a percentage of input volume will be treated as the equivalent of unaccounted-for-water, the measure applicable under the existing rule. The comment and response document explains that once the Water Audit method is introduced through the Delaware River Basin and a body of data is available for analysis, a more meaningful measure of system performance will be established.

DRBC Resolution No. 2009-01 and a copy of the comment and response document are available on the Commission’s web site, at <http://drbc.net>. Resolution 2009-1 incorporates Article 2 of the Water Code, showing the amendments as proposed in August 2008, as finally approved by the Commission on March 11, 2009 and incorporated by reference into the *Code of Federal Regulations* effective November 20, 2009.

Rule Text:

DRBC Resolution No. 2009-01 amends the Comprehensive Plan and Article 2 of the *Water Code* as set forth below. additions appear in **bold face type**. Deletions appear in **[bold face type within brackets]**. changes not included in the proposed rulemaking appear in **bold face type with underscore**, except that restored text (existing rule text originally proposed to be deleted) appears in Normal type with Underscore. *Italics denote editor’s notes*.

2.1.2 New and Existing Users (Resolution Nos. 76-17 and 92-2).

C. Owners of water supply systems serving the public (purveyors) seeking approval under Section 3.8 of the Compact for a new or an expanded water withdrawal shall include as part of the application a water conservation plan. The plan shall describe the various programs adopted by the purveyor to achieve maximum feasible efficiency in the use of water.

1. The water conservation plan shall, at a minimum, describe the implementation of the following programs as required by the Commission:

a. Source metering (Resolution No. 86-12);

* * *

e. **An ongoing water auditing program in accordance with section 2.1.8.**

* * *

2.1.6 Leak detection and repair (Resolution No. 87-6 Revised).

A. Owners of water supply systems serving the public (purveyors) in the Delaware River Basin that distribute water supplies in excess of an average of 100,000 gallons per day (gpd) during any 30-day period shall develop and undertake a systematic program to monitor and control leakage within their water supply system. Such a program shall at a minimum include: periodic surveys to monitor leakage, enumerate non-revenue water (or in instances where AWWA methodology as set forth in Section 2.1.8 below has not yet been adopted, enumerate unaccounted-for water), and determine the current status of system infrastructure; recommendations to monitor and control leakage; and a schedule for the implementation of such recommendations. Each purveyor's program shall be subject to review and approval by the designated agency in the state where the system is located. "Non-revenue water" is defined by AWWA as the sum of unbilled authorized consumption, apparent losses and real losses. "Non-revenue water percent" is defined as non-revenue water divided by the amount of water entering the distribution system times 100 percent.

"Unaccounted-for water" is defined as the amount of water entering the distribution system minus the amount of water delivered through service meters. [difference between the "metered ratio" and 100 percent. The metered ratio is the amount of water delivered through service meters] "Unaccounted-for water percent" is defined as unaccounted-for water divided by the amount of water entering the distribution system times 100 percent.

The designated state agencies are: Delaware Department of Natural Resources and Environmental Control; New Jersey Department of Environmental Protection; New York Department of Health, and Pennsylvania Department of Environmental Protection.

B. [Each purveyor that distributes in excess of one million gallons per day (mgd) shall submit its initial program to monitor and control leakage to the appropriate designated agency, within two years and each purveyor that distributes between 100,000 gpd and 1 mgd shall submit its initial program to monitor and control leakage to the appropriate designated agency within five years of the effective date of this regulation or at such earlier date as shall be fixed by the designated state agency. Each] After a purveyor has submitted to the appropriate designated agency its initial program to monitor and control leakage, the purveyor shall prepare and submit a revised and updated program [to monitor and control leakage] every three years thereafter or at such greater frequency [earlier date] as [may] [shall] be required by the designated state agency. The designated state agency may require more frequent program submission from purveyors with unaccounted-for or non-revenue water that is in excess of 15 percent.

C. Any project approvals hereafter granted pursuant to Section 3.8 of the DRBC Compact or any renewal of a project approval shall be subject to the provisions of this regulation.

[D. To avoid duplication of effort and to insure proper enforcement of this regulation, the Executive Director shall enter into administrative agreements with each of the designated agencies . . .]

* * *

2.1.8 Water Auditing (Resolution No. 2009-1).

A. Policy Statement. It shall be the policy of the Commission to establish [encourage owners of water supply systems serving the public to implement] a standardized water audit methodology for owners of water supply systems serving the public to ensure accountability in the management of water resources.

B. Voluntary Water Audit. [For the period beginning EFFECTIVE DATE and ending] Through December 31, 2011, owners of water supply systems serving the public[,] with sources or service areas located in the Delaware River Basin[,] are encouraged to implement an annual calendar year water audit program conforming to the IWA/AWWA Water Audit Methodology (AWWA Water Loss Control Committee (WLCC) Water Audit Software) and corresponding AWWA guidance.

C. Mandatory Water Audit. Effective January 1, 2012, the owners of each water supply system serving the public[,] with sources or service areas located in the Delaware River Basin[,] shall implement an annual calendar year water audit program conforming to IWA/AWWA Water Audit Methodology (AWWA Water Loss Control Committee (WLCC) Water Audit Software) and corresponding AWWA guidance.

D. Mandatory Reporting. Effective January 1, 2013, "Non-revenue water" reported under section 2.50.3. (Reporting Requirements), subsection B.1.b.ii. of this Water Code shall be computed in accordance with IWA/AWWA Water Audit Methodology (AWWA Water Loss Control Committee (WLCC) Water Audit Software) and corresponding AWWA guidance.

2.50.3 Reporting Requirements (Resolutions Nos. 2001-8 and 2009-1)

Existing subsection 2.50.3 A. (Year 2000 Reporting Requirements) in its entirety is deleted.

A[B]. Annual Reporting Requirements [for Subsequent Years]

1. Water Supply Systems Serving the Public. **[Commencing with reporting year 2001, t]** The owner(s) of each water supply system serving the public and subject to requirements under subsection 2.50.1, subsection 2.50.2, and the Ground water Protected Area for Southeastern Pennsylvania **[.]** shall report the following data on an annual basis to the designated agency. **[Changes to any other information required under Section A above shall also be reported. All information required under Section A above shall be completed for new withdrawals for the first year of operation.]**

a. Source Data

* * *

b. Service Area Data. The following data shall be reported separately for each county served.

i. Service Area Name(s)

ii. Total Annual Water Use by Category (MG). **[.]** All usage shall be reported according to the following categories: **[.]**

- Residential metered (including apartment complexes)
- Commercial metered
- Institutional metered
- Industrial metered
- Bulk Sales
- Other metered (Specify)

- **Non-revenue water, including unbilled authorized consumption, apparent losses, and real losses computed in accordance with Section 2.1.8 D. of this Water Code**

- Unaccounted for water (defined as the amount of water entering the distribution system minus the amount of water delivered through service meters)**

- Total

2. Other Withdrawals. **[Commencing with reporting year 2001, e]** Each person, firm, corporation or other entity, except water supply systems serving the public **[.]** subject to requirements under subsection 2.50.2 and the Ground Water Protected Area Regulations for Southeastern Pennsylvania **[.]** shall report the following data on an annual basis to the designated agency.

B[C]. To avoid duplication of effort and to insure proper enforcement of this regulation, the Executive Director is hereby authorized to enter into administrative agreements with the following designated agencies:

* * *

Dated: December 12, 2012
Pamela M. Bush, Esquire
Commission Secretary

**DEPARTMENT OF AGRICULTURE
HARNES RACING COMMISSION**

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

ORDER

501 Harness Racing Rules and Regulations

Pursuant to 29 Del.C. §10118 and 3 Del.C. §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on December 11, 2012, the Commission makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

1. The Commission posted public notice of the proposed amendments to DHRC Rule 6.6.6.3, 6.6.6.4, 6.6.6.9, 6.6.6.12, 6.6.6.12.1, 6.6.6.12.2, 6.6.6.12.3 & 6.6.6.12.4 in the November 1, 2012 *Register of Regulations* (Volume 16, Issue 5) and for two consecutive weeks in November in *The News Journal* and *Delaware State News* 11/10 & 11/17/12. The Commission proposed to update Rule 6.6.6.3, 6.6.6.4, 6.6.6.9, 6.6.6.12, 6.6.6.12.1, 6.6.6.12.2, 6.6.6.12.3 & 6.6.6.12.4 after Rules Committee review.

2. The Commission received no written comments. The Commission held a public hearing on December 11, 2012, in which no public comments were made.

FINDINGS OF FACT AND CONCLUSIONS

3. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.

4. 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.

5. The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on January 1, 2013.

IT IS SO ORDERED this 11th day of December, 2012.

Beverly H. Steele, Chairwoman

Robert (Breezy) Brown, Commissioner

George P. Staats, Commissioner

Larry Talley, Commissioner

Patt Wagner, Commissioner

***Please note that no changes were made to the regulation as originally proposed and published in the November 2012 issue of the *Register* at page 475 (16 DE Reg. 475). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

501 Harness Racing Rules and Regulations

DEPARTMENT OF EDUCATION PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 1520

REGULATORY IMPLEMENTING ORDER

1520 Early Childhood Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1520 Early Childhood Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It was necessary to review and amend this regulation in order to provide current formatting and to eliminate unnecessary language. This regulation sets forth the requirements for an Early Childhood Teacher.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on November 1, 2012. The notice invited written comments. Written comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. Both Councils endorsed the proposed changes.

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 "A" 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 "A", and said regulation shall be cited as 14 **DE Admin. Code** 1520 of the Administrative Code of Regulations of the Professional Standards Board.

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 6TH DAY OF DECEMBER, 2012

Kathleen Thomas, Chair	Chris Kenton
Michael Casson	David Kohan
Joanne Christian	Jill Lewandowski
Samtra Devard	Wendy Murray
Stephanie DeWitt	Mary Pinkston
Marilyn Dollard	Whitney Price
Karen Gordon	Jacque Wisnauskas
Cristy Greaves	

IT IS SO ORDERED the 20th day of December, 2012. Department of Education
Mark Murphy, Secretary of Education

Approved this 20th day of December, 2012

State Board of Education

Teri Quinn Gray, Ph.D., President	Gregory Coverdale
Jorge L. Melendez, Vice President	Terry M. Whittaker, Ed.D.
G. Patrick Heffernan	Randall L. Hughes
Barbara B. Rutt	

1520 Early Childhood Teacher

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Early Childhood Teacher. This certification is valid for birth to grade two (2); however, certification as an Elementary Teacher may also be used in K to grade 2.

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

2.0 Definitions

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

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as an Early Childhood Teacher to an educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
 - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto; and,
 - ~~3.1.3 Has satisfied the additional requirements in this regulation.~~

4.0 Additional Requirements

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

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

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1521

REGULATORY IMPLEMENTING ORDER

1521 Elementary Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1521 Elementary Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It was necessary to review and amend this regulation in order to provide current formatting and to eliminate unnecessary language. This regulation sets forth the requirements for an Elementary Teacher.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on November 1, 2012. 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 "A" 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 "A", and said regulation shall be cited as 14 **DE Admin. Code** 1521 of the Administrative Code of Regulations of the Professional Standards Board.

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 6TH DAY OF DECEMBER, 2012.

Kathleen Thomas, Chair	Chris Kenton
Michael Casson	David Kohan
Joanne Christian	Jill Lewandowski
Samtra Devard	Wendy Murray
Stephanie DeWitt	Mary Pinkston
Marilyn Dollard	Whitney Price
Karen Gordon	Jacque Wisnauskas
Cristy Greaves	

IT IS SO ORDERED the 20th day of December, 2012.

Department of Education

Mark Murphy, Secretary of Education

Approved this 20th day of December, 2012

State Board of Education

Teri Quinn Gray, Ph.D., President	Gregory Coverdale
Jorge L. Melendez, Vice President	Terry M. Whittaker, Ed.D.
G. Patrick Heffernan	Randall L. Hughes
Barbara B. Rutt	

1521 Elementary Teacher

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Elementary Teacher. This certification is required for grades K to 6. Notwithstanding the above, the Early Childhood Teacher certification may be used for K to grade 2 in lieu of this certification.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

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

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as an Elementary Teacher to an educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a 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.
-

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1522

REGULATORY IMPLEMENTING ORDER

1522 Elementary School Counselor

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1522 Elementary School Counselor. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It was necessary to review and amend this regulation in order to provide current grade levels, formatting and to consider the current course count. This regulation sets forth the requirements for an Elementary School Counselor.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on November 1, 2012. 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 "A" 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 "A", and said regulation shall be cited as 14 **DE Admin. Code** 1522 of the *Administrative Code of Regulations* of the Professional Standards Board.

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 6TH DAY OF DECEMBER, 2012

Kathleen Thomas, Chair	Chris Kenton
Michael Casson	David Kohan
Joanne Christian	Jill Lewandowski
Samtra Devard	Wendy Murray
Stephanie DeWitt	Mary Pinkston
Marilyn Dollard	Whitney Price
Karen Gordon	Jacque Wisnauskas
Cristy Greaves	

IT IS SO ORDERED the 20th day of December, 2012.

Department of Education

Mark Murphy, Secretary of Education

Approved this 2^{0th} day of December, 2012

State Board of Education

Teri Quinn Gray, Ph.D., President	Gregory Coverdale
Jorge L. Melendez, Vice President	Terry M. Whittaker, Ed.D.
G. Patrick Heffernan	Randall L. Hughes
Barbara B. Rutt	

1522 Elementary School Counselor**1.0 Content**

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Elementary School Counselor. This certification is required for grades 4 ~~K~~ to ~~6~~ five (5), and is valid in grades ~~5~~ six (6) to eight (8) in a Middle Level school. A Middle Level School Counselor must ~~have~~ hold either an Elementary School Counselor Standard Certificate or a Secondary School Counselor Standard ~~e~~Certificate.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

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

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as an Elementary School Counselor to an educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a ~~Limited Standard, Standard~~ or Professional Status Certificate issued by the Department prior to August 31, 2003; and,

- 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505, Standard Certificate including any subsequent amendment or revision thereto: and
- 3.1.3 Has satisfied the additional requirements in this regulation.

4.0 Additional Requirements

An educator must also ~~meet~~ have met the following:

- 4.1 Has satisfied at least one of the following additional education requirements:
 - 4.1.1 Graduated 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 Masters degree in Elementary School Counseling; or
 - 4.1.2 Graduated from a regionally accredited college or university with a Masters degree in any content area and satisfactorily completed ~~27 semester hours~~ thirty (30) credits of graduate course work or the equivalent in professional development as approved by the Department in the areas of:
 - 4.1.2.1 Principles and Practices of the School Counseling Program (3 credits);
 - 4.1.2.2 Individual Counseling Skills (3 credits);
 - 4.1.2.3 Group Counseling Skills (3 credits);
 - 4.1.2.4 Human Development (3 credits);
 - 4.1.2.5 Developmental Group Guidance (3 credits);
 - 4.1.2.6 Individual and Group Testing for Counselors (3 credits);
 - 4.1.2.7 Supervised Practicum in Elementary Counseling (3 credits);
 - 4.1.2.8 Counseling Theory (3 credits); and
 - 4.1.2.9 Consultation; and (3 credits).
 - 4.1.2.10 Ethical Issues in School Counseling (3 credits).
- 4.2 Has met at least one of the following experience requirements:
 - 4.2.1 A minimum of three years professional experience in an elementary school setting; or,
 - 4.2.2 A minimum of three years of equivalent experience as approved by the Department of Education; or,
 - 4.2.3 A supervised school counseling internship of one (1) full year in an elementary school setting which is part of a graduate degree program in Elementary School Counseling or arranged by the Department of Education. The internship may be completed over a two (2) year period on a half-time basis.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1539

REGULATORY IMPLEMENTING ORDER

1539 Health Education Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1539 Middle Level / Secondary Health Education Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It was necessary to review and amend this regulation in order to provide current formatting and to eliminate unnecessary language. This regulation sets forth the requirements for a Health Education Teacher.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on November 1, 2012. 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 "A" 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 "A", and said regulation shall be cited as **14 DE Admin. Code 1539** of the Administrative Code of Regulations of the Professional Standards Board.

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 6TH DAY OF DECEMBER, 2012

Kathleen Thomas, Chair	Chris Kenton
Michael Casson	David Kohan
Joanne Christian	Jill Lewandowski
Samtra Devard	Wendy Murray
Stephanie DeWitt	Mary Pinkston
Marilyn Dollard	Whitney Price
Karen Gordon	Jacque Wisnauskas
Cristy Greaves	

IT IS SO ORDERED the 20th day of December, 2012.

Department of Education

Mark Murphy, Secretary of Education

Approved this 20th day of December, 2012

State Board of Education

Teri Quinn Gray, Ph.D., President	Gregory Coverdale
Jorge L. Melendez, Vice President	Terry M. Whittaker, Ed.D.
G. Patrick Heffernan	Randall L. Hughes
Barbara B. Rutt	

1539 ~~Middle Level / Secondary~~ Health Education Teacher

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for ~~Middle Level / Secondary~~ Health Education Teacher. This certification is required for ~~grades 9 to 12 and for grades 5 to 8 in a Middle Level school~~ all Health Education Teachers in Delaware public schools.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

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

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a ~~Middle Level / Secondary~~ Health Education Teacher to an educator who has met the following:
 - 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a ~~Limited Standard~~, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
 - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto; ~~and,~~
 - 3.1.3 ~~Has satisfied the additional requirements in this regulation.~~

4.0 Additional Requirements

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

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

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1545

REGULATORY IMPLEMENTING ORDER

1545 Secondary School Counselor

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1545 Secondary School Counselor. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It was necessary to review and amend this regulation in order to provide current grade levels, formatting and to consider the current course count. This regulation sets forth the requirements for a Secondary School Counselor.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on

November 1, 2012. 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 "A" 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 "A", and said regulation shall be cited as 14 **DE Admin. Code** 1545 of the *Administrative Code of Regulations* of the Professional Standards Board.

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 6TH DAY OF DECEMBER, 2012

Kathleen Thomas, Chair	Chris Kenton
Michael Casson	David Kohan
Joanne Christian	Jill Lewandowski
Samtra Devard	Wendy Murray
Stephanie DeWitt	Mary Pinkston
Marilyn Dollard	Whitney Price
Karen Gordon	Jacque Wisnauskas
Cristy Greaves	

IT IS SO ORDERED the 20th day of December, 2012.

Department of Education

Mark Murphy, Secretary of Education

Approved this 20th day of December, 2012

State Board of Education

Teri Quinn Gray, Ph.D., President	Gregory Coverdale
Jorge L. Melendez, Vice President	Terry M. Whittaker, Ed.D.
G. Patrick Heffernan	Randall L. Hughes
Barbara B. Rutt	

1545 Secondary School Counselor

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Secondary School Counselor. This certification is required for grades nine (9) to twelve (12) and is

valid in grades ~~5~~ six (6) to eight (8) in a Middle Level school. A Middle Level School Counselor must ~~have hold~~ either an Elementary School Counselor Standard Certificate or a Secondary School Counselor Standard eCertificate.

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

2.0 Definitions

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

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Secondary School Counselor to an educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
 - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto; and,
 - 3.1.3 Has satisfied the additional requirements in this regulation.

4.0 Additional Requirements

- 4.1 An educator must also ~~meet~~ have met the following.
- 4.2 Has satisfied at least one of the following additional education requirements:
- 4.2.1 Graduated 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 Masters degree in Secondary School Counseling; or
 - 4.2.2 Graduated from a regionally accredited college or university with a Masters degree in any content area and satisfactorily completed ~~27 semester hours~~ 30 credits of graduate course work or the equivalent in professional development as approved by the Department in the areas of:
 - 4.2.2.1 Principles and Practices of the School Counseling Program (3 credits);
 - 4.2.2.2 Individual Counseling Skills (3 credits);
 - 4.2.2.3 Group Counseling Skills (3 credits);
 - 4.2.2.4 Human Development (3 credits);
 - 4.2.2.5 Career Development (3 credits);
 - 4.2.2.6 Individual and Group Testing for Counselors (3 credits);
 - 4.2.2.7 Supervised Practicum in Secondary Counseling (3 credits);
 - 4.2.2.8 Counseling Theory (3 credits);
 - 4.2.2.9 Consultation (3 credits); and
 - 4.2.2.10 Ethical Issues in School Counseling (3 credits).
- 4.3 Has met at least one of the following experience requirements:
- 4.3.1 A minimum of three years professional experience in a secondary school setting; or,
 - 4.3.2 A minimum of three years of equivalent experience as approved by the Department of Education; or,
 - 4.3.3 A supervised school counseling internship of one (1) full year in a secondary school setting which is part of a graduate degree program in Secondary School Counseling or arranged by the Department of Education. The internship may be completed over a two (2) year period on a half-time basis.

FINAL REGULATIONS

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1571

REGULATORY IMPLEMENTING ORDER

1571 Exceptional Children Special Education Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1571 Exceptional Children Special Education Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to review this regulation in order to comply with the 5 year regulation review process. A small amendment for clarification has been deemed necessary. This regulation sets forth the requirements for an Exceptional Children Special Education Teacher.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on November 1, 2012. 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 "A" 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 "A", and said regulation shall be cited as 14 **DE Admin. Code** 1571 of the Administrative Code of Regulations of the Professional Standards Board.

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 6TH DAY OF DECEMBER, 2012

Kathleen Thomas, Chair

Michael Casson

Joanne Christian

Samtra Devard

Stephanie DeWitt

Marilyn Dollard

Karen Gordon

Cristy Greaves

Chris Kenton

David Kohan

Jill Lewandowski

Wendy Murray

Mary Pinkston

Whitney Price

Jacque Wisnauskas

IT IS SO ORDERED the 20th day of December, 2012.

Department of Education
Mark Murphy, Secretary of Education

Approved this 20th day of December, 2012

State Board of Education
Teri Quinn Gray, Ph.D., President
Jorge L. Melendez, Vice President
G. Patrick Heffernan
Barbara B. Rutt

Gregory Coverdale
Terry M. Whittaker, Ed.D.
Randall L. Hughes

1571 Exceptional Children Special Education Teacher

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Exceptional Children Special Education Teacher. This certification is required for grades K to 12. Notwithstanding the above, the Early Childhood Exceptional Children Special Education Teacher certification may be used for K to grade 2 in lieu of this certification.
- 1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

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

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as an Exceptional Children Special 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.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1573

REGULATORY IMPLEMENTING ORDER

1573 Teacher of Students With Autism or Severe Disabilities

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1573 Teacher of Students with Autism or Severe Disabilities. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation to provide additional opportunities for

educators to acquire the skills and knowledge necessary to work with these students and to update the current required coursework/professional development. This regulation sets forth the requirements for a Teacher of Students with Autism or Students with Severe Intellectual Disabilities.

Notice of the proposed amendment of the regulation was published in the *Delaware Register of Regulations* on November 1, 2012. The notice invited written comments. Written comments were received from the Governor's Advisory Council for Exceptional Citizens, the State Council for Persons with Disabilities and Autism Delaware.

Comments from the two Councils: The Councils suggested amendments to three definitions so as to be more precise and the PSB has taken the recommendations and subsequently amended the definitions as suggested. The Councils expressed concern that if the past use or interpretation of the term "severe disabilities" or "severe developmental disabilities" included children with moderate intellectual disabilities, that the regulation may be adopting more narrow criteria for the category of students' teachers the regulation would be required for. Based on research into past interpretations and applications, the PSB found that the changes to the category of students targeted in the regulation is consistent with past practice and application, and does not narrow the past application. The Councils expressed concerns regarding the connections between this regulation and DOE regulation 14 **DE Admin. Code** 922 §3.0 definition of highly qualified special education teachers and whether the amendments to the regulation would require an educator to obtain certification as a special education teacher under both 14 **DE Admin. Code** 1571 and 1573 to receive highly qualified status. The certification required in 1573 is in addition to the certification required in 1571 (Exceptional Children Special Education Teacher), and educators would be required to obtain both certifications. However, regulation 14 **DE Admin. Code** 922 is within the Department of Education's purview and the DOE may amend the regulation at their discretion. The Council endorses the addition of Applied Behavior Analysis coursework, and the PSB appreciates the Council's endorsement. The Council expressed concerns regarding the application of the regulation to Delaware educators. Under the amendments, the certification is required for all educators within public schools teaching within the Delaware Autism Program or educators with a primary assignment teaching children with autism or children with severe intellectual disabilities. (See section 1.0). The PSB found that the past regulation was not consistently applied throughout the state and the amendments were to clarify that this certification is mandatory for the above referenced educators. The certification is currently not required for an educator who is not part of the Delaware Autism Program and has some students with autism in a regular class room setting. In that case, it is anticipated that the individual students' needs are addressed by an Individual Education Plan (IEP) with specific services appropriate to the individual student. The PSB will be monitoring the changes to the application of this regulation and will proceed with amendments as necessary.

Comments from Autism Delaware: Autism Delaware was concerned about the conflation of autism with severe intellectual disabilities and believes that there should be separate certification regulations. The amended regulation stipulates the minimum skills and knowledge required of an educator teaching students with autism and/or students with severe intellectual disabilities, understanding that there are indeed differences in the needs of these categories of students. The PSB shares Autism Delaware's concern and purposefully amended the title and language within the regulation to reflect this. The PSB found after gathering information and consulting with individuals in the field that overall there would be a negligible difference in educator programs preparing these teachers. The PSB also recognized the current programs within the state and the categories of students served. It is expected that individual students' needs will still be addressed with an IEP appropriate to the individual students. The PSB will monitor the implementation and pursue changes as necessary. Autism Delaware endorsed the addition of Applied Behavior Analysis for Educators and Functional Communication coursework, for which the PSB is appreciative. Autism Delaware encouraged the addition of Pragmatic Language and Social Skills and that the course Methods of Instruction in Academic Standards and Functional Skills is separated into two separate courses. The PSB has taken Autism Delaware's comment under consideration and decided not to further expand the course requirements in the amendment. However, the PSB plans on monitoring this regulation and making changes as necessary and will keep this recommendation as part of future consideration. Autism Delaware expressed concerns about the one year time frame allowed for educators to meet certification requirements. The draft regulation was amended and the published regulation allows for a eighteen (18) months following the effective date of the regulation for educators to meet the certification requirements.

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 "A" 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 "A", and said regulation shall be cited as 14 **DE Admin. Code** 1573 of the Administrative Code of Regulations of the Professional Standards Board.

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 6TH DAY OF DECEMBER, 2012

Kathleen Thomas, Chair

Chris Kenton

Michael Casson

David Kohan

Joanne Christian

Jill Lewandowski

Samtra Devard

Wendy Murray

Stephanie DeWitt

Mary Pinkston

Marilyn Dollard

Whitney Price

Karen Gordon

Jacque Wisnauskas

Cristy Greaves

IT IS SO ORDERED the 20th day of December, 2012.

Department of Education

Mark Murphy, Secretary of Education

Approved this 20th day of December, 2012

State Board of Education

Teri Quinn Gray, Ph.D., President

Gregory Coverdale

Jorge L. Melendez, Vice President

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan

Randall L. Hughes

Barbara B. Rutt

***Please note that no changes were made to the regulation as originally proposed and published in the November 2012 issue of the *Register* at page 489 (16 DE Reg. 489). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1573 Teacher of Students With Autism or Severe Disabilities

FINAL REGULATIONS

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1581

REGULATORY IMPLEMENTING ORDER

1581 School Reading Specialist

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1581 School Reading Specialist. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It was necessary to review and amend this regulation in order to provide a current definition, formatting and to consider the current course count. This regulation sets forth the requirements for a School Reading Specialist.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on November 1, 2012. 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 "A" 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 "A", and said regulation shall be cited as 14 **DE Admin. Code** 1581 of the Administrative Code of Regulations of the Professional Standards Board.

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 6TH DAY OF DECEMBER, 2012

Kathleen Thomas, Chair

Chris Kenton

Michael Casson

David Kohan

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Jill Lewandowski

Samtra Devard

Wendy Murray

Stephanie DeWitt

Mary Pinkston

Marilyn Dollard

Whitney Price

Karen Gordon

Jacque Wisnauskas

Cristy Greaves

IT IS SO ORDERED the 20th day of December, 2012.

Department of Education

Mark Murphy, Secretary of Education

Approved this 20th day of December, 2012**State Board of Education**

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

Randall L. Hughes

*Please note that no changes were made to the regulation as originally proposed and published in the November 2012 issue of the *Register* at page 493 (16 DE Reg. 493). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1581 School Reading Specialist

DEPARTMENT OF ELECTIONS

OFFICE OF THE COMMISSIONER OF ELECTIONS FOR THE STATE OF DELAWARE

Statutory Authority: 15 Delaware Code, Section 8021(c), 8041(1)

(15 Del.C. §§ 8021(c), 8041(1))

ORDER

Background

SUMMARY OF THE REGULATORY ACTION

The State Election Commissioner proposed regulations to amend the Campaign Finance Regulations pursuant to 29 Del.C. §10114 and 15 Del.C. §§8021(c) and 8041(1). The State Election Commissioner published its notice of proposed regulations in the November 2012 Delaware *Register of Regulations*, requiring written comments on or before November 30, 2012. The State Election Commissioner scheduled public hearings on the proposed regulations in each county on November 29, 2012 and extended the period to submit written comments to December 14, 2012. The State Election Commissioner received information, factual evidence and public comment on the proposed regulation during this time period.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

1. Several commenters asked whether the \$500 threshold contained in Sections 7.1 and 7.2 represented a per sign cost or an aggregate amount for a number of campaign signs. There were concerns about the fragmentation of purchases of signs that would enable a political committee or third party advertiser to avoid the \$500 lower limit for disclaimers.

RESPONSE

The \$500 threshold constitutes a per sign cost, not the aggregate of all signs purchased during a campaign.

2. Commenters asked whether the State Election Commissioner could implement a grandfather clause that would enable persons to use up their stock of signs and fliers without an disclaimer statement. The disclaimer requirement for existing signs is an unreasonable burden on repeat candidates. The burden will be difficult for candidates of moderate means, from the smaller parties, and who are seeking to defeat an incumbent. The burden is especially heavy for those who use homemade signs.

RESPONSE

The Commissioner has no authority to promulgate a grandfather clause that would allow the erection of existing signs without a disclaimer where the disclaimer is required under the Delaware Elections Disclosure Act, 78 Del. Laws, c. 400. As noted above, unless such a sign has a fair market value of \$500.00 or more, no disclaimer

is required. For an existing sign with a fair market value of \$500.00 or more, the Commissioner recommends affixing an addition to the sign that contains the required disclaimer.

3. On commenter deplored the propriety of promoting the Commissioner's webpage, as required by proposed regulation 7.2. He stated that persons wanting information about third party advertisers should be required to find it themselves, not rely upon a state website. He believes that candidates should not be burdened with providing such information. A second commenter on the same issue added that the burden on candidates to add the Commissioner's website to signs would be intrusive and burdensome.

RESPONSE

The purpose of adding the State Election Commissioner's webpage to the disclaimer is to make available information on third-party advertisers, not to advertise the State Election Commissioner. The webpage will contain the Statements of Organization and reports filed by the third-party advertisers. The Commissioner believes that such information will makes the electoral process more open and transparent and does not agree that persons interested in learning about third party advertisers should be required to find information on such entities by themselves. Candidates are not required to add the Commissioner's website to their campaign advertisements.

4. The same commenter disagrees with the requirement of 7.4.2 that disclaimers be contained in a printed box, which the commenter believes actually makes the advertisement harder to read. He requested striking the requirement that disclaimers be boxed.

RESPONSE

The Commissioner believes that boxing disclaimers will bring them to the attention of the reader, which is one of the goals of Section 7.

5. The same commenter stated that the electronic filing of reports of political committees would be burdensome on persons who are not tech savvy and would discriminate against elderly campaigners.

RESPONSE

The Commissioner does not concur that electronic filing is technologically challenging, given the prevalence of electronic forms in the current age. Nor does the Commissioner concur that elderly campaigners will be unable to file electronically and so suffer from discrimination.

6. The same commenter sought clarification on the words "in writing" as used in Section 10.1., specifically whether "in writing" includes email notifications.

RESPONSE

Yes.

7. One commenter asked for clarification of how to address equipment when closing a committee.

RESPONSE

If the filing party is carrying any equipment on its books, the party needs to dispose of the equipment and enter the disposal cost on Schedule B.

8. One commenter sought the purpose of the change to Section 3.3., which requires the creation of a campaign committee for a campaign for a different office within 24 hours of certain contributions and expenditures.

RESPONSE

This regulatory change is based on a change in 15 **Del.C.** §8005.

9. One commenter questioned the authority of the Commissioner to impose the disclaimer requirements contained in Section 7, given the right to political speech.

RESPONSE

This regulatory change is based on a change in 15 **Del.C.** §8021.

10. The same commenter questioned the practicality of a 12-point font disclaimer on a road sign.

RESPONSE

The Commissioner proposed a 12-point font to balance the electorate's need for open and transparent elections against the electorate's need to see and read a full campaign message. If, after opportunity to test the 12-point font requirement, the 12-point font proves to be too small, the Commissioner will propose new regulations that require a larger font.

11. The same commenter questioned the disclaimer requirement on the ground that no one really cares who erected or paid for a campaign sign, and the rules will disenfranchise many who want to be candidates.

RESPONSE

This regulatory change is based on a change in 15 **Del.C.** §8021.

12. One commenter questioned the correlation between sign size and font size.

RESPONSE

The Commissioner believes that larger signs are designed to be read from a farther distance and that therefore the font size of the disclaimer should be commensurately larger.

13. The same commenter inquired about the intent of Section 6, which requires that payments for the purchase or lease of vehicles be characterized as equipment purchases, not travel expenses.

RESPONSE

Payment for the purchase or lease of vehicles should be characterized as equipment purchases/rentals, not travel expenses.

14. The same commenter questioned the practicality of using fair market value to price real estate, apparently under Section 6.2.

RESPONSE

The use of fair market value to price real estate is a longstanding practice under Delaware's campaign finance regulations and has proved practical.

15. One commenter questioned the burden on the State for the enforcement of the font size requirement when the proper focus should be placement of signs from a public safety standpoint.

RESPONSE

The regulation of font size to further open and transparent elections and the regulation of placement of signs for safety purposes are two separate important state interests, both of which warrant attention.

16. One commenter queried whether the requirements for font color under Section 7.4.3 would force a political committee or third party advertiser to buy three colors of ink, not just two.

RESPONSE

No. Section 7.4.3 requires only a reasonable degree of contrast between the background and the printed statement.

17. Commenters queried whether the disclaimers need to be on both sides of two-sided signs, or on the front of a one-sided sign.

RESPONSE

Yes to both questions.

18. One commenter asked if the Commissioner would offer free training on how to file under Section 8.0

RESPONSE

Yes.

19. The same commenter asked for clarification on the receipt of a contribution mailed to a P.O. Box - date of arrival or date when the commenter opens her mail?

RESPONSE

The date of receipt would be the date of arrival of the mail.

20. One commenter suggested that the disclaimer requirement would require that signs be larger to accommodate the additional information.

RESPONSE

There may be circumstances where this is a correct statement.

21. One commenter asked about two-part signs, and whether each part of the sign would have to contain the label mandated by Section 7.

RESPONSE

Each part of the sign would not be required to have the Section 7 disclaimer if the signs are connected or attached.

22. One commenter expressed the need to ensure that state and local highway signs regulations pertaining to signs reflect the need for larger signs that may be triggered by the new disclaimer requirements.

RESPONSE

This comment should be addressed to the state and local authorities that regulate the size and placement of signs.

23. One commenter, noting the costs associated with the use of existing signs that do not contain any required disclaimers, queried whether a committee or advertiser could affix the disclaimer to an existing sign.

RESPONSE

Yes.

24. One commenter asked if there were specific size requirements for disclaimers placed on signs.

RESPONSE

No. Section 7 mandates that disclaimers be prominent.

25. One commenter asked if a campaign committee would be responsible for signs bought and erected by a different person or entity.

RESPONSE

The campaign committee would be responsible only for its own signs, e.g. the signs listed as expenditures on its campaign finance report.

26. One commenter asked if an existing sign needed a disclaimer added, and the sign were in the possession of a homeowner on whose lawn the sign had been placed in an earlier campaign, would the campaign committee that had purchased and placed the sign on the homeowner's lawn have to add a disclaimer.

RESPONSE

Yes, with the caveat that few signs placed on homeowner lawns will exceed \$500 in fair market value.

27. One commenter questioned the fairness of the \$50 late fees set forth in Section 10. The commenter queried whether there could be a provision for tardiness of greater than 24 hours based on the technical inability of a committee to timely file.

RESPONSE

This regulatory change is based on a change in 15 **Del.C.** §8044.

28. One commenter asked if there were penalties for the failure to comply with the disclaimer requirements under Section 7.

RESPONSE

Yes. See 15 **Del.C.** §8043 (i) A reporting party who violates §8021 of this title shall be assessed a fine by the Commissioner of \$500 or 25% of the cost of the campaign advertisement subject thereto, whichever is greater.

29. One commenter asked that the regulations be changed to add a new Section 8.4 that would require the Commissioner to send an email alert about upcoming deadlines for filing under Section 8.

RESPONSE

The Commissioner is willing to send such alerts to groups subject to Section 8, provided the Commissioner has a current email address.

30. One commenter requested that the Commissioner provide training on the new regulations.

RESPONSE

The Commissioner is willing to provide such training.

31. One commenter asked that the 24-hour deadline for filing reports of contributions and expenditures under Sections 3 and 9 remain seven days instead.

RESPONSE

This regulatory change is based on changes to 15 **Del.C.** §§8005, 8030, and 8031.

32. One commenter offered comments on grammatical and citing errors in the proposed regulations.

RESPONSE

These comments have been accepted and are reflected in the bracketed language below.

FINDINGS OF FACT

The State Election Commissioner finds that the proposed changes published in the November 2012 *Register of Regulations* should be adopted, subject to the modifications marked in bracketed text below, which are not substantive.

THEREFORE, IT IS ORDERED, that the proposed regulations to amend the Campaign Finance Regulations are adopted and shall be final effective January 10, 2013.

Elaine Manlove, State Election Commissioner

Campaign Finance Regulations

1.0 Authority Scope and purpose

~~The State Election Commissioner has authority under 15 Del.C. §8041(1) to enact rules and regulations not inconsistent with law "as are necessary to implement and enforce the Campaign Financing Act." These regulations should be read in conjunction with Chapter 80 of Title 15 and have the force and effect of law. The State Election Commissioner has authority under 15 Del.C. Sec. 8041(1) to enact rules and regulations to implement and enforce the Campaign Financing Act of 1990 and the 2012 Delaware Elections Disclosure Act. The purpose of these regulations is to mandate~~

disclosure of sources of campaign money to give voters information to make informed choices of candidates and to educate and to regulate candidates and political committees, including persons making independent expenditures through third party advertisements. The regulations should be read in conjunction with Chapter 80 of Title 15 and have the force and effect of law.

2.0. Definitions

- 2.1 “Campaign advertisement” has the meaning set forth in 15 Del.C. §8021(a) or any successor provision, as the same shall be amended from time to time.
- 2.2 “Electioneering communication” has the meaning set forth in 15 Del.C. §8002(11) or any successor provision, as the same shall be amended from time to time.
- 2.3 “Electronic format” means a communication posted or displayed electronically, and includes but is not limited to communications in electronic messages, electronic message attachments, text messages, or communications and advertisements appearing on Internet web pages, blogs, mobile devices, or other electronic communication systems.
- 2.4 “Independent expenditure” has the meaning set forth in 15 Del.C. §8002(13) or any successor provision, as the same shall be amended from time to time.
- 2.5 “Printed communication” means any communication distributed via mail, sign, the Internet, newspaper or other periodical.
- 2.6 “Third-party campaign advertisement” has the meaning set forth in 15 Del.C. §8002(27) or any successor provision, as the same shall be amended from time to time.

3.0 Contributions

- 3.1 Amount of contributions
 - 3.1.1 A contribution as defined by 15 Del.C. §8002(6) may not exceed the maximum allowed for any election period regardless of whether that contribution is designated by the donor to retire a previous campaign debt or for a present campaign.
 - 3.1.2 Regardless of how it is characterized, the total amount given by any contributor to any candidate for any election period may not exceed the limits permitted for contributions under Subchapter II of Chapter 80.
 - 3.1.3 Incumbents not seeking reelection or other elective office may accept contributions to repay debt after the close of the election. However, the total contributions by any person given to any office holder in this circumstance may not exceed the amount permitted to be received by such office holder in the last election in which such office holder stood for election.
- 3.2 Receipt of contribution
 - 3.2.1 Cash or reportable in-kind services. The date of receipt of a contribution in cash or in kind services required to be reported under 15 Del.C. Ch. 80 is the date that it is physically received by the candidate, treasurer or other representative of the committee which is registered with the State Election Commissioner Office. This date of receipt and not the date of deposit or otherwise shall be the date for reporting purposes.
 - 3.2.2 Checks. The date of receipt of a contribution paid by check is the date the candidate, treasurer or other representative of the committee physically receives it. If the check is received by mail, the date of receipt and date for reporting purposes is the date it is received by the candidate, treasurer or representative of the registered committee. The person first receiving the check on behalf of the candidate or committee shall note on its face the date of physical receipt of the check. The person marking the date of receipt shall also accurately and legibly initial the notation of the date of actual receipt of the check.
- 3.3 Committee structure.
 - 3.3.1 An office holder intending to seek a different office must establish a campaign committee for the new campaign ~~within seven days after first receiving a contribution to, or making expenditure for, the new campaign.~~ no later than 24 hours after it receives any contribution or makes any

expenditure that causes the aggregate amount of contributions [by to] or expenditures [to by] such committee to exceed \$500 during an election period.

- 3.3.2 If such candidate has not closed out the candidate's existing campaign committee, the existing committee shall become a subcommittee of the new campaign committee. No candidate may have more than one committee, although a committee may have subcommittees however they are designated. The new committee must be established as outlined above even if established for exploratory purposes only. For example, if a candidate is currently in office, is maintaining a candidate committee to settle past debt and is seeking a different office, there shall be one committee and a subcommittee.
- 3.3.3 A single report shall be filed with the Commissioner on behalf of the committee showing the required information for both the committee and subcommittee(s). A candidate and treasurer are jointly responsible for filing reports on behalf of a candidate committee. The designation by a candidate of a treasurer does not relieve the candidate of the requirement to file reports.
- 3.3.4 A candidate committee may accept contributions for the new campaign or to pay off debts of the subcommittee. However, the total contributed by any person to any candidate may not exceed the limits permitted under Subchapter II of Chapter 80 for the "election period" whether such contributions are for the new campaign or for its subcommittees to pay off prior debts.

4.0 School boards and offices paying under \$1,000

- 4.1 No candidate for election to any school board or to any other public office that pays less than \$1,000 per year shall be required to form a candidate committee if the candidate files a Certificate of Intention Form prepared by the Commissioner within 7 days of filing as a candidate and certifying (under penalty of perjury) the intention not to receive nor to spend more than \$2,000 in campaign funds.
- 4.2 A candidate who has filed a Certificate of Intention Form shall not be required to file any further reports with the Commissioner. However, if the candidate subsequently receives more than \$2,000 in contributions or spends more than \$2,000 before the end of the year in which the election for such office is held, the candidate or committee must, within 7 days of such receipt or expenditure, notify the Commissioner and file all reports that would otherwise have been required had no Certificate of Intention been made.
- 4.3 Reimbursement for personal expenses in connection with performance of duties of the office is not salary for purposes of calculating the \$1,000 limit on salaries for offices not required to report.

5.0 ~~Duties of a political committee~~ Statements of Organization

- 5.1 ~~A political committee must file, on forms prescribed by the Commissioner, the documents and reports required by 15 Del. C. Sec. 8005. In the case of a political committee, all~~ Each political committee shall file, under penalty of perjury, ~~officers of the committee are responsible for filing the a~~ Statement of Organization with the Commissioner no later than 24 hours after the committee receives any contribution or makes any expenditure that causes the aggregate amount of contributions by or expenditures to such committee to exceed \$500 during an election period. and Statement of Purposes and Goals with the Commissioner within 7 days after the committee first receives any contribution or makes any expenditure, or within 7 days of any change of officers. In accordance with 15 Del. C. Sec. 8030 the treasurer of a committee is responsible for timely filing of the report required by that section.
- 5.2 ~~The Statement of Organization of a candidate committee, or any amendment thereto, shall be signed under penalty of perjury by either the candidate or the treasurer. Notwithstanding the foregoing, in the case of a candidate committee, the candidate and treasurer are~~ shall be jointly responsible for timely filing of all documents and reports required by ~~15 Del. C. § § 8005 and 8030. such documents. All Statements of Purposes and Goals must state the political office(s) and/or election for which the committee is being formed. The Statement of Organization of a candidate committee must be signed by the candidate and committee treasurer personally.~~
- 5.3 ~~Any officer of a political committee may submit a resignation to the Commissioner and be removed from the list of committee officers, except that no committee shall be without a treasurer. In the event a committee treasurer resigns without the appointment by the committee of a new treasurer, the~~

~~following people shall automatically become treasurer: (1) In the case of a candidate committee, in the absence of a treasurer the candidate becomes the treasurer and is responsible for carrying out the duties of the treasurer as required by law, (2) In the case of a political committee the highest remaining officer becomes the treasurer and is responsible for the duties of the treasurer until a new treasurer is designated. In the case of any political committee other than a candidate committee, the Statement of Organization and any amendments thereto shall be signed under penalty by the treasurer, who shall be responsible for the timely filing thereof.~~

6.0 Authorized campaign expenditures

6.1 Reporting of Expenses

6.1.1 Vehicles. Payments made toward the purchase or lease of vehicles are not travel expenses and must be listed on reporting forms as equipment purchases. Such vehicles must be titled or leased in the name of the political committee. If, at the end of the election, the vehicle is transferred to personal use, the person to whom the vehicle is transferred must reimburse the political committee for the fair market value of the vehicle at the time of the transfer. Fair market retail value for a motor vehicle shall be that listed by the National Automobile Dealers Association ("NADA Bluebook").

6.1.2 Equipment

6.1.2.1 No committee may close out its business with equipment remaining. Equipment possessed by the political committee at the end of the election must be sold to satisfy debts, obligations or loans of the committee; or be given to a successor committee, or donated to any religious, charitable, educational or scientific organization exempt from Delaware income tax under 30 **Del.C.** §1902(b)(2), political parties, or to any volunteer fire company and to no other person, treating such equipment the same as left over funds pursuant to 15 **Del.C.** §8022.

6.1.2.2 In the event equipment is transferred by sale or other lawful means under these regulations to personal use, the person receiving the equipment shall pay the committee the fair market value of the equipment at the time of the transfer. Fair market value shall be that price that would be paid by disinterested parties on the open market for equipment of like age and condition.

6.1.2.3 When equipment is sold or transferred from the committee to the person receiving such equipment for personal use, the person receiving such equipment bears the burden of showing the payment of fair market value to the committee of such item of equipment transferred for personal use. Any such transfer shall be reported on the disclosure reports required by Chapter 80 and such report shall be accompanied by a sworn affidavit from the person receiving such equipment attesting that the person receiving such equipment in good faith believes the value paid to the committee for the transfer of the equipment to personal use equals the fair market value of the equipment at the time of the transfer. The Commissioner may require such a person receiving such equipment to substantiate such value by acceptable appraisal or other estimate of value of the equipment from a person in the business of appraising or selling such equipment, or other evidence of a like piece being sold for a comparable price. Whenever this Section requires a person to submit an affidavit or other documentation relating to the transfer of equipment, it is the political committee's obligation to obtain and attach such documentation or affidavit to its report regardless of whether the person receiving the equipment is a candidate or a person under the control of the committee.

6.2 Self Dealing

6.2.1 When a committee has a commercial dealing with a person associated with the committee in that person's personal capacity, the committee has the burden of showing an arm's length, actual legitimate business transaction. For example, leases of personal property to one's political committee at higher than the fair market value will result in the excess above the fair market value being considered as an illegal expenditure of campaign funds not authorized under 15 **Del.C.**

§8020. Likewise, any party or person other than the candidate who leases equipment to the political committee at a cost less than the fair market value will result in the difference between the lease cost and the fair market value of such lease being considered a campaign contribution by the lessor.

- 6.2.2 Also, all no or low interest loans made to the political committee by other than the candidate which are below the market rate of interest charged for similar loans in an arm's length commercial transaction will be considered contributions to the extent below the market interest rate and subject to the limitations of Chapter 80. Likewise, any reportable in kind services provided will be considered a contribution.
- 6.2.3 The committee has the obligation of attaching to its reports any documentation necessary by affidavit, appraisal or otherwise, that the dealings between the political committee and the person associated with the political committee were arms length transactions.
- 6.3 Payments to candidates and their Spouses as compensation for services, regardless of how denominated, shall be considered wages or salary and, as such, are prohibited under 15 Del.C. §8020.

7.0 General content requirements.

- 7.1 All campaign advertisements having a fair market value of \$500 or more, except printed items with a surface of less than 9 square inches, shall include prominently the statement: "Paid for by [name of political committee or other person paying for such advertisement]."
- 7.2 All third-party advertisements having a fair market value of \$500 or more, except printed items with a surface of less than 9 square inches, shall include prominently the statement: "Paid for by [name of political committee or other person paying for such third-party advertisement]. Learn more about [political committee or other person paying for such third-party advertisement] at elections.delaware.gov."
- 7.3 Statement specifications, general. All statements required pursuant to [this] Section [2] hereunder must be presented in a clear and conspicuous manner, to give the reader, observer, or listener adequate notice of (a) the identity of the political committee or person that paid for the communication; and (b) if applicable, the address of the Commissioner of Elections' web site. A disclaimer is not clear and conspicuous if it is difficult to read or hear, or if the placement is easily overlooked.
- 7.4 Statement specifications, printed communications. In addition to the general requirements of Section [67].2 hereunder, all statements required pursuant to 15 Del.C. §8021 that appear on any printed communication must also comply with the following specifications:
- 7.4.1 The statement must be of sufficient type size to be clearly readable by the recipient of the communication. Statements printed in the following font sizes shall be presumed to satisfy the foregoing type size requirement:
- 7.4.1.1 For printed communications smaller than 8½" x 11", a font size of eight (8) points or larger;
- 7.4.1.2 For printed communications from 8½" x 11" to 24" x 36", a font size of twelve (12) points or larger;
- 7.4.1.3 For printed communications that are larger than 24" x 36", a font size equal to least five percent (5%) of the height of such communication.
- 7.4.2 The statement must be contained in a printed box set apart from the other contents of the communication.
- 7.4.3 The statement must be printed with a reasonable degree of color contrast between the background and the printed statement. A statement satisfies the color contrast requirement of this section if it is printed in black text on a white background
- 7.4.4 If a printed communication appearing in electronic format lacks sufficient space to include the required statement in accordance with the foregoing specifications, such communication may meet disclosure requirements if, by clicking on the printed communication appearing in electronic format, the viewer is taken to a landing page or a home page that displays the statement in a conspicuous manner in accordance with the foregoing specifications.

- 7.5 Statement specifications, television communications. In addition to the general requirements of Section 7.2 hereunder, all statements required pursuant to 15 Del.C. §8021 that appear in any television communication must also comply with the following specifications:
- 7.5.1 The statement shall be both written and spoken either at the beginning or at the end of the communication, except that if the statement is written for at least five seconds of a broadcast of thirty seconds or less or ten seconds of a sixty second broadcast, a spoken disclosure statement is not required.
 - 7.5.2 The written disclosure statement shall appear with a reasonable degree of color contrast between the background and text of the statement, must be of sufficient size to be readily legible to an average viewer and shall air for at least four (4) seconds.
- 7.6 Statement specifications, radio communications. In addition to the general requirements of Section 7.2 hereunder, all statements required pursuant to 15 Del.C. §8021 that appear in any radio communication must also comply with the following specifications:
- 7.6.1 The statement shall be spoken in a clearly audible and intelligible manner at the beginning or end of the communication.
 - 7.6.2 The statement shall have a duration of at least three (3) seconds.
- 7.7 Statement specifications, telephone communications. In addition to the general requirements of Section 7.2 hereunder, all statements required pursuant to 15 Del.C. §8021 that appear in any telephone communication must also comply with the following specifications:
- 7.7.1 The statement shall be spoken in a clearly audible and intelligible manner at the beginning or end of the communication.
 - 7.7.3 The statement shall have a duration of at least three (3) seconds.

8.0 Reports of political committees

(a) Forms

~~Reports of political committees required by 15 Del. C. Sec. 8030 shall be on forms prescribed or approved by the Commissioner. Such reports shall provide all information required on such forms and shall be printed legibly or typed in blue or black ink. Forms shall be available in the Office of the Commissioner.~~

(b) Filing

~~Both the candidate and treasurer bear personal responsibility to file the reports required. Such reports must be received in the Office of the Commissioner by 4:30 p.m., on the second day after the end of the reporting period that is not a State holiday under 1 Del. C. Chapter 5; or mailed to the Commissioner and postmarked by the end of the due date. Reports may be transmitted by facsimile, provided, however, that they are received in the Office of the Commissioner by 4:30 p.m. on the day due. In such event, the original must be mailed to the Office of the Commissioner postmarked no later than the due date.~~

(c) Signing

~~All reports must be signed personally by the candidate or committee treasurer and the signature of the treasurer does not relieve the candidate of responsibility for filing the necessary reports of a candidate committee.~~

- 8.1 Forms. Reports of political committees and third party advertisers required by 15 Del.C. §§8030, 8031 shall be filed electronically on forms prescribed by the Commissioner. The Commissioner shall issue to each person subject to 15 Del.C. §§8030, 8031 an electronic password upon the approval and processing of each such person's Statement of Organization.
- 8.2 Filing. Reports must be filed electronically by the deadline on the date they are due.
- 8.3 Signing. The electronic password issued to a person subject to 15 Del.C. §§8030, 8031 shall constitute that person's signature. The electronic password issued to third party advertisers shall constitute that person's signature upon reports filed pursuant to 15 Del.C. §§8030, 8031. The electronic password shall also constitute the signature under penalty of perjury of a third party advertiser filing pursuant to 15 Del.C. §8031.

9.0 ~~Reports of independent expenditures~~ Special reports of third party advertisements

Pursuant to 15 *Del. C.* Sec. 8031 any person who makes an independent expenditure that causes the aggregate amount of independent expenditures made by such person to exceed \$100 in an election period, must file a report with the Commissioner on forms prescribed by the Commissioner. That report must be filed at the times required by 15 *Del. C.* Sec. 8030 and contain the information required by 15 *Del. C.* Sec. 8031.

9.1 The initial report filed by a person pursuant to 15 **Del.C.** §8031 during an election period shall contain all of the information required by Section 8031. Each subsequent report filed within the same election period shall contain the following information:

9.1.1 Any information required by Section 8005, if such information has changed since the last report filed with the Election Commissioner pursuant to Section 8031.

9.1.2 The full name and mailing address of each person to whom any expenditure has been made by the reporting person since the date of the last period under Section 8030 or Section 8031 in an aggregate amount in excess of \$100; the total aggregate amount of expenditures during the election period; the amount, date and purpose of each such expenditure; and the name of, and office sought by, each candidate on whose behalf such expenditure was made;

9.1.3 The full name and mailing address of each person who has made a contribution to the reporting person since the date of the last report filed pursuant to Section 8030 or Section 8031 in an aggregate amount or value in excess of \$100; the total of all contributions from such person since the date of the last report filed pursuant to Section 8030 or Section 8031; and the amount and date of all contributions from such person since the date of the last report filed pursuant to Section 8030 or Section 8031.

9.1.4 If a person listed under section (3) above is not an individual, the full name and mailing address of:

9.1.4.1 Any person who, directly or otherwise, owns a legal or equitable interest of 50 percent or greater in such entity; and

9.1.4.2 One responsible party, if the aggregate amount of contributions made by such entity during the election period exceeds \$1,200.

9.1.5 If an expenditure subject to Section 8031 is made more than 30 days before a primary or special election or 60 days before a general election, the report required under Section 8031 shall be filed within 48 hours after such expenditure is made. If the expenditure subject to Section 8031 is made 30 days or less before a primary or special election or 60 days or less before an election, such report shall be filed with the Commissioner within 24 hours after such expenditure is made. For purposes of this section, an expenditure shall be deemed to be made on the date it is paid or obligated, whichever is earlier.

10.0 ~~Failure to file reports~~ Late Reports

9.1 ~~False or No Report~~

9.1.1 Any candidate or treasurer who knowingly files any report required by Sec. 8023 or Subchapter 4 (of Chapter so of Title 15) that is false in any material respect, or who fails to file any such report, shall be guilty of a Class A misdemeanor under 15 *Del. C.* § 8043(e).

9.2 ~~Late Reports. Pursuant to 15 *Del. C.* Sec. 8044 any candidate, political committee, or other person that fails to file a report required may be fined by the Commissioner \$50 per month, or fraction thereof, that such report is tardy in delivery to the Commissioner. Any person so fined shall have the opportunity within 30 days of the assessment of the fine to show cause to the Commissioner why the tardiness was due to reasonable cause and not willful neglect. Such fines are a debt owed to the State and recoverable against the committee, its treasurer or, in the case of a candidate committee, the candidate, or in the case of an independent expenditure, the person making such expenditure. The assessment of a fine by the Commissioner does not preclude the Commissioner from referring cases of failure to file to the Attorney General for possible criminal prosecution.~~

10.1 Any reporting party who fails to file or deliver to the Commissioner any report required under this chapter shall be assessed a fine by the Commissioner of \$50 for each day that such report is tardy. In

the event any report required under this chapter shall be incomplete, such report shall be deemed tardy for purposes of this section. Notwithstanding the foregoing, a reporting party shall be entitled to an automatic, 1-time 24-hour extension hereunder, provided such party notifies the Commissioner in writing thereof no later than the filing deadline for such report.

- 10.2 In the event a report is incomplete or otherwise tardy, the Commissioner shall immediately notify the reporting party thereof in writing. Such notice shall state that a fine is being assessed for each late day, and to the extent applicable, shall also specify why such report is incomplete. Upon receipt of such notice, the reporting party shall have 30 days to appeal such fine in writing to the Commissioner. In the event of an appeal, the reporting party shall have the opportunity to show the Commissioner that such tardiness is due to reasonable cause and not willful neglect. If the Commissioner determines that such tardiness is not due to reasonable cause, or the reporting party fails to timely file an appeal, such fine shall constitute a debt due and owing the State, assessable by the Commissioner and recoverable against the reporting party.
- 10.3 If a tardy report is not filed or corrected within 30 days following: (a) a determination by the Commissioner that such tardiness is not due to reasonable cause; or (b) the expiration of the appeal period set forth in [910].2, then the Commissioner shall notify the Office of the Attorney General that the reporting party has failed to file such report.

11.0 Advisory opinions

Any person may apply to the Commissioner for a ruling that applies 15 **Del.C.** Ch. 80 to a particular set of facts specified by the person. Such requests must be in writing and signed by the requestor. The Commissioner will issue such ruling in writing with copies available to the public, except that the identity of that person that requested the ruling will not be disclosed without the person's consent. Copies of such rulings will be distributed in accordance with 15 **Del.C.** §8041.

12.0 Public disclosure

All reports made to the Commissioner and all rulings made by the Commissioner shall be public and open for inspection and copying at reasonable cost by the public,—except that the identity of the candidate or committee requesting a ruling pursuant to Section 8041(2) shall not be disclosed without the candidate's or committee's consent.

13.0 Regulations supplemental to statute

These regulations are in addition to and interpretive of the requirements of 15 **Del.C.** Ch. 80, and do not excuse any person from the obligation to comply with the provisions of that statute.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Reimbursement Methodology for ICF/MR Facilities

NATURE OF THE PROCEEDINGS

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan regarding *Payment Methodology for ICF/MR Facilities*. 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 November 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 30, 2012 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 Division of Medicaid and Medical Assistance (DMMA) has submitted a State Plan Amendment (SPA) to the Centers for Medicare and Medicaid Services (CMS) to eliminate the rate freeze for Intermediate Care Facilities for Individuals with Mental Retardation (ICF/MR) facilities that has been in effect since 2009.

Statutory Authority

- "Social Security Act §1902(a)(13)(A), Public process for determination of rates of payment;
- "42 CFR §440, Subpart A, Definitions;
- "42 CFR Part 447, Payment for Services;
- "42 CFR §447.205, Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates

Background

Intermediate Care Facilities for Individuals with Mental Retardation (ICF/MR)

Intermediate Care Facilities for Individuals with Mental Retardation (ICF/MR) is an optional Medicaid benefit that enables States to provide comprehensive and individualized health care and rehabilitation services to individuals to promote their functional status and independence. Although it is an optional benefit, all States offer it, if only as an alternative to home and community-based services waivers for individuals at the ICF/MR level of care.

IMPORTANT NOTE: Federal law and regulations use the term "intermediate care facilities for the mentally retarded". The Division of Medicaid and Medical Assistance (DMMA) prefer to use the accepted term "individuals with intellectual disability" (ID) instead of "mental retardation." However, as ICF/MR is the abbreviation currently used in all Federal requirements, that acronym will be used here.

State Variation

Need for ICF/MR is specifically defined by states, all of whom have established ICF/MR level of care criteria. State level of care requirements must provide access to individuals who meet the coverage criteria defined in Federal law and regulation.

Summary of Proposal

Based upon the Legislative Budget, the Medicaid State Plan will be amended to remove the current rate freeze for the State's ICF/MRs for State Fiscal Year 2013. Effective August 1, 2012, the rate methodology will go back to the methodology that was previously approved in the State Plan that uses reported facility costs to establish per diem rates for each level of care.

In compliance with 42 CFR §447.205, Public Notice was published before the proposed effective date of the change on July 29, 2012 in the *News Journal* and on July 30, 2012 in the *Delaware State News*.

The provisions of this state plan amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

Fiscal Impact Statement

DMMA projects that Medicaid payments to the affected ICF/MR facilities will total an estimated \$1,063,702.00 in State Fiscal Year (SFY) 2013 for which the State share of payments is estimated to be \$335,538.00. In SFY 2014, estimated Medicaid payments will total \$1,257,902.00 for which the State share of payments is estimated to be \$387,261.00.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of

Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

First, it seems that the State "rolled back" payment rates for non-public facilities in 2009 to the rate in effect on December 31, 2008. It is now proposing to exempt private ICF/MRs from that "roll back" for services rendered after August 1, 2012. The State projects that this will result in "leveraging" of federal funds. For example, DMMA anticipates the change will result in \$51,723 in increased State payments and \$194,200 in federal payments in SFY14. At 518. The Councils are aware of only one private ICF/MR in Delaware, the Mary Campbell Center. It would apparently benefit from the proposed change.

Second, other long-term care facilities subject to the "roll back" will receive additional funds based on a "Quality Assessment Rate Adjustment". That adjustment is authorized by Senate Bill No. 227 signed by the Governor on June 28, 2012. The Councils commented on the subsequent regulation defining eligibility for the adjustment. See 16 DE Reg. 38 (July 1, 2012) (proposed); and 16 DE Reg. 309 (September 1, 2012) (final).

Also, SCPD is somewhat influenced by competing considerations. On the one hand, providing more funds to facilities may result in higher quality of care and an incentive to accept "Medicaid" patients. On the other hand, SCPD questions whether the extra payments may undermine the "movement" towards promoting community-based service options.

Given the enactment of Senate Bill No. 227, and the leveraging of federal funds, both Councils endorse the proposed change since we believe that providing more funds to facilities may result in higher quality of care and an incentive to accept "Medicaid" patients. However, we would like to qualify our endorsement by stating that we hope adequate measures will be taken to ensure that the extra payments do not undermine the "movement" towards promoting community-based service options.

Agency Response: The Division appreciates the Councils' endorsement and understands its concerns. DMMA remains fully committed to promoting long term services and supports in the community.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the November 2012 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to update the Title XIX Medicaid State Plan regarding Payment Methodology for ICF/MRs Facilities is adopted and shall be final effective January 10, 2013.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #12-60

REVISION:

ATTACHMENT 4.19-D

Page 1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: **DELAWARE**
METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES
PROSPECTIVE REIMBURSEMENT SYSTEM
FOR LONG TERM CARE FACILITIES

~~Payment Methodology for Rate Periods Beginning January 1, 2009:~~

- A. ~~(1) Notwithstanding any other provision of this section, the following adjustments will apply to reimbursement rates for all long term care facilities, except for state owned and operated facilities.~~
- B. ~~(2) Effective for dates of service on or after April 1, 2009, per diem rates for long term care facilities with the exception of state owned and operated facilities, will be adjusted to the rates that were in effect on December 31, 2008. However, if Delaware has in effect a nursing facility quality assessment fee applicable to assessment periods beginning on June 1, 2012 and thereafter, the per diem rates for long term care facilities computed for the period ending December 31, 2008 shall be increased by a Quality Assessment Rate Adjustment Amount as follows:~~
- ~~(3) With specific regard to non-public facilities reimbursed under the payment methodologies in Section III.3 (ICF/MR facilities) of this Attachment, effective for dates of service on or after August 1, 2012, per~~

diem rates shall not be subject to the provision of paragraph A.(2) of this section and shall be computed as described in Section III of this Attachment.

- (4) With specific regard to nursing facilities reimbursed under the payment methodologies in Sections II and IX of this Attachment, if Delaware has in effect a nursing facility quality assessment fee applicable to assessment periods beginning on June 1, 2012 and thereafter, the per diem rates computed in accordance with paragraph A.(2) of this section shall be increased by a Quality Assessment Rate Adjustment Amount as described in paragraph B of this section.

B. Except as excluded in section B.(c) below, each nursing facility's rates shall be increased for dates of service beginning on or after June 1, 2012 by a per day dollar amount equal to the sum of:

- (a) a per day dollar amount equal to the per day dollar amount of the Nursing Facility Quality Assessment Fee that will be owed for the upcoming rate year by each facility as specified in Delaware Code Title 30, Chapter 65 section 6502 (b) and (d), plus
- (b) a per day dollar amount computed as follows:
- Step 1. Obtain the total annual Medicaid patient days for all participating nursing facilities from the Delaware Medicaid nursing facility cost reports for the fiscal year ending June 30 of the previous year for each facility, excluding government-operated and pediatric nursing facilities. Sum the Medicaid patient days for each facility to compute the total aggregate statewide Medicaid patient days.
- Step 2. For each facility identified in Step #1, multiply the per day dollar amount of the Nursing Facility Quality Assessment Fee that will be owed per paragraph B. (a) above by each facility times the number of Medicaid patient days for each facility from Step #1. Sum the dollar amounts for all facilities to compute the aggregate statewide total annual assessment amount to be paid to the facilities.
- Step 3. Obtain the Total annual patient days and non-Medicare patient days for the fiscal year specified in Step 1 from each of the facilities that will be subjected to the quality assessment specified in paragraph (a) above for the upcoming State fiscal year for both Medicaid and non-Medicaid nursing facilities licensed to operate in Delaware.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapters 60 and 63 (7 Del.C. Chs. 60 and 63)
7 DE Admin. Code 1302

Secretary's Order No.: 2012-WH-0047

1302 Delaware Regulations Governing Hazardous Waste

Date of Issuance: December 13, 2012

Effective Date of the Amendment: January 21, 2013

I. Background:

A public hearing was held on Thursday, October 25, 2012, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the Delaware Regulations Governing Hazardous Waste (hereinafter referred to as "RGHW"). The State of Delaware is authorized by the U.S. Environmental Protection Agency (hereinafter referred to as "EPA") to administer federal authority as part of its State hazardous waste management program. In order for Delaware to maintain its program delegation and authority, EPA requires Delaware to maintain a program that is equivalent and no less stringent than the federal program. To accomplish this, the State is proposing to adopt mandated federal regulations and miscellaneous changes to correct errors and add consistency or clarification. Some of the changes DNREC is proposing to make are currently in effect at the federal level.

The Department is proposing amendments to the following sections of its existing Regulations Governing Hazardous Waste: (1) Adoption of Federal Revision to Land Disposal Restrictions ("LDR") for Carbamate Wastes; (2) Adoption of Federal Technical Corrections as set forth in the Federal Register/Vol. 77, No. 72/Friday, April 13, 2012/22229; (3) Modification to Small Quantity Generators ("SQG") Accumulation Requirements for Ignitable/Reactive Wastes; (4) Clarification of Labeling Requirements for Small and Large Quantity Generators under Satellite Accumulation Rules, and for Conditionally Exempt Small Quantity Generators (note: this proposal does not affect labeling requirements in 90/180 day accumulation areas); (5) Addition of Secondary Containment to Container Accumulation Requirements found in §265 Subpart I - Use and Management of Containers; (6) Strengthen Tank Management Standards for SQG in §265 Subpart J - Tanks; (7) Addition of Tank Closure Standards for Generators in §265 Subpart J - Tanks; and (8) Correction of DRGHW §261.4(e)(2)(iii)(B)(1) by removing typographical error.

In an attempt to fully vet the Department's proposed amendments to the aforementioned RGHW to the regulated community throughout Delaware, a letter was sent by DNREC to all interested persons on July 25, 2012, encouraging the public to review the proposed amendments on the Department's web page, and to attend DNREC's workshop to discuss the same on August 29, 2012. Public comments were received by the Department as a result of that workshop, from both the EPA and from the University of Delaware, and the Department responded fully to those comments in emails dated August 30, 2012 and September 6, 2012, respectively. Accordingly, the Department then held a public hearing on Thursday, October 25, 2012, at which time there were no members of the public in attendance, nor were any comments received from the public or the regulated community at that time regarding these proposed amendments. Pursuant to Delaware law, the record was held open for an additional fifteen (15) days immediately following the date of the public hearing, in order to give the public further opportunity to provide comment to DNREC concerning this proposed promulgation. At the time the record formally closed on November 9, 2012, no public comments had been received by the Department concerning this matter. Proper notice of the hearing was provided as required by law.

Subsequent to the public hearing held on October 25, 2012, the Department's presiding Hearing Officer, Lisa A. Vest, prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated November 30, 2012, and that Report in its entirety is expressly incorporated herein by reference.

II. Findings:

The Department has provided sound reasoning with regard to the proposed amendments to Delaware's Regulations Governing Hazardous Waste, as reflected in the Hearing Officer's Memorandum of November 30, 2012, which is attached hereto and expressly incorporated into this Order in its entirety. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority, 7 Del.C. Chapters 60 and 63, to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
5. Promulgation of these proposed amendments would update Delaware's requirements, where appropriate, to be consistent with the federal requirements, thus bringing Delaware into compliance with EPA standards;
6. The addition of clarifying language, as well as the correction of clerical errors currently found in Delaware's existing regulations, will strengthen and provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community;
7. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
8. The Department's proposed regulation, as published in the October 1, 2012 Delaware *Register of Regulations* and set forth within Attachment "A" of the Hearing Officer's Memorandum and attached

hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect twenty days after its publication in the next available issue of the Delaware *Register of Regulations*;

9. The Department shall submit the proposed regulation as a final regulation to the Delaware Registrar of Regulations for publication in the next available issue, and shall provide written notice to the persons affected by the Order.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated November 30, 2012 and expressly incorporated herein, it is hereby ordered that the proposed amendments to the State of Delaware's Regulations Governing Hazardous Waste be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the amendments to the State of Delaware's Regulations Governing Hazardous Waste will update Delaware's requirements, where appropriate, to be consistent with the federal requirements, thus bringing Delaware into compliance with EPA standards. Again, the State is required to adopt these amendments in order to maintain its hazardous waste program authorization and remain current with the Federal RCRA hazardous waste program. Additionally, those changes being made to provide additional clarifying language, as well as to correct clerical errors currently found in Delaware's existing regulations, will provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community.

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.**, Chapters 60 and 63.

Collin P. O'Mara, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the October 2012 issue of the *Register* at page 383 (16 DE Reg. 383). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1302 Delaware Regulations Governing Hazardous Waste

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapter 74B; (7 **Del.C.**, Ch. 74B)

7 DE Admin. Code 1353

Secretary's Order No.: 2012-WH-0048

1353 Boiler Safety Regulations For Boilers, Pressure Vessels, and Nuclear

Date of Issuance: December 13, 2012

Effective Date of the Amendment: January 11, 2013

I. Background:

A public hearing was held on Wednesday, October 10, 2012, at 6:00 p.m. at the DNREC Lukens Drive Field Office, 391 Lukens Drive, New Castle, Delaware, to receive comment on proposed amendments to 7 **DE Admin. Code** 1353: Delaware Boiler Safety Regulations for Boilers, Pressure Vessels, and Nuclear (hereinafter referred to as "Boiler Safety Regulations"). The Department's Division of Boiler Safety was transferred from the Department of Public Safety to the Department of Natural Resources and Environmental Control (hereinafter referred to as "DNREC" or "Department") in 2003. In 2011, the statutory authority for the Boiler Program was transferred from Title 29 to Title 7 of the Delaware Code, and the program was formally placed in the Department's Division of Waste and Hazardous Substances.

The Department is proposing revisions to the Boiler Safety Regulations which incorporate the above administrative changes, and remove references to the "Division Director of Boiler Safety", since "Boiler Safety" is no longer a stand-alone Division within the Department. Additionally, the Department's proposed revisions reflect an exemption for high pressure breathing air cylinders used by emergency response organizations (as suggested by the Volunteer Fireman's Association), as well as definitional changes that allow third party inspection companies to inspect boiler systems or pressure vessels at uninsured facilities. Lastly, the proposed revisions also add requirements for facilities that have their own boiler inspectors to establish their own quality assurance program. The Department is proposing to make these revisions at this time in order to keep Delaware's Boiler Safety Regulations current with national standards, and to have them reflect the current organizational structure of this program within DNREC.

In an attempt to fully vet these proposed amendments to Delaware's existing Boiler Safety Regulations to the regulated community throughout Delaware, the Department engaged the Delaware Council of Boiler Safety in review and preparation of the same. Additionally, DNREC held workshops in both New Castle County and Kent County in March of 2012 in order to receive public comment regarding this matter, with over fifty (50) interested parties in attendance. Public comments were received by the Department as a result of those workshops, and the Department responded fully to those comments. Accordingly, the Department then held a public hearing on Wednesday, October 10, 2012, as noted above. At that time, there were a couple of questions raised by those members of the public in attendance, and Department staff responded fully to the same. Pursuant to Delaware law, the record was held open for an additional fifteen (15) days immediately following the date of the public hearing, in order to give the public further opportunity to provide comment to DNREC concerning this proposed promulgation. At the time the record formally closed on October 25, 2012, no additional public comment had been received by the Department concerning this matter. Proper notice of the hearing was provided as required by law.

Subsequent to the public hearing held on October 10, 2012, the Department's presiding Hearing Officer, Lisa A. Vest, prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated November 30, 2012, and that Report in its entirety is expressly incorporated herein by reference.

II. Findings:

The Department has provided sound reasoning with regard to the proposed amendments to Delaware's Regulations Governing Hazardous Waste, as reflected in the Hearing Officer's Memorandum of November 30, 2012, which is attached hereto and expressly incorporated into this Order in its entirety. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority, 7 Del.C. Chapters 60 and 74, 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 this proposed amendment 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 proposed amendments would keep Delaware's Boiler Safety Regulations current with national standards, and would enable these regulations to reflect the current organizational structure of this program within DNREC;
7. The aforementioned promulgation of these proposed will strengthen and provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community;
8. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
9. The Department's proposed regulation, as published in the September 1, 2012 Delaware *Register of Regulations* and set forth within Attachment "A" of the Hearing Officer's Memorandum and attached hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws

and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the Delaware *Register of Regulations*;

10. The Department shall submit the proposed regulation as a final regulation to the Delaware Registrar of Regulations for publication in the next available issue, and shall provide written notice to the persons affected by the Order.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated November 30, 2012 and expressly incorporated herein, it is hereby ordered that the proposed amendments to 7 **DE Admin. Code** 1353: Delaware Boiler Safety Regulations for Boilers, Pressure Vessels, and Nuclear be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the amendments to the State of Delaware's Boiler Safety Regulations will update Delaware's requirements, where appropriate, to be consistent and current with national standards for boiler safety, and will enable this program's regulations to accurately reflect the current organizational structure of Delaware's Boiler Safety Program. Additionally, the changes being made will provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community.

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.**, Chapters 60 and 74.

Collin P. O'Mara, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the September 2012 issue of the *Register* at page 251 (16 DE Reg. 251). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1353 Boiler Safety Regulations For Boilers, Pressure Vessels, and Nuclear

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Chapter 60; (7 **Del.C.**, Ch. 60)

Secretary's Order No.: 2012-F-0050

3300 Non-Tidal Finfish

Date of Issuance: December 13, 2012

Effective Date of the Amendment: January 11, 2013

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers proposed regulations to amend 7 **DE Admin. Code** 3300, Non-Tidal Finfish, specifically, Sections 3301, and 3303 through 3310. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2012-09. The Department published its initial proposed regulation Amendments in the September 1, 2012 Delaware *Register of Regulations*. The Department then held a public hearing on October 26, 2012. The public hearing record remained open at that time for public comment through November 10, 2012.

The Department's Division of Fish & Wildlife has received numerous complaints from the angling public

regarding stocked trout harvest prior to the season opening. The proposed amendments to §§3301 and 3304 seek to expressly define Newton and Tidbury Ponds as designated trout ponds, and formally establish closed and open seasons of same. Division regulations close fishing in stocked freshwater trout streams two weeks prior to the opening of trout season, in order to allow stocked trout to acclimate to their surroundings, become well dispersed, and simplifies enforcement of the freshwater trout regulations. Unfortunately, stocked trout ponds were not included in the definition of the trout streams, and therefore similar closures to fishing prior to the opening of trout season have not been able to be adequately enforced by the Department.

The Department is also proposing to amend §§3303 to allow the take of northern and blotched snakehead by hook and line, as well as bow and arrow and spear in non-tidal waters. These species are categorized as non-native invasive, which have the potential to cause ecological harm. Bow fishing is an effective harvesting technique that may diminish their numbers and slow or prevent their spread (similar language exists for carp).

Other proposed amendments are editorial in nature. These changes are intended to clarify awkwardly worded language currently existing in §3304 (Section 4.0), and make the non-tidal regulatory language consistent with the Delaware Administrative Code Drafting and Style Manual (Sept. 2009 edition). There is no desire of the Department to change the meaning or intent of that existing Section in any way at this time. It should be noted that the Department has the statutory basis and legal authority to act with regard to the proposed amendments, pursuant to 7 **Del.C.** §103(a) and (b).

The proposed Amendments were thoroughly vetted by the Department at the public hearing on October 26, 2012. No member of the public attended said hearing. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. No public comment was received by the Department from the public at any time during the course of this proposed promulgation. It should also be noted that all proper notification and noticing requirements concerning this proposed promulgation were met by the Department. Proper notice of the hearing was provided as required by law.

Subsequent to the closing of the record in this matter on November 10, 2012, the Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated November 30, 2012 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. As previously noted, no members of the public attended the hearing held on October 26, 2012, and no public comment was received by the Department from the public at any time during the course of this proposed promulgation. I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these Amendments. The adoption of this Order will allow Delaware to formally define designated trout ponds, prohibit the harvest of trout in designated trout ponds prior to the scheduled pond trout season, authorize the taking of northern and blotched snakehead (invasive species) by bow and arrow and spear, and make a number of minor editorial corrections to the non-tidal regulations.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at the public hearing held on October 26, 2012;
- 3.) The Department held a public hearing on October 26, 2012 in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The adoption of this Order will allow Delaware to formally define designated trout ponds, prohibit the harvest of trout in designated trout ponds prior to the scheduled pond trout season, authorize the

taking of northern and blotched snakehead (invasive species) by bow and arrow and spear, and make a number of minor editorial corrections to the non-tidal regulations;

- 6.) The recommended Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) manage trout ponds by regulation, as is done for trout streams here in Delaware, in order to address concerns regarding trout harvest prior to the season opener on Delaware's two stocked ponds, namely, Newton Pond and Tidbury Pond; (2) establish the type of fishing gear that can be used to harvest northern snakehead and blotched snakehead, invasive species which can be potentially harmful, both economically and ecologically, to Delaware's native populations; (3) provide minor editorial changes to the existing regulations, which are not intended to change the meaning or intent of the existing regulations in any way; and lastly, because (4) the amendments are well supported by documents in the record;
- 7.) The Department shall submit this Order approving the final regulation to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the September 2012 issue of the *Register* at page 245 (16 DE Reg. 245). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

3300 Non-Tidal Finfish

**DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION**

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))
26 DE Admin. Code 3008

IN THE MATTER OF THE ADOPTION OF
RULES AND PROCEDURES TO IMPLEMENT THE
RENEWABLE ENERGY PORTFOLIO STANDARDS
ACT, 26 DEL.C. §§351-363, AS APPLIED TO
RETAIL ELECTRICITY SUPPLIERS
(OPENED AUGUST 23, 2005; REOPENED
SEPTEMBER 4, 2007; AUGUST 5, 2008,
SEPTEMBER 22, 2009; AUGUST 17, 2010;
SEPTEMBER 6, 2011, SEPTEMBER 18, 2012

PSC REGULATION DOCKET NO. 56

ORDER NO. 8256

AND NOW, this 18th day of December, 2012:

I. INTRODUCTION

WHEREAS, in 2005 the General Assembly enacted, and the Governor signed into law, the "Renewable Energy Portfolio Standards Act," 26 Del.C. §§351-364 (the "REPSA Act"), which, beginning in 2007, required every retail electric supplier to annually accumulate a portfolio of "renewable energy credits" equivalent to a specified percentage of its retail electric supply sales in Delaware; and

WHEREAS, in 2006 the Delaware Public Service Commission (the "Commission") promulgated "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" (the "REPSA Rules") (Order No. 6931 dated June 6, 2006); and

WHEREAS, the Commission has revised the REPSA Rules from time to time to reflect amendments to the REPSA Act (See PSC Order No. 7377 (April 17, 2008); PSC Order No. 7494 (December 16, 2008); PSC Order No.

7653 (September 22, 2009); and PSC Order No. 7933 (March 22, 2011); and

WHEREAS, On July 7, 2011, the Governor signed into law Senate Bill No. 124 as amended by Senate Amendment No. 1 (78 **Del. Laws** ch. 99) (July 7, 2011), which, among other things, amended various sections of the REPSA Act; and

WHEREAS, by Order No. 8026 (September 6, 2011), the Commission authorized the publication in the Delaware *Register of Regulations* of proposed amendments to the REPSA Rules; and

WHEREAS, the Commission received several comments on the proposed amended REPSA Rules, and the Commission Staff convened several workshops to address commenters' concerns with the proposed REPSA Rules; and

WHEREAS, the Commission Staff proposed to modify the REPSA Rules to reflect the agreed-upon REPSA Act amendments; and

WHEREAS, by Order No. 8102 (January 31, 2012), the Commission ordered that the proposed revised REPSA Rules be published in the Delaware *Register of Regulations* and that notice of the rulemaking to develop final REPSA Rules be published, with comments due on or before April 2, 2012; and

WHEREAS, the Commission scheduled a public hearing on the proposed REPSA Rules for April 17, 2012; and

WHEREAS, the proposed amended REPSA Rules were published in the March 2012 issue of the Delaware *Register of Regulations* and the ordered notice was published in the *News Journal* and the *Delaware State News* newspapers; and

WHEREAS, the Commission received comments from Gary Myers, Esquire on or before April 2, 2012; and

WHEREAS, on April 12, 2012, Staff filed a written response to the comments submitted by Mr. Myers; and

WHEREAS, the Commission met at its regularly-scheduled meeting on April 17, 2012, held a hearing on this matter, and approved the proposed REPSA Rules as final in Minute Order No. 8139; and

WHEREAS, on May 15, 2012, the Commission memorialized its deliberation and decision from the April 17th meeting in Order No. 8150 and published a copy of the Order and revised REPSA Rules in the June 2012 Delaware *Register of Regulations*; and

II. ORDER 8150

WHEREAS, in Order No. 8150, the Commission directed Staff to reopen this regulation docket as soon as reasonably possible after the close of the legislative session to consider the proposed revisions raised by Mr. Gary Myers, as well as any other revisions that may become necessary if the REPSA Act was further amended by legislation (Id. at 41); and

WHEREAS, Order No. 8150 states that Mr. Myers recommended revisions to the REPSA Rules to remove exempted load industrial customers from any responsibility for Delmarva's REPSA compliance costs in accordance with the statutory exemption for industrial customers with loads exceeding 1500 kW; to clarify that electric suppliers could only recover their actual compliance costs from customers; and to provide that Delmarva Power & Light Company ("Delmarva") succeeds to the rights and obligations of retail electric suppliers; and

WHEREAS, no legislative revisions occurred in the past session; and

III. ORDER NO. 8219

WHEREAS, the Commission re-opened Regulation Docket No. 56 on September 18, 2012, to address Mr. Myers' proposed revisions outlined above; and

WHEREAS, the Commission proposed revisions to the REPSA rules, attached as Exhibit "A", and ordered the publication of Proposed Rulemaking in the Delaware *Register of Regulations*, The *News Journal*, and The *Delaware State News*; and

WHEREAS, the Commission further ordered a period for the submission of written comments until November 9, 2012; and

WHEREAS, the Commission received one written submission from Mr. Gary Myers dated October 27, 2012, which are attached as Exhibit "B". Mr. Myers' submission suggested the following revisions:

a. Minor Typographical Errors

That the term "Retail Electric Supplier" as set forth in 26 **DE Admin. Code** §3008-1.1 should be changed to "Retail Electricity Supplier" to conform with 26 **Del.C.** §352(22). Mr. Myers also suggested that the wording of 26 **DE Admin. Code** §§3008-3.2.3.2¹ and 3.2.3.2.1² should be clarified.

b. Obligations of Retail Suppliers Holding Transitional Contracts

That the REPSA Rules should include a provision stating that retail electricity suppliers holding transitional

contracts continue to have the obligation to annually disclose their renewable "costs" to their transitional customers as required by 26 **Del.C.** §358(f)(3) and 26 **DE Admin. Code** §3008-4.3. Mr. Myers' proposed an additional rule that would read as follows:

3.2.3.1.6 During the transitional process set forth in section 3.2.3.1 of these regulations, a retail electricity supplier subject to a transitional retail contract shall remain responsible for compliance with the provisions of 26 **Del.C.** §358(f)(1)-(3) and section 4.0 of these regulations with regard to such retail transitional contract.

c. DP&L's Recovery of REC and SREC Compliance Costs for a Particular Compliance Year

Mr. Myers pointed out that a retail supplier may recover from its customers a non-bypassable surcharge "actual dollar for dollar costs incurred in complying with a state mandated renewable energy portfolio standard." 26 **Del.C.** §358(f)(1). In addition, he noted that Proposed rule §3.2.3.2.2³ allows Delmarva to have such recovery after it has assumed REPSA compliance responsibility for all the electric load distributed to its customers. Mr. Myers suggested that to ensure a match between compliance obligations for a particular compliance year and compliance costs for that same year, the proposed rule or the adopting order should specifically emphasize that Delmarva can only recover for one compliance year the actual costs that were incurred to satisfy the REPSA requirements for that compliance year.

d. **REC Requirements for QFCPP Energy Output**

That 26 **DE Admin. Code** §3008-3.2.4 does not define what energy output from Delaware QFCP-manufactured fuels⁴ is "eligible" for REC⁵ treatment. Mr. Myers urges the Commission to announce now, either by separate REPSA rule provision or within an adopting order, the limits on REC equivalencies imposed by 26 **Del.C.** §353(d)(2) and that, under currently existing law, the output from any "above 30" MW capacity within a QFCPP⁶ is not eligible for REC equivalents.

e. **Interplay Between QFCPP Tariff Charges and REC and SREC⁷ Cost Recoveries**

Mr. Myers urges that the Commission should address, in any adopting order, the interplay of the QFCPP tariff charges (and the attendant REC equivalencies) and overall REPSA requirements. Currently, Delmarva bundles the monthly recovery of REC costs with the monthly QFCPP tariff charge amounts in its billing to customers. This bundling process may invite questions under several of the newly proposed revisions; and

WHEREAS, Staff agrees with the points made by Mr. Myers concerning minor typographical errors, the consistent usage of the term "Retail Electricity Supplier," and the further clarification that Delmarva's recovery of REC and SREC compliance costs are limited to a particular compliance year because these revisions will improve the clarity of the substance of the rules. Thus, Staff attaches a revised version of the REPSA Rules incorporating these changes as **Exhibit "C"** and a clean version of these changes as **Exhibit "D"**; and

1. 26 *Del. Admin. C.* §3008-3.2.3.2 provides as follows: "Beginning with sales as of June 1, 2012, the CREC will charge all of its distribution system customers for REPSA compliance costs through a non-bypassable charge based on the weighted average cost of the RECs and SRECs supplied by the CREC."

2. 26 *Del. Admin. C.* §3008-3.2.3.2.1 provides as follows: "The CREC will credit the distribution portion of the bill of the End-User Customers identified in Section 3.2.3.1.1 of these Regulations by the amount equal to the non-bypassable charge for the duration of the Transitional Retail Contract."

3. We do not find the reference to §3.2.3.2.2 in the existing regulations or proposed changes. We assume that this was a proposed change in the prior rulemaking proceeding.

4. 26 *Del. C.* §352(16) provides that a "Qualified fuel cell provider" ("QFCP") is an entity that: a. By no later than the commencement date of commercial operation of the full nameplate capacity of a fuel cell project, manufactures fuel cells in Delaware that are capable of being powered by renewable fuels, and b. Prior to approval of required tariff provisions, is designated by the Director of the Delaware Economic Development Office and the Secretary of DNREC as an economic development opportunity.

5. 26 *Del. C.* §352(18) provides that "Renewable energy credit" ("REC") means a tradable instrument that is equal to 1 megawatt-hour of retail electricity sales in the State that is derived from eligible energy resources and that is used to track and verify compliance with the provisions of Subchapter III-A of Title 26.

6. 26 *Del. C.* §352(17) provides that "Qualified fuel cell provider project" means a fuel cell power generation project located in Delaware owned and/or operated by a qualified fuel cell provider under a tariff approved by the Commission pursuant to 26 *Del. C.* §364(d).

WHEREAS, Staff believes that Mr. Myers' proposed revisions concerning obligations of retail suppliers holding transitional contracts and REC equivalents for QFCPP energy output are important but beyond the scope of the public notice of this rulemaking proceeding. Accordingly, Staff recommends that these issues be considered in either a separate rulemaking or upon additional notice in the current docket;

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NO FEWER THAN THREE COMMISSIONERS:

1. That the proposed REPSA Rules, as amended, which are set forth in the attached Exhibit "C" (the "Final REPSA Rules") are approved.
2. That as soon as reasonable after the conclusion of the current legislative session, Staff will re-open this regulation docket to consider further changes recommended by Mr. Myers in his October 27, 2012 submission as well as any further amendments made in the current legislative session.
3. 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:

Dallas Winslow, Chair

Jeffrey J. Clark, Commissioner

Joann T. Conaway, Commissioner

Jaymes B. Lester, Commissioner

ATTEST:

Alisa Carrow Bentley, Secretary

3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005)

(Break in Continuity of Sections)

3.0 Administration of RPS

3.1 Certifying and Decertifying Eligible Energy Resources:

- 3.1.1 The Commission through its Staff will certify Generation Units as Eligible Energy Resources based on the definition of Eligible Energy Resources found in Section 1.1 of this Regulation.
- 3.1.2 Any Generation Unit seeking certification as an Eligible Energy Resource must submit an Application for Certification as an Eligible Energy Resource Under the Delaware Renewable Energy Portfolio Standard (Application) to the Commission. This may include Customer-Sited Generation or a Generation Unit owned or operated by a Municipal Electric Company.
- 3.1.3 Customer-sited generation is eligible to be considered an Eligible Energy Resource provided the facility is physically located in Delaware.
- 3.1.4 Commission Staff will review the Application and will notify the applicant of its approval as an Eligible Energy Resource or of any deficiencies in its Application within 30 days of receipt. The applicant will have the opportunity to revise its submission, if appropriate.
- 3.1.5 If an Eligible Energy Resource, once notified by Commission Staff, fails to provide the required documentation or missing information within 60 days of the date of such notification, the Application will be dismissed and must be resubmitted.
- 3.1.6 If Commission Staff finds the Generation Unit to be in compliance with this Regulation and other applicable law, Staff will issue a State of Delaware Certification Number.

7. 26 *Del. C.* §352(25) provides that "Solar Renewable Energy Credit" ("SREC") means a tradable instrument that is equal to 1 megawatt-hour of retail electricity sales in the State that is derived from solar photovoltaic energy resources and that is used to track and verify compliance with the provisions of Subchapter III-A of Title 26.

- 3.1.7 Upon receipt of the State of Delaware Certification Number, a Generation Unit will be deemed an Eligible Energy Resource.
- 3.1.8 Upon designation as an Eligible Energy Resource, the Generation Unit's owner shall be entitled to one (1) REC for each mega-watt hour of energy derived from Eligible Energy Resources other than Solar Photovoltaic Energy Resources. Upon designation as an Eligible Energy Resource, the owner of a Generation Unit employing Solar Photovoltaic Energy Resources shall be entitled to one (1) SREC for each mega-watt hour of energy derived from Solar Photovoltaic Energy Resource. SRECs and RECs will be created and supplied by the PJM-EIS GATS, or its successor at law. Eligible Energy Resources are subject to applicable PJM-EIS GATS rules and shall pay applicable PJM-EIS GATS fees.
- 3.1.8.1 The Commission may establish or participate in another renewable energy tracking system, if the Commission finds that PJM-EIS's GATS is not applicable or not suited to meet the needs or requirements of the RPS.
- 3.1.9 If a Generation Unit is deemed an Eligible Energy Resource and the Eligible Energy Resource's GATS account continues to be maintained in good standing, the Eligible Energy Resource may achieve a Delaware designation for RECs or SRECs recorded with PJM-EIS's GATS for the calendar year being traded in GATS at the time of the Commission Staff's approval of the Eligible Energy Resource.
- 3.1.10 An Eligible Energy Resource will remain certified unless substantive changes are made to its operational characteristics. Substantive changes include but are not limited to changes in fuel type, fuel mix and generator type. An Eligible Energy Resource making substantive changes to its operational characteristics shall notify the Commission of such changes at least 30 days prior to the effective date of such changes. At such time, the Generation Unit shall submit a revised Application, which shall be subject to review and re-certification.
- 3.1.11 An Eligible Energy Resource must provide updates to any changes to information submitted in the Application within 30 days of those changes becoming effective. These changes include but are not limited to changes in ownership of the generating unit, changes in ownership of the RECs or SRECs, changes in system size, or the deactivation of the unit.
- 3.1.12 RECs or SRECs created by an Eligible Energy Resource shall remain valid for compliance, subject to Section 3.2.7, Section 3.3.3 and Section 3.3.4 of this Regulation, even if that Eligible Energy Resource is subsequently decertified for eligibility.
- 3.1.13 An Eligible Energy Resource may be decertified for any of the following:
- 3.1.13.1 Failure to comply with Sections 3.1.1 through 3.1.11;
- 3.1.13.2 A material change in circumstances that causes it to become ineligible for certification under Section 3.1;
- 3.1.13.3 Fraud or misrepresentation in the Application or to PJM-EIS GATS;
- 3.1.13.4 Failure to properly update the Commission on changes to information submitted in the Application; or
- 3.1.13.5 Good cause as determined by the Commission.
- 3.2 Compliance with RPS
- 3.2.1 The Total Retail Sales of each Retail Electricity Product delivered to End-Use Customers by a Retail Electricity Supplier during any given Compliance Year shall include a minimum percentage of electrical energy sales from Eligible Energy Resources and Solar Photovoltaics as shown in Schedule 1.

SCHEDULE 1

Compliance Year (beginning June 1st)	Cumulative Minimum Percentage from Solar Photovoltaics Energy Resources	Minimum Cumulative Percentage from Eligible Energy Resources
2007		2.0%

2008	0.011%	3.0%
2009	0.014%	4.0%
2010	0.018%	5.0%
2011	0.20%	7.0%
2012	0.40%	8.5%
2013	0.60%	10.0%
2014	0.80%	11.5%
2015	1.0%	13.0%
2016	1.25%	14.5%
2017	1.50%	16.0%
2018	1.75%	17.5%
2019	2.00%	19.0%
2020	2.25%	20.00%
2021	2.50%	21.00%
2022	2.75%	22.00%
2023	3.00%	23.00%
2024	3.25%	24.00%
2025	3.50%	25.00%

Minimum Cumulative Percentage from Eligible Energy Resources includes the Minimum Cumulative Percentage from Solar Photovoltaics

3.2.2 A Retail Electricity Supplier's compliance with Schedule 1 shall be based on accumulating RECs and SRECs equivalent to the current Compliance Year's Cumulative Minimum Percentage of Total Retail Sales of each Retail Electricity Product sold to End-Use Customers subject to Section 3.2.7 of these Regulations and, where appropriate, other Commission regulations.⁸ Each Retail Electricity Suppliers shall file a report detailing its compliance with its RPS obligations within 120 days following the end of Compliance Year 2011.

3.2.3 Beginning June 1, 2012, Commission-regulated electric companies ("CREC") shall be responsible for procuring RECs, SRECs, and any other attributes needed to comply with the **[minimum percentage requirements set forth in 26 Del.C. §354 and Section 3.2.1 with respect to all energy delivered to the CREC's End-Use Customers. Such RECs and SRECs shall be filed annually with the Commission within 120 days following the completion of the Compliance Year. In fulfilling the duty imposed upon it by 26 Del.C. §354(e), a CREC shall succeed to, and assume, the obligations, entitlements, and responsibilities imposed or allowed to a "retail electric[ity] supplier" under the provisions of 26 Del.C. §§354-362 and Sections 3.2, 3.3, 4.0 and 5.0 of these regulations.**

3.2.3.1 The transitional process set forth in these Regulations shall apply to all Retail Electricity Suppliers that entered into retail electric supply contracts prior to March 1, 2012 that include RPS compliance costs for Compliance Year 2012 and thereafter and that extend beyond June 1, 2012 (such retail electric supply contracts shall be referred to as "Transitional Retail Contracts". The transitional process will end when the particular

8. The Commission understands the legislation to mean that the Total Retail Sales of each Retail Electricity Product sold to End-Use Customers during a given Compliance Year shall include a minimum percentage of SRECs and RECs determined by the current Cumulative Minimum Percentage as defined in Schedule 1.

contract expires⁹, or is otherwise terminated, or is modified to transfer the RPS compliance costs to the CREC, whichever occurs first.

- 3.2.3.1.1 On or before March 1, 2012, each Retail Electricity Supplier shall provide the CREC, the Commission Staff and the DPA with identification of all End-Use Customers supplied through a Transitional Retail Contract and shall further provide such supporting data as may be requested. Such identification shall include, but shall not be limited to, the name of the End-Use Customer and the expiration date of the Transitional Retail Contract. All such information required to be submitted hereunder may be submitted confidentially by the Retail Electric Supplier.
- 3.2.3.1.2 End-Use Customers who dispute their designation may file a complaint with the Commission according to 26 **DE Admin. Code** §1000.
- 3.2.3.1.3 Retail Electricity Suppliers shall transfer the RECs and SRECs necessary to meet their RPS compliance obligations for each Transitional Retail Contract for the respective Compliance Year beginning with Compliance Year 2012, to the CREC's GATS account for retirement at no cost to the CREC. The CREC will provide to the respective Retail Electricity Supplier the sales number based on metered data pertaining to the identified Transitional Retail Contracts for determining its RPS obligation with preliminary data on or before June 15th, and final data on or before August 15th. Ninety percent of the Retail Electricity Supplier's expected total RECs/SRECs necessary for compliance with its RPS obligations for each Transitional Retail Contract shall be transferred to the CREC's GATS account on or before August 1st following the end of the Compliance Year, and the remaining RECs and SRECs necessary for compliance with the Retail Electricity Supplier's RPS compliance obligations for each Transitional Retail Contract shall be transferred to the CREC's GATS account on or before September 1st following the end of the Compliance Year. Should either of these deadlines fall on a weekend or legal holiday, the deadline will be the next business day following August 1st and September 1st.
- 3.2.3.1.4 If a Retail Electricity Supplier fails to transfer to the CREC's GATS account sufficient RECs or SRECs to comply with its RPS obligations for each Transitional Retail Contract, it shall reimburse the CREC for the CREC's weighted average purchase cost of procuring such RECs and /or SRECs necessary to comply with the Retail Electricity Supplier's obligations and/or any associated ACPs or SACP by the CREC. The CREC shall accept the retail supplier's designation of Transitional Retail Contracts in determining the RPS obligation for such supplier.
- 3.2.3.1.4.1 The CREC shall notify the Retail Electricity Supplier of its deficiency and the amount owed to the CREC by October 1st of each year. The CREC shall provide the Retail Electricity Supplier with all supporting documentation of the costs incurred, if requested by the Retail Electricity Supplier. The Retail Electricity Supplier shall have fifteen (15) business days to reimburse the CREC or to advise the Commission in writing of any dispute relating to the deficiency. Interest shall accrue for any late payment (after the 15 business days) and shall be payable to the CREC. The interest rate shall be based on Delmarva's short term debt rate in effect on the date when the payment was due from the Retail Electricity Supplier.
- 3.2.3.1.5 To protect a CREC and its customers from incurring an ACP or SACP due to a Retail Electricity Supplier's failure to transfer the appropriate number of RECs and/or SRECs necessary for compliance with its RPS obligations during the transitional process, a

9. For purposes of this rule, a contract will be considered to have expired as of the date of the end of the original contract term. Any extension(s) to the original contract term will, for purposes of this rule, be considered a new contract.

- CREC may request the Commission to approve a temporary reduction in its RPS obligation or a reduction in the ACP or SACP price for that Compliance Year.
- 3.2.3.2 Beginning with sales as of June 1, 2012, the CREC will charge all of its distribution system End-Use eCustomers for RPS compliance costs through a non-bypassable charge based on the weighted average cost of the RECs and SRECs supplied by the CREC.
- 3.2.3.2.1 Industrial Customers whose peak demand is in excess of 1500 kilowatts and have ~~its electric supply~~ been acknowledged by the Commission as having their] load exempted from the RPS compliance obligations pursuant to 26 Del.C. §353(b) and Sections 1.0, 2.2.1, [and] 2.2.2 shall not be charged the RPS compliance cost permitted by Section 3.2.3.2.
- 3.2.3.2.2 For a particular compliance year, the total recovery of the RPS compliance costs by the CREC, shall not be an amount greater than the CREC's actual dollar for dollar costs incurred [for that compliance year] in complying with the State of Delaware's RPS, except that any compliance fee assessed pursuant to 26 Del.C. §358(d) and Section 3.3.5 of this Regulations shall be recoverable only to the extent authorized by 26 Del.C. §358(f)(2) and Section 4.2 of this Regulation.
- 3.2.3.2.43 The CREC will credit the distribution portion of the bill of the End-User Customers identified in Section 3.2.3.1.1 of these Regulations by the amount equal to the non-bypassable charge for the duration of the Transitional Retail Contract.
- 3.2.3.3 The CREC and Retail Electricity Suppliers shall place on their websites customer education pertaining to the RPS non-bypassable charge and credit required in Section 3.2.3.2 and 3.2.3.2.1. The CREC shall also include information on the RPS non-bypassable charge and credit on its bill message or bill insert.
- 3.2.3.4 Retail Electricity Suppliers that prior to March 1, 2012, have entered into contracts to purchase or produce RECs and/or SRECs specifically for Delaware RPS compliance may offer to the CREC those RECs and/or SRECs. The price would be determined by separate agreement between the Retail Electricity Supplier and the CREC. In no case shall the CREC be obligated to purchase any RECs/SRECs from the Retail Electricity Supplier.

Please Note: As the rest of the sections were not amended since the regulation was originally published, they are not being published. The complete final regulation is available at:

[3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard \(Opened August 23, 2005\)](#)

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, January 17, 2013 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF LONG TERM CARE RESIDENTS PROTECTION
PUBLIC NOTICE**3102 Long Term Care Transfer, Discharge and Readmission Procedures**

The Division of Long Term Care Residents Protection (DLTCRP) is proposing a revision to Regulation 3102 - Long Term Care Transfer, Discharge and Readmission Hearing Procedures.

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 Tom Murray, Deputy Director, DHSS/DLTCRP, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-6661 by Thursday January 31, 2013.

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

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION
PUBLIC NOTICE**3105 Criminal History Record Checks and Drug Testing**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 29 of the **Delaware Code**, Section 7971(d) (1), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend Regulation 3105 Criminal History Record Checks and Drug Testing.

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 Tom Murray, Deputy Director, DHSS/DLTCRP, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-6661 by Thursday, January 31, 2013.

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

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION
PUBLIC NOTICE**3110 Criminal History 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 29 of the **Delaware Code**, Section 7971(d)(1), Delaware Health and Social Services (DHSS) / Division of Long Term Care Residents Protection is proposing to amend Regulation 3110 Criminal History Record Checks and Drug Testing 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 Tom Murray, Deputy Director, DHSS/DLTCRP, 3 Mill Road, Suite 308, Wilmington, DE 19806 or by fax to (302) 577-6661 by Thursday, January 31, 2013.

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

DIVISION OF SOCIAL SERVICES**PUBLIC NOTICE****Child Care Subsidy Program; Providing Child Care for Food Benefit Volunteers**

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

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 January 31, 2013.

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

DEPARTMENT OF JUSTICE**VICTIMS' COMPENSATION ASSISTANCE PROGRAM ADVISORY COUNCIL****PUBLIC NOTICE****301 Victims' Compensation Assistance Program Rules and Regulations
Brief Synopsis of the Subject, Substance and Issues**

The Department of Justice Victims Compensation Assistance Program proposes to amend existing Rule 25.0 by deleting "\$8,500" and substituting therefor "\$5,000". This amendment would reduce the ceiling on payment for funeral and burial expenses. The Victims' Act provides at 29 Del.C. §9002(9) that "pecuniary loss" in instances of death of the victim shall include funeral and burial expenses.

The Victims Compensation Advisory Council reviewed existing claims for funeral and burial expenses, national data regarding funeral and burial costs, and the limits placed by other state compensation programs on such awards. The Council concluded that funeral/burial claims at or near the present \$8500 limit seemed excessive in many cases, and constitute a significant drain on limited resources. Further, the Council found that the national average funeral cost is approximately \$5500. Finally, the median ceiling placed on such awards by other state compensation programs is \$5000. New Jersey and Maryland have ceilings of \$5000 for such costs.

Interested persons may submit comments in writing to Lisa Ogden, Director, VCAP, 900 King Street, Suite 4, Wilmington Delaware. The comment period will close on January 31, 2013.

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL****DIVISION OF AIR QUALITY****PUBLIC NOTICE****1147 - CO₂ Budget Trading Program**

The proposed amendments require that petroleum refinery units purchase Carbon Dioxide (CO₂) allowances to cover its reported emissions each year that are directly associated with the electricity generated and exported to the electrical grid. Petroleum refinery units participating in the CO₂ Budget Trading Program will be required to report emissions, as required by other Electric Generating Units, and accept enforceable permit conditions.

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Wednesday, January 23, 2013 beginning at 6:00 PM at the Delaware City Library located at 250 Fifth Street, Delaware City, DE. Interested parties may submit comments in writing to: Valerie Gray, DNREC Division of Air Quality, 655 South Bay Road, Suite 5N, Dover, DE 19901.

CALENDAR OF EVENTS/HEARING NOTICES

DIVISION OF FISH AND WILDLIFE**PUBLIC NOTICE****3214 Horseshoe Crab Annual Harvest Limit**

The purpose of this action is to establish Delaware's annual sex-specific horseshoe crab harvest limits (quota) in accordance with Addendum VII to the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan for Horseshoe Crabs (FMP). This action also provides a mechanism to close the fishery in a manner that minimizes the likelihood of exceeding the annual sex-specific quota allocation(s).

Addendum VII to the FMP instituted an Adaptive Resource Management (ARM) framework for establishing annual horseshoe crab sex-specific quotas in the Delaware Bay Region. The ARM Framework transparently incorporates the views of stakeholders along with predictive modeling to assess the potential consequences of multiple, alternative management actions in the Delaware Bay Region. The annual specification process determines the following year's (t + 1) harvest using horseshoe crab data from the previous year (t - 1) and shorebird data from the current year (t). State-by-state allocations within the region are apportioned based on Addendum VI quotas; the proportion of state landings of Delaware Bay origin; and, harvest caps for Maryland and Virginia (to protect horseshoe crabs of non- Delaware Bay-origin). Harvest caps in Maryland and Virginia can only be exceeded through a 2:1 (M:F) female offset when a female harvest moratorium is specified. Should data be unavailable to populate the ARM model, quotas may be set at the Addendum VI levels or the previous year's ARM framework.

This action would also establish measures for closing the horseshoe crab fishery. Presently, the Department lacks the ability to close the horseshoe crab fishery until landings reach the exact annual harvest limit. This method of closing the fishery fails to adequately consider the timeliness of harvest reporting and delinquent reporting. This has resulted in quota overages in some years. Overages pose a potential risk to horseshoe crab and shorebird resources. Further, overages must be deducted from the following year's quota and, therefore, may disadvantage harvesters or segments of the fishery the following year. Using the most recent landings data upon reaching 95% of the annual sex-specific quota will minimize the risk of exceeding allocations.

The hearing record on the proposed changes to the 3214 Horseshoe Crab Annual Harvest Limit regulation will be open January 1, 2013. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on January 23, 2013 beginning at 6 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

DIVISION OF FISH AND WILDLIFE**PUBLIC NOTICE****3900 Wildlife**

The changes to regulation 3900 Wildlife will be presented in a series of public hearings February 6, 2013 beginning at 6:00 p.m. in the DNREC Auditorium, 89 Kings Highway, Dover, Delaware. The hearing record for the proposed regulatory changes will remain open until 4:30 p.m. February 21, 2013. The hearing order is as follows:

3900.2 – Method of Take

3900.5 – Wild Turkeys

3900.10 – Nuisance Game Animals

3900.14 – Falconry

3900.16 – Endangered Species

DEPARTMENT OF SAFETY AND HOMELAND SECURITY**DIVISION OF STATE POLICE****2400 BOARD OF EXAMINERS OF CONSTABLES****PUBLIC NOTICE**

Notice is hereby given that the Board of Examiners of Constables, in accordance with 10 Del.C. Ch. 27 proposes to amend Rule 5.0 - Firearms Policy. This amendment clarifies the requirements for a constable to carry

a weapon while on duty. If you wish to view this amendment, contact Ms. Peggy Anderson at 302-672-5304. Any persons wishing to present views may submit them in writing, by March 1, 2013, to Delaware State Police, Professional Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold a special meeting on February 14, 2013, Room 105, Tatnall Building, 150 William Penn Street, Dover, Delaware.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
PUBLIC NOTICE
101 Regulations Governing Bingo

A. Type of Regulatory Action Required

Amendment to Existing Regulations

B. Synopsis of Subject Matter of the regulation

The Delaware Board of Charitable Gaming will seek public comments on the issue of whether a certain amendment to its current rules should be adopted.

The proposed amendment is to Rule 4.11 in 10 **DE Admin. Code** 101. The amendment would provide that when there are multiple winners in a game, the organization may in its own house rules determine how one winner will be declared.

Persons wishing to present their views regarding this matter may do so by appearing at a public hearing on Thursday, February 7, 2013 at the meeting of the Delaware Board of Charitable Gaming, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904. Persons may also submit written comments by the close of business on or before February 22, 2013 at the same address. 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

The amendment would change the current rule, which provides that when there are multiple winners, the prize should be divided as evenly as possible. When the prize is not a monetary prize, but rather a pocketbook, basket, or other type of non-monetary prize, dividing the prize is not practical. The Board therefore wishes to allow the organization holding the event to determine in its own house rules, how one winner will be declared. For example, an organization may call an extra number, or have some other method of determining a single winner.

The other players qualifying to win may be given a chance to win a prize at a subsequent drawing during the event, provided the value of that prize appears in the application for the event and is counted toward the maximum permissible prize.

DIVISION OF PROFESSIONAL REGULATION
PUBLIC NOTICE
500 Board of Podiatry

The Delaware Board of Podiatry in accordance with 24 **Del.C.** §506(a)(1) has proposed amendments to Rules 5.0 and 6.0. The proposed revisions to the rules are an attempt to clarify the timing of when the Podiatric Medical Licensing Exam for States (PM Lexis) exam needs to be satisfactorily completed for licensure in the State of Delaware. The proposed revisions also clarify that licensees must complete their continuing education credits for licensure renewal on or before June 30 of even numbered years.

A public hearing will be held on February 14, 2013, at 5:15 p.m. in the second floor conference room B 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 Meaghan Jerman, Administrative Assistant for the Delaware Board of Podiatry, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be fifteen (15) days after the public hearing.

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

DIVISION OF PROFESSIONAL REGULATION
PUBLIC NOTICE
1900 Board of Nursing

The Delaware Board of Nursing, pursuant to 24 **Del.C.** §1904(c), proposes to revise regulations 14.2.1.5 and 14.2.1.6. The proposed revisions to these regulations allow a nurse changing her primary state of residence from one Compact state to another to continue to practice under her home state license for 90 days. This is an increase in time from the prior regulation, which only allowed a nurse to work under her home state license for 30 days before requiring a new home state license. This change was prompted by the same change made in the Nurse Licensure Compact Administrators' Model Rules and Regulations.

The Board will hold a public hearing on the proposed regulation change on February 13, 2013 at 09:00 AM, Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until February 28, 2013.

DIVISION OF PROFESSIONAL REGULATION
PUBLIC NOTICE
2500 Board of Pharmacy

The Delaware Board of Pharmacy, pursuant to 24 **Del.C.** §2506(a)(1), proposes to revise its rules and regulations. The proposed addition to the rules require pharmacists to take, as part of their biennial renewal required continued education, at least two hours in the area of medication safety/errors. The proposed addition also adds to the list of crimes deemed substantially related to the practice of pharmacy a list of sexual offenses not previously included in the list of substantially related crimes.

The Board will hold a public hearing on the proposed rule change on January 16, 2013 at 10:00 a.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Catherine Simon, Administrator of the Delaware Board of Pharmacy, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until February 11, 2013.

PUBLIC SERVICE COMMISSION
PUBLIC NOTICE
3007 Electric Service Reliability and Quality Standards

By Order No. 8270 dated December 18, 2012, the Delaware Public Service Commission (the "Commission") approved reopening PSC Regulation Docket No. 50 to consider a proposed revision to Section 1.9. of the Rules Governing Electric Service Reliability and Quality Standards (the "Rules") for electric distribution companies subject to its jurisdiction. Currently, that section provides that the Rules shall be effective through 2012 and may be reviewed, revised, or extended as necessary to ensure the maintenance of electric reliability and quality service in Delaware. The Commission seeks to modify Section 1.9 of the Rules to extend the application of the Rules beyond the end of 2012.

The Commission encourages the public to submit written comments on or before January 4, 2013, but the last date to submit written comments will be on February 22, 2013. If you wish to file any written comments, please submit an original and ten copies of such written comments to the Commission at the following address:

Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware, 19904
Attn: Regulation Docket No. 50

The Commission will conduct a public hearing on the proposed revision and resulting new Rules on February 7, 2013, beginning at 1:00 P.M. at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

You may review PSC Order No. 8270 and the proposed revised Rules in the February 2012 issue of the Delaware Register of Regulations or on the PSC's Internet website located at <http://dep.sc.delaware.gov/default.shtml>. If you wish to obtain copies of the Order and proposed revised Rules, please contact the Commission at (302) 736-7500. If you would like to review documents at the Commission's offices, please contact Monica Hall at monica.hall@state.de.us to arrange a time for your review.

If you wish to request copies of documents in this matter, please submit a Freedom of Information Act Request Form. This form may be found at <http://smu.portal.delaware.gov/cgi-bin/mail.php?foia-request&subj=DOS>. There is also a link to the Freedom of Information Act Request Form on the Commission's website at <http://dep.sc.delaware.gov/default.shtml>. The Commission will respond to your request in accordance with the Delaware Freedom of Information Act, 29 **Del.C.** ch. 100.

If you have a disability and wish to participate or to review the materials in this matter, please contact the Commission to discuss any auxiliary aids or services you might need to help you. You may contact the Commission in person, by writing, by telephone (including text telephone), by Internet e-mail, or other means. If you have questions about this matter, you may call the Commission at 1-800-282-8574 (toll-free in Delaware) or (302) 736-7500 (voice and text telephone).

EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET
PUBLIC NOTICE
Environmentally Preferred Purchasing Policy

In accordance with procedures set forth in 29 **Del.C.** ch. 11, Subch. III and 29 **Del.C.**, ch. 101, the Director of the Office of Management and Budget is proposing to adopt a regulation setting forth the State of Delaware Environmentally Preferred Purchasing Policy.

On April 1, 2012 (Volume 15, Issue 10), OMB published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It was requested that written materials and suggestions from the public concerning the proposed regulations be delivered to OMB by May 1, 2012, or be presented at a public hearing on May 2, 2012, after which time OMB would review information, factual evidence and public comment to the proposed regulations. Considerable public comment was received by individuals representing the following groups:

- Chemical Industry Council of Delaware
- American Chemistry Council
- Diamond Pest Control
- Delaware Pest Control Association
- Consumer Specialty Products Association
- IVM Partners
- Royal Pest Solutions

The comments that were received have been considered and resulted in substantive changes to the form and content of the initially proposed regulation. In accordance with 29 **Del.C.** §10118(c), the amended regulation is hereby proposed as a newly proposed regulation.

The Director of the Office of Management and Budget, or an employee of the Office of Management and Budget designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed regulation on February 5, 2013 at 11:00 a.m. at the Office of Management and Budget, Haslet Building, room 219, 122 William Penn St., Dover, DE 19901. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. Robert Scoglietti, Delaware Office of Management and Budget, 122 William Penn Street, Dover, DE, 19901. Written comments must be received on or before February 4, 2013. Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing Mr. Robert Scoglietti at the address of the Delaware Office of Management and Budget set forth above.