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Legislative Council,
State of Delaware

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IN THIS ISSUE:

GREAT SEAL OF THE STATE OF DELAWARE · 1704 · 1776 · 1787 ·

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, 2009.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

12 **DE Reg.** 761-775 (12/01/08)

Refers to Volume 12, pages 761-775 of the *Delaware Register* issued on December 1, 2008.

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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.

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 15	4:30 p.m.
August 1	July 15	4:30 p.m.
September 1	August 17	4:30 p.m.
October 1	September 15	4:30 p.m.

DIVISION OF RESEARCH STAFF

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GOVERNOR

GENERAL NOTICE

CALENDAR OF EVENTS/HEARING NOTICES

The table printed below lists the regulations that have been proposed, adopted, amended or repealed in the preceding issues of the current volume of the *Delaware Register of Regulations*.

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

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

DELAWARE STANDARDBRED BREEDERS' FUND

Statutory Authority: 20 Delaware Code, Section 4815(b)(3)b.2.D (29 **Del.C.** §4815(b)(3)b.2.D)
3 **DE Admin. Code** 502

NOTICE

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund ("the Fund") hereby gives notice of its intention to adopt amended regulations pursuant to the General Assembly's delegation of authority to adopt such measures found at 29 *Del.C*. §4815(b)(3)b.2.D and in compliance with Delaware's Administrative Procedures Act, 29 *Del.C.* §10115. The proposed amended regulations constitute a modification of three existing regulations. The first two proposed amendments of regulations 4.0 and 9.0 drop the caps on bonus money paid to Breeders which will allow the program to maintain its competition level with neighboring programs. The third proposed amendment to regulation 14.0 allows a reasonable period of time for a sustaining payment to be received, thus avoiding the disqualification of a horse from a race due to the slow delivery of mail. This would also comply with the national standard.

The Fund solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*.

Any such submissions should be mailed or delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund whose address is State of Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901 by June 1, 2009.

502 Delaware Standardbred Breeders' Fund Regulations
(Break in Continuity of Sections)

4.0 Eligibility of Breeders for Bonus Payments

Bonus payments of eight percent (8%) of money earned in the Program by a foal shall be paid to the owner of the mare at the time of breeding that is bred to Delaware sires to produce that foal. Bonus

payments of two percent (2%) of money earned in the Program by a foal shall be paid to owners of stallions standing in Delaware. In order for a Delaware-bred horse to be eligible to earn an award for its breeder, in a race conducted by a licensed harness race track in Delaware, the foals, mares, and stallions shall be registered in accordance with these regulations with the Administrator of the Breeder's Program prior to entry for the race. In race year 2002, bonus payments shall be restricted to 2 year olds. ~~For race years 2003 and thereafter, bonus payments shall not exceed $70,000 per crop of foals. In the event such payments would exceed these limits, owners eligible for bonus payments shall receive a prorated share of those monies allocated toward the payment of bonus payments.~~

8 DE Reg. 336 (8/1/04)

(Break in Continuity of Sections)

9.0 Purses and Bonus Awards

9.1 A purse or bonus awarded under this section shall be in accordance with the standards for purses at each racing meet as approved by order of the Commission. The Administrator shall send a confirmation to the Department of Agriculture on a race week basis which will state the amount owed for purses of the Program.

9.2 Administrator of the Program shall compile bonus payments earned by breeders of Delaware Sires and Dams maintain a separate ledger of them. Bonus payments will be paid out at the end of the racing year. ~~For race years 2003 and thereafter, bonus payments shall not exceed $70,000 per crop of foals. In the event such payments would exceed these limits, owners eligible for bonus payments shall receive a prorated share of those monies allocated toward the payment of bonus payments.~~

9.3 A person interested in the bonus payments and objecting to calculations or determinations thereof as shown on the records of the Administrator of the Program shall be responsible for taking written appeals to the Board in the manner provided for appeals from decisions of the Administrator pertaining to registrations.

9.4 Records, funds and accounts of funds, prizes, purses, allowances and awards under this program shall be maintained separate from other records, funds and accounts and may not become co-mingled with other matters. The records, funds and accounts shall be kept continuously open for inspection by the Administrator of the Program.

8 DE Reg. 336 (8/1/04)

(Break in Continuity of Sections)

14.0 Nomination and Sustaining Payments

14.1 Nomination and sustaining payments shall be made to the Program in U.S. funds.

14.2 A fee payment required by this section shall be postmarked no later than the due date that is specified for the fee by this section. If the date due is on a Sunday and/or a legal federal holiday which falls on a Saturday, payment is due by the following Monday. If the due date falls on a Monday that is a legal holiday, such payment is due on Tuesday. Payment made by commercial delivery services shall be treated the same as those made by letters bearing a postmark.

14.3 Beginning with the yearlings of 2001, the yearling nomination fee shall be:

14.3.1 Forty (40) dollars each; and

14.3.2 Due by May 15th of the yearling year.

14.4 A nomination shall be accompanied by a photocopy of the United States Trotting Association registration certificate. Supplemental fees of $25 shall be assessed if the USTA registration certificate does not accompany the nomination. No nomination shall be accepted where a USTA registration certificate is not obtained and submitted within 60 days of nomination to the Delaware Standardbred Breeder's Program.

14.5 If the May 15th deadline to nominate a yearling is missed, a late supplemental payment of $350 shall be required. The late supplemental payment shall be accepted if it is received by March 15th of the two (2) year old year. This payment is in addition to the regular sustaining payment due on March 15th.

14.6 Sustaining payments shall be as follows:

14.6.1 Two (2) Year Old payments

March 15th	$100 (must be made to ensure eligibility as a three (3) year old)
May 15th	$200
Declaration Fee	$500 (for each track)

14.6.2 Three (3) Year Old payments

~~March~~ February 15th	$300
Declaration Fee	$500 (for each track)

6 DE Reg. 1497 (5/1/03)

5 DE Reg. 1274 (12/1/01)

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

502 Delaware Standardbred Breeders' Fund Regulations

THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10005; 29 Delaware Code, Section 4815(b)(3)(c)(3)
(3 **Del.C.** §10005; 29 **Del.C.** §4815(b)(3)(c)(3))
3 **DE Admin. Code** 1001

PUBLIC NOTICE

The Thoroughbred Racing Commission, in accordance with 3 **Del.C.** §10103(c) proposes changes to its rules and regulations. The proposal amends Section 15 of the rules and regulations by amending existing Rule 15.14 to allow conditional use of shock wave therapy, extracorporeal shock wave therapy, or radial pulse wave therapy treatments. A public hearing will be held on May 12, 2009 at 10:00 AM, in the Horsemen's Office at Delaware Park, 777 Delaware Park Blvd., Wilm., DE, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed regulations may obtain a copy from the Thoroughbred Racing Commission, 777 Delaware Park Blvd., Wilm., DE. Copies are also published online at the *Register of Regulations* website: *http://regulations.delaware.gov/services/current_issue.shtml*. Persons wishing to submit written comments may forward these to the attention of Mr. John F. Wayne, Executive Director, at the above address. The final date to receive written comments will be at 10:00 AM on May 12, 2009.

1001 Thoroughbred Racing Rules and Regulations

(Break in Continuity of Sections)

15.0 Medication; Testing Procedures

(Break in Continuity of Sections)

15.14 Shock Wave Therapy/Instruments

15.14.1 ~~No person may possess on a licensee's race track an instrument used for shock wave therapy.~~ The use of shock wave therapy shall not be permitted unless the following conditions are met:

15.14.1.1 Only licensed Veterinarians are permitted to possess or to use on the grounds of any licensee of the Commission an instrument used for shock wave therapy. Any shock wave therapy machines/instruments must be registered with and approved by the Commission or its designee before use. The use of shock wave therapy machines/instruments shall be limited to practicing veterinarians licensed by the Commission.

15.14.1.2 Any horse treated with shock wave therapy shall not be permitted to race, work, or breeze for a minimum of ten (10) days following treatment (the day of treatment shall be considered the first day in counting the number of days). This restriction applies to horses treated with shock wave therapy on or off the grounds of any licensee of the Commission. Any horse treated with shock wave therapy shall be placed on the Commission Veterinarian's list.

15.14.1.3 All shock wave therapy treatments must be reported to the official Commission veterinarian on the prescribed form not later than the time prescribed by the official Commission veterinarian. This applies to any and all horses treated on or off the grounds of any licensee of the Commission. A form submitted under this section shall not constitute a daily report under Rule 15.4.5.

15.14.2 ~~No horse may be treated with any form of shock wave therapy within ten (10) days of racing (the day of the treatment shall be considered the first day in counting the number of days).~~ A Trainer, Veterinarian, or other person, who has been found to have violated any of the above provisions of this Rule shall be subject to appropriate disciplinary action by the Stewards and/or Commission including but not limited to a maximum suspension of one year (365 days).

15.14.3 ~~The administration of shock wave therapy may only be performed by a licensed veterinarian. A veterinarian using shock wave therapy shall document and report each treatment on his daily medication report.~~ Definitions: The following terms and words used in this Rule are defined as:

15.14.3.1 Shock Wave Therapy shall mean all Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy treatments and any other treatments determined to pose similar risks by the Commission Veterinarian.

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

(Break in Continuity of Sections)

1 DE Reg. 508 (11/1/97)
1 DE Reg. 1184 (2/1/98)
3 DE Reg. 754 (12/1/99)
4 DE Reg. 179 (7/1/00)
4 DE Reg. 1131 (1/1/01)
4 DE Reg. 1821 (5/1/01)
6 DE Reg. 641 (11/1/02)
6 DE Reg. 1205 (3/1/03)
7 DE Reg. 766 (12/1/03)
7 DE Reg. 1540 (5/1/04)
8 DE Reg. 1699 (6/1/05)
10 DE Reg. 546 (09/01/06)
10 DE Reg. 1581 (04/01/07)
11 DE Reg. 1374 (04/01/08)

***Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Thoroughbred Racing Commission is available at: 1001 Thoroughbred Racing Rules and Regulations**

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

1915(c) Home and Community-Based Services Waiver for the Elderly and Disabled

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, and, in compliance with State Notice procedures as set forth in the Federal Register, September 27, 1994, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) will submit an application to the Centers for Medicare and Medicaid Services (CMS) for renewal of its 1915(c) Home and Community-Based Services waiver entitled, Elderly and Disabled Services Program, for an additional five years.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning extension of the this waiver 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, 2009. A copy of the draft waiver application is available upon request.

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

SUMMARY OF PROPOSAL

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) announces its intent to submit to the Centers for Medicare and Medicaid Services (CMS) the State's application for a renewal of Delaware's Home and Community-Based Services waiver entitled, Elderly and Disabled Services Waiver Program, for an additional five years. This request is being filed pursuant to Section §1915(c) of the Social Security Act.

Statutory Authority

- Social Security Act §1915(c), *Provisions Respecting Inapplicability and Waiver of Certain Requirements of this Title;*
- 42 CFR §441, Subpart G, *Home and Community-Based Services Waiver Requirements*

Background

The Medicaid Home and Community-Based Services (HCBS) waiver program is authorized in §1915(c) of the Social Security Act. The program permits a State to furnish an array of home and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalization. The State has broad discretion to design its waiver program to address the needs of the waiver's target population. Waiver services complement and/or supplement the services that are available to participants through the Medicaid State plan and other federal, state and local public programs as well as the supports that families and communities provide.

The Centers for Medicare and Medicaid Services (CMS) recognizes that the design and operational features of a waiver program will vary depending on the specific needs of the target population, the resources available to the State, service delivery system structure, State goals and objectives, and other factors. A State has the latitude to design a waiver program that is cost-effective and employs a variety of service delivery approaches, including participant direction of services.

Delaware's Elderly & Disabled (E&D) Waiver was originally approved in 1985. Newly-established waiver programs are in effect for a period of three years, and existing waivers are in effect for five years. The E&D Waiver

is approaching the conclusion of its current five-year effective period. The current demonstration, project #0136.90, is in effect through June 30, 2009. In order to continue providing services under this waiver after June 30, 2009, Delaware must submit a renewal application to the Centers for Medicare and Medicaid Services (CMS).

Summary of Proposal

The Division of Medicaid and Medical Assistance (DMMA) is in the process of renewing its home and community-based waiver for elderly and disabled waiver services and is announcing a thirty-day public comment period on the waiver extension. The State intends no significant changes in benefits or the population served during the renewal period.

Eligibility requirements, types of services provided, number of available slots, and other key program elements will remain the same. One new development for this renewal, however, is the implementation of a more extensive quality improvement strategy. Since the last renewal application several years ago, CMS has increased requirements for states to develop and implement quality improvement strategies for waiver programs. This renewal application conforms to these requirements and contains provisions for various aspects of a quality improvement strategy, including data collection, data aggregation, and remediation & improvement methodologies. Responsibility for the quality improvement strategy lies with the Division of Services for Aging and Physical Disabilities (DSAAPD), the E&D Waiver administering/operating agency, and the Division of Medicaid and Medical Assistance (DMMA), the oversight agency. The direct impact of the quality improvement strategy on participants and providers will be minimal. (Providers and a sample of participants will be asked questions during brief telephone surveys conducted annually.) Indirectly, all parties involved should benefit from improved efficiency and service delivery approaches which are expected results from the quality improvement strategy.

The renewal application proposes that Delaware will continue providing services under the E&D Waiver from July 1, 2009 through June 30, 2014.

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

*** Please Note: The application is available in PDF format at the following link:**

1915(c).pdf

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 11003

PUBLIC NOTICE

Child Care Subsidy Program
DSSM 11003.7.8 Special Needs Children

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by May 31, 2009.

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

SUMMARY OF PROPOSED CHANGE

The proposed change described below amends Child Care Program policies in the Division of Social Services Manual (DSSM) regarding *Special Needs.* The purpose of this change is to clarify policy for individuals with special child care needs.

Statutory Authority

- 45 CFR Part 98, *Child Care and Development Fund*
- 45 CFR §98.20, *A child's eligibility for child care services*

Summary of Proposed Change

DSSM 11003.7.8, *Special Needs*: The changes clarify and improve the readability and usability of the rule regarding child care services for eligible children with special needs. This includes removing examples and outdated language.

DSS PROPOSED REGULATION #09-17
REVISION:

11003.7.8 Special Needs Children

~~The designation of special needs impacts both eligibility and parent fees.~~

~~See section 11004.7 to determine eligibility for waiving the parent fee.~~

~~Eligibility~~

~~A family can be eligible for Child Care for a child that is between ages 13 and under 19 if the child has a special need that requires child care. This would mean the child is unable to care for himself physically or emotionally, or Division of Family Services (DFS) has referred the child for care due to a protective need.~~

~~Families with special needs children or adults must meet the need for services and income eligibility.~~

~~EXAMPLE: A financially eligible family with two working parents requests child care for their 14 year old child with Downs Syndrome. The 14 year old is incapable of caring for himself due to the Downs Syndrome. They would be eligible for Child Care due to the special needs of the child.~~

~~The special need of a child or an adult that directly results in the need for child care can in itself be the need for care when determining eligibility as long as they meet financial eligibility.~~

~~EXAMPLE: A financially eligible family of four with a working Father and a stay at home Mother requests child care for their 12 month old child with a developmental delay. In this case if it is verified that the child needs child care services to assist in increasing the development of the child, they would be eligible.~~

~~EXAMPLE: A financially eligible family of four with a working Father and a stay at home Mother requests child care for their two children ages 2 and 4. The mother was involved in a car accident and is unable to get out of bed. The special need of this mother would be the need for care.~~

~~All special needs for both the child and adult must be verified by using the Special Needs form.~~

~~Special circumstances within a family may be considered on a case by case basis when determining the need for child care. These cases must be approved by the Child Care Administrator.~~

~~EXAMPLE: Two older grandparents have custody of their 4 yr. old grandchild. The grandmother is unable to care for the child due to health reasons and the grandfather would like to look for work. There is no need for care since the grandfather is in the home. The circumstances of this four year old could qualify the grandparents for special needs child care. In this case still try to get a special needs form filled out that would address the 4 yr. olds need to be in a day care setting with other children to enhance the child's social and emotional development.~~

~~Division of Family Services~~

~~DFS cases meet the need for service due to the DFS referral. DFS cases do not need to meet financial eligibility. DFS cases that are non citizens and do not meet our citizenship criteria are eligible for services due to the DFS referral. DCIS II Child Care Sub system would place these cases in Category 51.~~

~~Parent fees may be waived for DFS cases on a case by case basis, with supervisory approval.~~

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

~~**10 DE Reg. 1007 (12/01/06)**~~

45 CFR 98.20

Eligibility

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

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

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

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

Children with Special Needs:

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

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

Adults with Special Needs:

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

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

Families with Protective Child Care Needs

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

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

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

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

10 DE Reg. 1007 (12/01/06)

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 11006

PUBLIC NOTICE

Child Care Subsidy Program
DSSM 11006.4.1 Absent Day Policy

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by May 31, 2009.

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

SUMMARY OF PROPOSED CHANGE

The proposed change described below amends Child Care Program policies in the Division of Social Services Manual (DSSM) regarding *Absent Days.* The purpose of this change is to clarify the *Absent Day Policy* as it relates to the number of absent days authorized and who cannot get paid absent days.

Statutory Authority

45 CFR Part 98, *Child Care and Development Fund*

Summary of Proposed Change

Amended **DSSM 11006.4.1**, *Absent Day Policy* clarifies that providers will not be paid for holidays that occur before the start date of the authorization. The Division of Social Services (DSS) may pay absent days for up to five days.

DSS PROPOSED REGULATION #09-18
REVISION:

11006.4.1Absent Day Policy

~~Payments are made~~ DSS pays for up to five absent days per month. The number of absent days per month is the same as the number of days authorized in one week (up to a maximum of five). The specific number of paid absent days is indicated on each child's ~~Form 618d~~ Authorization Form.

EXAMPLE: A child is authorized to attend three days a week. Therefore, the provider will be paid for up to three absent days a month.

Payment may be made for the major holidays listed in the contract for any child who attended at least one day during the month. No payment is made to a provider for a holiday that occurs before the start date of the authorization at that provider's site.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 and 1111 (18 **Del.C.** §§314 and 1111)
18 **DE Admin. Code** 305

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt proposed Department of Insurance Regulation 305 relating to actuarial appointments, actuarial opinions and memoranda of insurance companies. The docket number for this proposed amendment is 1089.

The purpose of the proposed amendment to regulation 305 is to update the existing regulation with respect to statutory law. The text of the proposed amendment is reproduced in the May 2009 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 1, 2009, 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.

305 Actuarial Opinion and Memorandum Regulation

~~**1.0 Purpose**~~

~~1.1 The purpose of this regulation is to prescribe:~~

~~1.1.1 Guidelines and standards for statements of actuarial opinion which are to be submitted in accordance with 18 **Del.C.** §1111(c), and for memoranda in support thereof;~~

~~1.1.2 Guidelines and standards for statements of actuarial opinion which are to be submitted when a company is exempt from 18 **Del.C.** §1111(c)(2); and~~

~~1.1.3 Rules applicable to the appointment of an appointed actuary.~~

~~**2.0 Authority**~~

~~This regulation is issued pursuant to the authority vested in the Commissioner of Insurance of the State of Delaware under 18 **Del.C.** §§314 and 1111. This regulation will take effect for annual statements for the year 1994.~~

~~**3.0 Scope**~~

~~3.1 This regulation shall apply to all life insurance companies and fraternal benefit societies doing business in this State and to all life insurance companies and fraternal benefit societies which are authorized to reinsure life insurance, annuities or accident and health insurance business in this State.~~

~~3.2 This regulation shall be applicable to all annual statements filed with the office of the Commissioner after the effective date of this regulation. Except with respect to companies which are exempted pursuant to 6.0 of this regulation, a statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with 8.0 of this regulation, and a memorandum in support thereof in accordance with 9.0 of this regulation, shall be required each year. Any company so exempted must file a statement of actuarial opinion pursuant to 7.0 of this regulation.~~

3.3 Notwithstanding the foregoing, the Commissioner may require any company otherwise exempt pursuant to this regulation to submit a statement of actuarial opinion and to prepare a memorandum in support thereof in accordance with 8.0 and 9.0 of this regulation if, in the opinion of the Commissioner, an asset adequacy analysis is necessary with respect to the company.

4.0 Definitions

"Actuarial Opinion" means:

- With respect to 8.0, 9.0 or 10.0, the opinion of an Appointed Actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy test in accordance with 8.0 of this regulation and with presently accepted Actuarial Standards;
- With respect to section 7.0, the opinion of an Appointed Actuary regarding the calculation of reserves and related items, in accordance with 7.0 of this regulation and with those presently accepted Actuarial Standards which specifically relate to this opinion.

"Actuarial Standards Board" is the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

"Annual Statement" means that statement required by 18 **Del.C.** §526 to be filed by the company with the office of the Commissioner annually.

"Appointed Actuary" means any individual who is appointed or retained in accordance with the requirements set forth in section 5.3 of this regulation to provide the actuarial opinion and supporting memorandum as required by 18 **Del.C.** §1111(c).

"Asset Adequacy Analysis" means an analysis that meets the standards and other requirements referred to in section 5.4 this regulation. It may take many forms, including, but not limited to, cash flow testing, sensitivity testing or applications of risk theory.

"Commissioner" means the Insurance Commissioner of this State.

"Company" means a life insurance company, fraternal benefit society or reinsurer subject to the provisions of this regulation.

"Non-Investment Grade Bonds" are those designated as classes 3, 4, 5 or 6 by the NAIC Securities Valuation Office.

"Qualified Actuary" means any individual who meets the requirements set forth in section 5.2 of this regulation.

5.0 General Requirements

5.1 Submission of Statement of Actuarial Opinion

5.1.1 There is to be included on or attached to Page 1 of the annual statement for each year beginning with the year in which this regulation becomes effective the statement of an appointed actuary, entitled "Statement of Actuarial Opinion," setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with section 8.0 of this regulation; provided, however, that any company exempted pursuant to 6.0 of this regulation from submitting a statement of actuarial opinion in accordance with 8.0 of this regulation shall include on or attach to Page 1 of the annual statement a statement of actuarial opinion rendered by an appointed actuary in accordance with 7.0 of this regulation.

5.1.2 If in the previous year a company provided a statement of actuarial opinion in accordance with 7.0 of this regulation, and in the current year fails the exemption criteria of sections 6.3.1, 6.3.2 or 6.3.5 to again provide an actuarial opinion in accordance with section 7.0, the statement of actuarial opinion in accordance with section 8.0 shall not be required until August 1 following the date of the annual statement. In this instance, the company shall provide a statement of actuarial opinion in accordance with section 7.0 with appropriate qualification noting the intent to subsequently provide a statement of actuarial opinion in accordance with section 8.0.

5.1.3 In the case of a statement of actuarial opinion required to be submitted by a foreign or alien company, the Commissioner may accept the statement of actuarial opinion filed by such company

with the insurance supervisory regulator of another state if the Commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this State.

5.1.4 Upon written request by the company, the commissioner may grant an extension of the date for submission of the statement of actuarial opinion.

5.2 "Qualified Actuary" is an individual who:

5.2.1 Is a member in good standing of the American Academy of Actuaries and

5.2.2 Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements; and

5.2.3 Is familiar with the valuation requirements applicable to life and health insurance companies; and

5.2.4 Has not been found by the Commissioner (or if so found has subsequently been reinstated as a qualified actuary), following appropriate notice and hearing to have:

5.2.4.1 Violated any provision of, or any obligation imposed by, the Insurance Law or other law in the course of his or her dealings as a qualified actuary; or

5.2.4.2 Been found guilty of fraudulent or dishonest practices; or

5.2.4.3 Demonstrated his or her incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary; or

5.2.4.4 Submitted to the Commissioner during the past five (5) years, pursuant to this regulation, an actuarial opinion or memorandum that the Commissioner rejected because it did not meet the provisions of this regulation including standards set by the Actuarial Standards Board; or

5.2.4.5 Resigned or been removed as an actuary within the past five (5) years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards: and

5.2.5 Has not failed to notify the Commissioner of any action taken by any Commissioner of any other state similar to that under section 5.2.4 above.

5.3 "Appointed Actuary" is a qualified actuary who is appointed or retained to prepare the Statement of Actuarial Opinion required by this regulation; either directly by or by the authority of the board of directors through an executive officer of the company. The company shall give the Commissioner timely written notice of the name, title (and, in the case of a consulting actuary, the name of the firm) and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary and shall state in such notice that the person meets the requirements set forth in section 5.2. Once notice is furnished, no further notice is required with respect to this person, provided that the company shall give the Commissioner timely written notice in the event the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements set forth in section 5.2. If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice shall so state and give the reasons for replacement.

5.4 Standards for Asset Adequacy Analysis

5.4.1 The asset adequacy analysis required by this regulation:

5.4.1.1 Shall conform to the Standards of Practice as promulgated from time to time by the Actuarial Standards Board and on any additional standards under this regulation, which standards are to form the basis of the statement of actuarial opinion in accordance with section 8.0 of this regulation; and

5.4.1.2 Shall be based on methods of analysis as are deemed appropriate for such purposes by the Actuarial Standards Board.

5.5 Liabilities to be Covered

5.5.1 Under authority of 18 **Del.C.** §1111(c), the statement of actuarial opinion shall apply to all in force business on the statement date regardless of when or where issued, e.g., reserves of Exhibits 8, 9 and 10, and claim liabilities in Exhibit 11, Part I and equivalent items in the separate account statement or statements.

5.5.2 If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with methods set forth in 18 **Del.C.** §§1108 and 1113(c), (d), (g) and (h), the company shall establish such additional reserve.

5.5.3 For years ending prior to December 31, 1996, the company may, in lieu of establishing the full amount of the additional reserve in the annual statement for that year, set up an additional reserve in an amount not less than the following:

5.5.3.1 December 31, 1994 The additional reserve divided by three.

5.5.3.2 December 31, 1996 Two times the additional reserve divided by three.

5.5.4 Additional reserves established under sections 5.5.2 or 5.5.3 above and deemed not necessary in subsequent years may be released. Any amounts released must be disclosed in the actuarial opinion for the applicable year. The release of such reserves would not be deemed an adoption of a lower standard of valuation.

6.0 Required Opinions

6.1 General

6.1.1 In accordance with 18 **Del.C.** §1111(c), every company doing business in this State shall annually submit the opinion of an appointed actuary as provided for by this regulation. The type of opinion submitted shall be determined by the provisions set forth in this section 6.0 and shall be in accordance with the applicable provisions in this regulation.

6.2 Company Categories

6.2.1 For purposes of this regulation, companies shall be classified as follows based on the admitted assets as of the end of the calendar year for which the actuarial opinion is applicable:

6.2.1.1 Category A shall consist of those companies whose admitted assets do not exceed $20 million;

6.2.1.2 Category B shall consist of those companies whose admitted assets exceed $20 million but do not exceed $100 million;

6.2.1.3 Category C shall consist of those companies whose admitted assets exceed $100 million but do not exceed $500 million; and

6.2.1.4 Category D shall consist of those companies whose admitted assets exceed $500 million.

6.3 Exemption Eligibility Tests

6.3.1 Any Category A company that, for any year beginning with the year in which this regulation becomes effective, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial opinion in accordance with section 8.0 of this regulation for the year in which these criteria are met. The ratios in sections 6.3.1.1, 6.3.1.2, and 6.3.1.3 below shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

6.3.1.1 The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .10.

6.3.1.2 The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than .30

6.3.1.3 The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is less than .50.

6.3.1.4 The Examiner Team for the National Association of Insurance Commissioners (NAIC) has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the Commissioner of the state of domicile and the

Commissioner has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office.

6.3.2 Any Category B company that, for any year beginning with the year in which this regulation becomes effective, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial opinion in accordance with section 8.0 of this regulation for the year in which the criteria are met. The ratios in sections 6.3.2.1, 6.3.2.2, and 6.3.2.3 below shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

6.3.2.1 The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .07.

6.3.2.2 The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than .40.

6.3.2.3 The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is less than .50.

6.3.2.4 The Examiner Team for the National Association of Insurance Commissioners (NAIC) has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the Commissioner of the state of domicile and the Commissioner has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office.

6.3.3 Any Category A or Category B company that meets all of the criteria set forth in sections 6.3.1 or 6.3.2 of this subsection, whichever is applicable, is exempted from submission of a statement of actuarial opinion in accordance with section 8.0 of this regulation unless the Commissioner specifically indicates to the company that the exemption is not to be taken.

6.3.4 Any Category A or Category B company that, for any year beginning with the year in which this regulation becomes effective, is not exempted under section 6.3.3 shall be required to submit a statement of actuarial opinion in accordance with 8.0 of this regulation for the year for which it is not exempt.

6.3.5 Any Category C company that, after submitting an opinion in accordance with 8.0 of this regulation, meets all of the following criteria shall not be required, unless required in accordance with section 6.3.6 below, to submit a statement of actuarial opinion in accordance with 8.0 of this regulation more frequently than every third year. Any Category C company which fails to meet all of the following criteria for any year shall submit a statement of actuarial opinion in accordance with 8.0 of this regulation for that year. The ratios in sections 6.3.5.1, 6.3.5.2, and 6.3.5.3 below shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

6.3.5.1 The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .05.

6.3.5.2 The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than .50.

6.3.5.3 The ratio of the book value of the non-investment grade bonds to the sum of the capital and surplus is less than .50.

6.3.5.4 The Examiner Team for the National Association of Insurance Commissioners (NAIC) has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the Commissioner of the state of domicile and the Commissioner has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office.

6.3.6 Any company which is not required by this section 6.0 to submit a statement of actuarial opinion in accordance with section 8.0 of this regulation for any year shall submit a statement of actuarial opinion in accordance with section 7.0 of this regulation for that year unless as provided for by the section 3.2 of this regulation the Commissioner requires a statement of actuarial opinion in accordance with 8.0 of this regulation.

6.4 Large Companies

6.4.1 Every Category D company shall submit a statement of actuarial opinion in accordance with section 8.0 of this regulation for each year beginning with the year in which this regulation becomes effective.

7.0 Statement of Actuarial Opinion Not Including an Asset Adequacy Analysis

7.1 General Description

7.1.1 The statement of actuarial opinion required by this section shall consist of a paragraph identifying the appointed actuary and his or her qualifications; a regulatory authority paragraph stating that the company is exempt pursuant to this regulation from submitting a statement of actuarial opinion based on an asset adequacy analysis and that the opinion, which is not based on an asset adequacy analysis, is rendered in accordance with 7.0 of this regulation; a scope paragraph identifying the subjects on which the opinion is to be expressed and describing the scope of the appointed actuary's work; and an opinion paragraph expressing the appointed actuary's opinion as required by 18 **Del.C.** §1111(c).

7.2 Recommended Language

7.2.1 The following language provided is that which in typical circumstances would be included in a statement of actuarial opinion in accordance with this section. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language which clearly expresses his or her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in section 7.0.

7.2.1.1 The opening paragraph should indicate the appointed actuary's relationship to the company. For a company actuary, the opening paragraph of the actuarial opinion should read as follows:

"I, [name of actuary], am [title] of [name of company] and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the Commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health companies."

7.2.1.2 For a consulting actuary, the opening paragraph of the actuarial opinion should contain a sentence such as:

"I, [name and title of actuary], a member of the American Academy of Actuaries, am associated with the firm of [insert name of consulting firm]. I have been appointed by, or by the authority of, the Board of Directors of [name of company] to render this opinion as stated in the letter to the Commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

7.2.2 The regulatory authority paragraph should include a statement such as the following: "Said company is exempt pursuant to Regulation [insert designation] of the [name of state] Insurance Department from submitting a statement of actuarial opinion based on an asset adequacy analysis. This opinion, which is not based on an asset adequacy analysis, is rendered in accordance with 7.0 of the regulation."

7.2.3 The scope paragraph should contain a sentence such as the following:

"I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, [ ]."

7.2.3.1 The paragraph should list items and amounts with respect to which the appointed actuary is expressing an opinion. The list should include but not be necessarily limited to:

7.2.3.1.1 Aggregate reserve and deposit funds for policies and contracts included in Exhibit 8;

7.2.3.1.2 Aggregate reserve and deposit funds for policies and contracts included in Exhibit 9;

7.2.3.1.3 Deposit funds, premiums, dividend and coupon accumulations and supplementary contracts not involving life contingencies included in Exhibit 10; and

7.2.3.1.4 Policy and contract claims - liability end of current year included in Exhibit 11, Part I.

7.2.4 If the appointed actuary has examined the underlying records, the scope paragraph should also include the following:

"My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic records and such tests of the actuarial calculations as I considered necessary."

7.2.5 If the appointed actuary has not examined the underlying records, but has relied upon listings and summaries of policies in force prepared by the company or a third party, the scope paragraph should include a sentence such as one of the following:

"I have relied upon listings and summaries of policies and contracts and other liabilities in force prepared by [name and title of company officer certifying in force records] as certified in the attached statement. (See accompanying affidavit by a company officer.) In other respects my examination included review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."

"I have relied upon [name of accounting firm] for the substantial accuracy of the in force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."

7.2.5.1 The statement of the person certifying shall follow the form indicated by section 7.2.10.

7.2.6 The opinion paragraph should include the following:

"In my opinion the amounts carried in the balance sheet on account of the actuarial items identified above:

Are computed in accordance with those presently accepted actuarial standards which specifically relate to the opinion required under this section:

Are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

Meet the requirements of the Insurance Law and regulations of the state of [state of domicile] and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;

Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end with any exceptions as noted below; and

Include provision for all actuarial reserves and related statement items which ought to be established.

The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Compliance Guidelines as promulgated by the Actuarial Standards Board, which guidelines form the basis of this statement of opinion."

7.2.7 The concluding paragraph should document the eligibility for the company to provide an opinion as provided by this section 7.0. It shall include the following:

"This opinion is provided in accordance with Section 7 of the NAIC Actuarial Opinion and Memorandum Regulation. As such it does not include an opinion regarding the adequacy of reserves and related actuarial items when considered in light of the assets which support them.

Eligibility for Section 7 is confirmed as follows:

The ratio of the sum of capital and surplus to the sum of cash and invested assets is [insert amount], which equals or exceeds the applicable criterion based on the admitted assets of the company (Section 6C).

The ratio of the sum of the reserves and liabilities for annuities and deposits to the excess of the total admitted assets is [insert amount], which is less than the applicable criteria based on the admitted assets of the company (Section 6C).

The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is [insert amount], which is less than the applicable criteria of .50.

To my knowledge, the NAIC Examiner Team has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable or the company has resolved the first or second priority status to the satisfaction of the commissioner of the state of domicile.

To my knowledge there is not a specific request from any Commissioner requiring an asset adequacy analysis opinion.

_____

Signature of Appointed Actuary

_____

Address of Appointed Actuary

_____

Telephone Number of Appointed Actuary"

7.2.8 If there has been any change in the actuarial assumptions from those previously employed, that change should be described in the annual statement or in a paragraph of the statement of actuarial opinion, and the reference in section 7.2.6 above to consistency should read as follows:

"... with the exception of the change described on Page [ ] of the annual statement (or in the preceding paragraph)."

The adoption for new issues or new claims or other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this paragraph.

7.2.9 If the appointed actuary is unable to form an opinion, he or she shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, he or she shall issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for such opinion.

7.2.9.1 This statement should follow the scope paragraph and precede the opinion paragraph.

7.2.10 If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force, there should be attached to the opinion, the statement of a company officer or accounting firm who prepared such underlying data similar to the following:

"I [name of officer], [title] of [name and address of company or accounting firm], hereby affirm that the listings and summaries of policies and contracts in force as of December 31, [ ], prepared for and submitted to [name of appointed actuary], were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.

_____

Signature of the Officer of the Company
or Accounting Firm

_____

Address of the Officer of the Company
or Accounting Firm

_____

Telephone Number of the Officer of the
Company or Accounting Firm"

8.0 Statement of Actuarial Opinion Based On an Asset Adequacy Analysis

8.1 General Description

8.1.1 The statement of actuarial opinion submitted in accordance with this section shall consist of:

8.1.1.1 A paragraph identifying the appointed actuary and his or her qualifications section 8.2.1.1;

8.1.1.2 A scope paragraph identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items which have been analyzed for asset adequacy and the method of analysis, section 8.2.2 and identifying the reserves and related actuarial items covered by the opinion which have not been so analyzed;

8.1.1.3 A reliance paragraph describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures or assumptions, (e.g., anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios section 8.2.3, supported by a statement of each such expert in the form prescribed by section 8.5; and

8.1.1.4 An opinion paragraph expressing the appointed actuary's opinion with respect to the adequacy of the supporting assets to mature the liabilities section 8.2.6.

8.1.1.5 one or more additional paragraphs will be needed in individual company cases as follows:

8.1.1.5.1 If the appointed actuary considers it necessary to state a qualification of his or her opinion:

8.1.1.5.2 If the appointed actuary must disclose the method of aggregation for reserves of different products or lines of business for asset adequacy analysis;

8.1.1.5.3 If the appointed actuary must disclose reliance upon any portion of the assets supporting the Asset Valuation Reserve (AVR), Interest Maintenance Reserve (IMR) or other mandatory or voluntary statement of reserves for asset adequacy analysis.

8.1.1.5.4 If the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion.

8.1.1.5.5 If the appointed actuary must disclose whether additional reserves of the prior opinion date are released as of this opinion date, and the extent of the release.

8.1.1.5.6 If the appointed actuary chooses to add a paragraph briefly describing the assumptions which form the basis for the actuarial opinion.

8.2 Recommended Language

8.2.1 The following paragraphs are to be included in the statement of actuarial opinion in accordance with this section. Language is that which in typical circumstances should be included in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language which clearly expresses his or her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in this section.

8.2.1.1 The opening paragraph should generally indicate the appointed actuary's relationship to the company and his or her qualifications to sign the opinion. For a company actuary, the opening paragraph of the actuarial opinion should read as follows:

"I, [name], am [title] of [insurance company name] and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the Commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

8.2.1.2 For a consulting actuary, the opening paragraph should contain a sentence such as:

"I, [name], a member of the American Academy of Actuaries, am associated with the firm of [name of consulting firm]. I have been appointed by, or by the authority of, the Board of Directors of [name of company] to render this opinion as stated in the letter to the Commissioner dated [insert date]. I meet the Academy qualification standards for

rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

8.2.2 The scope paragraph should include a statement such as the following:

"I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, 19 [ ]. Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis.

8.2.3 If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph should include a statement such as the following:

"I have relied on [name], [title], for [e.g., anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios] and, as certified in the attached statement, ..."

or

"I have relied on personnel as cited in the supporting memorandum for certain critical aspects of the analysis in reference to the accompanying statement."

Such a statement of reliance on other experts should be accompanied by a statement by each of such experts of the form prescribed by section 8.5.

8.2.4 If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph should also include the following:

"My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary."

8.2.5 If the appointed actuary has not examined the underlying records, but has relied upon listings and summaries of policies in force and/or asset records prepared by the company or a third party, the reliance paragraph should include a sentence such as:

"I have relied upon listings and summaries [of policies and contracts, of asset records] prepared by [name and title of company officer certifying in-force records] as certified in the attached statement. In other respects, my examination included such review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."

or

"I have relied upon [name of accounting firm] for the substantial accuracy of the in-force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects, my examination included review of the actuarial assumptions and actuarial methods and tests of the actuarial calculations as I considered necessary."

8.2.5.1 Such a section must be accompanied by a statement by each person relied upon of the form prescribed by section 8.5.

8.2.6 The opinion paragraph should include the following:

"In my opinion, the reserves and related actuarial values concerning the statement items identified above:

Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;

Are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

Meet the requirements of the Insurance Law and regulation of the state of [state of domicile] and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed.

Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below);

~~Include provision for all actuarial reserves and related statement items which ought to be established.~~

~~The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company.~~

~~The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion.~~

~~This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion.~~

~~or~~

~~The following material change(s) which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion: (Describe the change or changes).~~

~~Note: Choose one of the above two paragraphs, whichever is applicable.~~

~~The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis.~~

~~_____~~

~~Signature of Appointed Actuary~~

~~_____~~

~~Address of Appointed Actuary~~

~~_____~~

~~Telephone Number of Appointed Actuary"~~

~~8.3 Assumptions for New Issues~~

~~8.3.1 The adoption for new issues or new claims of other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this section 8.0.~~

~~8.4 Adverse Opinions~~

~~8.4.1 If the appointed actuary is unable to form an opinion, then he or she shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, then he or she shall issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for such opinion. This statement should follow the scope paragraph and precede the opinion paragraph.~~

~~8.5 Reliance on Data Furnished by Other Persons~~

~~8.5.1 If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force and/or asset oriented information, there shall be attached to the opinion the statement of a company officer or accounting firm who prepared such underlying data similar to the following:~~

~~"I [name of officer], [title], of [name of company or accounting firm], hereby affirm that the listings and summaries of policies and contracts in force as of December 31, 19[ ], and other liabilities prepared for and submitted to [name of appointed actuary] were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.~~

~~_____~~

~~Signature of the Officer of the Company~~

~~or Accounting Firm~~

~~_____~~

~~Address of the Officer of the Company or Accounting Firm~~

~~_____~~

~~Telephone Number of the Officer of the Company or Accounting Firm"~~

~~and/or~~

~~"I, [name of officer], [title], of [name of company, accounting firm or security analyst], hereby affirm that the listing, summaries and analyses relating to data prepared for and submitted to [name of appointed actuary] in support of the asset oriented aspects of the opinion were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.~~

~~_____~~

~~Signature of the Officer of the Company, Accounting Firm or the Security Analyst~~

~~_____~~

~~Address of the Officer of the Company, Accounting Firm or the Security Analyst~~

~~_____~~

~~Telephone Number of the Officer of the Company, Accounting Firm or the Security Analyst"~~

~~9.0 Description of Actuarial Memorandum Including an Asset Adequacy Analysis~~

~~9.1 General~~

~~9.1.1 In accordance with 18 **Del.C.** §1111(c), the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his or her opinion regarding the reserves under a section 8.0 opinion. The memorandum shall be made available for examination by the Commissioner upon his or her request but shall be returned to the company after such examination and shall not be considered a record of the insurance department or subject to automatic filing with the Commissioner.~~

~~9.1.2 In preparing the memorandum, the appointed actuary may rely on, and include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of section 5.2 of this regulation, with respect to the areas covered in such memoranda, and so state in their memoranda.~~

~~9.1.3 If the Commissioner requests a memorandum and no such memorandum exists or if the Commissioner finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this regulation, the Commissioner may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the Commissioner.~~

~~9.1.4 The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the Commissioner; provided, however, that any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the Commissioner and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the Commissioner pursuant to the statute governing this regulation. The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this regulation for any one of the current year or the preceding three (3) years.~~

~~9.2 Details of the Memorandum Section Documenting Asset Adequacy Analysis (section 8.0.~~

9.2.1 When an actuarial opinion under section 8.0 is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in section 5.4 of this regulation and any additional standards under this regulation. It shall specify:

9.2.1.1 For reserves:

9.2.1.1.1 Product descriptions including market description, underwriting and other aspects of a risk profile and the specific risks the appointed actuary deems significant;

9.2.1.1.2 Source of liability in force;

9.2.1.1.3 Reserve method and basis;

9.2.1.1.4 Investment reserves;

9.2.1.1.5 Reinsurance arrangements.

9.2.1.2 For assets:

9.2.1.2.1 Portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets;

9.2.1.2.2 Investment and disinvestment assumptions;

9.2.1.2.3 Source of asset data;

9.2.1.2.4 Asset valuation bases.

9.2.1.3 Analysis basis:

9.2.1.3.1 Methodology;

9.2.1.3.2 Rationale for inclusion/exclusion of different blocks of business and how pertinent risks were analyzed;

9.2.1.3.3 Rationale for degree of rigor in analyzing different blocks of business;

9.2.1.3.4 Criteria for determining asset adequacy;

9.2.1.3.5 Effect of federal income taxes, reinsurance and other relevant factors.

9.2.1.4 Summary of Results

9.2.1.5 Conclusion(s)

9.3 Conformity to Standards of Practice

9.3.1 The memorandum shall include a statement:

"Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum."

10.0 Additional Consideration for Analysis

10.1 Aggregation

10.1.1 For the asset adequacy analysis for the statement of actuarial opinion provided in accordance with section 8.0 of this regulation, reserves and assets may be aggregated by either of the following methods:

10.1.1.1 Aggregate the reserves and related actuarial items, and the supporting assets, for different products or lines of business, before analyzing the adequacy of the combined assets to mature the combined liabilities. The appointed actuary must be satisfied that the assets held in support of the reserves and related actuarial items so aggregated are managed in such a manner that the cash flows from the aggregated assets are available to help mature the liabilities from the blocks of business that have been aggregated.

10.1.1.2 Aggregate the results of asset adequacy analysis of one or more products of lines of business, the reserves for which prove through analysis to be redundant, with the results of one or more products or lines of business, the reserves for which prove through analysis to be deficient. The appointed actuary must be satisfied that the asset adequacy results for the various products or lines of business for which the results are so aggregated:

10.1.1.2.1 Are developed using consistent economic scenarios; or

10.1.1.2.2 Are subject to mutually independent risks, i.e., the likelihood of events impacting the adequacy of the assets supporting the redundant reserves is completely unrelated to the likelihood of events impacting the adequacy of the assets supporting the deficient reserves.

10.1.1.3 In the event of any aggregation, the actuary must disclose in his or her opinion that such reserves were aggregated on the basis of sections 10.1.1.1, 10.1.1.2.1 or 10.1.1.2.2 above, whichever is applicable, and describe the aggregation in the supporting memorandum.

10.2 Selection of Assets for Analysis

10.2.1 The appointed actuary shall analyze only those assets held in support of the reserves which are the subject for specific analysis, hereafter called "specified reserves". A particular asset or portion thereof supporting a group of specified reserves cannot support any other group of specified reserves. An asset may be allocated over several groups of specified reserves. The annual statement value of the assets held in support of the reserves shall not exceed the annual statement value of the specified reserves, except as provided in section 10.3 below. If the method of asset allocation is not consistent from year to year, the extent of its inconsistency should be described in the supporting memorandum.

10.3 Use of Assets Supporting the Interest Maintenance Reserve and the Asset Valuation Reserve:

10.3.1 An appropriate allocation of assets in the amount of the Interest Maintenance Reserve (IMR), whether positive or negative, must be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the Asset Valuation Reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support.

10.3.2 The amount of the assets used for the AVR must be disclosed in the Table or Reserves and Liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets must be disclosed in the memorandum.

10.4 Required Interest Scenarios

10.4.1 For the purpose of performing the asset adequacy analysis required by this regulation, the qualified actuary is expected to follow standards adopted by the Actuarial Standards Board; nevertheless, the appointed actuary must consider in the analysis the effect of at least the following interest rate scenarios:

10.4.1.1 Level with no deviation;

10.4.1.2 Uniformly increasing over ten (10) years at a half percent per year and then level;

10.4.1.3 decreasing at one percent per year to the original level at the end of ten (10) years and then level;

10.4.1.4 An immediate increase of three percent (3%) and then level;

10.4.1.5 Uniformly decreasing over ten (10) years at a half percent per year and then level;

10.4.1.6 Uniformly decreasing at one percent per year over five (5) years and then uniformly increasing at one percent per year to the original level at the end of ten (10) years and then level; and

10.4.1.7 An immediate decrease of three percent (3%) and then level.

10.4.2 For these and other scenarios which may be used, projected interest rates for a five (5) year Treasury Note need not be reduced beyond the point where the five (5) year Treasury Note yield should be at fifty percent (50%) of its initial level.

10.4.3 The beginning interest rates may be based on interest rates for new investments as of the valuation date similar to recent investments allocated to support the product being tested or be based on an outside index, such as Treasury yields, of assets of the appropriate length on a date close to the valuation date. Whatever method is used to determine the beginning yield curve and

~~associated interest rates should be specifically defined. The beginning yield curve and associated interest rates should be consistent for all interest rate scenarios.~~

~~10.5 Documentation~~

~~10.5.1 The appointed actuary shall retain on file, for at least seven (7) years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained.~~

1.0 Purpose

1.1 The purpose of this regulation is to prescribe:

1.1.1 Requirements for statements of actuarial opinion that are to be submitted in accordance with 18 **Del.C.** §1111(c), and for memoranda in support thereof;

1.1.2 Rules applicable to the appointment of an appointed actuary; and

1.1.3 Guidance as to the meaning of "adequacy of reserves."

2.0 Authority

This regulation is issued pursuant to the authority vested in the Commissioner of Insurance of the State of Delaware under 18 **Del.C.** §§314 and 1111. This regulation will take effect for annual statements for the year 2009.

3.0 Scope

3.1 This regulation shall apply to all life insurance companies and fraternal benefit societies doing business in this State and to all life insurance companies and fraternal benefit societies that are authorized to reinsure life insurance, annuities or accident and health insurance business in this State. This regulation shall be applied in a manner that allows the appointed actuary to utilize his or her professional judgment in performing the asset analysis and developing the actuarial opinion and supporting memoranda, consistent with relevant actuarial standards of practice. However, the commissioner shall have the authority to specify specific methods of actuarial analysis and actuarial assumptions when, in the commissioner's judgment, these specifications are necessary for an acceptable opinion to be rendered relative to the adequacy of reserves and related items.

3.2 This regulation shall be applicable to all annual statements filed with the office of the commissioner after the effective date of this regulation. A statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with 6.0 of this regulation, and a memorandum in support thereof in accordance with 7.0 of this regulation, shall be required each year.

4.0 Definitions

"**Actuarial Opinion**" means the opinion of an appointed actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with this regulation and with applicable Actuarial Standards of Practice.

"**Actuarial Standards Board**" means the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

"**Annual statement**" means that statement required by 18 **Del.C.** §526 to be filed by the company with the office of the commissioner annually.

"**Appointed actuary**" means an individual who is appointed or retained in accordance with the requirements set forth in 5.3 of this regulation to provide the actuarial opinion and supporting memorandum as required by 18 **Del.C**. §1111(c).

"**Asset adequacy analysis**" means an analysis that meets the standards and other requirements referred to in 5.4 of this regulation.

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

"**Company**" means a life insurance company, fraternal benefit society or reinsurer subject to the provisions of this regulation.

"**Qualified actuary**" means an individual who meets the requirements set forth in Section 5.2 of this regulation.

5.0 General Requirements

5.1 Submission of Statement of Actuarial Opinion

5.1.1 There is to be included on or attached to Page 1 of the annual statement for each year beginning with the year in which this regulation becomes effective the statement of an appointed actuary, entitled "Statement of Actuarial Opinion," setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with 6.0 of this regulation.

5.1.2 Upon written request by the company, the Commissioner may grant an extension of the date for submission of the statement of actuarial opinion.

5.2 Qualified Actuary. A "qualified actuary" is an individual who:

5.2.1 Is a member in good standing of the American Academy of Actuaries;

5.2.2 Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements;

5.2.3 Is familiar with the valuation requirements applicable to life and health insurance companies;

5.2.4 Has not been found by the Commissioner, or if so found has subsequently been reinstated as a qualified actuary, following appropriate notice and hearing to have:

5.2.4.1 Violated any provision of, or any obligation imposed by, the Insurance Law or other law in the course of his or her dealings as a qualified actuary;

5.2.4.2 Been found guilty of fraudulent or dishonest practices;

5.2.4.3 Demonstrated his or her incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary;

5.2.4.4 Submitted to the Commissioner during the past five (5) years, pursuant to this regulation, an actuarial opinion or memorandum that the Commissioner rejected because it did not meet the provisions of this regulation including standards set by the Actuarial Standards Board; or

5.2.4.5 Resigned or been removed as an actuary within the past five (5) years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards; and

5.2.5 Has not failed to notify the Commissioner of any action taken by any commissioner of any other state similar to that under Paragraph 5.2.4 above.

5.3 Appointed Actuary. An "appointed actuary" is a qualified actuary who is appointed or retained to prepare the Statement of Actuarial Opinion required by this regulation, either directly by or by the authority of the board of directors through an executive officer of the company other than the qualified actuary. The company shall give the Commissioner timely written notice of the name, title (and, in the case of a consulting actuary, the name of the firm) and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary and shall state in the notice that the person meets the requirements set forth in 5.2. Once notice is furnished, no further notice is required with respect to this person, provided that the company shall give the Commissioner timely written notice in the event the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements set forth in 5.2. If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice shall so state and give the reasons for replacement.

5.4 Standards for Asset Adequacy Analysis. The asset adequacy analysis required by this regulation:

5.4.1 Shall conform to the Standards of Practice as promulgated from time to time by the Actuarial Standards Board and on any additional standards under this regulation, which standards are to form the basis of the statement of actuarial opinion in accordance with this regulation; and

5.4.2 Shall be based on methods of analysis as are deemed appropriate for such purposes by the Actuarial Standards Board.

5.5 Liabilities to be Covered.

5.5.1 Under authority of 18 **Del.C.** §1111(c), the statement of actuarial opinion shall apply to all in force business on the statement date, whether directly issued or assumed, regardless of when or where issued, e.g., reserves of Exhibits 5, 6 and 7, and claim liabilities in Exhibit 8, Part 1 and equivalent items in the separate account statement or statements.

5.5.2 If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with methods set forth in the Standard Valuation Law, the company shall establish the additional reserve.

5.5.3 Additional reserves established under 5.5.2 above and deemed not necessary in subsequent years may be released. Any amounts released shall be disclosed in the actuarial opinion for the applicable year. The release of such reserves would not be deemed an adoption of a lower standard of valuation.

6.0 Statement of Actuarial Opinion Based On an Asset Adequacy Analysis

6.1 General Description. The statement of actuarial opinion submitted in accordance with this section shall consist of:

6.1.1 A paragraph identifying the appointed actuary and his or her qualifications as further detailed in 6.2.1 below

6.1.2 A scope paragraph identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items that have been analyzed for asset adequacy and the method of analysis, as detailed in 6.2.2, and identifying the reserves and related actuarial items covered by the opinion that have not been so analyzed;

6.1.3 A reliance paragraph describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures or assumptions, including anticipated cash flows from currently owned assets, including variation of cash flows according to economic scenarios as described in 6.2.3, and supported by a statement of each such expert in the form prescribed by 6.5; and

6.1.4 An opinion paragraph expressing the appointed actuary's opinion with respect to the adequacy of the supporting assets to mature the liabilities.

6.1.5 One or more additional paragraphs will be needed in individual company cases as follows:

6.1.5.1 If the appointed actuary considers it necessary to state a qualification of his or her opinion;

6.1.5.2 If the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion;

6.1.5.3 If the appointed actuary must disclose whether additional reserves as of the prior opinion date are released as of this opinion date, and the extent of the release;

6.1.5.4 If the appointed actuary chooses to add a paragraph briefly describing the assumptions that form the basis for the actuarial opinion.

6.2 Recommended Language. The following paragraphs are to be included in the statement of actuarial opinion in accordance with this section. Language is that which in typical circumstances should be included in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language that clearly expresses his or her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in this section.

6.2.1 The opening paragraph should generally indicate the appointed actuary's relationship to the company and his or her qualifications to sign the opinion. For a company actuary, the opening paragraph of the actuarial opinion should include a statement such as:

"I, [name], am [title] of [insurance company name] and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

For a consulting actuary, the opening paragraph should include a statement such as:

"I, [name], a member of the American Academy of Actuaries, am associated with the firm of [name of consulting firm]. I have been appointed by, or by the authority of, the Board of Directors of [name of company] to render this opinion as stated in the letter to the commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

6.2.2 The scope paragraph should include a statement such as:

"I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, 20[ ]. Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis.

Asset Adequacy Tested Amounts—Reserves and Liabilities					
Statement Item	**Formula Reserves (1)**	**Additional Actuarial Reserves (a) (2)**	**Analysis Method (b)**	**Other Amount (3)**	**Total Amount (1)+(2)+(3) (4)**
Exhibit 5 A Life Insurance					
B Annuities					
C Supplementary Contracts Involving Life Contingencies					
D Accidental Death Benefit					
E Disability—Active					
F Disability—Disabled					
G Miscellaneous					
Total (Exhibit 5 Item 1, Page 3)					
Exhibit 6 A Active Life Reserve					
B Claim Reserve					
Total (Exhibit 6 Item 2, Page 3)					

Exhibit 7 Premium and Other Deposit Funds (Column 5, Line 14)					
Guaranteed Interest Contracts (Column 2, Line 14)					
Other (Column 6, Line 14)					
Supplemental Contracts and Annuities Certain (Column 3, Line 14)					
Dividend Accumulations or Refunds (Column 4, Line 14)					
Total Exhibit 7 (Column 1, Line 14)					
Exhibit 8 Part 1 1 Life (Page 3, Line 4.1)					
2 Health (Page 3, Line 4.2)					
Total Exhibit 8, Part 1					
Separate Accounts (Page 3 of the Annual Statement of the Separate Accounts, Lines 1, 2, 3.1, 3.2, 3.3)					
TOTAL RESERVES					

IMR (General Account, Page ___ Line ___)	
(Separate Accounts, Page ___ Line ___)	
AVR (Page ___ Line ___)	(c)
Net Deferred and Uncollected Premium	

Notes:

(a) The additional actuarial reserves are the reserves established under 5.5.1.

(b) The appointed actuary should indicate the method of analysis, determined in accordance with the standards for asset adequacy analysis referred to in 6.0 of this regulation, by means of symbols that should be defined in footnotes to the table.

(c) Allocated amount of Asset Valuation Reserve (AVR).

6.2.3 If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph should include a statement such as:

"I have relied on [name], [title] for [e.g., "anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios" or "certain critical aspects of the analysis performed in conjunction with forming my opinion"], as certified in the attached statement. I have reviewed the information relied upon for reasonableness."

A statement of reliance on other experts should be accompanied by a statement by each of the experts in the form prescribed by 6.1.3.

6.2.4 If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph should include a statement such as:

"My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary. I also reconciled the underlying basic asset and liability records to [exhibits and schedules listed as applicable] of the company's current annual statement."

6.2.5 If the appointed actuary has not examined the underlying records, but has relied upon data (e.g., listings and summaries of policies in force or asset records) prepared by the company, the reliance paragraph should include a statement such as:

"In forming my opinion on [specify types of reserves] I relied upon data prepared by [name and title of company officer certifying in force records or other data] as certified in the attached statements. I evaluated that data for reasonableness and consistency. I also reconciled that data to [exhibits and schedules to be listed as applicable] of the company's current annual statement. In other respects, my examination included review of the actuarial assumptions and actuarial methods used and tests of the calculations I considered necessary."

The section shall be accompanied by a statement by each person relied upon in the form prescribed by 6.1.3.

6.2.6 The opinion paragraph should include a statement such as:

"In my opinion the reserves and related actuarial values concerning the statement items identified above:

(a) Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;

(b) Are based on actuarial assumptions that produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

(c) Meet the requirements of the Insurance Law and regulation of the state of Delaware; and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;

(d) Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below); and

(e) Include provision for all actuarial reserves and related statement items which ought to be established.

The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on the assets, and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company. (At the

discretion of the commissioner, this language may be omitted for an opinion filed on behalf of a company doing business only in this state and in no other state.)

The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion.

This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion.

or

The following material changes which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion: (Describe the change or changes.)

Note: Choose one of the above two paragraphs, whichever is applicable.

The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis.

_____

Signature of Appointed Actuary

_____

Address of Appointed Actuary

_____

Telephone Number of Appointed Actuary

_____

Date"

6.3 Assumptions for New Issues

The adoption for new issues or new claims or other new liabilities of an actuarial assumption that differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this 5.0.

6.4 Adverse Opinions

If the appointed actuary is unable to form an opinion, then he or she shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, then he or she shall issue an adverse or qualified actuarial opinion explicitly stating the reasons for the opinion. This statement should follow the scope paragraph and precede the opinion paragraph.

6.5 Reliance on Information Furnished by Other Persons

If the appointed actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, the actuarial opinion should so indicate the persons the actuary is relying upon and a precise identification of the items subject to reliance. In addition, the persons on whom the appointed actuary relies shall provide a certification that precisely identifies the items on which the person is providing information and a statement as to the accuracy, completeness or reasonableness, as applicable, of the items. This certification shall include the signature, title, company, address and telephone number of the person rendering the certification, as well as the date on which it is signed.

6.6 Alternate Option

6.6.1 The Standard Valuation Law gives the Commissioner broad authority to accept the valuation of a foreign insurer when that valuation meets the requirements applicable to a company domiciled in

this state in the aggregate. As an alternative to the requirements of 6.0, the Commissioner may make one or more of the following additional approaches available to the opining actuary:

6.6.1.1 A statement that the reserves "meet the requirements of the insurance laws and regulations of the State of (domicile) and the formal written standards and conditions of this state for filing an opinion based on the law of the state of domicile." If the commissioner chooses to allow this alternative, a formal written list of standards and conditions shall be made available. If a company chooses to use this alternative, the standards and conditions in effect on July 1 of a calendar year shall apply to statements for that calendar year, and they shall remain in effect until they are revised or revoked. If no list is available, this alternative is not available.

6.6.1.2 A statement that the reserves "meet the requirements of the insurance laws and regulations of the State of (domicile) and I have verified that the company's request to file an opinion based on the law of the state of domicile has been approved and that any conditions required by the Commissioner for approval of that request have been met." If the Commissioner chooses to allow this alternative, a formal written statement of such allowance shall be issued no later than March 31 of the year it is first effective. It shall remain valid until rescinded or modified by the Commissioner. The rescission or modifications shall be issued no later than March 31 of the year they are first effective. Subsequent to that statement being issued, if a company chooses to use this alternative, the company shall file a request to do so, along with justification for its use, no later than April 30 of the year of the opinion to be filed. The request shall be deemed approved on October 1 of that year if the commissioner has not denied the request by that date.

6.6.1.3 A statement that the reserves "meet the requirements of the insurance laws and regulations of the State of (domicile) and I have submitted the required comparison as specified by this state."

6.6.1.3.1 If the Commissioner chooses to allow this alternative, a formal written list of products (to be added to the table in Item (ii) below) for which the required comparison shall be provided will be published. If a company chooses to use this alternative, the list in effect on July 1 of a calendar year shall apply to statements for that calendar year, and it shall remain in effect until it is revised or revoked. If no list is available, this alternative is not available.

6.6.1.3.2 If a company desires to use this alternative, the appointed actuary shall provide a comparison of the gross nationwide reserves held to the gross nationwide reserves that would be held under NAIC codification standards. Gross nationwide reserves are the total reserves calculated for the total company in force business directly sold and assumed, indifferent to the state in which the risk resides, without reduction for reinsurance ceded. The information provided shall be at least:

(1) Product Type	(2) Death Benefit or Account Value	(3) Reserves Held	(4) Codification Reserves	(5) Codification Standard

6.6.1.3.3 The information listed shall include all products identified by either the state of filing or any other states subscribing to this alternative.

6.6.1.3.4 If there is no codification standard for the type of product or risk in force or if the codification standard does not directly address the type of product or risk in force, the appointed actuary shall provide detailed disclosure of the specific method and assumptions used in determining the reserves held.

6.6.1.3.5 The comparison provided by the company is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

6.6.2 Notwithstanding the above, the Commissioner may reject an opinion based on the laws and regulations of the state of domicile and require an opinion based on the laws of this state. If a company is unable to provide the opinion within sixty (60) days of the request or such other period of time determined by the Commissioner after consultation with the company, the Commissioner may contract an independent actuary at the company's expense to prepare and file the opinion.

7.0 Description of Actuarial Memorandum Including an Asset Adequacy Analysis and Regulatory Asset Adequacy Issues Summary

7.1 General

7.1.1 In accordance with 18 **Del.C.** §1111 (c), the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his or her opinion regarding the reserves. The memorandum shall be made available for examination by the Commissioner upon his or her request but shall be returned to the company after such examination and shall not be considered a record of the insurance department or subject to automatic filing with the Commissioner.

7.1.2 In preparing the memorandum, the appointed actuary may rely on, and include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of Section 5B of this regulation, with respect to the areas covered in such memoranda, and so state in their memoranda.

7.1.3 If the Commissioner requests a memorandum and no such memorandum exists or if the Commissioner finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this regulation, the Commissioner may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the Commissioner.

7.1.4 The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the Commissioner; provided, however, that any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the Commissioner and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the Commissioner pursuant to the statute governing this regulation. The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this regulation for any one of the current year or the preceding three (3) years.

7.1.5 In accordance with 18 **Del.C.** §1111 (c), the appointed actuary shall prepare a regulatory asset adequacy issues summary, the contents of which are specified in 6.0. The regulatory asset adequacy issues summary will be submitted no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required. The regulatory asset adequacy issues summary is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

7.2 Details of the Memorandum Section Documenting Asset Adequacy Analysis

When an actuarial opinion is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in this regulation and any additional standards under this regulation. It shall specify:

7.2.1 For reserves:

7.2.1.1 Product descriptions including market description, underwriting and other aspects of a risk profile and the specific risks the appointed actuary deems significant;

7.2.1.2 Source of liability in force;

7.2.1.3 Reserve method and basis;

7.2.1.4 Investment reserves;

7.2.1.5 Reinsurance arrangements;

7.2.1.6 Identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis;

7.2.1.7 Documentation of assumptions to test reserves for the following:

7.2.1.7.1 Lapse rates (both base and excess);

7.2.1.7.2 Interest crediting rate strategy;

7.2.1.7.3 Mortality;

7.2.1.7.4 Policyholder dividend strategy;

7.2.1.7.5 Competitor or market interest rate;

7.2.1.7.6 Annuitization rates;

7.2.1.7.7 Commissions and expenses; and

7.2.1.7.8 Morbidity.

The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions.

7.2.2 For assets:

7.2.2.1 Portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets used for each analysis basis;

7.2.2.2 Investment and disinvestment assumptions;

7.2.2.3 Source of asset data;

7.2.2.4 Asset valuation bases; and

7.2.2.5 Documentation of assumptions made for:

7.2.2.5.1 Default costs;

7.2.2.5.2 Bond call function;

7.2.2.5.3 Mortgage prepayment function;

7.2.2.5.4 Determining market value for assets sold due to disinvestment strategy; and

7.2.2.5.5 Determining yield on assets acquired through the investment strategy.

The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions.

7.2.3 For each analysis basis:

7.2.3.1 Methodology;

7.2.3.2 Rationale for inclusion or exclusion of different blocks of business and how pertinent risks were analyzed;

7.2.3.3 Rationale for degree of rigor in analyzing different blocks of business (include in the rationale the level of "materiality" that was used in determining how rigorously to analyze different blocks of business);

7.2.3.4 Criteria for determining asset adequacy (include in the criteria the precise basis for determining if assets are adequate to cover reserves under "moderately adverse conditions" or other conditions as specified in relevant actuarial standards of practice); and

7.2.3.5 Whether the impact of federal income taxes was considered and the method of treating reinsurance in the asset adequacy analysis; and

7.2.3.6 Suitability of assets used in support of the liabilities included in the analysis basis.

7.2.4 Summary of material changes in methods, procedures, or assumptions from prior year's asset adequacy analysis;

7.2.5 Summary of results; and

7.2.6 Conclusions.

7.3 Details of the Regulatory Asset Adequacy Issues Summary

7.3.1 The regulatory asset adequacy issues summary shall include:

7.3.1.1 Descriptions of the scenarios tested (including whether those scenarios are stochastic or deterministic) and the sensitivity testing done relative to those scenarios. If negative ending surplus results under certain tests in the aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force.

7.3.1.2 The extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different than the assumptions used in the previous asset adequacy analysis;

7.3.1.3 The amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion;

7.3.1.4 Comments on any interim results that may be of significant concern to the appointed actuary; Under the level interest rate scenario, the appointed actuary should specify the amount of additional reserve as of the valuation date which, if held, would eliminate all negative interim surplus values.

7.3.1.5 The methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each of the scenarios tested; and

7.3.1.6 Whether the actuary has been satisfied that all options whether explicit or embedded, in any asset or liability (including but not limited to those affecting cash flows embedded in fixed income securities) and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.

7.3.2 The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion.

7.4 Conformity to Standards of Practice. The memorandum shall include a statement:

"Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum."

7.5 Use of Assets Supporting the Interest Maintenance Reserve and the Asset Valuation Reserve

An appropriate allocation of assets in the amount of the interest maintenance reserve (IMR), whether positive or negative, shall be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the asset valuation reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support.

The amount of the assets used for the AVR shall be disclosed in the table of reserves and liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets shall be disclosed in the memorandum.

7.6 Required Interest Scenarios

7.6.1 For the purpose of performing the asset adequacy analysis required by this regulation, the qualified actuary is expected to follow standards adopted by the Actuarial Standards Board; nevertheless, the appointed actuary must consider in the analysis the effect of at least the following interest rate scenarios:

7.6.1.1 Level with no deviation;

7.6.1.2 Uniformly increasing over ten (10) years at a half percent per year and then level;

7.6.1.3 Uniformly increasing at one percent per year over five (5) years and then uniformly decreasing at one percent per year to the original level at the end of ten (10) years and then level;

7.6.1.4 An immediate increase of three percent (3%) and then level;

7.6.1.5 Uniformly decreasing over ten (10) years at a half percent per year and then level;

7.6.1.6 Uniformly decreasing at one percent per year over five (5) years and then uniformly increasing at one percent per year to the original level at the end of ten (10) years and then level; and

7.6.1.7 An immediate decrease of three percent (3%) and then level.

7.6.2 For these and other scenarios which may be used, projected interest rates for a five (5) year Treasury Note need not be reduced beyond the point where the five (5) year Treasury Note yield should be at fifty percent (50%) of its initial level.

7.6.3 The beginning interest rates may be based on interest rates for new investments as of the valuation date similar to recent investments allocated to support the product being tested or be based on an outside index, such as Treasury yields, of assets of the appropriate length on a date close to the valuation date. Whatever method is used to determine the beginning yield curve and associated interest rates should be specifically defined. The beginning yield curve and associated interest rates should be consistent for all interest rate scenarios.

7.7 Documentation

7.7.1 Documentation. The appointed actuary shall retain on file, for at least seven (7) years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained.

8.0 Effective Date

This Regulation is effective July 11, 2009.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C**., Ch. 60)
7 **DE Admin. Code** 1101

REGISTER NOTICE

SAN #2009-03

1. Title of the Regulation:

Amendment to Regulation 1101 “Definitions and Administrative Principles,” Section 2.0 - “Definitions.”

2. Brief Synopsis of the Subject, Substance and Issues:

The United States Environmental Protection Agency (EPA) has determined that the following organic compounds have negligible photochemical reactivity and has exempted them from regulation as ground-level ozone precursors; t-butyl acetate (TBAC), HFE-7000, HFE-7500, HFE-7300, HFC 227ea, methyl formate, propylene carbonate and dimethyl carbonate. This action updates the Delaware definition of a volatile organic compound (VOC) to be the same as the federal definition. This allows Delaware users of solvent containing products (e.g. coatings, adhesives, cleaning compounds, aerosol propellants and blowing agents) to utilize these VOC exempt compounds which may provide desired product properties without contributing to ozone formation.

3. Possible Terms of the Agency Action:

None.

4. Statutory Basis or Legal Authority to Act:

7 Delaware Code, Chapter 60.

5. Other Regulations That May Be Affected By The Proposal:

None

6. Notice of Public Comment:

There will be a hearing on this proposed amendment on May 26, 2009 beginning at 6pm in the Priscilla Building conference room in Dover. Interested parties may submit comments in writing to Gene Pettingill, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720 and/or statements and testimony may be presented either orally or in writing at the public hearing.

7. Prepared By:

Gene Pettingill (302) 323-4542 gene.pettingill@state.de.us April 13, 2009

1101 Definitions and Administrative Principles

02/01/1981

(Break in Continuity of Sections)

~~09/11/1999~~ xx/xx/2009

2.0 Definitions

(Break in Continuity of Sections)

"Volatile organic compounds" (Also denoted as VOCs) means any carbon-containing compound, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity:

- methane;
- ethane;
- methyl chloroform (1,1,1-trichloroethane);
- CFC-113 (1,1,2-trichloro-1,2,2-trifluoromethane;
- methylene chloride (dichloromethane);
- CFC-11 (trichlorofluoromethane);
- CFC-12 (dichlorodifluoromethane);
- HCFC-22 (chlorodifluoromethane);

- HFC-23 (trifluoromethane);
- CFC-114 (1,2-dichloro-1,1,2,2-tetrafluoroethane);
- CFC-115 (chloropentafluoroethane);
- HCFC-123 (1,1,1-trifluoro-2,2-dichloroethane);
- HFC-134a (1,1,1,2-tetrafluoroethane);
- HCFC-141b (1,1-dichloro-1-fluoroethane);
- HCFC-142b (1-chloro-1,1-difluoroethane);
- HCFC-124 (2-chloro-1,1,1,2-tetrafluoroethane);
- HFC-125 (pentafluoroethane);
- HFC-134 (1,1,2,2-tetrafluoroethane);
- HFC-143a (1,1,1-trifluoroethane);
- HFC-152a (1,1-difluoroethane);
- parachlorobenzotrifluoride (PCBTF);
- cyclic, branched, or linear completely methylated siloxanes;
- acetone;
- perchloroethylene (tetrachloroethylene);
- HCFC-225ca (3,3-dichloro-1,1,1,2,2-pentafluoropropane);
- HCFC-225cb (1,3-dichloro-1,1,2,2,3-pentafluoropropane);
- HFC-43-10mee (1,1,1,2,3,4,4,5,5,5-decafluoropentane);
- HFC-32 (difluoromethane);
- HFC-161 (ethylfluoride);
- HFC-236fa (1,1,1,3,3,3-hexafluoropropane);
- HFC-245ca (1,1,2,2,3-pentafluoropropane);
- HFC-245ea (1,1,2,3,3-pentafluoropropane);
- HFC-245eb (1,1,1,2,3-pentafluoropropane);
- HFC-245fa (1,1,1,3,3-pentafluoropropane);
- HFC-236ea (1,1,1,2,3,3-hexafluoropropane);
- HFC-365mfc (1,1,1,3,3-pentafluorobutane);
- HCFC-31 (chlorofluoromethane);
- HCFC-151a (1-chloro-1-fluoroethane);
- HCFC-123a (1,2-dichloro-1,1,2-trifluoroethane);
- 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ~~(C4F9OCH3)~~ ($C_4F_9OCH_3$);
- 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ~~(CF3)2CFCF2OCH3)~~ (($CF_3)_2CFCF_2OCH_3$);
- 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ~~(C4F9OC2H5)~~ ($C_4F_9OC_2H_5$);
- 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ~~(CF3)2CFCF2OC2H5)~~ (($CF_3)_2CFCF_2OC_2H_5$);
- methyl acetate; ~~and~~
- HFE–7000 (1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane) (n-$C_3F_7OCH_3$);
- HFE–7500 [3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane];
- HFC-227ea (1,1,1,2,3,3,3-heptafluoropropane);
- methyl formate;
- HFE-7300 (1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane);
- t-butyl acetate*;
- propylene carbonate;
- dimethyl carbonate; and
- perfluorocarbon compounds which fall into these classes:
  - Cyclic, branched, or linear, completely fluorinated alkanes.
  - Cyclic, branched, or linear, completely fluorinated ethers with no unsaturated bonds.
  - Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturated bonds.
  - Sulfur containing perfluorocarbons with no unsaturated bonds and with sulfur bonds only to carbon and fluorine.

* t-butyl acetate is a VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but is not a VOC for purposes of VOC emissions limitations or VOC content requirements.

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

1101 Definitions and Administrative Principles

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C**., Ch. 60)
7 **DE Admin. Code** 1146

REGISTER NOTICE
SAN #2009-04

1. Title of the Regulation:
Amend 7 **DE Admin. Code** 1146, Electric Generating Unit (EGU) Multi-Pollutant Regulation.

2. Brief Synopsis of the Subject, Substance and Issues:
Regulation 1146 provides sulfur dioxide (SO2), nitrogen oxides (NOx), and mercury emissions limitations for Delaware's coal-fired and residual fuel oil-fired EGUs with nameplate capacity ratings greater than or equal to 25 megawatts (MW). Among the limitations established by Regulation 1146 is an annual SO2 mass emissions cap of 2427 tons per year for Conectiv Delmarva Generation's Edge Moor Unit 5. The SO2 mass cap is identified in Table 5-1 of Regulation 1146. Edge Moor Unit 5 is a residual fuel-oil fired EGU with a nameplate rating of 446 MW.

Regulation 1146 was promulgated in November 2006, and on December 5, 2006 Conectiv appealed essentially all of the Regulation 1146 provisions that applied to their Edge Moor facility. On December 17, 2008, Conectiv and DNREC signed an agreement that resolves the appeal. The purpose of this proposed action is to satisfy one provision of that agreement: to propose an amendment to Regulation 1146 that modifies the SO2 mass emissions limit associated with Edge Moor Unit 5 (as constrained in Regulation 1146's Table 5-1) from 2427 tons per year to 4600 tons per year, beginning in calendar year 2009. No other changes to Regulation 1146 are being proposed, to include the requirement for Unit 5 to burn only low sulfur oil.

3. Possible Terms of the Agency Action:
None.

4. Statutory Basis or Legal Authority to Act:
7 Delaware Code, Chapter 60.

5. Other Regulations That May Be Affected By The Proposal:
None.

6. Notice Of Public Comment:
DNREC will hold a public hearing on this proposed amendment on May 26, 2009 beginning at 6pm in the Priscilla Building conference room, 156 S. State St., in Dover. Interested parties may submit comments in writing to

Bob Clausen, Air Quality Management Section, 156 S. State St., Dover DE 19901 and/or statements and testimony may be presented either orally or in writing at the public hearing.

7. Prepared By:
Bob Clausen (302) 739-9402

1146 Electric Generating Unit (EGU) Multi-Pollutant Regulation

(Break in Continuity of Sections)

12/11/2006

9.0 Penalties

The Department may enforce all of the provisions of this regulation under 7 **Del.C.** Ch 60.

Table 4-1

Annual NO_X Mass Emissions Limits

Unit	Control Period NO_X Mass Emissions Limit (tons)
Edgemoor 3	773
Edgemoor 4	1339
Edgemoor 5	1348
Indian River 1	601
Indian River 2	628
Indian River 3	977
Indian River 4	2032
McKee Run	244

Table 5-1
Annual SO_2 Mass Emissions Limits

Unit	Control Period SO_2 Mass Emissions Limit (tons)
Edgemoor 3	1391
Edgemoor 4	2410
Edgemoor 5	~~2427~~ 4600
Indian River 1	1082
Indian River 2	1130
Indian River 3	1759
Indian River 4	3657
McKee Run	439

Table 6-1
Annual Mercury Mass Emissions Limits

Unit	Mercury Mass Emissions 2009 - 2012 (ounces)	Mercury Mass Emissions 2013 and Beyond (ounces)
Edgemoor 3	266	106
Edgemoor 4	462	183
Indian River 1	207	82
Indian River 2	216	86
Indian River 3	337	134
Indian River 4	700	278

10 DE Reg. 1022 (12/01/06)
12 DE Reg. 347 (09/01/08)

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

1146 Electric Generating Unit (EGU) Multi-Pollutant Regulation

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DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

3500 BOARD OF EXAMINERS OF PSYCHOLOGISTS

Statutory Authority: 24 Delaware Code, Section 3506(a)(1) (24 **Del.C.** § 3506(a)(1))
24 **DE Admin. Code** 3500

PUBLIC NOTICE

Pursuant to 24 **Del.C.** §3506(a)(1), the Board of Examiners of Psychologists has proposed revisions to its rules and regulations.

A public hearing will be held on June 1, 2009 at 9:15 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 Board of Examiners of Psychologists, 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 10.0, which addresses the continuing education requirements for licensees. Effective as of the license renewal period beginning August 1, 2009, both psychologist and psychological assistants will be required to complete three hours of continuing education in ethics.

The Board also proposes an addition to Rule 13.0, pertaining to license renewal. The new Rule 13.5.3.7 expressly gives the Board the authority to conduct hearings and impose the full range of sanctions available under 24 **Del.C.** §3514 when licensees fail to comply with the continuing education requirements.

The proposed amendments strengthen continuing education standards and give the Board express authority to sanction licensees who do not comply with those standards. Therefore, the proposed revisions will serve to protect the public from unsafe practices and enhance practitioner competence.

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

3500 Board of Examiners of Psychologists

(Break in Continuity of Sections)

10.0 Continuing Education

10.1 Hours required.

10.1.1 The biennial licensing period begins August 1 of each odd-numbered year and ends July 31 of the next odd-numbered year.

10.1.~~1~~2 Psychologists must obtain 40 hours of continuing education during each biennial licensing period in order to be eligible for renewal of license. ~~The biennial licensing period begins August 1 of each odd-numbered year and ends July 31 of the next odd-numbered year.~~ Effective as of the license renewal period beginning August 1, 2009, all psychologists must complete three hours of continuing education in ethics.

10.1.~~2~~3 Psychological assistants must obtain 20 hours of continuing education during each biennial licensing period for re-registration. Effective as of the license renewal period beginning August 1, 2009, all psychological assistants must complete three hours of continuing education in ethics.

10.2 Proration of CE Requirement for New Licensees

10.2.1 The CE requirement for a licensee's initial licensing period shall be prorated as follows:

10.2.1.1 If an applicant is granted a psychologist license during the first six months of a license period, i.e., between July 31 of an odd-numbered year and January 31 of the next year, the new licensee must complete 30 CEs. An applicant granted a psychological assistant license in the same time period must complete 15 CEs in the initial licensing period.

10.2.1.2 If an applicant is granted a psychologist license during the second six months of a license period, i.e., between February 1 of an even-numbered year and July 31 of that same year, the new licensee must complete 20 CEs. An applicant granted a psychological assistant license in the same time period must complete 10 CEs in the initial licensing period.

10.2.1.3 If an applicant is granted a psychologist license during the third six months of a license period, i.e., between the dates of August 1 of an even-numbered year and January 31 of the next year, the licensee must complete 10 CEs. An applicant granted a psychological assistant license in the same time period must complete 5 CEs in the initial licensing period.

10.2.1.4 Any applicant granted a license during the last six months of a license period, i.e., between the dates of February 1 of an odd-numbered year and July 31 of that same year, need not complete any CEs during that period.

10.3 Hardship. An applicant for license renewal or registered psychological assistant may be granted an extension of time in which to complete continuing education hours upon a showing of hardship. Hardship may include, but is not limited to, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period, along with payment of the appropriate renewal fee. No extension shall be granted for more than 120 days after the end of the licensing period. A license shall be renewed upon approval of the hardship extension by the Board, but the license shall be subject o revocation if the licensee does not complete the requisite continuing education pursuant to the terms of the extension.

10.4 It is the responsibility of the psychologist or psychological assistant to maintain documentation of his/her continuing education for one year after the licensing period expires. Documentation of continuing education will consist of the information specified in 13.4.3.

10.5 The subject of the continuing education must contribute directly to the professional competency of a person licensed to practice as a psychologist or registered as a psychological assistant. The activity

must have significant intellectual or practical content and deal with psychological techniques, issues or ethical standards relevant to the practice of psychology.

10.6 Activities from APA-approved continuing education sponsors will be automatically accepted. The following may be eligible:

10.6.1 Other programs which are not APA-approved sponsors but where the material is relevant to professional practice and provides the equivalent of APA-defined credit. An applicant must provide a brochure or other documentation that supports the following criteria: relevance, stated objectives, faculty and educational objectives. To document attendance and completion, a certificate of attendance is required. In these circumstances, hours will be accrued on the basis of clock hours involved in the training.

10.6.2 Graduate courses relevant to professional practice taken for educational credit offered by a regionally accredited academic institution of higher education. Each credit hour of a course is equivalent to 5 CE hours.

10.6.3 Teaching an undergraduate or graduate level course in applied psychology at an accredited institution. Teaching a 3 hour semester or quarter course is considered the equivalent of 5 CE credits. No more than 5 CE credits may be completed in this manner for any renewal period and can be submitted only for the first time that a course is presented. Appropriate documentation of teaching must include the listing of the course in the school catalog and a letter from the academic institution stating that the course was taught.

10.6.4 Teaching of a workshop or conduction of a seminar on a topic of pertinence to the practice of psychology. Credit earned for one day is a maximum of 2 credits, two days is a maximum of 3 credits, and three days or more is a maximum of 5 credits. However, credit can be earned only once for teaching a particular seminar or workshop and not be eligible for re-submission at any time. Appropriate documentation is considered to be the brochure and demonstration of the workshop being held by the sponsoring entity.

10.6.5 Authorship, editing or reviewing of a publication. Credit may be earned only in the year of the publication and is limited to the following:

10.6.5.1 Author of a book (maximum of 40 CE hours)

10.6.5.2 Author of a book chapter or journal article (maximum of 15 CE hours)

10.6.5.3 Editor of a book (maximum of 25 CE hours)

10.6.5.4 Editor of or reviewer for a scientific or professional journal recognized by the Board (maximum 25 CE hours)

10.6.5.5 Proof of the above (10.6.5.1 - 10.6.5.4) must include the submission of the work or documentation of authorship by copy of title pages.

10.6.6 Preparing and presenting a scientific or professional paper or poster at a meeting of a professional or scientific organization. Up to 2 hours may be claimed for a poster presentation. Up to 3 hours of credit may be claimed for each hour of paper presentation, with a maximum of 8 CE hours per paper. Listing within the program and certificate letters of attendance at the meeting is appropriate documentation for both a paper or poster presentation.

10.7 The Board reserves the right to reject any CE program, if it is outside the scope of the practice of psychology.

10.8 The following will not be considered for credit: service to organizations; attending business meetings of professional organizations; business management or office administration courses; group supervision; or case conferences.

2 DE Reg. 776 (11/1/98)

4 DE Reg. 983 (12/1/00)

10 DE Reg. 1728 (05/01/07)

(Break in Continuity of Sections)

13.0 License Renewal

13.1 Renewal notices will be mailed to the current address on file in the Board's records in a timely fashion to all psychologists and psychological assistants who are currently licensed or registered. It shall be the responsibility of each psychologist and psychological assistant to advise the Board, in writing, of a change of name or address.

13.2 Continuing education requirements must be fulfilled as detailed in Section 10.0 of the Rules and Regulations and submitted along with the established fee for renewal to be approved. The Board may, in its discretion, grant a license renewal under the terms of a continuing education hardship extension pursuant to rule 10.3.

13.3 If a psychologist or a psychological assistant fails to renew or obtain a hardship exception by July 31, he or she may renew at any time until August 31 of that same year, upon payment of a late fee. In accord with Section 3507(b), whenever a license to practice or registration has expired, it is unlawful for the licensee/registration to practice while the license or registration is expired.

13.4 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 10.0.

13.4.1 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.

13.4.2 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 7.4.

13.5 Random post-renewal audits will be performed by the Board to ensure compliance with the CE requirements.

13.5.1 The Board will notify licensees within sixty (60) days after the end of a license renewal period (July 31 of odd-numbered years) that they have been selected for audit.

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

13.5.3 Verification shall include such information necessary for the Board to assess whether the course or other activity meets the CE requirements in Section 10.0, which may include, but is not limited to, the following information:

13.5.3.1 Appropriate documentation as outlined in Rule 10.6; and/or

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

13.5.3.3 Date and location of CE course;

13.5.3.4 Instructor of CE course;

13.5.3.5 Sponsor of CE course;

13.5.3.6 Title of CE course; and

13.5.3.7 Number of hours of CE course.

13.5.4 The Board shall review all documentation submitted by licensees pursuant to the CE audit. If the Board determines that the licensee has met the CE requirements, his or her license shall remain in effect. If the Board determines that the licensee has not met the CE requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. The hearing will be conducted to determine if there are any extenuating circumstances justifying the noncompliance with the CE requirements. Unjustified noncompliance with the CE requirements set forth in these rules and regulations may result in the licensee being subject to one or more of the disciplinary sanctions set forth in 24 **Del.C.** §3516.

4 DE Reg. 984 (12/1/00)

10 DE Reg. 1728 (05/01/07)

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

3500 Board of Examiners of Psychologists

DEPARTMENT OF TRANSPORTATION
DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 17 Delaware Code, Sections 134 and 141; 21 Delaware Code, Chapter 41
(17 **Del.C.** §§134, 141 and 21 **Del.C.** Ch. 41)
2 **DE Admin. Code** 2402

PUBLIC NOTICE

Delaware Manual on Uniform Traffic Control Devices, Parts 2, 6 and 9

Under Title 17 of the **Delaware Code**, Sections 134 and 141, as well as 21 **Delaware Code** Chapter 41, the Delaware Department of Transportation (DelDOT), adopted a Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). The Department has now drafted revisions to Parts 2, 6 and 9 of the Delaware MUTCD. A description of the proposed changes accompanies this notice.

The Department will take written comments on the draft changes to the Delaware MUTCD from June 1, 2009 through June 30, 2009. Copies of the Draft Delaware MUTCD Revisions to Parts 2, 6, and 9 can be obtained by reviewing or downloading a PDF copy at the following web address: http://regulations.delaware.gov/

Questions or comments regarding these proposed changes should be directed to: Donald Weber, P.E. Assistant Director of Transportation Engineering Division of Transportation Solutions Delaware Department of Transportation 169 Brick Store Landing Road Smyrna, DE 19977 (302) 659-2002 (telephone) (302) 653-2859 (fax) don.weber@state.de.us

***Please Note: Due to the size of the proposed regulation, the DelDOT Manual on Uniform Traffic Control Devices, Parts 2, 6 and 9, is not being published here. A PDF version is available at the following location:**

Delaware Manual on Uniform Traffic Control Devices, Parts 2, 6 and 9

DelDOT MUTCD Parts 2, 6 and 9
Proposed Revisions
March 18, 2009

Figure Number/ Table Number/ Section Number	Proposed Revision
Part 2	
Table of Contents	Revise to include Sections 2B.55 and 2B.56
Table 2B-1	Revise to include SR1-18-DE and SR1-19-DE signs
Section 2B.54	Delete references to SR1-18-DE sign
Figure 2B-22	Revise figure to include the SR1-19-DE sign and replace the SR1-19-DE sign
Section 2B.55	Create new section for the MOVE OVER OR REDUCE SPEED FOR STOPPED EMERGENCY AND MAINTENANCE VEHICLES (SR1-18-DE) sign describing the design and proper use of the sign

Section 2B.56	Create new section for the Engine Compression Brake Prohibition (SR1-19-DE) sign describing the design and proper use of the sign
Part 6	
Section 6E.02	Revise to include high visibility standards for emergency response personnel and law enforcement personnel per 23 CFR Part 634
Section 6F.58	Revise the compliance date for prismatic retroreflective sheeting on channelizing devices from January 5, 2009 to January 4, 2010
Section 6F.61	Revise the compliance date for prismatic retroreflective sheeting on vertical panel stripes from January 5, 2009 to January 4, 2010
Section 6F.62	Revise the compliance date for prismatic retroreflective sheeting on drums from January 5, 2009 to January 4, 2010
Table 6G-1	Revise the requirements for the treatment of longitudinal differences
Part 9	
Table 9B-1	Revise to include the Bicycle Route sign (M1-8a-DE)
Section 9B.20	Revise to include the Bicycle Route sign (M1-8a-DE)
Figure 9B-4	Revise figure to include the Bicycle Route signs (M1-8a-DE, M1-8a-DE (L), and M1-8a-DE (R))

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF AGRICULTURE

THOROUGHBRED RACING COMMISSION

Statutory Authority: 29 Delaware Code, Section 4815(b)(3)(c)(3) (29 **Del.C.** §4815(b)(3)(c)(3))
3 **DE Admin. Code** 1001

ORDER

1001 Thoroughbred Racing Rules and Regulations

Pursuant to 29 **Del.C.** §10108(c) and 3 **Del.C.** §10103, the Delaware Thoroughbred Racing Commission issues this Order adopting a contractual change to Section 8.8 of the Commission's Rules.

Summary of the Evidence

1. During the Commission's meeting, held April 14, 2009, officials with The Jockeys Guild together with the Delaware Jockeys Association, and the Delaware Thoroughbred Horsemen's Association presented to the Commission a new Jockey Mount fee agreement made April 9, 2009.
2. The Commission is not a party to the agreement.

Findings of Fact and Conclusions

1. The Commission concludes that the new Jockey Mount fee agreement should replace the old Jockey Mount fee agreement in Section 8.8 of the Commission Rules.
2. The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on May 1, 2009.

IT IS SO ORDERED this 15th day of April 2009.
Bernard J. Daney, Chairman
W. Duncan Patterson, Secretary/Commissioner
Debbie Killeen, Commissioner
Edward Stegemeier, Commissioner
Henry James Decker, Commissioner

1001 Thoroughbred Racing Rules and Regulations

(Break in Continuity of Sections)

8.0 Jockeys and Apprentice Jockeys

8.1 Probationary Mounts:

8.1.1 Any person desiring to participate at Licensee's premises as a rider and who never previously has ridden in a race may be permitted to ride in two races before applying for a permit as a Jockey or Apprentice Jockey, provided, however:

8.1.2 Such person has had at least one year of service with a racing stable and currently holds a permit issued by the Commission for a recognized activity in racing;

8.1.3 A registered Trainer certifies in writing to the Stewards that such person has demonstrated sufficient horsemanship to be permitted such probationary mounts;

8.1.4 The Starter has schooled such person in breaking from the starting gate with other horses and approves such person as being capable of starting a horse properly from the starting gate in a race;

8.1.5 The Stewards, in their sole discretion, are satisfied that such person intends to become a licensed Jockey, possesses the physical ability and has demonstrated sufficient horsemanship to ride in a race without jeopardizing the safety of horses or other riders in such race. No such person shall be permitted to ride in any such probationary race without the prior approval of the Stewards.

8.2 Qualification for Permit:

8.2.1 In addition to satisfying the requirements applicable to Permittees, et al., imposed by Part 2 of these Rules, in order to be eligible to have an authorization or permit issued to him as a Jockey or Apprentice Jockey, a person also:

8.2.2 Must be an individual 16 years of age or older;

8.2.3 Must utilize in his or her application his or her legal name only so that such may be listed in the daily race program;

8.2.4 Must have served at least one year with a racing stable;

8.2.5 Must have ridden in at least two races; and

8.2.6 Must, when required by the Stewards, provide a medical affidavit certifying he or she is physically and mentally capable of performing the activities and duties of a Jockey.

8.3 Amateur or Provisional Jockey:

8.3.1 An amateur wishing to ride in races on even terms with professional riders, but without accepting fees or gratuities therefore, must be approved by the Stewards as to competency of horsemanship, may be granted a Jockey's authorization or permit, and such amateur status must be duly noted on the daily race program. A registered Owner or registered Trainer, upon approval by the Stewards, may be issued a provisional Jockey's authorization or permit to ride his or her own horse or horse registered in his or her care as Trainer.

8.4 Apprentice Allowance:

8.4.1 An apprentice jockey may claim the following weight allowances in all overnight races except stakes and handicaps:

8.4.1.1 A ten pound allowance beginning with the first mount and continuing until the apprentice has ridden five winners.

8.4.1.2 A seven pound allowance until the apprentice has ridden an additional 35 winners.

8.4.1.3 If an apprentice has ridden a total of 40 winners prior to the end of a period of one year from the date of riding his or her fifth winner, he or she shall have an allowance of five pounds until the end of that year.

8.4.1.4 If after one year from the date of the fifth winning mount, the apprentice jockey has not ridden 40 winners, the applicable weight allowance shall continue for more than one year or until the 40th winner, whichever comes first. An apprentice may in no event claim a weight allowance for more than two years from the date of the fifth winning mount, unless an extension has been granted pursuant to this Rule.

8.4.1.5 After the completion of the weight allowances as defined in this Rule, a contracted apprentice may for one year claim three pounds when riding horses owned or trained by his or her original contract employer, provided his or her contract has not been transferred or sold since his or her first winner. Such original contract employer shall be deemed the party to the contract who was the employer at the time of the apprentice jockey's first winner.

8.4.1.6 An apprentice jockey may enter into a contract with a registered owner or registered trainer qualified under Rule 8.5 for a period not to exceed five years. Such contracts must be approved by the stewards and filed with the licensee or its registrar. Such contracts shall be binding in all respects on the signers thereof. An apprentice who is not contracted may be given an apprentice jockey certificate on a form furnished by the licensee or its registrar.

8.4.1.7 After the completion of the weight allowances defined in this Rule, such rider must obtain a jockey license before accepting subsequent mounts.

8.4.1.8 The Commission may extend the weight allowance of an apprentice jockey when, in the discretion of the Commission, an apprentice jockey is unable to continue riding due to:

8.4.1.8.1 Physical disablement or illness;

8.4.1.8.2 Attendance in an institution of secondary or higher education;

8.4.1.8.3 Restriction on racing;

8.4.1.8.4 Other valid reasons.

8.4.1.9 To qualify for an extension, an apprentice jockey shall have been rendered unable to ride for a period of not less than seven (7) consecutive days during the period in which the apprentice was entitled to an apprentice weight allowance. Under exceptional circumstances, total days lost collectively will be given consideration.

8.4.1.10 The Commission currently licensing apprentice jockeys shall have the authority to grant an extension to an eligible applicant, but only after the apprentice has produced documentation verifying time lost as defined by this Rule.

8.4.1.11 An apprentice may petition one of the jurisdictions in which he or she is licensed and riding for an extension of the time for claiming apprentice weight allowances, and the apprentice shall be bound by the decision of the jurisdiction so petitioned.

Revised 10/31/96.

8.5 Rider Contracts:

8.5.1 All contracts between an employer or Trainer and employee rider are subject to the rules of racing. All riding contracts for terms longer than 30 days, as well as any amendments thereto, or cancellations or transfer thereof, must be in writing with the signatures of the parties thereto notarized, be approved by the Stewards and filed with Licensee or his Registrar. The Stewards may approve a riding contract and permit parties thereto to participate in racing at Licensee's premises if they find that:

8.5.2 The contract employer is a registered Owner or registered Trainer who owns or trains at least three horses eligible to race at the time of execution of such contract;

8.5.3 The contract employer possesses such character, ability, facilities and financial responsibility as may be conducive to the development of a competent race rider;

8.5.4 Such contracts for Apprentice Jockeys provide for fair remuneration, adequate medical care and an option equally available to both employer and Apprentice Jockey to cancel such contract after two years from the date of execution.

8.6 Restrictions as to Contract Riders:

8.6.1 No rider may:

8.6.1.1 Ride any horse not owned or trained by his or her contract employer in a race against a horse owned or trained by his or her contract employer;

8.6.1.2 Ride or agree to ride any horse in a race without the consent of his or her contract employer;

8.6.1.3 Share any money earned from riding with his or her contract employer;

8.6.1.4 Repealed: 10/31/96.

8.7 Calls and Engagements:

8.7.1 Any rider not so prohibited by prior contract may agree to give first or second call on his or her race-riding services to any registered Owner or Trainer. Such agreements, if for terms of more than 30 days, must be in writing, approved by the Stewards and filed with the Licensee or its Registrar. Any rider employed by a racing stable on a regular salaried basis may not ride against the stable which so employs him or her. No Owner or Trainer shall employ or engage a rider to prevent him or her from riding another horse.

8.8 Jockey Fee:

8.8.1 The fee to a Jockey in all races shall be, in the absence of special agreement, as follows:

Purse Level	**Winning Mount Fee**	~~**Second**~~ **2nd Place Mount Fee**	~~**Third**~~ **3rd Place Mount Fee**	~~**Losing Mount**~~ **Other Mounts**
~~$5,000 to 9,900~~ Up to $10,000	10% ~~Of Win Purse~~	~~$65~~ $100	~~$50~~ $85	~~$45~~ $75
~~$10,000 to 14,900~~ $10,001 - $14,999	10% ~~Of Win Purse~~	5%	~~5%~~ $85	~~$50~~ $75
$15,000 ~~to 24,900~~ - $19,999	10% ~~Of Win Purse~~	5%	~~5%~~ $90	~~$55~~ $75
~~$25,000 to 49,900~~ $20,000 - $49,999	10% ~~Of Win Purse~~	5%	5%	~~$65~~ $75
$50,000 ~~to 99,900~~ - $99,999	10% ~~Of Win Purse~~	5%	5%	~~$80~~ $85
$100,000 and up	10% ~~Of Win Purse~~	5%	5%	$105

8.8.2 A jockey fee shall be considered earned by a rider when he or she is weighed out by the Clerk of Scales, except when:

8.8.2.1 A rider does not weigh out and ride in a race for which he or she has been engaged because an Owner or Trainer engaged more than one rider for the same race; in such case, the Owner or Trainer shall pay an appropriate fee to each rider engaged for such race.

8.8.2.2 Such rider capable of riding elects to take himself or herself off the mount without, in the opinion of the Stewards, proper cause therefore.

8.8.2.3 Such rider is replaced by the Stewards with a substitute rider for a reason other than a physical injury suffered by such rider during the time between weighing out and start of the race.

8.9 Duty to Fulfill Engagements:

8.9.1 Every rider shall fulfill his or her duly scheduled riding engagements unless excused by the Stewards. No rider shall be forced to ride a horse he or she believes to be unsound nor over a racing strip he or she believes to be unsafe, but if the Stewards find a rider's refusal to fulfill a riding engagement is based on a personal belief unwarranted by the facts and circumstances, such rider may be subject to disciplinary action.

8.10 Presence in Jockey Room:

8.10.1 Each rider who has been engaged to ride in a race shall be physically present in the Jockey room no later than one hour prior to post time for the first race on the day he or she is scheduled to ride, unless excused by the Stewards or the Clerk of Scales and, upon arrival, shall report to the Clerk of Scales his or her engagements. In the event a rider fails for any reason to arrive in the Jockey room prior to one hour before post time of a race in which he or she is scheduled to ride, the Clerk of Scales shall so advise the Stewards who thereupon may name a substitute rider, in which case they shall cause an announcement to be made of any such rider substitution prior to the opening of wagering on such race.

8.10.2 Each rider reporting to the Jockey room shall remain in the Jockey room until he or she has fulfilled all his riding engagements for the day, except to ride in a race or to view the running of a race from a location approved by the Stewards. Such rider shall have no contact or communication with any person outside the Jockey room other than an Owner or Trainer for whom he or she is riding, or a racing official, or a representative of Licensee, until such rider has fulfilled all his or her riding engagements for the day.

8.10.3 Licensee shall take measures designed to exclude from the Jockey room all persons, except riders scheduled to ride on the day's program, Valets, authorized attendants, Racing Officials, representatives of Licensee and persons having special permission from the Stewards to enter the Jockey room.

8.10.4 Any rider intending to discontinue riding at a race meeting prior to its conclusion shall so notify the stewards not later than after fulfilling his or her final riding engagement of the day he or she intends to depart.

8.11 Weighing Out:

8.11.1 Each rider engaged to ride in a race shall report to the Clerk of Scales for weighing out not more than one hour and not less than 15 minutes before post time for each race in which he or she is engaged to ride and to report their weight and overweight, if any, at a time designated by the Stewards.

8.11.2 No rider shall pass the scale with more than one pound overweight, without the consent of the Owner or Trainer of the horse he or she is engaged to ride. In no event shall a rider pass the scale with more than five pounds overweight.

8.11.3 No horse shall be disqualified because of overweight carried.

8.11.4 Whip, blinkers, number cloth, bridle and rider's safety helmet and rider's safety vest (with a minimum British rating of #5) shall not be included in a rider's weight.

Revised: 10/20/93

8.12 Wagering:

8.12.1 No rider shall place a wager, or cause a wager to be placed on his behalf, or accept any ticket or winnings from a wager on any race, except on his or her own mount to win, or a combination wager on his or her own mount to win, place and show, and except through the Owner or Trainer of the horse he or she is riding. Such Owner or Trainer placing wagers for his rider shall maintain a precise and complete record of all such wagers and such record shall be available for examination by the Stewards at all times.

8.13 Attire:

8.13.1 Upon leaving the Jockey room to ride in any race, each rider shall be neat and clean in appearance and wear the traditional Jockey costume with all jacket buttons and catches fastened. Except with the approval of the Stewards, each Jockey shall wear the cap and jacket racing colors

registered in the name of the Owner of the horse he or she is to ride, white or light breeches, top boots, safety helmet approved by the Commission, safety vest approved by the Commission and a number on his or her right shoulder corresponding to his or her mount's number as shown on the saddle cloth and daily race program. The Clerk of Scales and attending Valet shall be held jointly responsible with a rider for his or her neat and clean appearance and proper attire.

Revised: 10/20/93

8.14 Viewing Films or Tapes of Race

8.14.1 Every rider shall be responsible for checking the film list posted by the Stewards in the Jockey room the day after riding in a race, the posting of same to be considered as notice to all riders whose names are listed thereon to present themselves at the time designated by the Stewards to view the patrol films or video tape of races. Any rider may be accompanied by a representative of the Jockey organization of which he or she is a member in viewing such films or, with the Stewards' permission, be represented at such viewing by his or her designated representatives.

4 DE Reg. 174 (7/1/00)

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

***Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Thoroughbred Racing Commission is available at:**

1001 Thoroughbred Racing Rules and Regulations

THOROUGHBRED RACING COMMISSION

Statutory Authority: 29 Delaware Code, Section 4815(b)(3)(c)(3) (29 **Del.C.** §4815(b)(3)(c)(3))
3 **DE Admin. Code** 1001

ORDER

1001 Thoroughbred Racing Rules and Regulations

Pursuant to 29 **Del.C.** §10108(c) and 3 **Del.C.** §10103, the Delaware Thoroughbred Racing Commission issues this Order amending Section 19.3.1.1 of the Commission's Rules to reflect current practices and fees charged from third parties.

Summary of the Evidence

1. During the Commission's meeting, held April 14, 2009, the Commission discussed removing language specific to fees charged from third parties, specifically removing the text "$150.00" for court reporter fees charged by Wilcox & Fetzer.
2. Wilcox & Fetzer presently charges $175.00 for court reporter fees.

Findings of Fact and Conclusions

1. The Commission concludes that the language specific to fees, i.e. $150.00, should be removed.
2. The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on May 1, 2009.

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

Bernard J. Daney, Chairman
W. Duncan Patterson, Secretary/Commissioner
Debbie Killeen, Commissioner
Edward Stegemeier, Commissioner
Henry James Decker, Commissioner

1001 Thoroughbred Racing Rules and Regulations

(Break in Continuity of Sections)

19.0 Hearings, Reviews and Appeals

19.1 Procedure Before Stewards:

19.1.1 Before holding any Stewards' hearing provided for under these Rules, notice in writing must be given to any party charged with a violation, other than a routine riding offense occurring in a race, unless such notice is waived in writing by the person charged.

19.1.2 The notice required by the preceding subsection shall include:

19.1.2.1 Identification of the specific Rule or Rules involved, the infraction for which he is charged and a brief statement of the facts supporting such charge.

19.1.2.2 The time and place of hearing.

19.1.2.3 The statement that the party charged may be represented by legal counsel or by a representative of any racing trade organization of which he is a member.

19.1.3 All Stewards' hearings shall be closed and the Stewards shall cause no public announcement to be made concerning a matter under investigation until the conclusion of the hearing and the party charged has been notified of the decision.

19.1.4 The hearing shall be conducted by no less than two of the Stewards in such a manner as to ascertain and determine the substantial rights of the parties involved and shall not be bound by technical rules of procedure and evidence. In emergencies during the live racing meet or during periods when there is no live racing, a hearing may be conducted by only one Steward.

7 DE Reg. 316 (9/1/03)

19.1.5 All testimony at such hearings shall be given under oath. A record shall be made of the hearing, either by use of a tape recorder or by court reporter's transcript, or otherwise, if funds for such are made available from any source. The Stewards will not be required to receive testimony under oath in cases where their ruling is based upon a review of the video tapes of a race.

19.1.6 If, at the conclusion of their hearing, the Stewards find that a Rule has been violated, they promptly shall issue a written ruling which sets forth the name of every person charged with a violation, the Rule violated, their finding as to the violation of such Rule and the penalty affixed. Copies of such rulings shall be delivered to each party in interest and to the Commission and the Licensee, and posted in the Racing Secretary's office.

19.2 Review and Appeal:

19.2.1 Any party who is penalized by any order or ruling of the Stewards may apply to the Commission for a review of such Stewards' order or ruling.

19.3 Application for Review:

19.3.1 An application to the Commission for the review of a Steward's order or ruling must be made within forty-eight (48) hours after such order or ruling is issued by written or oral notice and shall:

19.3.1.1 Be in writing and addressed to the Commission's Administrator of Racing, accompanied by a filing fee in the amount of $250 plus an additional fee ~~of $150~~ to cover the cost of administrative expenses including court reporter costs. The Commission, for just cause, may refund the $250 portion of the filing fee. In no event shall the advance payment of the court reporter’s fee be refunded.

19.3.1.2 Contain the signature of the applicant and the address to which notices may be mailed to applicant;

19.3.1.3 Set forth the order or ruling requested to be reviewed and the date thereof;

19.3.1.4 Succinctly set forth the reasons for making such application;

19.3.1.5 Request a hearing;

19.3.1.6 Briefly set forth the relief sought; and

19.3.1.7 Provide assurance to the Commission that all expenses occasioned by the appeal will be borne by the applicant; and

19.3.1.8 Contain a sworn, notarized statement that the applicant has a good faith belief that the appeal is meritorious and is not taken merely to delay the penalty imposed by the stewards.

19.4 Disposition of Review Application:

19.4.1 After consideration of any such application for review, the Commission may grant the application, defer it or reject it. The applicant shall be advised of the Commission's disposition of his application for review.

19.5 Commission Hearing:

19.5.1 If the Commission grants any such application for review, before holding any hearing thereon, it shall:

19.5.1.1 Give written notice forthwith to the applicant and all other necessary parties personally or by mail, including:

19.5.1.1.1 Time and place of such hearing as designated by the Commission Chairman, but such time shall not be less than five (5) days and no more than thirty (30) days after service of notice unless at the request of a party and in order to provide a fair hearing.

19.5.1.1.2 Except to applicant, a copy of the application for review.

19.5.2 The Commission may request the Attorney General to appoint a special prosecutor to carry the burden of proof showing a Rule violation if the matter involves a Rule violation and requires a proceeding of an adversary nature, such prosecutor being an attorney who has had no prior participation in the matter on review.

19.5.3 The Commission may request the Attorney General, or a member of his staff other than the special prosecutor, to serve as law officer for the Commission to assist the presiding officer in rendering decisions of a judicial nature.

19.5.4 The Commission shall permit all parties that so desire to be represented by counsel and, to the extent it deems necessary or appropriate, shall permit all parties to respond and present evidence and argument on all issues involved.

19.5.5 The Commission may issue, under the hand of its Chairman and the seal of the Commission, subpoenas for the attendance of witnesses and the production of books, papers and documents, before the Commission, and may administer oaths or affirmations to the witnesses whenever, in the judgment of the Commission, it may be necessary for the effectual discharge of its duties.

19.5.6 If any person refuses to obey any subpoena or to testify or produce any books, papers or documents, then any Commissioner may apply to the Superior Court of the county in which he or the Commission may be sitting and, thereupon, the Court shall issue its subpoena requiring the person to appear and to testify or produce any books, papers or documents.

19.5.7 Whoever fails to obey or refuses to obey a subpoena of the Superior Court shall be guilty of contempt of court and shall be punished accordingly.

19.5.8 False swearing on the part of any witness shall be deemed perjury and shall be punished as such.

19.5.9 All tape recordings or stenographic recordings taken and transcriptions made of the hearing or any part thereof shall be paid for by such parties as request that such a tape or stenographic record be made of the hearing, except that additional transcripts thereof shall be paid for by the person desiring such copies.

19.5.10 The Commission may exclude evidence that is irrelevant, immaterial or unduly repetitious and may admit evidence that would be inadmissible under the Civil Rules of Procedure but is evidence of the type commonly relied upon by reasonably prudent men in the conduct of their affairs.

19.5.11 All or part of the evidence may be received in written form if the interest of the appearing parties will not be substantially prejudiced thereby.

19.5.12 The Commission may take official notice of technical facts or customs or procedures common to racing.

19.5.13 The Commission may make an informal disposition of the matter by stipulation, agreed settlement, consent order or default.

19.5.14 Upon conclusion of the hearing, the Commission shall take the matter under advisement, shall render a decision as promptly as possible and shall issue a ruling in final adjudication of the matter. Such ruling shall set forth the name of every person charged with a Rule violation; the Rule number and pertinent parts of the Rule alleged to have been violated; a separate statement of reasons for the decision; and penalties fixed by the Commission, if any. Copies of such ruling shall be delivered to each party in interest, posted in the Racing Secretary's office of the Licensee where the matter arose and forwarded to the national office of the National Association of State Racing Commissioners.

19.5.15 The Commission, for just cause, may refund the filing fee to the applicant.

Added: 9/27/94

19.6 Continuances:

19.6.1 All applications for a continuance of a scheduled hearing shall be in writing, shall set forth the reasons therefore and shall be filed with the Commission's Administrator of Racing after giving notice of such application by mail or otherwise to all parties or their attorneys, including counsel for the stewards. The Commission will not consider any continuance request from counsel for an appellant unless counsel has filed a written entry of appearance with the Commission. For attorneys who are not members of the Delaware bar, those attorneys must comply with the provisions of Delaware Supreme Court Rule 72 for admission pro hac vice before the Commission. The Commission will not consider any continuance request from attorneys who are not members of the Delaware bar unless and until that attorney has been formally admitted under Delaware Supreme Court Rule 72 as the attorney of record for the appellant.

19.6.2 When application is made for continuance of a cause because of the illness of an applicant, witness or counsel, such application shall be accompanied by a medical certificate attesting to such illness and inability.

19.6.3 An application for continuance of any hearing must be received by the Commission at least ninety-six (96) hours prior to the time fixed for the hearing. An application received by the Commission within the 96-hour period will not be granted except for extraordinary reasons. The Commission will not consider any request for a continuance absent evidence of good cause for the request. A failure by an appellant to take reasonable action to retain counsel shall not be considered good cause for a continuance.

19.6.4 If the Commission approves the application for continuance, it shall, concurrently with such postponement, set a date for the continued hearing.

3 DE Reg. 1541 (5/1/00)

8 DE Reg. 1289 (3/1/05)

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

***Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Thoroughbred Racing Commission is available at:**

1001 Thoroughbred Racing Rules and Regulations

DEPARTMENT OF EDUCATION

PROFESSIONAL STANDARDS BOARD

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

REGULATORY IMPLEMENTING ORDER

1506 Emergency Certificate

I. Summary of the Evidence and Information Submitted

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

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on February 2, 2009 in the form hereto attached as Exhibit "A". The notice invited written comments. No written comments were received.

II. Findings of Facts

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

III. Decision to Amend the Regulation

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

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1506 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 2ND DAY OF APRIL, 2009

Kathleen Thomas, Chair
Samtra Devard
Karen Gordon
Joanne Christian
Marilyn Dollard
Cristy Greaves

Lori Hudson
Jill Lewandowski
Gretchen Pikus
Karen Schilling-Ross
Carol Vukelich
David Kohan
Wendy Murray
Whitney Price
Michael Thomas
Cathy Zimmerman

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:
Lillian Lowery Ed.D., Secretary of Education

IT IS SO ORDERED THIS 16TH DAY OF APRIL, 2009
STATE BOARD OF EDUCATION

Richard M. Farmer, Jr., Vice President
Jorge L. Melendez
Dennis J. Savage
G. Patrick Heffernan
Barbara Rutt
Terry M. Whittaker, Ed.D.

1506 Emergency Certificate

1.0 Content

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

2.0 Definitions

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

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

"Certified" means holding a certificate in a specific content area at designated grade levels.

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

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

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

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

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

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

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

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

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

3.0 Issuance of Emergency Certificate

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

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

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

~~3.1.1~~ 3.1.2 Establish that the proposed recipient of an Emergency Certificate is competent by submitting evidence of the ~~educator's~~ individual's license and other considerations, which may include, but is not limited to, evidence of course work or work experience in the area for which the Emergency Certificate is requested, which the employing district applied in determining the proposed recipient's competence.

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

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

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

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

3.1.4.3 The anticipated time frame for the completion of the requirements; and

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

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

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

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

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

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

4.0 Employing District Report

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

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

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

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

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

5.0 Expiration of Emergency Certificate

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

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

6.0 Secretary of Education Review

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

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

7.0 Revocation of Emergency Certificate

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

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

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

Renumbered effective 6/1/07 - see Conversion Table

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

Title XIX Medicaid State Plan, the Title XXI Delaware Healthy Children Program State Plan and, the Division of Social Services Manual (DSSM) Regarding Income Disregards and the Decennial Census

Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan, the Delaware Healthy Children Program State Plan and, the Division of Social Services Manual (DSSM) related to the Decennial Census. 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 2009 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2009 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Amendments

The proposal amends the Title XIX Medicaid State Plan, the Title XXI Delaware Healthy Children Program State Plan and, the Division of Social Services Manual (DSSM) regarding the income disregards utilized in the Medicaid income eligibility determination process. Currently, individuals eligible for coverage under the Medicaid program are allowed disregards for certain types of income in the determination of their eligibility. The proposed change will add a disregard for income earned from temporary employment with the United States Census Bureau in completing a Decennial Census. In the past, the Census Bureau has successfully recruited program participants to help fill these vacancies, and wishes to do the same for the upcoming 2010 Census.

Statutory Authority

- Section 1902(r)(2) of the Social Security Act, *The methodology to be employed in determining income and resource eligibility…*;
- Section 1931 of the Social Security Act, *Assuring coverage for certain low-income families*;
- CMS, State Health Officials Letter dated February 18, 2000, *Eligibility for Those Individuals and Families Who Were Temporarily Hired for the 2000 Census Bureau*

Background

Delaware received a request from the United States Census Bureau asking that income from temporary census employment be excluded. The Centers for Medicare and Medicaid Services (CMS) is encouraging states to exclude the earned income of temporary census workers for purposes of eligibility. Doing so would mean that temporary income from census employment would not result in recipients losing access to medical assistance. The exclusion of this income will allow the Census Bureau to hire people to work in the neighborhoods in which they live to ensure the workforce reflects the diversity of the United States population.

Over the course of the 2010 Census, the Census Bureau currently expect to recruit more than 3 million applicants and hire more than 900,000 employees nationwide. Although Local Census Offices will require some staff from the fall of 2008 through the end of 2010, most positions are part of either the Address Canvassing or Nonresponse Follow-up operations occurring in 2009 and 2010, respectively. In 2009, over 100,000 people will be employed as part of the decennial census. Almost 600,000 people will be employed solely for the Nonresponse Follow-up operation in 2010.

Census work provides valuable job skills that could lead to permanent employment elsewhere (enumerators complete four to five days of paid training). Some of the skills involved in Census work include:

- Using handheld computers,
- Following detailed instructions,
- Completing paperwork,
- Working independently,
- Public contact skills, and
- Work during nights, weekends, and/or normal business hours depending on the operation.

Preliminary activities related to the 2010 Census have already begun in some states.

Summary of Proposal

The proposed rule allows the Division of Medicaid and Medicaid Assistance (DMMA) to exercise the federal option, in years in which there is a federal census, to exclude earned income paid by the Census Bureau to temporary census workers from the determination of the individual's eligibility for the following programs:

- Delaware Medical Assistance Program (DMAP);
- Delaware Healthy Children Program (DHCP).

Previous policy/state plan language specifically excluded wages from temporary employment related to Census 2000 activities. This exclusion was applied to the last federal census, but the reference was time-limited. These amendments will make the exclusion permanent.

Please note that this exclusion applies to temporary census workers only; income received by permanent census workers will be treated as countable income in the above programs.

Food and Nutrition Service (FNS) will **not** allow states to exclude income received by temporary census workers in determining eligibility and benefits for the Food Supplement Program. Delaware's Temporary Assistance for Needy Families (Delaware TANF) Program has also opted not to provide this exclusion.

The Child Care Subsidy Program has had this wage exclusion for temporary Census activities at *DSSM 11003.9.1* since October 2005 and will remain in place.

The provisions of the state plan amendments are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

Summary of Comments Received With Agency Response

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

As background, DMMA notes that income from temporary census workers is currently disregarded for purposes of the Food Supplement, TANF, and Child Subsidy programs. CMS is encouraging states to adopt a disregard for the Medicaid and CHIP programs. DMMA is honoring the CMS solicitation by explicitly adopting regulations making income received by temporary census workers "non-countable".

SCPD endorses the proposed regulations since they promote employment, facilitate development of job skills, and favor Medicaid and CHIP eligibility.

Agency Response: DMMA thanks the Council for their endorsement.

Findings of Fact:

The Department finds that the proposed changes as set forth in the March 2009 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan, the Delaware Healthy Children Program State Plan and, the Division of Social Services Manual (DSSM) regarding the exclusion of temporary decennial census income is adopted and shall be final effective May 10, 2009.

Date of Signature

Rita M. Landgraf, Secretary, DHSS

*** Please note that no changes were made to the regulation as originally proposed and published in the March 2009 issue of the *Register* at page 1153 (12 DE Reg. 1153). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

Title XIX Medicaid State Plan, the Title XXI Delaware Healthy Children Program State Plan and, the Division of Social Services Manual (DSSM) Regarding Income Disregards and the Decennial Census

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DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 1008A (16 **Del.C.** §1008A)
16 **DE Admin. Code** 4202

Nature of the Proceedings

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Hospital Acquired Infections. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Del.C.** Ch. 101 and authority as prescribed by 16 **Del.C.** §1008A.

On January 1, 2009 (Volume 12, Issue 7), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by January 30, 2009, or be presented at a public hearing on January 29, 2009, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written and verbal comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

Findings of Fact

Based on comments received, non-substantive changes were made to the proposed regulations. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Home Health Agencies are adopted and shall become effective April 10, 2009, after publication of the final regulation in the Delaware Register of Regulations.

April 1, 2009, Rita M. Landgraf, Secretary

Summary of Evidence

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Hospital Acquired Infections were published in the *Delaware State News*,

the *News Journal* and the *Delaware Register of Regulations*. Verbal and written comments were received on the proposed regulations during the public comment period (January 1, 2009 through January 30, 2009). Entities offering written comments included:

State Council for Persons with Disabilities
Governor's Advisory Council for Exceptional Citizens
Nemours/A.I. duPont Hospital for Children
Medical Society of Delaware

Public comments and the DHSS (Agency) responses are as follows:

The regulation sometimes refers to the codified version of the enabling legislation. See, e.g., §7.6 reference to 16 **Del.C.** Ch. 10A. Other sections refer to the statutes at large reference. See, e.g., §7.6.1 definition of "Public Report"; §7.6.2.2; and §7.6.6. It would be preferable to consistently use citations to the codified law which facilitates web-based access.

Agency Response: The Agency agrees and for purposes of consistency will make the change from "**76 Del. C. Ch. 10A"** in **§7.6.1, §7.6.2.2 and §7.6.6 to** "**16 Del. C. Ch. 10A**.".

In §7.6.1, definition of "Centers for Disease Control and Prevention", it would be preferable to substitute "which" for "who". The antecedent of the relative pronoun is "agency".

Agency Response: The Agency agrees and will substitute "which" for "who."

In §7.6, definition of "National Healthcare Safety Network", consider deletion of "voluntary". It is not a necessary part of the definition and there is some tension between the representation that the system is voluntary when §7.6.2.1 and Title 16 **Del.C.** §1011A make enrollment mandatory.

Agency Response: The Agency agrees and to avoid any confusion will delete "voluntary" in the definition of National Healthcare Safety Network.

Unless contained in another DPH regulation, the Division may wish to consider incorporation of a penalty provision for non-compliance to conform to Title 16 **Del.C.** §1007A. The Division could also consider incorporation of standards covering the annual report required by Title 16 **Del.C.** §1004A. Under the latter statute, the initial report must be published no later than June 30, 2009.

Agency Response: The penalties for violation of the Act have been set by the General Assembly in §1007A of the Hospital Infections Disclosure Act.

We applaud the State's attempt to improve the health of Delawareans by monitoring hospital-acquired infections. We are concerned with just one provision of the proposed regulation, however, namely section 7.6.3.1, which is copied below with a revision. This provision defines the reporting requirement for physicians. We recognize the need for and importance of this reporting, but the scope of this provision is overly broad and would impose an onerous burden on physician practices, which are already burdened by administrative hassles from the insurance companies. Setting aside the most obvious cases, how are physicians to know which infections were acquired in the hospital? This opens the door for requiring all infections to be reported, which besides creating a new burden on physician practices, would also skew the data on these infections. We suggest amending the provision simply by inserting the word "obviously" after the word "any" and before "hospital-acquired".

Suggested to read: 7.6.3.1 Physicians, who perform a clinical procedure, shall report to the ICP of the hospital where the clinical procedure was performed any <u>obviously</u> hospital-acquired infection that the physician diagnosed at a follow-up appointment with the patient.

Agency Response: The Agency respectfully disagrees.

There is no “cost impact” in the regulations – this is important and is usually included, it should be. I know for the State of DE if the FTE cost (to the state) is over $50,000 a regulation must pass to fund that aspect.

Agency Response: Section 3 of the Act as enacted into law provided that the Hospital Infections Disclosure Act would only ‘become effective upon the specific appropriation of funds for such purposes in the Annual Appropriations Act.’ The Agency believes it has complied in all respects with the law.

Section 2.2.1 within 48 hours of recognition or “diagnosis”?

Agency Response: The Agency appreciates your comments but we are only taking comments from the public on the Hospital Acquired Infections section of the Regulations for the Control of Communicable and Other Disease Conditions. When we do have a full review of these regulations, we are happy to address your comments at that time.

Section 2.3 “Ordinary Skill” – this seems vague. I suggest adding within their credentialed/scope of expertise. Also, “diagnosis” is more crucial than “impression” – this regulation promotes a lot of false alarms.

Agency Response: The Agency appreciates your comments but we are only taking comments from the public on the Hospital Acquired Infections section of the Regulations for the Control of Communicable and Other Disease Conditions. When we do have a full review of these regulations, we are happy to address your comments at that time.

Section 3.0 – who decides what is of public concern? How do define “outbreak” – 1? This implies knowing normal rate variation which would not be concerning if “experts” were determining this rather than local “labs” or “persons of ordinary skill”.

Agency Response: The Agency appreciates your comments but we are only taking comments from the public on the Hospital Acquired Infections section of the Regulations for the Control of Communicable and Other Disease Conditions. When we do have a full review of these regulations, we are happy to address your comments at that time.

Section 3.2.2 has lots of words like “unusual”, “may” – again, what is the impact of a false alarm – why not just require a “diagnosis” on the prescription?

Agency Response: The Agency appreciates your comments but we are only taking comments from the public on the Hospital Acquired Infections section of the Regulations for the Control of Communicable and Other Disease Conditions. When we do have a full review of these regulations, we are happy to address your comments at that time.

Section 4.2 is confusing as to who is actually making the reports?

Agency Response: The Agency appreciates your comments but we are only taking comments from the public on the Hospital Acquired Infections section of the Regulations for the Control of Communicable and Other Disease Conditions. When we do have a full review of these regulations, we are happy to address your comments at that time.

Attending physicians should be notified of all investigations as they will have best knowledge of the indications – the regulations are not uniform in requiring this.

Agency Response: The Agency appreciates your comments but we are only taking comments from the public on the Hospital Acquired Infections section of the Regulations for the Control of Communicable and Other Disease Conditions. When we do have a full review of these regulations, we are happy to address your comments at that time.

Section 4.4 is very hard to read or understand – can it be explained?

Agency Response: The Agency appreciates your comments but we are only taking comments from the public on the Hospital Acquired Infections section of the Regulations for the Control of Communicable and Other Disease

Conditions. When we do have a full review of these regulations, we are happy to address your comments at that time.

Section 5.3.3.2 and 5.3.3.3 both mention general symptoms as potential cause for alarm – all these symptoms can exist and do in common viral infections. I believe it is key to work off diagnosis rather than symptoms – we have diagnostic tools that diagnose within hours.

Agency Response: The Agency appreciates your comments but we are only taking comments from the public on the Hospital Acquired Infections section of the Regulations for the Control of Communicable and Other Disease Conditions. When we do have a full review of these regulations, we are happy to address your comments at that time.

Section 6.2.1 – quarantine should include making a diagnosis by a certified/board eligible expert.

Agency Response: The Agency appreciates your comments but we are only taking comments from the public on the Hospital Acquired Infections section of the Regulations for the Control of Communicable and Other Disease Conditions. When we do have a full review of these regulations, we are happy to address your comments at that time.

Section 6.7.3 through 6.8.1 – a major concern because if you process flow the timeline, a person could be "held" in isolation against their will for over 30 days (!!!!) before a definitive diagnosis or proper due process is performed or required. This has to be reviewed and changed – this represents a very important Civil Liberties issue.

Agency Response: The Agency appreciates your comments but we are only taking comments from the public on the Hospital Acquired Infections section of the Regulations for the Control of Communicable and Other Disease Conditions. When we do have a full review of these regulations, we are happy to address your comments at that time.

Section 7.1.1 and all vaccination/immunization sections – issues the words "must be" are present. I assume this is not a change from current practice?

Agency Response: The Agency appreciates your comments but we are only taking comments from the public on the Hospital Acquired Infections section of the Regulations for the Control of Communicable and Other Disease Conditions. When we do have a full review of these regulations, we are happy to address your comments at that time.

Section 7.3.2.5 contains the notification of Attending provision but only after the Division of Public Health determines to do it – my concern is that the "medical facts of the case" can take many directions without this contact being required early in the process.

Agency Response: The Agency appreciates your comments but we are only taking comments from the public on the Hospital Acquired Infections section of the Regulations for the Control of Communicable and Other Disease Conditions. When we do have a full review of these regulations, we are happy to address your comments at that time.

Section 7.6.1 – how do they "risk adjust"? This is key as it identifies trends BUT the regulations also assume that a local lab tech or lab director or Attending can do the same without this knowledge – how can that be?

Agency Response: National Healthcare Safety Network (NHSN) automatically "risk adjusts" the data that are entered into this system. Therefore, a local lab tech, lab director, or Attending can put the raw data into the system and the system will "risk adjust" the raw data based on the data collected. This is one of the reasons for all the hospitals to participate in the NHSN.

In section 7.6.4.1 reporting of data – why not just use those infections in the "Never Events" of CMS? It would avoid administrative duplication, make sense and provide a potential avenue to track cost savings rather than burden with extra costs of reporting.

Agency Response: The Agency appreciates your comments; however, the Hospital Infection Act states that Hospital Acquired Infection Advisory Committee will determine the clinical procedure and the data that will be reported to the Department.

Data will be tracked monthly but reported quarterly I believe the regs are trying to say.

Agency Response: National Health Safety Network accepts data monthly; therefore, the Agency agrees that data will be entered monthly and the reports will be available quarterly. The Agency will make this change in section 7.6.3.2. The section will read as follows: "The hospital's reporting officer or his or her designee shall submit **monthly** data on his or her hospital acquired infection rates to the Department through the NHSN, using the accepted CDC's NHSN definitions."

Section 7.6.5.1.2 Physicians names are included? Why? Will it include outpatient? Are you targeting only ICU patients hence adding selection bias?

Agency Response: The Agency will not include names of the physicians, outpatients, employees, and/or any identifying information in connection with a specific infection incident. This is stated in Section 7.6.6. The Hospital Acquired Infection Advisory Committee determines the clinical procedures, and examples of these are stated in Section 1003A in the Hospital Infection Disclosure Act. The data collected for this Act do not only include ICU patients. The data may also include other samples of population depending on what the Advisory Committee decides in the future.

Finally, a process flow map should be performed as I believe the Regulations do not provide an easy means to explain the reporting – each step in the process should include roles and responsibilities and a "chain of command to verify reports". In looking at the report, I believe there are a few inconsistencies.

Agency Response: The Agency appreciates your comments but at this time, a process flow map will not be included.

Under the list of Diseases/Conditions is listed "nosocomial" but there is no definition or clarification except for Central line infections – this has to be explained more or perhaps the regulations can spell out or reference the source of when an "outbreak" is determined. We have had, for example, many "scares" of nosocomial outbreaks – we have experienced the lack of clarity as to some of these issues - can there be included more guidance? Can we define "vaccine adverse reaction"? "Haemophilus influenzae, sterile sites" – all types?

Agency Response: The Agency appreciates your comments but we are only taking comments from the public on the Hospital Acquired Infections section of the Regulations for the Control of Communicable and Other Disease Conditions. When we do have a full review of these regulations, we are happy to address your comments at that time.

Section 11.6 Do we report who gets prophylaxis?

Agency Response: The Agency appreciates your comments but we are only taking comments from the public on the Hospital Acquired Infections section of the Regulations for the Control of Communicable and Other Disease Conditions. When we do have a full review of these regulations, we are happy to address your comments at that time.

The Regulations do not spell out the impact on the hospitals – i.e. when to close a unit, the impact of "colonization" on the workforce (when is colonization a concern and should limit work?), is there a workman's compensation potential issue if identified?

Agency Response: The Agency appreciates your comments but we are only taking comments from the public on the Hospital Acquired Infections section of the Regulations for the Control of Communicable and Other Disease Conditions. When we do have a full review of these regulations, we are happy to address your comments at that time.

In addition to non-substantive amendments mentioned above, minor grammatical or technical corrections were made to further clarify the proposed regulations.

The public comment period was open from January 1 – January 30, 2009.

Verifying documents are attached to the Hearing Officer's record. The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

4202 Control of Communicable and Other Disease Conditions

(Break in Continuity of Sections)

7.0 Control of Specific Contagious Diseases

(Break in Continuity of Section)

7.6 Hospital Acquired Infections

By January 1, 2008, hospital acquired infections shall be reported to the Centers for Disease Control and Prevention (CDC) through the National Healthcare Safety Network (NHSN) in accordance with the NHSN and the Department of Health and Social Service requirements and procedures as cited in 16 **Del.C.** Ch. 10A.

7.6.1 Definitions

For the purpose of this section, the following definitions shall apply.

"Centers for Disease Control and Prevention (CDC)" An agency of the United States Department of Health and Human Services **[who ~~who~~ which]** works to protect public health and safety by providing information to enhance health decisions, and promoting health through partnerships with state health departments and other organizations. The CDC focuses national attention on developing and applying disease prevention and control (especially infectious diseases), environmental health, occupational safety and health, health promotion, prevention and education activities designed to improve the health of the people of the United States.

"Correctional Facility" Any health care facility operated at any Department of Correction facility in this State.

"Department" The Department of Health and Social Services

"Hospital Acquired Infection (HAI)" A localized or systemic condition that results from adverse reaction to the presence of an infectious agent(s) or its toxin(s); and that was not present or incubating at the time of admission to the hospital or the correctional facility.

"Hospital Acquired Infection Advisory Committee" A group that is appointed by the Secretary of the Department that includes one (1) infection control professional who has responsibility for infection control programs from each hospital or health care system in Delaware, four (4) infectious disease physicians with expertise in infection control, and one (1) representative from the State Division of Public Health, and the Public Health Hospital Infections Specialist responsible for collating and reporting data. The Secretary shall also appoint seven (7) other members of the Committee including representatives from direct care nursing staff, academic researchers, consumer organizations, health insurers, health maintenance organizations, organized labor and purchasers of health insurance, such as employers.

"Infection Control Practitioner (ICP)" A registered nurse, physician, epidemiologist, or medical technologist who helps to prevent healthcare-acquired infections by isolating sources of infections and limiting their spread. The ICP systematically collects, analyzes and interprets health data in order to plan, implement, evaluate and disseminate appropriate public health practices. The ICP also trains healthcare staff through instruction and dissemination of information on infection control practices.

"National Healthcare Safety Network (NHSN)" An internet-based surveillance system that is **[~~voluntary and~~]** confidential. It is managed by the Division of Healthcare Quality Promotion at the

CDC and used for the monitoring events associated with health care. It provides risk adjusted data to the participating facilities to analyze in order to recognize trends. Its initial focus is on infections in patients and healthcare personnel. There are plans to expand NHSN to include noninfectious events (such as process measures).

"Public Report" the report provided to the hospitals, correctional facilities and the public by the Department as set forth in **[16 Del.C.]** §1003A(b) **[~~of this title. (76 Del. Laws, c. 122, §1)~~]**.

"Secretary" The Secretary of the Department of Health and Social Services

7.6.2 Membership in NHSN

7.6.2.1 All hospitals in the State shall join the CDC's NHSN. If the NHSN is not open for enrollment to all hospitals by this date, all hospitals shall join the NHSN within 180 days after the CDC permits such enrollment.

7.6.2.2 Hospitals shall confer rights to the Department to have access to hospital-specific data contained in the NHSN database consistent with the requirements of **[~~this chapter. (76 Del. Laws, c. 122, §1)~~ 16 Del.C. Ch. 10A]**.

7.6.2.3 Hospital staff assigned to fulfill the obligations of reporting under these regulations shall be trained and shall follow the methods and procedures required by the NHSN as a condition of participation.

7.6.3 Persons and Institutions Required to Report

7.6.3.1 Physicians, who perform a clinical procedure, shall report to the ICP of the hospital where the clinical procedure was performed any hospital-acquired infection that the physician diagnosed at a follow-up appointment with the patient.

7.6.3.2 The hospital's reporting officer or his or her designee shall submit **[~~quarterly~~ monthly]** data on his or her hospital acquired infection rates to the Department through the NHSN, using the accepted CDC's NHSN definitions.

7.6.3.3 Correctional facilities shall collect data on hospital acquired infections and infections in the correctional health care facilities as determined by the Hospital Acquired Infection Advisory Committee and promulgated by the Department. They shall report this data to the Department on a monthly basis.

7.6.3.4 If the hospital is a division or subsidiary of another entity that owns or operates other hospitals or related organizations, the quarterly report shall be for the specific division of subsidiary and not for the other entity.

7.6.4 Reporting of Data

7.6.4.1 Hospitals shall collect data on hospital acquired infection rates related to central line-related bloodstream infections (CLBSI) in an intensive care unit (ICU) on a monthly basis.

7.6.4.2 Other hospital-acquired infection rates shall be updated by the order of the Department per determination by the Hospital Acquired Infection Advisory Committee.

7.6.4.3 Hospitals shall report hospital acquired infections pursuant to 7.6.4.1 and 7.6.4.2 to the NHSN. In making such reports, hospitals shall abide by the reporting procedures required for NHSN participation, including the frequency of reports, the information to be reported, and other standards required by the NHSN.

7.6.5 Quarterly Reports

7.6.5.1 In addition to reports of data required by 7.6.4, hospitals, including the Department of Correction, shall report the following information to be included in the quarterly report issued by the Department. This background information shall be included in the Public Report.

7.6.5.1.1 For each hospital, adult and pediatric populations of each hospital, whether the hospital provides tertiary care, bed size, and specialty divisions of each hospital and whether a hospital is a teaching or a non-teaching institution shall be provided to the Department.

7.6.5.1.2 All physicians who perform clinical procedures and the hospital at which the clinical procedures were performed when a hospital-acquired infection was diagnosed at a

follow-up appointment with the patient shall be included in the report. The infection control department of each hospital shall only be required to report those physician-reported infections that meet the accepted NHSN definitions. This information shall be included in the hospital reports to the Department.

7.6.5.1.3 For Department of Correction, the population census of each infirmary facility, the type of facility, the number of beds in correctional health facilities, and the types of medical care that are provided to the inmates shall be reported to the Department.

7.6.5.2 Quarterly reports shall be available to each hospital 45 days after submittal to the Department for review by the hospitals and correctional facilities. The hospitals and correctional facilities shall have 7 days to review the quarterly reports and report any changes or provide additional summary information to the Department. Following the 7-day review period, such quarterly reports shall be made available to the public at each hospital, each correctional facility, and through the Department (the "Public Report").

7.6.5.3 In addition to reports of data required by 7.6.4, hospitals, including the Department of Correction, shall report the following information. Each hospital and correctional facility shall provide a brief summary report to comment on performance improvement, changes in patient population, and risk factors. The information contained in this report shall be considered proprietary information and shall be utilized by the Department. Such information shall not be included in the quarterly report issued by the Department and shall not otherwise be disclosed to the public.

7.6.6 No hospital report or Department disclosure may contain information identifying a patient, employee or licensed health care professional in connection with a specific infection incident. **[~~(76 Del. Laws, c. 122, §1)~~ 16 Del.C. Ch. 10A]**

APPENDIX I

State of Delaware - List of Notifiable Diseases/Conditions

AIDS (S)
Amoebiasis
Anthrax (T)
Arboviral human infections (including West Nile Virus, Eastern Equine Encephalitis, etc.)
Babesiosis
Botulism (T)
Brucellosis (T)
Campylobacteriosis
Central line related bloodstream infections in an intensive care unit (H)
Chancroid (S)
Chickenpox (Varicella)
Chlamydia (S)
Cholera (toxigenic Vibrio cholerae 01 or 0139) (T)
Coccidioidomycosis
Creutzfeldt-Jakob Disease (T)
Cryptosporidiosis
Cyclosporiasis
Cytomegalovirus (neonatal only)
Dengue Fever (T)
Diphtheria (T)
Enterhemorrhagic E.coli including but not limited to E.coli 0157:H7 (T)

Ehrlichiosis
Encephalitis
Enterococcus species, Vancomycin resistant (A)
ESBL resistance (Extended-Spectrum B-lactamases) (A)
Foodborne Disease Outbreak (T)
Giardiasis
Glanders (T)
Gonorrhea (S)
Granuloma inguinale (S)
Guillain-Barre
Hansen's Disease (Leprosy)
Hantavirus (T)
Haemophilus influenzae, invasive
Hemolytic Uremic Syndrome (T)
Hepatitis A (T)
Hepatitis B
Hepatitis C
Hepatitis Other
Herpes, congenital (S)
Herpes, genital (S)
Histoplasmosis
HIV (S)
Human Papillomavirus (S)
Influenza
Influenza Associated Infant Mortality (T)
Kawasaki Syndrome
Lead Poisoning
Legionellosis
Leptospirosis
Listeriosis
Lyme Disease
Lymphogranuloma venereum (S)
Malaria
Measles (T)
Melioidosis
Meningitis
Meningococcal Infections, all types (T)
Monkey Pox (T)
Mumps (T)
Norovirus
Nosocomial (Healthcare Associated) Disease Outbreak (T)
Pelvic Inflammatory Disease (N. gonorrhea, C. trachomatis, or unspecified) (S)
Pertussis (T)
Plague (T)
Poliomyelitis (T)
Psittacosis

Q Fever
Rabies (man and animal) (T)
Reye Syndrome
Rheumatic Fever
Ricin Toxin (T)
Rickettsial Disease
Rocky Mountain Spotted Fever
Rubella (including congenital which is rapidly reportable)
Rubella, congenital (T)
Salmonellosis
Severe Acute Respiratory Syndrome (SARS) (T)
Shigatoxin Production
Shigellosis
Silicosis
Smallpox (T)
Staphylococcal Enterotoxin (T)
Staphylococcal aureus, Methicillin Resistant (MRSA) (A)
Staphylococcal aureus, Vancomycin Intermediate or Resistant (VISA, VRSA) (T) (A)
Streptococcal Disease, invasive group A or B (T)
Streptococcus pneumoniae, invasive (sensitive and resistant) (A)
Syphilis (S)
Tetanus (T)
Toxic Shock Syndrome (Streptococcal or Staphylococcal)
Toxoplasmosis
Trichinellosis
Tuberculosis (T)
Tularemia (T)
Typhoid Fever (T)
Typhus Fever (endemic flea borne, louse borne, tick borne)
Vaccine Adverse Reaction
Vibrio, non-cholera
Viral Hemorrhagic Fevers (T)
Waterborne Disease Outbreaks (T)
Yellow Fever (T)
Yersiniosis
(T) - report by rapid means (telephone, fax or other electronic means)
(S) - sexually transmitted disease, report required within 24 hours
(A) - Drug Resistant Organisms required to be reported within 48 hours
(H) – Hospital Acquired Infection
Others - report required within 48 hours

9 DE Reg. 1188 (2/1/06)

*** Please note that no other changes were made to the regulation as originally proposed and published in the January 2009 issue of the *Register* at page 913 (12 DE Reg. 913). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

4202 Control of Communicable and Other Disease Conditions

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapters 60 and 63 (7 **Del.C.**, Ch. 60 & 63)
7 **DE Admin. Code** 1302

Secretary's Order No.: 2009-A-0012

Date of Issuance: April 14, 2009
Effective Date of the Amendment: May 21, 2009

I. Background:

A public hearing was held on Tuesday, March 24, 2009, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the Delaware *Regulations Governing Hazardous Waste* (hereinafter referred to as "RGHW"). The State of Delaware is authorized by the U.S. Environmental Protection Agency (hereinafter referred to as "EPA") to administer its own hazardous waste management program. In order for Delaware to maintain its program delegation and authority, EPA requires Delaware to maintain a program that is equivalent and no less stringent than the federal program.

To accomplish this, the State must periodically seek authorization from the EPA to administer the program, and Delaware is preparing the 7th such program reauthorization. For Delaware's Hazardous Waste program to be authorized, the EPA has requested minor, miscellaneous corrections to align the State's program with the Federal program.

The changes the Department is proposing to make are already in effect at the federal level. Delaware is proposing the following changes to the *Regulations Governing Hazardous Waste*: (1) Cathode Ray Tubes: correction for export notification, §261.39(a)(5)(iii) and (iv); (2) Cathode Ray Tubes: correction for broken CRT storage time limit, §261.4(b)(16)(i)(B)(3); (3) Manifest Printing: reserve all of §262.21; (4) Typographical correction for "Depository", §264.151(a)(1) Section 8c; and (5) Manifest Instructions corrections, §262 Appendix.

Due to the fact that the proposed changes to RGHW are required by the EPA, are self explanatory, and are not controversial, no workshop to explain these changes to the public was held by the Department. Instead, a letter was sent to all interested persons (i.e., the regulated community throughout Delaware) on February 25, 2009, encouraging the public to review the proposed amendments on the Department's web page, and to submit any comments prior to or at the hearing of March 24, 2009. No comments were received from the public or the regulated community regarding these proposed amendments during any phase of this proceeding. Proper notice of the hearing was provided as required by law.

After the hearing, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated February 10, 2009, and that Report in its entirety is expressly incorporated herein by reference.

II. Findings:

The Department has provided sound reasoning with regard to the proposed amendments to Delaware's *Regulations Governing Hazardous Waste*, as reflected in the Hearing Officer's Memorandum of April 13, 2009, which is attached hereto and expressly incorporated into this Order in its entirety. Moreover, the following findings and conclusions are entered at this time:

The Department has jurisdiction under its statutory authority, 7 **Del.C.** Chs. 60 and 63, to make a determination in this proceeding;

The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;

The Department held a public hearing in a manner required by the law and regulations;

The Department considered all timely and relevant public comments in making its determination;

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;

Promulgation of these proposed amendments would update Delaware's requirements, where appropriate, to be consistent with the federal requirements, thus bringing Delaware into compliance with EPA standards;

The correction of clerical errors currently found in Delaware's existing regulations will provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community;

The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;

The Department's proposed regulation, as published in the March 1, 2009 *Delaware Register of Regulations* and set forth within Attachment "A" of the Hearing Officer's Memorandum and attached hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect twenty days after its publication in the next available issue of the *Delaware Register of Regulations*;

The Department shall submit the proposed regulation as a final regulation to the *Delaware Register of Regulation* for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated April 13, 2009 and expressly incorporated herein, it is hereby ordered that the proposed amendments to the State of Delaware's *Regulations Governing Hazardous Waste* be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the amendments to the State of Delaware's *Regulations Governing Hazardous Waste* will update Delaware's requirements, where appropriate, to be consistent with the federal requirements, thus bringing Delaware into compliance with EPA standards. Again, the State is required to adopt these amendments in order to maintain its hazardous waste program authorization and remain current with the Federal RCRA hazardous waste program. Additionally, those changes being made to correct clerical errors currently found in Delaware's existing regulations will provide better clarity and a fuller understanding of the regulatory language contained within this regulation to the general public and the regulated community.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del.C.** Chs. 60 and 63.

David S. Small, Acting Secretary

*** Please note that no changes were made to the regulation as originally proposed and published in the March 2009 issue of the *Register* at page 1170 (12 DE Reg. 1170). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

1302 Regulations Governing Hazardous Waste

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** 3507 and 3511

Secretary's Order No.: 2009-F-0013

Date of Issuance: April 14, 2009
Effective Date of the Amendment: May 11, 2009

I. Background:

A public hearing was held on Thursday, March 26, 2009, at 7:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Tidal Finfish Regulations for both summer flounder and black sea bass.

Delaware is obligated to cap the summer flounder recreational harvest at 65,000 fish for 2009. The harvest cap has been adjusted up from the previous year's level of 64,000 fish, due to the fact that the latest scientific stock assessment data indicates that overfishing is not occurring in the stock. Three management options for the summer flounder that included potential minimum size limits ranging from 18.5 inches to 19.5 inches with a four fish creel limit (i.e., four fish per day) were presented at the public hearing for comment. Those options were designed to restrict the recreational summer flounder harvest in Delaware during 2009, and they embodied varying levels of risk with regard to Delaware potentially exceeding its allowable harvest quota for 2009, with the smallest size limit being the most risky and the largest minimum size limit being the least risky. Recreational fishermen, bait and tackle dealers will be affected by the option ultimately chosen to manage the summer flounder harvest for 2009.

The coast wide minimum size requirement for recreationally harvested black sea bass, as mandated by the Atlantic States Marine Fisheries Commission's (ASMFC) Fishery Management Plan (FMP) for Summer Flounder, Scup and Black Sea Bass for the 2009 fishing season is 12.5 inches[1]. Delaware currently has a twelve (12) inch minimum size limit for recreationally harvested black sea bass. As such, it will be necessary to amend Tidal Finfish Regulation No. 3507 to adjust the current minimum size to comply with the ASMFC FMP.

The Department has the statutory basis and legal authority to act with regard to these promulgations, pursuant to 7 **Del.C.** §903(e)(2)(a). No other Delaware regulations are affected by these proposals.

After listening to the public comment received concerning summer flounder proposals 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 3: 18.5 inches minimum size limit, 4 fish per day" best accomplishes the mandated summer flounder quota of 65,000 harvested fish (or less) with no closure period.

Numerous members of the public attended this hearing on March 26, 2009 to voice their concerns with regard to the Department's proposed changes to the summer flounder regulations, and the same were taken into consideration during the Division's review of this proposed regulatory amendment. It should be noted that no comment was received regarding the proposed amendment to the black sea bass regulations. 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 the public comment received in this matter, as reflected in the Hearing Officer's Report of April 13, 2009, which is

1. The federal regulations governing Summer Flounder and Black Sea Bass are managed under one fishery management program by ASMFC. Thus, the Department has historically amended the regulations concerning both these species jointly as well.

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 these proposed amendments would bring Delaware into compliance with federal guidelines for the management of both summer flounder and black sea bass, since these species come under both federal and state jurisdiction;

7. With regard to the proposed amendments to Delaware's regulations concerning summer flounder, Option #3 will set the summer flounder restrictions for 2009 at an 18.5" minimum 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. With regard to the proposed amendments to Delaware's regulations concerning black sea bass, the 2009 season would carry the aforementioned restriction of a 12.5" minimum size limit;

9. The Department has reviewed both of these proposed regulatory amendments in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

10. The Department's aforementioned proposed amendments to Delaware's regulations concerning both summer flounder and Black Sea Bass, as published in the March 1, 2009 *Delaware Register of Regulations* (and as revised with respect to the summer flounder regulations to reflect the 18.5" minimum size limit, 4 fish per day, no closure specifications) and as set forth in Attachment "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, both should be approved as final regulatory amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*;

11. The Department shall submit the proposed regulations (again, as revised with respect to the summer flounder regulations to reflect the 18.5" minimum size limit, 4 fish per day, no closure specifications) as final regulations to the Delaware Register of Regulations for publication in its next available issue, and shall provide written notice to the persons affected by the Order; and that

12. 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 Memorandum dated April 13, 2009 and expressly incorporated herein, it is hereby ordered that the proposed amendments, as revised, to State of Delaware Tidal Finfish Regulation No. 3511 for Summer Flounder for 2009 and Regulation No. 3507 for Black Sea Bass 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 both black sea bass and summer flounder for 2009 will bring Delaware into compliance with federal guidelines for the management of these species, since both come under both federal and state jurisdiction with regard to the harvest management of the same. This action, which incorporates Option #3 (18.5" minimum size limit, 4 fish per day, no closure specifications) as Delaware's formal management plan for summer flounder for the 2009 fishing season, will allow Delaware to maintain its harvest cap of 65,000 fish. 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 these species with these conservation measures to ensure that both summer flounder and black sea bass 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, Acting Secretary

3507 Black Sea Bass Size Limits; Trip Limits; Seasons; Quotas

(Penalty Section 7 **Del.C.** §936(b)(2))

1.0 It shall be unlawful for any commercial person to have in possession any black sea bass (*Centropristis striata*) that measures less than eleven (11) inches, total length excluding any caudal filament.

2.0 It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than ~~twelve (12)~~ twelve and one-half (12.5) inches total length excluding any caudal filament.

6 DE Reg. 1230 (3/1/03)
6 DE Reg. 1360 (4/1/03)

3.0 It shall be unlawful for any commercial fisherman to land, to sell, trade and or barter any black sea bass in Delaware unless authorized by a black sea bass landing permit issued by the Department. The black sea bass landing permit shall be presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

4.0 The black sea bass pot fishery and the black sea bass commercial hook and line fishery shall be considered separate black sea bass fisheries. The total pounds allocated to each fishery by the Department shall be as follows: 96 percent of the State's commercial quota, as determined by the ASMFC, for the pot fishery; 4 percent for the commercial hook and line fishery.

5.0 The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 CFR §§ 648.4 and who had applied for and secured from the Department a commercial food fishing license and has a reported landing history in either the federal or state reporting systems of landing by pot at least 10,000 pounds of black sea bass during the period 1994 through 2001. Those individuals that have landing history only in the federal data base must have possessed a state commercial food fishing license for at least one year during the time from 1994 through 2001.

6.0 The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has applied for and secured from the Department a commercial food fishing license and a fishing equipment permit for hook and line and submitted landings reports in either the federal or state landing report systems for black sea bass harvested by hook and line during at least one year between 1994 and 2001.

1 DE Reg. 1767 (5/1/98)
2 DE Reg. 1900 (4/1/99)
3 DE Reg. 1088 (2/1/00)
4 DE Reg. 1665 (4/1/01)
4 DE Reg. 1859 (5/1/01)
5 DE Reg. 2142 (5/1/02)

6 DE Reg. 348 (9/1/02)
6 DE Reg. 1230 (3/1/03)

7.0 Any overage of the State's commercial quota will be subtracted by the Atlantic States Marine Fisheries Commission from the next year's commercial quota.

Any overage of an individual's allocation will be subtracted from that individual's allocation the next year and distributed to those individuals in the appropriate fishery that did not exceed their quota.

8.0 Each participant in a black sea bass fishery shall be assigned a equal share of the total pounds of black sea bass allotted by the Department for that particular fishery. A share shall be determined by dividing the number of pre-registered participants in one of the two recognized fisheries into the total pounds of black sea bass allotted to the fishery by the Department. In order to pre-register an individual must indicate their intent in writing to participate in this fishery.

9.0 Individual shares of the pot fishery quota may be transferred to another participant in the pot fishery. Any transfer of black sea bass individual pot quota shall be limited by the following conditions:

9.1 A maximum of one transfer per year per person.

9.2 No transfer of shares of the black sea bass pot fishery quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the actual transfer.

10.0 Individual shares of the commercial hook and line fishery quota may be transferred to another participant in the commercial hook and line fishery. Any transfer of black sea bass individual commercial hook and line quota shall be limited by the following conditions:

10.1 A maximum of one transfer per year per person.

10.2 No transfer of shares of the black sea bass commercial hook and line quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the transfer.

11.0 Each commercial food fisherman participating in a black sea bass fishery shall report to the Department, via the interactive voice phone reporting system operated by the Department, each days landings in pounds at least one hour after packing out their harvest.

12.0 It shall be unlawful for any recreational fisherman to have in possession more than 25 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

7 DE Reg. 1575 (5/1/04)
6 DE Reg. 1230 (3/1/03)
8 DE Reg. 1488 (4/1/05)
9 DE Reg. 1759 (5/1/06)
11 DE Reg. 1662 (06/01/08)

3511 Summer Flounder Size Limits; Possession Limits; Seasons

(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) 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.

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 ~~nineteen and one half (19.5)~~ **[eighteen and one half (18.5)]** inches between the tip of the snout and the furthest tip of the tail. **[~~(Note: size limit to be determined in combination with creel limit.)~~]**

7 DE Reg. 1575 (5/1/04)

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 ~~nineteen and one half (19.5)~~ **[eighteen and one half (18.5)]** 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: size limit to be determined in combination with creel 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) 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: Proposed options for creel limits and minimum size limits to restrict the recreational summer flounder harvest in Delaware during 2009. These options embody varying levels of risk~~

~~with regard to Delaware potentially exceeding its allowable harvest quota for 2009, with the smallest size limit being the most risky and the largest minimum size limit being the least risky~~.

~~Option~~	~~Season Closure~~	~~Number of Open Days~~	~~Bag Limit~~	~~Minimum Size - inches~~
~~1~~		~~365~~	~~4~~	~~18.5~~
~~2~~		~~365~~	~~4~~	~~19.0~~
~~3~~		~~365~~	~~4~~	~~19.5~~]

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 (05/01/07)
11 DE Reg. 1493 (05/01/08)

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

3900 Board of Clinical Social Work Examiners

Statutory Authority: 24 Delaware Code, Section 3906(a)(1) (24 **Del.C.** §3906(a)(1)
24 **DE. Admin. Code** 3900

ORDER

The Board of Clinical Social Work Examiners ("the Board") was established to protect the general public from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered by the profession under its purview. The Board was further established to maintain minimum standards of practitioner competence in the delivery of services to the public. The Board is authorized, by 24 **Del.C.** §3906(a)(1), to make, adopt, amend and repeal regulations as necessary to effectuate those objectives.

Pursuant to 24 **Del.C.** §3906(a)(1), the Board has proposed revisions to Rule 4.0, which addresses professional supervision. Section 3907(a)(1) of Title 24 of the Delaware Code provides that applicants for licensure must have experience "under professional supervision acceptable to the Board." Rule 4.0 is designed to clarify this statutory provision.

Rule 4.1, which specifically defines "professional supervision acceptable to the Board," is amended to provide clear and objective standards for a supervisory relationship. The revised Rule follows the principles set forth in the Association of Social Work Boards' Model Social Work Practice Act.

Rule 4.1.1 is added to address the circumstance where an applicant is unable to locate a licensed clinical social worker to provide supervision. The amendment requires the applicant to provide documentation that a licensed clinical social worker ("LCSW") was, in fact, "not available."

Rule 4.2 is added to provide that applicants for licensure may not simultaneously supervise one another. This amendment will prohibit supervisory relationships that may be compromised by conflicts of interest.

Pursuant to 29 **Del.C.** §10115, notice of the public hearing and a copy of the proposed regulatory changes were published in the Delaware *Register of Regulations*, Volume 12, Issue 6 on December 1, 2008.

Summary of the Evidence and Information Submitted

A public hearing on the proposed rule revisions was held on January 5, 2009. Written comment was submitted by Russell Buskirk by e-mail dated December 6, 2008. Mr. Buskirk indicated that he supported the proposed revisions and further requested that the Board eliminate the option of having supervision provided by master's level degree social workers ("MSWs"). In his view, there are sufficient LCSWs in Delaware to provide supervision for applicants.

Gail Levinson, of the Clinical Social Work Society of Delaware, was present at the hearing and questioned whether it was appropriate for unlicensed MSWs to provide supervision for applicants.

Julie Jenks Zorach, of the Clinical Social Work Society of Delaware, stated that she endorsed the proposed rule revisions. However, with respect to the new Rule 4.1.1, she suggested that the Board provide guidance as to the circumstances under which the Board will accept an applicant's representation that an LCSW was not available to provide supervision.

Findings of Fact

The Board carefully reviewed and considered the proposed rule revisions and the evidence and information submitted.

Section 3907(a)(1) of Title 24 of the Delaware Code provides that applicants for licensure must have experience "under professional supervision acceptable to the Board." When supervision by an LCSW is not available, supervision may be provided by an MSW.

The proposed amendments to the Board's rules will strengthen and clarify the requirements for supervisory relationships. For example, an applicant will be required to provide documentation in support of his or her statement that an LCSW was not available to provide supervision. The Board will have the discretion to determine, on a case-by-case basis, whether the submitted documentation is sufficient. Further, simultaneous supervisory relationships, with their attendant potential for conflicts of interest, will be prohibited. In short, the proposed amendments will serve to protect the public from unsafe practices and enhance practitioner competence.

Therefore, the Board finds that adopting the amended rules and regulations as proposed is in the best interest of the citizens of the State of Delaware and is necessary to protect the health and safety of the general public.

Decision and Effective Date

The Board hereby adopts the proposed amendments to the rules and regulations to be effective 10 days following final publication of this Order in the *Register of Regulations*.

Text and Citation

The text of the revised rules and regulations remains as published in the Delaware *Register of Regulations*, Volume 12, Issue 6 on December 1, 2008.

IT IS SO ORDERED this 2nd day of February 2009 by the Delaware Board of Clinical Social Work Examiners.

Ralph Robinson, Professional Member, President
Philip Thompson, Professional Member, Vice President
Joseph McDonough, Public Member (Abstaining)
Diane Postell, Professional Member, Secretary
Barbara Reed, Public Member

*** Please note that no changes were made to the regulation as originally proposed and published in the December 2008 issue of the *Register* at page 775 (12 DE Reg. 775). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

3900 Board of Clinical Social Work Examiners

DIVISION OF PROFESSIONAL REGULATION

8800 BOXING, SPARRING MATCHES AND EXHIBITIONS

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

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on April 23, 2009 to receive comments regarding the proposal of the Division of Professional Regulation ('the Division") to strike the existing regulations related to boxing, sparring matches and exhibitions in their entirety and establish new combative sports rules and regulations governing boxing and mixed martial arts events in Delaware.

An initial public hearing was held on December 8, 2008, James L. Collins, Director of the Division ("the Director"), conducted the hearing. As a result of the public comment, the Division through its Director determined to make both substantive and non-substantive revisions to the proposed rules originally published in the Delaware Register of Regulations on November 1, 2008 at 12 **DE Reg**. 637.

The full text of the revised rules incorporating the substantive and non-substantive changes was published in the Register of Regulations on February 1, 2009 at 12 **DE Reg.** 1054.

Summary of the Evidence and Information Submitted

No written comments were received in regard to the revised rules as published on February 1, 2009 (12 **DE Reg.**1054). No members of the public in attendance at the hearing held on April 23, 2009 offered public comment on the rules.

Findings of Fact and Conclusions

1. The public was given notice and an opportunity to provide the Division with comments in writing and by testimony at the public hearing on the proposed combative sports rules and regulations. The Division received no written or verbal comments on the proposed rules and regulations at the hearing held on April 23, 2009.

2. The rules as published in February took into consideration the public comment submitted at the initial public hearing held on December 8, 2008.

3. Pursuant to 28 **Del.C.** §103(b)(1) the Division has statutory authority to promulgate rules regulating all professional and amateur boxing, mixed martial arts and combative sports entertainment events held in the State.

4. The Division finds that the proposed rules are necessary to implement the provisions of House Bill 501, enacted in the 144th General Assembly, which updated the authority of the Division of Professional Regulation, the Department of State, in accordance with 28 **Del.C.** Ch. 1, to regulate boxing, mixed martial arts and combative sports entertainment events in Delaware

5. The Division finds that the rules necessary for the interest and protection of the public health, safety, and welfare.

Decision and Effective Date

There were no changes to the proposed rules as a result of the public hearing held on April 23, 2009. The Board hereby adopts rules to be effective 10 days following publication of this order in the Register of Regulations.

Text and Citation

The text of the rules remains as published in the Register of Regulations, Vol. 12, Issue 8, February 1, 2009, without any modifications.

SO ORDERED this 23 day of April, 2009.

DIVISION OF PROFESSIONAL REGULATION

James L. Collins, Director

*** Please note that no changes were made to the regulation as originally proposed and published in the February 2009 issue of the *Register* at page 1054 (12 DE Reg. 1054). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

8800 Boxing, Sparring Matches and Exhibitions

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER FOUR

March 27, 2009

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES

RE: PRESERVATION OF DELAWARE'S INDEPENDENT JUDICIARY AND CONTINUANCE OF THE JUDICIAL NOMINATING COMMISSION

WHEREAS, under Article IV of the Delaware Constitution and Title 10 of the Delaware Code, the Governor appoints, by and with the consent of the State Senate, the Chief Justice and Justices of the Delaware Supreme Court, the Chancellor and Vice Chancellors of the Court of Chancery, the President Judge, Judges and Commissioners of the Superior Court, the Chief Judge, Judges and Commissioners of the Family Court, the Chief Judge, Judges and Commissioners of the Court of Common Pleas, and the Chief Magistrate of the Justice of the Peace Courts (collectively "judges"); and

WHEREAS, the State of Delaware has received national recognition for the quality and impartiality of its judiciary; and

WHEREAS, this recognition results from the State's long-standing commitment to a bipartisan judiciary composed of judges of high integrity, independence and excellent legal abilities; and

WHEREAS for over thirty years, Governors of the State of Delaware have been assisted in their search for highly qualified judicial nominees by a Judicial Nominating Commission composed of distinguished attorneys and laypersons; and

NOW THEREFORE, I, JACK A. MARKELL, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby ORDER:

1. The Judicial Nominating Commission is continued to assist the Governor regarding all appointments of judges as defined above.

2. The Commission shall consist of eleven members. Ten members shall be appointed by the Governor in the manner prescribed in this Order. The eleventh member shall be nominated by the President of the Delaware State Bar Association and, with the consent of the Governor, appointed by the Governor. Not less than four of the Governor's appointees shall be members of the Bar of the Supreme Court of Delaware. Not less than four of the appointees shall be persons who are not members of the bar in any state. The members of the Commission shall reflect the broad diversity of the citizenry of Delaware.

3. Except as otherwise provided in this Order, all members of the Commission shall serve three year terms and may be reappointed. In making the initial appointments under this Order, the Governor shall designate four appointees to serve full three year terms, four appointees to serve two year terms, and three appointees to serve one year terms, all at the pleasure of the Governor. Any subsequent appointment upon the expiration of any term shall be for three years at the pleasure of the Governor. In the event a member for any reason does not complete his term, his replacement shall be appointed for the balance of the uncompleted term, at the pleasure of the Governor.

4. No member of the Commission shall hold elective constitutional office during the member's term on the Commission. No more than six members of the Commission shall be registered members of the same political

party at the time of their appointment. Members of the Commission shall receive no compensation but shall be reimbursed for customary and usual expenses directly incurred in the performance of their duties.

5. The Governor shall designate one member of the Commission to serve as Chairperson and another as Vice-Chairperson. The role of the Chairperson and Vice-Chairperson shall be defined in the Commission's procedures and standards. The Commission shall adopt and make public procedures and standards for the conduct of its affairs, consistent with this Order. Unless and until new procedures and standards are adopted by the Commission, the existing procedures and standards of the Judicial Nominating Commission shall govern, so long as they are consistent with this Order. Except as otherwise provided in this Order, the Commission shall act by majority vote.

6. All records and deliberations with respect to persons under consideration as nominees or prospective nominees shall be held in confidence by the Commission and shall be disclosed only at the direction of the Governor and only to the Governor or the Governor's designee(s). To the extent deemed appropriate by the Governor or the Governor's designee(s), however, the Chairperson or the Delaware State Bar Association's designee to the Commission may disclose certain records and deliberations of the Commission to the Delaware State Bar Association's Committee on Judicial Appointments, provided such disclosure shall be held in confidence by that Committee and disclosed to no one outside that Committee. The Delaware State Bar Association's Committee on Judicial Appointments shall provide comments to the designee of the Delaware State Bar Association, who shall, in turn, provide those comments to the Commission, prior to the Commission making its recommendations to the Governor. The Judicial Nominating Commission is established by the Governor solely to assist in the exercise of the Governor's discretion regarding judicial appointments, and the creation of the Commission and its adoption of procedures and standards in no way waives any privilege attaching to the source and substance of any advice or information provided to the Governor in this regard, nor waives any privilege attaching to the records, investigations and deliberations of the Commission regarding the performance of its duties under this Executive Order. The records, investigations and deliberations of the Commission, along with all internal communications and communications with the Governor and the Governor's designee(s), are intended to be protected by the executive privilege.

7. All vacancies in any judicial offices filled by judges, as that term is defined above, shall be filled in the following manner. The Governor will notify the Chairperson of the Commission (or, in the Chairperson's absence, the Vice-Chairperson) of the occurrence, or expected occurrence, of the vacancy which the Governor intends to fill. Following the notice from the Governor, and in accordance with its own procedures and standards, the Commission shall submit to the Governor within sixty days a list for such vacancy of not less than three qualified persons willing to accept the office; provided, however, that the Commission may recommend fewer than three prospective nominees for such vacancy if, because of the small number of prospective nominees appropriate for recommendation at that time, or because of the existence of more than one office to be filled, a majority of the entire membership concludes that it should be permitted to submit a list containing fewer than three qualified persons for such office. The Governor may refuse to nominate a person from the list submitted and may require the Commission, within thirty days, to submit a supplementary list of no fewer than three other qualified persons willing to accept the office, subject to the same provisions governing the original list. The Governor may then nominate a person from the original or the supplementary list. The Governor shall not call upon the Commission for more than one supplementary list unless a majority of the members of the Delaware State Senate decline to give their consent to the Governor's nomination from the original or first supplementary list. If the Senate fails to confirm the Governor's nomination, then the Governor may direct the Commission to submit within thirty days a supplementary list of not less than three qualified persons willing to accept the office, subject to the same provisions governing the original list. The time limits for action by the Commission may be lengthened or shortened at any time by direction of the Governor.

8. The Governor shall only nominate a person from either the original list or a supplementary list to fill a vacancy created by a judge as defined above; provided, however, whenever there is a vacancy or prospective vacancy in the office of Chief Justice, Chancellor, President Judge of Superior Court, Resident Judge of Superior Court, Chief Judge of Family Court, or Chief Judge of the Court of Common Pleas, and the list of prospective nominees submitted by the Judicial Nominating Commission for such vacancy includes the incumbent, and the

Governor elects to appoint a state judge of a constitutional or statutory court other than the incumbent to fill such vacancy, then the Governor also may elect, without further submission to or from the Commission, to appoint the incumbent, or any other person whose name appears on a list submitted by the Commission for such vacancy, to the derivative vacancy which will be created by the appointment of such other state judge.

9. In considering persons to submit to the Governor as prospective nominees, the Commission shall seek men and women of the highest caliber, who by intellect, work ethic, temperament, integrity and ability demonstrate the capacity and commitment to sensibly, intelligibly, promptly, impartially and independently interpret the laws and administer justice. The Commission shall seek the best qualified persons available at the time for the particular vacancy at issue

10. If an applicant is not submitted by the Commission to the Governor as a prospective nominee, such action indicates merely that the Commission has determined not to recommend such applicant for the vacancy existing at that time and shall not reflect adversely on such applicant's qualifications and/or opportunity for future consideration for judicial appointment.

11. No member of the Commission shall be considered as a prospective nominee so long as he or she is a Commission member.

12. If any member of the Commission is an attorney for, or client, partner, employer, employee or relative of any applicant, then such member shall disclose the relationship to the Commission and shall not participate in the deliberations of the Commission concerning that applicant.

13. Executive Order Nos. Four and Sixteen, issued by Governor Ruth Ann Minner, are hereby rescinded.

Jack A. Markell
Governor

EXECUTIVE ORDER
NUMBER FIVE

April 2, 2009

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES

RE: INITIAL ALLOCATION AND SUB-ALLOCATION OF STATE PRIVATE ACTIVITY BOND VOLUME CAP FOR CALENDAR YEAR 2009

WHEREAS, the Internal Revenue Service issued Revenue Procedure 2008-66, which provides the State of Delaware (the "State") with $273,270,000 in private activity bond volume cap ("Volume Cap") for 2009, and pursuant to 29 **Del.C.** §5091(a), the State's 2009 Volume Cap is allocated among the various State and local government issuers; and

WHEREAS, the Governor hereby confirms the initial allocation as set forth in 29 Del.C. §5091(a) of the 2009 Volume Cap to various State and local government issuers; and

WHEREAS, pursuant to 29 **Del.C.** §5091(b), the State's $136,635,000 Volume Cap for 2009 is to be sub-allocated by the Governor between the Delaware State Housing Authority and the State's Economic Development Authority; and

WHEREAS, the Secretary of Finance recommends that the State's Volume Cap for 2009 of $136,635,000 be

allocated equally between the Delaware State Housing Authority and the Delaware Economic Development Authority;

NOW, THEREFORE, I, JACK A. MARKELL, by the authority vested in me as Governor of the State of Delaware, do hereby DECLARE and ORDER that:

1. The $136,635,000 allocation to the State of Delaware of the 2009 Volume Cap is hereby sub-allocated: $68,317,500 to the Delaware State Housing Authority and $68,317,500 to the Delaware Economic Development Authority.

2. $136,635,000 of the 2009 Volume Cap is hereby allocated to local government issuers as follows:
   $47,825,000 of the 2009 Volume Cap is hereby allocated to New Castle County, Delaware;
   $34,160,000 of the 2009 Volume Cap is hereby allocated to the City of Wilmington, Delaware;
   $27,325,000 of the 2009 Volume Cap is hereby allocated to Kent County, Delaware, and
   $27,325,000 of the 2009 Volume Cap is hereby allocated to Sussex County.

Jack A. Markell,
Governor

DEPARTMENT OF EDUCATION

PROFESSIONAL STANDARDS BOARD

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

IMPLEMENTING ORDER

Hearing Procedures and Rules

Background and Context

The Professional Standards Board's *Procedures Manual* includes descriptions of the Board's organization and operations, its meeting procedures and its rules of hearing practice, among other items. On September 1, 2005, the Professional Standards Board adopted the *Procedures Manual* to replace bylaws which were originally adopted in 2000. The Standards Board *Hearing Procedures and Rules*, which were originally adopted on February 8, 2001, were incorporated as an appendix to the *Procedures Manual* and were also amended on September 1, 2005. The Delaware Professional Standards Board concludes it is necessary to amend the *Hearing Procedures and Rules* to:

(1) Conform to changes in Statute and regulation relative to Delaware educator licensure and certificate denial, revocation limitation and suspension.
(2) Specify time frames for compliance.
(3) Clarify various components

These changes are exempted from the procedural requirements of the *Administrative Procedures Act* to 29 **Del. C.** 10113(b)(1), (2), (4) and (5). As a result, the Professional Standards Board may adopt these changes informally.

Final Order

The Delaware Professional Standards Board concludes that it is appropriate to amend the *Professional Standards Board Hearing Procedures and Rules* as described above. The amended manual is attached as Exhibit "A" and is hereby adopted by the Delaware Professional Standards Board as its *Hearing Procedures and Rules*, effective immediately.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD

THE 2ND DAY OF APRIL, 2009

Kathleen Thomas, Chair	Joanne Christian
Samtra Devard	Marilyn Dollard
Karen Gordon	Cristy Greaves
Lori Hudson	David Kohan
Jill Lewandowski	Wendy Murray
Gretchen Pikus	Whitney Price
Karen Schilling-Ross	Michael Thomas
Carol Vukelich	Cathy Zimmerman

Hearing Procedures and Rules

1.0 Scope and Purpose of Procedures and Rules

The Professional Standards Board ("the Standards Board") is authorized by Chapter 12 of the Education Code (Title 14 of the **Delaware Code**) to adopt or approve rules and regulations and to hold hearings related to proposed licensing and certification actions by the Department of Education. The Standards Board is also governed by the Administrative Procedures Act (Chapter 101 Title 29 of the **Delaware Code**).

These Hearing Procedures and Rules ("Rules") shall govern the practice and procedure before the Standards Board in hearings and regulatory proceedings.

2.0 General Provisions

2.1 These Rules shall be liberally construed to secure a just, economical, and reasonably expeditious determination of the issues presented in accordance with the Standards Board's statutory responsibilities and with the Administrative Procedures Act.

2.2 The Standards Board may, for good cause, and to the extent consistent with law, waive any of these Rules, either upon application or upon its own motion.

2.3 Whether a proceeding constitutes an evidentiary hearing or regulatory action shall be decided by the Standards Board on the basis of the applicable laws. A party's designation of the proceeding shall not be controlling on the Standards Board or binding on the party.

2.4 The Standards Board may appoint a representative to act as a hearing officer for any proceeding before the Standards Board. Except as otherwise specifically provided, the duties imposed, and the authority provided to the Standards Board by these Rules shall also extend to its hearing officers.

2.5 Notwithstanding any part of these Rules to the contrary, the Standards Board, or its counsel, designee or hearing officer, may conduct pre-hearing conferences and tele-conferences to clarify issues, confirm interim relief, specify procedures and otherwise expedite the proceedings.

2.6 The Standards Board or its designee or hearing officer may administer oaths, order the taking of depositions, issue subpoenas and compel attendance of witnesses and the production of books, accounts, papers, records, documents and testimony. The Standards Board or its designee or hearing officer may also take testimony, hear proofs and receive exhibits into evidence at any hearing. Testimony at any hearing shall be under oath or affirmation.

2.7 The Standards Board may elect to conduct joint hearings with the State Board of Education and other state and local agencies. These Rules may be modified as necessary for joint hearings.

2.8 Any party to a proceeding before the Standards Board may be represented by counsel. An attorney representing a party in a proceeding before the Standards Board shall notify the Executive Director of the Standards Board ("Executive Director") of the representation in writing as soon as practical. Attorneys who are not members of the Delaware Bar may be permitted to appear pro hac vice before the Standards Board in accordance with Rule 72 of the Rules of the Delaware Supreme Court.

2.9 The Standards Board may continue, adjourn or postpone proceedings for good cause at the request of a party or on its own initiative. Absent a showing of exceptional circumstances, requests for postponements of any matter scheduled to be heard by the Standards Board shall be submitted to the Executive Director in writing at least three (3) business days before the date scheduled for the proceeding. The Chair of the Standards Board shall then decide whether to grant or deny the request for postponement. If a hearing officer has been appointed, the request for postponement shall be submitted to the hearing officer, who shall then decide whether to grant or deny the request.

2.10 A copy of any document filed with or submitted to the Standards Board or its hearing officer shall be provided to all other parties in the proceeding, or to their legal counsel.

3.0 Evidentiary Hearings

3.1 Section 3.0 governs proceedings where a statute or regulation provides the right to an original hearing before the Standards Board to decide a specific controversy or dispute.

3.2 Petitions for Hearing

3.2.1 A party may initiate a hearing on matters within the Standards Board's jurisdiction by mailing or delivering a petition for hearing to the Executive Director. The petition shall be in writing, shall be signed by the party making the request (or by the party's authorized representative). It shall set forth the grounds for the action in reasonable detail and shall identify the source of the Standards Board's authority to decide the matter. Petitions may not be delivered to the Executive Director by facsimile or other electronic means.

3.2.2 Unless otherwise provided by statute or regulation, the petition for hearing must be postmarked or delivered to the Executive Director within thirty (30) calendar days of the petitioning party's receipt of notice that official action has been taken by an authorized person, organization, board or agency. If authorized by statute or regulation actual notice may not be necessary and it may be sufficient to mail notice to the party's last known address.

3.2.3 A copy of the petition for hearing shall be sent to all other parties to the proceeding at the time it is mailed or delivered to the Executive Director. A copy of any other paper or document filed with the Standards Board or its hearing officer shall be provided to all other parties to the proceeding at the same time it is mailed or delivered to the Standards Board or its hearing officer. If the party is represented by legal counsel, delivery to legal counsel is sufficient.

3.2.4 Upon receipt of an adequately detailed petition for hearing, the Executive Director shall assign the matter to a hearing officer from a roster of hearing officers approved by the Standards Board. The Executive Director shall provide the petition for hearing and the hearing officer assignment to the Standards Board at its next regularly scheduled meeting.

3.2.5 The Standards Board or hearing officer, in their discretion, may direct the person, organization, board or agency taking official action to file a written response to a Petition for hearing.

3.2.6 A party shall be deemed to have consented to a closed hearing unless the party notifies the Executive Director in writing that a public hearing is requested. Such notice must be delivered to the Executive Director within five (5) business days of the receipt of the notice scheduling the hearing.

3.2.7 Parties shall keep the Standards Board informed of their current addresses and telephone numbers during the pendency of any proceedings.

3.3 Formal Hearings

3.3.1 Procedures

3.3.1.1 The hearing will proceed with the party with the burden of proof first presenting its evidence and case. The other party may then present its case. The party with the burden of proof will then have an opportunity to present rebuttal evidence.

3.3.1.2 Opening and closing arguments and post-hearing submissions of briefs or legal memoranda will be permitted at the discretion of the Standards Board or hearing officer.

3.3.1.3 Any person who testifies as a witness shall also be subject to cross examination by the other parties to the proceeding. Any witness is also subject to examination by the Standards Board or its hearing officer.

3.3.2 Evidence

3.3.2.1 Strict rules of evidence shall not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.

3.3.2.2 The Standards Board or its hearing officer may exclude evidence and limit testimony as provided in Section 10125(b) of the Administrative Procedures Act.

3.3.2.3 Objections to the admission of evidence shall be brief and shall state the grounds for the objection. Objections to the form of the question will not be considered.

3.3.2.4 Any document introduced into evidence at the hearing shall be marked by the Standards Board or the hearing officer and shall be made a part of the record of the hearing. The party offering the document into evidence shall provide a copy of the document to each of

the other parties and to each of the Standards Board members present for the hearing unless otherwise directed.

3.3.2.5 Requests for subpoenas for witnesses or other sources of evidence shall be delivered to the Executive Director in writing at least fifteen (15) business days before the date of the hearing, unless additional time is allowed for good cause. The Executive Director shall prepare the subpoenas. The party requesting the subpoena is responsible for delivering it to the person to whom it is directed.

3.3.2.6 A written list of witnesses a party intends to call during a hearing shall be delivered to the Executive Director and to all other parties at least five (5) business days prior to a hearing. The Standards Board or its hearing officer, in its discretion, may refuse to receive into evidence any testimony of a witness who has not been named on the witness list.

3.3.2.7 Witnesses may be sequestered at the discretion of the Standards Board or its hearing officer upon request of any party.

3.4 Expedited Hearing

3.4.1 The PSB or its hearing officer shall hold expedited hearings as required by law or regulation.

3.5 Creation of Record before Standards Board

3.5.1 Any party may request the presence of a stenographic reporter on notice to the Executive Director at least ten (10) business days prior to the date of the hearing. The requesting party shall be liable for the expense of the reporter and of any transcript the party requests.

3.5.2 If a stenographic reporter is not present at the hearing, the Standards Board shall cause an electronic recording of the hearing to be made by tape recorder or other suitable device. Electronic recordings shall be destroyed unless a written request to preserve it is made to the Executive Director within three (3) months of the conclusion of the proceedings.

3.6 Burden of Proof and Standard of Review

3.6.1 Unless otherwise provided by statute or regulation, the burden of proof in license or certification actions is on the applicant to show by a preponderance of the evidence that he or she meets the requirements of the applicable laws and regulations relating to the issuance of a license or certificate.

3.6.2 Unless otherwise provided by statute or regulation, the burden of proof in license revocation, limitation or suspension disciplinary actions or certification actions shall be on the person, organization, board or agency taking official action to establish by a preponderance of evidence that the licensee has engaged in misconduct or otherwise has failed to comply with the applicable laws and regulations relating to the retention of the license or certificate.

3.7 Standards Board Decision

3.7.1 When the Standards Board has appointed a hearing officer, the hearing officer shall submit a proposed written decision for consideration by the Standards Board.

3.7.2 The proposed decision shall comply with Section 10126(a) of the Administrative Procedures Act. The proposed decision shall be submitted to the Standards Board and the parties within twenty (20) calendar days of the conclusion of the proceedings before the hearing officer.

3.7.3 The parties shall have twenty (20) calendar days from the date the proposed order is delivered to them to submit in writing to the Standards Board and the other party any exceptions, comments and arguments respecting the proposed order. The parties may agree to shorten or waive the comment period, or to consent to the hearing officer's recommendation without additional information. When the parties consent to the hearing officer's recommendation, they shall so advise the Executive Director.

3.7.4 To the extent possible, the Standards Board shall consider a matter conducted by a hearing officer at its next regular meeting following the parties' submissions, if any, or the end of the comment period, whichever comes first.

3.7.5 The Standards Board shall consider the entire record of the case, the hearing officer's proposed decision, and written comments thereto, if any, in reaching its final decision. The Standards

Board's decision shall be incorporated in a final order which shall be signed and mailed to the parties by certified mail.

4.0 Public Regulatory Hearings

4.1 Section 4.0 governs public hearings before the Standards Board or its hearing officers where the Standards Board decides to hold such hearings before adopting or approving rules and regulations or taking other regulatory action.

4.2 Notice that the Standards Board has scheduled a public regulatory hearing shall be provided as required in Section 10115 of the Administrative Procedures Act. Notice of the public hearing shall also be circulated to individuals and agencies on the Standards Board's mailing list for meeting agendas. The notice of the hearing shall indicate whether the Standards Board will conduct the hearing or designate a hearing officer for that purpose.

4.3 Creation of record of public hearing

4.3.1 Any party may request the presence of a stenographic reporter on notice to the Executive Director at least ten (10) business days prior to the date of the hearing. The requesting party shall be liable for the expense of the reporter and of any transcript the party requests.

4.3.2 If a stenographic reporter is not present at the hearing, the Standards Board shall cause an electronic recording of the hearing to be made by tape recorder or other suitable device. Electronic recordings shall be destroyed unless a written request to preserve it is made to the Executive Director within three (3) months of the conclusion of the hearing. Any party requesting that a written transcript be made from the recording shall bear the cost of producing the transcript.

4.4 Subpoenas

4.4.1 The Standards Board or its hearing officer may to issue subpoenas for witnesses or other evidence for the public hearing. Where possible, such subpoenas shall be delivered to the party to whom they are directed at least ten (10) business days prior to the public hearing.

4.4.2 The Standards Board or its hearing officer may also, in its discretion, issue subpoenas at the request of a person interested in the proceedings. Requests for such subpoenas shall be delivered to the Executive Director at least fifteen (15) business days prior to the date of the hearing, unless additional time is allowed for good cause.

4.5 Documents

4.5.1 The Standards Board or its hearing officer shall, at the beginning of the hearing, mark as exhibits any documents it has received from the public as comment and any other documents which it will consider in reaching its decision. Documents received during the hearing shall also be marked as exhibits.

4.5.2 Any person or party submitting a document before or during the public hearing shall provide at least twenty (20) copies of the document to the Standards Board, unless directed otherwise.

4.6 Witnesses

4.6.1 The order of witnesses appearing at the hearing shall be determined by the Standards Board or its hearing officer. The Standards Board or its hearing officer may direct an agency or organization to designate a single person to present the agency or organization's position at a public hearing.

4.6.2 The Standards Board or its hearing officer may limit a witness's testimony and the admission of other evidence to exclude irrelevant, insubstantial or unduly repetitious proof.

4.6.3 Any person who testifies at a public hearing shall be subject to examination by the Standards Board or its hearing officer. The Standards Board or its hearing officer may in their discretion allow cross examination of any witness by other participants in the proceedings.

4.7 Conclusion

4.7.1 At the conclusion of the public hearing, the Standards Board shall issue its findings and conclusions in a written order in the form provided in Section 10118(b) of the Administrative Procedures Act. The Board's order shall be rendered within a reasonable time after the public hearing.

DELAWARE RIVER BASIN COMMISSION

The Delaware River Basin Commission will hold a public hearing and business meeting on Wednesday, May 6, 2009 beginning at 10:30 a.m. at the Commission's office building, 25 State Police Drive, West Trenton, New Jersey. 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

DELAWARE STANDARDBRED BREEDERS' FUND

PUBLIC NOTICE

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund ("the Fund") hereby gives notice of its intention to adopt amended regulations pursuant to the General Assembly's delegation of authority to adopt such measures found at 29 *Del.C*. §4815(b)(3)b.2.D and in compliance with Delaware's Administrative Procedures Act, 29 *Del.C.* §10115. The proposed amended regulations constitute a modification of three existing regulations. The first two proposed amendments of regulations 4.0 and 9.0 drop the caps on bonus money paid to Breeders which will allow the program to maintain its competition level with neighboring programs. The third proposed amendment to regulation 14.0 allows a reasonable period of time for a sustaining payment to be received, thus avoiding the disqualification of a horse from a race due to the slow delivery of mail. This would also comply with the national standard.

The Fund solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*.

Any such submissions should be mailed or delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund whose address is State of Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901 by June 1, 2009.

THOROUGHBRED RACING COMMISSION

PUBLIC NOTICE

The Thoroughbred Racing Commission, in accordance with 3 **Del.C.** §10103(c) proposes changes to its rules and regulations. The proposal amends Section 15 of the rules and regulations by amending existing Rule 15.14 to allow conditional use of shock wave therapy, extracorporeal shock wave therapy, or radial pulse wave therapy treatments. A public hearing will be held on May 12, 2009 at 10:00 AM, in the Horsemen's Office at Delaware Park, 777 Delaware Park Blvd., Wilm., DE, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed regulations may obtain a copy from the Thoroughbred Racing Commission, 777 Delaware Park Blvd., Wilm., DE. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml. Persons wishing to submit written comments may forward these to the attention of Mr. John F. Wayne, Executive Director, at the above address. The final date to receive written comments will be at 10:00 AM on May 12, 2009.

DEPARTMENT OF EDUCATION

PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, May 21, 2009 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

1915(c) Home and Community-Based Services Waiver for the Elderly and Disabled

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, and, in compliance with State Notice procedures as set forth in the Federal Register, September 27, 1994, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) will submit an application to the Centers for Medicare and Medicaid Services (CMS) for renewal of its 1915(c) Home and Community-Based Services waiver entitled, Elderly and Disabled Services Program, for an additional five years.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning extension of the this waiver 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, 2009. A copy of the draft waiver application is available upon request.

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

DIVISION OF SOCIAL SERVICES

PUBLIC NOTICE

Child Care Subsidy Program

DSSM 11003.7.8 Special Needs Children

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by May 31, 2009.

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

DIVISION OF SOCIAL SERVICES

PUBLIC NOTICE

Child Care Subsidy Program

DSSM 11006.4.1 Absent Day Policy

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by May 31, 2009.

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

DEPARTMENT OF INSURANCE

PUBLIC NOTICE

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt proposed Department of Insurance Regulation 305 relating to actuarial appointments, actuarial opinions and memoranda of insurance companies. The docket number for this proposed amendment is 1089.

The purpose of the proposed amendment to regulation 305 is to update the existing regulation with respect to statutory law. The text of the proposed amendment is reproduced in the May 2009 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 1, 2009, 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 NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

REGISTER NOTICE

SAN #2009-03

Title of the Regulation:

Amendment to Regulation 1101 “Definitions and Administrative Principles,” Section 2.0 - “Definitions.”

Brief Synopsis of the Subject, Substance and Issues:

The United States Environmental Protection Agency (EPA) has determined that the following organic compounds have negligible photochemical reactivity and has exempted them from regulation as ground-level ozone precursors; t-butyl acetate (TBAC), HFE-7000, HFE-7500, HFE-7300, HFC 227ea, methyl formate, propylene carbonate and dimethyl carbonate. This action updates the Delaware definition of a volatile organic compound (VOC) to be the same as the federal definition. This allows Delaware users of solvent containing products (e.g. coatings, adhesives, cleaning compounds, aerosol propellants and blowing agents) to utilize these VOC exempt compounds which may provide desired product properties without contributing to ozone formation.

Notice of Public Comment:

There will be a hearing on this proposed amendment on May 26, 2009 beginning at 6pm in the Priscilla Building conference room in Dover. Interested parties may submit comments in writing to Gene Pettingill, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720 and/or statements and testimony may be presented either orally or in writing at the public hearing.

Prepared By:

Gene Pettingill (302) 323-4542 gene.pettingill@state.de.us April 13, 2009

DIVISION OF AIR AND WASTE MANAGEMENT

REGISTER NOTICE

SAN #2009-04

Title of the Regulation:

Amend 7 **DE Admin. Code** 1146, Electric Generating Unit (EGU) Multi-Pollutant Regulation.

Brief Synopsis of the Subject, Substance and Issues:

Regulation 1146 provides sulfur dioxide (SO2), nitrogen oxides (NOx), and mercury emissions limitations for Delaware's coal-fired and residual fuel oil-fired EGUs with nameplate capacity ratings greater than or equal to 25 megawatts (MW). Among the limitations established by Regulation 1146 is an annual SO2 mass emissions cap of 2427 tons per year for Conectiv Delmarva Generation's Edge Moor Unit 5. The SO2 mass cap is identified in Table 5-1 of Regulation 1146. Edge Moor Unit 5 is a residual fuel-oil fired EGU with a nameplate rating of 446 MW.

Regulation 1146 was promulgated in November 2006, and on December 5, 2006 Conectiv appealed essentially all of the Regulation 1146 provisions that applied to their Edge Moor facility. On December 17, 2008, Conectiv and DNREC signed an agreement that resolves the appeal. The purpose of this proposed action is to satisfy one provision of that agreement: to propose an amendment to Regulation 1146 that modifies the SO2 mass emissions limit associated with Edge Moor Unit 5 (as constrained in Regulation 1146's Table 5-1) from 2427 tons per year to 4600 tons per year, beginning in calendar year 2009. No other changes to Regulation 1146 are being proposed, to include the requirement for Unit 5 to burn only low sulfur oil.

Notice of Public Comment:

DNREC will hold a public hearing on this proposed amendment on May 26, 2009 beginning at 6pm in the Priscilla Building conference room, 156 S. State St., in Dover. Interested parties may submit comments in writing to Bob Clausen, Air Quality Management Section, 156 S. State St., Dover DE 19901 and/or statements and testimony may be presented either orally or in writing at the public hearing.

Prepared By:

Bob Clausen (302) 739-9402

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

3500 BOARD OF EXAMINERS OF PSYCHOLOGISTS

PUBLIC NOTICE

Pursuant to 24 **Del.C.** §3506(a)(1), the Board of Examiners of Psychologists has proposed revisions to its rules and regulations.

A public hearing will be held on June 1, 2009 at 9:15 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 Board of Examiners of Psychologists, 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 10.0, which addresses the continuing education requirements for licensees. Effective as of the license renewal period beginning August 1, 2009, both psychologist and psychological assistants will be required to complete three hours of continuing education in ethics.

The Board also proposes an addition to Rule 13.0, pertaining to license renewal. The new Rule 13.5.3.7 expressly gives the Board the authority to conduct hearings and impose the full range of sanctions available under 24 **Del.C.** §3514 when licensees fail to comply with the continuing education requirements.

The proposed amendments strengthen continuing education standards and give the Board express authority to sanction licensees who do not comply with those standards. Therefore, the proposed revisions will serve to protect the public from unsafe practices and enhance practitioner competence.

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

DEPARTMENT OF TRANSPORTATION

DIVISION OF TRANSPORTATION SOLUTIONS

PUBLIC NOTICE

Delaware Manual on Uniform Traffic Control Devices, Parts 2, 6 and 9

Under Title 17 of the **Delaware Code**, Sections 134 and 141, as well as 21 **Delaware Code** Chapter 41, the Delaware Department of Transportation (DelDOT), adopted a Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). The Department has now drafted revisions to Parts 2, 6 and 9 of the Delaware MUTCD. A description of the proposed changes accompanies this notice.

The Department will take written comments on the draft changes to the Delaware MUTCD from June 1, 2009 through June 30, 2009. Copies of the Draft Delaware MUTCD Revisions to Parts 2, 3, and 6 can be obtained by reviewing or downloading a PDF copy at the following web address: http://regulations.delaware.gov/

Questions or comments regarding these proposed changes should be directed to: Donald Weber, P.E. Assistant Director of Transportation Engineering Division of Transportation Solutions Delaware Department of Transportation 169 Brick Store Landing Road Smyrna, DE 19977 (302) 659-2002 (telephone) (302) 653-2859 (fax) don.weber@state.de.us

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