
Delaware Register of Regulations

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Bombay Hook National Wildlife Refuge, Smyrna, Delaware

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 April 15, 2008.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
June 1	May 15	4:30 p.m.
July 1	June 16	4:30 p.m.
August 1	July 15	4:30 p.m.
September 1	August 15	4:30 p.m.
October 1	September 15	4:30 p.m.

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Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF AGRICULTURE
HARNESS RACING COMMISSION

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

PUBLIC NOTICE

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rule 8 by a change to Rule 8.3.5.9.4. The Commission will hold a public hearing on the proposed rule changes on June 10, 2008. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on May 1, 2008.

The proposed changes are for the purpose of updating Rule 8 to reflect current policies, practices and procedures. Copies are published online at the Register of Regulations website: http://regulations.delaware.gov/services/current_issue.shtml. A copy is also available for inspection at the Racing Commission office.

501 Harness Racing Rules and Regulations***(Break in Continuity of Sections)*****8.0 Veterinary Practices, Equine Health Medication****8.1 General Provisions**

The purpose of this Rule is to protect the integrity of horse racing, to ensure the health and welfare of race horses and to safeguard the interests of the public and the participants in racing.

(Break in Continuity of Sections)**8.3.5.9 Bleeder List**

8.3.5.9.1 The Bleeder Medication Veterinarian shall maintain a Bleeder List of all horses which have demonstrated external evidence of exercise induced pulmonary hemorrhage (EIPH) or the

existence of hemorrhage in the trachea post exercise upon:

8.3.5.9.1.1 visual examination wherein blood is noted in one or both

nostrils either:

8.3.5.9.1.1.1 during a race;

8.3.5.9.1.1.2 immediately post-race or post-exercise on track;

or

8.3.5.9.1.1.3 within one hour post-race or post-exercise in

paddock and/or stable area, confirmed by endoscopic examination; or

8.3.5.9.1.2 endoscopic examination, which may be requested by the

owner or trainer who feels his horse is a bleeder. Such endoscopic examination must be done by a practicing veterinarian, at the owner's or trainer's expense, and in the presence of the Commission Veterinarian. Such an examination shall take place within one hour post-race or post-exercise; or

8.3.5.9.1.3 presentation to the Commission Veterinarian, at least 48

hours prior to racing, of a current Bleeder Certificate from an official veterinarian from any other jurisdiction, which show the date, place and method -- visual or endoscopy -- by which the horse was determined to have bled, or which attests that the horse is a known bleeder and receives bleeder medication in that jurisdiction, provided that such jurisdiction's criteria for the identification of bleeders are satisfactory to the Commission Veterinarian.

8.3.5.9.2 The confirmation of a bleeder horse must be certified in writing by

the Commission Veterinarian and entered on the Bleeder List. Copies of the certification shall be issued to the owner of the horse or the owner's designee upon request. A copy of the bleeder certificate shall be attached to the horse's eligibility certificate.

8.3.5.9.3 Every confirmed bleeder, regardless of age, shall be placed on

the Bleeder List, and furosemide or Furosemide with Aminocaproic Acid, if applicable must be administered to the horse in accordance with these rules prior to every race, including qualifying races, in which the horse starts.

8.3.5.9.4 A horse which bleeds (EPIH) based on the criteria set forth in

8.3.5.9.1 above shall be restricted from racing at any facility under the jurisdiction of the Commission, as follows:

8.3.5.9.4.1 1st time - 10 days;

8.3.5.9.4.2 2nd time - 30 days, provided that the horse must be

added to or remain on the Bleeder List, and must complete a satisfactory qualifying race before resuming racing;

8.3.5.9.4.3 3rd time - 30 days, and the horse shall be added to the

Steward's Veterinarian's List, to be removed at the discretion of the Commission Veterinarian following a satisfactory qualifying race after the mandatory 30-day rest period; and

8.3.5.9.4.4 4th time - barred for life.

8.3.5.9.5 An owner or trainer must notify the Commission Veterinarian

immediately of evidence that a horse is bleeding following exercise or racing.

8.3.5.9.6 A horse may be removed from the Bleeder List at the request of

the owner or trainer, if the horse completes a 10-day rest period following such request, and then re-qualifies. A horse may discontinue the use of Aminocaproic Acid without a ten (10) day rest period or having to reliquary provided the horse was on Aminocaproic Acid for thirty (34) days or more. In addition, once a horse discontinues the use of Aminocaproic Acid, it is prohibited from using said medication for ninety (90) days from the date of its last administration for Aminocaproic Acid.

8.3.5.9.7 Any horse on the Bleeder List which races in a jurisdiction where

it is not eligible for bleeder medication, whether such ineligibility is due to the fact that it does not qualify for bleeder medication in that jurisdiction or because bleeder medication is prohibited in that jurisdiction, shall automatically remain on the Bleeder List at the discretion of the owner or trainer, provided that such decision by the owner or trainer must be declared at the time of the first subsequent entry in Delaware, and the Furosemide and Aminocaproic Acid symbols in the program shall appropriately reflect that the horse did not receive Furosemide or Furosemide with Aminocaproic Acid its last time out. Such an election by the owner or trainer shall not preclude the Chief DHRC Veterinarian, or Presiding Judge from requiring re-qualification whenever a horse on the Bleeder List races in another jurisdiction without bleeder medication, and the integrity of the Bleeder List may be questioned.

8.3.5.9.8 Any horse on the Bleeder List which races without Furosemide or

Furosemide with Aminocaproic Acid in any jurisdiction which permits the use of Furosemide or Furosemide with Aminocaproic Acid in any jurisdiction which permits the use of Lasix shall automatically be removed from the Bleeder List. In order to be restored to the Bleeder List, the horse must demonstrate EIPH in accordance with the

criteria set forth in subdivision 8.3.5.9.1 above. If the horse does demonstrate EIPH and is restored to the Bleeder List, the horse shall be suspended from racing in accordance with the provisions of 8.3.5.9.4 above.

8.3.5.9.9 The Presiding Judge, in consultation with the Commission Veterinarian, will rule on any questions relating to the Bleeder List.

8.3.5.10 Medication Program Entries

It is the responsibility of the trainer at the time of entry of a horse to provide the racing secretary with the bleeder medication status of the horse on the entry blank, and also to provide the Commission Veterinarian with a bleeder certificate, if the horse previously raced out-of-state on bleeder medication.

(Break in Continuity of Sections)

***Please Note:** As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Harness Racing Commission is available at: <http://regulations.delaware.gov/AdminCode/title3/500/index.shtml#TopOfPage>

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 410

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

410 Satellite School Agreements

A. Type of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Secretary of Education seeks to amend 14 DE Admin. Code 410 Satellite School Agreements to clarify the process by which a local school district or charter school can establish a satellite school. Pursuant to Title 14, Section 2005 of Delaware Code "a 'satellite school' is defined as a public school that operates in physical facilities leased from, donated by or located on property that is owned or leased by a private sector or governmental employer which is not the school district or charter school operating the satellite school."

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before June 6, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation outlines the process for the establishment of satellite schools not achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation outlines the process for the establishment of satellite schools not equal education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses health and safety issues as part of the establishment of satellite schools.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation outlines the process for the establishment of satellite schools not students' legal rights

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The statute requires that there be a regulation concerning the establishment of satellite schools.

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

410 Satellite School Agreements

1.0 Definition

~~As per 14 Del.C. §2005 a satellite school is defined as a public school that operates in physical facilities leased from, donated by or located on property that is owned or leased by a private sector or governmental employer which is not the school district or charter school operating the satellite school.~~

2.0 Satellite School Facilities

~~Satellite school facilities shall be subject to the same health and safety codes required of other public school facilities. Plans and specifications of proposed satellite school facilities shall be submitted for review and approval, as appropriate, to the following agencies by the local district or charter school board: Fire Marshal of appropriate jurisdiction, Architectural Accessibility Board, Division of Public Health for food preparation and serving area and swimming pools, Department of Natural Resources and Environmental Control for wastewater and erosion control, local building officials to provide a Certificate of Occupancy or Approval, State Risk Manager and the Department of Education.~~

3.0 Documentary Evidence of Review and Approval by the Authorities Listed as in 2.0 Shall be Provided to the Department of Education

4.0 Review of Plans

~~Upon receipt of the aforementioned documentary evidence, the Department of Education shall cause a review of the plans or inspection of the proposed facilities to be conducted by appropriate Department staff to determine the adequacy of the facilities for the intended educational purpose considering such items as size, accessibility, adequacy of sanitary facilities, adequacy of lighting and ventilation, and other considerations relevant to the health and safety of students.~~

5.0 Certificates of Occupancy or Occupancy Permits

~~Certificates of Occupancy or Occupancy Permits shall be obtained from the appropriate jurisdictional authorities prior to occupancy of the facilities by the satellite school. A copy of such certificate or permit shall be provided to the Department of Education. The satellite school facilities shall be subject to the same periodic inspections for health and safety as other public schools.~~

~~6.0 Conference with The State Risk Manager~~

~~The reorganized school district or charter school shall confer with the State Risk Manager regarding any liabilities that they and their employees may be subject to and shall provide appropriate protection and coverage for same.~~

~~2 DE Reg. 1383 (2/1/99)~~

~~6 DE Reg. 1348 (4/1/03)~~

1.0 Purpose

The purpose of this regulation is to outline the process for the establishment of a satellite school as allowable in 14 **Del.C.** §2005.

2.0 Definitions

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

"Charter School Satellite School Agreement" shall mean the contract between a Charter School and the private sector or governmental employer for the operation of a Satellite School. The agreement form shall be in a format established and approved by the Department. The contract shall, at a minimum, be consistent with the provisions of 14 **Del.C.** Chapter 5 and 14 **Del.C.** §2005. A Charter School authorized by a Local School District shall only establish a Satellite School arrangement within the authorizer's school district boundaries.

"Department" shall mean the Department of Education.

"Local School District Satellite School Agreement" shall mean the contract between the Local School District and the private sector or governmental employer for the operation of a Satellite School that has been approved by the local school district board of education. The Local School District shall be responsible for the development of the agreement form. A local school district shall only establish a Satellite School arrangement within the school district's boundaries.

"Local School District" shall mean a reorganized school district or vocational technical school district established pursuant to 14 **Del.C.** Chapter 10.

"Satellite School" shall mean a public school that operates in physical facilities leased from, donated by or located on property that is owned or leased by a private sector or governmental employer which is not the school district or charter school operating the satellite school.

3.0 Charter School Application for Approval Process

3.1 A Charter School seeking approval for the operation of a Satellite School shall make the application to the Office of the Secretary, Department of Education. The Charter School shall provide to the Office of the Secretary a copy of the proposed Charter School Satellite School Agreement and any additional information required pursuant to this regulation. An application for the establishment of a Satellite School by a Charter School shall be considered a major modification of the existing charter and shall follow the procedures as outlined in 14 **DE Admin. Code** 275, 9.0. Provided further, the Charter School shall, at a minimum, meet the following requirements:

3.1.1 The Satellite School facilities shall be subject to the same health and safety codes and building codes, in accordance with the local code enforcement entity, as required by other public school facilities; and

3.1.2 The enrollment preferences shall be consistent with 14 **Del.C.** §506(b) and with any additional considerations as prescribed in 14 **Del.C.** §2005(c).

3.2 Upon receipt of the documentation in 3.1 of this regulation, the Department shall cause a review of the plans or inspection of the proposed facilities to be conducted by appropriate Department staff to determine the adequacy of the facilities for the intended educational purpose.

3.3 Approval by the Department shall require the assent of both the Secretary of Education and the State Board of Education. The decision shall be considered final and not subject to appeal.

PROPOSED REGULATIONS

4.0 School District Application for Approval Process

- 4.1 A Local School District seeking approval for the operation of a Satellite School shall make the application to the Office of the Secretary, Department of Education. The Local School District shall provide to the Office of the Secretary a copy of the Local School District Satellite School Agreement that has been first approved by the local school board and any additional information required pursuant to this regulation. Provided further, the Local School District Satellite School Agreement criteria shall, at a minimum, meet the following requirements:
- 4.1.1 The Satellite School facilities shall be subject to the same health and safety codes and building codes, in accordance with the local code enforcement entity, as required by other public school facilities; and
- 4.1.2 The enrollment considerations shall be consistent with 14 Del.C. §2005(c).
- 4.2 Upon receipt of the documentation in 4.1 of this regulation, the Department shall cause a review of the plans or inspection of the proposed facilities to be conducted by appropriate Department staff to determine the adequacy of the facilities for the intended educational purpose.
- 4.3 Approval by the Department shall require the assent of the Secretary of Education. The decision shall be considered final and not subject to appeal.

5.0 Compliance with State Risk Management

- 5.1 The Charter School shall provide evidence that the types and limits of insurance coverage the Charter School plans to obtain for operation of a Satellite School are adequate and consistent with 14 Del.C. Chapter 5.
- 5.2 The Local School District shall confer with the State Risk Manager regarding any liabilities that they and their employees may be subject to and shall provide appropriate protection and coverage for same.

6.0 Certificates of Occupancy or Occupancy Permits

- 6.1 Certificates of Occupancy or Occupancy Permits shall be obtained from the appropriate jurisdictional authorities prior to occupancy of the facilities by the Satellite School. The Satellite School facilities shall be subject to the same periodic inspections for health and safety as other public schools.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 608

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

608 Unsafe School Choice Option for Students in Persistently Dangerous Schools and for Students who have been Victims of a Violent Felony

A. Type of Regulatory Action Requested
Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Secretary of Education seeks to amend 14 DE Admin. Code 608 Unsafe School Choice Option for Students in Persistently Dangerous Schools and for Students who have been Victims of a Violent Felony. The amendment changes the title of the regulation to 608 Unsafe School Choice Option Policy, adds another definition and requires each school district and charter school to have an electronic copy on file with the Department of Education of the current policies and procedures describing school choice options to a student who is the victim of a violent felony, including the process for notifying parents and provide any new or revised policies and procedures to the Department of Education within ninety (90) days of any revision(s). In addition, the amended regulation clarifies suspension and expulsion data are used for the determination of persistently dangerous schools.

Persons wishing to present their views regarding this matter may do so in writing by the close of business

on or before June 6, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, DE 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses school climate issues which can have an impact on student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses school climate issues not equitable education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation continues to ensure all student's health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses school climate issues that include the issue of students' legal rights.

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

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will add some additional reporting and administrative requirements at the local board and school levels in order to comply with the federal statute.

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? Federal legislation requires that the State have this regulation in order to receive federal funds.

10. What is the cost to the State and to the local school boards of compliance with the regulation? Federal funds are available to cover some of the additional costs to the State and to the local school boards for compliance with this regulation.

608 Unsafe School Choice Option for ~~Students in Persistently Dangerous Schools and for Students who have been Victims of a Violent Felony~~ Policy

The Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001), requires that a State Education Agency establish a State Unsafe School Choice Option policy in order to receive funding under ESEA.

1.0 Definitions

In this regulation, the following terms shall have the meanings indicated below:

"**Crime**" shall have the same meaning as provided in 14 Del.C. §4112.

"**Enrolled Students**" unless the context indicates otherwise, means all students included in the Delaware Student Information System (DELSIS) report for the year of the data collection.

"**Expulsion**" means, for purposes of this regulation, the exclusion from the regular school setting for a period determined by the local district board or charter school board not to exceed one year. The process for readmission shall be determined by the local district board or charter school board.

"**Firearm**" means handgun, rifle, shotgun, or other type of firearm as that term is defined in the federal Gun Free Schools Zone Act at 18 U.S.C.A. §921.

"**Fiscal Year**" means the period of July 1 through June 30.

"**Gun Free Schools Violation**" means the prohibited bringing to school, or possession while in school of a firearm by a student.

"**Persistently Dangerous School**" means a school that has five or more unsafe incidents for every one hundred students enrolled for three consecutive fiscal years.

"**Safe School**" means a school in the same school district that is not currently identified by the Department of Education as a persistently dangerous school.

"**School**" means any public school including charter schools. School property shall have the same meaning as provided in 14 **Del.C.** §4112 (a)(9).

"**Suspension**" means, for the purpose of this regulation, the external (out of school) removal of a student from the general school population.

"**Terroristic Threatening**" shall have the same meaning as provided in 11 **Del.C.** §621.

"**Unsafe Incidents**" means any of the following:

The school suspended or expelled a student for a ~~g~~Gun ~~f~~Free ~~s~~Schools ~~v~~Violation; or

The school suspended or expelled a student for a crime committed on school property which is required to be reported under 14 **Del.C.** §4112; or

The school reported a crime committed by a non student on school property that is required to be reported under 14 **Del.C.** §4112; or

The school suspended or expelled a student for terroristic threatening as that term is defined in 11 **Del.C.** §621.

"**Violent Felony**" shall have the same meaning as provided in 11 **Del.C.** §4201(c). (A list of these crimes can be found in the Delaware Guidelines for the Development of the Unsafe School Choice Option.)

2.0 Identification of Persistently Dangerous Schools

2.1 ~~Beginning in July 2003,~~ The Department of Education shall identify each persistently dangerous school using the data reported to it pursuant to the provisions of 14 **Del.C.** §4112 and, 14 **DE Admin. Code** 601, and any expulsion and suspension data as required by the Department.

2.42 Notwithstanding any provision herein to the contrary, any year that a school fails to comply with the reporting mandates, as set forth in 2.01 above, to the Delaware Department of Education or to the appropriate police agency as set forth above, the Department of Education will consider the school as if it otherwise met the criteria to be classified as a persistently dangerous school for that year until such time as it may be determined, in the sole discretion of the Department, that the school has met such reporting requirements.

2.23 A school identified as persistently dangerous will retain that designation for the entire fiscal year.

3.0 Students Attending Schools Labeled as Persistently Dangerous

3.1 A student attending a persistently dangerous school shall be allowed to choice to a safe school in the same school district, including a charter school; provided such an option exists in the district, the student should be permitted to transfer to a school that is making adequate yearly progress and has not been identified as being in school improvement, corrective action or restructuring.

3.42 Each public school district having one or more persistently dangerous schools and any charter school identified as a persistently dangerous school shall develop a plan and time line that describes the process for notifying parents of the school's status and for relocating any student who exercises the right to choice to a safe school. The plan shall also describe the corrective actions that will be implemented. The plan shall be forwarded to the Department of Education no later than September 15th of the year that the school is identified.

4.0 Students Who are Victims of a Violent Felony

4.1 A student who is the victim of a ~~v~~Violent ~~f~~Felony while in or on the grounds of a school in which the student is enrolled shall be allowed to choice to a safe school in the same school district, including a charter school; the student should be permitted to transfer to a school that is making adequate yearly progress and has not been identified as being in school improvement, corrective action or restructuring.

4.42 All school districts and charter schools shall establish a plan that describes their policies and procedures for providing school choice options to a student who is the victim of a violent felony, including the process for notifying parents. ~~These plans shall be forwarded to the Department of Education by September 15, 2003.~~ Each school district and charter school shall have an electronic copy of the current policies and procedures

on file with the Department of Education.

4.3 Each school district and charter school shall provide an electronic copy of any new or revised policies and procedures within ninety (90) days of any revision(s) regardless of whether said revisions were made as a result of changes to Federal, state or local law, regulations, guidance or policies.

7 DE Reg. 67 (7/1/03)

OFFICE OF THE SECRETARY

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

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

745 Criminal Background Check for Public School Related Employment

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

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

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before June 6, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, DE 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? This regulation is related to criminal background checks for student teachers and does not directly affect the student achievement as measured against state achievement standards.

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

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

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

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

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

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

public school to reduce administrative requirements at the district or school level.

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

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

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

745 Criminal Background Check for Public School Related Employment and Student Teaching

1.0 Definitions

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

“Covered Personnel” means the following:

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

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

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

“Student Teaching Position” means a structured, supervised learning experience for a student in a teacher education program in which the student teacher practices the skills being learned in the teacher education program and gradually assumes increased responsibility for instruction, classroom management, and other related duties for a class of students in a local school district or charter school. These skills are practiced under the direct supervision of the certified teacher who has official responsibility for the class.

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

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

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

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- 2.1.1 After notification by a school district or charter school that he/she is a final candidate for a Covered Personnel position, the individual shall present him/herself to State Bureau of Identification personnel at one of the Delaware State Police Troops processing such criminal background checks or at an on site appointment arranged by the school district or charter school. School districts and charter schools at their option may require an applicant to submit a criminal background check prior to becoming a final candidate.
- 2.1.2 The candidate shall cooperate in all respects with this criminal background check process, or his/her application cannot be accepted. On completion of the procedure, the candidate will be given a Verification Form of Processing by the State Bureau of Identification, which may be shown to prospective placing districts and charter schools as proof that the candidate has completed the procedure. The candidate should retain the Verification Form of Processing for his/her records.
- 2.1.3 The candidate shall have ~~the~~ an original of the completed criminal background check sent to one school district or charter school. ~~An copy~~ original of all information sent to the school district or charter school shall be sent by the State Bureau of Identification to the candidate.
- 2.1.4 As a part of the application for public school related employment or as a part of the contract for services, the candidate shall sign a release form approved by the Department of Education. The release will allow the school district or charter school that was sent the original of the completed criminal background check to do the following:
- 2.1.4.1 Confirm the receipt of that original and disclose its contents to the district superintendent or charter school director or district or charter school chief personnel officer of other Delaware school districts or charter schools considering the person as a candidate.
- 2.1.4.2 Send the original criminal background check to the placing school district or charter school if the candidate is hired or placed under contract in another Delaware school district or charter school,
- 2.1.4.3 Send any subsequent criminal history information to the person's employing or contracting school district(s) or charter school(s).
- 2.1.5 Each final candidate shall have a determination of suitability made by the school district or charter school and forwarded to him/her. If a determination is made to deny a candidate employment based upon the criminal history, he/she shall have an opportunity to appeal as set forth in ~~5-0~~ 7.0.
- 2.1.6 Final candidates for employment or entering into a contract for services may have criminal background checks from other states accepted, if all of the following conditions are met;
- 2.1.6.1 The criminal background check shall have been conducted within the previous twelve (12) months and include a federal criminal background check;
- 2.1.6.2 The criminal background check shall be sent directly from the criminal background check agency in the other state to a Delaware school district or charter school;
- 2.1.6.3 A verification from the candidate's most recent employer(s) covering the previous twelve (12) months, stating that the employer knows of no offenses committed by the candidate during that time, shall be sent directly from the candidate's most recent employer(s) to the Delaware school district or charter school which was sent the original background check.
- 2.1.6.4 The out of state candidate shall sign a release to allow the school district or charter school receiving the out of state criminal background check and the reference to confirm their receipt, disclose their contents and forward them, subject to the same disclosure regulations that apply to Delaware criminal background checks.
- 2.1.7 Except as described herein, all costs associated with obtaining a criminal background check shall be paid for by the person seeking a Covered Personnel position. School districts or charter schools may use funds other than state funds to pay for criminal background check costs and may enter into consortia to pay such costs for persons covered by the law who work in more than one school district or charter school during the course of the school year.

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

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

Effective January 1, 2009, all persons in a Student Teaching Position in a public school district or charter school shall be subject to the same criminal background check requirements as those persons in Covered Positions as this term is defined in 1.0 of this regulation, unless explicitly excluded herein.

- 3.1 A candidate for a Student Teaching Position in a public school shall be subject to the following procedures:
- 3.1.1 After notification by the higher education institution that he/she is a candidate for a Student Teaching Position, the individual shall present him/herself to State Bureau of Identification personnel at one of the Delaware State Police Troops processing such criminal background checks or at an on site appointment arranged by the candidate or the higher education institution.
 - 3.1.2 The candidate shall cooperate in all respects with this criminal background check process, or his/her application cannot be accepted. On completion of the procedure, the candidate will be given a Verification Form of Processing by the State Bureau of Identification, which may be shown to prospective placing higher education institution as proof that the candidate has completed the procedure. The candidate should retain the Verification Form of Processing for his/her records.
 - 3.1.3 The candidate shall have an original of the completed criminal background check sent to the higher education institution. An original of all information sent to the higher education institution shall be sent by the State Bureau of Identification to the candidate.
 - 3.1.4 As a part of the application for assignment as a student teacher the candidate shall sign a release form approved by the Department of Education. The release will allow the higher education institution that was sent an original of the completed criminal background check to do the following:
 - 3.1.4.1 Confirm the receipt of that original and disclose its contents to the district superintendent or charter school director or district or charter school chief personnel officer of Delaware school districts or charter schools considering the person as a candidate for a Student Teaching Position.
 - 3.1.4.2 Send a copy of the criminal background check to the placing school district or charter school if the candidate is placed in a Student Teaching Position.
 - 3.1.4.3 Send any subsequent criminal history information to the school district or charter school where the candidate is engaged in student teaching activities.
 - 3.1.5 Each candidate for student teaching shall have the determination for suitability made by the candidate's higher education institution in conjunction with the school district or charter school where the student teacher is being placed in a student teaching position. The criteria for determining the suitability and subsequent placement of a candidate in a student teaching position may vary among the districts and charter schools. If a determination is made to deny a candidate placement into a student teaching position based upon the higher education institution's review of the criminal history, the higher education institution may provide for an appeal process. A candidate for student teaching who is denied a placement into student teaching by a district or charter school shall not be afforded the opportunity to appeal as set forth in 7.0.
 - 3.1.5.1 Notwithstanding the above, a school district or charter school may have criteria for student teaching placement that differs from the criteria for public school employment, therefore a person in a student teacher position may be denied subsequently employment. If a determination is made to deny a candidate employment based upon the criminal history, he/she shall have an opportunity to appeal as set forth in 7.0.
 - 3.1.6 Candidates for student teaching may have criminal background checks from other states accepted, if all of the following conditions are met:
 - 3.1.6.1 The criminal background check shall have been conducted within the previous twelve (12) months and include a federal criminal background check;
 - 3.1.6.2 The criminal background check shall be sent directly from the criminal background check agency in the other state to the higher education institution;

3.1.6.3 The out of state candidate shall sign a release to allow the higher education institution receiving the out of state criminal background check and the reference to confirm their receipt, disclose their contents and forward them, subject to the same disclosure regulations that apply to Delaware criminal background checks.

3.1.7 All costs associated with obtaining a criminal background check shall be paid for by the person seeking a student teaching position placement.

~~3-0~~ 4.0 Procedures for School Districts and Charter Schools for Criminal Background Checks on Candidates for Employment or for Persons Providing Services Under a Contract

~~3-1~~ 4.1 School districts and charter schools shall require all persons subject to the law and these regulations to complete a release as a part of the application or contract submissions process and, if they become a final candidate for a Covered Personnel position, to initiate the criminal background check process prior to entering into the Covered Personnel position.

~~3-2~~ 4.2 The school district or charter school sent the original of a completed criminal background check shall keep the information received in a confidential manner and shall:

~~3-2-1~~ 4.2.1 If requested by another Delaware school district superintendent or charter school director or school district or charter school chief personnel officer and assured that a signed release is on file in the requesting district or charter school, confirm the receipt of that original and disclose its contents to the superintendent or director or the chief personnel officer of the requesting Delaware school district or charter school considering the person for hire;

~~3-2-2~~ 4.2.2 If requested by another Delaware school district superintendent or charter school director or school district or charter school chief personnel officer and sent a copy of the signed release on file in the requesting district or charter school, send the original criminal background check to the requesting Delaware school district or charter school if the candidate is placed in a Covered Personnel position; and

~~3-2-3~~ 4.2.3 If sent any subsequent criminal history information on the person hired, placed under contract or assuming an extra duty position in another district or charter school, forward such information to the school district or charter school.

~~3-2-4~~ 4.2.4 School districts or charter schools may also share and forward the above information with the Delaware Department of Education under the same conditions applicable to school districts or charter schools. The provision shall apply only when the Department of Education is acting in its capacity as an employer, a party to a contract for services or taking on a person in an extra duty position.

~~3-3~~ 4.3 The school district or charter school, in accordance with 11 **Del.C.** §8571(b), (d) and (e), shall make a determination of suitability for employment on each person it requested to initiate the criminal background check process. That determination shall be communicated to the person in writing. If a determination is made to deny a candidate employment based upon the criminal history, he/she shall have an opportunity to appeal for reconsideration as set forth in ~~5-0~~ 7.0.

~~3-4~~ 4.4 When a candidate is finally placed in a Covered Personnel position the district or charter school shall do the following if the original of the completed criminal background check is not yet in its possession:

~~3-4-1~~ 4.4.1 Make a written request to the school district or charter school that received the original of the completed criminal background check to forward the original copy to the placing district or charter school for placement in the employee's or contractor's file. As a part of the request, the placing district or charter school shall forward a copy of the release signed by the candidate.

~~3-4-2~~ 4.4.2 Notify the State Bureau of Identification that the candidate has become Covered Personnel in the district or charter school and is no longer associated with the school district or charter school that received the original of the completed criminal background check.

~~3-5~~ 4.5 A school district or charter school may place the candidate in a Covered Personnel position provisionally in accordance with 11 **Del.C.** §8571(f); however, the school district or charter school shall require the candidate to comply with the provisions described in these regulations, including the requirement to initiate the criminal background check prior to being hired provisionally.

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

5.0 Procedures for Higher Education Institutions, Public School Districts and Charter Schools for Criminal Background Checks on Candidates for Student Teaching Positions

- 5.1 The higher education institution where candidates for Student Teaching Positions in Delaware's public school district and charter schools are enrolled shall require all candidates to complete a release as a part of the assignment process for a Student Teaching Position to initiate the criminal background check process prior to entering into a Student Teaching Position.
- 5.2 The higher education institution sent an original of a completed criminal background check shall keep the information received in a confidential manner and shall:
- 5.2.1 If requested by the Delaware school district superintendent or charter school director or school district or charter school chief personnel officer in which the student teacher will be placed, confirm the receipt of that original and disclose its contents to the superintendent or director or the chief personnel officer of the requesting Delaware school district or charter school considering the person for a Student Teaching Position;
- 5.2.2 If sent any subsequent criminal history information on the person placed in a Student Teaching Position, forward such information to the school district or charter school in which the student teacher is placed.
- 5.3 The higher education institution in conjunction with the placing public school district or charter school shall make a determination of suitability for assignment in a Student Teaching Position as outlined in 3.1 of this regulation. The prospective public school district or charter school shall make the final determination for the suitability for placement in a Student Teaching Position in its school(s). That determination shall be communicated to the person in writing.
- 5.4 When a candidate is finally assigned to a Student Teaching Position in a public school district or charter school, the higher education institution shall keep the original of the completed criminal background check unless:
- 5.4.1 A written request is made by the public school district or charter school, where the candidate is assigned in a Student Teaching Position, to have such original of the completed criminal background check forwarded and to be placed in the student teacher's file. As a part of the request, the higher education institution shall forward a copy of the release signed by the candidate; or
- 5.4.2 A written request is made by another public school district or charter school where the student teacher may be applying for or is a candidate in a Covered Position.
- 5.4.3 Notwithstanding 5.4.1 and 5.4.2, the higher education institution may dispose of the criminal background check in a secure manner no earlier than six (6) months after the student graduates from the higher education institution.

4.0 6.0 Length of Validity of Criminal Background Check and Exemption for "Continuous Employment"

- 4.1 6.1 A criminal background check obtained under these regulations shall only be valid for twelve (12) months. If a person is not Continuously Employed by a Delaware school district or charter school within that period, the district or charter school or higher education institution receiving the original criminal background check need not retain it beyond that time. If the person becomes Continuously Employed by a Delaware school district or charter school, the original criminal background check shall be kept on file for a minimum of five (5) years.
- 4.2 6.2 Each person who has been Continuously Employed in a public school district or charter school shall be exempt from the screening provisions of 11 Del.C. §8571.
- 4.3 6.3 A person who transfers between Delaware public school districts or charter schools and is placed in a Covered Personnel position shall comply with 11 Del.C. §8570, et seq., and these regulations before being hired or providing contracted services. A criminal background check performed within the previous twelve (12) months and held by another school district, charter school or out of state school, or higher education institution and supplied under 2.0 and ~~3.0~~ 4.0 or 3.0 through 5.0 of these regulations is one means of complying with 11 Del.C. §8570, et seq., and these regulations.

10 DE Reg. 684 (10/01/06)**5-0 7.0 Determination of Suitability and Appeal Process for Covered Personnel, excluding Student Teachers**

~~5-1~~ 7.1 A person covered by 11 **Del.C.** §8570, et seq., and these regulations, shall have the opportunity to respond to a school district or charter school regarding any criminal history information obtained prior to a determination of suitability for employment being made. See 11 **Del.C.** §8571(d). Such a response shall be made within ten (10) working days of the person's receipt of the criminal background check information from the State Bureau of Identification. The determination of suitability for employment shall be made by the school district or charter school pursuant to the factors listed in 11 **Del.C.** §8571(d).

~~5-2~~ 7.2 The school district or charter school shall communicate the results of the determination of suitability to the person, in writing, within five (5) working days of the receipt of the person's response to the criminal history information. If a determination is made to deny a person placement in a Covered Personnel position, based upon the criminal history, the person shall have an opportunity to appeal for reconsideration as set forth in ~~5-3-4~~ 7.3.1 through ~~5-3-3~~ 7.3.3.

~~5-3~~ 7.3 Appeal for Reconsideration

~~5-3-4~~ 7.3.1 An appeal for reconsideration shall be initiated by a person notified that he/she is being denied or being terminated from placement in a Covered Personnel position, pursuant to 11 **Del.C.** §8571, by submitting a letter of appeal to the district superintendent or charter school director within ten (10) working days of the receipt of written notice.

~~5-3-2~~ 7.3.2 The appeal shall be reviewed by the district superintendent or charter school director and the appellant shall have the right to be heard by the district superintendent or charter school director within ten (10) working days of the receipt of the letter of appeal.

~~5-3-2-4~~ 7.3.2.1 Local school districts and charter schools shall develop procedures for appeals for reconsideration. The process shall be as informal and accessible as possible, but shall allow for impartial and complete review.

~~5-3-3~~ 7.3.3 A written decision shall be rendered by the district superintendent or charter school director within ten (10) working days of the hearing. A decision made by the district superintendent or charter school director under this appeal procedure is final, unless the district or charter school has made specific provisions for appeal to another entity within the district or charter school. The decision shall not be appealable to the State Board of Education or to the Department of Education.

10 DE Reg. 684 (10/01/06)**8.0 Determination of Suitability for Student Teacher**

8.1 The determination of suitability for assignment as a student teacher shall be made by the placing higher education institution in conjunction with the placing public school district or charter school as prescribed in 3.0 of this regulation. Such decisions shall be communicated to the student teacher candidate in writing.

6-0 9.0 Confidentiality

~~6-4~~ 9.1 All information and records pertaining to criminal background checks, pursuant to 11 **Del.C.** §8570, et seq., and these regulations, shall be maintained in a confidential manner including, but not limited to, the following:

~~6-4-4~~ 9.1.1 Access to criminal background check records, and letters of reference accompanying out of state criminal background checks, and determination of suitability shall be limited to the district superintendent or charter school director and the district or charter school chief personnel office or higher education institution officer responsible for student teacher assignments and one person designated to assist in the processing of criminal background checks, who will receive training in confidentiality, be required to sign an agreement to keep such information confidential and employ proper precautions to insure that interoffice communications remain confidential.

~~6-4-2~~ 9.1.2 All such records shall be kept in locked, fireproof cabinets;

~~6.4.3~~ 9.1.3 No information from such records shall be released without the signed approval of and the appropriate signed release of the candidate or person placed in a Covered Personnel position.

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

~~7.0~~ 10.0 Penalties

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

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

~~8.0~~ 11.0 Subsequent Criminal History Information

~~8.4~~ 11.1 Subsequent criminal history on a person in a Covered Personnel position may be sent by the State Bureau of Identification to the district superintendent or charter school director or district or charter school chief personnel office and shall be used by district or charter school in making a determination about the person's continued suitability for placement in a public school environment.

~~8.2~~ 11.2 If subsequent criminal history information is mistakenly directed to a district or charter school other than the current district or charter school of Covered Personnel, the information shall be forwarded immediately to the employing district or charter school by the receiving district superintendent, charter school director or district or charter school chief personnel officer.

~~8.3~~ 11.3 If a person is known to be in a Covered Personnel position in more than one district or charter school, the superintendent, director or chief personnel officer of the district or charter school receiving the subsequent criminal history information on that person shall share the information received immediately with the district superintendent, charter school director or district or charter school chief personnel officer of the other school district or charter school.

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

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

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 915

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

915 James H. Groves High School

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 915 James H. Groves High School by adding the requirement in 4.4.1 that students enrolled in the James H. Groves High School must successfully complete and receive credit for a minimum of one Groves course in order to receive a State of Delaware diploma.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before Friday, June 6, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation will help improve student achievement as measured against state achievement standards by providing opportunities for older students to complete their high school education.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure that all students receive an equitable education because the Groves students will have to meet the same standards as students in regular high school programs, except for physical education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses academic requirements not health and safety issues.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses academic requirements not legal rights issues.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no additional cost to the State and to the local school board.

915 James H. Groves High School**(Break in Continuity of Sections)****4.0 Attendance, Grading and Graduation Criteria**

- 4.1 A graduation plan shall be developed for each student enrolled in the James H. Groves High School by the Groves Administrator or his or her designee.
- 4.2 Students enrolled in James H. Groves High School courses which have an attendance requirement, shall attend a minimum of 85% of the course hours in order to receive a unit of credit. No provision is made for excused absences.
- 4.3 The grading system for the James H. Groves High School shall be based on a 100 point numeric scale. An alpha conversion chart to determine level of performance shall be:
 - 4.3.1 Students receiving a grade of "A" (93 to 100) demonstrate superior understanding of the content and have demonstrated knowledge and competence at the highest level.
 - 4.3.2 Students receiving a grade of "B" (85 to 92) demonstrate better than average understanding of the content and have demonstrated above average knowledge and competence.
 - 4.3.3 Students receiving a grade of "C" (75 to 84) demonstrate satisfactory understanding of the content and have demonstrated knowledge and competence.
 - 4.3.4 No credit is awarded for grades less than 75.

4.4 Groves High School students shall be eligible to receive a State of Delaware diploma when they have met the State graduation requirements in effect at the time of their graduation. (See 14 **DE Admin. Code** 505.2, 3.1 or 5.0). The single exception is physical education which is waived in lieu of another credit.

4.4.1 All course content shall be based on the State Content Standards. Notwithstanding the above, students enrolled in the James H. Groves High School must successfully complete and receive credit for a minimum of one Groves course in order to receive a State of Delaware diploma.

10 DE Reg. 988 (12/01/06)

5.0 Fees

All fees for the James H. Groves High School shall be set by the Delaware Secretary of Education.

10 DE Reg. 988 (12/01/06)

6.0 Students Rights and Responsibilities

Students enrolled in each Center shall have such rights and be subject to such responsibilities as set forth in the *James H. Groves Student Rights and Responsibilities* document, and as such may be amended from time to time by the Department.

10 DE Reg. 988 (12/01/06)

7.0 Establishing a Center

7.1 A school district, agency or organization may seek to establish a James H. Groves Center for service delivery by following the process outlined below. No district, agency or organization shall have more than one Groves Center.

7.1.1 An affiliation shall be established with an existing Groves Center as a satellite site or obtain approval from the Groves Leadership Team to establish a pilot Center.

7.1.2 After a two year affiliation as a satellite Center of an existing Groves Center or two year success as a pilot Center, the Department may grant full Center status to the satellite site or the pilot Center.

7.1.2.1 A formal request for full Center status shall be made to the Department at the end of year one as a satellite or pilot Center. The request shall include:

7.1.2.1.1 A needs assessment documenting program need for services in the district's adult community, potential population to be served, impact on existing ~~centers~~ Centers, and rationale for requesting a Groves Center;

7.1.2.1.2 A description of the district, agency or organization's experience and success in adult program delivery;

7.1.2.1.3 An explanation of the commitment to the Groves adult education program and assurances;

7.1.2.1.4 Budget requirements including in kind contributions;

7.1.2.1.5 Submission of an annual performance report; and

7.1.2.1.6 Submission of the State Evaluation Report completed in the tenth month of the first year.

7.1.3 The district agency or organization representatives shall meet with the Groves Leadership Team to review the Center request.

7.1.4 The Groves Leadership Team shall make a recommendation for Center status through the Department's Director for Adult Education to the Secretary of Education.

7.1.5 Approval or denial shall be communicated to the district, agency or organization by the Department within 60 days of the Center status application.

7.1.6 If approved, the Department shall apply for Center funding in the upcoming State budget cycle. If State funding is allocated for the additional Center, full Center status shall be given to the program provided the annual performance report and State Evaluation Report are satisfactory.

- 7.1.7 Appeal Process: In the event Center status is denied by the Department a hearing may be requested by the district, agency or organization. The hearing shall be conducted by the Secretary of Education or his or her designee.

10 DE Reg. 988 (12/01/06)

(Break in Continuity of Sections)

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

[915 James H. Groves High School](#)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

PUBLIC NOTICE

DRA 2005 - Third Party Data Exchange

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding the DRA 2005 Third Party Data Exchange Mandate.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by May 31, 2008.

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

SUMMARY OF PROPOSED AMENDMENT

The proposed amends the Title XIX Medicaid State Plan to document compliance with Section 6035 of the Deficit Reduction Act of 2005 (DRA). Section 6035 requires States to have laws which mandate that third parties comply with all of the provisions of section 1902(a)(25)(I) of the Social Security Act (the Act).

Statutory Authority

- Deficit Reduction Act of 2005 (Public Law 109-171), enacted on February 8, 2006, Section 6035, *Enhancing Third Party Identification and Payment*
- House Bill 101, 144th General Assembly, *An Act to Amend Title 18 of the Delaware Code Relating to the Insurance Code*

Background

Third Party Liability (TPL) refers to the legal obligation of third parties, i.e., certain individuals, entities, or programs, to pay all or part of the expenditures for medical assistance furnished under a State plan. The Medicaid program by law is intended to be the payer of last resort; that is, all other available third party resources must meet their legal obligation to pay claims before the Medicaid program pays for the care of an individual eligible for Medicaid. Examples of third parties which may be liable to pay for services include private health insurance, Medicare, employment-related health insurance, court-ordered health insurance derived by noncustodial parents, court judgments or settlements from a liability insurer, workers' compensation, first party probate-estate recoveries,

long-term care insurance, and other State and Federal programs (unless specifically excluded by Federal statute).

Individuals eligible for Medicaid assign their rights to third party payments to the State Medicaid agency. States are required to take all reasonable measures to ascertain the legal liability of third parties to pay for care and services available under the State plan. Once States have determined that a potentially liable third party exists, the State is required to either "cost avoid" or "pay and chase" claims. Cost avoidance is where the provider of services bills and collects from liable third parties before sending the claim to Medicaid. Pay and chase is utilized when the State Medicaid agency pays the medical bills and then attempts to recover from liable third parties.

Section **6035(b)** of the Deficit Reduction Act of 2005 (DRA) created a new subsection (I) in section 1902(a)(25) of the Act. Under that new subsection, States are required to have laws that mandate health insurers or other parties that are legally responsible for payment of a claim for a health care item or service to provide the State with information that enables State Medicaid agencies to determine the existence of third party coverage for Medicaid recipients. States must amend their State plans to include an attestation that the required State law is in place.

The provisions of section 6035 of the DRA were effective January 1, 2006, except where States must pass new laws to comply with the DRA. States that already have the requisite laws should submit an amendment to their State plan as soon as practicable. States that do not currently have the required laws in place should enact the required legislation during their next legislative session and submit a State Plan amendment as soon as the legislation has been enacted.

Summary of Proposed Amendment

House Bill (HB) 101 was signed into law by the Governor on February 4, 2008. HB 101 implements the requirement in the DRA mandate that states have laws in place to require that, as a condition of conducting business in the State, all health insurers provide eligibility and coverage information to the State Medicaid Agency, when the State requests such information. This information exchange will guarantee that third party insurance coverage is exhausted before Medicaid pays for a service for Medicaid recipients who also have third party coverage.

The Division of Medicaid and Medical Assistance (DMMA) will amend the Title XIX Medicaid State Plan to provide assurances, satisfactory to the Secretary, that it has laws in effect requiring health insurers (including parties that are legally responsible for payment of a claim for a health care item or service), as a condition of doing business in the state:

- (1) To provide, upon request of the state, eligibility and claims payment data with respect to individuals who are eligible for or receiving Medicaid;
- (2) To accept an individual's or other entity's assignment of rights (i.e., rights to payment from the parties) to the state;
- (3) To respond to any inquiry from the state regarding a claim for payment for any health care item or service submitted not later than three years after the date such item or service was provided; and,
- (4) To agree not to deny a claim submitted by the state solely on the basis of the date of submission of the claim.

DMMA will also, amend the state plan regarding the frequency of data exchange for health insurance carriers from "biannually" to "No less than once every two (2) months, unless written permission is given in advance by the agency."

DMMA PROPOSED REGULATIONS #08-12

REVISIONS:

69

Revision: HCFA-PM-94-1 (MB)
FEBRUARY 1994

State/Territory: DELAWARE

Citation-

42 CFR 433.137

4.22 Third Party Liability

- (a) The Medicaid agency meets all requirements of:

1902(a)(25)(H) and (I)
of the Act.

- (1) 42 CFR 433.138 and 433.139.
- (2) 42 CFR 433.145 through 433.148.
- (3) 42 CFR 433.151 through 433.154.
- (4) Sections 1902(a)(25)(H) and (I).

Section 6035 of the
DRA of 2005

- (5) Section 6035 of the Deficit Reduction Act of 2005

42 CFR 433.138(f)

(b) Attachment 4.22-A

- (1) Specifies the frequency with which data exchanges required in §433.138(d)(1), (d)(3) and (d)(4) and the diagnosis and trauma code edits required in §433.138(e) are conducted;

42 CFR 433.138(g)(1)(ii)
and (2)(ii)

- (2) Describes the methods and the agency uses for meeting the follow-up requirements contained in §433.138(g)(1)(i) and (g)(2)(i);

42 CFR 433.138(g)(3)(i)
and (iii)

- (3) Describes the methods the agency uses for following up on information obtained through the State motor vehicle accident report file data exchange required under §433.138(d)(4)(ii) and specifies the time frames for incorporation into the eligibility case file and into its third party data base and third party recovery unit of all information obtained through the follow-up that identifies legally liable third party resources; and

§433.138(g)(4)(i)
through (iii)

- (4) Describes the methods the agency uses for following up on paid claims under §433.138(e) (methods include a procedure for periodically identifying those trauma codes that yield the highest third party collections and giving priority to following up on those codes) and specifies the time frames for incorporation into the eligibility case file and into its third party data base and third party recovery unit of all information obtained through the follow-up that identified legally liable third party resources.

(Break in Continuity of Sections)

ATTACHMENT 4.22-A

Page 1

OMB NO.:0938-0193

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

**Requirements for Third Party Liability (TPL) –
Identifying Liable Resources**

1. ~~Frequency of TPL Matches~~ Data Exchange Frequency (42 CFR 433.138(f)):
 - a. SSA wage – quarterly

PROPOSED REGULATIONS

- b. IV-A agency – in Delaware is the same as the Title XIX agency and updates are available, daily
 - c. State Workmen's Compensation files – weekly
 - d. Motor vehicle – not computerized – no match available
 - e. SWICA – quarterly
 - f. Health Insurance Carriers – ~~biannually~~ no less than once every two (2) months, unless written permission is given in advance by the agency
2. Follow-up requirements of 42 CFR 433.138 (g)(1) (i) and (g) (2) (i):

As soon as any matches on employers are received by the Delaware Client Information System (DCIS), the system will automatically generate a letter to verify health insurance coverage. This action will be taken within 30 days of the receipt of the match data.

- 3. State motor vehicle match is unavailable because of the information needed for TPL is not carried in the State's motor vehicle automated system. (42 CFR 433.138(g)(3))
- 4. Trauma code reports are produced weekly by the fiscal agent. The TPL unit sends an accident inquiry form to the client/provider within two weeks regarding potential TPL. Positive responses result in a request for claims history and subsequent bills generated to applicable insurance company or attorney. Any information on ongoing legally liable third party resources is immediately entered into the third party database, which is part of the Medicaid Management Information System (MMIS). (42 CFR 433.138(g)(4))

(Break in Continuity of Sections)

NEW:

SUPPLEMENT TO ATTACHMENT 4.22

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

STATE LAWS REQUIRING THIRD PARTIES TO PROVIDE COVERAGE ELIGIBILITY AND CLAIMS DATA

1902(A)(25)(I)

The State has in effect laws that require third parties to comply with the provisions, including those which require third parties to provide the State with coverage, eligibility and claims data, of 1902(A)(25)(I) of the Social Security Act.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

School-Based Health Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan related to School-Based Health Services.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by May 31, 2008.

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

SUMMARY OF PROPOSED AMENDMENT

The proposed amends the Title XIX Medicaid State Plan as it relates to School-Based Health Services.

Statutory Authority

- Section 504 of the Rehabilitation Act of 1973;
- 45 CFR Part 84, *Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance*;
- Individuals with Disabilities Education Act (IDEA) - P.L. 94-142;
- Section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 - P.L. 100-360;
- 42CFR§440.40, *Early and Periodic Screening and Diagnosis and Treatment*;
- 42CFR§431.53, *Assurance of Transportation*; and,
- 42CFR§433.20, *Rates of FFP for Administration: Reimbursement for School-Based Administrative Expenditures (NEW)*

Background

School-Based Health Services

The Medicaid program can pay for certain medically necessary services which are specified in Medicaid law when provided to individuals eligible under the state plan for medical assistance. The Individuals with Disabilities Education Act (IDEA) formerly called the Education of the Handicapped Act, authorized Federal funding to states for programs that impact Medicaid payment for services provided in schools.

Section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (P.L. 100-360) amended section 1903(c) of the Act to permit Medicaid payment for medical services provided to children under IDEA through a child's Individualized Education Plan (IEP) or Individualized Family Service Plan (IFSP). This amendment was enacted to ensure that Medicaid would cover the health-related services under IDEA.

Under Part B of IDEA, school districts must prepare an IEP for each child which specifies all special education and "related services" needed by the child. The Medicaid program can pay for some of the "health related services" required by Part B of IDEA in an IEP, if they are among the services specified in Medicaid law. In addition, the services must be included in the state's Medicaid plan or available through the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) Program. Examples of such services include physical therapy, speech pathology services, occupational therapy, psychological services and medical screening and assessment services. In summary, the Centers for Medicare and Medicaid Services' (CMS) policy is that health-related services included in a child's IEP or IFSP can be covered under Medicaid if all relevant statutory and regulatory requirements are met. A state may cover services often included in an IEP or IFSP as long as: 1) the services are medically necessary and coverable under a Medicaid coverage category (speech therapy, physical therapy, etc.); 2) all other Federal and state regulations are followed, including those for provider qualifications, comparability of services and the amount, duration and scope provisions; and, 3) the services are included in the state's plan or available under the EPSDT Program.

School Administration Expenditures and Costs Related to Transportation of School-Age Children Between Home and School.

On December 28, 2007, CMS published a final rule, at 72 Federal Register 73635, which would eliminate Federal Medicaid payment for school administration expenditures and costs related to transportation of school-aged children between home and school. The Secretary has found that these activities are not necessary for the proper and efficient administration of the Medicaid State plan and are not within the definition of the optional transportation benefit.

Based on these determinations, under this final rule, Federal Medicaid payments will no longer be

available for administrative activities performed by school employees or contractors, or anyone under the control of a public or private educational institution, and for transportation from home to school.

This regulation is effective on February 26, 2008. Under legislation passed by Congress, there is a six-month delay in implementing these changes so school budgets in the 2007-2008 school year will not be affected. However, Congress is making new efforts to delay CMS's rules to allow time for further review of the financial impact the rules will have on states, local government agencies and providers. The current moratorium that precludes CMS from implementing these rules will expire on June 30, 2008.

Summary of Proposed Amendment

CMS reviewed both the School-Based Health Services program and reimbursement methodology included in the Title XIX Medicaid State Plan. Pending that review, CMS only approved the current methodology until July 1, 2008. The Division of Medicaid and Medical Assistance (DMMA) must amend the State Plan at Attachment 3.1-A to clarify and update the description of covered categories of services and revise the reimbursement methodology for these services at Attachment 4.19-B.

Therefore, effective July 1, 2008, reimbursement for covered services provided or purchased by the Department of Education (DOE) or Local Education Agencies (LEA) is determined on a fee-for-service basis. Rates include allowable direct costs (salaries, benefits, purchase of service and other costs directly related to the delivery of the medical services) and indirect costs, allocated as part of an approved Cost Allocation Plan per OMB Circular A-87. Rates must be consistent with efficiency, economy and quality of care. Also, upon implementation by CMS, Federal Financial Participation (FFP) will not be available for the cost of transportation of school-age children between home and school pursuant to 42 CFR §§431.53(b) and 433.20.

The provisions of this amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

DMMA PROPOSED REGULATIONS #08-17

REVISIONS:

ATTACHMENT 3.1-A
Page 2 Addendum

State of Delaware

AMOUNT, DURATION, AND SCOPE OF MEDICAL AND REMDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

LIMITATIONS:

- 4.b. EPSDT services are limited only by medical necessity criteria and are not arbitrarily limited in amount, duration, or scope. Limitations on organ transplants are identified in Attachment 3.1-A, Page 1 Addendum.

~~Non-State Plan~~ EPSDT services include:

- 1) Prescribed Pediatric Extended Care (PPEC) ~~services~~ facilities that are licensed as such by the State's Office of Health Facilities, Licensing and Certification and that are provided as an alternative to more expensive institutionalization or as an alternative to community/home care for children who are determined to be in medical need of the service. These services include nursing, nutrition, developmental assessment, speech therapy, physical therapy and occupational therapy provided in an outpatient setting, up to twelve hours per day, five days a week.

PPEC services ~~will~~ must be prior authorized ~~on an individual basis~~, using policy established by the Delaware Medicaid program.

State of Delaware

AMOUNT, DURATION, AND SCOPE OF MEDICAL
AND REMDIAL CARE AND SERVICES PROVIDED TO THE
CATEGORICALLY NEEDY

4.b. (continued)

2) School-Based Health Services – Medicaid covers the following health and mental health services provided in a school setting or purchased by the Delaware Department of Education (DOE) or Local Education Agency (LEA) when they are medically necessary and furnished by providers meeting specified criteria:

- (a) EPSDT screens, including vision, dental, immunization, orthopedic and developmental screening (per 42 CFR §440.40(b) and 441 Subpart B)
- (b) Nursing Services, including provision of one-on-one individualized Health Education (per 42 CFR §440.60 and §440.170)
- (c) Assessment and/or Treatment as follows:
Physical Therapy, Occupational Therapy, Speech Therapy, Language, and Hearing Services, Vision, Dental, Immunizations, Developmental/Orthopedic, Health Education, Psychological (per 42 CFR §440.110)
- (d) Medically necessary behavioral health services designed to correct or ameliorate a mental health or developmental disability and restore a recipient to his or her best possible level of functioning as determined via an EPSDT screen and documented in an Individualized Education Plan (IEP)/Individualized Family Service Plan (IFSP) (per 42 CFR §§440.130 and 440.160), including:
 - Mental health assessment
 - Psychological and developmental testing
 - Counseling and therapy
 - Facility-based mental health or developmental disability treatment
 - Inpatient psychiatric services for individuals under age 21

If the regulatory changes at 42 CFR §§431.53(b) and 433.20 regarding the elimination of reimbursement for the cost of transportation of school-age children between home and school either as a reimbursable service or administrative activity are implemented, Delaware will cease claiming for those costs as of the effective date.

With the exception of EPSDT screens, all services provided under this section are diagnostic or active treatments designed to reasonably improve the student's physical or mental condition and are provided to the student whose condition or functioning can be expected to reasonably improve with interventions.

Such services shall be medically necessary and shall be prescribed in a written treatment plan signed by a licensed practitioner within the scope of practice as defined under state law or regulations and documented in the student's IEP/IFSP. Services must be performed by qualified professionals operating within the scope of their practice under State law and regulations.

State of Delaware

AMOUNT, DURATION, AND SCOPE OF MEDICAL
AND REMDIAL CARE AND SERVICES PROVIDED TO THE

CATEGORICALLY NEEDY

Services must be provided by qualified providers who meet the requirements of the regulations cited above in this section and other applicable state law and regulations. Unlicensed professionals may operate under the direction of a licensed practitioner who acts as supervisor and is responsible for the work, who plans the work and methods, who regularly reviews the work performed and who is accountable for the results. Supervision must adhere to the requirements of the practitioner's applicable licensing board. The licensed practitioner must co-sign documentation for all services provided by practitioners under his or her direction.

Providers must maintain all records necessary to fully document the nature, quality, amount and medical necessity of services furnished to Medicaid recipients.

- 3) Mental Health and Drug/Alcohol services approved and monitored through the Department of Services for Children, Youth and their Families. These include:
 - (a) Mental Health Outpatient Services
 - (b) Mental Health Case Management
 - (c) Professional Medical Services (i.e., neurologists, clinical psychologists, psychiatric social workers and other licensed medical providers)
 - (d) Psychiatric facility services
 - (e) Drug/Alcohol Rehabilitation Services
- 4) Assistive Technology
- 5) Orthotics and Prosthetics
- 6) Chiropractic Services
- 7) Any other medical or remedial care provided by licensed medical providers
- 8) Any other services as required by §6403 of OBRA '89 as it amended §1902(a)(43), §1905(a)(4)(B) and added a new §1905(r) to the Act

(Break in Continuity of Sections)

ATTACHMENT 4.19-B
Page 19a

5. Other EPSDT Services

Reimbursement for services not otherwise covered under the State Plan is determined by the Medicaid agency through review of a rate setting committee. Non-institutional services are paid on a fee-for-service basis. Institutional services are per diem rates based on reasonable costs. These services include:

- (a) Prescribed Pediatric Extended Care - see ATT. 4.19-B, Page 7
- (b) Inpatient and Partial Hospital Psychiatric Services – reimbursed on a per diem basis
- (c) Outpatient Psychiatric Facility Services - fee-for-service
- (d) School-Based Health Services - ~~fee for service; this reimbursement methodology will expire effective July 1, 2008~~ reimbursement for covered services provided or purchased by the

Department of Education (DOE) or Local Education Agencies (LEA) is determined on a fee-for-service basis. Rates include allowable direct costs (salaries, benefits, purchase of service and other costs directly related to the delivery of the medical services) and indirect costs, allocated as part of an approved Cost Allocation Plan per OMB Circular A-87. Rates must be consistent with efficiency, economy and quality of care. Upon implementation by CMS, FFP will not be available for the cost of transportation of school-age children between home and school pursuant to 42 CFR §§431.53(b) and 433.20

- (e) Mental Health and Drug/Alcohol Rehabilitation Services:
- Institutional - per diem
 - Non-Institutional - fee-for-service or, if managed by the Department of Services for Children, Youth and Their Families' Division of Child Mental Health (see ATTACHMENT 4.19-B, Page 19 Addendum).

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 and 2741; 21 Delaware Code, Section 2118 (18 **Del.C.** §§314 & 2741; 21 **Del.C.** §§2118)
18 **DE Admin. Code** 606

PUBLIC NOTICE

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 606 relating to the standardization of insurance identification cards and notification to the Division of Motor Vehicles of the termination of automobile insurance. The docket number for this proposed amendment is 730.

The purpose of the proposed amendment to regulation is to eliminate the requirement that insurance identification cards be issued for periods of less than six months when the payment period is for a period of less than six months and to delete the requirement that fleet vehicles carry vehicle-specific identification cards. The text of the proposed amendment is reproduced in the May 2008 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday June 2, 2008, and should be addressed to Mitchell G. Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

606 Proof of Automobile Insurance [Formerly Regulation 31]

1.0 Authority

- 1.1 This regulation is adopted under the authority of 18 **Del.C.** §§314 and 2741; 21 **Del.C.** §2118 as amended by S. B. 212, and adopted in cooperation with the Division of Motor Vehicles. This regulation is promulgated under the provisions of the Administrative Procedures Act, 29 **Del.C.**, Ch.101.

11 DE Reg. 800 (12/01/07)

2.0 Purpose

- 2.1 The purpose of this regulation is to

- 2.1.1 establish requirements to govern the form of the standardized insurance identification (ID) card for each insured vehicle pursuant to Delaware law;
- 2.1.2 establish the procedure by which automobile insurers shall notify the Division of Motor Vehicles when automobile insurance coverage is terminated or when insurers pay claims for uninsured motorists; and
- 2.1.3 provide procedures for the submission of insurance company data to the Division of Motor Vehicles for administrative efficiency.

11 DE Reg. 800 (12/01/07)

3.0 Definitions

"**Commercial auto coverage**", "**commercial vehicle coverage**" or "**commercial lines policy**" is any coverage provided to an insured, regardless of the number of vehicles or entities covered, under a commercial auto, garage, or truckers coverage form and/or rated from either a commercial manual or rating rule as filed and approved by the Delaware Department of Insurance. Vehicle type and ownership are not necessarily the primary factors in either underwriting the coverage or rating the coverage. The rating may be subject to individual risk characteristics including but not limited to experience rating, schedule rating, loss rating or deductible rating.

"**Fleet**" shall mean five or more vehicles under single ownership or lease used for commercial purposes.

"**Personal lines auto coverage**," "personal lines vehicle coverage" or "personal lines policy" shall apply to any insured or insurance policy that does not fall within commercial lines.

To the extent necessary, the definitions contained in 21 **Del.C.** § 101 shall apply to all terms not otherwise defined herein.

11 DE Reg. 800 (12/01/07)

4.0 Insurance Identification Card

- 4.1 All companies licensed to write automobile insurance in the State of Delaware must furnish Insurance Identification Cards. At least one card must be issued for each vehicle for which liability insurance is in effect. Delaware policyholders who are members of the military and are stationed outside of Delaware may be issued a card of that state provided their coverage meets Delaware requirements.
- 4.2 Insurers may use uniform ACORD format or may prepare the ACORD format as described below:
 - 4.2.1 The size, weight, and color of the card shall be as below:
 - 4.2.1.1 Size: Not smaller than 3-1/2" x 2-1/4" or larger than 3" x 5"
 - 4.2.1.2 Weight: Optional
 - 4.2.1.3 Color: White
 - 4.2.1.4 Each card shall be printed on paper stock which contains a clearly visible watermark, screened color, reflective ink, or laser-lock which prevents unauthorized or fraudulent reproduction. The watermark must be a company logo, or a generic insurance-specific logo which clearly identifies the watermark as issued by an insurance company. The ACORD "ghost script" anti-fraud paper with the ACORD watermark shall satisfy the watermark requirement.

5.0 Insurance Identification Cards for Personal Lines Coverage

- 5.1 The Insurance Identification Card for privately owned or leased motor vehicles and/or for vehicles that are used non-commercially but covered under commercial lines policies shall contain the following information:
 - ~~4.2.2~~ ~~The insurance card shall contain the following information:~~
 - ~~4.2.2.1~~ 5.1.1 The statement "The ID card must be carried in the vehicle at all times" shall be shown on the face of the card if space is available; otherwise this statement may appear on the back of the card.
 - ~~4.2.2.2~~ 5.1.2 Card shall be identified as "Identification Card."

- ~~4.2.2.3~~ 5.1.3 The insurance company name shall be printed on the face of the card. If the insurer is part of a group, the group name may be printed on the card so long as the card clearly identifies the name of the insurer issuing the insurance.
- ~~4.2.2.4~~ 5.1.4 Insurer's five digit National Association of Insurance Commissioners ("NAIC") company identification number.
- ~~4.2.2.5~~ 5.1.5 Named Insured. This name must be the named insured as carried in the insurer's records.
- ~~4.2.2.6~~ 5.1.6 The insurer may, at its option, include the address of the insured.
- ~~4.2.2.7~~ 5.1.7 Policy Number.
- ~~4.2.2.8~~ 5.1.8 Effective date of the time period the policy shall be in effect.
- ~~4.2.2.9~~ 5.1.9 Expiration Date. The insurance identification card shall be valid for no more than the term stated in the policy but not to exceed 6 months. Notwithstanding the foregoing limitation, an insurance identification card may be issued for a period of 12 months if the premium has been written on an annual basis and the premium is being paid in installments of no more than for a 12 month period. ~~Any insured who has not been continuously insured by a licensed insurance company or a qualified self insured during the six months preceding the effective date of an ID card under this regulation shall be issued an ID card with an expiration date no longer than the date for which premium has been paid or for six months whichever is shorter; provided, however, that any insured owning five or more vehicles may be issued an ID card which is effective for a six month period.~~ The expiration date shall be stated in such manner that the exact date of expiration can be clearly identified. For purposes of this section, a policy renewed in the same company with a lapse in coverage of 30 days or less shall be considered to have been continuously insured by a licensed insurance company during the preceding six months.
- ~~4.2.2.10~~ 5.1.10 Vehicle(s) Insured. Information shall be completed by indicating any of the following, depending on the type of policy or vehicle involved:
- ~~4.2.2.10.1~~ 5.1.10.1 Year, Make, and Vehicle Identification Number ("VIN") of the vehicle(s) insured. Model of the vehicle may be shown as the Make. The Year, and Make of the vehicle may be abbreviated, but the complete VIN must be shown.
- ~~4.2.2.11~~ 5.1.11 Items which are not obvious as to meaning shall be appropriately captioned.
- ~~4.2.3~~ 5.2 The order of the information to be contained on the ID card may be rearranged at the option of the company, provided there is no drastic change and the rearrangement is necessary to accommodate a fixed printout system already established by a company.
- ~~4.2.4~~ 5.3 At least one ID card shall be issued for each vehicle insured under the policy for which liability insurance is in effect.
- ~~4.2.5~~ 5.4 If a vehicle is specifically described on the ID card, the company must issue a new card upon either a change of vehicle or the acquisition of any additional one. If a different policy number is assigned upon renewal, a new ID Card must also be issued. The expiration date requirement of section ~~4.2.2.9~~ 5.1.9 above shall apply to an insured's replacement or additional insured vehicle in a manner similar to the previously owned or insured vehicle. The owner of the vehicle shall so inform the insurer of the additional or replacement vehicle. Only after the insurer is so informed, shall the insurer be obligated to issue an ID card to the insured for the additional or replacement vehicle.
- ~~4.2.6~~ 5.5 A letter or notification should accompany every ID card advising the insured that the card is required to register the vehicle, to obtain new tags, and to serve as evidence of insurance for the law enforcement authorities, e.g., in cases involving accidents, moving traffic violations or road spot checks. This notification may be printed on the back of the ID card. Delaware law requires the ID card to be in the vehicle when it is being operated.
- ~~4.2.7~~ 5.6 The Division of Motor Vehicles will accept for registration purposes a copy of the application for insurance or the assignment notice or binder pending issuance of insurance or the assignment notice pending issuance of the ID card. However, such evidence of insurance will be accepted for registration purposes only if it has been dated prior to the date and no later than the day preceding the date of application for registration. For Assigned Risk coverage, insurers shall instruct their agents to place an

insurer identification code of "99999" on applications to indicate placement with the Assigned Risk Plan.

~~4.2.8~~ 5.7 Insurance ID cards shall be issued in conformance with section ~~4.2.2~~ 5.1 above. The Insurance Commissioner may exercise his statutory authority to investigate and examine the compliance of insurance carriers with this regulation. The Insurance Commissioner may, after notice and hearing, impose and enter an order as follows:

~~4.2.8.1~~ 5.7.1 For each occasion where the Insurance Commissioner determines that an ID card was issued inadvertently in non-compliance with section ~~4.2.2.9~~ 5.1.9 above, the insurer shall be fined \$100. No fine, however, shall be imposed if the ID card was validly issued.

~~4.2.8.2~~ 5.7.2 For each occasion where the Insurance Commissioner determines an ID card was issued with disregard of the requirements of Section ~~4.2.2.9~~ 5.1.9 above, but with no pattern of conscious disregard, the insurer shall be fined \$1,000.

~~4.2.8.3~~ 5.7.3 For each occasion where the Insurance Commissioner determines an ID card was issued as part of a pattern of conscious disregard of the requirements of section ~~4.2.2.9~~ 5.1.9 above, the insurer shall be fined \$2,000.

~~4.2.9~~ 5.8 "Date of issuance" of an insurance card shall be the effective date of that card.

~~Amended Section 4 became effective May 12, 1993.~~

11 DE Reg. 800 (12/01/07)

6.0 Insurance Identification Cards for Commercial Lines Coverage

6.1 The ID card required by this section shall be provided for each vehicle insured under each commercial lines policy, which shall include any insurance issued for fleet vehicles.

6.2 The ID card shall conform to the physical requirements set forth in section 4.0 of this regulation.

6.3 The ID card shall contain the following information:

6.3.1 the statement "The ID card must be carried in the vehicle at all times" shall be shown on the face of the card if space is available; otherwise this statement may appear on the back of the card;

6.3.2 the card shall be identified as "Identification Card";

6.3.3 the insurer's company name shall be printed on the face of the card. If the insurer is part of a group, the group name may be printed on the card so long as the card clearly identifies the name of the insurer issuing the insurance;

6.3.4 the insurer's five digit National Association of Insurance Commissioners ("NAIC") company identification number;

6.3.5 the name of the commercial entity or registrant that owns or leases the fleet as carried in the insurer's records. The insurer, at its option, may include the name of any parent company involved or, in the case of vehicles not operated by the registrant, an indication that the vehicle is "owned or operated by _____";

6.3.6 the insurer may, at its option, include the address of the insured;

6.3.7 the policy number with any appropriate designations required by the insurer for commercial or fleet vehicles; and

6.3.8 the inception and expiration dates of the policy.

6.4 The expiration date for ID cards shall be no more than twelve months from the effective date of the policy and the expiration date shall be stated by day, month and year or month, day and year, so long as the exact date of expiration can be clearly identified.

6.5 Sections 5.2.3 through 5.2.9 above shall apply to ID cards issued under commercial lines policies.

57.0 Violations and Penalties

57.1 If an insurer shall violate the provisions of this regulation, the Commissioner shall give written notice to the insurer of the violation and said notice shall inform the insurer of the right to request a hearing pursuant to 18 Del.C. §323.

57.2 If an insurer shall be determined to be in violation by consent or after a hearing, the Commissioner may impose such penalties as permitted pursuant to the Insurance Code.

11 DE Reg. 800 (12/01/07)

68.0 Notice of Cancellation or Termination

68.1 When a personal lines insurance policy is cancelled or terminated and that cancellation or termination is final under 18 **Del.C.** §3904 (a) (1) within 6 months of the original date of issuance, the insurer must file a Notice of Cancellation with the Division of Motor Vehicles.

68.2 The notice shall be filed with the Division of Motor Vehicles within 30 days following the effective date on which cancellation has become final. "Final" means the date after which coverage cannot be reinstated except by the issuance of a new policy.

68.3 The notice shall be a form with the size, content, and format consistent with the attached forms or as otherwise approved by the Division of Motor Vehicles.

11 DE Reg. 800 (12/01/07)

79.0 Furnishing Motor Vehicle Liability Insurance Information to the Division of Motor Vehicles

79.1 An insurer shall furnish within 30 days of a request by the Division of Motor Vehicles prescribed information on each motor vehicle insured in the State of Delaware. The information shall be provided in the form and manner approved by the Division of Motor Vehicles.

11 DE Reg. 800 (12/01/07)

810.0 Random Selection/Verification

810.1 Pursuant to 21 **Del.C.** §2118 the Division of Motor vehicles shall periodically randomly select on an annual basis at least 10 percent of the vehicle registrations and send them to the insurers of record for verification of liability insurance.

810.2 All responses from the insurers shall be delivered to the Delaware Division of Motor Vehicles within 30 days of the mailing date of the verification request.

810.3 The random selection/verification process shall be done no more than twelve times and no less than four times annually.

11 DE Reg. 800 (12/01/07)

911.0 Notification of Uninsured Drivers

911.1 Each insurer licensed to write automobile liability insurance in Delaware shall notify the Division of Motor Vehicles on a form approved by the Division of Motor Vehicles the name of any person or persons involved in an accident or filing a claim who is alleged to have been operating a Delaware registered motor vehicle without the insurance required under Delaware law. The insurer shall provide the name, address, and description of the vehicle alleged to be uninsured.

11 DE Reg. 800 (12/01/07)

4012.0 Additional Required Proofs of Insurance

4012.1 Each insurer licensed to write automobile liability insurance in this State shall furnish to their insureds verification of the insurance in force at the request of the Division of Motor Vehicles by use of a form approved by the Division of Motor Vehicles. Each insurer is to utilize such measures as may be necessary to assure delivery of these forms to qualified insured drivers only.

11 DE Reg. 800 (12/01/07)

4413.0 Severability

4413.1 If any provision of this regulation or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of the regulation which can be given effect without the invalid provision or application and to this end the provisions of this regulation are declared to be severable.

11 DE Reg. 800 (12/01/07)

4214.0 Effective Date

4214.1 This Regulation shall become effective ~~January 1~~ July 1, 2008.

*Regulation No. 31 was entitled "Insurance Identification Card" under an effective date of July 1, 1979; amended July 1, 1982; amended effective January 1, 1991 and again on May 12, 1993 under present title except for the conditions specified under § 6 and § 4 of the regulation and April 12, 1993.

~~Attachments A to G accompanying Regulation No. 31 follow:~~

~~INSURANCE CERTIFICATION REQUEST
INITIAL TAP PROCESSING
LETTER OF TRANSMITTAL
RANDOM SELECTION TAPE PROCESSING
RANDOM SELECTION MANUAL PROCESSING
DELAWARE UNINSURED VEHICLE REPORT
DELAWARE INSURANCE CERTIFICATION~~

11 DE Reg. 800 (12/01/07)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 102(a) (7 Del.C. §102(a))
7 DE Admin. Code 3901

REGISTER NOTICE SAN # 2008-04

1. **TITLE OF THE REGULATION:**
3901 Wildlife, 19.0 Bald Eagle Protection
2. **BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**
The purpose of this action is to ensure that Delaware's Bald Eagle population persists after protection from the federal Endangered Species Act was terminated on 8 August 2007. Bald eagles are very sensitive to disturbance which may result in failure of nests or abandonment of nest sites. In Delaware, the acreage of development in proximity to current nest sites is proposed to double in the next five years. Scientific studies from this region show eagles require significant no-disturbance buffers around their nests in order to persist. The purpose of this regulation is to maintain the same level of protection to eagle nest sites that was in place under the Endangered Species Act prior to August 2007. Eagles are a significant non-consumptive wildlife resource that will require protection in order to persist.
3. **POSSIBLE TERMS OF THE AGENCY ACTION:**
N/A
4. **STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**
Title 7, Delaware Code, Chapter 1: § 102 (a)
Title 7, Delaware Code, Chapter 7, Subchapter II: § 739 (a)
5. **OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:**
None

6. NOTICE OF PUBLIC COMMENT:

The Department of Natural Resources and Environmental Control, Division of Fish and Wildlife, will conduct a public hearing on the proposed new regulation 19.0 Bald Eagle Protection. Bald eagles are very sensitive to disturbance. **Delaware Code** currently protects eagles from disturbance but does not define disturbance. The new regulation will define disturbance by proposing to adopt the same protection to eagle nest sites that was formerly provided under the Endangered Species Act of 1973 prior to the eagle's removal from the federal Endangered Species List in August of 2007.

The proposed regulation may be inspected at the Department's offices located in room B234 at the Richardson and Robbins Building, 89 Kings Highway, Dover Delaware, 19901. For additional information interested parties can also contact Karen Bennett (302-739-9912) or Christopher Heckscher (302-653-2880).

A public hearing will be held in the DNREC auditorium in the Richardson and Robbins Building, 89 Kings Highway, Dover, on 4 June 2008 at 7 pm. Citizens may address comments in writing to the Wildlife Section, Division of Fish and Wildlife, 4876 Hay Point Landing Road, Smyrna, 19977. E-mail comments may be sent to Karen.bennett@state.de.us, Christopher.Heckscher@state.de.us or Lisa.Vest@state.de.us. The record will remain open for written comments until 4:30 pm June 14, 2008. Prior to the hearing, a public workshop will be given in the DNREC auditorium in the Richardson and Robbins Building, 89 Kings Highway, Dover, 28 May 2008. The purpose of this workshop will be to provide information to the public regarding the proposed regulation.

7. PREPARED BY:

Christopher M. Heckscher 302-653-2880
Name/Phone #

8 April 2008
Date

3901 Wildlife

(Break in Continuity of Sections)

19.0 Bald Eagle Protection

(Penalty Title 7 Del.C. §739(a))

19.1 Nest site protection. This regulation provides two zones of protection for active bald eagle nests: (1) Limited activity is permitted between 750 feet and 1,320 feet from the nest from July 1 through November 30 by permit from the Director of the Division of Fish and Wildlife. Permissible activities between 750 feet and 1,320 feet shall be determined by the Division of Fish and Wildlife on a case by case basis; (2) No activity is permitted between the nest and 750 feet.

19.1.1 Exemptions. Exemptions include all regularly occurring pre-existing activities including but not limited to agricultural practices, legal game hunting, transient watercraft, vehicular and pedestrian traffic, as long as the level or frequency of the pre-existing activity will not be increased. Exemptions may be considered on a case by case basis where such exemptions are deemed unlikely to negatively affect eagles by a Division of Fish and Wildlife Biologist and are not in conflict with federal regulations.

19.1.2 For the purposes of subsection 19.1, the term "active bald eagle nest" shall mean any nest that has been in use by a pair of bald eagles at any time in the previous five-year period as determined by a Division of Fish and Wildlife biologist.

19.1.3 For the purposes of subsection 19.1.1, the term "regularly occurring pre-existing activity" shall mean all activity that has taken place within protection zones noted in 18.1 on an annual basis prior to nest placement. Regularly occurring pre-existing activity shall not result in an increased level of activity within protection zones defined in subsection 19.1.

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

[3901 Wildlife](#)

PROPOSED REGULATIONS

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

400 Delaware Gaming Control Board

Statutory Authority: 28 Delaware Code, Sections 1122 (a) and 1503

(28 Del.C. §§1122 (a) and 1503)

24 DE Admin. Code 401, 402, 403, 404

PUBLIC NOTICE

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 28 Del.C. Chapter 11, Section 1122 (a)(2), and 28 Del.C. section 1503, the Delaware Gaming Control Board proposes to revise its Rules and Regulations. The proposed Rules and Regulations will make regulatory changes to the maximum wagering limits for charitable gambling other than raffles as well as add a definition of the term week as it relates to charitable gambling. Bingo, Raffles, Charitable Gambling other than Raffles and No Limit Texas Hold'em Poker have had the application submission time lines added to the appropriate section of the rules and regulations.

A public hearing will be held on the proposed Rules and Regulations on **Thursday, June 5th, 2008 at 12:30 p.m.** in Conference Room B, second floor, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments shall be submitted to the Board in care of the Division of Professional Regulation at the above address. The final date to submit written comments shall be at the above scheduled Public Hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or make comments at the Public Hearing should notify the Division of Professional Regulation at (302) 744-4500.

401 Regulations Governing Bingo

1.0 Definitions

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

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

"Board" The Delaware Gaming Control Board.

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

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

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

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

"Game" The game of bingo.

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

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

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

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

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

“Week” means a seven day period beginning on Sunday and ending on Saturday.

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

2.0 Applications For Bingo License

2.1 eOriginal applications shall be filed upon:

2.1.1 the first application of an organization for a license;

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

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

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

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

2.3.1 An application must be submitted in advance of the proposed date of the function as to allow the Board to consider the application at two consecutive board meetings before deciding to approve or deny the application.

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

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

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

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

3.0 Bingo Licenses

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

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

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

- 3.2.2 The members of the applicant who intend to conduct the bingo games are bona fide active members of the applicant and are persons of good moral character and have never been convicted of a crime involving moral turpitude.
- 3.2.3 The bingo games are to be conducted in accordance with the provisions of the State Constitution, statutes, and regulations.
- 3.2.4 The proceeds are to be disposed of as provided in the State Constitution and statutes.
- 3.2.5 No salary, compensation or reward whatever will be paid or given to any member under whom the game is conducted. If the findings and determinations of the Board are to the effect that the application is approved, the Secretary shall execute a license for the applicant.
- 3.3 The license shall be issued in triplicate. The original thereof shall be transmitted to the applicant. Two copies shall be retained by the Commission for its files.
- 3.4 If the findings and determinations of the Commission are to the effect that the application is denied, the Secretary shall so notify the applicant by certified mail of the reasons for denial, and shall refund any application fees submitted.
- 3.5 In the event of a request for an amendment of a license, the request shall be promptly submitted to the Commission in writing, and shall contain the name of the licensee, license number, and a concise statement of the reasons for requested amendment. The Commission may grant or deny the request, in its discretion, and may require supporting proof from the licensee before making any determination. The Commission may require the payment of an additional license fee before granting the request. The licensee shall be notified of the Commission's action by appropriate communication, so that the licensee will not be unduly inconvenienced.
- 3.6 No license shall be effective for a period of more than one year from the date it was issued.
- 3.7 No license shall be effective after the organization to which it was granted has become ineligible to conduct bingo under any provision of Article II, §17A of the Delaware Constitution.
- 3.8 No license shall be effective after the voters in any District designated in Article II, §17A of the Constitution have decided against bingo in a referendum held pursuant to that section and subchapter II of the Bingo Statute.
- 3.9 No bingo licensee licensed prior to July 14, 1998, shall conduct more than ten (10) bingo events in any calendar month and no bingo licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998) shall conduct more than one (1) bingo event per week. A bingo licensee who was licensed prior to July,14, 1998 whose license lapses for six (6) months or more due to non-renewal or suspension or any other reason shall, upon licensing thereafter, be considered a licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998).
- 3.10 The license application shall contain a full and fair description of the prize and the appraised value of the prize. In lieu of submitting an appraisal, the applicant or licensee may submit the full retail value of the prize. In cases where the applicant or licensee purchases the prize from a third party, the Board may require that the applicant or licensee arrange for an independent appraisal of the value of the prize from a person licensed to render such appraisals, or if there is no person licensed to render such appraisals, from a person qualified to render such appraisals.

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

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

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

4.0 Conduct of Bingo

- 4.1 The officers of a licensee shall designate a bona fide, active member to be in charge of and primarily responsible for the conduct of the game of chance on each occasion. The member in charge shall supervise all activities on the occasions for which he is in charge and shall be responsible for the making of the required report thereof. The member in charge shall be familiar with the provisions of the Bingo Statute, and these rules and regulations.
- 4.2 The room where any game is being held, operated, or conducted, or where it is intended that any game shall be held, operated, or conducted, or where it is intended that any equipment be used, shall

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

- 4.3 No person under the age of eighteen (18) shall be permitted in any bingo game, the prize for which is money. No person under the age of 18 shall be permitted to participate in any instant bingo game. No person under the age of sixteen (16) shall participate in any game of bingo nor shall such person conduct or assist in the conduct of the playing of any game of bingo, except that persons no younger than the age of fourteen (14) may act as waiters and waitresses in the handling of food or drinks at an occasion on which a licensee conducts bingo.
- 4.4 No organization licensed prior to enactment of 71 **Del. Law** 444 (July 14, 1998), may hold, operate, or conduct bingo more often than ten (10) days in any calendar month. No bingo licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998) shall conduct more than one bingo event per week. A bingo licensee licensed prior to the enactment of 71 **Del. Laws** 444 (July 14, 1998), whose license lapses for six (6) months or more due to nonrenewal or suspension or any other reason shall, upon licensing thereafter, be considered a licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998).
- 4.5 The Board and its duly authorized agents and employees may examine the books and records of any licensee, so far as those books and records relate to any transaction connected with the holding, operating, and conducting of the game of bingo, and may examine any manager, officer, director, agent, member, employee, or assistant of the licensee under oath in relation to the conduct of the game of bingo.
- 4.6 ~~(Deleted.)~~
- 4.76 No prize greater in an amount or value than \$250 shall be offered or given any single game and the aggregate amount or value of all prizes offered or given in all games played on a single occasion shall not exceed \$1,000. All winners shall be determined and all prizes shall be awarded in any game played on any occasion within the same calendar day as that upon which the game is played. The value of any promotional giveaways, which shall be no more than \$500 per annum to be distributed at an organizational anniversary date and no more than three (3) holiday dates per year, shall not be counted towards the dollar amounts described in this section. However, a licensee may offer inducements, including but not limited to cookie-jar bingo games that do not exceed \$500 per game per night, free refreshments, and free transportation of players to and from bingo events, to attract bingo players to the bingo event, provided that the fair market value of inducements is limited to 15% of the total amount of all other prizes offered or given during the bingo event.
- 4.76.1 Any amounts in any cookie-jar bingo games shall not be included in the limitations of this section or in any prize money limitations. A bingo licensee may not have more than two \$500 cookie jar bingo pots at any one time which are to be awarded to players. The licensee must award the first cookie jar bingo pot before it may start a third cookie jar bingo pot. In the event that a licensee has a first cookie jar bingo pot of \$500 and then accrues a second cookie jar bingo pot of \$500, the licensee must award the first cookie jar pot to a player on the occasion at which the second cookie jar pot reaches the \$500 limit. On such occasion, if the first cookie jar pot is not awarded by the end of the occasion, the licensee shall conduct a final special bingo game of "full card" or "black out" bingo using a separate, single card, and the first \$500 cookie jar shall be won by the player or players who first covers all spaces on their entire card.
- 4.87 Two or more organizations may not hold games of bingo at the same place on the same day. Unless a bingo licensee has been licensed prior to the enactment of 71 **Del. Laws** 444 (July 14, 1998), only one licensed organization may hold bingo games in a licensed organization's building during any given week.
- 4.98 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.

- ~~4.409~~ 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.
- 4.4410 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.
- 4.4211 When more than one player is found to be the winner on the call of the same number in the same game, the designated prize shall be divided equally as possible; and when division is not possible, substitute prizes, whose aggregate value shall not exceed that of the designated prize, shall be awarded; but such substitute prizes shall be of equal value to each other.
- ~~4.4312~~ 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.
- 4.4413 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.
- 4.4514 No arrangement of numbers shall be required to be covered in order to win the game other than the following:
- 4.4514.1 one unspecified horizontal row;
 - 4.4514.2 one unspecified vertical row;
 - 4.4514.3 one unspecified full diagonal row;
 - 4.4514.4 one unspecified row (horizontal, vertical, or diagonal);
 - 4.4514.5 Two or more of the foregoing, forming a specified arrangement;
 - 4.4514.6 The entire card;
 - 4.4514.7 Four corners;
 - 4.4514.8 Eight spaces surrounding the free space.
- 4.4615 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.
- 4.4716 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.
- ~~4.4817~~ No licensee shall conduct more than forty (40) games on a single occasion.
- 4.4918 In the playing of bingo, no person who is not physically present in the room where the game is actually conducted shall be allowed to participate as a player in the game.
- 4.2019 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.
- 4.2420 The entire proceeds of the games of bingo must be used solely for the promotion or achievement of the purposes of the licensee.
- 4.2221 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.
- 4.2324 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.

- 4.2425 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.
- 4.2526 No person shall conduct or assist in conducting any game except an active member of the organization to which the license is issued.
- 4.2627 No item of expense shall be incurred or paid in connection with the conduct of the game except shall be incurred or paid in connection with the conduct of the game except such as are bona fide items of a reasonable amount for merchandise furnished or services rendered which are reasonably necessary for the conduct of the game.

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

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

(Break in Continuity of Sections)

402 Regulations Governing Raffles

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

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

(Break in Continuity of Sections)

6.0 Application

- 6.1 All applications for a license to conduct a raffle shall be submitted on Form BCC-2 at least six (6) weeks prior to the date of the function. The information supplied must include the name, address, and phone number of the sponsoring organization, the prize to be awarded, the value of the prize, the maximum number of tickets to be sold, the cost of each raffle ticket, the date the prize will be awarded, the exact nature of the charitable purpose for which the proceeds will be used, and the name, address and phone number of the person in charge of the organization, and the person designated to be the record keeper for the raffle.
- 6.1.1 An application must be submitted sufficiently in advance of the proposed date of the function as to allow the Board to consider the application at two consecutive board meetings before deciding to approve or deny the application.
- 6.2 There shall be a license fee of \$15 for each raffle application submitted to the Board for approval.
- 6.3 The Board shall make an investigation of the qualifications of each applicant and the merits of each application. The Board shall consider the impact, if any, of the approval of a new raffle license application on existing licensees within the applicant's geographical location prior to granting the approval, and may deny the application if it concludes that approval of the application would be detrimental to existing licensees.
- 6.4 The Board may issue a license only after it determines that:
- 6.4.1 The applicant is duly qualified to conduct raffles under the State Constitution, statutes, and rules and regulations governing raffles; and
- 6.4.2 The member or members of the applicant who intend to conduct the games are bona fide active members of the applicant and are persons of good moral character and have never been convicted of crimes involving moral turpitude; and
- 6.4.3 The proceeds are to be disposed of as provided in the State Constitution and statutes; and

- 6.4.4 No salary, compensation or reward whatever will be paid or given to any member under whom the game is conducted.
- 6.5 No raffle license application shall be effective for a period of more than one year from the date it was issued.
- 6.6 No raffle license shall be effective after the organization to which it was granted has become ineligible to conduct the game under any provision of Article II, §17A or §17B of the State Constitution.

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

(Break in Continuity of Sections)

403 Regulations Governing Charitable Gambling Other Than Raffles

1.0 Definitions

“Board” The Delaware Gaming Control Board.

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

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

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

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

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

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

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

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

(Break in Continuity of Sections)

6.0 Operation of Games

- 6.1 ~~The maximum initial wager permitted on any game at any function (with the exception of No Limit Texas Hold'em played under the provisions of 28 Del.C. §1801 et seq.) is one dollar, except that a wager of up to five dollars is permitted in blackjack, with doubling allowed. In other card game, the maximum ante is one dollar, and the maximum wager on any card for any draw is up to five dollars with three raises allowed. There shall be no limit on the amounts which may be wagered on any game at any function, except that no more than \$200.00 shall be lost by a single person on any one day. All wagers must be made with approved tournament chips provided by the sponsoring organization. The sponsoring organization shall supply wristbands to all players and the wristbands must be worn by players at all times during the event. The amount of chips obtained by each player shall be recorded on the wristband and players may not obtain more than \$200.00 in chips during the event.~~

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

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

(Break in Continuity of Sections)

11.0 Application

- 11.1 All applications for a license to conduct a Function shall be submitted on Form BCC-3. The information supplied must include the name, address, and phone number of the Sponsoring organization, a list of the games to be conducted, the wagering limit on each game, the date and time that the function will be held, the premises where the Function will be held, the owner of the premises, the name, address, and phone number of the designated member in charge and the person responsible for the proper accounting and the exact nature of the charitable purpose for which the proceeds will be used.
- 11.1.1 An application must be submitted sufficiently in advance of the proposed date of the function as to allow the Board to consider the application at two consecutive board meetings before deciding whether to approve or deny the application.
- 11.2 There shall be a license fee of \$15 for each occasion upon which the organization wishes to conduct charitable gambling under a license.
- 11.3 There shall be an annual license fee of \$300 for each organization sponsoring instant bingo games.
- 11.4 The Board shall make an investigation of the qualifications of each applicant and the merits of each application. The Board shall consider the impact, if any, of the approval of a new charitable gambling license on existing licensees within the applicant's geographical location prior to granting the approval, and may deny the application if it concludes that approval of the application would be detrimental to existing licensees.
- 11.5 The Board may issue a license only after it determines that:
- 11.5.1 The applicant is duly qualified to conduct the charitable games under the State Constitution, statutes, and rules and regulations governing charitable gaming; and
- 11.5.2 The member or members of the applicant who intend to conduct the games are bona fide active members of the applicant and are persons of good moral character and have never been convicted of crimes involving moral turpitude; and
- 11.5.3 The proceeds are to be disposed of as provided in the State Constitution and statutes; and
- 11.5.4 No salary, compensation or reward whatever will be paid or given to any member under whom the game is conducted.
- 11.6 No charitable gambling license shall be effective for a period of more than one year from the date it was issued.
- 11.7 No charitable gambling license shall be effective after the organization to which it was granted has become ineligible to conduct the game under any provision of Article II, §17A or §17B of the State Constitution.

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

12.0 Reports After the Function

- 12.1 Within 15 days of the last day of the function, the member-in-charge shall submit a report to the Board that includes all information required by 28 **Del.C.** §1140(a).
- 12.2 When no function is held on a date a licensee is authorized to hold such a function, a report to that effect shall be filed with the Board.
- 12.3 If a licensee fails to timely file a report or if a report is not properly verified, no further license shall be issued to the licensee and any existing licensee shall be suspended until such time as the deficiency has been corrected.

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

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

13.0 Suspension and Revocation of Licenses

- 13.1 Proceedings to suspend or to revoke a license shall be brought by notifying the licensee of the ground thereof and the date set forth for hearing thereon. The Board may stop the operation of a charitable gaming function pending a hearing, in which case the hearing must be held within five (5) days after such action.
- 13.2 The Board shall cause the notice of hearing to be served personally on an officer of the licensee or the member in charge of the conduct of the function or to be sent by registered or certified mail to the licensee at the address shown in the license. All hearing procedures shall be subject to the requirements of the Administrative Procedures Act, 29 **Del.C.** §10131.
- 13.3 When suspension or revocation proceedings are begun before the Board, it shall hear the matter and make written findings in support of its decision. The licensee shall be informed of the decision, and of the effective date of the suspension or revocation.
- 13.4 When a license is suspended or revoked, the licensee shall surrender up the license to the Board on or before that effective date set forth in the notice of the decision. In no case shall any license be valid beyond the effective date of suspension or revocation, whether surrendered or not.
- 13.5 ~~Upon finding of the violation of these rules and regulations or the Delaware statutes, such as would warrant the suspension or revocation of a license, the Board may in addition to any other penalties imposed, declare the violator ineligible to conduct a raffle and to apply for a license under said law for a period not exceeding thirty (30) months thereafter. Such declaration of the ineligibility may be extended to include, in addition to the violator, any of its subsidiary organizations, its parent organization and any other organization having a common parent organization or otherwise affiliated with the violator, when in the opinion of the Board, the circumstances of the violation warrant such action.~~ Upon a finding of a violation of these rules or of the appropriate statute, a license or permit may be suspended or revoked by the Board. In addition to any other penalty imposed, the Board may declare the violator to be ineligible to apply for a license or permit for a period not to exceed thirty (30) months. Such decision may be extended to include the violator's parent organization, subsidiary organization or any organization having a common parent or otherwise affiliated with the violator, when in the opinion of the Board, the circumstances of the violation warrant such action.

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

14.0 Severability

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

404 Regulations Governing No Limit Texas Hold'em Poker**1.0 Reports After the Function**

- 1.1 Within 30 days of the last day of the function, the member-in-charge shall submit a report to the Board that includes all information required by 28 **Del.C.** §1140(a).

- 1.2 When no function is held on a date a licensee is authorized to hold such a function, a report to that effect shall be filed with the Board.
- 1.3 If a licensee fails to timely file a report or if a report is not properly verified, no further license shall be issued to the licensee and any existing license shall be suspended until such time as the deficiency has been corrected.

2.0 Limitation of Texas Hold'em Tournaments

- 2.1 The Board interprets the phrase "with each tournament by the sponsoring organization to be held at least ~~75~~ 70 days apart" in 28 Del.C. §1827 to mean that no sponsoring organization may conduct a subsequent tournament less than 75 days from the date of their immediately prior tournament.

3.0 Re-buys

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

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

4.0 Application

- 4.1 An application must be submitted sufficiently in advance of the proposed date of the function as to allow the Board to consider the application at two consecutive board meetings before deciding whether to approve or deny the application.

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

[400 Delaware Gaming Control Board](#)

DIVISION OF PROFESSIONAL REGULATION

1400 Board of Electrical Examiners

Statutory Authority: 24 Del.C. §1406(a)(1)

24 DE Admin. Code 1400

PUBLIC NOTICE

The Delaware Board of Electrical Examiners, in accordance with 29 Del.C. Chapter 101 and 24 Del.C. §1406(a)(1), proposes amendments to its regulation sections 1.0 through 3.0, 5.0 through 7.0, and 15.0.

Changes to section 1.0 include deleting language that unnecessarily repeats statutory language and making explicit licensees' obligation to notify the Board of a change of address. Changes to sections 2.0, 3.0, 5.0, and 6.0 are technical, including deleting language that repeats statutory language. Section 5.0 is proposed for deletion as unnecessary.

The proposed addition to **7.0 Expiration and Renewal** creates a mandatory audit of all late-renewed licensees to verify compliance with the continuing education and insurance requirements. The proposed addition to **15.0 Inspection agencies** clarifies the word "salary" as used in 24 Del.C. §1421(j).

A public hearing is scheduled for Wednesday, June 4, 2008 at 8:30 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Judy Letterman at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Judy Letterman at the above address or by calling (302) 744-4500.

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

1400 Board of Electrical Examiners

1.0 License Required

- 1.1 ~~No person shall perform electrical services or represent themselves as qualified to perform electrical services without first having been duly licensed unless specifically excepted by statute. 24 Del.C. §§1407, 1419~~
- 1.2~~1~~ To perform "electrical services" or "electrical work" means to plan, estimate, layout, perform, or supervise the installation, erection, or repair of any electrical conductor, molding, duct, raceway, conduit, machinery, apparatus, device, or fixture for the purpose of lighting, heating, or power in or on any structure or for elevators, swimming pools, hot tubs, electric signs, air conditioning, heating, refrigeration, oil burners, and overhead and underground primary distribution systems.
- 1.3 ~~A license is not required for servicing equipment in the fields of heating, air conditioning, refrigeration or appliances.~~
- 1.4~~2~~ A licensee under this chapter shall perform all electrical services or electrical work in accordance with the standards established in the National Electric Code (NEC) as adopted by the Delaware Fire Commission and in any applicable local building code. The version of the NEC applicable to a particular project is determined by the Delaware Fire Commission.
- 1.5~~3~~ Every individual who receives a license shall prominently display the words "Licensed Electrician" and the license number on the exterior of all vehicles used for work in not less than three inch letters and numbers. This section is satisfied by any abbreviation readily understood to mean "Licensed Electrician" such as "Lic. Elec." along with the license number.
- 1.4 Licensees shall notify the Board of a change of address. Change of address notifications shall be sent by certified mail within 60 days of date the address change.

7 DE Reg. 1167 (3/1/04)

9 DE Reg. 260 (8/1/05)

2.0 Applications

- 2.1 Applications may be obtained in person during regular business hours or by mail from the Division of Professional Regulation ("Division"), Cannon Building, Ste. 203, 861 Silver Lake Boulevard, Dover, DE 19904-2467. Applications must be made in the name of the individual, not a company. The Board shall approve the application form to insure that it contains all of the information necessary to satisfy the statutory requirements for licensure.
- 2.2 Applications which are incomplete shall be retained for one year to allow an applicant the opportunity to supplement the application. After one year, incomplete applications are destroyed. Thereafter, an applicant must resubmit a current application with the appropriate fee.
- 2.3 Applications approved for testing will be valid for two years. If the test is ~~isn't~~ not taken, the application is destroyed. Thereafter, an applicant must resubmit a ~~current~~ new application with the appropriate fee.

3.0 Qualifications

- 3.1 ~~Persons demonstrating the education and experience qualifications set forth in 24 Del.C. §1408 may be licensed as a master electrician, limited electrician, master electrician special, or limited electrician special.~~
- 3.2~~1~~ An applicant shall submit proof of qualifications verified by his or her affidavit on a form approved by the Board. Proof of experience requires an employer's affidavit from the supervising licensed electrician describing the nature of the experience. If an applicant cannot obtain the required affidavit from the supervising licensed electrician, ~~tax~~ W-2 ~~tax~~ forms showing full-time employment may be substituted at the discretion of the Board. The required experience and training must be completed prior to taking the licensure ~~test~~ exam.
- 3.3~~2~~ Applicants relying on military training and experience shall must submit official documentation from the supervising officials showing type and approximate hours of work experience. Other official military documentation that reliably verifies military training and experience may be accepted when supervisory officials are not available or cannot be located.

3.43 The requirement of two years of technical training under 24 **Del.C.** §1408 (a)(1)(c) can be met by successful completion of two years of technical training related to electrical technology in a vocational/technical high school or by completion of 48 credit hours in technical training related to electrical technology at an accredited post-secondary school.

3.54 The experience necessary under 24 **Del.C.** §1408 to qualify for a particular license must relate to the activity authorized by such a license as defined in 24 **Del.C.** §1402(10) - (13).

4 DE Reg. 1788 (5/1/01)

6 DE Reg. 1495 (5/1/01)

4.0 Examinations

4.1 As a condition of licensure, applicants shall obtain a grade of 75% on the Division-approved test. Only the National Electrical Code Book can be used during the test as a reference. Applicants should submit a completed application with all necessary credentials for Board approval at least 45 days before the test is given. As long as the credentials have been approved, a license may issue from the Division of Professional Regulation upon proof of obtaining a passing score on the test, proof of insurance, and payment of the fee as provided herein. A member of the State Board of Electrical Examiners may attend the examination. All scores will be presented to the Board at the first meeting after the examination results are available. The roster of persons qualified for licensure will appear in the minutes.

4.2 Applicants who fail two consecutive times with a grade of less than 50% each time must wait one year before retesting.

4 DE Reg. 1788 (5/1/01)

5.0 Fees [Reserved]

~~5.1 Fee information can be obtained from the Division of Professional Regulation, Cannon Building Ste. 203, 861 Silver Lake Boulevard, Dover, DE 19904-2467.~~

6.0 License and Insurance

~~6.1 The license will be issued by the Division of Professional Regulation to a qualified applicant upon receipt of the required fee and proof of insurance.~~

6.21 ~~Each licensee~~ shall maintain general liability insurance of at least \$300,000.00. Proof of ~~said~~ insurance shall must be submitted at the time of with licensure issuance applications and maintenance of the required insurance shall be attested to in the course of ~~and~~ each licensure renewal.

6.32 The insurance requirement is satisfied for a licensee who is performing work as an employee as long as the employer is insured for the risk on the work performed as required under these regulations. A licensee who also works independently from his ~~or her~~ employer must maintain separate insurance for that risk as provided under these regulations.

4 DE Reg. 1788 (05/01/01)

10 DE Reg. 1329 (02/01/07)

7.0 Expiration and Renewal

7.1 The ~~biennial~~ licenses granted by the Board ~~shall automatically terminate on~~ must be renewed by June 30th of each even numbered year, ~~or on such other date as is specified by the Division of Professional Regulation otherwise, they expire as of July 1st.~~

7.2 Renewal. It is the responsibility of the licensee to file a renewal application with the Board. The ~~failure of the Board is not required~~ to notify a licensee of his expiration dates ~~does not in any way relieve that responsibility~~. Renewal may be accomplished online at www.dpr.delaware.gov.

7.2.1 Renewal applications will be randomly audited by the Board to ensure their accuracy. Licensees selected for random audit will be notified of that selection within 60 days after the renewal deadline. Licensees must then submit verification of their receipt of the notification of audit within 10 days.

- 7.2.2 As a condition of renewal, applicants must attest to completion of continuing education (CE) as required by Regulation 8.0 and list all CE course names and approval numbers. Applicants must also attest to maintenance of the liability insurance required by Regulation 6.0 and indicate the name of their insurer and their policy number. Attestation may be completed electronically if renewal is accomplished online. Alternatively, paper renewal documents containing the CE and insurance attestations may be submitted. Licensees selected for random audit will be required to supplement their attestations with documentation of CE attendance and maintenance of insurance coverage.
- 7.3 ~~A license is expired when a licensee has failed to either complete the requirements for renewal or obtain permission for inactive status.~~ A licensee may activate/renew an expired license within one year of after the date the renewal application was due deadline by meeting all requirements and paying an additional/late fee set by the Division of Professional Regulation. All late renewals will be audited for compliance with the CE and insurance renewal requirements.
- 7.4 A licensee with a valid license may request in writing to be placed on inactive status. ~~An inactive status can be effective for up to two years and renewed biennially by application to the Division upon proof of 10 hours of continuing education CE. Said Inactive licenses may be reactivated by the Board upon written request, with proof of insurance, and payment of a prorated fee to be computed set by the Division of Professional Regulation.~~
- 7.5 A licensee is not authorized to work as a licensed electrician in this State during the period of inactive status.
- 7.6 An individual whose license has expired for more than one year must reapply as a new applicant. Any prior training and experience can be used to satisfy the requirements under 24 **Del.C.** §1408(a). However, the applicant must take the examination required by §1408(5) and achieve a passing score unless he or she previously passed an approved licensure test that covered the National Electric Code that is the standard in Delaware at the time of the new application.

4 DE Reg. 1788 (05/01/01)

9 DE Reg. 260 (08/01/05)

10 DE Reg. 1329 (02/01/07)

11 DE Reg. 812 (12/01/07)

(Break in Continuity of Sections)

15.0 Inspection agencies

- 15.1 Inspection agencies shall be licensed in accord with the provisions of 24 **Del.C.** §1421 in order to operate in Delaware. An application on a form approved by the Board must be filed at the Division of Professional Regulation. Licenses must be renewed annually on June 30 by completing the renewal form and paying the fee determined by the Division.
- 15.2 No inspection agency will be approved until it produces proof of general liability insurance in the amount of at least \$1,000,000.00 and errors and omissions insurance in the amount of at least \$1,000,000.00.
- 15.3 Inspection agencies must submit, to the Division of Professional Regulation, the names of its employees who are inspectors and proof of compliance with the statutory requirements for inspectors. Inspectors must have seven years of experience in residential, commercial, or industrial wiring. Proof of experience shall be submitted by affidavit of the named employer, a tax form w-2, or tax Schedule C. The experience requirement for an inspector employed by an approved inspection agency on July 20, 1999 is satisfied with seven years of inspection experience. Each inspector shall also submit a passing score for the Electrical one and two family dwelling and the Electrical General examinations within 18 months of employment and the Electrical Plan Review examination within 24 months of employment. For inspectors employed by the inspection agency on July 20, 1999, the time for taking said examinations shall run from the date these regulations become effective and not the date first employed.

- 15.4 An employee of an inspection agency shall confirm that the person who has filed for an inspection is a licensee under this chapter, a homeowner having a permit, or a person who has performed work allowed under an exception to licensure. Licensure verification is available online, free of charge at www.dpr.delaware.gov.
- 15.5 If a violation found in an inspection is not corrected within 15 days as provided in 24 **Del.C.** §1421(g), the inspection agency shall notify the Board in writing and include a copy of the notice of violation. The Division of Professional Regulation will send, on behalf of the Board, the notice of violation to the other inspection agencies and to any local building inspector having jurisdiction over the structure.
- 15.6 An inspection agency shall notify the Board in writing within 10 days when an employee leaves the agency or when a new employee is hired by the agency. This notification shall include the full name and address of the inspector. The date a new employee is hired by an inspection agency marks the beginning of the period in which the inspection examinations in Rule 15.3 must be successfully completed.
- 15.7 As used in 24 **Del.C.** §1421(j), "salary" means compensation of employees at a set figure with installments paid weekly, monthly, or other fixed period or compensation based on time worked, i.e. paid by the hour. "Salary" does not include compensation based on the number of inspections performed. Inspectors may not be compensated based on the number of inspections performed or given any other incentive to increase the speed at which they perform inspections.

4 DE Reg. 1788 (05/01/01)

6 DE Reg. 1495 (05/01/03)

7 DE Reg. 1167 (03/01/04)

10 DE Reg. 1329 (02/01/07)

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

[1400 Board of Electrical Examiners](#)

DIVISION OF PROFESSIONAL REGULATION

2600 Examining Board of Physical Therapists and Athletic Trainers

Statutory Authority: 24 Delaware Code, Section 2604(a)(1) (24 **Del.C.** §2604(a)(1))

24 **DE Admin. Code** 2600

PUBLIC NOTICE

Pursuant to 24 **Del.C.** §2604(a)(1), the Examining Board of Physical Therapists and Athletic Trainers has proposed revisions to its rules and regulations.

A public hearing will be held on May 27, 2008 at 5:15 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Examining Board of Physical Therapists and Athletic Trainers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board proposes amendments to Rule 1.2.3, which addresses supervision of a Physical Therapist Assistant who has one year or more experience. Currently, the Physical Therapist Assistant must receive on-site, face to face supervision, by the supervising Physical Therapist, at least once every fifth treatment day or once every three weeks, whichever occurs first. These supervisory visits require the presence of two practitioners: the Physical Therapist and the Physical Therapist Assistant. The amended Rule 1.2.3 requires on-site face to face supervision at least once every **twelfth** visit or once every **four** weeks, whichever occurs first. This change in supervision requirements decreases the number of required supervisory visits involving the presence of two practitioners. Consequently, practitioners would be able to see more patients with the benefit of enhancing the provision of physical therapy services to the public.

Rule 1.2.3 is further revised to state that, in addition to providing the required supervision of the Physical Therapist Assistant, the supervising Physical Therapist must also see the patient at least once every sixth treatment day. Thus, although there will be a decrease in the number of supervisory visits, the patient will be seen by the Physical Therapist on a regular basis. This amendment ensures that the change in supervision of the Physical Therapist Assistant will not adversely impact patient care.

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

2600 Examining Board of Physical Therapists

1.0 Definitions

1.1 Consultation (24 Del.C. §2612)

- 1.1.1 Consultation in direct access. A licensed health practitioner who has been granted prescriptive authority must be consulted if a patient is still receiving physical therapy after 30 calendar days have lapsed from the date of the initial assessment. This consultation must be documented and could take place at any time during the initial thirty day period. The consultation can be made by telephone, fax, in writing, or in person. There is nothing in these rules and regulations or in the Physical Therapy Law that limits the number of consultations the Physical Therapist can make on the patient's behalf. The consult should be with the patient's personal licensed health practitioner. If the patient does not have a personal licensed health practitioner, the Physical Therapist is to offer the patient at least three licensed health practitioner from which to choose. The referral to a licensed health practitioner after the initial thirty day period must not be in conflict with 24 Del.C. §2616(a)(8) which deals with referral for profit. If no licensed health practitioner consult has been made in this initial thirty day period, treatment must be terminated and no treatment may be resumed without a licensed health practitioner consult.
- 1.1.2 Consultation with written prescription from a licensed health practitioner. A prescription accompanying a patient must not be substantially modified without documented consultation with the referring practitioner. The consultation can be made by telephone, fax, in writing, or in person.

1.2 Direct Supervision (24 Del.C. §2611(a))

- 1.2.1 Direct supervision in connection with a Physical Therapist or Athletic Trainer practicing under a temporary license means:
 - 1.2.1.1 a licensed Physical Therapist or Athletic Trainer supervisor shall be on the premises when the individual with a temporary license is practicing and
 - 1.2.1.2 evaluations and progress notes written by the individual with a temporary license shall be co-signed by the licensed Physical Therapist supervisor.
- 1.2.2 Direct supervision in relation to a Physical Therapist Assistant with less than one (1) year experience means a Physical Therapist shall be on the premises at all times and see each patient.
- 1.2.3 Direct supervision in relation to a Physical Therapist Assistant with one (1) year or more experience means that a Physical Therapist Assistant must receive on-site, face to face supervision at least once every ~~fifth~~ twelfth treatment day or once every ~~three~~ four weeks, whichever occurs first. In addition to the required on-site, face to face supervision of the Physical Therapist Assistant, the supervising Physical Therapist must see the patient at least once every sixth treatment day. The supervising Physical Therapist must have at least one (1) year clinical experience. The Physical Therapist must be available and accessible by telecommunications to the Physical Therapist Assistant during all working hours of the Physical Therapist Assistant.
- 1.2.4 The Physical Therapist is responsible for the actions of the Physical Therapist Assistant or the Athletic Trainer when under his/ her supervision. All supervision must be documented.
- 1.2.5 Direct supervision in connection with an Athletic Trainer treating an injury not defined as an 'athletic injury', which must be a musculoskeletal disorder if seen for physical therapy when the athletic trainer has one (1) year or more of continuous experience means that an Athletic Trainer must receive on-site, face to face supervision at least once every fifth treatment day or once every three weeks, whichever occurs first. The supervising Physical Therapist must have at least one (1)

year clinical experience. The Physical Therapist must be accessible by telecommunications to the Athletic Trainer during all work hours of the Athletic Trainer.

Direct supervision in connection with an Athletic Trainer treating an injury not defined as an 'athletic injury' which must be a musculoskeletal disorder if seen for physical therapy, when the Athletic Trainer has less than one (1) year of continuous experience means a Physical Therapist shall be on the premises at all times and see each patient.

- 1.2.6 Direct supervision in connection with an Athletic Trainer with a temporary license treating an 'athletic injury' is that the licensed Athletic Trainer supervisor shall be on the premises when the individual with a temporary license is practicing and all evaluations and progress notes shall be co-signed by the Athletic Trainer supervisor.
- 1.2.7 Direct supervision in relation to an Athletic Trainer with one (1) year or more experience means that an Athletic Trainer must receive on-site, face to face supervision at least once every fifth treatment day or once every three weeks, whichever occurs first. The Supervising Athletic Trainer must have at least one (1) year experience. The Supervising Athletic Trainer must be available and accessible by telecommunications to the Athletic Trainer during all working hours.
- 1.2.8 At no time may a Physical Therapist supervise more than 2 Physical Therapist Assistants, 2 Athletic Trainers or 1 Physical Therapist Assistant and 1 Athletic Trainer. A Physical Therapist may only supervise 1 Physical Therapist Assistant off site.
- 1.2.9 Direct supervision in connection with support personnel means a licensed Physical Therapist, Physical Therapist Assistant or Athletic Trainer shall be personally present and immediately available within the treatment area to give aid, direction, and instruction when procedures are performed. On site or on premises (24 **Del.C.** §2602(5)), means that the supervising professional is located on the same physical property where the supervision is occurring.
- 1.3 Support personnel (24 **Del.C.** §2615) means a person(s) who performs certain routine, designated physical therapy tasks, or athletic training tasks, under the direct supervision of a licensed Physical Therapist or Physical Therapist Assistant or Athletic Trainer. There shall be documented evidence of sufficient in-service training to assure safe performance of the duties assigned to the support personnel.
- 1.4 Unprofessional Conduct (24 **Del.C.** §2616(7)). Unprofessional conduct shall include departure from or the failure to conform to the minimal standards of acceptable and prevailing physical therapy practice or athletic training practice, in which proceeding actual injury to a patient need not be established 24 **Del.C.** §2616(7). Such unprofessional conduct shall include, but not be limited to, the following:
 - 1.4.1 Assuming duties within the practice of physical therapy or athletic training without adequate preparation or supervision or when competency has not been maintained.
 - 1.4.2 The Physical Therapist or Athletic Trainer who knowingly allows a Physical Therapist Assistant or Athletic Trainer to perform prohibited activities is guilty of unprofessional conduct.
 - 1.4.3 The Physical Therapist, Physical Therapist Assistant, or Athletic Trainer who knowingly performs prohibited activities is guilty of unprofessional conduct.
 - 1.4.4 The Physical Therapist, Athletic Trainer, or Physical Therapist Assistant who knowingly allows support personnel to perform prohibited activities is guilty of unprofessional conduct.
 - 1.4.5 Performing new physical therapy or athletic training techniques or procedures without proper education and practice or without proper supervision.
 - 1.4.6 Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.
 - 1.4.7 Inaccurately recording, falsifying, or altering a patient or facility record.
 - 1.4.8 Committing any act of verbal, physical, mental or sexual abuse of patients.
 - 1.4.9 Assigning untrained persons to perform functions which are detrimental to patient safety, for which they are not adequately trained or supervised, or which are not authorized under these rules and regulations.
 - 1.4.10 Failing to supervise individuals to whom physical therapy or athletic training tasks have been delegated.

- 1.4.11 Failing to safeguard the patient's dignity and right to privacy in providing services regardless of race, color, creed and status.
- 1.4.12 Violating the confidentiality of information concerning the patient.
- 1.4.13 Failing to take appropriate action in safeguarding the patient from incompetent health care practice.
- 1.4.14 Practicing physical therapy as a Physical Therapist or Physical Therapist Assistant or athletic training as an Athletic Trainer when unfit to perform procedures or unable to make decisions because of physical, psychological, or mental impairment.
- 1.4.15 Practicing as a Physical Therapist, Physical Therapist Assistant or Athletic Trainer when physical or mental ability to practice is impaired by alcohol or drugs.
- 1.4.16 Diverting drugs, supplies or property of a patient or a facility.
- 1.4.17 Allowing another person to use his/her license.
- 1.4.18 Resorting to fraud, misrepresentation, or deceit in taking the licensing examination or obtaining a license as a Physical Therapist, Physical Therapist Assistant or Athletic Trainer.
- 1.4.19 Impersonating any applicant or acting as proxy for the applicant in a Physical Therapist, Physical Therapist Assistant, or Athletic Trainer licensing examination.
- 1.4.20 A Physical Therapist, who initiated a physical therapy plan of care without a referral, continuing to treat a patient for longer than thirty days without a licensed health practitioner consult. An Athletic Trainer continuing to treat a patient, who initiated treatment for a minor strain, sprain, or contusion for longer than thirty days without a licensed health practitioner consult; preventative taping, padding, bandaging, icing and conditioning excluded.
- 1.4.21 Substantially modifying a treatment prescription without consulting the referring licensed health practitioner.
- 1.4.22 Failing to comply with the mandatory continuing education requirements of 24 **Del.C.** §2607(a) and Section 7 of these rules and regulations.

4 DE Reg. 1114 (1/1/01)

5 DE Reg. 2101 (5/1/02)

8 DE Reg. 1587 (5/1/05)

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

2600 Examining Board of Physical Therapists

DIVISION OF PROFESSIONAL REGULATION

2930 Council on Real Estate Appraisers

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

24 DE Admin. Code 2930

PUBLIC NOTICE

Pursuant to 24 **Del.C.** § 4006(a)(1), the Council on Real Estate Appraisers has proposed an amendment to its rules and regulations. A new Rule 2.5.10 is added to specify that at least 14 hours of continuing education per licensure period must be taken in a traditional classroom setting, including the mandatory 7 hour USPAP update course. In addition, the mandatory 2 hour Delaware law, rules and regulations course must be taken in a traditional classroom setting, in Delaware. This new Rule 2.5.10 will supersede the version of Rule 2.5.10 set forth in the Final Order on rule revisions published in the Register of Regulations on May 1, 2008.

A public hearing will be held on June 17, 2008 at 9:45 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware

Council on Real Estate Appraisers, 861 Silver Lake Boulevard, Dover, Delaware 11904. Persons wishing to submit written comments may forward these to the Council at the above address. The final date to receive written comments will be at the public hearing.

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

2930 Council on Real Estate Appraisers

1.0 Application for Appraiser License or Certificate

1.1 Application

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

1.2 Filing and Fees

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

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

1.2.2.1 Initial application and licensure for appraiser trainee license

1.2.2.2 Initial application and licensure for licensed real property appraiser license

1.2.2.3 Initial application and certification for certified residential real property appraiser certificate

1.2.2.4 Initial application and certification for certified general real property appraiser certificate

1.2.2.5 Renewal

1.2.2.6 Duplicate license and certificate

1.2.2.7 Roster

1.2.2.8 Federal Appraiser Registry

1.2.2.9 Letter of Good Standing

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

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

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

2.0 Appraiser Licensing and Certification

2.1 Qualifications for Appraiser Licensure and Certification

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

2.1.1.1 certified general real property appraiser;

2.1.1.2 certified residential real property appraiser;

2.1.1.3 licensed real property appraiser; and

2.1.1.4 trainee real property appraiser.

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

2.1.3 The 2008 qualification criteria established by the AQB will be phased in using the segmented approach. The three AQB components that must be satisfied to obtaining licensure are: education, experience and examination. An applicant must meet the criteria in effect at the time he or she

completes one of these components. Therefore, all applicants for certification or licensure must meet the 2008 qualifications criteria established by the AQB for any component completed on or after January 1, 2008.

2.2 License and Certificate Renewal

- 2.2.1 In September of each odd numbered year, the Division of Professional Regulation will send renewal notices to the mailing address on file of all licensees and certificate holders. Certificates and licenses will expire on October 31st of each odd numbered year.
- 2.2.2 As a condition of renewal, all licensees and certificate holders, either resident or reciprocal, shall be required to satisfy the continuing education requirements set forth in rule 2.3 of this Section.
- 2.2.3 A licensee or certificate holder shall not perform appraisals after a license has expired. A licensee or certificate holder may renew a certificate or license within 12 months of its expiration. After 12 months, the individual must reapply as a new applicant.
- 2.2.4 A licensee or certificate holder may apply for inactive status for a period not to exceed 6 years if he or she is not performing appraisals in Delaware.
 - 2.2.4.1 Persons with in an inactive license or certificate must complete the same continuing education requirement as active licensees or certificate holders. Evidence of completion is due at renewal as provided in Rule 2.3.
 - 2.2.4.2 An inactive license or certificate can be reactivated by notifying the Council in writing.

2.3 Continuing Education

- 2.3.1 All licensees and certificate holders are required to attest to the completion of continuing education according to the following schedule:
 - 2.3.1.1 No continuing education is required for fewer than 16 months of licensure;
 - 2.3.1.2 Effective with the licensure period beginning November 1, 2007, fourteen (14) hours of continuing education are required after at least 6months but fewer than 24 months of licensure; and
 - 2.3.1.3 twenty-eight (28) hours of continuing education are required after 24 months of licensure.

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

- 2.4.1 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.
- 2.4.2 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 2.5.

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

- 2.5.1 The Council will notify licensees within sixty (60) days after January 31 that they have been selected for audit.
- 2.5.2 Licensees selected for random audit shall be required to submit verification within ten (10) days of receipt of notification of selection for audit.
- 2.5.3 Verification shall include such information necessary for the Council to assess whether the course or other activity meets the CE requirements in Section 2.0, which may include, but is not limited to, the following information:
 - 2.5.3.1 Proof of attendance. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance;
 - 2.5.3.2 Date of CE course;
 - 2.5.3.3 Instructor of CE course;
 - 2.5.3.4 Sponsor of CE course;
 - 2.5.3.5 Title of CE course; and
 - 2.5.3.6 Number of hours of CE course.

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

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- 2.5.4.1 the seven (7) hour National USPAP Update Course or its equivalent as determined through the AQB Course Approval Program or by an alternate method established by the AQB and
 - 2.5.4.2 two (2) hours of education on Delaware Law, Rules and Regulations
 - 2.5.5 Programs must be structured to maintain or increase an appraiser's skill, knowledge, and competency in real estate appraising. The following topics are appropriate but not exclusive:
 - 2.5.5.1 Influences on real estate value
 - 2.5.5.2 Legal consideration of appraisal
 - 2.5.5.3 Types of value
 - 2.5.5.4 Real estate markets and analysis
 - 2.5.5.5 Valuation process
 - 2.5.5.6 Property description
 - 2.5.5.7 Highest and best use
 - 2.5.5.8 Appraisal math & statistics
 - 2.5.5.9 Sales comparison approach
 - 2.5.5.10 Site value
 - 2.5.5.11 Cost approach
 - 2.5.5.12 Income approach
 - 2.5.5.12.1 Estimation of income and expenses
 - 2.5.5.12.2 Operating statement ratios
 - 2.5.5.12.3 Direct capitalization
 - 2.5.5.12.4 Cash flow estimates
 - 2.5.5.12.5 Measures of cash flow
 - 2.5.5.12.6 Discounted cash flow analysis
 - 2.5.5.12.7 Gross rent multiplier analysis
 - 2.5.5.13 Valuation of partial interests
 - 2.5.5.14 Appraisal standards and ethics
 - 2.5.5.15 Narrative report writing
 - 2.5.5.16 Appraisal Statistical concepts
 - 2.5.5.17 Ad valorem taxation
 - 2.5.5.18 Arbitration
 - 2.5.5.19 Business courses related to real estate appraisal
 - 2.5.5.20 Development cost estimating
 - 2.5.5.21 Ethics and standards of professional practice
 - 2.5.5.22 Land use planning, zoning and taxation
 - 2.5.5.23 Management, leasing, brokerage, timesharing
 - 2.5.5.24 Property development
 - 2.5.5.25 Real estate appraisal (valuations/evaluations)
 - 2.5.5.26 Real estate financing and investment
 - 2.5.5.27 Real estate law
 - 2.5.5.28 Real estate litigation
 - 2.5.5.29 Real estate appraisal related computer applications
 - 2.5.5.30 Real estate securities and syndication
 - 2.5.5.31 Real property exchange
 - 2.5.5.32 Delaware law and regulations
 - 2.5.6 Continuing education credit, up to 14 hours per licensure cycle, may also be granted for participation, other than as a student, in:

- 2.5.6.1 Teaching, including preparation time up to the number of hours spent teaching, for example, a 3 hour class can be submitted for 6 hours if the preparation time was at least 3 hours.
- 2.5.6.2 Program development
- 2.5.6.3 Authorship of textbooks
- 2.5.7 Continuing education credit may be awarded for participation in field trips, conferences, and trade association meetings, excluding travel time, if those activities specifically relate to real estate appraisal education, but for no more than eight (8) hours per licensure period.
- 2.5.8 A creditable hour is defined as fifty minutes out of each sixty minute segment. The educational offering must be at least two hours.
- 2.5.9 The Delaware Council on Real Estate Appraisers may approve the content of a distance education course after approval of the delivery mechanism is approved from one of the following sources:
- 2.5.9.1 AQB approved organizations providing approval of course design and delivery, such as the International Distance Education Certification Center (IDECC);
- 2.5.9.2 A college that qualifies for content approval and awards academic credit for the distance education course; or
- 2.5.9.3 A qualifying college for content approval with a distance education delivery program that approves the course design and delivery that incorporates interactivity;
- 2.5.10 At least 14 hours per licensure period must be taken in a traditional classroom setting, with an instructor. The mandatory 7 hour USPAP update course must be taken in a traditional classroom setting, with an instructor. In addition, the mandatory 2 hour Delaware law, rules and regulations course must be taken in a traditional classroom setting, in Delaware, with an instructor.
- 2.5.4011 Educational offerings that have documented approval by the AQB or another state are automatically approved when they are submitted to the Council with a certificate of attendance. In cases where the educational offering has not been approved by the AQB or another state, either the provider or the appraiser must apply to the Council for approval using a form approved by the Council. Applicants seeking pre-approval must submit all required documentation 60 days before the scheduled offering.
- 2.6 Duplicate License or Certificate Fee
- 2.6.1 By submitting a written request to the Council and paying the appropriate fee as set by the Division of Professional Regulation, a licensee or certificate holder may obtain a duplicate real property appraiser license, certificate or pocket card to replace an original license, certificate or pocket card which has been lost, damaged, destroyed, or if the name of the licensee or certificate holder has been lawfully changed. A certified copy of a marriage license, divorce decree or court order of a name change must accompany a request for a change of name.
- 2.7 Federal Appraiser Registry
- Licensees and certificate holders are required to be enrolled in the federal roster or registry of state licensed and state certified real property appraisers. The fee established for that purpose shall be paid biennially by the license or certificate holder to the State of Delaware.
- 4 DE Reg. 1504 (03/01/01)**
6 DE Reg. 1668 (06/01/03)
9 DE Reg. 1377 (03/01/06)
11 DE Reg. 813 (12/01/07)

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

[2930 Council on Real Estate Appraisers](#)

DIVISION OF PROFESSIONAL REGULATION

5300 Board of Massage and Bodywork

Statutory Authority: 24 Delaware Code, Section 5306(a)(10) (24 **Del.C.** §5306(a)(1))
24 **DE Admin. Code** 5300

PUBLIC NOTICE

The Delaware Board of Massage and Bodywork, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §5306(a)(1), proposes amendments to its regulation sections 1.0, 2.0, and 7.0. Specifically, the proposed additions to **1.0 Definitions** define the two categories of allowable continuing education. The proposed amendments to **2.0 Filing of Application for Licensure as Massage/Bodywork Therapist** clarify the language of that section but do not alter the substance of the provision.

The proposed amendments to **7.0 Continuing Education** provide for online licensure renewal, allow half of continuing education requirements to be fulfilled online, clarify the categorical restrictions on continuing education, and provide for the automatic approval of the content of continuing education courses approved by either the National Certification Board for Therapeutic Massage and Bodywork ("NCBTMB") or the American Massage Therapy Association ("AMTA").

A public hearing is scheduled for Thursday, June 19, 2008 at 1:30 p.m. in the second floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Nancy Fields at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Nancy Fields at the above address or by calling (302) 744-4500.

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

5300 Board of Massage and Bodywork

1.0 **Definitions and Clarifications**

- 1.1 The term "500 hours of supervised in-class study" as referenced in 24 **Del.C.** §5308(a)(1) shall mean that an instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a curriculum that is substantially the same as referenced in 24 **Del.C.** §5308(a)(1) and which includes hands-on technique and contraindications as they relate to massage and bodywork. More than one school or approved program of massage or bodywork therapy may be attended in order to accumulate the total 500 hour requirement.
- 1.2 The term a "300 - hour course of supervised in-class study of massage" as referenced in 24 **Del.C.** §5309(a)(1) shall mean that an instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a 300 hour course which includes no less than sixty hours of anatomy and physiology, one hundred-forty hours of theory and technique and one hundred hours of elective courses in the field of massage therapy as referenced in 24 **Del.C.** §5309(a)(1).
 - 1.2.1 The 300 hour course must be a unified introductory training program in massage and bodywork, including training in the subjects set forth in Regulation 1.4. The entire 300 hour course must be taken at one school or approved program. The Board may, upon request, waive the "single school" requirement for good cause or hardship, such as the closure of a school.
- 1.3 The term a "200 hour course of supervised in-class study of massage" as referenced in 24 **Del.C.** §5309(b) shall mean that an instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a 200 hour course which includes no less than fifty hours of anatomy and physiology, one hundred-ten hours of theory and technique, twenty- five hours of ethics, law, and contraindications and fifteen hours of elective courses in the field of massage therapy as referenced in 24 **Del.C.** §5309(b).

1.4 The Board has jurisdiction over the “practice of massage and bodywork” as defined in 24 Del.C. §5302(6).

1.4.1 **“Massage”** includes, the following practices or modalities:

- Chair Massage
- Deep Tissue Massage Therapy
- Manual Lymphatic Drainage
- Massage Therapy
- Myofascial Release Therapy
- Neuromuscular Therapy
- Swedish Massage Therapy
- Trager
- Visceral Manipulation

1.5.2 **“Bodywork”** includes the following practices or modalities:

- Acupressure
- Craniosacral therapy
- Clinical aroma therapy
- Hellerwork
- Process Acupressure
- Reflexology
- Rolfing
- Shiatsu

1.5 Continuing Education categories

1.5.1 **“Core course”** means a continuing education course with a subject matter within the “practice of massage and bodywork,” which contributes to the professional competency of the massage/bodywork therapist or massage technician. Core courses must be designed to maintain, improve, or expand skills and knowledge or to develop new and relevant skills and knowledge.

1.5.2 **“Elective course”** means a continuing education course with a subject matter that is outside the “practice of massage and bodywork,” which does not directly contribute to the professional competency of the massage/bodywork therapist or massage technician. Elective courses must have one of the following subject matters: modalities outside the “practice of massage and bodywork,” personal growth and self-improvement, business management, anatomy, or physiology.

1.6 **“CPR certification”** means a valid **Heartsaver®** CPR Certification or its equivalent issued by the American Heart Association, a valid Adult CPR Certification or its equivalent issued by the American Red Cross, or a valid Standard CPR Certification or its equivalent issued by the National Safety Council.

3 DE Reg. 1516 (5/1/00)

4 DE Reg. 1245 (2/1/01)

8 DE Reg. 692 (11/1/04)

10 DE Reg. 575 (09/01/06)

11 DE Reg. 692 (11/01/07)

2.0 Filing of Application for Licensure as Massage/Bodywork Therapist

2.1 A person seeking licensure as a massage/bodywork therapist must submit a completed application on a form prescribed by the board to the board office at the Division of Professional Regulation (“Division”), Dover, Delaware. Each application must be accompanied by (1) proof of current CPR certification and (2) payment of the application fee established by the Division. ~~of Professional Regulation~~

- 2.2 In addition to the application and materials described in ~~R~~regulation 2.1, an applicant for licensure as a massage/bodywork therapist shall have (1) each school or approved program of massage or bodywork where the applicant completed the hours of study required by 24 **Del.C.** §5308(a)(1) submit to the Board an official transcript or official documentation showing dates and total hours attended and a description of the curriculum completed; and (2) Assessment Systems, Incorporated, or its predecessor, submit to the Board verification of the applicant's score on the written examination described in ~~R~~regulation 3.0.
- 2.3 The ~~b~~Board shall not consider an application for licensure as a massage/bodywork therapist until all items specified in ~~R~~regulations 2.1 and 2.2 are submitted to the ~~b~~Board's office.
- 2.3.1 The ~~b~~Board may, in its discretion, approve applications contingent on receipt of necessary documentation. If the required documentation is not received within 120 days from the date when the application is first reviewed by the ~~b~~Board, the ~~b~~Board ~~will~~ shall propose to deny the application.
- 2.3.2 If an application is complete in terms of required documents, but the candidate has not responded to a ~~b~~Board request for further information, explanation or clarification within 120 days of the ~~b~~Board's request, the ~~b~~Board ~~will~~ shall vote on the application as ~~it stands~~ is.
- 2.4 ~~Renewal. Applicants for renewal of a massage/bodywork therapist license shall submit a completed renewal form, renewal fee, proof of continuing education pursuant to Regulation 7.0 and proof of a current CPR certification. Applicants for renewal of a massage/bodywork therapist license must maintain a current CPR certification, pay the required renewal fee, and submit a completed renewal application that indicates whether the applicant has met the CE requirements pursuant to regulation 7.0. Licensees holders shall be required to maintain current CPR certification throughout the biennial licensure period.~~

4 DE Reg. 1245 (2/1/01)

8 DE Reg. 692 (11/1/04)

10 DE Reg. 575 (09/01/06)

3.0 Examination

The Board designates the National Certification Examination administered by the National Certification Board for Therapeutic Massage and Bodywork ("NCBTMB") as the written examination to be taken by all persons applying for licensure as a massage/bodywork therapist. The Board will accept as a passing score on the exam the passing score established by the NCBTMB.

4.0 Application for Certification as Massage Technician

- 4.1 A person seeking certification as a massage technician must submit a completed application on a form prescribed by the board to the board office at the Division of Professional Regulation, Dover, Delaware. Each application must be accompanied by (1) proof of current certification and (2) payment of the application fee established by the Division of Professional Regulation.
- 4.2 In addition to the application and materials described in Regulation 4.1, an applicant for certification as a massage technician shall have the school or approved program of massage or bodywork therapy where the applicant completed the hours or study required by 24 **Del.C.** §5309(a)(1) submit to the Board an official transcript or official documentation showing dates and total hours attended and a description of the curriculum completed.
- 4.2.1 An applicant for a temporary massage technician certification, in addition to the application and materials described in Regulation 4.1, shall have the school or approved program of massage or bodywork therapy where the applicant completed the hours or study required by 24 **Del.C.** §5309(b) submit to the Board an official transcript or official documentation showing dates and total hours attended and a description of the curriculum completed.
- 4.3 The board shall not consider an application for certification as a massage technician until all items specified in Regulation 4.1 and 4.2 are submitted to the board's office.
- 4.3.1 The board may, in its discretion, approve applications contingent on receipt of necessary documentation. If the required documentation is not received within 120 days from the date when the application is first reviewed by the board, the board will propose to deny the application.

4.3.2 If an application is complete in terms of required documents, but the candidate has not responded to a board request for further information, explanation or clarification within 120 days of the board's request, the board will vote on the application as it stands.

4.4 Renewal. Applicants for renewal of a massage technician certificate shall submit a completed renewal form, renewal fee, proof of continuing education pursuant to Rule 7.0 and proof of current CPR certification. Certificate holders shall be required to maintain current CPR certification throughout the biennial licensure period. Temporary massage technician certificates are valid for no more than one (1) year and may not be renewed or reissued pursuant to the provision of 24 **Del.C.** §5309(b).

3 DE Reg. 1516 (5/1/00)

4 DE Reg. 1245 (2/1/01)

8 DE Reg. 692 (11/1/04)

10 DE Reg. 575 (09/01/06)

5.0 Expired License or Certificate

An expired license as a massage/bodywork therapist or expired certificate as a massage technician, excluding temporary massage technician certificates, may be reinstated within one (1) year after expiration upon application and payment of the renewal fee plus a late fee as set by the Division of Professional Regulation, submission of documentation demonstrating compliance with the continuing education requirements of Regulation 7.0 and proof of current CPR certification.

5 DE Reg. 827 (10/01/01)

8 DE Reg. 692 (11/1/04)

10 DE Reg. 575 (09/01/06)

6.0 Inactive Status

6.1 A licensee asking to have his or her license placed on inactive status must notify the board of his/her intention to do so in writing prior to the expiration of his/her current license. Holders of temporary massage technician certificates are not eligible for inactive status.

6.2 A licensee on inactive status seeking to re-enter practice must notify the board in writing of his/her intention, pay the appropriate fee, and provide the board with documentation demonstrating compliance with the continuing education hours required by Regulation 7.0, and proof of current CPR certification.

8 DE Reg. 692 (11/1/04)

10 DE Reg. 575 (09/01/06)

7.0 Continuing Education (CE)

7.1 Renewal Requirements. Hours required. ~~For license or certification periods beginning September 1, 2004 and thereafter, each m~~Massage/bodywork therapists shall complete ~~twenty-four (24)~~ hours of Board approved continuing education CE during each biennial licensing period, except as otherwise provided in these Rules and Regulations. ~~Each m~~Massage technician shall complete ~~twelve (12)~~ hours of acceptable continuing education approved CE during each biennial licensing period, except as otherwise provided in these Rules and Regulations. Completion of the required continuing education CE hours is a ~~condition of prerequisite for~~ renewing a license or certificate. Hours earned in a biennial licensing period in excess of those required for renewal may not be credited towards the hours required for renewal in any other licensing period.

7.1.1 Calculation of Hours. For academic course work, correspondence courses, or seminar/workshop instruction, one (1) hour of acceptable continuing education CE shall mean 50 minutes of actual instruction. One (1) academic semester hour shall be equivalent to ~~fifteen (15)~~ continuing education CE hours; one (1) academic quarter hour shall be equivalent to ~~ten (10)~~ continuing education CE hours.

7.1.2 If, during a licensing period, an individual certified by the Board as a massage technician is issued a license as a massage/bodywork and bodywork therapist, the continuing education CE requirement for that licensing period is as follows:

- 7.1.2.1 If the license is issued more than ~~twelve (12)~~ months prior to the next renewal date, the licensee shall complete ~~twenty-four (24)~~ hours of acceptable ~~continuing education~~ CE during the licensing period.
- 7.1.2.2 If the license is issued less than ~~twelve (12)~~ months prior to the next renewal date, the licensee shall complete ~~twelve (12)~~ hours of acceptable ~~continuing education~~ CE during the licensing period.
- 7.2 ~~Proration.~~ Candidates for renewal who were first licensed or certified ~~twelve (12)~~ months or less before the date of renewal are exempt from the ~~continuing education~~ CE requirement for the period in which they were first licensed or certified.
- 7.3 Content. Therapists and technicians may:
- 7.3.1 ~~Except as provided in Rule 7.3.2, continuing education hours must contribute to the professional competency of the massage/bodywork therapist or massage technician within modalities constituting the practice of massage and bodywork. Continuing education hours must maintain, improve or expand skills and knowledge obtained prior to licensure or certification, or develop new and relevant skills and knowledge. For each biennial licensing period, massage therapists must complete at least eighteen of the required twenty-four hours of continuing education hours in supervised in-class hands-on study of the "practice of massage and bodywork" as defined in Rule 1.4. For each biennial licensing period, massage technicians must complete at least nine of the required twelve hours of continuing education hours in supervised in-class hands-on study of the "practice of massage and bodywork" as defined in Rule 1.4. Fulfill all of their CE requirements with approved Core courses.~~
- 7.3.2 ~~For each biennial licensing period, massage therapists may complete (but are not required to complete) up to six hours of the required twenty-four hours of continuing education hours in any combination of the areas and methods listed in Rules 7.3.2.1 through 7.3.2.5. In each biennial licensing period, massage technicians may complete (but are not required to complete) up to three hours of the required twelve hours of continuing education hours in any combination of the areas and methods listed in Rules 7.3.2.1 through 7.3.2.6. Fulfill 25% of their CE requirements with approved Elective courses.~~
- 7.3.2.1 ~~Courses in modalities such as are listed in Rule 1.5, which are modalities other than in the practice of massage and bodywork~~
- 7.3.2.2 ~~Personal growth and self-improvement courses~~
- 7.3.2.3 ~~Business Management Courses~~
- 7.3.2.4 ~~Courses taught by correspondence or mail~~
- 7.3.2.5 ~~Courses taught by video, teleconferencing, video conferencing or computer.~~
- 7.3.2.6 ~~Courses in anatomy or physiology~~
- 7.3.3 Fulfill 50% of their CE requirements with Board-approved courses conducted online, by video replay, video- or tele-conference, correspondence, or mail. This allowance is subject to the limitation of Elective courses in regulation 7.3.2.
- 7.4 Board approval.
- 7.4.1 NCBTMB- and AMTA-approved CE courses are automatically approved for content. This provision is subject to the requirements and limitations under regulation 7.3.
- 7.4.12 All continuing education To obtain credit for CE courses not approved by NCBTMB or AMTA, those courses must be pre-approved by the Board before submission of a renewal application. Continuing education programs CE course participants or providers must may apply for pre-approval of continuing education hours courses by submitting a written request to the Board which that must includes the a program agenda, a syllabus and indicating the time spent on each topic, the names and resumes of the presenters, and the number of CE hours for which approval is and category requested. The Board reserves the right to approve less than the number of hours requested or to approve a course in a different category than requested.
- 7.4.23 Self-directed activity. The Board may, upon request, review and approve credit for self-directed activities, including, but not limited to; teaching, research, and preparation ~~and/or~~ presentation of

professional papers and articles. A ~~licensee~~ may apply for 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 activities by submitting a written request for pre-approval that must include an proposal outlining of the scope of the activity, the number of ~~continuing education~~ CE hours and category 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.

7.4.34 Course preparation and instruction. The Board may ~~award~~ approve up to six additional ~~continuing education~~ CE credits, on an hour for hour basis, to ~~continuing education~~ instructors for their ~~first-time~~ initial preparation and presentation of an approved ~~continuing education~~ CE course for ~~other practitioners, to a maximum of 6 additional hours.~~ (e.g. an instructor preparing and presenting an 8 eight hour course for the first time may receive up to ~~6~~ six additional credit hours, ~~for preparation of the course~~). This provision remains subject to the limitations of Rule regulation 7.3.2.

7.4.5 Board approval of a licensee's CE hours in a modality is not a Board endorsement of the licensee's competence to practice that modality.

7.5 Reporting Verification.

7.5.1 ~~For license or certification periods beginning September 1, 2004 and thereafter, each candidate for renewal shall submit a summary of their continuing education hours, along with any supporting documentation requested by the Board, to the Board on or before May 31 of the year the license or certification expires. No license or certification shall be renewed until the Board has approved the required continuing education hours or granted an extension of time for reasons of hardship. The Board's approval of a candidate's continuing education hours in a particular modality does not constitute approval of the candidate's competence in, or practice of, that modality. Verification of CE hours shall be by attestation. Attestation shall be completed electronically if the renewal is accomplished online. Alternatively, the attestation of completion may be submitted by paper renewal forms. Requests for paper renewal forms must be directed to the Division.~~

7.5.2 ~~If a continuing education program has already been approved by the Board, the candidate for renewal must demonstrate, at the Board's request, the actual completion of the continuing education hours by giving the Board a letter, certificate or other acceptable proof of attendance provided by the program sponsor. Post-Renewal Audit. The Board will conduct random audits of renewal applications to ensure the veracity of attestations and compliance with the renewal requirements. Licensees selected for the random audit shall submit CE course attendance verification in the form of a certificate of attendance or completion that must be signed by the course presenter or by a designated official of the sponsoring organization. Licensees shall retain their CE course attendance documentation for each licensure period and for at least one year after renewal. Licensees found to be deficient or found to have falsely attested may be subject to disciplinary proceedings and may have their license suspended or revoked. Licensees renewing during the late renewal period pursuant to regulation 5.0 shall be audited.~~

7.6 ~~Hardship. A candidate for renewal may be granted an extension of time in which to complete continuing education CE hours upon a showing of unusual hardship. "Hardship" may include, but is not limited to, disability, illness, extended absence from the jurisdiction, and exceptional family responsibilities. Requests for hardship consideration extensions must be submitted to the Board in writing prior to the end of the licensing or certification period for which ~~it~~ the request is being made. If ~~the Board does not have sufficient time to consider and approve a request for hardship extension prior to the expiration of the license, the license will lapse upon the expiration date and be reinstated upon completion of continuing education pursuant to the hardship exception. The licensee may not practice until reinstatement of the license.~~~~

7.7 ~~Continuing Education Requirements for Late Renewal. Reinstatement of a Lapsed License Unless extended by the Board for hardship as defined in Rule regulation 7.6, and subject to the ~~one (1)~~ one-year limitation set forth in Rule regulation 5.0, a massage/bodywork therapists and massage technicians applying for reinstatement of a lapsed license late renewal must provide to the Board adequate proof of the ~~satisfactory completion of twenty-four (24) hours of Board approved continuing~~~~

~~education within the required CE for the immediately preceding two (2) year licensure period prior to the date of application for reinstatement. A massage technician applying for reinstatement of a lapsed license must provide to the Board adequate proof of the satisfactory completion of twelve (12) hours of Board approved continuing education within the immediately preceding two (2) year period prior to the date of application for reinstatement. Continuing education hours required for reinstatement of a lapsed license may not be credited towards the hours required for renewal in any other licensing period.~~

~~7.7.1 A massage therapist who has let his/her license lapse for more than one (1) year and is ineligible for reinstatement and therefore required to submit a new application shall not be permitted to circumvent continuing education requirements. The massage therapist must provide to the Board adequate proof of the satisfactory completion of twenty four (24) hours of Board approved continuing education within the immediately preceding two (2) year period prior to the date of the new application. A massage technician who has let his/her license lapse for more than one (1) year and is ineligible for reinstatement and therefore required to submit a new application shall not be permitted to circumvent continuing education requirements. The massage technician must provide to the Board adequate proof of the satisfactory completion of twelve (12) hours of Board approved continuing education within the immediately preceding two (2) year period prior to the date of the new application. Continuing education hours required to be filed with a new application may not be credited towards the hours required for renewal in any other licensing period.~~

7.8 ~~Continuing Education Requirements for Licensees Returning from to InActive Status. Unless extended by the Board for hardship as defined in Rule regulation 7.6, a massage/bodywork therapists and massage technicians returning from inactive status must provide notice to the Board as set forth in Rule regulation 6.2 and must provide to the Board adequate proof of the satisfactory completion of twenty four (24) hours of Board approved continuing education CE within the immediately preceding two (2) two-year period prior to the date of the notice to return to active. A massage technician returning from inactive status must provide notice to the Board as set forth in Rule regulation 6.2 and must provide to the Board adequate proof of the satisfactory completion of twelve (12) hours of Board approved continuing education CE within the immediately preceding two (2) year period prior to the date of the notice to return to active status. Continuing education CE hours required to return to active status may not be credited towards the hours required for renewal in any other licensing period.~~

3 DE Reg. 1516 (5/1/00)

4 DE Reg. 1245 (2/1/01)

4 DE Reg. 1944 (6/1/01)

5 DE Reg. 1409 (1/1/02)

7 DE Reg. 40 (7/1/03)

8 DE Reg. 692 (11/1/04)

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

[5300 Board of Massage and Bodywork](#)

PROPOSED REGULATIONS

DEPARTMENT OF TRANSPORTATION DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 Delaware Code, Section 302, and 29 Delaware Code, Section 10115 (21 Del.C. §302; 29 Del.C. 10115)
2 DE Admin. Code 2221

PUBLIC NOTICE

The Delaware Division of Motor Vehicles gives notice of intent to adopt proposed Division of Motor Vehicles Regulation 2221 relating to the use of translators by driver license applicants who cannot speak or read English.

Any person who wishes to make written suggestions, briefs or other written materials concerning this proposed new regulation must submit the same to Jack E. Eanes, Chief of Operations, Delaware Division of Motor Vehicles, P.O. Box 698, Dover, Delaware 19903, or by fax to (302) 739-2042 by May 30, 2008.

2221 Use of Translators

1.0 Authority

The authority to promulgate this regulation is 21 Del.C. §302 and 29 Del.C. §10115.

2.0 Purpose

This regulation establishes procedures regarding the use of translators for driver license applicants who cannot read or speak English. This regulation also establishes procedures on how a translator may assist an applicant during the Division's written and road tests.

3.0 Applicability

This regulation will enable the Division of Motor Vehicles to maintain the integrity of the driver license written and road test process. This regulation also ensures compliance with Delaware law on the written test portion of the driver license application process and federal law on commercial driver license road tests.

4.0 Delaware Law

Delaware Title 21, Section 2707(b)(5), prohibits the Division from issuing an operator's or chauffeur's license to any person who is unable to understand highway warning or directional signs in the English language.

5.0 Substance of Regulation

5.1 Translation services may be provided by any individual the applicant selects.

5.2 Translators may read the questions and answers to the applicant as shown on the Division's automated test system but will not provide any other assistance during the test. The highway warning and directional sign portion of the test on the automated test system must be taken and passed without any assistance from the translator. Those applicants who fail the automated sign test twice on separate occasions shall be given a paper sign test. The signs shall be shown to the applicant who shall explain the answers to the translator who, in turn, shall provide the answers to the DMV technician. This will ensure the applicant is able to understand highway warning and directional signs in English.

5.3 Translators may provide assistance during the road test portion of Class D road tests by providing a brief overview of the road test requirements and by relaying instructions to the applicant from the DMV technician. Translators will sit in the rear of the vehicle and relay instructions to the applicant from the DMV technician but will not provide any other assistance unless directed to do so by the DMV technician. Federal law prohibits translators for commercial driver license road tests. Translators will

provide applicants a brief overview of the parallel parking portion of the road test. The translator will stand next to the DMV technician during the parallel parking portion of the road test and will not provide any other instructions unless directed to do so by the DMV technician.

6.0 Non-compliance

Any applicant whose translator is found speaking during a road test at any time other than when directed by the DMV technician will automatically fail the road test. Translators who assist applicants by providing answers to questions or by pointing out the correct answers will be prohibited from providing translator services in Division facilities.

7.0 Payment of Translator Service Fees

All fees associated with an applicant using a translator shall be the responsibility of the applicant requesting the service and paid for by the applicant.

8.0 Scheduling

An applicant requiring a translator is responsible for scheduling a translator for both the written and road tests.

9.0 Video and Audio Monitoring

The Division may use video and audio devices to monitor translators during the written and road tests. This is done to ensure translators are not providing answers to the applicant.

10.0 Severability

If any part of this rule is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portion shall be severed, and the remaining portions of this rule shall remain in full force and effect under Delaware law.

11.0 Effective Date

The following regulation shall be effective 10 days from the date the order is signed, and it is published in its final form in the Register of Regulations in accordance with 29 Del.C. §10118(e).

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION**OFFICE OF THE SECRETARY**

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

REGULATORY IMPLEMENTING ORDER**729 School Custodians****I. Summary of the Evidence and Information Submitted**

Secretary of Education intends to amend 14 **DE Admin. Code** 729 School Custodians. The amendments include a new definitions section; clarifies the training components related to additional pay stipends; and clarifies that charter schools are allocated custodial units similar to districts.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on Monday, March 17, 2008 in the form hereto attached as *Exhibit "A"*. There were no comments received on this regulation.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 729 School Custodians in order to clarify training and related additional stipends and that charter schools are allocated custodial units similar to districts.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 729 School Custodians. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 729 School Custodians

attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 729 School Custodians hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 729 School Custodians amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 729 School Custodians in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on April 15, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of April 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 15th day of April 2008

***Please note that no changes were made to the regulation as originally proposed and published in the February 2008 issue of the *Register* at page 980 (11 DE Reg. 980). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at [729 School Custodians](#)**

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 877

REGULATORY IMPLEMENTING ORDER

877 Tobacco Policy

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 877 Tobacco Policy by adding a provision that an electronic copy of the current regulation is on file at the Department of Education.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on Wednesday, March 5, 2008 in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities endorsing the amended regulation.

II. Findings of Facts

Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 877 Tobacco Policy in order to add a provision that an electronic copy of the most current regulation is on file with the Department of Education.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 877 Tobacco Policy. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 877 Tobacco Policy attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 877 Tobacco Policy hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 877 Tobacco Policy amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 877 Tobacco Policy in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on April 15, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of April 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 15 day of April 2008

***Please note that no changes were made to the regulation as originally proposed and published in the March 2008 issue of the *Register* at page 1100 (11 DE Reg. 1100). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at**

[877 Tobacco Policy](#)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1540

REGULATORY IMPLEMENTING ORDER**1540 Secondary English Language Arts 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 regulation **DE Admin. Code** 1540 Secondary English Language Arts Teacher. This regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation in order to align it with the valid grade levels designated within the newly amended **DE Admin. Code** 1531 Middle Level English Language Arts Teacher. This regulation sets forth the requirements for a Secondary English Language Arts Teacher

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on Friday February 29, 2008 in the form hereto attached as Exhibit "A". The notice invited written

comments. No written comments were received.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1540 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 3RD DAY OF APRIL, 2008

Kathleen Thomas, Chair
Joanne Christian
Sandra Falatek
Barbara Grogg
Lori Hudson
Mary Mirabeau
Gretchen Pikus
Michael Thomas

Cathy Cathcart
Marilyn Dollard
Karen Gordon
Leslie Holden
Dorothy McQuaid
Wendy Murray
Karen Schilling-Ross
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 17TH DAY OF APRIL, 2008.

STATE BOARD OF EDUCATION

Jean W. Allen, President
Mary B. Graham, Esquire
Barbara Rutt
Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President
Jorge L. Melendez
Dennis J. Savage

1540 Secondary English Language Arts Teacher

1.0 Content

This regulation shall apply to the requirements for a Standard Certificate, pursuant to ~~14 Del.C. §1220(a)~~, for English Teacher (required for grades 9 to 12, and valid in grades 5 to 8 in a middle-level school).

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

2.0 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

~~"Standards Board"~~ means the Professional Standards Board established pursuant to ~~14 Del.C. §1201~~.

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

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

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

~~10-DE-Reg-100 (07/01/06)~~

3.0 Standard Certificate

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

~~3.1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:~~

~~3.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or~~

~~3.1.2 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in English; or~~

~~3.1.3 Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or~~

~~3.1.4 Holding a bachelor's degree from a regionally accredited college or university in any content area and for applicants applying after June 30, 2006 for their first Standard Certificate, satisfactory completion of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) credits must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and~~

~~3.2 For applicants applying after December 31, 2005, where a Praxis™ II examination in the area of the Standard Certificate requested applicable and available, achieving a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination; or~~

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

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

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

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

~~10 DE Reg 100 (07/01/06)~~

~~4.0 -Multiple Certificates~~

~~Educators may hold certificates in more than one area.~~

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

~~10 DE Reg. 100 (10/01/06)~~

~~5.0 Application Requirements~~

~~An applicant for a Standard Certificate shall submit:~~

~~5.1 Official transcripts; and~~

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

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

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

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

~~6.0 -Application Procedures for License Holders~~

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

~~7.0 -Effect of Regulation~~

~~This regulation shall apply to all requests for issuance of a Standard Certificate, except as specifically~~

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

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

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

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

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

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

~~10 DE Reg. 100 (07/01/06)~~

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

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 English Language Arts Teacher. This certification is required for grades 9 to 12 and is valid in a Middle Level school, grades 6 to 8 [and may be used in lieu of the Middle Level English Language Arts Teacher certification in grades 6 to 8.]

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.

3.0 Standard Certificate

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

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

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

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

~~10 DE Reg. 100 (07/01/06)~~

~~11 DE Reg. 1173 (03/01/08)~~

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

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1542

REGULATORY IMPLEMENTING ORDER

1542 Secondary Mathematics 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 regulation **DE Admin. Code** 1542 Secondary Mathematics Teacher. This regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation in order to align it with the valid grade levels designated within the newly amended **DE Admin. Code** 1532 Middle Level Mathematics Teacher. This regulation sets forth the requirements for a Secondary Mathematics Teacher.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on Friday February 29, 2008 in the form hereto attached as Exhibit "A". The notice invited written comments. No written comments were received.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1542 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 3RD DAY OF APRIL, 2008

Kathleen Thomas, Chair
Joanne Christian
Sandra Falatek
Barbara Grogg
Lori Hudson
Mary Mirabeau

Cathy Cathcart
Marilyn Dollard
Karen Gordon
Leslie Holden
Dorothy McQuaid
Wendy Murray

Gretchen Pikus
Michael Thomas

Karen Schilling-Ross
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 17TH DAY OF APRIL, 2008.

STATE BOARD OF EDUCATION

Jean W. Allen, President
Mary B. Graham, Esquire
Barbara Rutt
Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President
Jorge L. Melendez
Dennis J. Savage

1542 Secondary Mathematics Teacher

1.0 Content

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 ~~Del.C.~~ §1220(a), for Mathematics Teacher Secondary (required for grades 9 to 12, and valid in grades 5 to 8 in a middle level school.

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

2.0 Definitions

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

"Certification" means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.

"Department" means the Delaware Department of Education.

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

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

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

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

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

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

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

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

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

~~"Standards Board" means the Professional Standards Board established pursuant to 14 Del.C. §1201.~~

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

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

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

~~10 DE Reg. 100 (07/01/06)~~

3-0 Standard Certificate

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

3.1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:

3.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or

3.1.2 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in Mathematics; or

3.1.3 Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or

3.1.4 Holding a bachelor's degree from a regionally accredited college or university in any content area and for applicants applying after June 30, 2006 for their first Standard Certificate, satisfactory completion of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) credits or their equivalent must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and

3.2 For applicants applying after December 31, 2005, where a Praxis™ II examination in the area of the Standard Certificate requested is applicable and available, achieving a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination; or

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

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

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

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

~~10 DE Reg. 100 (07/01/06)~~

4-0 Multiple Certificates

Educators may hold certificates in more than one area.

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

~~10 DE Reg. 100 (07/01/06)~~

5-0 Application Requirements

An applicant for a Standard Certificate shall submit:

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

6.0 Application Procedures for License Holders

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

7.0 Effect of Regulation

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

8.0 Validity of a Standard Certificate

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

9.0 Secretary of Education Review

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

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

~~10-DE-Reg-100 (07/01/06)~~

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

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 Mathematics Teacher. This certification is required for grades 9 to 12 and is valid in a Middle Level school, grades 6 to 8 [and may be used in lieu of the Middle Level Mathematics Teacher certification in grades 6 to 8.]

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.

3.0 Standard Certificate

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

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

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

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

10 DE Reg. 100 (07/01/06)

11 DE Reg. 1177 (03/01/08)

Renumbered effective 6/1/07 - see Conversion Table

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 2901 (14 Del.C. §2901)
14 DE Admin. Code 1544

REGULATORY IMPLEMENTING ORDER

1544 Secondary Social Studies 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 regulation **DE Admin. Code 1544 Secondary Social Studies Teacher**. This regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation in order to align it with the valid grade levels designated within the newly amended **DE Admin. Code 1534 Middle Level Social Studies Teacher**. This regulation sets forth the requirements for a Secondary Social Studies Teacher.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on Friday February 29, 2008 in the form hereto attached as Exhibit "A". The notice invited written comments. No written comments were received.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 Del.C. §1205(b), the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code 1544** of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 3RD DAY OF APRIL, 2008

Kathleen Thomas, Chair
Joanne Christian
Sandra Falatek
Barbara Grogg
Lori Hudson
Mary Mirabeau
Gretchen Pikus
Michael Thomas

Cathy Cathcart
Marilyn Dollard
Karen Gordon
Leslie Holden
Dorothy McQuaid
Wendy Murray
Karen Schilling-Ross
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 17TH DAY OF APRIL, 2008.

STATE BOARD OF EDUCATION

Jean W. Allen, President
Mary B. Graham, Esquire
Barbara Rutt
Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President
Jorge L. Melendez
Dennis J. Savage

1544 Secondary Social Studies Teacher**4.0 Content**

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 ~~Del.C.~~ §1220(a), for Social Studies Teacher Secondary (required for grades 9 to 12, and valid in grades 5 to 8 in a middle level school).
~~7-DE Reg. 775 (12/1/03)~~

2.0 Definitions

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

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

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

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

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

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

~~“Immorality” means conduct which is inconsistent with the rules and principles of morality~~

expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of his or her unfitness;

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

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

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

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

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

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

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

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

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

~~10-DE Reg. 100 (07/01/06)~~

3-0 Standard Certificate

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

3-1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:

3-1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or

3-1.2 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in history, political science, government, civics, geography, or economics; or

3-1.3 Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or

3-1.4 Holding a bachelor's degree from a regionally accredited college or university in any content area and for applicants applying after June 30, 2006 for their first Standard Certificate, satisfactory completion of fifteen (15) credits of their equivalent in professional development related to their area of certification, of which at least six (6) credits or their equivalent must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and

3-2 For applicants applying after December 31, 2005, where a Praxis™ II examination in the area of the Standard Certificate requested is applicable and available, achieving a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination; or

3-3 Meeting the requirements for licensure and holding a valid and current license or certificate from another state in Social Studies;

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

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

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

~~10-DE-Reg-100 (07/01/06)~~

~~4.0 Multiple Certificates~~

~~Educators may hold certificates in more than one area.~~

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

~~10-DE-Reg-100 (07/01/06)~~

~~5.0 Application Requirements~~

~~An applicant for a Standard Certificate shall submit:~~

~~5.1 Official transcripts; and~~

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

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

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

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

~~6.0 Application Procedures for License Holders~~

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

~~7.0 Effect of Regulation~~

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

~~8.0 Validity of a Standard Certificate~~

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

~~9.0 Secretary of Education Review~~

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

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

~~10 DE Reg. 100 (07/01/06)~~

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

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 Social Studies Teacher. This certification is required for grades 9 to 12 and is valid in a Middle Level school, grades 6 to 8 [and may be used in lieu of the Middle Level Social Studies Teacher certification in grades 6 to 8.]

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.

3.0 Standard Certificate

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

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

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

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

~~10 DE Reg. 100 (07/01/06)~~

~~11 DE Reg. 1185 (03/01/08)~~

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

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

School-Based Wellness Center Services

Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance. The Department's proceedings to amend the Title XIX Medicaid State Plan to add specific reimbursement methodology language for School-Based Wellness Center Clinic Services 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 March 2008 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Amendment

The purpose of this proposal is to amend the Title XIX Medicaid State Plan to add specific reimbursement

language for School-Based Wellness Center Clinic Services.

Statutory Authority

- 42 CFR 440.205, *Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates*;
- 42 CFR §440.90, *Clinic Services*; and,
- State Medicaid Manual, Section 4320, *Clinic Services*.

Summary of Proposed Amendment

School-Based Wellness Center Clinic Services provide primary prevention and early intervention services, including physical examinations, treatment of acute medical problems, community referrals, counseling and other supportive services to children in school or educational settings.

The Centers for Medicare and Medicaid Services (CMS) advised the State Agency to revise the Title XIX Medicaid State Plan to add specific reimbursement methodology language for School-Based Wellness Center Services.

School-Based Wellness Center Services, operated by the Division of Public Health in Delaware schools, are reimbursed a single rate once each benefit year for any client served in one of the school-based clinics. The single rate is based on prior year statewide costs of all School-Based Wellness Centers.

No change will be made to the services provided under the school-based wellness services benefit.

The provisions of this amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

This proposed regulation was also published concurrently herein under "Emergency Regulations" to allow for public comment.

Summary of Comments Received with Agency Response and Explanation of Changes

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DMMA has considered the comment and responds as follows:

The Councils understand the Center for Medicare and Medicaid Services (CMS) is prompting DMMA to adopt a funding standard. The DMMA proposes no change in services and it establishes a single rate for each client served in a Wellness Center which would be based on prior year Center costs. We reviewed the amendment and did not identify any concerns.

Agency Response: Your participation is appreciated. Thank you for your comment.

Further analysis by Division staff resulted in changes to the rule as proposed to insert language related to cost reports and interim rates; and, to address upper payment limits as set forth in 42 CFR §447.321. These additions are indicated by **[bracketed bold type]**.

Findings of Fact:

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

THEREFORE, IT IS ORDERED, that the proposed regulation regarding the specific reimbursement methodology language for School-Based Wellness Center Services is adopted and shall be final effective May 10, 2008.

Vincent P. Meconi, Secretary, DHSS, April 14, 2008

**DMMA FINAL ORDER REGULATIONS #08-13
REVISIONS:**

ATTACHMENT 3.1-A
Page 4

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State/Territory: DELAWARE

AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND SERVICES PROVIDED TO THE
CATEGORICALLY NEEDY

9. Clinic Services

Clinic services are limited to the following:

- ~~Medical~~ or rehabilitation clinics (including Mental Health clinics which require certification by the Division of Substance Abuse and Mental Health (DSAMH) as part of the Single State Agency for Medicaid) and
- State Licensed Free Standing Surgical Centers (FSSCs) which equate to Federally defined Ambulatory ~~Surgical Centers (ACs)~~ using related policies for ACSs described in Sections 2265 and 2266 of the Medicare Carriers Manual.
- School-Based Wellness Center Clinic Services that provide primary prevention and early intervention services, including physical examinations, treatment of acute medical problems, community referrals, counseling and other supportive services to children in school or educational settings.

(Break in Continuity of Sections)

ATTACHMENT 4.19-B
Page 2

Medical/Dental free-Standing Clinics are paid either a negotiated flat rate or as physicians are paid (see above). School-Based Wellness Center Services, operated by the Division of Public Health in Delaware schools, are reimbursed a single rate once each benefit year for any client served in one of the school-based clinics. The single rate is based ~~on prior year statewide costs of all School-Based Wellness Centers. cost reports for the prior year submitted in a format specified by the Medicaid agency. An interim rate is paid until the end of the reporting period when there is a retrospective cost settlement. Actual costs reported on the cost report are divided by actual encounters to determine the actual cost per encounter for the period. Actual costs will be compared to interim payments and settlements will be completed.~~

Payments for clinic services will not exceed the upper payment limits set forth in 42 CFR §447.321: (1) For services covered by Medicare, payments are not to exceed the Medicare rates or the Medicare aggregate payment amount for those services; and, (2) For services not covered by Medicare, aggregate payments are not to exceed an amount that could reasonably be estimated would have been paid under Medicare payment principles.]

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Long Term Care Resource Exclusions - Automobiles

Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend existing rules in the Division of Social Services Manual (DSSM) used to

determine eligibility related to Long Term Care Resource Exclusions - Automobiles. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the March 2008 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposal

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend existing rules in the Division of Social Services Manual (DSSM) used to determine eligibility related to Long Term Care Resource Exclusions - Automobiles.

Statutory Authority

- 42 CFR 416.1218, *Exclusion of the Automobile*; and,
- POMS Section SI 01130.200, *Automobiles and Other Vehicles Used for Transportation*.

Summary of Proposal

DSSM 20310.5 and 20330.1, *Automobiles*: One vehicle, regardless of the value, will be totally excluded if used for transportation of the eligible individual or a member of the eligible individual's household.

Summary of Comments Received with Agency Response and Explanation of Changes

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DMMA has considered each comment and responds as follows.

In general, the amendments are consistent with the attached federal regulations, 20 C.F.R. §§416.1218 and 416.1201(c). However, we have three (3) recommendations to share with you.

First, the grammar in §20330.1 is problematic. Councils recommend the following substitute (with changes underlined):

If one vehicle can not be excluded under Section 20310.5, or there is more than one vehicle, the equity value is a resource if it:

- Is owned by an eligible individual/spouse; or

- Cannot be excluded under another provision (e.g. property essential to self support - DSSM 20320.5; co-owner refuses to sell) or conditional benefits do not apply (DSSM 20360).

Agency Response: DMMA agrees. Changes to the rule as proposed are indicated by **[bracketed bold type]**.

Second, the federal regulation [20 C.F.R. §416.1218(b)(2)] specifically recites that automobiles not excluded under 20 C.F.R. §416.1218(b)(1) are "non-liquid resources." Although 16 **DE Admin Code** 20300.2 "captures" this concept, it would be preferable to clarify this status in the proposed §§20310.5 and 20330.1. This could be achieved by inserting "non-liquid" prior to "resource" in both sections.

Agency Response: DMMA agrees. The change to the rule as proposed is indicated by **[bracketed bold type]**.

Third, proposed §20330.1 contains the following benchmark for valuation of an auto's equity value: "The equity value is the price it can reasonably sell for on the open market minus any encumbrances." The federal standard is more restrictive by limiting equity value to "the price that an item can reasonably be expected to sell for on the open market in the particular geographical area involved; minus...(a)ny encumbrances. [emphasis supplied] See attached 20 C.F.R. 416.1201(c)(2). The federal regulation would not allow a valuation based on an eBay, national, or international internet sale. The DMMA regulation would allow valuation based on a non-Delaware market. At a minimum, we recommend the adoption of the following revised sentence: "The equity value is the

price it can reasonably sell for on the open market in Delaware minus any encumbrances.”

Agency Response: DMMA agrees. The change to the rule as proposed is indicated by **[bracketed bold type]**.

Findings of Fact:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) related to Long Term Care Resources Exclusions – Automobiles is adopted and shall be final effective May 10, 2008.

Vincent P. Meconi, Secretary, DHSS, April 14, 2008

DMMA FINAL REGULATION #08-14 REVISIONS:

~~20310.5~~ **Automobiles**

~~One automobile, regardless of value, if, for the individual or a member of the individual's household (member of a household is one who receives food, clothing and shelter at the applicant's residence at time of institutionalization) if it fits the exclusions listed in Sections 20310.5.1–20310.5.4.~~

~~20310.5.1~~ **Employment**

~~The automobile is excluded if necessary for employment.~~

~~20310.5.2~~ **Medical Use**

~~If the automobile is necessary for the medical treatment of a specific or regular medical problem, it may be excluded.~~

~~20310.5.3~~ **Modifications**

~~An exclusion may be used if the vehicle is modified for operation by or transportation of a disabled person.~~

~~20310.5.4~~ **Essential Daily Activities**

~~The automobile may be excluded if it is necessary because of climate, terrain, distance, or similar factors to provide necessary transportation to perform essential daily activities.~~

~~20310.6~~ **Joint Ownership**

~~If the automobile is jointly owned and if a co-owner refuses to sell it may be excluded.~~

20310.5 **Automobiles**

20 CFR 416.1218

SI 01130.200

An automobile is any registered or non-registered vehicle that is used for transportation.

One automobile, per household, is excluded if:

- Used for transportation of the eligible individual or
- Used for transportation of a member of the eligible individual's household.

If there is more than one vehicle used for transportation, the automobile with the greatest equity value will be excluded.

The equity value of all additional automobiles will be evaluated as a **[non-liquid]** resource.

*(Break In Continuity of Sections)***20330.1 Vehicles**

Vehicles are defined as automobiles, boats, travel trailers, motorcycles etc. The current market value of a vehicle is the average price that it will sell for (based on year, make, model and condition) on the open market in a certain geographic area. Current market value can be determined by using the NADA book (trade in value) or a written appraisal from a disinterested, knowledgeable source. One vehicle may be excluded under Section 20310.5. Only one vehicle may be excluded for a married couple.

If NO vehicle is excluded per Section 20310.5, up to \$4650 of the CMV of ONE vehicle is excluded. If the CMV exceeds \$4650, the excess counts as a resource, unless the vehicle can be excluded under some other provision (i.e., co-owner refuses to sell). It is unlikely the \$4650 exclusion will be used. This is because most vehicles are used for either a medical problem or for essential daily activities and can be excluded per Section 20310.5.

Any vehicle an individual owns in addition to the vehicle that was totally or partly excluded (up to \$4650), is a resource in the amount of its equity value. The equity value is the CMV minus amount owed on the vehicle. The exclusion is applied in the manner most advantageous to the individual. If one of two vehicles can be excluded as necessary for medical treatment, the exclusion is applied to the vehicle with the greater equity value regardless of which vehicle is used to obtain medical treatment.

20330.1 Automobiles

For the purpose of Medicaid, automobile is defined as any registered or unregistered vehicle used for transportation.

One vehicle may be excluded under Section 20310.5.

Only one vehicle may be excluded per married couple/household.

If one vehicle can not be excluded under Section 20310.5, or there is more than one vehicle, the equity value is a [non-liquid] resource if [it] :

- Is owned by an eligible individual/spouse [;or]
- Cannot be excluded under another provision (e.g. property essential to self support - DSSM 20320.5; co-owner refuses to sell) or conditional benefits do not apply (DSSM 20360).

The equity value is the price it can reasonably sell for on the open market [in Delaware] minus any encumbrances.

DIVISION OF SOCIAL SERVICES

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

ORDER**Fair Hearing Procedures****Nature of the Proceedings:**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to Fair Hearing procedures. The Department's proceedings were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of public comment pursuant to 29 **Delaware Code** Section 10115 in the March 2008 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposal

The purpose of this regulatory action is to amend the Division of Social Services Manual (DSSM) regarding Fair Hearing procedures.

Statutory Authority

- 31 Delaware Code, *Department of Health and Social Services*
- 45 CFR §205.10, *Hearings*
- 7 CFR §273.15, *Fair Hearings*
- 42 CFR §431.205, *Provision of Hearing System*

Summary of Proposed Changes

1) DSSM 5000, *Definitions*: This rule modification: a) updates the Fair Hearing policy to include the Child Care Subsidy Program; and, b) expands the definition of the Department to clarify the divisions affected by this policy.

2) DSSM 5405, *Fair Hearing Procedures*: This revision clarifies the responsibilities of each party in a fair hearing, including the extent of the hearing officer's authority.

Summary of Comments Received with Agency Response and Explanation of Changes

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DSS has considered each comment, found the comments to be helpful and instructive and have, for the most part, adopted the suggestions made.

First, in §5000, the definition of "DHSS" merits revision.

A. Paragraph 2 refers to "a managed care company ("MCO") under contract with DHSS to manage an operation of the Medicaid Program." The Division of Child Mental Health Services is a Medicaid MCO. It is not a "company". Moreover, we lack information on whether its status as an MCO is established by "contract", memorandum of understanding, or other document. DHSS should consider amending this section to accurately include the DCMHS.

Agency Response: DSS agrees and changed the reference in the final order regulation to read "managed care organization." Also, in response to amending §5000 to include DCMHS, DSS decline the recommendation because §5000 describes the Divisions within the Department of Health and Social Services (DHSS) and DCMHS is a Division within the Department of Services to Children, Youth & Their Families. The rules adequately cover hearing requests over Medicaid Program services offered by DCMHS as a Medicaid Program managed care provider.

B. Paragraph 1 refers to "financial assistance". This may be too narrow. The **Delaware Code** contemplates many forms of "public assistance". See Title 31 **Del.C.** §§501-502. DSS administers a variety of public assistance benefits, including job training and education. Compare 16 **DE Admin Code** §5304: "An opportunity for a hearing will be granted to any... recipient who is aggrieved by any action of the Division of Social Services such as actions to... assign Food Stamp Program recipients to a specific employment and training component." DSS is also involved in medical assistance. Apart from the Chronic Renal Disease Program, DSS is responsible for PASARR hearings. See 16 **DE Admin Code** §5304.1. Therefore, Par. 1 could be amended to refer to "economic, medical, vocational or child care subsidy assistance". Parenthetically, 16 **DE Admin Code** §5304 refers to "economic assistance" rather than "financial assistance". "Economic" is ostensibly a more encompassing term.

Agency Response: DSS adopted the Councils' recommendation.

C. DDDS and DSAAPD are not mentioned in the definition of covered DHSS divisions. Both agencies administer some Medicaid waivers. The waivers authorize aggrieved applicants and participants to pursue a fair hearing. See, e.g. attached Appendix F-1:1 from ABI waiver.

Agency Response: DSS adopted this change in the final order regulation and also added the Division of Public Health to the list since that Division is involved with AIDS waiver services funded under the Medicaid Program.

D. The DLTCRP is not mentioned in the definition of covered DHSS divisions. Consistent with Title 16 **Del.C.** §1121(18), residents of licensed long-term care facilities can request a DHSS hearing to contest an involuntary discharge. Pursuant to 16 **DE Admin Code** §5304.2, DSS processes such fair hearing requests involving nursing homes. However, the DLTCRP has been processing hearings for non-nursing homes with no regulations. See attached October, 2004 correspondence between DLP and DLTCRP. It would be preferable to clarify that such hearings are subject to the Title 16 **Admin Code** 5000 procedures and clarify if they are processed by DSS or the DLTCRP.

Agency Response: The proposed rulemaking does not change the existing rule at §5304.2 and DSS has jurisdiction for residential nursing facility discharge hearings as provided under 42 CFR 483.202 and 483.204 (a) (1). (The reference in the current rule to §438.202 and §438.204 (a)(1) erroneously transposes the rule numbers and may have been superceded by changes in the federal numbering system. Please note that this jurisdictional issue is under review by DHSS' legal council.)

Second, §5405(4) categorically disallows the hearing officer "to assist either party in the presentation of the case". Since DHSS representatives are professionals routinely involved in hearings, this disallowance disproportionately affects pro se applicants. This provision also violates federal Food Stamp regulations which recite as follows:

(p) Household rights during hearing. The household may not be familiar with the rules of order and it may be necessary to make particular efforts to arrive at the facts of the case in a way that makes the household feel most at ease.

7 C.F.R. §273.15(p). The courts have often imposed an expectation of some assistance to pro se applicants in presenting their case in administrative hearings. See, e.g. Reefer v. Barnhart, 326 F.3d 376, 380 (3d Cir. 2003); Livingston v. Califano, 614 F.2d 342, (3d Cir. 1980); and Dobrowolsky v. Califano, 606 F. 2d 403 (3d Cir. 1979).

Agency Response: The only change in the rule text is to remove indefinite pronouns as references and replace with gender neutral language. DSS considered the comment and will retain the rule as proposed.

Third, §5405(3)(b) changes the order of presentation. The current standard establishes a norm of DHSS presenting first unless the hearing officer exercises discretion to have the individual present first. The amendment requires the party with the burden of proof to proceed first and disallows any hearing officer discretion. This is highly objectionable. The hearing officer should be granted some discretion in establishing the order of presentation. Moreover, it would be preferable to retain the current approach in which the State normally presents first. This is the approach adopted in other administrative hearings. See, e.g. attached Department of Education hearing procedures under Title 14 **Del.C.** §3135. As a practical level, it may streamline the hearing to have the State present first. For example, if a pro se applicant has been denied eligibility for a program, it is logical to have DHSS present first on the program eligibility standards and specific reasons why the applicant does not meet the standards. If the applicant proceeds first, the applicant may not be clear on the standards and eligibility deficits. As a result, the presentation will be unfocused and protracted. Moreover, if the unsophisticated pro se applicant simply recites that he believes he is eligible, his appeal will be summarily denied for failure to prove all essential elements of the case with no presentation by the State based on §5405(3)(c).

Agency Response: This change was prompted by a 2007 Delaware Supreme Court decision, Urban v. Meconi, No. 439, 2006. In the matter before the Court a party claimed that the Department had improperly allocated the burden of proof at a fair hearing. The Court considered "it noteworthy that DHSS, itself, took the position that the relevant sections of the Delaware Social Services Manual are inconsistent and 'improper.' . . . In light of that admission, we assume DHSS is reviewing the Manual and making appropriate changes."

DSS has reviewed the Social Services Manual. The change in the order of presentation at fair hearings as proposed is a result of that review. In light of the Delaware Supreme Court's remark, the proposed change, as written, is appropriate.

If the proposed changes to §5405(3)(b) are retained, DHSS should amend the fourth sentence to read as follows:

The appellant or claimant is the moving party for actions related to initial ineligibility determinations, initial denials of claims or the failure to act upon a claim with

reasonable promptness.

Councils' rationale is that any termination or discontinuation of assistance decision amounts to an "ineligibility determination" or "denial".

Agency Response: To facilitate clarity and enable recognition of the party who carries the burden of proof, DSS adopted the Councils' recommendation.

Fourth, the amendment to §5405(3)d) is problematic. It recites:

If the ~~second~~ party has presented evidence, the ~~first~~ party may, in the discretion of the hearing office, present rebuttal evidence.

The words "second" and "first" should be retained for clarity. Otherwise, it is unclear which "party" is being referenced.

Agency Response: DSS changed the terms in the final order regulation to the "moving" and "non-moving" parties.

Further analysis by Division staff resulted in changes to the rule as proposed to correct administrative and publication errors and omissions as indicated by **[bracketed bold type]**.

Findings of Fact:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual regarding Fair Hearing procedures is adopted and shall be final effective May 10, 2008.

Vincent P. Meconi, Secretary, DHSS, April 14, 2008

DSS FINAL ORDER REGULATIONS #08-16 REVISIONS:

5000 Definitions

Advance Notice Period or Timely Notice Period - Is the ten (10) day period between the date a notice is mailed to the date a proposed action is to take effect.

Appellant - Is a recipient who has requested a hearing.

Benefits - Are any kind of assistance, payments or benefits made by TANF, GA, Medicaid, Child Care, or Food Stamps.

Claimant - Is an applicant who has requested a hearing.

Department ~~(or DHSS) is the Department of Health and Social Services.~~

DHSS - Is the Department of Health and Social Services, including

1) the Division of Social Services ("DSS"), in connection with **[financial assistance economic, medical, vocational]** or child care subsidy assistance;

2) the Division of Medicaid and Medical Assistance ("DMMA") or a managed care **[company organization]** ("MCO") under contract with DHSS to manage an operation of the Medicaid Program, in connection with medical assistance;

3) the Division of State Service Centers ("DSSC") in connection with the Emergency Assistance

Program [;:]

[4) the Division of Developmental Disabilities Services (DDDS) in connection with Medicaid Program services;

5) the Division of Public Health in connection with Medicaid Program services;

6) the Division of Services for the Aging and Adults with Physical Disabilities (DSAAPD) in connection with Medicaid Program services.]

DSS - Is the Division of Social Services (or "the Division.")

Fair Hearing - Is an administrative hearing held in accordance with the principles of due process which include:

- 1) Timely and adequate notice;
- 2) The right to confront and cross-examine adverse witnesses;
- 3) The opportunity to be heard orally;
- 4) The right to an impartial decision maker;
- 5) The opportunity to obtain counsel.

Hearing Decision - Is the decision in a case appealed to the State hearing officer. The decision includes the substance of what transpired at the hearing and a summary of the case facts, supporting evidence, and pertinent State or federal regulations and gives the reason for the decision. In Food Stamp disqualification cases, the hearing decision must also respond to reasoned arguments by the appellant.

EXAMPLE: At a Food Stamp Program Intentional Program Violation Hearing involving a failure to report a change promptly, an appellant may argue that a failure to report does not constitute "clear and convincing evidence" of intent to defraud. The hearing officer's decision must respond to this argument.

Hearing Officer - Is the individual responsible for conducting the hearing and issuing a final decision on issues of fact and questions of law.

Hearing Record - Is a verbatim transcript of all evidence and other material introduced at the hearing, the hearing decision, and all other correspondence and other documents which are admitted as evidence or otherwise included for the hearing record by the hearing officer.

Hearing Summary - Is a document prepared by an agency stating the reason(s) the action under appeal was taken and the information upon which the reasons are based. The summary may include documents to be used to decide the issue in question. Its purpose is to provide an appellant with information to prepare his/her case for the hearing.

MCO - Means a Managed Care Organization offering or providing medical services to recipients of medical assistance from ~~the Division of Social Services~~ DHSS and individual medical service providers of an MCO panel.

Party - A party to a hearing is a person or an administrative agency or other entity who has taken part in or is concerned with an action under appeal. A party may be composed of one or more individuals.

Request for a Fair Hearing - Any clear expression (oral or written) by the appellant or his/her authorized agent that ~~(s)he~~ the individual wants to appeal a decision to a higher authority. Such request may be oral in the case of actions taken under the Food Stamp Program.

State Presenter - Is the agency employee advocating the State's case in a hearing.

(Break In Continuity of Sections)

5405 Fair Hearing Procedures

- 1) Hearing Officer's Introduction

The hearing officer will ~~appropriately introduce~~ open the purpose of the meeting ~~hearing~~, will identify the individuals and roles of those in attendance, and generally "set the stage" to assure the appellant or claimant of his/~~her~~ right to be heard. In addition, ~~(s)he~~ the hearing officer will administer an oath to all witnesses and parties ~~presenting~~ expected to present testimony at the hearing. The hearing officer may, in his/~~her~~ discretion, deal with any preliminary matters prior to beginning the case.

2) Manner of Proceeding

The hearing officer shall conduct the hearing in an informed fashion, consistent however with the procedural rights of the Department and the **[appellant or]** claimant to a courteous, fair, and fairly conducted hearing consistent with due process and the requirements of the federal regulation. Parties will be courteous to each other and the hearing officer at all times and will obey the orders and rulings of the hearing officer.

3) Order of Presentation

a) Opening Remarks.

At the discretion of the hearing officer, the Department and the appellant or claimant will each be given an opportunity to make brief opening statements. An opening statement shall advise the hearing officer of the issues a party contends are a part of the case and shall ~~succinctly~~ briefly summarize how the party's case will be proven. The hearing officer may, ~~however~~, terminate or limit any opening statement which is unduly lengthy, repetitive or irrelevant.

b) ~~The State will present its case first, unless, in the discretion of the hearing officer,~~ The moving party will present its case first. ~~†The burden of persuasion proof rests on the other party (the claimant)~~ is on the moving party. The moving party is the party to the hearing seeking a change in the status quo ante. The Department is the moving party for actions to discontinue, terminate, suspend, or reduce assistance. The appellant or claimant is the moving party for actions relating to [initial] ineligibility determinations, the [initial] denials of claims or the failure to act upon a claim with reasonable promptness. This shall ~~Each party's case shall~~ include the presentation of all witnesses to give testimony and all documents and other evidence ~~which is admissible~~ offered to prove its case. The other party may cross-examine each witness and may raise any legal basis for exclusion of any evidence at appropriate times during the hearing. Witnesses may be sequestered by or with the approval of the hearing officer.

c) ~~The other~~ Each party may present any witnesses to give testimony ~~(and may testify his/herself)~~ and other evidence which is admissible to ~~prove~~ support his/~~her~~its case. However, ~~such~~ the non-moving party need not present any evidence, but may rely upon the ~~other~~ moving party's failure to prove an essential element of his/~~her~~its case. If evidence or testimony is presented, the other party shall have the opportunity to raise any legal basis for its exclusion and the opportunity to cross examine witnesses at the appropriate time during the proceeding.

d) If the ~~second~~ **[non-moving]** party has presented any evidence, the ~~first~~ **[moving]** party may, in the discretion of the hearing officer, present rebuttal evidence.

e) Closing Remarks.

The parties will be given an opportunity to briefly summarize their cases in closing remarks. Such closing remarks may summarize evidence and present legal argument for the adoption of one position against the adoption of the other. However, the hearing officer may limit or terminate unduly lengthy, repetitive, or irrelevant closing remarks.

4) Role of Hearing Officer

The hearing officer is in charge of running the hearing. ~~He/she~~ The hearing officer shall make all rulings on the admissibility of evidence as to how the proceedings are conducted. The hearing officer may question witnesses or direct the parties to produce evidence which ~~he/she~~ the hearing officer determines ~~to be~~ is necessary for him/~~her~~ to ~~render~~ a decision in the case. However, other than ensuring that the hearing is conducted fairly, the hearing officer is not permitted to assist either party in the presentation of his/~~her~~its the case.

5) Decisions of the Hearing Officer

Decisions of the State hearing officer will be based exclusively on evidence introduced at the hearing. The decision of the hearing officer will be issued not more than 90 days from the date the request for a fair hearing is filed or more than 30 days from the date the hearing is conducted. The decision of the hearing officer is the final decision of the agency. Judicial review, pursuant to 31 **Del.C.** 520, may be taken directly from the hearing officer's

decision, within thirty (30) days of the decision.

DIVISION OF SOCIAL SERVICES

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

ORDER

Child Care Subsidy Program

Nature of the Proceedings

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to the Child Care Subsidy Program. The Department's proceedings were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of public comment pursuant to 29 **Delaware Code** Section 10115 in the March 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2008 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposal

The purpose of this regulatory action is to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program – Purchase of Care federal minimum wage requirements.

Statutory Authority

7 CFR §273.7(h)(1)(i), *Suitable Employment*

Summary of Proposed Change

This rule modification clarifies that the Purchase of Care minimum wage requirements are based on **federal** requirements in the following sections of the Division of Social Services Manual (DSSM): DSSM 11002.9, *Definitions and Explanation of Terms*; DSSM 11003.5, *In-Home Child Care*; and, DSSM 11003.9.1, *Income*.

Summary of Comments Received with Agency Response

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

As background, the CCDBG program if funded by the federal government through the Child Care and Development Block Grant with regulations published at 45 C.F.R. Parts 98 and 99. See §11002.9E of the DSS regulations. The federal regulations require states to establish and periodically revise a sliding fee scale based on income and family size. See 45 C.F.R. §98.42. The latest DSS child care gross income limits are based on 200% of the federal poverty level. See §11002.9AA. The amendments are as follows.

1) In §11003.5, DSS proposes to clarify that domestic services workers must be paid the federal minimum wage. This is accurate. Consistent with the attached U.S. DOL fact sheet, domestic workers are covered by the federal minimum wage law. In contrast, the Delaware minimum wage law does not apply to domestic workers. See Title 19 **Del.C.** §901(3). Parenthetically, the State minimum wage is currently 7.15/hour while the federal minimum wage is currently \$5.85/hour. By July 24, 2009, there will be little difference between the State and federal minimum wages since the federal minimum wage will increase to \$7.25/hour.

2) In §11002.9Q, DSS defines employment as "wages equal to the federal minimum wage or an equivalent". This does not appear objectionable.

The Council did not identify any concerns with the proposed changes.

Agency Response: Your participation is appreciated. Thank you for your comments.

Findings of Fact:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual regarding the Child Care Subsidy Program – Purchase of Care federal minimum wage requirements is adopted and shall be final effective May 10, 2008.

Vincent P. Meconi, Secretary, DHSS, April 14, 2008

***Please note that no changes were made to the regulation as originally proposed and published in the March 2008 issue of the *Register* at page 1196 (11 DE Reg. 1196). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at [Child Care Subsidy Program](#)**

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF AIR AND WASTE MANAGEMENT**

Statutory Authority: 7 Delaware Code, Section 6010, (7 **Del.C.** §6010)
7 **DE Admin. Code** 1138

Secretary's Order No.: 2008-A-0014

1138 Emissions Standards For Hazardous Air Pollutants For Source Categories

Date of Issuance: April 14, 2008 Effective Date: July 28, 2008

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 **Del.C.** §§8001 *et seq.*, 29 **Del.C.** §§10111 *et seq.* and 7 **Del.C.** §6010(a), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

On March 8, 2007, the Department opened a proposed rulemaking proceeding in Start Action Notice ("SAN") 2007-03 to amend the current Regulation 38 in the *Delaware's Regulations Governing Control of Air Pollution*. ("DRGCAP"). The Department's experts within the Division of Air and Waste Management ("DAWM"), Air Quality Management Section, drafted the amendments to reflect changes in the federal regulation of perchloroethylene ("PCE"), which is also known as tetrachloroethylene. In 1990, the federal Clean Air Act ("CAA") in Section 112 classified the air emissions from PCE as a hazardous air pollutant ("HAP"). In 1993, United States Environmental Protection Agency ("EPA") issued regulations to reduce the emissions of PCE from dry cleaning facilities based upon maximum achievable control technology ("MACT"). The Department promulgated Regulation 38 in *DRGCAP* and reflected the federal regulation under its authority as the Delaware administrator of the CAA and to allow independent state authority to enforce the standards under Title 7 of the **Delaware Code**. On July 27, 2006, EPA amended its regulation of PCE in *40 CFR Part 63* to impose more stringent standards after completing the required PCE risk assessments, which concluded that the MACT standard did not adequately reduce the public's health risk to an acceptable level, as defined in the CAA. Consequently, the Department's proposed amendments will reflect the federal changes and impose the more stringent emission standards on Delaware's approximately 80 permitted dry cleaning facilities that are authorized to release PCE under the limits established by the air pollution control permit issued under *DRGCAP Regulation 1102*. The proposed regulation also will provide a permanent exemption for all existing permitted dry cleaners as small area sources from obtaining a Title V permit requirement under *DRGCAP Regulation 30*. In addition, the Department proposed weekly testing for PCE leaks and repair requirements in order to better protect the environment and public health.

The health risks of PCE are still being studied by the EPA and others, but the record contains ample

evidence that human health is adversely affected by air exposure to PCE, primarily through neurological disorders and it also poses a possible or probable risk to human health as a carcinogenic.

The Department held three public workshops on October 29, November 5, and November 6, 2007 in New Castle and Kent Counties, and published the proposed regulation on January 1, 2008 in the *Delaware Register of Regulations*, and held a public hearing on January 22, 2008 before the Department's hearing officer, Robert P. Haynes, who issued a report dated March 12, 2008, which is attached hereto as Appendix A. The Report recommends approval of the proposed regulation as a final regulation. I agree and adopt the Report and its reasoning.

The proposed regulation is supported by the considerable scientific evidence developed by the Department's experts, and in a collaborative manner with interested participants, which included many of the small business owners. The Department conducted outreach to the dry cleaning industry and has reviewed the concerns of small businesses for the regulatory burden imposed by this proposed regulation, which is based upon a federal regulation. The proposed regulation reflects the dry cleaning industry's acceptance of the regulation because no public comments were submitted.

I find that the record developed during the public hearing process provides ample support for the Department to adopt this final regulation. The justification is that it will result in cleaner air quality and improve the health of workers in the dry cleaning business, who often are the owners and who are the most at risk for the exposure to air emissions from PCE. The federal regulation reflects developments in reasonably available air pollution controls, and the Delaware's regulation will also reflect the standards enabled by the improvements in air pollution technology in the dry cleaning business. The regulation approved by this Order will result in lowering the release of HAPs and improve the working conditions of many Delawareans.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary and 29 Del.C. §10118(d), hereby approved the final regulation in Appendix A to the Report and reflects a nonsubstantive change due to the delayed effective date from the proposed regulation published in the January 1, 2008 *Delaware Register of Regulations*;
2. The Department shall have this Order published in the *Delaware Register of Regulations* and in newspapers in the same manner as the notice of the proposed regulation; and
3. The Department shall provide notice to the persons affected by the Order, as determined by the Department, including all those who submitted comments to the Department, who otherwise participated in the public hearing, and who requested to receive notice of all actions on proposed regulations.

John A. Hughes, Secretary

1138 Emissions Standards For Hazardous Air Pollutants For Source Categories

7/28/08 10/11/00

5.0 Subpart M Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

5.1 Applicability.

5.1.1 The provisions of Section 5.0 of this regulation apply to the owner or operator of each dry cleaning facility that uses perchloroethylene.

~~[5.1.2 The compliance date for a new dry cleaning system depends on the date that construction or reconstruction commences. Each dry cleaning system shall be in compliance with all of the applicable provisions of Section 5.0 of this regulation beginning on July 28, 2008 or immediately upon startup, whichever is later.~~

~~5.1.2.1 Each dry cleaning system that commences construction or reconstruction on or after December 9, 1991 and before December 21, 2005, shall be in compliance with the provisions of Section 5.0 of this regulation except 5.3.15 of this section beginning on June 30, 1999 or immediately upon startup, whichever is later, except for dry cleaning systems complying with section 112(i)(2) of the Clean Air Act; and shall be in compliance with the provisions of 5.3.15 beginning on July 28, 2008.~~

~~5.1.2.2 The compliance dates for a new dry cleaning systems that commence construction or reconstruction on or after December 21, 2005, but before July 13, 2006.~~

~~5.1.2.2.1 Each dry cleaning system that commences construction or reconstruction on or after December 21, 2005, but before July 13, 2006, and is not located in a building with~~

~~a residence, shall be in compliance with the provisions of Section 5.0 of this regulation, except 5.3.15 of this section, immediately upon startup; and shall be in compliance with the provisions of 5.3.15 beginning on July 28, 2008 or immediately upon startup, whichever is later.~~

~~**5.1.2.2.2** Each dry cleaning system that commences construction or reconstruction on or after December 21, 2005, but before July 13, 2006, and is located in a building with a residence, shall be in compliance with the provisions of Section 5.0 of this regulation, except 5.3.15 of this section, immediately upon startup; shall be in compliance with the provisions of 5.3.15.3 and 5.3.15.5 of this section beginning on July 28, 2008.~~

~~**5.1.2.3** Each dry cleaning system that commences construction or reconstruction on or after July 13, 2006, shall be in compliance with the provisions of Section 5.0 of this regulation, including 5.3.15 of this section, immediately upon startup.]~~

~~5.1.3 **[[Reserved.]** Each dry cleaning system that commenced construction or reconstruction before December 9, 1991, and each new transfer machine system and its ancillary equipment that commenced construction or reconstruction on or after December 9, 1991 and before September 22, 1993, shall be in compliance with the provisions of Section 5.0 of this regulation except 5.3.15 of this section beginning on June 30, 1999 and shall be in compliance with 5.3.15 beginning on July 28, 2008.]~~

5.1.4 **[Reserved].** Each existing dry to dry machine and its ancillary equipment located in a dry cleaning facility that includes only dry to dry machines, and each existing transfer machine system and its ancillary equipment, and each new transfer machine system and its ancillary equipment installed between December 9, 1991 and September 22, 1993, as well as each existing dry to dry machine and its ancillary equipment, located in a dry cleaning facility that includes both transfer machine system(s) and dry to dry machine(s) is exempt from Sec. 63.322, Sec. 63.323, and Sec. 63.324, except paragraphs 63.322 (c), (d), (i), (j), (k), (l), (m), 63.323(d), and 63.324 (a), (b), (c), (d)(1), (d)(2), (d)(3), (d)(4), and (e) if the total perchloroethylene consumption of the dry cleaning facility is less than 530 liters (140 gallons) per year. Consumption is determined according to Sec. 63.323(d).

5.1.5 **[Reserved].** Each existing transfer machine system and its ancillary equipment, and each new transfer machine system and its ancillary equipment installed between December 9, 1991 and September 22, 1993, located in a dry cleaning facility that includes only transfer machine system(s) is exempt from Sec. 63.322, Sec. 63.323, and Sec. 63.324, except paragraphs 63.322 (c), (d), (i), (j), (k), (l), (m), 63.323(d), and 63.324 (a), (b), (c), (d)(1), (d)(2), (d)(3), (d)(4), and (e) if the perchloroethylene consumption of the dry cleaning facility is less than 760 liters (200 gallons) per year. Consumption is determined according to Sec. 63.323(d).

5.1.6 **[Reserved].**

(1) If the total yearly perchloroethylene consumption of a dry cleaning facility determined according to Sec. 63.323(d) is initially less than the amounts specified in paragraph (d) or (e) of this section, but later exceeds those amounts, the existing dry cleaning system(s) and new transfer machine system(s) and its (their) ancillary equipment installed between December 9, 1991 and September 22, 1993 in the dry cleaning facility must comply with Sec. 63.322, Sec. 63.323, and Sec. 63.324 by 180 calendar days from the date that the facility determines it has exceeded the amounts specified, or by June 30, 1999, whichever is later.

(2) Following review of notification submitted in accordance with 63.324(c)(1), the Department may determine that the dry cleaning facility shall not be subject to the additional requirements imposed under paragraph (f)(1), if there has been no exceedance during the prior 36 months and

(i) The total yearly perchloroethylene consumption falls below and remains below the amounts specified in paragraph (d) or (e) before and after the next purchase of perchloroethylene, or

(ii) The exceedance occurred due to the initial filling of a newly installed dry to dry machine and the total yearly perchloroethylene consumption, exclusive of the quantity of perchloroethylene purchased to initially fill the newly installed dry to dry machine, remains below the amounts specified in paragraph (d) or (e).

5.1.7 A dry cleaning facility is a major source if the facility emits or has the potential to emit more than 9.1 megagrams per year (10 tons per year) of perchloroethylene to the atmosphere. In lieu of measuring a facility's potential to emit perchloroethylene emissions or determining a facility's potential to emit perchloroethylene emissions, a dry cleaning facility is a major source if:

5.1.7.1 It includes only dry-to-dry machines and has a total yearly perchloroethylene con-

sumption greater than 8,000 liters (2,100 gallons) as determined according to 5.4.4 of this section or

5.1.7.2 It includes only transfer machine systems or both dry-to-dry machines and transfer machine systems and has a total yearly perchloroethylene consumption greater than 6,800 liters (1,800 gallons) as determined according to 5.4.4 of this section.

5.1.8 A dry cleaning facility is an area source if it does not meet the conditions of 5.1.7 of this section.

5.1.9 Change in facility status to major source.

5.1.9.1 If the total yearly perchloroethylene consumption of a dry cleaning facility determined according to 5.4.4 of this section is initially less than the amounts specified in 5.1.7 of this section, but then exceeds those amounts, the dry cleaning facility becomes a major source and all dry cleaning systems located at that dry cleaning facility must comply with the appropriate requirements for major sources in 5.3, 5.4, and 5.5 of this section by 180 calendar days from the date that the facility determines it has exceeded the amounts specified, or by June 30, 1999, whichever is later.

5.1.9.2 Following review of notification submitted in accordance with 5.5.3.1 of this section, the Department may determine that the dry cleaning facility shall not be subject to the additional requirements imposed in 5.1.9.1 of this section, if there has been no exceedance during the prior 36 months and

5.1.9.2.1 The total yearly perchloroethylene consumption falls below and remains below the amounts specified in 5.1.7 of this section before and after the next purchase of perchloroethylene or

5.1.9.2.2 The exceedance occurred due to the initial filling of a newly installed dry-to-dry machine and the total yearly perchloroethylene consumption, exclusive of the quantity of perchloroethylene purchased to initially fill the newly installed dry-to-dry machine, remains below the amounts specified in 5.1.7 of this section.

5.1.10 Coin-operated dry cleaning machines.

(1) All coin-operated dry cleaning machines are subject to the provisions of Section 5.0 of this regulation ~~exempt from Sec. 63.320(f) 5.1.6, Sec. 63.322, Sec. 63.323, and Sec. 63.324, except paragraphs 63.322 (c), (d), (i), (j), (k), (l), and (m), 63.323(d), and 63.324 (a), (b), (c), (d)(1), (d)(2), (d)(3), (d)(4), and (e).~~

(2) ~~Facilities consisting of only coin-operated dry cleaning machines, unless otherwise subject to Regulation 30 permitting requirements, are exempt from paragraph 63.320(k).~~

5.1.11 ~~The owner or operator of any source subject to the provisions of this subpart M is subject to Regulation 30 permitting requirements. These affected sources, if not major or located at major sources as defined under Regulation 30, are deferred by the Department from Regulation 30 permitting requirements until December 9, 2004. All sources receiving deferrals shall submit Regulation 30 permit applications by December 9, 2005. All sources receiving deferrals still must meet the compliance schedule as stated in Sec. 63.320. The owner or operator of an area source subject to Section 5.0 of this regulation is exempt from the obligation to obtain a Title V operating permit under Regulation 30 of State of Delaware "Regulations Governing the Control of Air Pollution", if the owner or operator is not required to obtain a Title V operating permit under 3.a. of Regulation 30 for a reason other than the owner or operator's status as an area source under Section 5.0. Notwithstanding the previous sentence, the owner or operator shall continue to comply with the provisions of Section 5.0 applicable to area sources.~~

2 DE Reg. 1390 (2/1/99)

4 DE Reg. 707 (10/1/00)

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

[1138 Emissions Standards For Hazardous Air Pollutants For Source Categories](#)

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)(a) (7 Del.C. §903(e)(2)(a))
7 DE Admin. Code 3511

3511 Summer Flounder Size Limits; Possession Limits

Secretary's Order No.: 2008-F-0015

I. Background:

A public hearing was held on Thursday, March 27, 2008, at 7:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Tidal Finfish Regulation for Summer Flounder concerning size limits, creel limits, and seasons. The Summer Flounder Fishery Management Plan details the annual process that the Atlantic States Marine Fisheries Commission's Summer Flounder Fishery Management Board, the Mid-Atlantic Fishery Management Council and the National Marine Fisheries Service are to use for conservation equivalency in the recreational summer flounder fishery. These agencies agreed at their joint meeting on December 11, 2007 that the states would implement conservation equivalent measures rather than a coastwide management program for summer flounder in 2008. The total allowable harvest quota has been reduced for 2008 in order to comply with the rebuilding scheduled as mandated in the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006. As such, all coastal states will be required to reduce the number of summer flounder harvested by recreational anglers in 2008.

Delaware's harvest cap for summer flounder will be 64,338 fish in 2008, which represents a 41.3 percent reduction from the estimated 109,696 fish harvested in 2007. As such, a number of management options designed to reduce the recreational harvest of summer flounder for 2008 were presented by the Department at the public hearing on March 27, 2008. These proposed options included minimum size limits ranging from 18.5 to 19.5 inches, in conjunction with creel limits ranging from 1 to 4 fish per angler per day. Additional management options included a partial harvest season closure designed to restrain the harvest in 2008 at or below the state's harvest limit.

Recreational fishermen, bait and tackle dealers will be affected by the option ultimately chosen by the Secretary to manage the summer flounder harvest for 2008. The Department has the statutory basis and legal authority to act with regard to this promulgation pursuant to 7 Del.C. §903(e)(2)(a). No other Delaware regulations are affected by this proposal.

After listening to the public comment received during all phases of this promulgation process, and performing an exhaustive review and consideration of all components of the fishery, economic impacts and conservation of the resource, the Department believes "Option 5" best accomplishes the mandated 41.3% reduction with no closure period.

Numerous members of the public attended this hearing on March 27, 2008 to voice their concerns with regard to the Department's proposed changes to these regulations, and the same were taken into consideration during the Division's review of this proposed regulatory amendment. Afterwards, the Hearing Officer prepared her report regarding this matter and submitted the same to the Secretary for review and consideration. Proper notice of the hearing was provided as required by law.

II. Findings:

The Department has provided a reasoned analysis and a sound conclusion with regard to the response given to each such comment, as reflected in the Hearing Officer's Report of March 27, 2008, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
 2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
 3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
 4. The Department held a public hearing in a manner required by the law and regulations;
 5. The Department considered all timely and relevant public comments in making its determination;
- Promulgation of these proposed amendments would bring Delaware into compliance with federal guidelines for the

management of summer flounder, since summer flounder come under both federal and state jurisdiction;

6. Promulgation of these proposed amendments would bring Delaware into compliance with federal guidelines for the management of summer flounder, since summer flounder come under both federal and state jurisdiction;

7. Option 5 will set the summer flounder restrictions at a 19.5" size limit and a 4-fish daily bag limit, with no seasonal closure. This was the option most supported by the public, based upon comments received by the Department during the public comment phase of this promulgation;

8. Option 5 will reduce the 2008 summer flounder harvest in Delaware by a minimum of 41.3%, as required by the ASMFC's Summer Flounder Fishery Management Board, the Mid-Atlantic Fishery Management Council and the National Marine Fisheries Service, and in order to comply with the rebuilding scheduled as mandated in the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006;

9. 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;

10. The Department's proposed amendments to Tidal Finfish Regulation for Summer Flounder for 2008 are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that

11. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Report dated April 14, 2008 and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Tidal Finfish Regulation for Summer Flounder for 2008 be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of State of Delaware Tidal Finfish Regulations for Summer Flounder for 2008 will bring Delaware into compliance with federal guidelines for the management of summer flounder, since summer flounder come under both federal and state jurisdiction with regard to the harvest management of this species. This action, which incorporates Option 5 as Delaware's management plan for summer flounder, will reduce the harvest of summer flounder by a minimum of 41.3%. It is incumbent upon Delaware to be in compliance with the Commission's plan, not only to avoid federal sanctions against Delaware and its fishery, but to protect this species with these conservation measures to ensure that summer flounder will continue to be found in Delaware waters in the future.

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, purposes, and authority of 7 **Del.C.** §903(e)(2)(a).

David S. Small, in his official capacity as Acting Secretary

3511 Summer Flounder Size Limits; Possession Limits; (Formerly Tidal Finfish Reg. 4) (Penalty Section 7 **Del.C.** §936(b)(2))

1.0 It shall be unlawful for any recreational fisherman to have in possession more than ~~four (4)~~ **[four (4)]** summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging. ~~[(Note: creel limit to be determined in combination with seasonal closure and size limit.)]~~

2.0 It shall be unlawful for any person, other than qualified persons as set forth in section 4.0 of this regulation, to possess any summer flounder that measure less than ~~eighteen (18)~~ **[nineteen and one half (19.5)]** inches between the tip of the snout and the furthest tip of the tail. ~~[(Note: creel limit to be determined in combination with seasonal closure and size limit.)]~~

3.0 It shall be unlawful for any person while on board a vessel, to have in possession any part of a

summer flounder that measures less than ~~eighteen (18)~~ **[nineteen and one half (19.5)]** inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed. ~~[(Note: creel limit to be determined in combination with seasonal closure and size limit.)]~~

4.0 Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:

4.1 A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder;

4.2 A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or

4.3 A bill of lading while transporting fresh or frozen summer flounder.

4.4 A valid commercial food fishing license and a food fishing equipment permit for gill nets.

5.0 It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.

6.0 It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.

7.0 It shall be unlawful for any person, who has been issued a commercial food fishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than ~~four (4)~~ **[four (4)]** summer flounder at or between the place where said summer flounder were caught and said person's personal abode or temporary or transient place of lodging. ~~[(Note: creel limit to be determined in combination with seasonal closure and size limit.)]~~

~~**Note: Proposed options for seasonal closures associated with creel limits and minimum size limits to restrict the recreational summer flounder harvest in Delaware during 2008.**~~

<u>Option</u>	<u>Season Closure</u>	<u>Number of Open Days</u>	<u>Bag Limit</u>	<u>Minimum Size</u>
<u>1</u>	<u>May 11 – June 23</u>	<u>322</u>	<u>2</u>	<u>18.5</u>
<u>2</u>	<u>none</u>	<u>365</u>	<u>4</u>	<u>19.0</u>
<u>3</u>	<u>May 11 – June 1</u>	<u>343</u>	<u>4</u>	<u>19.0</u>
<u>4</u>	<u>Aug 24 – Dec. 31</u>	<u>235</u>	<u>4</u>	<u>19.0</u>
<u>5</u>	<u>none</u>	<u>365</u>	<u>4</u>	<u>19.5</u>

- 1 DE Reg. 1767 (5/1/98)
- 2 DE Reg. 1900 (4/1/99)
- 3 DE Reg. 1088 (2/1/00)
- 4 DE Reg. 1552 (3/1/01)
- 5 DE Reg. 462 (8/1/01)
- 5 DE Reg. 2142 (5/1/02)
- 6 DE Reg. 1358 (4/1/03)
- 7 DE Reg. 1575 (5/1/04)
- 8 DE Reg. 1488 (4/1/05)
- 9 DE Reg. 1759 (5/1/06)
- 10 DE Reg. 1722 (5/1/07)
- 11 DE Reg. 1207 (03/01/08)

FINAL REGULATIONS

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)(a), (7 **Del.C.** §903(e)(2)(a))
7 **DE Admin. Code** 3716 and 3771

Secretary's Order No.: 2008-F-0016

3716 Crab Pot Number Buoys and Vessel Panel Color Code and Number Requirements; and 3771 Oyster Harvesting Licensee Requirements

Date of Issuance: April 15, 2008

Effective Date of the Amendment: May 11, 2008

I. Background:

A public hearing was held on Monday, March 31, 2008, at 7:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Shellfish Regulation No. 3716: Crab Pot Number Buoys and Vessel Panel Color Code and Number Requirements, as well as proposed amendments to the existing Delaware Shellfish Regulation No. 3771: Oyster Harvesting Licensee Requirements. The proposed changes to Regulation No. 3716 would facilitate enforcement of existing regulations when up to three commercial crabbers fish off of the same vessel. Under the existing regulations, pots deployed from the same vessel may use up to three different color codes, thus making it very difficult for on-the-water enforcement of the 500 pot limit per vessel, because the enforcement officers would have to count the pots represented by up to three different color codes. If only one color code is allowed to be fished from a vessel, this will facilitate counting of the pots to ensure regulatory compliance. Additionally, this proposed change would benefit the potters who would like to take advantage of using a common color code with the other participants in the fishery using the same vessel.

There would be no changes proposed to the numbering of crab pots, except that any vessel that elects to fish more than one licensee's pots would be required to display each licensee's numbers on the color code panel that is mounted on the vessel. Any pot fished from such a vessel must have at least one color-coded buoy displaying the crab pot license number being used by any one of the crabbers fishing from that vessel.

It should be noted that implementation of these proposed amendments to Delaware's Shellfish Regulation No. 3716 would be delayed for one fishing season (until January 1, 2009) to give the crabbers enough advance notice to re-paint their corks as necessary to comply with the proposed changes.

The proposed revisions to Delaware Shellfish Regulation No. 3771 (Oyster Harvesting Licensee Requirements), on the other hand, would go into effect immediately upon promulgation. These proposed amendments would clarify how oyster tags must be applied to bushel bags containing harvested oysters. The tag shall be cinched around the top of the bag and locked, such that the bag may not be opened without breaking the tag or the seal. This change should help discourage the illegal practice of re-using the oyster bags and oyster tags in order to circumvent oyster harvest quotas. Delaware's oyster resource is quite limited, and non-compliance with tagging and reporting requirements places the remaining resource of harvestable oysters in jeopardy. Each participant is granted a finite number of bushels that may be harvested each year, which is determined by dividing the total allowable harvest by the number of participants in the fishery.

Commercial fishermen will be affected by the above-referenced proposed amendments to Delaware Shellfish Regulation Nos. 3716 and 3771. The Department has the statutory basis and legal authority to act with regard to these promulgations, pursuant to 7 **Del.C.** §§1902(a)(5), 2303(e), 2306(a), and 2106. No other Delaware regulations are affected by this proposal.

Numerous members of the public attended this hearing on March 27, 2008 to voice their concerns with regard to the Department's proposed changes to these regulations, and the same were taken into consideration during the Division's review of this proposed regulatory amendment. Afterwards, the Hearing Officer prepared her report regarding this matter and submitted the same to the Secretary for review and consideration. Proper notice of the hearing was provided as required by law.

II. Findings:

The Department has provided a reasoned analysis and a sound conclusion with regard to the response given to each such comment, as reflected in the Hearing Officer's Report of March 31, 2008, which is attached and

expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Promulgation of the proposed amendments to Delaware Shellfish Regulation No. 3716 would facilitate enforcement of existing regulations when up to three commercial crabbers fish off of the same vessel. Furthermore, the proposed changes should benefit the potters who would like to take advantage of using a common color code with the other participants in the fishery using the same vessel;
7. The implementation of the proposed amendments to Delaware Shellfish Regulation No. 3716 will be delayed for one fishing season, until January 1, 2009, in order to give the crabbers enough advance notice to re-paint their corks as necessary in order to avoid non-compliance with the proposed revisions;
8. The proposed amendments to Delaware Shellfish Regulation No. 3771 would go into effect immediately upon promulgation, thus helping to discourage the illegal practice of re-using oyster bags and oyster tags in order to circumvent oyster harvest quotas, as well as helping to protect the remaining (but limited) resource of harvestable oysters;
9. 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;
10. The Department's proposed amendments to Delaware Shellfish Regulation No. 3716 and Delaware Shellfish Regulation No. 3771 are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulations, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that
11. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Report dated April 15, 2008 and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Shellfish Regulation No. 3716, as well as Delaware Shellfish Regulation No. 3771, be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of State of Delaware Shellfish Regulation No. 3716 will facilitate enforcement of the existing regulations, as well as provide better clarity to the public in general with regard to the specifics of the same. Additionally, the revisions to State of Delaware Shellfish Regulation No. 3771 will help discourage the illegal practice of re-using oyster bags and oyster tags in order to circumvent oyster harvest quotas. Delaware's oyster resource is quite limited, and non-compliance with current tagging and reporting requirements places the remaining resource of harvestable oysters in jeopardy. Thus, promulgation of these amendments to Delaware's existing regulations will better protect this species, and will help the Department to ensure that oysters will continue to be found in Delaware waters in the future.

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, purposes, and authority of 7 **Del.C.** §§1902(a)(5), 2303(e), 2306(a), and 2106.

David S. Small, in his official capacity as Acting Secretary

3716 Crab Pot Number Buoys and Vessel Panel Color Code and Number Requirements (Formerly S-29)

(Penalty Section 7 Del.C. §1912)

Proposed revisions to 3716 would take effect January 1, 2009.

1.0 The color code assigned by the Department to a commercial crab pot licensee shall be displayed on each buoy or buoys attached to the line of each crab pot deployed in the water in the following order:

1.1 The first color in the color code sequence shall be on a buoy or buoys located the farthest from the crab pot (top).

1.2 The last color in the color code sequence shall be on the buoy or buoys located the closest to the crab pot (bottom).

1.3 Any second or third color in the color code sequence between the first and last colors shall be on a buoy or buoys in the same top to bottom order as in the color code sequence.

2.0 Each color coded buoy attached to a line of a commercial crab pot shall measure at least three (3) inches by three (3) inches by three (3) inches except that a separate buoy, located between the crab pot and color-coded buoy nearest the crab pot but no closer than five (5) feet to the color coded buoy nearest the crab pot may be of lesser dimensions.

3.0 Each color in a color code shall cover a contiguous area of at least 28 square inches on a buoy.

4.0 Each color coded buoy shall be visible on the water's surface when the tide is slack and the wind is less than ten (10) miles per hour.

5.0 Each color coded buoy shall have its color or colors recognizable at all times.

6.0 If more than one licensee elects to fish his or her crab pots from the same vessel, then all licensees who fish from that vessel, up to the maximum of three licensees per vessel, shall use the same color code on the pots fished from that vessel. Any licensee who subsequently elects to fish their pots on their own and not on a vessel with other licensees retains the right to use their originally assigned color code.

6.0 The color code assigned by the Department to a commercial crab pot licensee shall be displayed on the 2' x 2' panel on the licensee's vessel in a manner that when viewed from either side of the vessel, the sequence of colors shall be as follows relative to the vessel:

6.1 The first color in the color code sequence shall be on the panel in a vertical band closest to the stern of the vessel.

6.2 The last color in the color code shall be on the panel in a vertical band closest to the bow of the vessel.

6.3 Any second or third color in the color code sequence between the first and last colors shall be on the panel in vertical band(s) in the same stern to bow order as assigned in the color code sequence.

7.0 Each color coded panel shall be visible and the color(s) shall be recognizable at all times while tending crab pots.

8.0 Each color coded panel shall be displayed as vertical bands on the panel such that each color covers a contiguous area of equal size. The panel shall not display any color other than the colors in the assigned color code except for a color used to indicate the crab pot number.

10.0 If more than one licensee, up to the maximum of three licensees per vessel, elects to fish his or her crab pots from the same vessel, then that vessel shall display the same color code panel as on the pots fished from that vessel.

9.1.0 A number shall be assigned by the Department to each commercial crab pot license.

12.0 The commercial crab pot licensee's number shall be displayed on the color coded panel on the licensee's vessel with at least three (3) inch high contrasting colored Arabic numerals so that said number shall be visible from either side of the vessel. If more than one licensee elects to fish his or her crab pots from the same vessel then the color coded panel shall contain all of the numbers being fished from that vessel.

13.0 The commercial crab pot licensee's number shall be displayed on at least one color coded buoy attached to each crab pot displayed in the water in at least one (1) inch high Arabic numerals. The number shall be painted in a contrasting color, branded on or carved into the buoy. If more than one licensee elects to fish his or her crab pots from the same vessel, then one of the crab pot's license numbers assigned to that vessel shall be displayed on at least once color coded buoy attached to each crab pot fished from that vessel [although no one licensee may fish more than 200 pots at any one time].

3771 Oyster Harvesting Licensee Requirements (Formerly S-73)(Penalty Section 7 **Del.C.** §1912)*Proposed revisions to 3771 would take effect immediately upon ratification.*

1.0 It shall be unlawful for any person licensed to harvest oysters from the State's natural oyster beds to possess another person's oyster harvesting tags while on board the vessel listed on said person's oyster harvesting license unless the other person is on board said vessel while harvesting oysters.

2.0 It shall be unlawful for any person licensed to harvest oysters from the State's natural oyster beds for direct sale to not attach an oyster harvesting tag in the locked position through the fabric of a bushel bag containing oysters. The tag shall be cinched around the top of the bag and locked such that the bag may not be opened nor oysters removed from the bag without breaking the tag or seal. Bags shall be tagged prior to the vessel leaving the shellfish harvest grounds and returning to any port.

3.0 It shall be unlawful for any person to possess a bushel bag that is empty or partially filled with oysters so long as an oyster harvesting tag is attached to said bag.

5 DE Reg. 2140 (5/1/02)**6 DE Reg. 1356 (4/1/03)**

4.0 It shall be unlawful for any person to possess an oyster cage that is empty of oysters so long as an oyster harvesting tag is attached to said cage. A partially filled oyster cage must have the appropriate number of tags attached in the locked position to reflect the number of bushels of oysters in the cage.

6 DE Reg. 1356 (4/1/03)

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION**2930 Council on Real Estate Appraisers**Statutory Authority: 24 Delaware Code, Section 4006(a)(1) (24 **Del.C.** §4006(a)(1))**24 DE Admin. Code 2930****ORDER****2930 Council on Real Estate Appraisers**

The Council on Real Estate Appraisers was established to protect the general public from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered by the profession under its purview. The Council was further established to maintain minimum standards of practitioner competence in the delivery of services to the public. The Council is authorized, by 24 **Del.C.** §4006(a)(1) to make, adopt, amend and repeal regulations as necessary to effectuate those objectives.

Pursuant to 24 **Del.C.** §4006(a)(1), the Council on Real Estate Appraisers has proposed several changes to its rules and regulations.

Rule 2.3.1.1, pertaining to continuing education, is amended to correct a typographical error in the most recent amendment to the Rules. Amended Rule 2.3.11 states that no continuing education is required for fewer than 6 months of licensure, not 16 months. A new Rule 2.5.10 is added to specify that at least 14 hours of continuing education per licensure period must be taken in a traditional classroom setting, including the mandatory 7 hour USPAP update course.

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

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

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

Pursuant to 29 **Del.C.** §10115, notice of the public hearing and a copy of the proposed regulatory changes was published in the Delaware *Register of Regulations*, Volume 11, Issue 8 on February 1, 2008.

Summary of the Evidence and Information Submitted

At the public hearing on March 18, 2008, Mr. Earl Loomis addressed the proposed Rule 2.5.10, which requires that the mandatory USPAP update course must be taken in a traditional classroom setting. Mr. Loomis suggested that the mandatory course in Delaware law, rules and regulations should also be taken in a traditional classroom setting.

Findings of Fact

The Council finds that the proposed amendments will serve to both protect the public and enhance practitioner competence.

In particular, Rule 2.5.10 ensures that licensees will get the greatest benefit from the required USPAP update course by participating in the program in a classroom setting. The amendments to Rule 4.0, requiring licensees to provide the Council with updated contact information, will enable the Council to monitor and communicate with licensees when needed. Further, the requirement that licensees carry their pocket cards will ensure that members of the public can verify the identity of licensees. The amendments to Rule 4.2.4, which prohibit licensees who have been disciplined within a certain time period from supervising trainees, will ensure that only sufficiently qualified individuals will be able to take on this significant responsibility. Finally, the amendments to Rule 11.0, which add crimes to the Council's crime list, will provide further protection to the public from individuals who have been convicted of crimes substantially related to the practice of real estate appraisal.

Finally, the Council agreed with the suggestion of Mr. Loomis that the Delaware law, rules and regulations course should be taken in a traditional classroom setting. This amendment will be addressed in a subsequent Public Notice of rule revisions.

Decision and Effective Date

The Council hereby adopts the proposed amendments to the regulations to be effective 10 days following final publication of this order in the *Register of Regulations*.

Text and Citation

The text of the final regulations is attached hereto as Exhibit A and is formatted to show the amendments. A non-marked up version of the regulations as amended is attached hereto as Exhibit B.

IT IS SO ORDERED this 15^h day of April 2008, by the Council on Real Estate Appraisers.

Stephen Huston, Chairperson

George Fantini, Vice Chairperson

Donald West

Charles Witt

Richard Bauermeister

Arthur Cahall

Neal Scott

Kevin Esslinger

***Please note that no changes were made to the regulation as originally proposed and published in the February 2008 issue of the *Register* at page 1012 (11 DE Reg. 1012). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at**

[2390 Council on Real Estate Appraisers](#)

DELAWARE RIVER BASIN COMMISSION **NOTICE OF PUBLIC HEARING AND BUSINESS MEETING**

The Delaware River Basin Commission will hold a public hearing and business meeting on Wednesday, May 14, 2008 beginning at 10:30 a.m. at the Independence Seaport Museum at Penn's Landing located at 211 South Columbus Boulevard and Walnut Street, Philadelphia, Pennsylvania. For more information visit the DRBC web site at www.drbc.net or contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

DEPARTMENT OF AGRICULTURE **HARNESS RACING COMMISSION** **NOTICE OF PUBLIC HEARING** **501 Harness Racing Rules and Regulations**

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rule 8 by a change to Rule 8.3.5.9.4. The Commission will hold a public hearing on the proposed rule changes on June 10, 2008. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on May 1, 2008.

The proposed changes are for the purpose of updating Rule 8 to reflect current policies, practices and procedures. Copies are published online at the Register of Regulations website: http://regulations.delaware.gov/services/current_issue.shtml. A copy is also available for inspection at the Racing Commission office.

DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, May 15, 2008 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES **DIVISION OF MEDICAID AND MEDICAL ASSISTANCE** **NOTICE OF PUBLIC COMMENT PERIOD** **DRA 2005 - Third Party Data Exchange**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding the DRA 2005 Third Party Data Exchange Mandate.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by May 31, 2008.

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
NOTICE OF PUBLIC COMMENT PERIOD
School-Based Health Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan related to School-Based Health Services.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by May 31, 2008.

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

DEPARTMENT OF INSURANCE
NOTICE OF PUBLIC COMMENT PERIOD

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 606 relating to the standardization of insurance identification cards and notification to the Division of Motor Vehicles of the termination of automobile insurance. The docket number for this proposed amendment is 730.

The purpose of the proposed amendment to regulation is to eliminate the requirement that insurance identification cards be issued for periods of less than six months when the payment period is for a period of less than six months and to delete the requirement that fleet vehicles carry vehicle-specific identification cards. The text of the proposed amendment is reproduced in the May 2008 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday June 2, 2008, and should be addressed to Mitchell G. Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS
OFFICE OF WORKERS' COMPENSATION
NOTICE OF PUBLIC HEARING AND COMMENT PERIOD

The Secretary of Labor in accordance with 19 **Del.C.** §§2322B and §2322F(j) has proposed rules and regulations relating to workers' compensation. These proposals set forth health care payment system with coordinated instructions and guidelines developed by the Health Care Advisory Panel to assist in the health care treatment in workers' compensation ("Practice Guidelines") and also set forth the utilization review program developed by the Health Care Advisory Panel and associated utilization request form to assist in the health care treatment in workers' compensation ("Utilization Review" and "Utilization Review Form").

A public hearing will be held before the Health Care Advisory Panel ("Panel") at 4:00 p.m. on May 12, 2008, in the Department of Labor Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802 where

members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from John Kirk, Administrator, Workers' Compensation, Division of Industrial Affairs, Department of Labor, P.O. Box 9828, 4425 N. Market Street, Wilmington, Delaware 19809-0828. Persons wishing to submit written comments may forward these to the Panel at the above address. The final date to receive written comments will be at the public hearing.

The Panel will consider making a recommendation to the Secretary at the regularly scheduled meeting following the public hearing.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE NOTICE OF PUBLIC COMMENT PERIOD 3901 Wildlife

19.0 Bald Eagle Protection

The purpose of this action is to ensure that Delaware's Bald Eagle population persists after protection from the federal Endangered Species Act was terminated on 8 August 2007. Bald eagles are very sensitive to disturbance which may result in failure of nests or abandonment of nest sites. In Delaware, the acreage of development in proximity to current nest sites is proposed to double in the next five years. Scientific studies from this region show eagles require significant no-disturbance buffers around their nests in order to persist. The purpose of this regulation is to maintain the same level of protection to eagle nest sites that was in place under the Endangered Species Act prior to August 2007. Eagles are a significant non-consumptive wildlife resource that will require protection in order to persist.

The Department of Natural Resources and Environmental Control, Division of Fish and Wildlife, will conduct a public hearing on the proposed new regulation 19.0 Bald Eagle Protection. Bald eagles are very sensitive to disturbance. **Delaware Code** currently protects eagles from disturbance but does not define disturbance. The new regulation will define disturbance by proposing to adopt the same protection to eagle nest sites that was formerly provided under the Endangered Species Act of 1973 prior to the eagle's removal from the federal Endangered Species List in August of 2007.

The proposed regulation may be inspected at the Department's offices located in room B234 at the Richardson and Robbins Building, 89 Kings Highway, Dover Delaware, 19901. For additional information interested parties can also contact Karen Bennett (302-739-9912) or Christopher Heckscher (302-653-2880).

A public hearing will be held in the DNREC auditorium in the Richardson and Robbins Building, 89 Kings Highway, Dover, on 4 June 2008 at 7 pm. Citizens may address comments in writing to the Wildlife Section, Division of Fish and Wildlife, 4876 Hay Point Landing Road, Smyrna, 19977. E-mail comments may be sent to Karen.bennett@state.de.us, Christopher.Heckscher@state.de.us or Lisa.Vest@state.de.us. The record will remain open for written comments until 4:30 pm June 14, 2008. Prior to the hearing, a public workshop will be given in the DNREC auditorium in the Richardson and Robbins Building, 89 Kings Highway, Dover, 28 May 2008. The purpose of this workshop will be to provide information to the public regarding the proposed regulation.

PREPARED BY:

Christopher M. Heckscher 302-653-2880

8 April 2008

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
400 Delaware Gaming Control Board
NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 28 **Del.C.** Chapter 11, Section 1122 (a)(2), and 28 **Del.C.** section 1503, the Delaware Gaming Control Board proposes to revise its Rules and Regulations. The proposed Rules and Regulations will make regulatory changes to the maximum wagering limits for charitable gambling other than raffles as well as add a definition of the term week as it relates to charitable gambling. Bingo, Raffles, Charitable Gambling other than Raffles and No Limit Texas Hold'em Poker have had the application submission time lines added to the appropriate section of the rules and regulations.

A public hearing will be held on the proposed Rules and Regulations on **Thursday, June 5th, 2008 at 12:30 p.m.** in Conference Room B, second floor, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments shall be submitted to the Board in care of the Division of Professional Regulation at the above address. The final date to submit written comments shall be at the above scheduled Public Hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or make comments at the Public Hearing should notify the Division of Professional Regulation at (302) 744-4500.

DIVISION OF PROFESSIONAL REGULATION
1400 Board of Electrical Examiners
NOTICE OF PUBLIC HEARING

The Delaware Board of Electrical Examiners, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §1406(a)(1), proposes amendments to its regulation sections 1.0 through 3.0, 5.0 through 7.0, and 15.0.

Changes to section 1.0 include deleting language that unnecessarily repeats statutory language and making explicit licensees' obligation to notify the Board of a change of address. Changes to sections 2.0, 3.0, 5.0, and 6.0 are technical, including deleting language that repeats statutory language. Section 5.0 is proposed for deletion as unnecessary.

The proposed addition to **7.0 Expiration and Renewal** creates a mandatory audit of all late-renewed licensees to verify compliance with the continuing education and insurance requirements. The proposed addition to **15.0 Inspection agencies** clarifies the word "salary" as used in 24 **Del.C.** §1421(j).

A public hearing is scheduled for Wednesday, June 4, 2008 at 8:30 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Judy Letterman at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Judy Letterman at the above address or by calling (302) 744-4500.

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

DIVISION OF PROFESSIONAL REGULATION
2600 Examining Board of Physical Therapists and Athletic Trainers
NOTICE OF PUBLIC HEARING

Pursuant to 24 **Del.C.** §2604(a)(1), the Examining Board of Physical Therapists and Athletic Trainers has proposed revisions to its rules and regulations.

A public hearing will be held on May 27, 2008 at 5:15 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments.

Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Examining Board of Physical Therapists and Athletic Trainers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board proposes amendments to Rule 1.2.3, which addresses supervision of a Physical Therapist Assistant who has one year or more experience. Currently, the Physical Therapist Assistant must receive on-site, face to face supervision, by the supervising Physical Therapist, at least once every fifth treatment day or once every three weeks, whichever occurs first. These supervisory visits require the presence of two practitioners: the Physical Therapist and the Physical Therapist Assistant. The amended Rule 1.2.3 requires on-site face to face supervision at least once every **twelfth** visit or once every **four** weeks, whichever occurs first. This change in supervision requirements decreases the number of required supervisory visits involving the presence of two practitioners. Consequently, practitioners would be able to see more patients with the benefit of enhancing the provision of physical therapy services to the public.

Rule 1.2.3. is further revised to state that, in addition to providing the required supervision of the Physical Therapist Assistant, the supervising Physical Therapist must also see the patient at least once every sixth treatment day. Thus, although there will be a decrease in the number of supervisory visits, the patient will be seen by the Physical Therapist on a regular basis. This amendment ensures that the change in supervision of the Physical Therapist Assistant will not adversely impact patient care.

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

DIVISION OF PROFESSIONAL REGULATION
2930 Council On Real Estate Appraisers
NOTICE OF PUBLIC HEARING

Pursuant to 24 **Del.C.** § 4006(a)(1), the Council on Real Estate Appraisers has proposed an amendment to its rules and regulations. A new Rule 2.5.10 is added to specify that at least 14 hours of continuing education per licensure period must be taken in a traditional classroom setting, including the mandatory 7 hour USPAP update course. In addition, the mandatory 2 hour Delaware law, rules and regulations course must be taken in a traditional classroom setting, in Delaware. This new Rule 2.5.10 will supersede the version of Rule 2.5.10 set forth in the Final Order on rule revisions published in the Register of Regulations on May 1, 2008.

A public hearing will be held on June 17, 2008 at 9:45 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Council on Real Estate Appraisers, 861 Silver Lake Boulevard, Dover, Delaware 11904. Persons wishing to submit written comments may forward these to the Council at the above address. The final date to receive written comments will be at the public hearing.

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

DIVISION OF PROFESSIONAL REGULATION
3500 Board of Examiners of Psychologists
NOTICE OF PUBLIC HEARING

The Delaware Board of Examiners of Psychologists, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §3506(a)(1), has proposed amendments to its regulation 11.0. Specifically, the proposed modification of regulation **11.0 Professional Conduct** would require licensees to adhere to the American Psychological Association's current Record Keeping Guidelines.

A public hearing on the proposed changes was originally scheduled for Thursday, April 7, 2008 but has

been rescheduled. The public hearing will now take place on Monday, May 5, 2008 at 9:00 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904.

The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Nancy Fields at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Nancy Fields at the above address or by calling (302) 744-4500.

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

DIVISION OF PROFESSIONAL REGULATION
5300 Board of Massage and Bodywork
NOTICE OF PUBLIC HEARING

The Delaware Board of Massage and Bodywork, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §5306(a)(1), proposes amendments to its regulation sections 1.0, 2.0, and 7.0. Specifically, the proposed additions to **1.0 Definitions** define the two categories of allowable continuing education. The proposed amendments to **2.0 Filing of Application for Licensure as Massage/Bodywork Therapist** clarify the language of that section but do not alter the substance of the provision.

The proposed amendments to **7.0 Continuing Education** provide for online licensure renewal, allow half of continuing education requirements to be fulfilled online, clarify the categorical restrictions on continuing education, and provide for the automatic approval of the content of continuing education courses approved by either the National Certification Board for Therapeutic Massage and Bodywork ("NCBTMB") or the American Massage Therapy Association ("AMTA").

A public hearing is scheduled for Thursday, June 19, 2008 at 1:30 p.m. in the second floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Nancy Fields at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Nancy Fields at the above address or by calling (302) 744-4500.

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

DEPARTMENT OF TRANSPORTATION
DIVISION OF MOTOR VEHICLES
NOTICE OF PUBLIC COMMENT PERIOD
2221 Use of Translators

The Delaware Division of Motor Vehicles gives notice of intent to adopt proposed Division of Motor Vehicles Regulation 2221 relating to the use of translators by driver license applicants who cannot speak or read English.

Any person who wishes to make written suggestions, briefs or other written materials concerning this proposed new regulation must submit the same to Jack E. Eanes, Chief of Operations, Delaware Division of Motor Vehicles, P.O. Box 698, Dover, Delaware 19903, or by fax to (302) 739-2042 by May 30, 2008.
