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# Delaware Register of Regulations

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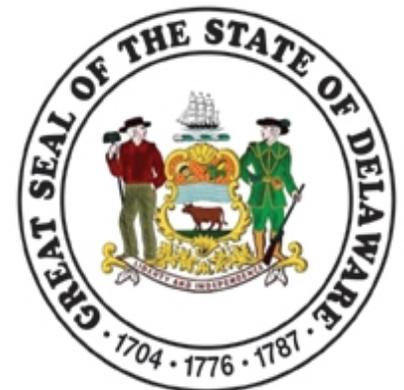


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Proposed  
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Executive Orders

Calendar of Events &  
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before January 16, 2012.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

15 **DE Reg.** 24-47 (07/01/11)

Refers to Volume 15, pages 24-47 of the *Delaware Register* issued on July 1, 2011.

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

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

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

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

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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.).

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**DEPARTMENT OF TECHNOLOGY AND INFORMATION**
**Office of the Secretary**

 Policies and Procedures Regarding FOIA Requests..... 15 **DE Reg.** 906 (Final)

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

 2217 Driver License and Identification Card Application Procedures for  
 Delaware Compliant & Delaware Non-Compliant Identification Documents 15 **DE Reg.** 322 (Prop.)  
 15 **DE Reg.** 687 (Final)  
 2287 Public Carrier Regulations..... 15 **DE Reg.** 55 (Prop.)  
 15 **DE Reg.** 550 (Final)

**Division of Planning and Policy**

 2306 Crash Data Release..... 15 **DE Reg.** 795 (Prop.)  
 2309 Standards and Regulations for Subdivision Streets and  
 State Highway Access..... 15 **DE Reg.** 56 (Prop.)  
 15 **DE Reg.** 551 (Final)

**Division of Transportation Solutions**

 2402 Delaware Manual on Uniform Traffic Control Devices..... 15 **DE Reg.** 106 (Final)

**Office of the Secretary**

 Policies and Procedures Regarding FOIA Requests..... 15 **DE Reg.** 910 (Final)

**EXECUTIVE DEPARTMENT**
**Delaware Economic Development Office**

 Policies and Procedures Regarding FOIA Requests..... 15 **DE Reg.** 920 (Final)

**Office of Management and Budget**

 Disability Insurance Program Rules and Regulations..... 15 **DE Reg.** 799 (Prop.)  
 Policies and Procedures Regarding FOIA Requests..... 15 **DE Reg.** 925 (Final)

**STATE EMPLOYEE BENEFIT COMMITTEE**

 2001 Group Health Care Insurance Eligibility and Coverage Rules..... 15 **DE Reg.** 225 (Final)  
 15 **DE Reg.** 1071 (Final)

**Symbol Key**

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

**Proposed Regulations**

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

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

Statutory Authority: Statutory Authority: 3 Delaware Code, Section 4815(b)(3)(c)(3)  
(3 **Del.C.** §4815(b)(3)(c)(3))  
3 **DE Admin. Code** 1002

**PUBLIC NOTICE**

The Delaware Jockey's Health and Welfare Benefit Board, in accordance with 3 **Del.C.** §10103(c) has proposed changes to its rules and regulations. The proposed change for Rule 2.1.1 amends active Delaware Jockey eligibility requirement by increasing the minimum required number of mounts in a racing season from 25 to 50. A public hearing will be held on March 14, 2012, beginning at 9:00 AM, in the second floor conference room of the Horsemen's Office, located on the grounds of Delaware Park, 777 Delaware Park Boulevard, Wilmington, Delaware 19804, where members of the public may offer comments. Anyone wishing to receive a copy of the proposed regulations may obtain a copy from the Delaware Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804. Persons wishing to submit written comments may forward these to the attention of John F. Wayne, Executive Director, at the above address. The final date to receive comments will be March 14, 2012, during the public hearing. Copies are also published online at the *Register of Regulations* website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml).

**1002 Delaware Jockeys' Health and Welfare Benefit Board Regulations****1.0 Introduction**

- 1.1 These regulations are authorized pursuant to 3 **Del.C.** §10171 and 29 **Del.C.** §4815(b)(3)c which established a Delaware Jockeys' Health and Welfare Benefit Board (hereinafter "the Board") and Delaware Jockeys' Health and Welfare Benefit Fund (hereinafter "the Fund").
- 1.2 The Delaware Jockeys' Health and Welfare Benefit Board shall consist of 1 member of the Delaware Thoroughbred Racing Commission, 1 member from the licensed agent under Chapter 1010 of **Title 3** or Chapter 4 of **Title 28**, 1 member of the Delaware Horsemen's Association, 1 representative from the organization that represents the majority of the jockeys who are licensed and ride regularly in

Delaware, and 2 jockeys who are licensed and ride regularly in Delaware. The Chairman of the Thoroughbred Racing Commission shall serve as an *ex officio* member, and vote on matters in the event of a tie vote on any issue. All members shall be appointed by the Thoroughbred Racing Commission, and shall serve a two year term.

- 1.3 The Board shall elect a Chairperson from among the appointed members of the Board. The Chairperson shall serve a two year term and may serve consecutive terms. The Chairperson shall be the presiding officer at all meetings of the Board.
- 1.4 The Board shall administer the Fund pursuant to these regulations and other reasonable criteria for benefit eligibility.
- 1.5 A special fund of the State has been established and will be known as the "Delaware Jockeys' Health and Welfare Benefit Fund." The Fund shall consist of the proceeds transferred from the licensed video lottery agent and the purse account pursuant to 29 **Del.C.** §4815(b)(3)c. The proceeds transferred to the Fund will be maintained in an account established in the Department of Agriculture.
- 1.6 The Fund will be invested by the State Treasurer consistent with the investment policies established by the Cash Management Policy Board. All income earned by the Fund will be reinvested in the Delaware Jockeys' Health and Welfare Benefit Fund.
- 1.7 The Board shall use the Fund to provide for jockeys who regularly ride in Delaware, health benefits for active, disabled and retired jockeys. The Board may also expend usual and customary expenses for administrative purposes from the Fund.
- 1.8 The Thoroughbred Racing Commission's Administrator of Racing will provide administrative support to the Board and keep minutes of all the meetings of the Board and preserve all records of the Board. The Board's Office will be considered as part of the Office of the Thoroughbred Racing Commission.
- 1.9 The Board can propose to amend these regulations by an affirmative vote of the majority of the Board.

## **2.0 Eligibility Criteria for Health Coverage**

- 2.1 The Board will pay from the Fund for health coverage for active jockeys who regularly ride in Delaware, eligible retired jockeys, and disabled Delaware jockeys.
  - 2.1.1 An Active Delaware Jockey, who regularly rides in Delaware, is eligible for health insurance coverage under the fund, if the jockey had ~~twenty five (25)~~ fifty (50) mounts in a Delaware Park season at Delaware Park; and
    - 2.1.1.1 If the jockey's Delaware Park mounts are less than 100 in a Delaware Park season, then 50% or more of that jockey's total mounts during the regular Delaware Park season must be at Delaware Park.
    - 2.1.1.2 If the jockey's Delaware Park mounts are 100 or more in a Delaware Park season, the jockey is eligible for health insurance coverage, regardless of the amount of total mounts at other tracks.
  - 2.1.2 A Retired Delaware Jockey is eligible for health insurance coverage under the Fund if:
    - 2.1.2.1 The Jockey was receiving health insurance coverage as a retired jockey provided by the Delaware Thoroughbred Racing Commission's health insurance plan with the Jockey's Guild on January 1, 2006; or
    - 2.1.2.2 The Jockey rode a minimum of 100 mounts at Delaware Park during the regular Delaware Park season for at least seven years.
  - 2.1.3 A disabled Delaware Jockey's spouse and dependents qualify for health benefits if the disabled jockey meets all of the following requirements:
    - 2.1.3.1 The jockey was an active participant in the Delaware Jockeys' Health and Welfare Fund benefit program at the time of the on-track accident that resulted in total and permanent disability; and
    - 2.1.3.2 Be deemed permanently disabled by Social Security and qualify for Medicare as a result of an injury sustained during the regular Delaware Park season on the premises of Delaware Park, and arising in the course of his/her participation as a licensed jockey.

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- 2.2 A jockey and/or the jockey's family who meets the eligibility requirements of either an active Delaware jockey, a retired Delaware jockey, or a disabled Delaware jockey's family will be entitled to health coverage beginning on the first of the month after it can be determined the eligibility requirement has been met, and continuing until December 31<sup>st</sup> of the next calendar year.
- 2.3 The Board will pay from the Fund for health coverage for the dependents of active jockeys who regularly ride in Delaware, eligible retired jockeys, and disabled Delaware jockeys.
- 2.3.1 Eligibility for coverage for dependants will be determined by the company providing the insurance coverage.

**9 DE Reg. 1749 (05/01/06)**

**13 DE Reg. 1536 (06/01/10)**

**15 DE Reg. 60 (07/01/11)**

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**DEPARTMENT OF EDUCATION**  
**PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 1598

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

**1598 Delaware Professional Development Standards**

**A. Type of Regulatory Action Requested**

Amendment to Existing Regulation

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1598 Delaware Professional Development Standards. The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1598 Delaware Professional Development Standards. This regulation sets forth the standards for Delaware educators' professional development. Delaware professional development standards would reflect Learning Forward's recently adopted professional learning standards.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday, March 5, 2012 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses Delaware educator professional development standards, which in turn upon implementation with fidelity, will improve student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students shall meet the standards set for professional development.

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

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

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

makers at the local board and school level.

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

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

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

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

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

## 1598 Delaware Professional Development Standards

### 1.0 Content

- 1.1 Learning Forward, formerly known as the National Staff Development Counsel (NSDC, 2004), adopted updated Standards for Staff Development Professional Learning that connect professional development learning and student learning, and acknowledge that all educators have a responsibility to learn in order to improve student performance.
- 1.2 In accordance with 14 Del.C. §1205(b), the NSDC 2004 Standards For Professional Learning (Learning Forward, 2011) are hereby incorporated by reference and adopted as Delaware's Professional Development Standards. The NSDC Learning Forward's Standards shall serve as the foundation for professional development for all Delaware educators, and as indicators that guide the learning, facilitation, implementation, and evaluation of professional learning. The standards make explicit that the purpose of professional development is for educators to develop the knowledge, skills, practices, and dispositions they need to help students perform at higher levels.
- 1.3 A summary of the Standards are set forth within. In depth descriptions, contextual explanations, examples and more specific criteria and guidance is provided in the complete set of standards as published in Standards For Professional Learning (Learning Forward, 2011).

### 2.0 ~~Context Standards~~ Prerequisites for Professional Learning

- 2.1 Professional Development that improves the learning of all students:
  - 2.1.1 ~~Organizes adults into learning communities whose goals are aligned with those of the school and district.~~
  - 2.1.2 ~~Requires skillful school and district leaders who guide continuous instructional improvement.~~
  - 2.1.3 ~~Requires resources to support adult learning and collaboration.~~
- 2.1 The following prerequisites are fundamental, necessary for effective learning, and reside where professional learning intersects with professional ethics:
- 2.2 An Educator's commitment to all students is the foundation of effective professional learning.
- 2.3 Each educator involved in professional learning comes to the experience ready to learn.
- 2.4 Because there are disparate experience levels and use of practice among educators, professional learning can foster collaborative inquiry and learning that enhances individual and collective performance.
- 2.5 Like all learners, educators learn in different ways and at different rates.

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## 3.0 ~~Process Standards~~ Learning Communities

- 3.1 Professional Development that improves the learning of all students:
  - ~~3.1.1 Uses disaggregated student data to determine adult learning priorities, monitor progress, and help sustain continuous improvement.~~
  - ~~3.1.2 Uses multiple sources of information to guide improvement and demonstrate its impacts.~~
  - ~~3.1.3 Prepares educators to apply research to decision making.~~
  - ~~3.1.4 Uses learning strategies appropriate to the intended goal.~~
  - ~~3.1.5 Applies knowledge about human learning and change.~~
  - ~~3.1.6 Provides educators with the knowledge and skills to collaborate.~~
- 3.1 Professional learning that increases educator effectiveness and results for all students occurs within learning communities committed to continuous improvement, collective responsibility, and goal alignment.
- 3.2 Professional learning within communities requires continuous improvement, promotes collective responsibility, and supports alignment of individual, team, school, and school system goals.
- 3.3 Learning communities convene regularly and frequently during the workday to engage in collaborative professional learning to strengthen their practice and increase student results.
- 3.4 Learning community members are accountable to one another to achieve the shared goals of the school and school system and work in transparent, authentic settings that support their improvement.

## 4.0 ~~Content Standards~~ Leadership

- 4.1 Professional Development that improves the learning of all students:
  - ~~4.1.1 Prepares educators to understand and appreciate all students, create safe, orderly, and supportive learning environments, and hold high expectations for their academic achievement.~~
  - ~~4.1.2 Deepens educators' content knowledge, provides them with research-based instructional strategies to assist students in meeting rigorous academic standards, and prepares them to use various types of classroom assessments appropriately.~~
  - ~~4.1.3 Provides educators with knowledge and skills to involve families and other stakeholders appropriately.~~
- 4.1 Professional learning that increases educator effectiveness and results for all students requires skillful leaders who develop capacity, advocate, and create support systems for professional learning.
- 4.2 Leaders throughout the pre-K-12 education community recognize effective professional learning as a key strategy for supporting significant school and school system improvements to increase results for all students.
- 4.3 Whether they lead from classrooms, schools, school systems, technical assistance agencies, professional associations, universities, or public agencies, leaders develop their own and others' capacity to learn and lead professional learning, advocate for professional learning, provide support systems, and distribute leadership and responsibility for professional learning effectiveness and results.

## 5.0 Resources

- 5.1 Professional learning that increases educator effectiveness and results for all students requires prioritizing, monitoring, and coordinating resources for educator learning.
- 5.2 Effective professional learning requires human, fiscal, material, technology, and time resources to achieve student learning goals.
- 5.3 How resources are allocated for professional learning can overcome inequities and achieve results for educators and students. The availability and allocation of resources for professional learning affect its quality and results.

5.4 Understanding the resources associated with professional learning and actively and accurately tracking them facilitates better decisions about and increased quality and results of professional learning.

## **6.0 Data**

6.1 Professional learning that increases educator effectiveness and results for all students uses a variety of sources and types of student, educator, and system data to plan, assess, and evaluate professional learning.

6.2 Data from multiple sources enrich decisions about professional learning that leads to increased results for every student. Multiple sources include both quantitative and qualitative data, such as common formative and summative assessments, performance assessments, observations, work samples, performance metrics, portfolios, and self-reports.

6.3 The use of multiple sources of data offers a balanced and more comprehensive analysis of student, educator, and system performance than any single type or source of data can.

6.4 Thorough analysis and ongoing use are essential for data to inform decisions about professional learning, as is support in the effective analysis and use of data.

## **7.0 Learning Designs**

7.1 Professional learning that increases educator effectiveness and results for all students integrates theories, research, and models of human learning to achieve its intended outcomes.

7.2 Integrating theories, research, and models of human learning into the planning and design of professional learning contributes to its effectiveness.

7.3 Several factors influence decisions about learning designs, including the goals of the learning, characteristics of the learners, their comfort with the learning process and one another, their familiarity with the content, the magnitude of the expected change, educators' work environment, and resources available to support learning.

7.4 The design of professional learning affects its quality and effectiveness.

## **8.0 Implementation**

8.1 Professional learning that increases educator effectiveness and results for all students applies research on change and sustains support for implementation of professional learning for long-term change.

8.2 The primary goals for professional learning are changes in educator practice and increases in student learning. The process occurs over time and requires support for implementation to embed the new learning into practices.

8.3 Effective professional learning is achieved by applying findings from change process research to support long-term change in practice by extending learning over time.

8.4 Effective professional learning integrates a variety of supports for individuals, teams, and schools.

8.5 Constructive feedback and reflection should be integrated in implementation to support continuous improvement in practice that allows educators to move along a continuum from novice to expert through application of their professional learning.

## **9.0 Outcomes**

9.1 Professional learning that increases educator effectiveness and results for all students aligns its outcomes with educator performance and student curriculum standards.

9.2 For all students to learn, educators and professional learning must be held to high standards.

9.3 Professional learning that increases results for all students addresses the learning outcomes and performance expectations education systems designate for students and educators.

9.4 When the content of professional learning integrates student curriculum and educator performance standards, the link between educator learning and student learning becomes explicit, increasing the likelihood that professional learning contributes to increased student learning.

9.5 When systems increase the stakes for students by demanding high, equitable outcomes, the stakes for professional learning increase as well.

15 DE Reg. 77 (07/01/11)

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

Statutory Authority: 16 Delaware Code, Section 512 (16 Del.C. §512)  
16 DE Admin. Code 5100

### PUBLIC NOTICE

#### **DSSM: TANF, General Assistance, Refugee Cash Assistance Program Relating to Civil Unions**

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 (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding *Civil Unions*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by March 1, 2012.

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 amends related policies in the Division of Social Services Manual (DSSM) regarding *Civil Unions*.

#### **Statutory Authority**

146<sup>th</sup> General Assembly, Senate Bill #30, *An Act to Amend Title 13 of the Delaware Code Relating to Civil Unions*

#### **Background**

Signed into law by the Governor on May 11, 2011, Senate Bill #30 is an Act that creates the recognized legal relationship of civil union in Delaware for eligible persons. This Act further recognizes as civil unions for all purposes under Delaware law legal unions between two persons of the same sex entered into in jurisdictions outside of Delaware provided that such union and the parties thereto meet the Delaware eligibility requirements to enter into a civil union in the State of Delaware. Parties who enter into a lawful civil union in Delaware, or whose legal union is recognized as a civil union under Delaware law, will have all of the same rights, benefits, protections and responsibilities as married persons under Delaware law. It is not the intent of the Delaware General Assembly to revise the definition or eligibility requirements of marriage under Delaware law or to require any religious institution to perform solemnizations of civil unions.

#### **Summary of Proposal**

The purpose of the proposal is to clarify Division of Social Services (DSS) policies for the Temporary Assistance for Needy Families (TANF), General Assistance (GA), and Refugee Cash Assistance (RCA) programs

to ensure the rights and responsibilities of parties to a civil union are consistent and equal to partners in marriage. Parties to a civil union have the same eligibility and responsibilities as partners in a marriage when applying for, or participating in, Delaware's Cash Assistance programs.

The proposed changes affect the following policy sections:

- DSSM 3004, *Caretakers in TANF Families*
- DSSM 3028.2, *Optional Composition of Assistance Units*
- DSSM 4001, *Family Budget Group*
- DSSM 4005.3, *Step-Parent Income in the TANF Program*
- DSSM 4005.5, *Income of a Spouse in the GA Program*
- DSSM 8025, *Family Budget Group*

## DSS PROPOSED REGULATION #12-02 REVISIONS:

### 3004 Caretakers in TANF Families

Assistance is provided to needy families. A family is one or more children living with a specified relative, guardian, or custodian (adult acting in loco parentis).

Specified relative is defined as:

- Any relative by blood, marriage, or adoption who is within the fifth degree of kinship to the dependent child. The degree of relationship is as follows: a parent (1st degree), grandparent (2nd degree), sibling (2nd degree), great-grandparent (3rd degree), uncle or aunt (3rd degree), nephew or niece (3rd degree), great-great-grandparent (4th degree), great-uncle or aunt (4th degree), first cousin (4th degree), great-great-great-grandparent (5th degree), great-great uncle or aunt (5th degree), or a first cousin once removed (5th degree).
- Any other persons named in the above groups whose relationship to one of the child's parents is established by legal adoption;
- The spouse of any person named in the above groups even though the marriage terminated by death or divorce;

For the purposes of the TANF program a guardian is defined as:

- An adult providing an appropriate supportive living arrangement who has been appointed as guardian of the child(ren) in his/her care by an authorized court, or
- an adult who has received the consent and approval to exercise the day-to-day care, custody, and control of the child(ren) in his/her care by the Delaware Division of Family Services or any agency or court licensed or authorized to place children in a nonrelated home.
- A party to a civil union of any person named in the above groups even if the civil union terminated by death or dissolution.

A custodian or an adult acting *in loco parentis* ("in the place of a parent") is defined as:

An adult who provides an appropriate supportive living arrangement for the child(ren) in his/her care, and who has:

- intentionally taken over the duties of a parent and is responsible for exercising the day-to-day care, custody, and control of the child(ren),
- accepted the legal responsibility of caring for the child,
- been referred to the Delaware Division of Family Services for purposes of determining suitability of the adult to act *in loco parentis* and the dependency of the child(ren).

Adults acting in loco parentis are required to acknowledge their acceptance of the legal responsibility for the child(ren) in their care and their intentional acceptance of the day-to-day care, custody, and control of the child(ren) in their care. This acknowledgement must be in writing and on a Division of Social Services approved form.

The Division of Family Services (DFS), within the Department of Services for Children, Youth, and Their Families (DSCYF) must approve the living arrangement of a custodian and the children they are caring for by the next redetermination. If verification of consent and approval by DFS is not provided by the next redetermination, TANF payments should be stopped.

**Paternity Establishment:**

When a child lives with both the natural father and the mother but paternity has not been legally established, refer the parents to the Division of Child Support Enforcement (DCSE) for a voluntary acknowledgement of paternity. If the alleged father is unwilling to complete the voluntary acknowledgement of paternity, DSS will consider the child deprived of the care and support of his/her father. Refer the case to DCSE for follow-up on establishing paternity.

When a child lives with the natural father, but paternity has not been legally established, have the father complete a declaration of natural relationship document. Obtain one additional document from the documents listed below to support the natural father's claim of relationship.

- Social Security Administration records;
- Hospital, clinic, or Public Health Records;
- Department of Services to Children, Youth, and Their Families records;
- Census Bureau records;
- Income Tax records specifying the relationship;
- Insurance policies which specify the relationship;
- Military or veterans records which specify the relationship Statement from a minister, priest, or rabbi;
- Family Bible, Baptismal Certificate or other family records (such as wills, deeds), written in ink and not altered which specify the relationship;
- Statement of physician or midwife who attended the birth and remembers the names of the people involved;
- Other government or local agency records, newspaper records, or local histories which specify the relationship;
- A Declaration of Natural Relationship signed by the mother or other maternal relative;
- If none of the above documents are available, a declaration of Natural Relationship signed by a knowledgeable person.

When a child lives with a relative of the natural father, but paternity has not been legally established, have the relative complete a Declaration of Natural Relationship document. Obtain one additional document from the documents listed above to support the relative's claim of relationship.

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

**3028.2 Optional Composition of Assistance Units**

1. In TANF the dependent child, and if residing in the home and otherwise eligible, the child's blood-related or adoptive minor siblings, and the child's natural or adoptive parent(s) must be included in the unit. When both parents of the dependent child are in the home, both parents must be included in the unit regardless of their marital status. In a case where paternity has not been legally established, the putative father must acknowledge paternity as a condition of eligibility.

A non-parent needy caretaker relative may be included in the unit if the caretaker so chooses.

The needy legal spouse of a caretaker relative may be included in the unit only if the caretaker is the natural or adoptive parent of the child(ren), and the caretaker is incapacitated or is the principal wage earner and qualifies as an unemployed parent.

2. In TANF married/civil union couple cases, where each adult has children from previous relationships that are eligible for TANF, include the family in one TANF unit. If the couple has children in common who are also eligible for TANF, include these children in the unit also.
3. In TANF married, civil union, or unmarried couple cases where each adult has children from previous relationships who are eligible for TANF, they have the option of being in one assistance unit or two separate assistance units. If the unit fails financially, a separate assistance unit may be established for the child(ren) of the previous relationships.

~~For example, EXAMPLE:~~ A couple each have a child from previous relationships. Initially, we place all the family members into one TANF assistance unit. Income from the ~~male partner's~~ Partner A's job makes the family ineligible for TANF. We have the option of placing ~~the female partner~~ Partner B and his or her child from a previous relationship into a TANF assistance unit. In this scenario, if the couple were married/in a civil union, a step-parent situation would exist. If the couple were not married/in a

civil union, eligibility is based solely on the information from the ~~female partner~~ Partner B and his or her child.

4. When a couple, ~~married or unmarried~~, has a child in common and each partner has a child from a previous relationship, the couple, the child in common, and the other children will initially be placed in one TANF assistance unit. The siblings keep this as one assistance unit.

~~Example: A couple each have a child from previous relationships. Initially, we place all the family members into one TANF assistance unit. Income from the male partner's job makes the family ineligible for TANF. We have the option of placing the female partner and his or her child from a previous relationship into a TANF assistance unit. In this scenario, if the couple were married a step-parent situation would exist. If the couple were not married, eligibility is based solely on the information from the female partner and his or her child.~~

5. A pregnant woman, with no other children, may receive TANF beginning on the first day of the month that her child is expected to be born, if the woman meets all other technical and financial eligibility requirements, and her expected due date has been verified by a physician. The child is added to the unit, and a supplemental grant is effective the date of its birth if the birth is reported within five (5) days. If the birth is not reported within five (5) days, the child is added to the unit and the grant is effective as of the date of the report. The child's father, if he is otherwise eligible, is also added using these guidelines. Procedures for completing supplemental applications for newborns are outlined in DSSM 2000.6.

(See DSSM 4010 ~~for budgeting instructions~~ Determining Financial Eligibility and Grant Amounts for Pregnant Women in TANF and GA)

A pregnant woman who plans to place her child for adoption is eligible for TANF beginning the 1st day of the month her child is due, assuming she meets all other eligibility requirements. If she still plans to terminate her parental rights after the child is born, the child cannot be added to the assistance unit and the child is not eligible for Medicaid. In this instance, the TANF case is closed at the end of the month that the birth occurs.

6. If a child receiving SSI is the only child in the home, the child's caretaker relative can receive TANF if the child is deprived of parental care. The caretaker's needy legal spouse can receive TANF if the caretaker is the child's natural or adoptive parent and the caretaker is incapacitated or qualifies as an unemployed parent.
7. For GA eligible adults, include the adult. The adult's spouse or UMP is also included if the spouse or partner also meets a condition of unemployment.
8. A woman who has a verified pregnancy and receives a GA check the month she delivers her child is eligible for TANF that month for herself and her child if she reports the birth to DSS, and she meets all other TANF technical and financial eligibility requirements.

The TANF grant is effective the date of the child's birth if the birth is reported within five (5) days.

The TANF grant is effective the date of the report if the birth is not reported within five (5) days.

If the pregnancy had not been verified, the TANF grant is effective the date the birth is verified.

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

#### **4001 Family Budget Group**

Assume there is no income.

Family budget group is the total number of persons whose needs and income are budgeted together. This will always include the following:

1. Married and civil union couples if they live together and are both eligible for a grant.
2. ~~Unmarried couples~~ Couples who do not have legally recognized marriages/civil unions but who live together as husband and wife or spouses and are both eligible for a grant.

NOTE: In GA, couples will be considered as living together as husband and wife if:

- a. They say they are ~~married~~, joined by a civil union or marriage even if the marriage/civil union cannot be verified, or

- b. They are recognized as parties to a civil union, spouses, or husband and wife in the community, or
  - c. One partner uses the other's last name, or
  - d. They state they intend to marry/join in a civil union, or
  - e. They jointly hold resources.
3. Parents and their eligible children.
- Family budget groups will consist of more than one assistance unit when all budget group members are not placed in the same assistance unit. In those instances, the need standard for the family cannot exceed the TANF need standard for the budget group size as specified in Section 4007.2. (See DSSM 3028 for a definition of an assistance unit)
- In households that include a caretaker, the caretaker's children and other children that are the caretaker's responsibility, the caretaker's needs and income and those of his/her children are always budgeted together. The needs and income of any other children in the home will be considered separately. In these situations, the separate budget groups can be combined to form a single family budget group only when the following conditions are met:
- A. Assistance would be denied to any of the recipients by maintaining separate budget groups.
  - B. The caretaker understands the implications of combining the budget groups (i.e., lower assistance payments.) and chooses to have his/her needs and income and those of his/her children considered with the needs and income of any other children in the home.

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

**4005.3 Step-Parent Income in the TANF Program**

In the TANF Program, a step-parent through marriage or civil union who resides with his/her step-children is considered responsible for supporting those children. A portion of the step-parent's income is used to determine the step-children's financial eligibility and the amount of assistance the children receive. To determine the amount of the step-parent's income that is deemed to the assistance unit, follow the steps listed below:

**NOTE:** The assistance unit must include the step-child, the step-child's natural or adoptive parent, and siblings who are also living in the home and who are otherwise eligible.

- 1. Determine the step-parent's gross income.
- 2. Deduct \$90.00 from earned income.
- 3. Deduct the TANF standard of need (See DSSM 4007.2) for the family size that includes the step-parent and those individuals who
  - a. live in the step-parent's home
  - b. are the step-parent's dependents for income tax purposes
  - c. are not members of the TANF assistance unit because of a sanction.(These individuals cannot include a person who is removed from the TANF unit because he/she failed without good cause to cooperate with DCSE or the First Step Program and is being sanctioned.)
- 4. Deduct amounts paid by the step-parent to individuals who are not living in the home, but who are claimed as dependents for income tax purposes.
- 5. Deduct child support or alimony payments made to individuals not living in the home.

The remainder is unearned income used to determine the assistance unit's financial eligibility and grant amount.

Summary - Total Income

- \$90.00 from earned income

- Standard of Need

- Payments to dependents

Countable Income

The resources of a step-parent are not considered in determining the financial eligibility of the assistance unit.

Resources held jointly by the step-parent and the step-parent's spouse are considered available in their entirety to both partners. If the spouse is a member of the assistance unit, these resources are considered in determining the unit's eligibility.

Step-parent budgeting is only used to determine the financial eligibility or benefit level of a step-child when the step-child's natural parent resides in the home. Stepparent income is not used to determine financial eligibility or benefit levels when the step-child's natural parent does not reside in the home.

NOTE: If the step-parent is included as a member of the TANF unit, his/her income is budgeted in accordance with rules governing the income of TANF applicants and recipients.

*(Break in Continuity of Sections)*

#### 4005.5 Income of a Minor Parent's Parent of Legal Guardian in the GA Program

This policy applies to GA applicants and recipients who are married/party to a civil union and live with their spouse.

To determine GA financial eligibility and grant amounts for unemployable adults where the GA eligible person resides with a spouse who has income but is not also technically eligible for a grant.

1. Determine the spouse's gross unearned income.
2. Determine the spouse's gross earned income.
3. Deduct \$50 for work expenses from the spouse's earned income.
4. Add amounts from Step 1 and Step 3 to determine the spouse's countable income.
5. Compare the sum in Step 4 to the GA Standard of Need for two people.
6. If income exceeds the standard, the GA case is financially ineligible.
7. If income is less than the standard, the GA case is financially eligible. To determine the grant amount, subtract the income from the GA Standard of Need for two. The grant equals the difference, if the difference is less than the GA Standard of Need for one person. The grant equals the GA standard if one of the differences is equal to or greater than that amount.

EXAMPLES:

1. Spouse of GA eligible has \$200 countable income.  
\$200 is greater than \$166 - Case is ineligible.
2. Spouse has \$130 countable income.  
\$130 is less than \$166 - Case is eligible.  
\$166 minus \$130 = \$36 = GA grant.
3. Spouse has \$30 countable income.  
\$30 is less than \$166  
\$166 minus \$30 = \$136
4. GA grant = \$123 (maximum for one person)

DCIS Instructions

~~The spouse's countable income and the grant amount must be determined manually. If the grant is to be reduced by the spouse's income (as in Example #2), the amount that equals the difference between the GA Standard of Need for one and the grant to be issued is entered as PA only unearned income on the TD.~~

EXAMPLE (using #2 above): \$123 (GA S/N) - \$36 (GA grant) = \$87 (amount entered as PA only unearned income).

*(Break in Continuity of Sections)*

#### 8025 Family Budget Group

Family budget group is the total number of persons whose needs and income are budgeted together. This will always include the following:

1. Married and civil union couples if they live together and are both eligible for a grant.

2. ~~Unmarried couples~~ Couples who do not have legally recognized marriages/civil unions but who live together as husband and wife or spouses and are both eligible for a grant.

NOTE: In RCA, couples will be considered as living together as husband and wife if:

- a. They say they are ~~married~~, joined by a civil union or marriage even if the marriage/civil union cannot be verified, or
  - b. They are recognized as parties to a civil union, spouses, or husband and wife in the community, or
  - c. One partner uses the other's last name, or
  - d. They state they intend to marry/join in a civil union, or
  - e. They jointly hold resources.
3. Parents and their eligible children.

Family budget groups will consist of more than one assistance unit when all budget group members are not placed in the same assistance unit. In those instances, the need standard for the family cannot exceed the RCA need standard for the budget group size as specified in Section 8031.1 (See DSSM 8021)

In households that include a caretaker, the caretaker's children and other children that are the caretaker's responsibility, the caretaker's needs and income and those of his/her children are always budgeted together. The needs and income of any other children in the home will be considered separately. In these situations, the separate budget groups can be combined to form a single family budget group only when the following conditions are met:

1. a. Assistance would be denied to any of the recipients by maintaining separate budget groups.
2. b. The caretaker understands the implications of combining the budget groups (i.e., lower assistance payments, increased Medicaid coverage, etc.) and chooses to have his/her needs and income and those of his/her children considered with the needs and income of any other children in the home.

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## **DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

### **DIVISION OF WATERSHED STEWARDSHIP**

Statutory Authority: 7 Delaware Code, Chapter 40 (7 **Del.C.** Ch.40)  
7 **DE Admin. Code** 5101

#### **5101 Sediment and Stormwater Regulations**

#### **REGISTER NOTICE SAN #2006-16**

**1. Title Of The Regulations:**

*Delaware Sediment and Stormwater Regulations*

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

Substantial revisions to the *Delaware Sediment and Stormwater Regulations* are proposed to address April 2005 recommendations of Governor Minner's Task Force on Surface Water Management. The regulations have been revised to address stormwater volume management, conveyance adequacy, operation and maintenance of stormwater management facilities, and to establish performance standards for sediment and stormwater practices.

**3. Possible Terms of the Agency Action:**

There is no sunset date for this regulation.

**4. Statutory Basis or Legal Authority to Act:**

Title 7, Delaware Code, Chapter 40, the Sediment and Stormwater Law

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

Upon the effective date of revised regulations, the *Regulations Governing the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay, and Little Assawoman Bay Watersheds*, effective November 11, 2008, Section 5.0 Sediment and Stormwater Controls, may be affected.

**6. Notice of Public Comment:**

The Department of Natural Resources and Environmental Control (DNREC) Division of Watershed Stewardship will conduct a public hearing on the proposed revisions to the *Delaware Sediment and Stormwater Regulations Regulation No. 5101 Sediment and Stormwater Regulations*, to address the April 2005 recommendations of Governor Minner's Task Force on Surface Water Management.

The public hearing on this proposed revision of **Regulation No. 5101 Sediment and Stormwater Regulations** will be held Thursday, March 1, 2012, at 6:00 p.m. in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, DE 19901.

The proposed regulation revisions may be inspected at the following locations:

Department of Natural Resources and Environmental Control  
89 Kings Highway  
Dover, DE 19901

Kirkwood Library  
6000 Kirkwood Highway  
Wilmington DE 19808

Kent County Public Library  
497 South Red Haven Lane  
Dover, DE 19901

Georgetown Public Library  
123 West Pine Street,  
Georgetown, DE 19947

The proposed regulation revisions may be inspected on the DNREC Division of Watershed Stewardship's Sediment and Stormwater Program website: <http://www.dnrec.delaware.gov/swc/Pages/SedimentStormwater.aspx>

For additional information or any appointments to inspect the proposed regulation revisions at DNREC, please contact Elaine Webb, DNREC Sediment and Stormwater Program, 89 Kings Highway, Dover, DE 19901, (302) 739-9921, [Elaine.Webb@state.de.us](mailto:Elaine.Webb@state.de.us). Review of the documents at the libraries will occur during the libraries' scheduled operating hours.

Interested parties shall submit comments in writing on the proposed regulation revisions by the end of the comment period, as designated by the hearing officer at this hearing, to Elaine Webb and/or statements and testimony may be presented either orally or in writing at the March 1, 2012 public hearing. It is requested that those interested in presenting statements at the public hearing register in advance and that written statements and comments be addressed to:

Elaine Webb  
DNREC – Sediment and Stormwater Program  
89 Kings Highway  
Dover, DE 19901

**7. PREPARED BY:**

Elaine Webb / (302) 739-9921 / January 11, 2012  
Email address: [Elaine.Webb@state.de.us](mailto:Elaine.Webb@state.de.us)

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## 5101 Sediment and Stormwater Regulations

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

**5101 Sediment and Stormwater Regulations**

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## DEPARTMENT OF STATE

### DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 306(a)(1) (24 **Del.C.** §306(a)(1))  
24 **DE Admin. Code** 300

### PUBLIC NOTICE

#### 300 Board of Architecture

The Delaware Board of Architects in accordance with 24 **Del.C.** §306(a)(1) has proposed changes to its rules and regulations. The proposal amends multiple sections of the rules and regulations to address continuing education requirements, add appropriate definitions and conform requirement for eligibility for examination and registration to NCARB standards.

Members of the public can offer comments on the proposed changes by submitting their comments in writing to the Board of Architects, Attn: Nicole Williams, 861 Silver Lake Boulevard, Suite 203, Dover, Delaware 19904. The final date to receive written comments will be March 1, 2012. Anyone wishing to receive a copy of the proposed regulations may obtain a copy from the Board of Architects at the above address. The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the written comment period.

#### 300 Board of Architects

#### 1.0 Scope: Definitions

**Purpose:** Regulations of the Delaware Board of Architects are set forth for the purpose of clarifying and implementing 24 **Del.C.** Ch. 3 which establishes the Board and confers upon it responsibility for registration of architects and the regulation of the practice of architecture.

**Invalidity:** Any provision found to be invalid shall not affect any other provision and the remaining provisions shall remain in full force and effect.

**Terms Defined by Statute:** Terms defined in 24 **Del.C.** Ch. 3 shall have the same meanings when used in these regulations, except where the context clearly indicates a different meaning.

**Terms Defined Herein:** As used in these regulations, the following terms shall have the following meanings except where the context clearly indicates a different meaning.

“**AIA**” American Institute of Architects

“**Administration of Construction Contracts**” Shall comprise at least the following services: (i) visiting the construction site on a regular basis as is necessary to determine that the work is proceeding generally in accordance with the technical submissions submitted to the building official at the time the building permit was issued; (ii) processing shop drawings, samples, and other submittals required of the contractor by the terms of the construction contract documents; and (iii) notifying an owner and the appropriate building official of any code violations, changes that affect code compliance, the use of any materials, assemblies, components, or equipment prohibited by a code, major or substantial changes between such technical submissions and the work in progress, or any deviation from the technical submissions that he or she identifies as constituting a hazard to the public, that he or she observes in the course of performing his or her duties.

## PROPOSED REGULATIONS

**“Applicant”** An individual who has submitted an application for registration to the Board.

**“Architect”** Any person who is authorized to practice architecture as defined in Title 24, Chapter 3 and who holds a current Certificate of Registration.

**“A.R.E.”** The current Architect Registration Examination, prepared by NCARB.

**“Board”** Delaware Board of Architects, 861 Silver Lake Blvd. Cannon Building, Suite 203, Dover, De 19903.

**“CACB”** Canadian Architectural Certification Board.

**“Continuing Education (CE)”** Continuing education is post-licensure learning that enables a registered architect to increase or update knowledge of and competence in technical and professional subjects related to the practice of architecture to safeguard the public’s health, safety, and welfare.

**“Continuing Education Hour (CEH)”** One continuous instructional hour (50 to 60 minutes of contact) spent in Structured Educational Activities intended to increase or update the architect’s knowledge and competence in Health, Safety, and Welfare Subjects. If the provider of the Structured Educational Activities prescribes a customary time for completion of such an Activity, then such prescribed time shall, unless the Board finds the prescribed time to be unreasonable, be accepted as the architect’s time for Continuing Education Hour purposes irrespective of actual time spent on the activity.

**“Direct Supervision”** That degree of supervision by a person overseeing the work of another, whereby the supervisor has both control over and detailed professional knowledge of the work prepared under the person’s supervision. Direct supervision shall mean that the supervisor and the individual being supervised perform their work in the same office where personal contact is routine.

**“Division”** Division of Professional Regulation, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, Delaware 19904.

**“EESA”** Educational Evaluation Services for Architects. A provider of architectural education evaluation services administered by NAAB.

**“Examination”** The current Architect Registration Examination (A.R.E.), ~~as accepted by the Board of~~ NCARB.

**“Health, Safety, and Welfare Subjects”** Technical and professional subjects that the Board deems appropriate to safeguard the public and that are within the following enumerated areas necessary for the proper evaluation, design, construction, and utilization of buildings and the building environment.

BUILDING SYSTEMS: Structural, Mechanical, Electrical, Plumbing, Communications, Security, Fire Protection

CONSTRUCTION CONTRACT ADMINISTRATION: Contracts, Bidding, Contract Negotiations

CONSTRUCTION DOCUMENTS: Drawings, Specifications, Delivery Methods

DESIGN: Urban Planning, Master Planning, Building Design, Site Design, Interiors, Safety and Security Measures

ENVIRONMENTAL: Energy Efficiency, Sustainability, Natural Resources, Natural Hazards, Hazardous Materials, Weatherproofing, Insulation

LEGAL: Laws, Codes, Zoning, Regulations, Standards, Life Safety, Accessibility, Ethics, Insurance to protect Owners and Public

MATERIALS and METHODS: Construction Systems, Products, Finishes, Furnishings, Equipment

PRE-DESIGN: Land Use Analysis, Programming, Site Selection, Site and Soils Analysis, Surveying

PRESERVATION: Historic, Reuse, Adaptation

**“IDP”** Intern Development Program of NCARB.

**“IDP Applicant”** An individual who has completed the IDP training requirements set forth herein and has submitted an application for registration to the Board.

**“Initial Registration”** Receiving for the first time a certificate of registration as an architect in any United States jurisdiction or Canadian province.

**“Intern”** Any individual in the process of satisfying the Board's training requirements. This includes graduates from recognized architectural programs, architectural students who acquire acceptable training prior to graduation and other qualified individuals identified by the Board.

**“NAAB”** The National Architectural Accrediting Board.

**“NCARB”** The National Council of Architectural Registration Boards.

**“Other Official”** A vice president, treasurer, secretary or board officer, but shall not mean a subcommittee chairperson, subcommittee member or general member.

**“Principal”** An individual who is a registered architect and in charge of an organization's architectural practice, either alone or with other registered architects.

**“Responsible Control”** That amount of control over and detailed professional knowledge of the content of technical submissions during their preparation as is ordinarily exercised by a registered architect applying the required professional standard of care, including but not limited to an architect's integration of information from manufacturers, suppliers, installers, the architect's consultants, owners, contractors, or other sources the architect reasonable trusts that is incidental to and intended to be incorporated into the architect's technical submissions if the architect has coordinated and reviewed such information. Other review, or review and correction, of technical submissions after they have been prepared by others does not constitute the exercise of responsible control because the reviewer has neither control over nor detailed professional knowledge of the content of such submissions throughout their preparation.

**“Safety”** Design characteristics of a building or its surrounding site relating to, but not limited to, compliance with occupancy classification requirements; compliance with construction classification requirements; means of egress; fire-rated construction assemblies; compliance with interior finish requirements; fire detection, alarm and suppression systems; and compliance with environmental health regulations and smoke control systems, compliance with the minimum requirements for heating and cooling; natural and artificial illumination; natural and artificial ventilation; physical hygiene; and accessibility from environmental barriers.

**“Structured Educational Activities”** Educational activities in which at least 75 percent of an activity's content and instructional time must be devoted to Health, Safety, and Welfare Subjects related to the practice of architecture, including course of study or other activities under the areas identified as Health, Safety and Welfare Subjects and provided by qualified individuals or organizations, whether delivered by direct contact or distance learning methods.

**“Technical Submissions”** Designs, drawings, specifications, studies and other technical documents prepared in the course of practicing architecture. All technical submissions shall be identified by date and by the name and address of the registered architect or the registered architect's firm.

**“Training Requirements”** The Intern Development Program (IDP) training requirements established from time to time by NCARB for certification by NCARB, as accepted by the Board from time to time.

**“TU”** Training unit, used to calculate the hours of training earned by IDP applicants

## 12 DE Reg. 70 (07/01/08)

### 2.0 General Provisions

#### 2.1 NCARB:

- 2.1.1 The Board shall maintain membership in NCARB and pay the necessary costs thereof.
- 2.1.2 The Board shall keep up-to-date information on the recommended policies adopted from time to time by NCARB.
- 2.1.3 The Board shall cooperate with NCARB in establishing uniform standards of architectural registration throughout the United States.

#### 2.2 Practice of Architecture:

- 2.2.1 Only architects shall engage in the practice of architecture as defined in 24 Del.C. Ch. 3. The practice of architecture means the rendering or offering to render those services, hereinafter described, in connection with the design and construction, enlargement or alteration of a structure or group of structures which have as their principal purpose human habitation or use, and the

utilization of space within and surrounding structures; the services referred to include planning, preparing studies, designs, drawings, specifications and other technical submissions and furnishing administration of construction contracts.

- 2.2.2 Services offered in connection with the "utilization of space within" such structures include space planning and programming, and interior design. Services offered in connection with the "space surrounding such structures" include site analysis and site design. These provisions shall not be construed to prevent or affect the practice of landscape architecture by a landscape architect or the practice of engineering by an engineer.
- 2.2.3 The seal of an architect shall not be required for:
- 2.2.3.1 activities associated with detached, single and two-family dwellings, and any sheds, storage buildings and garages incidental to such dwellings or
  - 2.2.3.2 farm buildings, including barns, silos, sheds or housing for farm equipment and livestock, provided such structures are designed to be occupied by no more than ten (10) persons; or
  - 2.2.3.3 alteration, renovation or remodeling of a structure which does not affect structural or other safety features of the structure, regardless of whether local authorities require a building permit for such work and when the work contemplated by the design does not require the issuance of a permit under applicable building codes.
  - 2.2.3.4 Pursuant to 24 **Del.C.** §303(b)(11) and (12), every person holding a NCARB Certificate, but not registered as an architect in Delaware and intending to offer architectural services in Delaware or participate in an architectural design competition in Delaware shall submit notice of such intent to the Board using the appropriate form appended to these regulations.

**12 DE Reg. 70 (07/01/08)**

**3.0 Application for Registration:**

- 3.1 Submission of Application fee: Every individual seeking registration shall submit an application to the Board, accompanied by the filing fee established above. Such filing fee shall be determined in accordance with statutory criteria.
- 3.1.1 References from employers listed on an application for registration must be provided to substantiate the minimum experience required in support of education and training standards. It is the applicant's responsibility to see that fees references are submitted to the Board. Such reference information shall be submitted on forms furnished by the Board.
- 3.1.2 Proof of self-employment must be substantiated with the following:
- 3.1.2.1 a copy of business license(s) for those duration's claimed as part of the application or a letter from your accountant or local building official substantiating experience, or similar objective proof of self-employment.
- 3.2 Applicants; General:
- 3.2.1 Applicants needing additional practical experience reference forms may use photostatic copies.
  - 3.2.2 The Board will take no action to review an application until all references, transcripts and fees are received.
  - 3.2.3 An applicant is not registered until so notified in writing by the Board.
  - 3.2.4 Filing of an application, fees, etc., shall not be construed as completing the registration process; the board will register applicants at regular Board meetings only.
  - 3.2.5 A license issued by the Division of Professional Regulation certifies that the individual named has met the qualifications of the Board to engage in practice.
- 3.3 Requirements of All Applicants. Applicants Must:
- 3.3.1 submit the required fees
  - 3.3.2 answer all questions on the application form completely and legibly.

- 3.3.3 obtain the notarization of the application in the space provided. Applications shall contain a current affidavit that has been signed and notarized within the twelve (12) months immediately preceding presentation of the application to the Board.
- 3.4 Applicants for Registration by Examination (A.R.E.):
  - 3.4.1 Must have filed a completed application with the Board, including the NCARB record showing completion of IDP training requirements. Eligibility for admission to examination shall be determined by NCARB.
- 3.5 An applicant re-applying with a lapsed registration shall submit evidence of Continuing Education compliance for the preceding two (2) year period.

#### **4.0 Registration Standards:**

- 4.1 Registration Standards: To be granted registration an applicant must:
  - 4.1.1 ~~Hold a professional degree in architecture from a degree program that is accredited by NAAB at the time of graduation or not later than two years after termination of enrollment. Receipt of a professional degree in architecture from a degree program accredited by CACB will be accepted as equivalent to a NAAB accredited professional degree in architecture.~~
  - 4.1.2 ~~Applicants who received their education outside of the United States shall obtain and provide to the Board an educational evaluation by EESA as directed through NAAB, and must provide evidence of training and degree equivalent to accredited programs. For purposes of 24 Del.C. §307(a)(1), an evaluation by EESA of training and degree equivalent to accredited programs constitutes such other education as the Board deems equivalent.~~
  - 4.1.3 ~~Applicants for admittance to the A.R.E. must submit proof of completion of IDP requirements through NCARB.~~
  - 4.1.4 ~~Have passed the examination. Timing of administration and retake policy for failed portions of the examination will be governed by the rules adopted from time to time by NCARB.~~
  - 4.1.5 ~~Have complied with all regulations of the Board and 24 Del.C. Ch. 3.~~
  - 4.1.1 Education – meet the Education Requirements as set forth in the NCARB Education Guidelines. Check NCARB's website, [www.ncarb.org](http://www.ncarb.org) for updates and the most current information regarding the NCARB Education Guideline.
  - 4.1.2 Training – meet the Training Requirements set forth in the NCARB Intern Development Program Guidelines (IDP). Check NCARB's website, [www.ncarb.org](http://www.ncarb.org) for updates and the most current information regarding the IDP.
  - 4.1.3 Examination – have passed the Architect Registration Examination (ARE) in accordance with the NCARB pass/fail standards current at the time the applicant takes the Examination.
  - 4.1.4 Have complied with all regulations of the Board and 24 Del.C. Ch. 3.
  - 4.1.5 Agree with the following conditions of examination:
    - 4.1.5.1 take the ARE at any NCARB-approved test center, whether or not it is located in Delaware.
    - 4.1.5.2 to accept the ARE results as determined by NCARB.
    - 4.1.5.3 if there is any alleged misbehavior on the part of an applicant in connection with taking the examination, the board will investigate the allegation and take appropriate action. Misbehavior may include, without limitation, violation of NCARB's guidelines or policies, or an applicant's confidentiality agreements with respect to the examination.

**12 DE Reg. 70 (07/01/08)**

#### **5.0 IDP Training Requirements**

- 5.1 ~~The IDP is a requirement for all applicants for initial registration in the State of Delaware. Applicants holding a current registration in good standing in another United States jurisdiction or Canadian province and documenting five (5) or more years of practicing architecture immediately preceding the~~

~~date of the application that is acceptable to the Board may obtain a waiver of the IDP requirement. A request for waiver shall be made on a form prescribed by the Board.~~

- 5.2 ~~The IDP, which is administered by the National Council of Architectural Registration Boards (NCARB), will be initiated by completing an application for NCARB/IDP Council Record and submitting required application fees. This application may be obtained from NCARB, 1801 K Street NW, Suite 1100, Washington, D.C. 20006 1310 or [www.ncarb.org](http://www.ncarb.org). Preparation of all components of the IDP record for references, transcripts, training, etc., will be done in accordance with current NCARB standards. The NCARB Council Record will be accepted as verification of education and training requirements for initial registration.~~

## **5.0 Reciprocal Registration**

- 5.1 Reciprocal Registration – An applicant who holds a current and valid certification issued by NCARB and submits satisfactory evidence of such certification to the Board shall be registered without the necessity of complying with provisions 4.1.2 through 4.1.4 if he/she:
- 5.1.1 holds a current and valid registration as an architect issued by a registration authority of the United States or Canada, and submits satisfactory evidence for such registration to the Board, and
- 5.1.2 files his/her application with the Board, upon a form prescribed by the Board, containing such information satisfactory to the Board concerning the applicant, as the Board considers pertinent, and pays the applicable fee established by the Board.

**12 DE Reg. 70 (07/01/08)**

## **6.0 Registration**

- 6.1 Duration - Each certificate of registration issued by the Board shall be valid for two years, or the expiration of the current licensing period.
- 6.2 Continuing Education requirements for renewal.
- 6.2.1 ~~For registration periods beginning August 1, 2007 and thereafter, each holder of a certificate of registration shall complete twenty four (24) contact hours of continuing education acceptable to the Board during each biennial registration period.~~
- 6.2.2 ~~All continuing education shall be obtained in the areas of Health, Safety and Welfare. The following are acceptable continuing education: a) NCARB monograph programs; b) health safety and welfare programs approved by AIA.~~
- 6.2.3 ~~Completion of required continuing education is a condition for renewal of a certificate of registration.~~
- 6.2.4 ~~One (1) contact hour is defined as one hour or one unit of acceptable continuing education in accordance with the standards of NCARB for NCARB monograph programs and the AIA for health, safety and welfare programs approved by the AIA.~~
- 6.2.5 ~~An Architect who has been registered for less than one year in Delaware on July 31 biennial renewal shall be exempt from the continuing education requirement for the preceding two (2) year period.~~
- 6.2.6 ~~Each registered architect shall be required to attest to the satisfactory completion of twenty four (24) contact hours of continuing education within the immediately preceding two (2) year period. No continuing education credits may carryover over into a later biennial period.~~
- 6.3 ~~Continuing Education Rule:~~
- 6.3.1 ~~Random audits of compliance will be performed by the Board. All registrants shall maintain documentation of continuing education, which shall include proof of attendance and verification that the education was an NCARB monograph course or a health, safety and welfare course approved by AIA.~~
- 6.3.2 ~~Attestation of compliance may be completed electronically if the renewal is accomplished online. Alternatively, paper renewal documents that contain the attestation of compliance may be submitted.~~

- ~~6.3.3 Attestation of continuing education shall be submitted to the Division of Professional Regulation prior July 31 of the reporting year.~~
- 6.4 ~~Hardship Extension: The Board may, in its discretion, grant an extension of time within which the continuing education requirement must be completed for reasons, including, but not limited to, illness, disability, military service, and exceptional family responsibilities. The period of hardship extension granted shall be determined by the Board. Requests for a hardship extension must be in writing and submitted to the Board prior to the expiration of the licensing period.~~
- 6.2.1 In addition to all other requirements for registration renewal, an architect must complete a minimum of 12 Continuing Education Hours each calendar year or be exempt from these continuing education requirements as provided below. Failure to comply with these requirements may result in non-renewal of the architect's registration.
- 6.2.1.1 Continuing Education Hours. 12 Continuing Education Hours must be completed in Health, Safety, and Welfare Subjects acquired in Structured Educational Activities. Continuing Education Hours may be acquired at any location. Excess Continuing Education Hours may not be credited to a future calendar year.
- 6.2.1.2 Reporting and Record keeping. An architect shall complete and maintain forms as required by the Board certifying that the architect has completed the required Continuing Education Hours. Forms may be audited by the Board for verification of compliance with these requirements. Documentation of reported Continuing Education Hours shall be maintained by the architect for six years from the date of award. If the Board disallows any Continuing Education Hours the architect shall have 60 days from notice of such disallowance either to provide further evidence of having completed the Continuing Education Hours disallowed or to remedy the disallowance by completing the required number of Continuing Education Hours (but such Continuing Education Hours shall not again be used for the next calendar year). If the Board finds, after proper notice and hearing, that the architect willfully disregarded these requirements or falsified documentation of required Continuing Education Hours, the architect may be subject to disciplinary action in accordance with the Board regulations.
- 6.2.1.3 Exemptions. An architect shall not be subject to these requirements if:
- 6.2.1.3.1 The architect has been granted emeritus or other similar honorific but inactive status by the Board; or
- 6.2.1.3.2 The architect otherwise meets all renewal requirements and is called to active military service, has a serious medical condition, or can demonstrate to the Board other like hardship, then upon the Board's so finding, the architect may be excused from some or all of these requirements.
- ~~6.4 Hardship Extension: Requests for a hardship extension must be in writing and submitted to the Board prior to the expiration of the licensing period. The Board may, at its discretion, grant an extension of time within which the Continuing Education requirement must be completed. The period of hardship extension granted shall be determined by the Board.~~
- 6.5 Late Renewal
- 6.5.1 A registrant that has failed to renew on or before July 31<sup>st</sup> renewal date may apply to the Board to renew their registration within ~~six (6)~~ four (4) months following the renewal date.
- 6.5.2 All late renewal applications must be accompanied by:
- 6.5.2.1 Renewal fee
- 6.5.2.2 Late renewal fee
- 6.5.2.3 Documentation of compliance with the continuing education requirement prior to the renewal date.
- 6.5.3 A registrant who has failed to complete the Continuing Education requirement ~~by the August 4 renewal date of the previous two calendar years~~ by the July 31<sup>st</sup> renewal date may request, in writing, an extension of time of no more than ~~six (6)~~ four (4) months following the July 31<sup>st</sup> renewal

date to satisfy the immediately preceding two (2) year requirement. The request for an extension must be received by the Board in writing prior to the July 31<sup>st</sup> renewal date.

6.5.4 No continuing education completed during the late period may be used to satisfy future renewal requirements.

6.6 Not Transferable - A certificate of registration shall not be transferable.

6.7 Revocation, Suspension, Cancellation or Non-renewal of Registration - In the event of revocation, cancellation, suspension or nonrenewal of any registration, the registered architect shall be required immediately to return his/her Certificate of Registration, seal and license to the Board. Civil penalties may be imposed for failure to promptly return the Certificate of Registration, seal and license to the Board. 24 Del.C. §317(d).

6.8 Reciprocity

6.8.1 Registration through reciprocity applications shall be governed by 24 Del.C. §309.

6.8.2 Applicants for registration through reciprocity who were previously registered as architects in Delaware and had the Certificate of Registration cancelled or lapsed shall be required to certify that they have satisfied the minimum Continuing Education Requirement for Renewal provided in Regulation 6.2 and 6.3 for the two year period preceding the new registration, notwithstanding that the Certificate of Registration was cancelled or lapsed.

**9 DE Reg. 1764 (5/1/06)**

**12 DE Reg. 70 (07/01/08)**

## **7.0 Rules of Professional Conduct - All architects shall abide by these Rules of Professional Conduct.**

7.1 Competence

7.1.1 When practicing architecture, an architect shall act with reasonable care and competence, and shall apply the technical knowledge and skill which are ordinarily applied by architects of good standing, practicing in the same locality.

7.1.2 In designing a project, an architect shall take into account applicable building laws and regulations. While a registered architect may rely on the advice of other professionals (e.g., attorneys, engineers and other qualified persons) as to the intent and meaning of such regulations, once having obtained such advice, an architect shall not knowingly design a project in violation of such laws and regulation.

7.1.3 An architect shall undertake to perform professional services only when he or she, together with those whom the architect may engage as consultants, is qualified by education, training and experience in the specific technical areas involved.

7.1.4 No individual shall be permitted to engage in the practice of architecture if, in the Board's judgment, such individual's professional competence is substantially impaired by physical or mental disabilities.

7.2 Conflict of Interest

7.2.1 An architect shall not accept compensation for his/her services from more than one party on a project unless the circumstances are fully disclosed to and agreed to by (such disclosure and agreement to be in writing) all interested parties.

7.2.2 If an architect has any business association or direct or indirect financial interest which is substantial enough to influence his/her judgment in connection with the performance of professional services, the architect shall fully disclose in writing to his/her client or employee the nature of the business association or financial interest. If the client or employee objects to such association or financial interest, the architect will either terminate such association or interest or offer to give up the commission or employment.

7.2.3 An architect shall not solicit or accept compensation from material or equipment suppliers in return for specifying or endorsing their products. As used herein, "compensation" shall not mean customary and reasonable business hospitality, entertainment, or product education.

- 7.2.4 When acting as the interpreter of building contract documents and the judge of contract performance, an architect shall render decisions impartially, favoring neither party to the contract.
- 7.3 Full Disclosure
- 7.3.1 An architect, making public statements on architectural questions, shall disclose when he/she is being compensated for making such statements or when he/she has an economic interest in the issue.
- 7.3.2 An architect shall accurately represent to prospective or existing client or employee his/her responsibility in connection with work for which he/she is claiming credit.
- 7.3.3 If, in the course of his/her work on a project, an architect becomes aware of a decision taken by his/her employer or client, against such registered architect's advice, which violates applicable state or-municipal building laws and regulations which will, in the registered architect's judgment, materially and adversely affect the safety to the public of the finished project, the architect shall:
- 7.3.3.1 report the decision to the local building inspector or other public official charged with the enforcement of the applicable state or municipal building laws and regulations; and
- 7.3.3.2 refuse to consent to the decision; and
- 7.3.3.3 in circumstances where the architect reasonably believes that other such decisions will be taken, notwithstanding his/her objection, terminate his/her services with respect to the project. In the case of a termination in accordance with clause 3, the architect shall have no liability to his/her client or employer on account of such termination.
- 7.3.4 An architect shall not deliberately make a materially false statement or fail deliberately to disclose a material fact requested in connection with his/her application for a registration or renewal thereof.
- 7.3.5 An architect possessing knowledge of a violation of the provisions set forth in 7.0 by another architect shall report such knowledge to the Board.
- 7.4 Compliance with Laws
- 7.4.1 An architect shall not, in the conduct of his or her practice, knowingly violate any state, federal or local law, rule or regulation.
- 7.4.2 An architect shall neither offer nor make any payment or gift to a government official (whether elected or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which the architect is interested.
- 7.4.3 An architect shall comply with the registration laws and regulations governing his/her professional practice in any United States jurisdiction. An architect may be subject to disciplinary action if, based on grounds substantially similar to those which lead to disciplinary action in this jurisdiction, the architect is disciplined in any other United States jurisdiction.
- 7.4.4 An employer engaged in the practice of architecture shall not have been found by a court or an administrative tribunal to have violated any applicable federal or state law protecting the rights of persons working for the employer with respect to fair labor standards or with respect to maintaining a workplace free of discrimination. For purposes of this rule, any registered architect employed by a firm engaged in the practice of architecture who is in charge of the firm's architectural practice, either alone or with other architects, shall be deemed to have violated this rule if the firm has violated this rule.
- 7.5 Professional Conduct
- 7.5.1 Each office in Delaware offering architectural services shall have an architect resident and regularly employed in that office having direct supervision of such work.
- 7.5.2 An architect may sign and seal technical submissions only if the technical submissions were: (i) prepared by the architect; (ii) prepared by persons under the architect's responsible control; or (iii) prepared by another architect registered in this State if the signing and sealing architect has reviewed the other architect's work and either has coordinated the preparation of the work or has integrated the work into his or her own technical submissions, or (iv) prepared by another architect registered in any United States jurisdiction and holding the certification issued by NCARB if (a) the signing and sealing architect has reviewed the other architect's work and has integrated the work

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into his/her own technical submissions and (b) the other architect's technical submissions are prototypical building documents. An architect may also sign and seal drawings, specifications, or other work which is not required by law to be prepared by an architect if the architect has reviewed such work and has integrated it into his/her own technical submissions. "Responsible control" shall be that amount of control over and detailed professional knowledge of the content of technical submissions during their preparation as is ordinarily exercised by a registered architects applying the required professional standard of care, including but not limited to an architect's integration of information from manufacturers, suppliers, installers, the architect's consultants, owners, contractors, or other sources the architect reasonably trusts that is incidental to and intended to be incorporated into the architect's technical submissions if the architect has coordinated and reviewed such information. ~~Other- Reviewing, or reviewing and correcting on of,~~ technical submissions after they have been prepared by others does not constitute the exercise of responsible control because the reviewer has neither control over nor detailed knowledge of the content of such submissions throughout their preparation. Any registered architect signing or sealing technical submissions not prepared by that architect but prepared under the architect's responsible control by persons not regularly employed in the office where the architect is resident, shall maintain and make available to the Board upon request for at least five (5) years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the architect's control over and detailed knowledge of such technical submissions throughout their preparation. "Technical submissions" are designs, drawings, specifications, studies, and other technical reports prepared in the course of practicing architecture." Any registered architect signing or sealing technical submissions integrating the work of another architect into the registered architect's own work as permitted under clauses (iii) and (iv) above shall maintain and make available to the Board upon request for at least five (5) years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the registered architect's review of and integration of the work of such other architect's work into his/her own technical submissions, and that such review and integration met the required professional standard of care.

7.5.3 An architect shall neither offer nor make any gifts, other than gifts of nominal value (including, for example, reasonable entertainment and hospitality), with the intent of influencing the judgment of an existing or prospective client in connection with a project in which the architect is interested.

7.5.4 An architect shall not engage in conduct involving fraud or wanton disregard of the rights of others.

7.5.5 An architect shall not make misleading, deceptive, or false statements or claims.

### 7.6 Design and Use of Architect's Seal

7.6.1 Pursuant to 24 **Del.C.** §313, and subject to 6.7 and 7.5, each architect shall procure a seal, which shall contain the name of the architect; his/her registration number and the phrase REGISTERED ARCHITECT--STATE OF DELAWARE. This seal shall comply in all respects, including size and format, with the specimen shown below. The architect shall use his/her legal name on the Certificate of Registration, the seal and the license.



- 7.6.2 Pursuant to 24 **Del.C.** §313, all technical submissions which are published and/or are submitted to public authorities for building permits or regulatory approvals shall be sealed by the architect. Each design, each drawing, each set of specifications, all addenda and the cover of all other technical submissions shall be sealed. Other technical submissions include designs and drawings of a preliminary nature which are submitted to any public and/or the reviewing agency. When technical submissions are submitted for any permit, at each place where the seal is imprinted, there shall be an original signature, date of the signature, and the date of expiration of the architect's Delaware registration all located in close proximity to the seal in a format substantially similar to the following:

Signature: \_\_\_\_\_

Date of signature: \_\_\_\_\_

Date of registration expiration: \_\_\_\_\_

- 7.6.3 The seal appearing on any technical submission shall be prima facie evidence that said technical submission was prepared by or under the direct supervision of the individual named on said submission.
- 7.6.4 All technical submissions prepared by an architect shall contain the following legend wherever the architect's seal appears: "The professional services of the architect are undertaken for and are performed in the interest of [name of person employing architect]. No contractual obligation is assumed by the architect for the benefit of any other person involved in the project."
- 7.6.5 Pursuant to 24 **Del.C.** §303(c)(2), if a registered architect has not been employed to furnish construction contract administration services at the time such registered architect issues such technical submissions, the registered architect shall note on such technical submissions that the registered architect has not been so employed by including the following text, in minimum 12 point type, in close proximity to the seal:

The architect who sealed, signed and dated this document has not been employed to furnish construction contract administration services as defined in 24 **Del.C.** §303(c).

- 7.6.6 No person shall remove or alter any seal, signature or date required by 7.6.1, 7.6.4 and/or 7.6.5.  
**12 DE Reg. 70 (07/01/08)**

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## DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 1106 (24 **Del.C.** §1106)  
24 **DE Admin. Code** 1100

### PUBLIC NOTICE

#### 1100 Board of Dentistry and Dental Hygiene

The Board of Dentistry and Dental Hygiene ("the Board") in accordance with 24 **Del.C.** §1106(a)(1) has proposed amendments to Rule 5.0 *Supervision*. The proposed amendments require that a dentist must perform a clinical exam of a patient at least once within in a 12 month period to be in compliance with the requirements of general supervision. The proposal also makes a technical correction to a statutory reference that has changed as result of revisions to the Board's statute.

A public hearing will be held on March 22, 2012 at 3:15 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware

# PROPOSED REGULATIONS

Board of Dentistry and Dental Hygiene, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

## 1100 Board of Dentistry and Dental Hygiene

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

#### 5.0 Supervision

- 5.1 Conditions Applicable to General Supervision - A licensed dental hygienist, by virtue of having passed a licensure examination and being duly licensed by the State, is capable of performing those services allowed by law under supervision, the following conditions shall exist:
- 5.2 Advance Notice to Patient - The patient is notified, as soon as it is known, that the dentist will not be present, and is given the option to reschedule to a time when the dentist will be present in the office.
- 5.3 Dentist Review of Records - The dentist shall review the treatment records of each patient prior to and following the patient treatment.
- 5.4 The dentist must perform at least one clinical examination of the patient within a 12 month period.
- 5.4~~5~~ Patient Contraindications - Patients for whom it is medically or dentally contraindicated, will not be scheduled when the dentist is not present.
- 5.5~~6~~ Office Requirements - A second office employee shall be present in the treatment facility at all times when patient care is performed. This is both for safety and security reasons.
- 5.6~~7~~ Practice in a Public Health Institution - A licensed dental hygienist, per 24 **Del.C.** §1157~~21~~(c), may operate under the general direction of a dentist in an institution, provided that all of the conditions of general supervision are met.

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

**1100 Board of Dentistry and Dental Hygiene**

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### DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 1775 (c)) (24 **Del.C.** §1775 (c))  
24 **DE Admin. Code** 1770

#### PUBLIC NOTICE

### 1770 Respiratory Care Advisory Council

The Respiratory Care Advisory Council of the Delaware Board of Medical Licensure and Discipline ("Council") in accordance with 24 **Del.C.** §1775(c) is proposing changes to Regulation 8.5.1.2 to clarify that a maximum number of eight (8) contact hours of continuing education may be obtained by taking courses in Basic Life Support (BLS), Advanced Cardiac Life Support (ACLS), Pediatric Advanced Life Support (PALS) and the Neonatal Resuscitation Program (NRP).

A public hearing will be held on March 14, 2012 at 3:00 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public may offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Respiratory Care Advisory Council, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward the written comments to the Council at the above address. The final date to receive written comments will be at the public hearing.

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Pursuant to 24 **Del.C.** §1775(c) the Council will consider forwarding the proposed regulations to the Board of Medical Licensure and Discipline for final approval following the public hearing.

**1770 Respiratory Care Practice Advisory Council**

*(Break in Continuity of Sections)*

**8.0 Continuing Education**

**8.1 Contact Hours Required for Renewal**

8.1.1 The respiratory care practitioner shall be required to complete twenty (20) contact hours of continuing education biennially. At least ten (10) of the required twenty (20) contact hours shall be from traditional programs attended either in person or remotely by the use of telecommunication technology that allows the attendee to interact with and ask questions of the presenter during the presentation. The remaining ten (10) hours may be obtained in non-traditional programs in which the participant learns the material at their own pace and place of choosing and demonstrates their mastery of the course content by examination in order to earn contact hours or by participating in the activities described in rules 8.3.1.8 or 8.3.1.9 below.

8.1.2 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the Requirements of Rule 8.0.

8.1.3 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.

8.1.3 Licensees selected for random audit will be required to supplement the attendance verification pursuant to Rule 8.1.4.

8.1.4 The respiratory care practitioner shall retain all certificates and other documented evidence of participation in an approved/accredited continuing education program for a period of at least (3) three years. Upon request, such documentation shall be made available to the Council for random audit and verification purposes.

8.1.5 Contact hours shall be prorated for new licensees in accordance with the following schedule:

Two years remaining in the licensing cycle requires -	20 hours
One year remaining in the licensing cycle requires -	10 hours
Less than one year remaining in the licensing cycle -	exempt

**8.2 Exemptions**

8.2.1 A licensee who because of a physical or mental illness during the license period could not complete the continuing education requirement may apply through the Council to the Board of Medical Practice for a waiver. A waiver would provide for an extension of time or exemption from some or all of the continuing education requirements for one (1) renewal period. Should the illness extend beyond one (1) renewal period, a new request must be submitted.

8.2.2 A request for a waiver must be submitted sixty (60) days prior to the license renewal date.

**8.3 Criteria for Qualification of Continuing Education Program Offerings**

The following criteria are given to guide respiratory care practitioners in selecting an appropriate activity/program and to guide the provider in planning and implementing continuing education activities/programs. The overriding consideration in determining whether a specific activity/program qualifies as acceptable continuing education shall be that it is a planned program of learning which contributes directly to the professional competence of the respiratory care practitioner.

**8.3.1 Definition of Contact Hours**

8.3.1.1 Fifty consecutive minutes of academic course work, correspondence course, or seminar/workshop shall be equivalent to one (1) contact hour. A fraction of a contact hour may be computed by dividing the minutes of an activity by 50 and expressed as a decimal.

8.3.1.2 Recredentialing examination for certified respiratory therapist, (CRT), and registered respiratory therapist, (RRT), shall be equivalent to five (5) contact hours.

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## PROPOSED REGULATIONS

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- 8.3.1.3 Successful completion of advanced specialty exams administered by the National Board for Respiratory Care, (NBRC), shall be equal to five (5) contact hours for each exam.
- 8.3.1.4 One (1) semester hour shall be equal to fifteen (15) contact hours.
- 8.3.1.5 One (1) quarter hour shall be equal to ten (10) contact hours.
- 8.3.1.6 Two (2) hours (120 minutes) of clinical educational experience shall be equal to one (1) contact hour.
- 8.3.1.7 Fifty (50) consecutive minutes of presentation of lectures, seminars or workshops in respiratory care or health care subjects shall be equivalent to one (1) contact hour.
- 8.3.1.8 Preparing original lectures, seminars, or workshops in respiratory care or health care subjects shall be granted no more than two (2) contact hours for each contact hour of presentation.
- 8.3.1.9 Performing clinical or laboratory research in health care shall be reviewed and may be granted an appropriate number of contact hour(s) at the Council's discretion.
- 8.3.2 Learner Objectives
  - 8.3.2.1 Objectives shall be written and be the basis for determining content, learning experience, teaching methodologies, and evaluation.
  - 8.3.2.2 Objectives shall be specific, attainable, measurable, and describe expected outcomes for the learner.
- 8.3.3 Subject Matter

Appropriate subject matter for continuing education shall include the following:

  - 8.3.3.1 Respiratory care science and practice and other scientific topics related thereto
  - 8.3.3.2 Respiratory care education
  - 8.3.3.3 Research in respiratory care and health care
  - 8.3.3.4 Management, administration and supervision in health care delivery
  - 8.3.3.5 Social, economic, political, legal aspects of health care
  - 8.3.3.6 Teaching health care and consumer health education
  - 8.3.3.7 Professional requirements for a formal respiratory care program or a related field beyond those that were completed for the issuance of the original license
- 8.3.4 Description

Subject matter shall be described in outline form and shall include learner objectives, content, time allotment, teaching methods, faculty, and evaluation format.
- 8.3.5 Types of Activities/Programs
  - 8.3.5.1 An academic course shall be an activity that is approved and presented by an accredited post-secondary educational institution which carries academic credit. The course may be within the framework of a curriculum that leads to an academic degree in respiratory care beyond that required for the original license, or relevant to respiratory care, or any course that shall be necessary to a respiratory care practitioner's professional growth and development.
  - 8.3.5.2 A correspondence course contains the following elements:
    - 8.3.5.2.1 developed by a professional group, such as an education corporation or professional association.
    - 8.3.5.2.2 follows a logical sequence.
    - 8.3.5.2.3 involves the learner by requiring active response to module materials and provides feedback.
    - 8.3.5.2.4 contains a test to indicate progress and to verify completion of module.
    - 8.3.5.2.5 supplies a bibliography for continued study.
  - 8.3.5.3 A workshop contains the following elements:
    - 8.3.5.3.1 developed by a knowledgeable individual or group in the subject matter.
    - 8.3.5.3.2 follows a logical sequence.

- 8.3.5.3.3 involves the learner by requiring active response, demonstration and feedback.
- 8.3.5.3.4 requires hands-on experience.
- 8.3.5.3.5 supplies a bibliography for continued study.
- 8.3.5.4 Advanced and specialty examinations offered by the NBRC or other examinations approved by the Council including:
  - Recredentialing exam.
  - Neonatal pediatric specialty exam.
  - Pulmonary function credentialing exams
  - Sleep Disorders Specialty (SDS) Certification
  - Advanced practitioner exam
- 8.3.5.5 Course preparation
- 8.3.5.6 Clinical education experience must be:
  - 8.3.5.6.1 Planned and supervised.
  - 8.3.5.6.2 Extended beyond the basic level of preparation of the individual who is licensed.
  - 8.3.5.6.3 Based on a planned program of study.
  - 8.3.5.6.4 Instructed and supervised by individual(s) who possess the appropriate credentials related to the discipline being taught.
  - 8.3.5.6.5 Conducted in a clinical setting.
- 8.4 Educational Providers
  - 8.4.1 Continuing education contact hours awarded for activities/programs approved by the following are appropriate for fulfilling the continuing education requirements pursuant to these regulations:
    - American Association for Respiratory Care.
    - American Medical Association under Physician Category I.
    - American Thoracic Society
    - American Association of Cardiovascular and Pulmonary Rehabilitation
    - American Heart Association
    - American Nurses Association
    - American College of Chest Physicians
    - American Society of Anesthesiologists
    - American Sleep Disorders Association
    - Other professional or educational organizations as approved periodically by the Council.
- 8.5 Accumulation of Continuing Education
  - 8.5.1 When a licensee applies for license renewal, a minimum of twenty (20) contact hours in activities that update skills and knowledge levels in respiratory care theory, practice and science is required. The total of twenty (20) contact hours per renewal period shall include the following categories:
    - 8.5.1.1 A minimum of 12 contact hours of continuing education required for renewal must be acquired in a field related to the science and practice of respiratory care as set forth in Subsection 8.3.3, Subject Matter, 8.3.3.1, 8.3.3.2, or 8.3.3.3. Courses in Basic Life Support (BLS), Advanced Cardiac Life Support (ACLS), Pediatric Advanced Life Support (PALS) and the Neonatal Resuscitation Program (NRP) may not be used to satisfy the requirements of 8.5.1.1.
    - 8.5.1.2 The remaining 8 contact hours of the continuing education required for renewal may be selected from any category under Subsection 8.3.3, Subject Matter, and may include courses in BLS, ACLS, PALS, and NRP up to a maximum of 8 contact hours either individually or in combination with other courses.
  - 8.5.2 Contact hours, accumulated through preparation for, presentation of, or participation in activities/programs as defined are limited to application in meeting the required number of contact hours per renewal period as follows:
    - 8.5.2.1 Presentation of respiratory care education programs, including preparation time, to a maximum of four contact hours.

- 8.5.2.2 Presentation of a new respiratory care curriculum, including preparation, to a respiratory care education program, to a maximum of four contact hours.
  - 8.5.2.3 Preparation and publication of respiratory care theory, practice or science, to a maximum of four contact hours.
  - 8.5.2.4 Research projects in health care, respiratory care theory, practice or science, to a maximum of four contact hours.
  - 8.5.2.5 Infection control programs from facility or agency to a maximum of one contact hour.
  - 8.5.2.6 Academic course work, related to health care or health care administration, to a maximum of four contact hours.
- 8.6 Audit of Continuing Education Contact Hours
- 8.6.1 Audit. Each biennium, the Division of Professional Regulation shall randomly select from the list of renewed licensees a percentage of licensees, determined by the Council, to be audited. The Council may also audit based on complaints or charges against an individual license, relative to compliance with continuing education requirements or based on a finding of past non-compliance during prior audits.
  - 8.6.2 Documentation. When a licensee is selected for audit, the licensee shall be required to submit documentation showing detailed accounting of the various CEU's claimed by the licensee. Licensees selected for random audit are required to supplement the attestation with supporting materials which may include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity and a document showing proof of attendance (i.e., certificate, a signed letter from the sponsor attesting to attendance, report of passing test score). The Council shall attempt to verify the CEUs shown on the documentation provided by the licensee. Upon completion of the review, the Council decide whether the licensee's CEU's meet the requirements of these rules and regulations.
    - 8.6.2.1 Any continuing education not meeting all provisions of these rules shall be rejected in part or in whole by the Council
    - 8.6.2.2 Any incomplete or inaccurate documentation of continuing education may be rejected in part or in whole by the Council.
    - 8.6.2.3 Any continuing education that is rejected must be replaced by acceptable continuing education within a reasonable period of time established by the Council. This continuing education will not be counted towards the next renewal period.
  - 8.6.3 Council Review and Hearing Process. The Council shall review all documentation requested of any licensee shown on the audit list. If the Council determines the licensee has met the requirements, the licensee's license shall remain in effect. If the Council initially determines the licensee has not met the requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if there are any extenuating circumstances justifying the apparent noncompliance with these requirements. Unjustified noncompliance of these regulations shall be considered unprofessional conduct in the practice of respiratory care pursuant to Rule 6.3.
  - 8.6.4 Sanctions for Unjustified Noncompliance. The minimum penalty for the first finding of unjustified noncompliance shall be a letter of reprimand and a \$250.00 monetary penalty; however, the Council may recommend to the Board imposing any of the additional penalties specified in 24 **Del.C.** §1777(e). The minimum penalty for the second finding of unjustified noncompliance shall be a thirty (30) day license suspension; however, the Council may recommend to the Board imposing any of the additional penalties specified in 24 **Del.C.** §1777(e).
  - 8.6.5 Requests for Extension- Extenuating Circumstances. A licensee applying for renewal may request an extension and be given up to an additional twelve (12) months to make up all outstanding required CEUs providing he/she can show good cause why he/she was unable to comply with such requirements at the same time he/she applies for renewal. The licensee must state the reason for such extension along with whatever documentation he/she feels is relevant. The Council shall consider requests such as extensive travel outside the United States, military service, extended illness of the licensee or his/her immediate family, or a death in the immediate

family of the licensee. The written request for extension must accompany the renewal application. The Council shall issue an extension when it determines that one or more of these criteria have been met or if circumstances beyond the control of the licensee have rendered it impossible for the licensee to obtain the required CEU's. A licensee who has successfully applied for an extension under this paragraph shall make up all outstanding hours of continuing education within the extension period approved by the Council. Make-up credits may not be used in the next renewal period.

8.6.6 Appeal. Any licensee sanctioned pursuant to these rules and regulations may contest such ruling by filing an appeal of the Board's final order pursuant to the Administrative Procedures Act.

**4 DE Reg. 694 (10/1/00)**

**8 DE Reg. 1438 (4/1/05)**

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

**10 DE Reg. 354 (08/01/06)**

**13 DE Reg. 1223 (03/01/10)**

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

**1770 Respiratory Care Practice Advisory Council**

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**DIVISION OF PROFESSIONAL REGULATION**

Statutory Authority: 24 Delaware Code, Section 1796 (24 **Del.C.** §1796)  
24 **DE Admin. Code** 1790

**PUBLIC NOTICE**

**1790 Acupuncture Advisory Council**

Consistent with a recent statutory amendments providing for the licensure of Acupuncture Detoxification Specialists (ADS), the Acupuncture Advisory Council ("Council") of the Board of Medical Licensure and Discipline ("Board") in accordance with 24 **Del.C.** §1796(c) and 29 **Del.C.** Ch. 101, has developed and is proposing to recommend to the Board the approval of regulations regarding the practice of acupuncture detoxification using the National Acupuncture Detoxification Association (NADA) or equivalent organization's auricular point protocol in the State of Delaware. The proposed regulations clarify the provisions of 24 **Del.C.** §1799F regarding initial licensure, practice settings, renewal and demonstrating continued competency at the time of renewal.

A public hearing will be held on Thursday, April 19, 2012 at 3:15 p.m. in the second floor Conference Room C of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public may offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Medical Licensure and Discipline, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward the written comments to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Council may vote on whether to promulgate the proposed regulations subject to the approval of the Board immediately following the public hearing.

**1790 Acupuncture Advisory Council**

**1.0 Source of Authority: 24 Del.C. Ch. 17, Subchapter X**

The Rules and Regulations herein contained constitute, comprise, and shall be known as the Rules and Regulations of the Acupuncture Advisory Council of the Board of Medical Practice Licensure and Discipline, and are hereby promulgated, pursuant to 24 **Del.C.** §1796 (c).

## 2.0 Definitions

Whenever used in these Rules and Regulations unless expressly otherwise stated, or unless the context or subject matter requires a different meaning, the following terms shall have the respective meanings hereinafter set forth or indicated.

"**ACAOM**" means Accreditation Commission for Acupuncture and Oriental Medicine.

"**Board**" means Delaware Board of Medical Practice Licensure and Discipline.

"**CCAOM**" means the Council of Colleges of Acupuncture and Oriental Medicine.

"**Council**" means the Acupuncture Advisory Council of the Board of Medical Practice Licensure and Discipline.

"**Crime Substantially Related to the Practice of Acupuncture and Acupuncture Detoxification**" means those crimes identified in Rule 29 of the rules and regulations of the Board of Medical Practice Licensure and Discipline.

"**License**" means a license issued by the Board to practice acupuncture or acupuncture detoxification.

"**Licensed Acupuncture Detoxification Specialist ("ADS")**" means an individual authorized to practice acupuncture detoxification using the National Acupuncture Detoxification Association (NADA) or equivalent organization's auricular point protocol.

"**Licensed Acupuncturist ("L.Ac.")**" means an individual authorized to practice acupuncture under the provisions of the Medical Practice Act, 24 **Delaware Code**, Chapter 17, Subchapter X.

"**NADA**" means the National Acupuncture Detoxification Association

"**NCCAOM**" means the National Certification Commission for Acupuncture and Oriental Medicine.

"**Practice of Acupuncture**" means the use of oriental medical therapies for the purpose of normalizing energetic physiological functions including pain control, and for the promotion, maintenance, and restoration of health.

"**Practice of Acupuncture Detoxification**" means the use of a NADA or equivalent organization's auricular point protocol for the purpose of treating alcoholism, nicotine dependency, substance abuse, or chemical dependency.

## 3.0 Purpose

The purpose of the rules and regulations standards is to establish minimal acceptable levels of safe practice to protect the general public and to serve as a guide for the Council and Board to evaluate the safe and effective practice of acupuncture and auricular acupuncture detoxification.

## 4.0 Minimum Standards of Practice for the Acupuncture Practitioner

### 4.1 Clean Needle Technique

- 4.1.1 All applicants for licensure shall complete a course in clean needle technique as administered by the CCAOM or provide evidence of passing an examination in clean needle technique before a license will be issued unless a waiver is granted pursuant to 24 **Del.C.** §1798(b).

### 4.2 English as a Second Language

- 4.2.1 An applicant for whom English is a second language must demonstrate his or her ability to speak English by providing evidence of one of the following:
- 4.2.1.1 Passage of the NCCAOM examination taken in English;
  - 4.2.1.2 Completion at least 60 credits from an English-speaking undergraduate school or English-speaking professional school;
  - 4.2.1.3 Passage of the TOEFL (Test of English as a Foreign Language) with a score of 550 or higher on the paper based test or with a score of 213 or higher on the computer based test;
  - 4.2.1.4 Passage of the TSE (Test of Spoken English) with a score of 45 or higher;
  - 4.2.1.5 Passage of the TOEIC (Test of English for International Communication) with a score of 500 or higher; or

- 4.2.1.6 At the discretion of the Council, passage of any similar, validated exam testing English competency given by a testing service with results reported directly to the Council or with results otherwise subject to verification by direct contact between the testing service and the Council.

## **5.0 Filing of Application for Licensure as an Acupuncture Practitioner**

### **5.1 Application - Initial Licensure**

- 5.1.1 An applicant who is applying for licensure as acupuncture practitioner must submit a completed application on a form prescribed by the Council and approved by the Board to the Board office at the Division of Professional Regulation ("Division"), Dover, Delaware. The application must be accompanied by payment of the fees established by the Division.
- 5.1.2 Each application must be accompanied by (1) proof of achievement of a Diplomate in Oriental Medicine from NCCAOM or other equivalent recognized by the Council and approved by the Board (2) evidence of completion of a course in clean needle technique as provided in regulations 4.1 and (3) for applicants for whom English is a second language, proof of ability to speak English as provided in Regulation 4.2.

### **5.2 Application - Current Practitioners**

- 5.2.1 An applicant who is applying for licensure under the 24 **Del.C.** §1799A must have been practicing in Delaware for the 12 month period prior to June 27, 2008. The applicant must submit proof of achievement of a Diplomate in Acupuncture from NCCAOM or other equivalent recognized by the Council and approved by the Board of evidence of graduation from a course of training or at least 1,800 hours in acupuncture, including 300 clinical hours, that is accredited by ACAOM or its equivalent as determined by Council and (2) evidence of completion of a course in clean needle technique as provided in regulations 4.1.
- 5.2.2 Proof of practice may be demonstrated by providing a W-2, business license, schedule C, or other similar documentation of practice during the period 6/27/2007 through 6/26/2008 acceptable to Council.

### **5.3 Application - Reciprocity**

- 5.3.1 An applicant for licensure by reciprocity must submit a copy of the law and regulations from the State in which they are currently licensed in order for the Council and Board to determine that the standards for licensure are substantially similar along with letters of good standing from all jurisdictions in which they are licensed.

- 5.4 If any documents submitted by an applicant require translation to English, the translation shall be obtained by the applicant, at the applicant's expense, from an organization approved by the Council and Board.

- 5.5 The Council and Board shall not consider an application for licensure as an acupuncture practitioner complete until all items specified in the applicable regulations are submitted to the Board's office.

- 5.5.1 The Council may recommend and the Board may, in its discretion, approve applications contingent on receipt of necessary documentation. If the required documentation is not received within 120 days from the date when the application is first reviewed by the Council, the Council shall propose to deny the application.
- 5.5.2 If an application is complete in terms of required documents, but the candidate has not responded to a Council or Board request for further information, explanation or clarification within 120 days of the Council or Board's request, the Council shall make its recommendation to and the Board shall vote on the application as is.

## **6.0 Unprofessional Conduct and Inability to Practice Acupuncture**

- 6.1 "Unprofessional conduct" includes but is not limited to any of the following acts or omissions:

- 6.1.1 Has employed or knowingly cooperated in fraud or material deception in order to acquire or renew a license to practice acupuncture, has impersonated another person holding a license, has

- allowed another person to use the acupuncturist's license, or has aided and abetted a person not licensed to practice acupuncture to represent himself or herself as an acupuncturist;
- 6.1.2 The use of any false, fraudulent, or forged statement or document or the use of any fraudulent, deceitful, dishonest, or unethical practice in connection with a certification, registration, or licensing requirement for acupuncturists, or in connection with the practice of acupuncture;
  - 6.1.3 Having a license to practice acupuncture revoked, suspended, or otherwise disciplined, including the denial of licensure by the licensing authority of another state or territory for reasons which would preclude licensure in this state. In making its determination, the Board may rely upon decisions made by the appropriate authorities in other states or territories and may not permit a collateral attack on those decisions;
  - 6.1.4 Conviction of or admission under oath to having committed a crime substantially related to the practice of medicine other profession regulated by the Board of Medical Practice as defined by the Board of Medical Practice in its rules and regulations;
  - 6.1.5 Any dishonorable, unethical, or other conduct likely to deceive, defraud, or harm the public;
  - 6.1.6 Advertising, practicing or attempting to practice acupuncture under a false or assumed name;
  - 6.1.7 Advertising, practicing or attempting to practice acupuncture in an unethical or unprofessional manner;
  - 6.1.8 The practice of acupuncture without a license;
  - 6.1.9 Failing to perform any statutory or legal obligation placed upon an acupuncturist;
  - 6.1.10 Making or filing a false report in connection with the practice of acupuncture which the licensee knows to be false, intentionally or negligently failing to file a report required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so.
  - 6.1.11 Solicitation or acceptance of a fee from a patient or other person by fraudulent representation that a manifestly incurable condition, as determined with reasonable medical certainty, can be permanently cured;
  - 6.1.12 Misconduct, incompetence, or gross negligence in the practice of acupuncture;
  - 6.1.13 Willful violation of the confidential relationship with or confidential communications of a patient;
  - 6.1.14 Engaging in sexual relations with a patient until at least six (6) months have lapsed since the patient-practitioner relationship has ended.
  - 6.1.15 Making deceptive, untrue, or fraudulent misrepresentations in the practice of acupuncture;
  - 6.1.16 Soliciting patients, either personally or through an agent, through the use of fraud, intimidation, or undue influence, or a form of overreaching conduct;
  - 6.1.17 Failing to keep written medical records documenting the course of treatment of the patient;
  - 6.1.18 Exercising undue influence on the patient to exploit the patient for financial gain of the licensee or of a third party;
  - 6.1.19 Being unable to practice acupuncture with reasonable skill and safety to patients by reason of illness or intemperate use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition;
  - 6.1.20 Malpractice or the failure to practice acupuncture at the level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner of acupuncture as being acceptable under similar conditions and circumstances;
  - 6.1.21 Practicing or offering to practice beyond the scope permitted by law or accepting or performing professional responsibilities which the licensee knows or has reason to know that such a person is not qualified by training, experience or certification to perform;
  - 6.1.22 Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows, or has reason to know, that such person is not qualified by training, experience, or licensure to perform them;
  - 6.1.23 Violating any provision of the Medical Practice Act, a rule of the Council and Board or a lawful order of the Board entered in a disciplinary hearing conducted by Council or the Board or failing to

comply with a lawfully issued subpoena of the Board to provide documents and or to appear before the Council or Board;

- 6.1.24 Conspiring with another to commit an act, or committing and act, which coerces, intimidates, or precludes another licensee from lawfully advertising or providing his or her services;
- 6.1.25 Fraud or deceit, or gross negligence, incompetence, or misconduct in the operation of a course of study;
- 6.1.26 Failing to comply with state, county, or municipal regulations or reporting requirements relating to public health and the control of contagious and infectious disease;
- 6.1.27 Failing to comply with clean needle techniques and proper procedures for the disposal of potentially infectious materials;
- 6.1.28 Unjustified failure upon request to divulge information relevant to the authorization or competence of a person to practice acupuncture to the Board, to any committee thereof, to the Executive Director, or to anyone designated by the Executive Director to request such information; and
- 6.1.29 Charging a grossly exorbitant fee for professional or occupational services rendered.

## **7.0 Disciplinary Investigations and Hearings**

- 7.1 Upon receipt of a written complaint against an acupuncturist or upon its own motion, the Council may request the Division of Professional Regulation to investigate the complaint or a charge against an acupuncturist and the process established by 29 **Del.C.** §8735(h) shall be followed with respect to any such matter.
- 7.2 As soon as practicable after receipt of a complaint from the Attorney General's Office following an investigation conducted pursuant to 29 **Del.C.** §8735(h), the Council shall conduct an evidentiary hearing upon notice to the licensee. Written findings of fact and conclusions of law shall be sent to the Board of Medical Practice along with any recommendation to revoke, to suspend, to refuse to renew a license, to place a licensee on probation, or to otherwise reprimand a licensee found guilty of unprofessional conduct in the licensee's professional activity which is likely to endanger the public health, safety or welfare, or the inability to render acupuncture services with reasonable skill or safety to patients because of mental illness or mental incompetence, physical illness or excessive use of drugs including alcohol.

## **8.0 Renewal of License**

- 8.1 Each license shall be renewed biennially. The failure of the Board to notify a licensee of his/her expiration date and subsequent renewals does not, in any way, relieve the licensee of the requirement to renew his/her certificate pursuant to the Board's regulations and 24 **Del.C.** Ch. 17.
- 8.2 Renewal may be effected by:
  - 8.2.1 filing a renewal application prescribed by the Board and provided by the Division of Professional Regulation. License renewal may be accomplished online at [www.dpr.delaware.gov](http://www.dpr.delaware.gov);
  - 8.2.2 providing other information as may be required by the Board to ascertain the licensee's good standing;
  - 8.2.3 attesting on the renewal application to the completing of continuing education as required by Rule 9.0;
  - 8.2.4 payment of fees as determined by the Division of Professional Regulation.
- 8.3 Failure of a licensee to renew his/her license shall cause his/her license to expire. A licensee whose license has expired may renew his/her license within one year after the expiration date upon fulfilling items 7.2.1 - 7.2.4 above, certifying that he/she has not practiced acupuncture in Delaware while his/her license has expired, and paying the renewal fee and a late fee as determined by the Division of Professional Regulation.
- 8.4 No licensee will be permitted to renew his/her license once the one-year period has expired.
- 8.5 The former licensee may re-apply under the same conditions that govern applicants for new licensure under 24 **Del.C.** Ch. 17.

- 8.6 No acupuncturist shall practice acupuncture in the State of Delaware during the period of time that his/her Delaware license has expired.

## **9.0 Continuing Education**

### **9.1 Professional Development Activity Points Required for Renewal**

- 9.1.1 Licensees are required to complete (30) Professional Development Activity (PDA) points biennially. Licensees shall retain all certificates and other documented evidence of participation in an approved/accredited continuing education program for a period of at least (3) three years. Upon request, such documentation shall be made available to the Council for random audit and verification purposes.

- 9.1.2 PDAs shall be prorated for new licensees in accordance with the following schedule:

Two years remaining in the licensing cycle requires - 30 hours

One year remaining in the licensing cycle requires -15 hours

Less than one year remaining in the licensing cycle -exempt

### **9.2 Exemptions**

- 9.2.1 A licensee who because of a physical or mental illness during the license period could not complete the continuing education requirement may apply through the Council to the Board of ~~Medical Practice~~ for a waiver. A waiver would provide for an extension of time or exemption from some or all of the continuing education requirements for one (1) renewal period. Should the illness extend beyond one (1) renewal period, a new request must be submitted.

- 9.2.2 A request for a waiver must be submitted sixty (60) days prior to the license renewal date.

### **9.3 Criteria for Qualification of Continuing Education Program Offerings**

The following criteria are given to guide licensees in selecting an appropriate activity/program and to guide the provider in planning and implementing continuing education activities/programs. The overriding consideration in determining whether a specific activity/program qualifies as acceptable continuing education shall be that it is a planned program of learning which contributes directly to professional competence in the practice of acupuncture.

#### **9.3.1 Definition and PDA Point Requirements**

- 9.3.1.1 Each hour of continuing education is equal to (1) PDA point.

- 9.3.1.2 Fifteen of the required 30 PDA points shall enhance core knowledge, skills and abilities and shall be in biomedicine and/or one of the five branches of Oriental medicine (e.g., acupuncture, Chinese herbs, Chinese dietary therapy, Qigong, Asian bodywork therapy). Four the 15 core PDA points shall be taken in safety and/or ethics (e.g., CPR, herbal safety, universal precautions, clean needle techniques, ethics and liability, public health reporting requirements).

- 9.3.1.3 The remaining 15 PDA points may be taken in electives that directly contribute to a licensee's knowledge or practice of acupuncture (including Western science and medical practices, medical ethics, medical research, practice management, adjunctive therapies, patient education, and disaster relief training, etc.).

### **9.4 Acceptable Activities/Programs**

- 9.4.1 Acceptable activities and programs include:

- 9.4.1.1 Additional NCCAOM Certification: A maximum of 10 PDA points may be submitted for successfully achieving an additional certification from NCCAOM in acupuncture, Chinese herbology, or Asian bodywork therapy (Required Documentation: Copy of the NCCAOM certificate including certification date which must be within the two year renewal period);

- 9.4.1.2 Passage of the NCCAOM or other approved Biomedicine Examination: A maximum of 10 PDA points may be submitted for successfully passing the NCCAOM Biomedicine examination. (Required Documentation: A copy of the official letter notifying the licensee of their test score including the exam date which must be within the two year renewal period).

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- 9.4.1.3 Service on a Professional Board: Serving on a regional, state, or national board or committee related to acupuncture may be submitted for a maximum of 5 PDA points submitted per renewal period. (Required Documentation: A letter, printed on letterhead from the organization's chair verifying participation dates of service, and in what capacity.)
- 9.4.1.4 Clinical Experience: Completing a supervised clinical experience in acupuncture, Chinese herbology, Oriental medicine or Asian bodywork therapy which includes observation, case discussions, and/or supervised practice. The experience must be conducted in a formal clinical setting and be part of an educational or preceptor program. One PDA point is equal to one hour of supervision with a maximum of 5 PDA points per renewal period. (Required Documentation: A letter from the school or preceptor who must be an NCCAOM Diplomate in active status for 5 years. Date(s), hours, and type of experience are required on letterhead stationery)
- 9.4.1.5 Directing Clinical Supervision: Supervising a clinical experience in acupuncture, Chinese herbology, Oriental medicine or Asian bodywork therapy which includes directing students in observation, case discussions, and/or supervised practice. The experience must be conducted in a formal clinical setting and be part of an educational or preceptor program. One PDA point is equal to one hour of supervision with a maximum of 5 PDA points per renewal period. (Required Documentation: A letter from the school or preceptor, on letterhead, indicating the date(s), hours, and type of supervision.)
- 9.4.1.6 Research in Oriental Medicine: A maximum of 10 PDA points may be submitted for documented research in acupuncture or Oriental medicine. The licensee must be a primary researcher, and the research must be funded (not self-funded). (Required Documentation: One PDA point is equal to one hour of research. A letter from the school, hospital or official agency funding the research is required. The letter, on letterhead, must be accompanied by a copy of the published abstract showing the licensee's name as contributor.)
- 9.4.1.7 Teaching or Lecturing: A maximum of 10 PDA points may be submitted for teaching and/or lecturing in acupuncture or Oriental medicine subjects. (Required Documentation: One PDA point is equal to one hour of teaching. Date(s), number of classroom hours, course title, and instructor's name is required on letterhead stationery from the providing organization, or listed on a school transcript)
- 9.4.1.8 Tai Chi/Qigong: A maximum of 5 PDA points may be submitted for Tai Chi and exercise Qigong courses. One PDA point is equal to one hour of instruction. (Required Documentation: Date(s), number of hours, course title, and instructor's name is required on either an end-of-course certificate or letterhead stationery from the providing organization.)
- 9.4.1.9 Language: A maximum of 5 PDA points may be submitted for the study of a second language relevant to a practitioner's practice. One PDA point is equal to one hour of instruction. (Required Documentation: Date(s), number of hours, course title, and instructor's name is required on either an end-of-course certificate or on letterhead from the providing organization.)
- 9.4.1.10 Publications: Includes writing and editing books, professional journals, and articles in Oriental medicine. PDA points may be permitted as follows:
- 9.4.1.10.1 Author a Book: A maximum of 15 PDA points may be submitted for authoring a book in the field of Oriental medicine that is at least 150 pages in length. (Required Documentation: Copy of the book cover and title pages showing the date, ISBN number, abstracts, and executive summaries.)
  - 9.4.1.10.2 Author a Chapter in a Book: A maximum of 10 PDA points may be submitted for authoring chapters in a book in the field of Oriental Medicine. Five PDA points may be gained for each chapter with a maximum of submitting two chapters per renewal period. (Required Documentation: Copy of the book cover and title pages showing the date, ISBN number, abstracts, and executive summaries).

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**PROPOSED REGULATIONS**

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- 9.4.1.10.3 Edit a Book or Professional Journal: A maximum of 10 PDA points may be submitted for editing a professional book or journal. Five PDA points may be gained for each book or professional journal with a maximum of submitting two books/journals per renewal period. (Required Documentation: A letter, on letterhead, from the author of the book or the editor in chief of the journal is required. The letter should describe the licensee's participation in the editing process including the title of the book/journal, publishing date, ISBN number, abstracts, and executive summaries.)
- 9.4.1.10.4 Publication of a Peer-Reviewed Journal Article: A maximum of 10 points may be submitted for authoring an article in a professional, peer-reviewed journal in the field of Oriental medicine. Five PDA points may be gained for each article with a maximum of submitting two articles per recertification cycle. (Required Documentation: Copy of the article, the cover of the journal, and the table of contents that show the date, article title, and author.)
- 9.4.1.10.5 Author an Article: A maximum of 5 PDA points may be submitted for writing an article that is published. (Required Documentation: Copy of the article and the cover of the newspaper or magazine that shows the date and table of contents or article listing.)
- 9.4.1.10.6 Formal Continuing Education Programs: All PDA points may be obtained by taking formally organized courses which satisfy the content requirements of Regulation 9.3.1.2 and are approved by the Board or sponsored and/or approved by and sponsored by the following organizations and their member organizations:
- 9.4.1.10.6.1 The American Association of Acupuncture and Oriental Medicine (AAAOM),
  - 9.4.1.10.6.2 The Council of Colleges of Acupuncture and Oriental Medicine (CCAOM),
  - 9.4.1.10.6.3 The Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM),
  - 9.4.1.10.6.4 The National Commission for the Certification of Acupuncture and Oriental Medicine (NCCAOM),
  - 9.4.1.10.6.5 The National Academy of Acupuncture and Oriental Medicine (NAAOM),
  - 9.4.1.10.6.6 The Society for Acupuncture Research,
  - 9.4.1.10.6.7 Center for Oriental Medical Research and Education (COMRE),
  - 9.4.1.10.6.8 The National Acupuncture Detoxification Association,
  - 9.4.1.10.6.9 The National Acupuncture Teachers Association, or
  - 9.4.1.10.6.10 The American Academy of Medical Acupuncturists;
  - 9.4.1.10.6.11 World Health Organization (WHO),
  - 9.4.1.10.6.12 National Institutes of Health (NIH),
  - 9.4.1.10.6.13 The National Institutes of Health Office of Alternative Medicine (NIHOAM),
  - 9.4.1.10.6.14 American Medical Association (AMA),
  - 9.4.1.10.6.15 American Osteopathic Association (AOA).
  - 9.4.1.10.6.16 American Nurses Association (ANA),
  - 9.4.1.10.6.17 American Psychiatric Association (APA),
  - 9.4.1.10.6.18 American Hospital Association (AHA),
  - 9.4.1.10.6.19 American Lung Association (ALA),
  - 9.4.1.10.6.20 Red Cross;
  - 9.4.1.10.6.21 Local colleges;
  - 9.4.1.10.6.22 Local hospitals; or
  - 9.4.1.10.6.23 Other professional or educational organizations as approved periodically by the Board upon the recommendation of Council. (Required Documentation: Certificate of attendance documenting hours attended and/or credits awarded.)
- 9.4.2 No continuing education PDA points will be given for advocating legislation or for peer Reviewed Posters and/ or exhibits.

- 9.4.3 PDA points for foreign study are subject to the approval of the Council and Board.
- 9.4.4 Approval of continuing education is at the discretion of the Council and with the approval of the Board. PDAs earned in excess of the required credits for the two (2) year period may not be carried over to the next biennial period.

**13 DE Reg. 858 (12/01/09)****10.0 Acupuncture Detoxification Specialists (ADS)****10.1 Initial Licensure**

- 10.1.1 An applicant who is applying for licensure as acupuncture detoxification specialist must submit a completed application on a form prescribed by the Council and approved by the Board to the Board office at the Division of Professional Regulation ("Division"), Dover, Delaware. The application must be accompanied by payment of the fees established by the Division.
- 10.1.2 Each application must be accompanied by (1) proof of successful completion of the NADA auricular point protocol training program satisfactory to the Council and Board for the treatment of alcoholism, nicotine dependency, substance abuse, or chemical dependency that meets or exceeds the standards of training set by the NADA including instruction in clean needle technique and (2) evidence of a current license or certificate in good standing in a healthcare related profession as approved by the Council and the Board. Acceptable healthcare professionals include:
- 10.1.2.1 A Licensed chemical dependency professional;
- 10.1.2.2 A licensed nurse;
- 10.1.2.3 A licensed psychologist who works directly with chemically dependent clients of a chemical dependency program in the counseling or treatment of those clients;
- 10.1.2.4 A licensed social worker—clinical who works directly with the chemically dependent clients of a chemical dependency program in the counseling or treatment of those clients; and,
- 10.1.2.5 Any other licensed healthcare professional approved by the Council and Board.
- 10.1.2.6 Individuals certified by the National Association for Addictions Professionals, (NAADAC) as a national certified addictions counselor (NCAC or MAC), by the Delaware Certification Board (DCB Inc.) as a certified alcohol and drug counselor, or by a certifying organization acceptable to the Council and Board.
- 10.1.3 Exemption -individuals providing evidence of NADA certification obtained prior to July 27, 2010 shall not be required to provide evidence of licensure or certification in a healthcare profession.

**10.2 Practice Setting Requirements**

- 10.2.1 Acupuncture detoxification specialists may only perform the auricular point protocol within a state, federal, or other board approved alcohol, substance abuse, or chemical dependency program or other Council and Board approved healthcare setting. An approved healthcare setting other than state, federal, or other board approved alcohol, substance abuse, or chemical dependency program setting must be (1) pre-approved by the Council and Board, and (2) have a licensed acupuncturist or physician licensed to practice medicine on staff where the auricular point protocol is used as part of a multi disciplinary approach to treatment.
- 10.2.2 Acupuncture detoxification specialists are prohibited from practicing independently of an approved program or setting under Regulation 10.2.1.

**10.3 License Renewal**

- 10.3.1 Each license shall be renewed biennially. The failure of the Board to notify a licensee of his/her expiration date and subsequent renewals does not, in any way, relieve the licensee of the requirement to renew his/her certificate pursuant to the Board's regulations and 24 **DeI.C.** Ch. 17.
- 10.3.2 Renewal may be effected by:

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## PROPOSED REGULATIONS

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- 10.3.2.1 filing a renewal application prescribed by the Board and provided by the Division of Professional Regulation. License renewal may be accomplished online at [www.dpr.delaware.gov](http://www.dpr.delaware.gov);
  - 10.3.2.2 providing other information as may be required by the Board to ascertain the licensee's good standing;
  - 10.3.2.3 attesting to proof of current certification by NADA or an equivalent organization. If renewal of certification is not required by the organization the applicant for renewal as an ADS must attest that he or she has attended the NADA Annual Conference one time during the two year renewal period or has completed a NADA refresher course of at least 7 hours with a registered NADA trainer. Licensees shall retain all certificates and other documented evidence to verify their attestation under this paragraph for a period of at least (3) three years. Upon request, such documentation shall be made available to the Council for random audit and verification purposes.
  - 10.3.2.4 payment of fees as determined by the Division.
  - 10.3.3 Failure of a licensee to renew his/her license shall cause his/her license to expire. A licensee whose license has expired may renew his/her license within one year after the expiration date upon fulfilling items 10.3.2.1-10.3.2.4 above, certifying that he/she has not practiced as an acupuncture detoxification specialist in Delaware while his/her license has expired, and paying the renewal fee and a late fee as determined by the Division.
  - 10.4 No licensee will be permitted to renew his/her license once the one-year period has expired.
  - 10.5 The former licensee may re-apply under the same conditions that govern applicants for new licensure under 24 **Del.C.** Ch. 17.
  - 10.6 No acupuncturist detoxification specialist shall practice auricular point protocol in the State of Delaware during the period of time that his/her Delaware license has expired.
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**Symbol Key**

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

**Final Regulations**

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

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

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**DEPARTMENT OF EDUCATION  
OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 525

**REGULATORY IMPLEMENTING ORDER****525 Requirements for Career and Technical Education Programs****I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 525 Requirements for Career and Technical Education Programs. The amendments add the Health Occupations Students of America (HOSA) as a recognized student career and technical student organization and delete the ability for the local school district or charter school to have programs that are not based on the content standards of the state.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on December 6, 2011, in the form hereto attached as *Exhibit "A"*. (Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities endorsing the amendments.)

**II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 525 Requirements for Career and Technical Education Programs in order to eliminate the local standard language to reflect the development and existence of the state standards, national CTE standards, the national CTSO standards and DPAS II component 5 elements.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 525 Requirements for Career and Technical Education Programs. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE**

**Admin. Code 525** Requirements for Career and Technical Education Programs attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code 525** Requirements for Career and Technical Education Programs hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. Text and Citation

The text of 14 **DE Admin. Code 525** Requirements for Career and Technical Education Programs amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code 525** Requirements for Career and Technical Education Programs in the *Administrative Code of Regulations* for the Department of Education.

#### V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on January 19, 2012. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 19th day of January 2012.

#### Department of Education

Lillian M. Lowery, Ed.D., Secretary of Education

Approved this 19th day of January 2012

#### State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

James L. Wilson, Ed.D.

#### 525 Requirements for Career and Technical Education Programs

\*Please note that no changes were made to the regulation as originally proposed and published in the December 2011 issue of the *Register* at page 718 (15 DE Reg. 718). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**525 Requirements for Career and Technical Education Programs**

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#### PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code 1505**

#### REGULATORY IMPLEMENTING ORDER

#### 1505 Standard 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 1505** Standard Certificate. The regulation addresses the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). Amendments include several additions to definitions and affording the Department of Education the final approval of requisite coursework or professional development, as mandated for specific Standard Certificates or for

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individuals working toward their first Standard Certificate who have not graduated from an educator preparation program. Some reformatting was also done to allow for easier understanding. This regulation sets forth the general requirements for specific grade level, content area, specialist and administrative Standard Certificates.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on December 1, 2011. The notice invited written comments. Similar written comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. An area of concern for the Councils was the definition of "Immorality". The definition within the regulation is consistent with Delaware case law and the requirements of other public school personnel that are governed by state licensure, certification, and permit regulations and laws. The Professional Standards Board has incorporated the comments related to grammatical recommendations. The amended regulation does narrow eligibility somewhat, as noted in the written comments. These were purposeful amendments.

## **II. FINDINGS OF FACTS**

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

## **III. DECISION TO AMEND THE REGULATION**

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

## **IV. TEXT AND CITATION**

The text of the regulation amended shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1505 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 5<sup>TH</sup> DAY OF JANUARY, 2012

Kathleen Thomas, Chair

Chris Kenton

Michael Casson

David Kohan

Joanne Christian

Jill Lewandowski

Samtra Devard

Wendy Murray

Stephanie DeWitt

Whitney Price

Marilyn Dollard

Shelley Rouser

Karen Gordon

Jacque Wisnauskas

Cristy Greaves

**IT IS SO ORDERED** the 19<sup>th</sup> day of January 2012.

### **Department of Education**

Lillian M. Lowery, Ed.D., Secretary of Education

Approved this 19<sup>th</sup> day of January 2012

**State Board of Education**

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

Gregory Coverdale  
Terry M. Whittaker, Ed.D.  
James L. Wilson, Ed.D.

**1505 Standard Certificate**

\*Please note that no changes were made to the regulation as originally proposed and published in the December 2011 issue of the *Register* at page 722 (15 DE Reg. 722). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**1505 Standard Certificate**

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**PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
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** 1505 Standard Certificate. The regulation addresses the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a) who have otherwise obtained employment or an offer of employment with an employing district and hold a valid Delaware Initial, Continuing, or Advanced License, but lack necessary skills and knowledge to immediately meet certification requirements in a specific content area. It is necessary to amend this regulation in order to reduce the period of time an Emergency Certificate is valid and to require more oversight by the employer and due diligence on the part of the individual to make progress toward the specific Standard Certificate for which the Emergency Certificate was issued in order to be eligible for a maximum of a one year extension. This regulation sets forth the requirements for an Emergency Certificate.

Notice of the proposed amendment of the regulation was published in the Delaware *Register of Regulations* on December 1, 2011. The notice invited written comments. Similar written comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. One grammatical edit was noted and made. The Councils suggested extending the expiration date from June 30 to minimize possible interruptions in instruction in year round programs. After considering the comment and seeking more information from the year round programs, it was determined that extending the expiration date to August 30 as suggested would be problematic, as the next school year would have started which may result in more unintended interruptions. In addition, it was confirmed that most all educator contracts run through the end of June, thus making June 30 the rationale expiration date. By implementing the June 30 expiration date district and charter school personnel offices are able to coordinate emergency certificates with an educator's employment status and should promote consistency in instruction. It was noted by the Councils that the amended regulation does establish a new approach to Emergency Certificates by shortening the duration and requiring educator diligence in completing a Standard Certificate's requirements in a timely fashion. After considerable research and reviewing data, this was a purposeful focus of amendments made to the regulation. The PSB and SBE examined the history and use of the emergency certificates. These were purposeful amendments based on the information examined and are specifically intended to narrow the circumstances and duration of emergency certificates.

**II. FINDINGS OF FACTS**

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

**III. DECISION TO AMEND THE REGULATION**

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

**IV. TEXT AND CITATION**

The text of the regulation amended shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1505 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 5<sup>TH</sup> DAY OF JANUARY, 2012

Kathleen Thomas, Chair

Chris Kenton

Michael Casson

David Kohan

Joanne Christian

Jill Lewandowski

Samtra Devard

Wendy Murray

Stephanie DeWitt

Whitney Price

Marilyn Dollard

Shelley Rouser

Karen Gordon

Jacque Wisnauskas

Cristy Greaves

**IT IS SO ORDERED** the 19<sup>th</sup> day of January 2012.

**Department of Education**

Lillian M. Lowery, Ed.D., Secretary of Education

Approved this 19<sup>th</sup> day of January 2012

**State Board of Education**

Teri Quinn Gray, Ph.D., President

Gregory Coverdale

Jorge L. Melendez, Vice President

Terry M. Whittaker, Ed.D.

G. Patrick Heffernan

James L. Wilson, Ed.D.

Barbara B. Rutt

**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.

~~["DPAS" means an approved state educator performance system pursuant to 14 Del.C. Ch. 12, Subchapter VII.]~~

"Emergency Certificate" means a temporary credential issued to an individual who has obtained employment or an offer of employment with an employing [district authority] 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 supervise and employ an individual under an Emergency Certificate, and The employing district has reviewed the individual's credentials and established that the individual is competent, and that tThe employing district is committed required 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 the overall rating of "Highly Effective" or "Effective" on the DPAS Summative Evaluation.~~

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

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

12 DE Reg. 1412 (05/01/09)

## 3.0 Issuance of Emergency Certificate

3.1 Upon request receipt of a completed application from the employing [district authority], the Department may issue an Emergency Certificate, valid for up to three years, to an 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 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 individual in a 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 shall:

- ~~3.1.1~~ ~~Submit to the Department in writing the need for this individual to receive an Emergency Certificate.~~
- ~~3.1.2~~ ~~Establish that the proposed recipient of an Emergency Certificate is competent by submitting evidence of the 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.~~
- ~~3.1.4~~ ~~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 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 shall result in denial of the Emergency Certificate.~~
- ~~3.3~~ ~~The Emergency Certificate may be valid for up to three (3) years from the month in which the 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 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.~~
- ~~3.1.1~~ ~~An Emergency Certificate is valid for one school year subject to a limited extension as indicated herein.~~
- ~~3.1.2~~ ~~The Emergency Certificate is issued for a particular school year and expires on June 30th unless a limited extension is granted.~~
- ~~3.1.3~~ ~~The Department may grant a limited extension if the individual has met the requirements for an extension.~~
- ~~3.2~~ ~~An Emergency Certificate is only valid for the individual during their tenure with the employing [district authority] requesting the Certificate unless a transfer is approved as specified in 3.7.~~
- ~~3.3~~ ~~An Emergency Certificate may not be renewed or extended for a leave of absence.~~
- ~~3.4~~ ~~An Emergency Certificate may be extended for an exigent circumstances. Extensions for exigent circumstances shall not exceed one (1) year in length.~~
- ~~3.5~~ ~~Notwithstanding the foregoing, an Emergency Certificate issued to an individual in a 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.~~
- ~~3.6~~ ~~Notwithstanding the foregoing, an Emergency Certificate issued to an individual in an alternative routes for teacher licensure and certification program shall be valid for the time specified in 14 **Del.C.** §1260 and 14 **DE Admin. Code** 1507 Alternative Routes to Teacher Licensure and Certification.~~
- ~~3.7~~ ~~Transfer of Emergency Certificates to a New Employing [District Authority].~~

# FINAL REGULATIONS

- 3.7.1 Upon application by a new employing [district authority], the Department may approve the transfer of the Emergency Certificate if the following requirements are met:
- 3.7.1.1 The new employing [district authority] that hires an individual with a valid Emergency Certificate requests prior to the expiration of the original emergency certificate, the continued approval of the Emergency Certificate through the remainder of the original term or requests an extension.
- 3.7.1.2 The new employing [district authority] must conduct an independent review of the individual's competency and assume the commitments and responsibilities of an employing [district authority] within this regulation.
- 3.7.1.3 The new employing [district authority] shall also review the individual's Emergency Certificate written plan and amend as necessary and submit the revised written plan and transfer request for Department approval.
- 3.8 Extension of Emergency Certificates
- 3.8.1 The Emergency Certificate may be valid for up to two (2) consecutive school years. An employing [District authority] must request an extension of the Emergency Certificate prior to June 30th.
- 3.8.2 Emergency Certificates granted an extension shall expire on June 30th of the consecutive school year.
- 3.8.3 Prior to June 30th, the employing [district authority] shall review the Emergency Certificate and if considered necessary, the employing [district authority] may apply to the Department for an extension for an additional school year.
- 3.8.4 The Department may grant an extension of the Emergency Certificate if the following requirements are met:
- 3.8.4.1 The employing [district authority] submits a complete request and report prior to June 30th.
- 3.8.4.2 The [district employing authority] has established that the individual has made documented progress toward earning the Standard Certificate and has demonstrated continued competence through receiving a satisfactory summative evaluation on the annual DPAS.
- 3.8.4.2.1 Documented progress toward the Standard Certificate would include but is not limited to evidence of the educator having:
- 3.8.4.2.1.1 taken the necessary examination of content knowledge, such as the Praxis II test,  
or
- 3.8.4.2.1.2 completed requisite coursework or professional development, or
- 3.8.4.2.1.3 made significant growth toward the necessary degree or certificate.
- 3.8.4.3 Notwithstanding the above requirements in 3.8.4.2.1, the Department may grant an extension upon a showing of exigent circumstances.
- 3.9 Notification to Parents
- 3.9.1 As a condition of the individual receiving an emergency certificate, an employing [district authority] shall within sixty (60) days of the assignment notify the parents of the students within the educator's responsibility of the emergency certification.
- 3.9.2 The notification may be included in an already established form of communication to parents including but not limited to Highly Qualified Teacher status.
- 3.9.3 A copy of the [district employing authority] letter shall be on file with the Department.
- 3.10 An Emergency Certificate shall not be issued more than once to an individual for a specific Standard Certificate.
- 7 DE Reg. 161 (8/1/03)**  
**9 DE Reg. 544 (10/1/05)**  
**12 DE Reg. 1412 (05/01/09)**

**4.0 Application Procedures**

- 4.1 The employing [district authority] shall:
- 4.1.1 Submit to the Department in its request for the issuance of an Emergency Certificate the need for the individual to receive an Emergency Certificate and certify that the employing [district authority] has conducted a meaningful review of the applicant's credentials and found that the individual is competent.
- 4.1.2 Establish that the proposed recipient of an Emergency Certificate is competent by submitting evidence of the individual's license and other considerations. The evidence must establish that the employing [district authority] conducted a meaningful review of the individual's competence and may include, but is not limited to, evidence of course work or work experience in the area for which the Emergency Certificate is requested.
- 4.1.3 Apply for the Emergency Certificate within sixty (60) calendar days of the individual's hire or new job assignment.
- 4.1.4 Set forth a written plan with the application of the Emergency Certificate, verified by the individual and the employing [district authority]. The plan must be designed to support and assist the individual in achieving the skills and knowledge necessary to meet the applicable certification requirements. The written plan is subject to Department approval. The written plan shall contain at a minimum the following:
- 4.1.4.1 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
- 4.1.4.2 The specific course work or professional development including the educational institution or provider the individual intends to use to fulfill the requirements; and
- 4.1.4.3 The anticipated time frame for the completion of the requirements; and
- 4.1.4.4 A specific listing of how the employing [district authority] shall support and assist the individual in achieving the skills and knowledge necessary and completing the requirements.
- 4.2 Failure by the employing [district authority] to fulfill the conditions set forth shall result in denial of the Emergency Certificate.

**45.0 Employing [District Authority] Report**

- 5.1 At the end of each school year the validity period during which an Emergency Certificate is in effect, if the employing [district authority] intends to request an extension for an additional school year, the employing [district authority] shall file a written status report with the Department detailing the individual's progress completing the written plan with the Department, which shall:
- 45.1.1 Establish that the recipient of the Emergency Certificate has demonstrated continued competence through receiving a satisfactory summative evaluation on the annual Delaware Performance Appraisal System DPAS.
- 45.1.2 Document the progress made by the recipient of the Emergency Certificate toward fulfilling the written plan established by the employing [district authority] and approved by the Department 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.
- 45.3 Failure by the employing [district authority] to fulfill the conditions set forth in 4.1 and 4.2 above 5.1 prior to June 30th shall result in suspension the expiration 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)**

**12 DE Reg. 1412 (05/01/09)**

**56.0 Expiration of Emergency Certificate**

- 6.1 Prior to the expiration of an Emergency Certificate, the individual shall meet the requirements for issuance of a Standard Certificate (See 14 **Del.C.** §1505).
- 6.2 If no action is taken by the employing [district authority] prior to the deadline, an Emergency Certificate automatically expires on June 30th.
- 6.3 Emergency Certificates that have expired may not be extended.

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

12 DE Reg. 1412 (05/01/09)

**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 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)

12 DE Reg. 1412 (05/01/09)

**7.0 Revocation of Emergency Certificate**

- 7.1 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** 150514.

7.1.1 An educator is entitled to a full and fair hearing before the ~~Professional~~ Standards Board.

7.1.2 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

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

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)  
16 **DE Admin. Code** 3225

## ORDER

**3225 Assisted Living Facilities****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department"), Division of Long Term Care Residents Protection, initiated proceedings to amend the regulations regarding the Assisted Living Facilities. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code**, Section 10114, with authority prescribed by 29 **Delaware Code**, Section 7971.

The Department published its notice of proposed regulatory change pursuant to 29 **Delaware Code** Section 10115 in the November 2011 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 1, 2011 at which time the Department

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would receive information, factual evidence and public comment to the said proposed changes to the regulations.

### **SUMMARY OF PROPOSED CHANGE**

The proposed change will amend the regulation clarify reporting requirements for medication and treatment errors and omissions, as well as to refine the time periods for which records must be retained by facilities.

#### **Statutory Authority**

29 **Del.C.** Ch. 79, §7971, Division of Long Term Care Residents Protection

16 **Del.C.** Ch. 11, §1101, Nursing Facilities and Similar Facilities

#### **Background**

The Division recognized the need to clarify reporting requirements for medication and treatment errors and omissions, as well as the need to refine the time periods for which records must be retained by facilities.

#### **Summary of Proposed Amendment**

This regulatory proposal amends the existing regulations as outlined below:

- Revises the record retention requirement.
- Revises reporting requirements for medication errors or omissions
- Clarifies reporting requirements for treatment errors or omissions
- Defines reporting requirements when a resident's drugs have been diverted

#### **Summary of Comments Received with Agency Response and Explanation of Changes**

The Governor's Advisory Council for Exceptional Citizens (GACEC), the State Council for Persons with Disabilities (SCPD), the Delaware Health Care Facilities Association (DHCFA), the Delaware Trial Lawyers Association (DTLA) and Public Archives all commented on the proposed revisions.

With the exception of Public Archives all other entities commented on the definition of "Significant Medication Error" under the Glossary of Terms. SCPD and GACEC ask that "omission in treatment" be included as it currently is at 19.7.7.5; DTLA commented that the removal of "significant errors or omissions in medication or treatment would result in making some citizens even more vulnerable; and DHFCA asked that the explanation of this term at 19.7.7.5 be used as the definition with the exclusion of the reference to "drug diversion."

*Response: The Division agrees to include the terms "errors and omissions" in the reporting requirements for medication errors and treatment errors at 19.7.7.5 & 19.7.7.6 respectively. We have omitted "drug diversion" as a reportable medication error. We have added a separate section defining the reporting requirements of "drug diversion" at 19.7.11.*

DHFCA commented that the terms "drug diversion" and errors and omissions" need to be defined.

*Response: The Division has included a separate reporting requirement for "drug diversion" at 19.7.11. The definition of the term is implicit in the context in which it is used. The Division disagrees with the need for a specific definition of "errors and omissions" as that phrase has a commonly accepted definition among the health care and legal communities.*

SCPD, GACEP, DTLA and Public Archives object to lowering the medical record retention period from 5 years to 3 years.

*Response: The Division has restored the 5 year retention period unless the resident is deceased, in which case the records need only be retained for 3 years.*

#### **FINDINGS OF FACT:**

The Department finds that the proposed changes set forth in the November 2010 *Register of Regulations* should be adopted, subject to the withdrawal and the modification set forth above which are not substantive.

THEREFORE, IT IS ORDERED, that the proposed changes to Regulation 3225 Assisted Living Facilities, with the withdrawal and the modification indicated herein, is adopted and shall be final effective February 1, 2012.

Rita Landgraf, Cabinet Secretary  
Dept. of Health and Social Services

### 3225 Assisted Living Facilities

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

#### 19.0 Records and Reports

- 19.1 The assisted living facility shall be responsible for maintaining appropriate records for each resident. These records shall document the implementation of the service agreement for each resident.
- 19.2 Records shall be available, along with the equipment to read them if electronically maintained, at all times to legally authorized persons; otherwise such records shall be held confidential.
- 19.3 The assisted living facility resident clinical records shall be retained for a minimum of ~~535~~ years following discharge **[or 3 years after death]** before being destroyed.
- 19.4 In cases in which facilities have created the option for an individual's record to be maintained by computer, rather than hard copy, electronic signatures shall be acceptable. In cases when such attestation is done on computer records, safeguards to prevent unauthorized access and reconstruction of information must be in place. The following is an example of how such a system may be set up:
  - 19.4.1 There is a written policy, at the assisted living facility, describing the attestation policy(ies) force at the facility;
  - 19.4.2 The computer has built-in safeguards to minimize the possibility of fraud;
  - 19.4.3 Each person responsible for an attestation has an individualized identifier;
  - 19.4.4 The date and time is recorded from the computer's internal clock at the time of entry;
  - 19.4.5 An entry is not to be changed after it has been recorded; and
  - 19.4.6 The computer program controls what sections/ areas any individual can access/enter data based on the individual's personal identifier.
- 19.5 Incident reports, with adequate documentation, shall be completed for each incident. Records of incident reports shall be retained in facility files for the following:
  - 19.5.1 All reportable incidents.
  - 19.5.2 Falls without injury and falls with injuries that do not require transfer to an acute care facility or do not require reassessment of the resident.
  - 19.5.3 Errors or omissions in treatment or medication.
  - 19.5.4 Injuries of unknown source.
  - 19.5.5 Lost items, in accordance with facility policy, which are not subject to financial exploitation. Adequate documentation shall consist of the name of the resident(s) involved; the date, time and place of the incident; a description of the incident; a list of other parties involved, including witnesses and any accused persons; the nature of any injuries; resident outcome; and follow-up action, including notification of the resident's representative or family, attending physician and licensing or law enforcement authorities when appropriate.
- 19.6 Reportable incidents shall be reported immediately, which shall be within 8 hours of the occurrence of the incident, to the Division. The method of reporting shall be as directed by the Division.
- 19.7 Reportable incidents include:
  - 19.7.1 Abuse as defined in 16 **Del.C.** §1131.
    - 19.7.1.1 Physical abuse.
      - 19.7.1.1.1 Staff to resident with or without injury.
      - 19.7.1.1.2 Resident to resident with or without injury.

- 19.7.1.1.3 Other (e.g., visitor, relative) to resident with or without injury.
- 19.7.1.2 Sexual abuse.
  - 19.7.1.2.1 Staff to resident sexual acts.
  - 19.7.1.2.2 Resident to resident non-consensual sexual acts.
  - 19.7.1.2.3 Other (e.g., visitor, relative) to resident non-consensual sexual acts.
- 19.7.1.3 Emotional abuse.
  - 19.7.1.3.1 Staff to resident.
  - 19.7.1.3.2 Resident to resident.
  - 19.7.1.3.3 Other (e.g., visitor, relative) to resident.
- 19.7.2 Neglect as defined in 16 **Del.C.** §1131.
- 19.7.3 Mistreatment as defined in 16 **Del.C.** §1131.
- 19.7.4 Financial exploitation as defined in 16 **Del.C.** §1131.
- 19.7.5 Resident elopement.
  - 19.7.5.1 Any circumstance in which a resident's whereabouts are unknown to staff and the resident suffers harm.
  - 19.7.5.2 Any circumstance in which a cognitively impaired resident, whose whereabouts are unknown to staff, exits the facility.
  - 19.7.5.3 Any circumstance in which a resident cannot be found inside or outside a facility and the police are summoned.
- 19.7.6 Death of a resident in a facility or within 5 days of transfer to an acute care facility.
- 19.7.7 Significant injuries.
  - 19.7.7.1 Injury from an incident of unknown source in which the initial investigation concludes that there is reasonable basis to suspect that the injury is suspicious. An injury is suspicious based on; the extent of the injury, the location of the injury (e.g., the injury is located in an area not generally vulnerable to trauma), the number of injuries observed at one particular point in time or the incidence of injuries over time.
  - 19.7.7.2 Injury from a fall which results in transfer to an acute care facility for treatment or evaluation or which requires periodic reassessment of the resident's clinical status by facility professional staff for up to 48 hours.
  - 19.7.7.3 Injury sustained while a resident is physically restrained.
  - 19.7.7.4 Injury sustained by a resident dependent on staff for toileting, mobility, transfer and/or bathing.
  - 19.7.7.5 ~~Significant medication error or omission in medication/treatment, including drug diversion, which causes the resident discomfort, jeopardizes the resident's health and safety or requires extensive monitoring for up to 48 hours.~~  
Medication error or omission which causes or prolongs the resident's discomfort, jeopardizes the resident's health or safety, or requires periodic reassessment of the resident's clinical status by facility professional staff.
  - 19.7.7.6 Treatment error or omission which causes or prolongs the resident's discomfort, jeopardizes the resident's health or safety, or requires periodic reassessment of the resident's clinical status by facility professional staff.
  - 19.7.7.[67] A burn greater than first degree.
  - 19.7.7.[78] Choking resulting in transfer to an acute care facility.
  - 19.7.7.[89] Areas of contusions or lacerations which may be attributable to abuse or neglect.
  - 19.7.7.[910] Serious unusual and/or life-threatening injury.
- 19.7.8 Attempted suicide.
- 19.7.9 Poisoning.
- 19.7.10 Epidemic outbreak or quarantine.

19.7.11 ~~[Fire within a facility due to any cause]~~ Circumstances which provide a reasonable basis to suspect that a resident's drugs have been diverted.

19.7.12 Utility interruption lasting more than 8 hours in one or more major service including electricity, water supply, plumbing, heating or air conditioning, fire alarm, sprinkler system or telephone system.

19.7.13 Structural damage or unsafe structural conditions.

19.7.13.1 Structural damage to a facility due to natural disasters such as hurricanes, tornadoes, flooding or earthquakes.

19.7.13.2 Water damage which impacts resident health, safety or comfort.

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

13 DE Reg. 1328 (04/01/10)

## 20.0 Waivers and Severability

20.1 Waivers may be granted by the Division for good cause.

20.2 Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

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

14 DE Reg. 1190 (05/01/11)

15 DE Reg. 81 (07/01/11)

**\*Please Note:** As the rest of the sections were not amended since the proposal in the November 2011 Register, they are not being published here. A complete copy of the final regulation is available at:

**3225 Assisted Living Facilities**

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### ORDER

#### Reimbursement Methodology for Certain Medicaid Services

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend existing rules in the Title XIX Medicaid State Plan regarding the reimbursement methodology for certain Medicaid services. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the December 2011 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2011 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSAL

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend the Title XIX Medicaid State Plan to clarify the reimbursement methodology for certain Medicaid services.

## Statutory Authority

- 42 CFR §440, Subpart A, *Definitions*; and,
- 42 CFR §447.205, *Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates*; and,
- 42 CFR §447, *Payments for Services*.

## Background

In accordance with 42 CFR §447.205 and Section 1902(a)(13)(A) of the Social Security Act, Delaware Health and Social Services (DHSS), Division of Medicaid and Medicaid Assistance (DMMA) is required to give public notice of any significant proposed change in its methods and standards for setting payment rates for services.

## Summary of Proposal

The Centers for Medicare and Medical Assistance (CMS) requires that reimbursement methods for setting payment rates for services be consistent with the statutory and regulatory requirements of Section 1902(a) of the Social Security Act, Section 1902(a)(30)(A) of the Act and 42 CFR §430.10.

To more clearly define the comprehensive payment methodology used to base individual practitioner rates, the following significant changes are proposed.

Effective for dates of service provided on or after January 1, 2012:

- 1) Reimbursement Methodology for **Medical Free-Standing and Dental Free-Standing Clinics**: Licensed free-standing emergency room are paid a negotiated flat rate per encounter. Dialysis clinics are paid 100% of the applicable Medicare rate. Dental free-standing clinics are paid the same as non-clinic dentists per EPSDT Dental Treatment. All other medical clinics are paid as physicians are paid as described in Attachment 4.19-B, Other Types of Care, Physician, Podiatry and Independent Radiology Services.
- 2) Reimbursement Methodology for **Extended Services for Pregnant Women**: Government providers are reimbursed on a negotiated rate basis which will not exceed actual costs which result from efficient and economic operation of the provider. Reimbursement of non-governmental providers will be based on reasonable charges which will not exceed the prevailing charges in the locality for comparable services as determined from the annual DMMA Nursing Wage Survey. The agency's fee schedule rate was set as of June 1, 2002 and is effective for services on or after that date. The fee schedule and any periodic adjustments are published on the DMAP website at: <http://www.dmap.state.de.us/downloads.html>.
- 3) Reimbursement Methodology for **Optometrists and Opticians**: Optometrists and Opticians are reimbursed for examinations as physicians and are paid as described in Attachment 4.19-B, Other Types of Care, Physician, Podiatry and Independent Radiology Services.
- 4) Reimbursement Methodology for **Emergency Transportation**: Emergency transportation is reimbursed as a percentage of the Medicare Fee Schedule for Delaware as follows:
  - Ground Mileage, per Statute Mile will be 22%
  - Advanced Life Support, Emergency Transport will be 13%
  - Basic Life Support, Emergency Transport will be 17%
  - Conventional Air Services, Transport One Way (Rotary Wing) will be 39%
  - Rotary Wing Air Mileage, per Statute Mile will be 38%.

The provisions of this state plan amendment are subject to approval by the CMS.

## Fiscal Impact Statement

The proposed revision imposes no increase in cost on the General Fund.

## SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

Two representatives from the Delaware Optometric Association (DOA) offered the following similar observations and recommendation summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

**DOA**

Having reviewed the proposed Reimbursement Methodology for Certain Medicaid Services, it appears to us that opticians should not be referenced in the language regarding reimbursement for examinations as physicians. They are not physicians and as such are not licensed regulated health care providers. Both Optometrists and Opticians may supply materials to Medicaid beneficiaries. They SHOULD be included in the section referring to rates for eyeglass frames and lenses (DME). That can be accomplished by deleting "and Opticians" in the first sentence.

**Agency Response:** Thank you for your comments about the revised State Plan language regarding reimbursement for Optometrist and Optician Services. This State Plan Amendment was submitted at the request of CMS who requested that DMMA should provide more detail about its current methodology. The sentence "Optometrists and Opticians are paid as physicians" does not intend to imply that either of those professions meets the licensure or other requirements for physicians. It means that these disciplines are paid as physicians *are paid* under the Delaware State Plan for Medical Assistance. That means that they are paid based on rates in the Delaware Medicaid Physician Fee Schedule, which is paid as a percentage of the Medicare Physician Fee Schedule. There are rates for many procedure codes on the Medicare and Medicaid Fee Schedules that can be performed by other practitioner types than physicians.

There are no changes to the proposed regulation as a result of this comment.

**FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the December 2011 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan regarding the reimbursement methodology for certain Medicaid services including *Medical and Dental Free-Standing Clinics, Optometrists and Opticians, Extended Services for Pregnant Women and Emergency Transportation Services* is adopted and shall be final effective February 10, 2012.

Rita M. Landgraf, Secretary, DHSS

**DMMA FINAL ORDER REGULATION #12-01  
REVISION:**

ATTACHMENT 4.19-B  
Page 2

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE: DELAWARE**

**METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES - OTHER TYPES OF CARE**

Medical/~~Dental~~ free-Standing Clinics are paid either a negotiated flat rate or as physicians are paid (see above) that are licensed as a free standing emergency room under section 4404 of Title 16 of the Delaware Administrative Code are paid a negotiated flat rate per encounter. Dialysis clinics are paid 100% of the applicable Medicare rate. All other medical clinics are paid as physicians are paid as described in Attachment 4.19-B Other Types of Care, Physician, Podiatry and Independent Radiology Services.

The agency's fee schedule for free standing emergency rooms was set as of April 1, 2005 and is effective for services provided on or after that date. The fee schedule and any periodic adjustments are published on the Delaware Medical Assistance Program (DMAP) DMAP website at: <http://www.dmap.state.de.us/downloads.html>.

Dental free-standing Clinics are paid the same as non-clinic dentists per EPSDT Dental Treatment, Attachment 4.19-B page 19.

ATTACHMENT 4.19-B  
Page 3

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
STATE: DELAWARE**

**METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES - OTHER TYPES OF CARE**

Transportation Services are reimbursed as follows:

1. Emergency Transportation: ~~is reimbursed a flat rate for any trip up to the first 10 miles and an additional amount for each additional mile: Effective for dates of service on or after January 1, 2012, emergency transportation is reimbursed as a percentage of the Medicare Fee Schedule for Delaware as follows:~~

- Ground Mileage, per Statute Mile will be 22%
- Advanced Life Support, Emergency Transport will be 13%
- Basic Life Support, Emergency Transport will be 17%
- Conventional Air Services, Transport One Way (Rotary Wing) will be 39%
- Rotary Wing Air Mileage, per Statute Mile will be 38%.

2. Non-emergency Transportation: The broker is reimbursed a monthly capitated rate for each Medicaid client residing in the State.

~~Optometrists and Opticians are reimbursed a set fee for examinations and another set fee for stock lenses. The reimbursement for non-stock lenses is made by prior approval by the Medicaid agency's Optometric Consultant. The agency's rates were set as of March 1 of each year and are effective for services on or after that date are reimbursed for examinations as physicians and are paid as described in Attachment 4.19-B Other Types of Care, Physician, Podiatry and Independent Radiology Services.~~

Except as otherwise noted in the Plan, State-developed fee schedule rates are the same for both governmental and private ~~providers of optometrist and optician services~~ individual practitioners, and the. The fee schedule and any annual/periodic adjustments to the fee schedule are available to providers upon request published and found at: <http://www.dmap.state.de.us/downloads/hcpcs.html>.

Rates for eye glass frames and lenses are contained in the National Heritage Insurance Corporation (NHIC) CMS Contractor file for Durable Medical Equipment (DME). Their website is located at: <http://www.medicarenhic.com/dme/dmfees.shtml>.

~~Extended Services to Pregnant Women: will be reimbursed at a unit rate for individual services: Government providers are reimbursed on a negotiated rate basis which will not exceed actual costs which result from efficient and economic operation of the provider. Reimbursement of non-governmental providers will be based on reasonable charges which will not exceed the prevailing charges in the locality for comparable services as determined from the annual DMAP Nursing Wage Survey. The agency's fee schedule rate was set as of June 1, 2002 and is effective for services on or after that date. The fee schedule and any periodic adjustments are published on the DMAP website at: <http://www.dmap.state.de.us/downloads.html>.~~

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## DIVISION OF PUBLIC HEALTH

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

### ORDER

### 4202 Control of Communicable and Other Disease Conditions

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations for the Control of Communicable and Other Disease Conditions related to the reporting of Hospital Acquired Infections. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Delaware Code**, Section 1008A.

On December 1, 2011 (Volume 15, Issue 6), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Delaware Code** Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by December 30,

2011, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period. All comments received were endorsements of the proposed regulations and there were no comments requesting changes to the proposed regulations. Therefore, no evaluation or summarization of comments is presented in the accompanying "Summary of Evidence."

#### SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations for the Control of Communicable and Other Disease Conditions related to the reporting of Hospital Acquired Infections were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

The public comment period was open from December 1, 2011 through December 30, 2011. Based on comments received (letters of endorsement) during the public comment period no changes have been made to the proposed regulations.

Entities offering written comments (endorsement of the proposed regulations) included:

- State Council for Persons with Disabilities
- Governor's Advisory Council for Exceptional Citizens

The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

#### FINDINGS OF FACT:

Based on comments received, no 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 for the Control of Communicable and Other Disease Conditions related to the reporting of Hospital Acquired Infections are adopted and shall become effective February 11, 2012, after publication of the final regulation in the *Delaware Register of Regulations*.

Rita M. Landgraf, Secretary

#### 4202 Control of Communicable and Other Disease Conditions

\*Please note that no changes were made to the regulation as originally proposed and published in the December 2011 issue of the *Register* at page 737 (15 DE Reg. 737). 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](#)

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### DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 311 & 2501 (18 Del.C. §§311, 2501)

#### ORDER

#### 1314 Health Premium Consumer Comparison

Proposed Regulation 1314 relating to Health Premium Consumer Comparison was published in the *Delaware Register of Regulations* on December 1, 2011. The comment period remained open until December 30, 2011. There was no public hearing on proposed Regulation 1314. Public notice of the proposed Regulation 1314 in the

*Register of Regulations* was in conformity with Delaware law.

### **SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Comments were received on the proposed Regulation 1314 from:

1. The State Council for Persons with Disabilities, who endorsed the regulation with one clarification recommendation;
2. America's Health Insurance Plans (AHIP), who submitted concerns and proposed clarification amendments;
3. The Governor's Advisory Council for Exceptional Citizens, who endorsed the regulation with one clarification recommendation; and
4. Blue Cross Blue Shield Delaware (submitted late), who submitted proposed clarification and grammar amendments.

The collective comments were reviewed and considered, with minor clarification amendments being made. No substantive changes were made to the proposed Regulation 1314.

### **FINDINGS OF FACT**

Based on Delaware law and the record in this docket, I make the following findings of fact:

The requirements of proposed Regulation 1314 best serve the interests of the public and of insurers and comply with Delaware law.

### **DECISION AND EFFECTIVE DATE**

Based on the provisions of 18 **Del.C.** §§314, 1111, and of 29 **Del.C.** §§10113-10118, and the record in this docket, I hereby adopt proposed Regulation 1314 as may more fully and at large appear in the version attached hereto to be effective on February 15, 2012.

### **TEXT AND CITATION**

The text of proposed Regulation 1314 last appeared in the *Register of Regulations* Vol. 15, Issue 6, pages 740-742.

IT IS SO ORDERED this 18th day of January, 2012.

Karen Weldin Stewart, CIR-ML  
Insurance Commissioner

### **1314 Health Premium Consumer Comparison**

#### **1.0 Authority**

This regulation is adopted by the Commissioner pursuant to the authority granted by 18 **Del.C.** §§311 and 2501 and promulgated in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

#### **2.0 Definitions**

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

**["Health Insurance" means a plan or policy issued by a carrier for the payment for, provision of, or reimbursement for health care services.]**

**"Insurer" means every insurer, health service[s] corporation, and managed care organization licensed to offer and sell health insurance in the state of Delaware (and does not include limited benefit plans, vision only, dental, Medicare supplement, or long term care).**

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# FINAL REGULATIONS

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"Rate estimates" means the estimate~~s~~ of annual insurance premiums produced for the Department's rate survey.

"Rate survey" means a request by the Department that insurers calculate estimated annual insurance premiums based on hypothetical consumer profiles. The rate survey shall include estimated premiums for zip codes or other geographic area identified by the Department.

### **3.0 Scope**

- 3.1 Insurers that market health insurance [in this state] shall be required to complete the full rate survey required by this regulation.
- 3.2 The provisions of this regulation shall not apply to policies of insurance ~~[that only cover specified diseases or are limited health benefit plan dental plans and limited benefit plans providing health benefit plans identified as not included under 18 Del.C. §3602(10)b, §3572(4) or §7202(18).]~~

### **4.0 Insurer Information**

Each insurer will be provided with an account on the Department's website to provide basic company information and to administer the submission of rate survey data.

### **5.0 Survey Completion Deadline**

- 5.1 In 2012, all required rate survey data from insurers must be submitted to the Department on or before ~~[March 15th]~~ May 1st. In all subsequent years ~~[(and again except)]~~ in 2012, all required rate survey data from insurers must be submitted to the Department on or before September 1st of each year.
- 5.2 The Department of Insurance shall make available the rate survey request format with hypothetical consumer profiles, coverage levels, and other information necessary for calculating rate estimates on the Department's website no later than September 15th of each year (and on ~~[March 30, May 15, 2012]).~~
- 5.3 Rate survey data that is incomplete or not reported according to the Department's instructions will be returned to the insurer for correction and must be resubmitted within 10 business days.

### **6.0 Survey Format**

- 6.1 Insurers shall provide rate estimates based on rates in effect as of August 31st of the year when the rate survey is being completed (and as of March 1, 2012, to comply with section 5.1 above).
- 6.2 All rate estimates shall be rounded to the nearest dollar.
- 6.3 Insurers shall submit rate data utilizing an electronic spreadsheet provided by the Department or by other means specified by the Department. Insurers shall be required to upload the data to the Department via the Internet.

### **7.0 Responsibility for Information and Data**

Insurers shall be responsible for the accuracy of company information and rate data submitted to the Department for publication. As part of the submission process, insurers will be subject to examination to verify the accuracy of the data being submitted.

### **8.0 Consumer Quote Requests**

- 8.1 Insurers shall provide a single electronic mail message to the Department for the purpose of allowing consumers to request a personalized health insurance premium quote as part of the rate comparison process.
- 8.2 The insurer shall ~~[be required to]~~ provide a direct email response to the consumer, confirming receipt of the quote request ~~[and providing the requested information].~~

8.3 The insurer shall be required to maintain ~~[an electronic a]~~ log of all email responses to consumer requests for rate quotes for a period of one year after the request. The ~~[electronic]~~ log shall be capable of being transferred to the Department upon request.

## **9.0 Penalties**

Insurers that do not comply with this regulation are subject to the provisions of 18 Del.C. §329.

## **10.0 Severability**

If any provision of this regulation or the application of any such provision to any person or circumstance shall be held invalid, the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected.

## **11.0 Effective Date**

This regulation shall become effective on February 15, 2012.

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**DEPARTMENT OF LABOR  
DIVISION OF INDUSTRIAL AFFAIRS  
Office of Workers' Compensation**

Statutory Authority: 19 Delaware Code, Sections 2322B, C, E, and F  
(19 Del.C. §§2322B, C, E, and F)  
19 DE Admin Code 1341

### **ORDER**

#### **1341 Workers' Compensation Regulations**

Effective February 10, 2012, the Department of Labor (DOL) will put in place the following changes to subsection 5.0, Appendix A, of 19 DE Admin Code 1341 ("Request for Utilization Review" form).

1. 7c Added language explaining the process to supply contact information for additional health care providers under review, when the utilization review request must involve more than two providers.

2. 7d Added language explaining the process to supply contact information for hospitals and ASCs that would suffer loss from a non-certified utilization review determination.

3. Added language to the last paragraph of page 1 explaining the process for requesters to supply DOL with the certification that the UR request complies with the prompt pay provision mandated in 19 Del.C. §2322F(h).

Pursuant to 29 Del.C. §10113(b)(1), (b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally:

(1) Descriptions of agency organization, operations and procedures for obtaining information;

This regulatory change to the Request for Utilization Review form explains the procedure to obtain information pertinent to the utilization review process and therefore, is exempt from the procedural requirements of Chapter 101, pursuant to 29 Del.C. §10113(b)(1).

#### **DEPARTMENT OF LABOR**

John McMahon, Secretary of Labor

# FINAL REGULATIONS

## 1341 Workers' Compensation Regulations

*(Break in Continuity of Sections)*

### APPENDIX A

#### DELAWARE DEPARTMENT OF LABOR MEDICAL UTILIZATION REVIEW PROGRAM REQUEST FOR UTILIZATION REVIEW (Pursuant to 19 Del.C. §2322 F(j))

**PLEASE TYPE OR CLEARLY PRINT ALL INFORMATION.** All information and addresses must be verified as current and accurate.

1. Date of Request \_\_\_\_\_
2. WC Number(s) \_\_\_\_\_ Date(s) of injury \_\_\_\_\_
3. Nature of Injury/Practice Guideline(s) \_\_\_\_\_
4. Claimant's Name \_\_\_\_\_  
Age \_\_\_\_\_ Sex \_\_\_\_\_  
Address \_\_\_\_\_ Tel. No. \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_
5. Employer \_\_\_\_\_
6. Party Requesting Review \_\_\_\_\_  
Primary Contact at Party's Office \_\_\_\_\_  
Email Address \_\_\_\_\_  
Address \_\_\_\_\_ Tel. No. \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_
- 7(a). Health Care Provider to be reviewed \_\_\_\_\_  
Specialty (if applicable) \_\_\_\_\_  
Date of first treatment \_\_\_\_\_  
Address \_\_\_\_\_ Tel. No. \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_
- 7(b). Health Care Provider to be Reviewed \_\_\_\_\_  
Specialty (if applicable) \_\_\_\_\_  
Date of first treatment \_\_\_\_\_  
Address \_\_\_\_\_ Tel. No. \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_
- (c) Additional Health Care Providers to be reviewed (list name, specialty, address, etc. on a separate sheet)
- (d) Health Care Facility(s) Impacted (e.g. hospital, ambulatory surgery center, etc.) by this retrospective review (list name, address, etc. on a separate sheet)

8. Treatment to be reviewed: Specify the health care service to be reviewed and the timeframe within which the treatment was or will be rendered.

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My signature certifies the following: (a) all names and addresses on this form have been verified as current and accurate; (b) two identical copies of associated medical material are being submitted for review; and (c) ~~all items listed in the table of contents are in each copy of the medical material~~ the bill denial for the treatment subject to this review was sent within 30 days of receiving the provider's bill; and (d) all items listed in the table of contents are in

each copy of the medical material.

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Print Name of Requester

Signature of Requester

**COPY THIS FORM OR REPRODUCE EXACTLY IN APPEARANCE AND CONTENT.  
SEE INSTRUCTIONS ON BACK**

Rev. 02/2011

1 of 2

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

**1341 Workers' Compensation Regulations**

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL  
CONTROL**

**DIVISION OF AIR AND WASTE MANAGEMENT**

Statutory Authority: 7 Delaware Code, Chapter 60; (7 **Del.C.**, Ch. 60)  
**7 DE Admin. Code 1125**

**Secretary's order No.: 2012-A-0003**

**1125 Requirements for Preconstruction Review**

**Date of Issuance: January 17, 2012**

**Effective Date of the Amendment: February 11, 2012**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

**Background and Procedural History**

This Order considers proposed *revised* regulations to amend 7 **DE Admin. Code** 1125, Requirements for Preconstruction Review; Sections 1.9 ("Definitions"), 2.0 ("Emissions Offset Provisions"), and 3.0 ("Prevention of Significant Deterioration of Air Quality [PSD]). The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice 2011-01. The Department published its initial proposed regulation Amendments in the May 1, 2011 *Delaware Register of Regulations*, and held a public hearing on May 23, 2011. It should be noted that public comment was received by the Department with regard to this proposed promulgation, and the Department provided a very thorough and detailed response to the same.

The proposed amendments to 7 **DE Admin. Code** 1125 are required by the U.S. Environmental Protection Agency ("EPA") to allow new source review permitting of qualifying emission sources of particulate matter ("PM") with an aerodynamic diameter equal to or less than 2.5 micrometers (PM<sub>2.5</sub>) and of emission sources of two PM<sub>2.5</sub> precursors, sulfur dioxide and/or nitrogen oxides, to conform to the requirements of the EPA PM<sub>2.5</sub> new source review permitting program, as shown in 73 FR 28321 and 75 FR 64864.

Previously, particulate matter was regulated in the size range of equal to or less than 10 micrometers in diameter. EPA has since determined that PM in the smaller size range was more detrimental to public health, as

they were more easily inhaled by people and would lodge in the lungs and not be easily removed, causing numerous breathing-related problems.

EPA established air quality standards for PM<sub>2.5</sub> in 1997. Since then, the standards have been revised, but implementation was delayed by various court challenges. On May 16, 2008, EPA published a final rule defining the new source review permitting program for PM<sub>2.5</sub> (73 FR 28321). This rule also set-up a transitional permitting program and required State Implementation Plan (SIP) approved states, such as Delaware, to adopt and submit SIP revisions within three years of rule publication. Therefore, this proposed promulgation action is necessary for Delaware to remain compliant with the aforementioned EPA rule which defines the new source review permitting program.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated January 5, 2012 (Report). The Report recommends certain findings and the adoption of the proposed *revised* Amendments as attached to the Report as Appendix A.

### Findings and Discussion

I find that the proposed *revised* Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these *revised* Amendments. With the adoption of this Order, Delaware will (1) conform to the federal requirements concerning new source permitting of qualifying sources of particulate matter with an aerodynamic diameter equal to or less than 2.5 micrometers (PM<sub>2.5</sub>) and of sources of two PM<sub>2.5</sub> precursors, sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>); and (2) correct several known typographical errors contained within the current version of this regulation.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at the public hearing held on May 23, 2011;
- 3.) The Department held a public hearing on May 23, 2011 in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended *revised* Amendments, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended *revised* Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) conform to the federal requirements concerning new source permitting of qualifying sources of particulate matter with an aerodynamic diameter equal to or less than 2.5 micrometers (PM<sub>2.5</sub>) and of sources of two PM<sub>2.5</sub> precursors, sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>); (2) correct several known typographical errors contained within the current version of this regulation; and, lastly, because (3) the amendments are well supported by documents in the record;
- 6.) The Department shall submit this Order approving the final *revised* regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

**1125 Requirements for Preconstruction Review**

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

**1125 Requirements for Preconstruction Review**

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**DIVISION OF AIR AND WASTE MANAGEMENT**

Statutory Authority: 7 Delaware Code, Section 901(b) and 903(e)(2)a (7 Del.C. §901(b)  
§903(e)(2)a)

**7 DE Admin. Code 3553**

**Secretary's Order No.: 2012-A-0002**

**Proposed Revision to Delaware's 2008 State Implementation Plan For Attainment of the PM<sub>2.5</sub> Annual National Ambient Air Quality Standard - Attainment Demonstration**

**Date of Issuance: January 17, 2012**

**Effective Date of the Amendment: February 11, 2012**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

**Background and Procedural History**

This Order considers the proposed revision to the Delaware 2008 State Implementation Plan (SIP) for Attainment of the PM<sub>2.5</sub> Annual National Ambient Air Quality Standard. The purpose of this proposed revision is to (1) replace the on-road mobile emissions budget in the 2008 PM<sub>2.5</sub> SIP with a budget that is based on the MOVES model; (2) demonstrate that the MOVES based mobile source budget is consistent with attainment of the PM<sub>2.5</sub> NAAQS; and (3) demonstrate that the contingency requirements of the Clean Air Act (CAA) are met. The Department published its initial proposed revision to the aforementioned Delaware SIP in the December 1, 2011 *Delaware Register of Regulations*, and held a public hearing on December 28, 2011. It should be noted that no public comment was received by the Department with regard to this proposed promulgation, and no members of the public attended the hearing held by the Department in this matter.

On March 2, 2010, the U.S. Environmental Protection Agency ("EPA") published a notice in the Federal Register concerning the approval of utilization of the Motor Vehicle Emissions Simulator ("MOVES") model as a tool for calculation of on-road emissions. That EPA notice also established the beginning of a two-year transportation conformity grace period, which is scheduled to end on March 2, 2012. Subsequent to that date, MOVES is required to be used for new regional emissions analyses for transportation conformity. In consideration of the aforementioned MOVES requirement (and, due to the ability of the MOVES model to predict more accurate mobile emissions), the Department proposes to amend its current State Implementation Plan with a revised on-road mobile emissions budget which utilizes the MOVES model. With the adoption of this amended SIP, the Department will be able to more accurately calculate the on-road sector's portion of particulate matter and oxides of nitrogen emissions in New Castle County. This proposed action will also address the compatibility issue with future regional emissions analyses for transportation conformity for the annual PM<sub>2.5</sub> standard.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated January 5, 2012 (Report). The Report recommends certain findings and the adoption of the proposed revisions to Delaware's 2008 State Implementation Plan, as attached to the Report as Appendix A.

## Findings and Discussion

I find that the proposed revision to Delaware's aforementioned SIP is well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed SIP revision.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of the proposed revision to the Delaware 2008 State Implementation Plan (SIP) for Attainment of the PM<sub>2.5</sub> Annual National Ambient Air Quality Standard. With the adoption of this Order, Delaware will (1) replace the on-road mobile emissions budget in the 2008 PM<sub>2.5</sub> SIP with a budget that is based on the MOVES model; (2) demonstrate that the MOVES based mobile source budget is consistent with attainment of the PM<sub>2.5</sub> NAAQS; and (3) demonstrate that the contingency requirements of the Clean Air Act (CAA) are met.

In conclusion, the following findings and conclusions are entered:

1.) The Department has jurisdiction under its statutory authority to issue an Order adopting this proposed SIP revision as final;

2.) The Department provided adequate public notice of the proposed SIP revision, and provided the public with an adequate opportunity to comment on the proposed SIP revision, including at the public hearing held on December 28, 2011;

3.) The Department held a public hearing on December 28, 2011 in order to consider public comment before making any final decision;

4.) The Department's Hearing Officer's Report, including its recommended record and the recommended SIP revision, as set forth in Appendix A, is adopted to provide additional reasons and findings for this Order;

5.) The recommended revision to Delaware's 2008 State Implementation Plan (SIP) for Attainment of the PM<sub>2.5</sub> Annual National Ambient Air Quality Standard should be adopted as final, because Delaware will be able to (1) replace the on-road mobile emissions budget in the 2008 PM<sub>2.5</sub> SIP with a budget that is based on the MOVES model; (2) demonstrate that the MOVES based mobile source budget is consistent with attainment of the PM<sub>2.5</sub> NAAQS; (3) demonstrate that the contingency requirements of the Clean Air Act (CAA) are met; and, lastly, because (4) the revision is well supported by documents in the record;

6.) The Department shall submit this Order approving the final revision to Delaware's 2008 State Implementation Plan (SIP) for Attainment of the PM<sub>2.5</sub> Annual National Ambient Air Quality Standard to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

**Proposed Revision to Delaware's 2008 State Implementation Plan For Attainment of the PM<sub>2.5</sub> Annual National Ambient Air Quality Standard - Attainment Demonstration**

**October 2011**

**Section 1. Introduction**

In April, 2008 Delaware submitted to the EPA its "State Implementation Plan for Attainment of the PM<sub>2.5</sub> Annual National Ambient Air Quality Standard - Attainment Demonstration" (the "2008 PM<sub>2.5</sub> SIP").<sup>1</sup> The 2008 PM<sub>2.5</sub> SIP set out to accomplish four primary goals:

- Demonstrate that with all existing and proposed controls, all of Delaware's PM<sub>2.5</sub> monitors will show attainment in 2009.
- Demonstrate that the entire Philadelphia-Wilmington, PA-NJ-DE non-attainment area will attain the annual PM<sub>2.5</sub> NAAQS in 2009.
- Establish Delaware's 2009 mobile source budgets for transportation conformity determinations under Regulation No. 1132, Transportation Conformity.

1. [http://www.awm.delaware.gov/Info/Regs/Documents/DE\\_PM25\\_SIP\\_AD\\_fnl.pdf](http://www.awm.delaware.gov/Info/Regs/Documents/DE_PM25_SIP_AD_fnl.pdf)

- Treat emission reduction credits (ERCs) banked under 7 DE Admin. Code 1134, Emissions Banking and Trading Program, as “emitted.” As such, the future use of these credits is consistent with, and will not interfere with any calculation or provision of this SIP.

This SIP revision is related to the PM<sub>2.5</sub> and NOx on-road mobile source budgets that were established in the 2008 PM<sub>2.5</sub> SIP. Those SIP budgets were established using EPA’s MOBILE6.2 model.<sup>2</sup> However, effective March 2012<sup>3</sup> a new on-road mobile emissions model – Motor Vehicle Emissions Simulator (MOVES) – is required to be used in all planning and transportation conformity determinations.

The purpose of this SIP revision is to 1) replace the on-road mobile emissions budget in the 2008 PM<sub>2.5</sub> SIP with a budget that is based on the MOVES model, 2) demonstrate that the MOVES based mobile source budget is consistent with attainment of the PM<sub>2.5</sub> NAAQS by 2010, and 3) demonstrate that the contingency requirements of the Clean Air Act (CAA) are met. No other changes or revisions to the 2008 PM<sub>2.5</sub> SIP are proposed.

Note that this SIP revision impacts only PM<sub>2.5</sub> and NOx emissions and calculations. While sulfur dioxide (SO<sub>2</sub>) is a pollutant of concern relative to PM<sub>2.5</sub> it is not a pollutant of concern for mobile budgets, and therefore no SO<sub>2</sub> changes are proposed as part of this SIP revision. The treatment of SO<sub>2</sub> emissions in the 2008 PM<sub>2.5</sub> SIP is unchanged.

Questions or comments regarding this SIP revision should be addressed to Phil Wheeler, M.S. Project Leader for Transportation Conformity, Planning Branch, Division of Air Quality, Delaware Department of Natural Resources and Environmental Control, at [philip.wheeler@state.de.us](mailto:philip.wheeler@state.de.us).

**Section 2. Revised On-Road Mobile Source Budgets**

This SIP revision establishes on-road mobile emissions budget for New Castle County for PM<sub>2.5</sub> and NOx. When approved by the EPA, all subsequent PM<sub>2.5</sub> conformity analyses will test future on-road mobile emissions calculated for transportation plans in New Castle County with this new budget.

- 2.1 EPA’s MOVES model was used to quantify PM<sub>2.5</sub> and NOx emission from on-road mobile sources. These emissions are shown in Table 2-1 below. The associated 2012 MOVES input and output files are included in Appendix A of this SIP revision.

Table 2-1 On-Road Mobile Emission Budget (Tons per Year (tpy))

County	Emissions Budget	
	NOx	PM <sub>2.5</sub>
New Castle	6,273	199

- 2.2 This SIP revision establishes the emission levels identified in Table 2-1 as the on-road mobile emissions budget for New Castle County for PM<sub>2.5</sub> and NOx.

**Section 3. Demonstration that 2009 MOVES based On-Road Mobile Source Emissions are Consistent with Attainment of the PM<sub>2.5</sub> NAAQS by 2010**

Delaware demonstrated attainment of the annual PM<sub>2.5</sub> NAAQS in its 2008 PM<sub>2.5</sub> SIP by showing that Projected 2009 Emissions (i.e., the 2009 emission levels after the implementation of all state and federal control requirements) were less than the Attainment Targets (i.e., the emission levels needed for attainment based on modeling). This same methodology is used below to demonstrate that the MOVES based mobile budgets presented in Section 2 above are consistent with attainment of the PM<sub>2.5</sub> NAAQS.

2. Details of the MOBILE6 budget calculations are included in Section 8.2 of the 2008 PM<sub>2.5</sub> SIP.
3. EPA has proposed to extend this date by one year; to March 2013.

- 3.1 Community Multi-scale Air Quality Model (CMAQ) modeling was conducted in the 2008 PM<sub>2.5</sub> SIP to demonstrate that Delaware and the entire Philadelphia based non-attainment area would attain the PM<sub>2.5</sub> NAAQS in 2010<sup>4</sup>. CMAQ modeling demonstrated that the Delaware emission levels shown in Table 3-1 are the levels that are necessary for, and consistent with attainment of the annual PM<sub>2.5</sub> NAAQS. These emission levels reflect the level of emissions needed for attainment, and are therefore referred to as the “2009 Attainment Target.”<sup>5, 6</sup>

Table 3-1 2009 Attainment Target (tpy)

County	NOx	PM <sub>2.5</sub>
Kent	8,554	1,185
<b>New Castle</b>	<b>23,048</b>	<b>3,249</b>
Sussex	18,001	3,581
Statewide Total	49,603	8,015

- 3.2 Attainment year (i.e., 2009) emission levels were projected in the 2008 PM<sub>2.5</sub> SIP based on final and enforceable State and Federal emission control requirements.<sup>7</sup> These projected 2009 emission levels, which are referred to as the “Delaware Projected 2009 Emissions,” are shown in Table 3-2.

Table 3-2 Delaware Projected 2009 Emissions (tpy)

County	NOx	PM <sub>2.5</sub>
Kent	7,799	989
<b>New Castle</b>	<b>21,807</b>	<b>3,015</b>
Sussex	11,591	2,571
Statewide Total	41,197	6,575

- 3.3 Table 3-3 compares the 2009 mobile emissions calculated using MOBILE6 and MOVES. The associated 2009 MOBILE6 and MOVES input and output files are included in Appendix B of this SIP revision.

Table 3-3 2009 MOBILE6, MOVES and Increase due to MOVES (tpy)

County	2009 Mobile6		2009 MOVES		MOVES Increase	
	NOx	PM <sub>2.5</sub>	NOx	PM <sub>2.5</sub>	NOx	PM <sub>2.5</sub>
Kent	1,922	32	3,488	109	1,566	77
<b>New Castle</b>	<b>4,904</b>	<b>87</b>	<b>8,448</b>	<b>257</b>	<b>3,544</b>	<b>170</b>

- A detailed discussion of the CMAQ modeling and modeling results can be found in Section 6 of the 2008 PM<sub>2.5</sub> SIP.
- Although New Castle County is the only nonattainment county, emission levels of all three counties are used in the attainment demonstration. This is discussed in Sections 3 and 4 of this SIP revision.
- A detailed discussion of the emission inventories associated with the Attainment Target can be found in Section 5 of the 2008 PM<sub>2.5</sub> SIP.
- A detailed discussion of Delaware’s projected 2009 emission levels can be found in Section 4 of the 2008 PM<sub>2.5</sub> SIP.

Sussex	2,707	41	4,764	147	2,057	106
<b>Totals</b>	<b>9,533</b>	<b>160</b>	<b>16,700</b>	<b>513</b>	<b>7,167</b>	<b>353</b>

3.4 Adding the “MOVES *Increase*” emissions from Table 3-3 to the “*Delaware Projected 2009 Emissions*” from Table 3-2 yields a projected Delaware 2009 Emission level that reflects the use of the MOVES model instead of the MOBILE6 model. This revised emissions projection is shown in Table 3-4, and is referred to as the “*Revised Delaware Projected 2009 Emissions.*”

Table 3-4 Revised Delaware Projected 2009 Emissions (tpy)

County	NOx	PM <sub>2.5</sub>
Kent	9,365	1,066
<b>New Castle</b>	<b>25,351</b>	<b>3,185</b>
Sussex	13,648	2,677
<b>Statewide Total</b>	<b>48,364</b>	<b>6,928</b>

3.5 The “*Revised Delaware Projected 2009 Emissions*” (i.e., Table 3-4) are demonstrated to be consistent with attainment if they are equal to or lower than the “*2009 Attainment Target*” (i.e., Table 3-1). The “*Revised Delaware Projected 2009 emissions*” are compared to the “*Attainment Target*” in Table 3-5 below.

Table 3-5 Shortfall and Surplus by County and Statewide (tpy)

County	Attainment Target		Revised Delaware Projected 2009 Emissions		Surplus/Shortfall	
	NOx	PM <sub>2.5</sub>	NOx	PM <sub>2.5</sub>	NOx	PM <sub>2.5</sub>
Kent	8,554	1,185	9,365	1,066	-811	119
<b>New Castle</b>	<b>23,048</b>	<b>3,249</b>	<b>25,351</b>	<b>3,185</b>	<b>-2,303</b>	<b>64</b>
Sussex	18,001	3,581	13,648	2,677	4,353	904
<b>Statewide</b>	<b>49,603</b>	<b>8,015</b>	<b>48,364</b>	<b>6,928</b>	<b>1,239</b>	<b>1,087</b>

This comparison shows that there is a 64 tpy PM<sub>2.5</sub> surplus in New Castle County, and a 2,303 tpy NOx shortfall for New Castle County. This demonstrates that, relative to direct PM<sub>2.5</sub>, the MOVES based mobile budgets are consistent with attainment. These results also indicate that NOx requires further analysis.

3.6 Because of the regional nature of secondarily-formed sulfate and nitrate, and the broad modeling domain of the CMAQ modeling, which included all of Delaware, emission reductions from Kent and Sussex counties will contribute to attainment within New Castle County and the Philadelphia based non-attainment area. Kent and Sussex counties are within the State of Delaware, contiguous to New Castle County, and are less than 200 kilometers away. EPA’s PM<sub>2.5</sub> Implementation Rule specifically provides for the consideration of in-state NO<sub>x</sub> and SO<sub>2</sub> reductions in their SIPs from sources up to 200 kilometers away from the non-attainment area boundaries.<sup>8</sup>

Consistent with this EPA rule, emissions from Kent and Sussex Counties were analyzed. Using the same methodology as above, statewide emissions are calculated and presented in Table 3-5. These results indicate that while there is a 2009 NOx shortfall of 2,303 tpy in New Castle County, there is a

8. PM2.5 Implementation Rule, April 25, 2007 (72 FR 20586 at 20636)

statewide NO<sub>x</sub> surplus of 1,239 tpy. The analysis demonstrates that the 2009 MOVES based emission shown in Table 3-3 do not impair Delaware's ability to meet its SIP emissions targets or meeting EPA's National Ambient Air Quality Standards for particulate matter.<sup>9</sup>

#### Section 4. Demonstration that the Contingency Measure Requirements of the CAA are Met

Contingency measures are additional control measures to be implemented in the event that an area fails to either meet "reasonable further progress" or attain the standards by its attainment date. The quantity of emission reductions needed to satisfy contingency requirements is an amount equal to one year's worth of required reductions.

Delaware demonstrated that the contingency requirements of the CAA were met in Section 9 of its 2008 PM<sub>2.5</sub> SIP by showing that the Delaware control measures have reduced NO<sub>x</sub> and primary PM<sub>2.5</sub> by more than is necessary to attain compliance with the PM<sub>2.5</sub> NAAQS. This same methodology is used below to demonstrate that the "*Revised Delaware Projected 2009 Emissions*" in Table 3-4 are low enough to satisfy contingency requirements.

- 4.1 Quantification of the contingency requirement is discussed in detail in Section 9.1 of the 2008 PM<sub>2.5</sub> SIP. The contingency requirement for NO<sub>x</sub> and PM<sub>2.5</sub> is presented in Table 9-3 of the 2008 PM<sub>2.5</sub> SIP, and shown below in Table 4-1.

Table 4-1 Contingency Requirement (tpy)

County	NO <sub>x</sub>	PM <sub>2.5</sub>
New Castle	1,100	26

- 4.2 Demonstration that contingency requirement is met is shown if the "*Revised Delaware Projected 2009 Emissions*" shown in Table 3-4 are lower than the "*Attainment Target*" shown in Table 3-1 by at least the amount of the amount of the contingency requirement shown in Table 4-1. Table 3-5 shows this calculation.

Table 3-5 shows that a 64 tpy reduction of PM<sub>2.5</sub> emissions are above and beyond that necessary for attainment. Since 64 tpy is greater than the contingency requirement of 26 tpy PM<sub>2.5</sub>, the contingency requirement is demonstrated relative to the pollutant primary PM<sub>2.5</sub>. Table 3-5 also indicates that NO<sub>x</sub> requires further analysis.

- 4.3 Because of the regional nature of secondarily-formed sulfate and nitrate, and the broad modeling domain of the CMAQ modeling, which included all of Delaware, emission reductions from Kent and Sussex counties will contribute to attainment within New Castle County and the Philadelphia based non-attainment area. Kent and Sussex counties are within the State of Delaware, contiguous to New Castle County, and are less than 200 kilometers away. EPA's PM<sub>2.5</sub> Implementation Rule specifically provides for the consideration of in-state NO<sub>x</sub> and SO<sub>2</sub> reductions in their SIPs from sources up to 200 kilometers away from the non-attainment area boundaries.

Consistent with this EPA rule, emissions from Kent and Sussex Counties were analyzed. Using the same methodology as above, statewide emissions are calculated and presented in Table 3-5. This indicates that while there is a 2009 NO<sub>x</sub> shortfall of 2,303 tpy in New Castle County, there is a statewide NO<sub>x</sub> surplus of 1,239 tpy. Since 1,239 tpy is greater than the contingency requirement of 1,100 tpy NO<sub>x</sub>, the contingency requirement is demonstrated as met relative to the pollutant NO<sub>x</sub>.

#### Section 5. Summary

The analysis in Section 3 and Section 4 above demonstrates that 2009 MOVES based emission levels in table

9. Note that this is similar to the approach used in the 2008 PM<sub>2.5</sub> SIP to address SO<sub>2</sub> emissions. See Section 5 (page 65) of the 2008 PM<sub>2.5</sub> SIP.

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3-3 are consistent with attainment and the contingency requirements of the CAA. This SIP revision is anticipated to be approved by the EPA in 2012. Because the 2012 based mobile budgets established in Section 2 of this SIP revision are less than the 2009 MOVES based emission levels shown in Table 3-3, Section 3 and Section 4 above also demonstrate that mobile budgets established in Section 2 are consistent with attainment and contingency requirements of the CAA.

Appendix A. 2012 MOVES input and output files

Appendix B. 2009 MOVES and 2009 MOBILE6 Input and Output Files

Appendices A and B may be viewed by request to Philip Wheeler, Division of Air Quality during normal business hours at the Division's office at 655 South Bay Road, Suite 5N, Dover, Delaware, Delaware, 19901. Appointments can be made by calling 302/739-9402.

They also can be viewed on the Division of Air Quality website at:

<http://www.dnrec.delaware.gov/whs/awm/Info/Regs/Pages/AQMPlansRegs.aspx>.

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### **DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Sections 901(b) and 903 (e)(2)a  
(7 Del.C. §901(b); 7 Del.C. §903 (e)(2)a)  
**7 DE Admin. Code 3531**

**Secretary's Order No.: 2012-F-0001**

**3531 Tautog; Size Limits, Creel Limits and Seasons**

**SAN # 2011-09**

**Date of Issuance: January 17, 2012**

**Effective Date of the Amendment: February 11, 2012**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

### **Background and Procedural History**

This Order considers proposed regulatory amendments to Delaware Tidal Finfish Regulation No. 3531 regarding Tautog. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2011-09. The Department published the proposed amendments in the September 1, 2011 *Delaware Register of Regulations* and held a public hearing on October 5, 2011. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated January 3, 2012 (Report). The Report recommends certain findings and the adoption of the proposed new regulation as attached to the Report as Appendix A.

### **Findings and Discussion**

I find that the proposed new regulation is well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts in the Division of Fish and Wildlife developed the record and drafted the proposed regulation. As a result of the regulatory development process, the Department received public comments supporting this proposed regulation, as discussed in the Report.

With the adoption of these regulatory amendments to Delaware Tidal Finfish Regulation No. 3531 as final, Delaware will be able to remain in compliance with the federal guidelines for the management of Tautog, as set forth by the ASMFC, to wit: (1) the size limit at 16 inches; (2) the creel limit at five (i.e., five fish per day), with the exception of the time period from April 1 through May 11, at which time the creel limit will be 3; and (3) a closure at

the beginning of summer, from May 12<sup>th</sup> through July 16<sup>th</sup>, and then a second closure at the end of summer, from Sept. 1<sup>st</sup> through Sept. 28<sup>th</sup>.

Of the possible options vetted to the public during this promulgation process, the Department believes the larger size limit of sixteen inches is more desirable for most recreational fishers and the for-hire sector (i.e., Headboat/Charter Boat). There is also a general sentiment among the public that there should be a uniform size limit for Delaware and nearby states (such as New Jersey, Maryland, and Virginia). All the Tautog management options being considered presently by both Maryland and Virginia require a sixteen-inch tautog size limit (the preferred management options for New Jersey are yet to be determined). A uniform size limit in this region will decrease confusion for those that fish both in Delaware and nearby states. Moreover, the uniform size limit may reduce illegal harvest by standardizing the catch.

The Department further notes that a summer closure is preferable to a winter closure. Historically, the winter season is considered the primary tautog season, and tautog is a primary target for the for-hire sector during winter. Tautog research conducted by the Department's Division of Fish and Wildlife has shown that the spawning season can extend into July, thus keeping the fishery closed during early July may, in fact, allow more tautog to spawn. Many other recreational fisheries are open in the summer season, thus a tautog fishery closure would have less of an impact in summer than in winter.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed regulatory amendments to this regulation, and provided the public with an adequate opportunity to comment on the proposed amendments, including at a public hearing;
- 3.) The Department held a public hearing on the proposed amendments to this regulation in order to consider public comments before making any final decision, and has considered all relevant and timely public comment received;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended amendments to this regulation, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended amendments to this regulation satisfy the aforementioned federal requirements of reduction strategies with regard to Delaware's management of Tautog, and do not result in any substantive change from the proposed amendments as originally published in the September 1, 2011, *Delaware Register of Regulations*;
- 6.) The recommended amendments should be adopted as final because Delaware will be enabled to remain in compliance with the federal guidelines for the management of Tautog, as set forth by the ASMFC. It will not deprive fishermen of the enjoyment of tautog fishing during the winter months, as historically, the winter season is considered the primary tautog season, and tautog is a primary target for the for-hire sector during winter. Additionally, this management option will also help to fortify and rebuild the tautog stock, as tautog research conducted by the Department's Division of Fish and Wildlife has shown that the spawning season can extend into July, thus keeping the fishery closed during early July may, in fact, allow more tautog to spawn. Many other recreational fisheries are open in the summer season, thus, a tautog fishery closure would have less of an impact in summer than in winter.
- 7.) The Department shall submit this Order approving the final amendments to this regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

### 3531 Tautog; Size Limits, Creel Limits and Seasons.

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 **[Notwithstanding the provisions of 7 Del.C. §939, ~~it~~]** shall be unlawful for any person to possess any tautog, *Tautoga onitis*, less than ~~fourteen (14)~~ inches **[~~FBD~~ sixteen (16)]** in total length **[during**

~~the period.] beginning at 12:01 a.m. on July 1 and ending at 12:00 p.m. on March 31, next ensuing [TBD.]~~

~~2.0 It shall be unlawful for any person to possess any tautog less than fifteen (15) inches [TBD] in total length during the period beginning at 12:01 a.m. on April 1 and ending at 12:00 p.m. on June 30, next ensuing [TBD].~~

~~3.0~~ 2.0 Notwithstanding the provisions of 7 Del.C. §§938, 939, it shall be unlawful for any person to possess more than ~~three (3) [TBD] five (5)]~~ tautog during the period ~~beginning at 12:01 on April 1 and ending at 12:00 p.m. on June 30, next ensuing [TBD] beginning at 12:00 a.m. on January 1 and ending at 11:59 p.m. on March 31, and during the period beginning at 12:00 a.m. on July 17 and ending at 11:59 p.m. on August 31, and during the period beginning at 12:00 a.m. on September 29 and ending at 11:59 p.m. on December 31],~~ at or between the place where said tautog were caught and said person's personal abode or temporary or transient place of lodging.

~~4.0~~ 3.0 Notwithstanding the provisions of 7 Del.C. §§938, 939, ~~it]~~ shall be unlawful for any person to possess more than ~~ten (10) [TBD] three (3)]~~ tautog during the period ~~beginning at 12:01 a.m. on July 1 and ending at 12:00 p.m. on March 31, next ensuing [TBD] beginning at 12:00 a.m. on April 1 and ending at 11:59 p.m. on May 11],~~ at or between the place where said tautog were caught and said person's personal abode or temporary or transient place of lodging.

~~5.0~~ 4.0 Notwithstanding the provisions of subsections 1.0, 2.0~~;~~ ~~and] 3.0 [and 4.0]~~ of this regulation, it shall be unlawful for any person to possess any tautog during the period ~~beginning at 12:01 a.m. on May 12 and ending at 12:00 p.m. on June 30 and during the period beginning at 12:01 a.m. on September 1 and ending at 12:00 p.m. on September 28, next ensuing [TBD] beginning at 12:00 a.m. on May 12 and ending at 11:59 p.m. on July 16 and during the period beginning at 12:00 a.m. on September 1 and ending at 11:59 p.m. on September 28],~~ except in said person's personal abode or temporary or transient place of lodging.

1 DE Reg. 1771 (05/01/98)

6 DE Reg. 1360 (04/01/03)

11 DE Reg. 1257 (03/01/08)

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**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Section 901(b) and 903(e)(2)a (7 Del.C. §901(b) §903(e)(2)a)

**7 DE Admin. Code 3553**

Secretary's Order No.: #2011-F-0046

**3553 River Herring Creel Limit**

Date of Issuance: December 15, 2011

Effective Date of the Amendment: February 11, 2012

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

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**Background and Procedural History**

This Order considers proposed regulations to amend 7 DE Admin. Code 3553, *River Herring Creel Limit*. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2011-15. The Department published its initial proposed regulation Amendments in the November 1, 2011 *Delaware Register of Regulations*, and held a public hearing on November 28, 2011. Public comment was received by the Department during all phases of this promulgation (pre-hearing, post-hearing and at that time of the public hearing), and the Department responded fully and thoroughly to all questions from the public regarding this proposed promulgation. Furthermore, as a result of comments received from DNREC Enforcement personnel, the Department *revised* the original proposed amendment language subsequent to its publication in the *Register of Regulations* on November 1, 2011, in order to clarify the intent of this promulgation. That revision was fully vetted to the public at the time of the public hearing on November 28, 2011, and no additional hearing or publication is necessary regarding this matter.

The Department is proposing revisions to Delaware Tidal Finfish Regulation No. 3553 in order for Delaware to adopt and incorporate Amendment 2 to the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fisheries Management Plan (IFMP) for Shad and River Herring. The aforementioned federal Amendment 2 prohibits commercial and recreational River Herring fisheries in state waters beginning January 1, 2012, unless a state or jurisdiction can demonstrate that their alewife and/or blueback herring stock(s) can support a commercial and/or recreational fishery that will not diminish potential future stock reproduction and recruitment. The lack of reliable, system-specific data prevents Delaware/New Jersey (i.e., Delaware River and Bay) and Delaware/Maryland (i.e., Nanticoke River) from providing reliable targets that would satisfy this mandate. Therefore, Delaware must close its recreational and commercial River Herring fisheries.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated December 9, 2011 (Report). The Report recommends certain findings and the adoption of the proposed *revised* Amendments, as attached to the Report as Appendix A.

**Findings and Discussion**

I find that the proposed *revised* Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed *revised* Amendments.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these *revised* Amendments. With the adoption of this Order, Delaware will be enabled to (1) be in compliance with Amendment 2 to the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fisheries Management Plan for Shad and River Herring by closing its recreational and commercial River Herring fisheries, effective January 1, 2012; and (2) be consistent with its neighboring states of Maryland and New Jersey, which are closing their River Herring fisheries, in the Maryland portion of the Nanticoke River, and in the Delaware River and Bay, respectively, as well.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed *revised* Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed *revised* Amendments, including at the public hearing held on November 28, 2011;
- 3.) The Department held a public hearing on November 28, 2011 in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended *revised* Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended *revised* Amendments should be adopted as final regulation Amendments because Delaware will be enabled to (1) be in compliance with Amendment 2 to the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fisheries Management Plan for Shad and River Herring by closing its recreational and commercial River Herring fisheries, effective January 1, 2012; and (2) be consistent with its neighboring states of Maryland and New Jersey, which are closing their River Herring fisheries, in the Maryland

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portion of the Nanticoke River, and in the Delaware River and Bay, respectively, as well; and, lastly, because (3) the amendments are well supported by documents in the record;

6.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

### **3553 River Herring Creel Limit**

(Penalty Section 7 **Del.C.** 936(b)(2))

~~[Unless otherwise authorized,]~~ It shall be unlawful for any person to have in possession ~~except a person with a valid Delaware commercial food fishing license, more than ten (10) any~~ blueback herring and/or alewife (*Alosa aestivalis* and/or *Alosa pseudoharengus*), collectively known as river herring, unless said person has a valid bill-of-sale or receipt ~~[for said river herring from a state or jurisdiction where river herring harvest is lawful and]~~ that indicates the date said river herring were received, the number of said river herring received and the name, address and signature of the ~~commercial food fisherman~~ harvester who legally caught said river herring; or, a bill-of-sale or receipt from a person who is a licensed retailer and legally obtained said river herring for resale.

**8 DE Reg. 1315 (03/01/05)**

**11 DE Reg. 1259 (03/01/08)**

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## **DEPARTMENT OF SAFETY AND HOMELAND SECURITY**

### **DIVISION OF STATE POLICE**

Statutory Authority: 24 Delaware Code, Section 1304 (24 **Del.C.** §1304)  
24 **DE Admin. Code** 1300

### **ORDER**

#### **1300 Board of Examiners of Private Investigators & Private Security Agencies**

Pursuant to the Guidelines in 29 **Del.C.** Section 10118(a)(1)-(7), the Board of Examiners of Private Investigators and Private Security Agencies ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to rules:

3.0 – Nightstick, PR 24, Mace, Peppergas and Handcuffs

5.0 – Use of Animals

7.0 – Employment Notification

12.0 – Record Book; Right of Inspection,

the Board makes the following Findings and Conclusions:

#### **Summary of Evidence and Information Submitted**

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt these amendments.

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**Findings of Fact**

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on proposed amendments. The written comments and oral testimony received are described in paragraph 1.

4. The Board finds that the adoption of these rules will:

- change where the training certificates are to be sent;
- expand the prohibition to all areas regulated by this chapter;
- omit the first paragraph and will place it in another rule at a later date, and
- add the requirement to keep a copy of the 16 hours mandatory security guard training

5. The Board finds that these adoptions will have no adverse impact on the public.

6. The Board finds that the amendment is well written and describes its intent to adopt these rules.

**Conclusion**

7. The proposed rule adoption was published by the Board in accord with the statutory duties and authority as set forth in 24 **Del.C.** Section 1304 et seq. and, in particular, 24 **Del.C.** Section 1304(b)(3).

8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 **Del.C.** Section 1304 et. seq.

9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.

10. The Board therefore adopts the amendment pursuant to 24 **Del.C.** Section 1304(b)(3) and guidelines of 29 **Del.C.** Section 10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).

11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.

12. The effective date of this Order shall be February 1, 2012.

13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 10<sup>th</sup> of January, 2012.

Lt. Colonel James Paige, Chairman

APPROVED AS TO FORM:

W. Michael Tupman, Esquire

Deputy Attorney General

January 10, 2012

**1300 Board of Examiners of Private Investigators & Private Security Agencies**

**\*Please note that no changes were made to the regulation as originally proposed and published in the December 2011 issue of the *Register* at page 766 (15 DE Reg. 766). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1300 Board of Examiners of Private Investigators & Private Security Agencies**

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## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 1106(a)(1) (24 **Del.C.** §1106(a)(1))  
24 **DE. Admin. Code** 1100

### 1100 Board of Dentistry and Dental Hygiene

#### ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on December 15, 2011 at a scheduled meeting of the Delaware Board of Dentistry and Dental Hygiene (the "Board") to receive comments regarding the Board's proposed amendments to the Board's rules and regulations.

Pursuant to 24 **Del.C.** §1106(a)(1) the Board proposed amendments to its regulations governing continuing professional education. The proposed amendments add a requirement that two (2) of the fifty (50) credit hours of continuing education required for dentists and two (2) of the twenty-four (24) credit hours required for hygienists must be in courses covering infection control. The proposal also modifies the regulations to require that licensees renew their license online and to enable licensees to attest to the completion of continuing education at the time of renewal. Finally, the proposed regulations delineate the audit and hearing process for non-compliance with the continuing education requirements.

#### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

**Board Exhibit 1**, the *News Journal* Affidavit of Publication, and **Board Exhibit 2**, the *Delaware State News* Affidavit of Publication, were made a part of the record. No written comments were received. State Dental Director Dr. Greg McClure and former dental hygiene advisory member Fay Rust, RDH, attended the hearing as members of the public.

#### FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's rules and regulations. The Board received no written comments on the proposed amendments. There was verbal comment from former dental hygiene advisory member Fay Rust and State Dental Director Dr. Greg McClure about whether specific courses would qualify for continuing education credit but the comments did not go to the substance of the specific changes proposed.

2. Pursuant to 24 **Del.C.** §1106 the Board has statutory authority to promulgate rules and regulations clarifying specific sections of its statute. The amendments to Regulation 6.0 *Continuing Professional Education (CPE)* clarify the requirements for continuing education that the Board is required to establish under the provisions of 24 **Del.C.** §1106(a)(1) and (7).

3. The Board finds that requiring a course in infection control as a mandatory requirement for continuing education is necessary for the protection of the public.

4. The Board further finds that the changes to the regulations allowing for attestation at the time of online renewal and setting forth the audit and hearing process will give clarity to licensees regarding the requirements and make the regulations consistent with the process for attestation and online renewal established by the Division of Professional Regulation for all professions.

#### DECISION AND EFFECTIVE DATE

The Board hereby adopts the changes to its rules and regulations to be effective 10 days following publication of this order in the *Register of Regulations*.

## TEXT AND CITATION

The text of the revised rules remains as published in *Register of Regulations*, Vol. 15, Issue 5, on November 1, 2011 without any modification as a result of the public hearing.

**SO ORDERED** this 12<sup>th</sup> day of January 2012.

**BOARD OF DENTISTRY AND DENTAL HYGIENE**

Blair Jones, DMD, President, Professional Member  
 Robert Director, DDS, Professional Member  
 John Lenz, DDS, Professional Member  
 Neil McAneny, DDS, Professional Member

Thomas Cox, DDS, Professional Member  
 Joan Madden, RDH, Professional Member  
 Nathaniel Gibbs, Public Member

**HYGIENE ADVISORY MEMBERS**

(Voting as to regulations affecting the practice of dental hygiene pursuant to 24 **Del.C.** §1105(c)(5))  
 Debra Bruhl, RDH, Professional Hygiene Advisory Member  
 Buffy Parker, RDH, Professional Hygiene Advisory Member

**1100 Board of Dentistry and Dental Hygiene**

**\*Please note that no changes were made to the regulation as originally proposed and published in the December 2011 issue of the *Register* at page 777 (15 DE Reg. 777). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1100 Board of Dentistry and Dental Hygiene**

**DIVISION OF PROFESSIONAL REGULATION**

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

**ORDER****1700 Board of Medical Licensure and Discipline**

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on November 1, 2011 at a scheduled meeting of the Delaware Board of Medical Licensure and Discipline (the "Board") to receive comments regarding proposed changes to the Board's rules and regulations. The proposal creates new Regulation 32 – *Use of Controlled Substances for the Treatment of Pain* which closely follows Federation of State Medical Boards' *Model Policy for the Use of Controlled Substances for the Treatment of Pain* adopted by the Board as a policy in June of 2009.

**SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

The Board did not receive any written or oral public comment opposed to the proposed regulations. Nitin Rao, Medical Society of Delaware, offered comments in support of the regulations and hoped that the regulations would quicken the implementation of the Physician Monitoring Program and also hoped that the State would support education on the policies. Paula Paul, Delaware Academy of Physician Assistants, stated that the Academy supports the regulations. Finally, Jeanne Chiquoine, American Cancer Society, added that she echoed the comments of Mr. Rao.

**FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION SUBMITTED**

**Board Exhibit 1**, the *News Journal* Affidavit of Publication, and **Board Exhibit 2**, the *Delaware State News* Affidavit of Publication, were made a part of the record. No written comments were received in regard to proposed

Regulation 32. The Board considered the oral comments provided at the public hearing all of which support the proposal without any substantive modification.

The Board held multiple publicly noticed committee meetings and a properly noticed public hearing to give practitioners a chance to comment on the proposed regulations.

The Board finds that regulations are necessary for the protection of the public in that they will help minimize prescribing practices that deviate from the appropriate standard of care that can lead to abuse and diversion. The regulations closely follow the Federation of State Medical Boards' *Model Policy for the Use of Controlled Substances for the Treatment of Pain* and assist practitioners by providing them with the minimum requirements for meeting the necessary standard of care.

#### **THE LAW**

The Board's rulemaking authority is provided by 24 **Del.C.** §1713(a)(12).

#### **DECISION AND EFFECTIVE DATE**

The Board hereby adopts Regulation 32 as effective 10 days following publication of this Order in the *Register of Regulations*.

#### **TEXT AND CITATION**

The text of Regulation 32 remains as published in *Register of Regulations*, Vol. 15, Issue 4, on October 1, 2011.

**IT IS SO ORDERED** this 10<sup>th</sup> day of January, 2012.

#### **BOARD OF MEDICAL LICENSURE AND DISCIPLINE**

Stephen Cooper, Vice-President, Presiding	Vincent Lobo, D.O.
John Banks, Public Member	Joseph Parise, D.O.
George Brown, Public Member	Mary Ryan, Public Member
Garrett H. Colmorgen, M.D.	Daryl Sharman, M.D.
Thomas Desperito, M.D.	

#### **1700 Board of Medical Licensure and Discipline**

**\*Please note that no changes were made to the regulation as originally proposed and published in the October 2011 issue of the *Register* at page 498 (15 DE Reg. 498). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1700 Board of Medical Licensure and Discipline**

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#### **DIVISION OF PROFESSIONAL REGULATION**

Statutory Authority: 24 Delaware Code, Section 2905(a)(1) (24 **Del.C.** §2905(a)(1))  
**24 DE Admin. Code 2900**

#### **2900 Real Estate Commission**

#### **ORDER**

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on January 12, 2012 at a scheduled meeting of the Delaware Real Estate Commission to receive comments regarding the Commission's proposed revisions to its rules and regulations. The Commission proposed extensive revisions

to the rules and regulations to implement amendments to the Commission's licensing law, Chapter 29 of Title 24 of the **Delaware Code**, which will go into effect on February 3, 2012. In particular, the proposed rules specify the licensure requirements for Broker, Associate Broker and Salesperson and for licensure by reciprocity. The Commission proposes removal of the requirement that application must be made within twelve months after course completion. However, if application is not made within twelve months, the applicant must meet continuing education requirements. The amendments add provisions imposing greater responsibility on the Broker for the conduct of his or her Associate Brokers and Salespersons. Specifically, Brokers will be required to maintain continuing education certificates for Associate Brokers and Salespersons. The rules pertaining to advertising are expanded to set forth disclosure requirements for all types of advertising, including internet advertising. The rules pertaining to continuing education are expanded to specify requirements for licensure renewal. The Commission's authority to conduct audits and impose discipline in connection with rule to show cause hearings is also explained in detail. Finally, the list of crimes substantially related to the provision of Real Estate Services is expanded.

The proposed changes to the rules and regulations were published in the *Register of Regulations*, Volume 15, Issue 6, on December 1, 2011. Notice of the January 12, 2012 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2.

### Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

Commission Exhibit 1: *News Journal* Affidavit of Publication.

Commission Exhibit 2: *Delaware State News* Affidavit of Publication.

The Commission received no written or public comment.

### Findings of Fact and Conclusions

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

Pursuant to 24 **Del.C.** §2905(a)(1), the Commission has the statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute. The proposed revisions serve to implement amendments to the Commission's licensing law, which will go into effect on February 3, 2012. Amendments pertaining to broker responsibilities, advertising and continuing education provide greater clarity for licensees and greater protection for the public. The Commission concludes that adoption of the rules and regulations as amended advances professional standards and is in the best interest of the public.

### Decision and Effective Date

The Commission 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 *Register of Regulations*, Volume 15, Issue 6 on December 1, 2011.

**IT IS SO ORDERED** this 12th day of January 2012 by the Delaware Real Estate Commission.

Christopher J. Whitfield, Professional Member,

Vice-Chairperson

Ricky H. Allamong, Professional Member

James C. Brannon, Jr., Public Member

Gilbert Emory, Public Member

Michael Harrington, Sr., Professional Member,

Secretary

Joseph McCann

Patricia O'Brien, Public Member

Andrew Staton, Professional Member, Chairperson

Vincent M. White, Professional Member

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## 2900 Real Estate Commission

\*Please note that no changes were made to the regulation as originally proposed and published in the December 2011 issue of the *Register* at page 788 (15 DE Reg. 788). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**2900 Real Estate Commission**

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### OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b); 29 Delaware Code, Section 10113(b)  
(5 Del.C. §121(b); 29 Del.C. §10113(b))  
5 DE Admin.Code §1114

### ORDER

#### 1114 Alternative Franchise Tax

IT IS HEREBY ORDERED on this 12th day of January 2012, that line 10 in Schedule 2 for Forms 1114E and 1114F in Regulation 1114 is amended to make it consistent with changes in Section 1101A(d) of Title 5 of the **Delaware Code** under 78 **Del. Laws** Ch.72. A copy of the amendments to line 10 in Schedule 2 for Forms 1114E and 1114F in Regulation 1114 is attached hereto and incorporated herein by reference, with deleted language struck through and added language underlined. The amendments are being adopted to conform that Schedule in Regulation 1114 to provisions of 78 **Del. Laws** Ch. 72 which amended the basic law for Regulation 1114. The amendments do not otherwise alter the substance of Regulation 1114, the remaining provisions of which are not affected by these amendments.

The effective date of the amendments is February 11, 2012. The amendments are adopted by the State Bank Commissioner in accordance with Title 5, and pursuant to the requirements of Chapter 11 and Section 10113(b) of Title 29 of the **Delaware Code**. A copy of this order and the amendments to line 10 in Schedule 2 of Forms 1114E and 1114F in Regulation 1114 are to be filed with the Registrar of Regulations.

Robert A. Glen, State Bank Commissioner  
12 January 2012

#### 1114 Alternative Franchise Tax Chapter 11 of Title 5 of the Delaware Code

Effective Date: December 11, 2006

**1.0** This regulation applies to banking organizations and trust companies, other than federal savings banks not headquartered in this State but maintaining branches in this State, that annually elect to pay an alternative franchise tax pursuant to Section 1101A of Title 5 of the **Delaware Code**. The election to pay the alternative franchise tax is made by filing an original final alternative franchise tax return on the due date, or an amended return within 180 days of the due date of the original return.

#### **2.0** Definitions

“**Bank**” means every bank and every corporation conducting a banking business of any kind or plan whose principal place of business is in this State, except a national bank.

“**Banking organization**” means:

- A bank or bank and trust company organized and existing under the laws of this State;
- A national bank, including a federal savings bank, with its principal office in this State;
- An Edge Act corporation organized pursuant to § 25(a) of the Federal Reserve Act, 12 U.S.C. § 611 et seq. (an “Edge Act Corporation”), or a state chartered corporation exercising the powers granted thereunto pursuant to an agreement with the Board of Governors of the Federal Reserve System (an “Agreement Corporation”), and maintaining an office in this State;
- A federal branch or agency licensed pursuant to § 4 and § 5 of the International Banking Act of 1978, 12 U.S.C. § 3101 et seq., to maintain an office in this State;
- A foreign bank branch, foreign bank limited purpose branch or foreign bank agency organized pursuant to Chapter 14 of Title 5 of the **Delaware Code**, or a resulting branch in this State of a foreign bank authorized pursuant to Chapter 14 of Title 5 of the **Delaware Code**; or
- A resulting branch in this State of an out-of-state bank, or a branch office in this State of an out-of-state bank.

“**International Banking Transaction**” shall mean any of the following transactions, whether engaged in by a banking organization, any foreign branch thereof (established pursuant to Section 771 of Title 5 of the **Delaware Code** or federal law) or any subsidiary corporation directly or indirectly owned by any banking organization:

- The financing of the exportation from, or the importation into, the United States or between jurisdictions abroad of tangible property or services;
- The financing of the production, preparation, storage or transportation of tangible personal property or services which are identifiable as being directly and solely for export from, or import into, the United States or between jurisdictions abroad;
- The financing of contracts, projects or activities to be performed substantially abroad, except those transactions secured by a mortgage, deed of trust or other lien upon real property located in this State;
- The receipt of deposits or borrowings or the extensions of credit by an international banking facility, except the loan or deposit of funds secured by mortgage, deed of trust or other lien upon real property located in this State;
- The underwriting, distributing and dealing in debt and equity securities outside of the United States and the conduct of any activities permissible to an Edge Act Corporation or an Agreement Corporation described above, or any of its subsidiaries, in connection with the transaction of banking or other financial operations; or
- The entering into foreign exchange trading or hedging transactions in connection with the activities described in paragraphs (1) through (5) above.

“**International Banking Facility**” means a set of asset and liability accounts, segregated on the books and records of a banking organization, that includes only international banking facility deposits, borrowings and extensions of credit.

“**National Bank**” means a banking association organized under the authority of the United States and having a principal place of business in this State.

“**Net Operating Income Before Taxes**” means all pre-tax net income from the operations of a banking organization or trust company, including extraordinary items and other adjustments, computed in accordance with principles used by the Federal Financial Institutions Examination Council or other appropriate federal authority.

“**Out-of-state bank**” has the same meaning as in Section 795 of Title 5 of the **Delaware Code**, which is (i) a State bank, as defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813(a), that is not chartered under Delaware law, or (ii) a national bank association created under the National Bank Act (12 U.S.C. § 21 et seq.) whose organization certificate identifies an address outside Delaware as the place at which its discount and deposit operations are to be carried out.

“**Resulting branch in this State of an out-of-state bank**” has the same meaning as in Section 1101(a) of Title 5 of the **Delaware Code**, which is a branch office in this State of an out-of-state bank resulting from a merger as provided in Subchapter VII of Chapter 7 of Title 5 of the **Delaware Code**, and, in addition, a branch office in this State of an out-of-state bank.

“**Securities Business**” means to engage in the sale, distribution and underwriting of, and deal in, stocks, bonds, debentures, notes or other securities.

“**Trust Company**” means a trust company or corporation doing a trust company business which has a principal place of business in this State.

### **3.0 Instructions for Filing the Estimated Alternative Franchise Tax Return**

- 3.1 A banking organization or trust company whose alternative franchise tax liability for the current year is estimated to exceed \$10,000 should file an estimated alternative franchise tax return with the State Bank Commissioner, instead of the estimated franchise tax report in Regulation No. 1104 or No. 1111, and pay estimated alternative franchise tax:
- 3.1.1 Filing. The estimated alternative franchise tax return shall be filed with the State Bank Commissioner on the first day of March of the current year. Filing an estimated tax return for a particular taxation method is not a mandatory election of that particular method. Additional tax due that results from the underpayment of estimated taxes will be computed on the basis of the final method properly chosen.
  - 3.1.2 Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the estimated alternative franchise tax return required by section 3.1.1., or an estimated franchise tax report pursuant to Regulation No. 1104 or No. 1111, unless the State Bank Commissioner is satisfied that such failure was not willful.
  - 3.1.3 Form. The estimated alternative franchise tax return is contained in this regulation as Form 1114E.
  - 3.1.4 Rounding. All amounts shall be rounded to the nearest dollar.
  - 3.1.5 Calculation of estimated alternative franchise tax. The total estimated alternative franchise tax shall be calculated as follows:
    - 3.1.5.1 The estimated net operating income before taxes of the banking organization or trust company;
    - 3.1.5.2 Plus the estimated net operating income before taxes of any corporation(s) making an election as provided in Regulation No. 1101;
    - 3.1.5.3 Less any deductions set forth in Section 1101A(c)(1) of Title 5 of the Delaware Code;
    - 3.1.5.4 Less the estimated net operating income before taxes of any subsidiary corporation(s) and Edge Act corporation(s) making an election as provided in Regulation No. 1113;
    - 3.1.5.5 Apportion the entire net income to the State of Delaware in accordance with Section 1101A(c)(6) of Title 5 of the Delaware Code (attach Schedule 1 – Apportionment Percentage Calculation Worksheet [apportionment percentage shall be rounded to the nearest tenth of a percent]);
    - 3.1.5.6 Multiply the elective income tax base by the rate of taxation set forth in Section 1101A(c)(7) of Title 5 of the Delaware Code;
    - 3.1.5.7 Plus the estimated location benefit tax liability calculated in accordance with Section 1101A(d) of Title 5 of the Delaware Code, (attach Schedule 2 – Location Benefit Tax Calculation Worksheet);
    - 3.1.5.8 Adjust the subtotal estimated alternative franchise tax for applicable employment tax credits pursuant to Section 1105 of Title 5 of the Delaware Code, calculated in accordance with Regulation No. 1109;
    - 3.1.5.9 Adjust the subtotal estimated alternative franchise tax for TravelLink tax credits calculated in accordance with Department of Transportation (DeIDOT) TravelLink tax credit reporting requirements;
    - 3.1.5.10 Adjust the subtotal estimated alternative franchise tax for Historic Preservation Tax Credits calculated in accordance with Chapter 18 of Title 30 of the Delaware Code and the regulations thereunder.

- 3.1.6 Payment of estimated alternative franchise tax. The estimated alternative franchise tax liability shall be due and payable as follows:
- 3.1.6.1 40% due on or before June 1 of the current taxable year;
  - 3.1.6.2 20% due on or before September 1 of the current taxable year;
  - 3.1.6.3 20% due on or before December 1 of the current taxable year.

#### 4.0 Instructions for Filing the Final Alternative Franchise Tax Return

- 4.1 Filing. The December 31 call report, verified by oath, setting forth the net operating income of the banking organization or trust company and the final alternative franchise tax return, setting forth the "taxable income" of the banking organization or trust company, shall be filed with the Office of the State Bank Commissioner on or before January 30; provided, however, that a banking organization may file this return on or before any later date allowed by the Federal Financial Institutions Examination Council guidelines for filing its Report of Condition and Income. A banking organization or trust company whose original final franchise tax report was filed pursuant to Regulation No. 1105 or No. 1112 may elect to pay the alternative franchise tax pursuant to Section 1101A of Title 5 of the Delaware Code by filing an amended final alternative franchise tax return, as provided in this regulation, within 180 days of the due date of the original return.
- 4.2 Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the final alternative franchise tax return required by subsection 4.1, or the final franchise tax report in Regulation No. 1105 or No. 1112, unless the State Bank Commissioner is satisfied that such failure was not willful.
- 4.3 Form. The final alternative franchise tax return is contained in this regulation as Form 1114F.
- 4.4 Rounding. All amounts shall be rounded to the nearest dollar.
- 4.5 Calculation of final alternative franchise tax. The total final alternative franchise tax shall be calculated as follows:
- 4.5.1 The net operating income before taxes of the banking organization or trust company, (attach a statement of net income that is filed with an appropriate financial regulatory agency);
  - 4.5.2 Plus the net operating income before taxes of any corporation(s) making an election as provided in Regulation No. 1101, (attach Regulation 1101 form – Election To Be Treated As A Subsidiary Corporation Under Sections 1101(f) or 1101A(c)(3) of Title 5 of the Delaware Code and a separate report of income for each electing corporation);
  - 4.5.3 Less any deductions set forth in Section 1101A(c)(1) of Title 5 of the Delaware Code;
  - 4.5.4 Less the net operating income before taxes of any subsidiary corporation(s) and Edge Act corporation(s) making an election as provided in Regulation No. 1113;
  - 4.5.5 Apportion the entire net income to the State of Delaware in accordance with Section 1101A(c)(6) of Title 5 of the Delaware Code (attach Schedule 1 – Apportionment Percentage Calculation Worksheet [apportionment percentage shall be rounded to the nearest tenth of a percent]);
  - 4.5.6 Multiply the elective income tax base by the rate of taxation set forth in Section 1101A(c)(7) of Title 5 of the Delaware Code;
  - 4.5.7 Plus the location benefit tax liability calculated in accordance with Section 1101A(d) of Title 5 of the Delaware Code, computed as of December 31 of the year prior to the year for which alternative franchise tax is paid (attach Schedule 2 – Location Benefit Tax Calculation Worksheet);
  - 4.5.8 Adjust the subtotal alternative franchise tax for applicable employment tax credits pursuant to Section 1105 of Title 5 of the Delaware Code calculated in accordance with Regulation No. 1109, (attach Employment Tax Credit Calculation Worksheet);
  - 4.5.9 Adjust the subtotal alternative franchise tax for Travelink tax credits calculated in accordance with Department of Transportation (DelDOT) Travelink tax credit reporting requirements, (attach DelDOT approval and calculation worksheet);
  - 4.5.10 Adjust the subtotal alternative franchise tax for Historic Preservation Tax Credits calculated in accordance with Chapter 18 of Title 30 of the Delaware Code and the regulations thereunder,

(attach a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with Section 1105(g) of Title 5 of the Delaware Code, and if the credits have been transferred, sold or assigned to the taxpayer by another person, also attach a Certificate of Transfer in accordance with Section 1814(c) of Title 30 of the Delaware Code).

**5.0 Payment of Final Alternative Franchise Tax**

- 5.1 Taxes owed for the previous calendar year are due and payable on or before March 1 of the following year. Checks or other forms of payment should be made payable or directed to the State of Delaware.
- 5.2 The amount due and payable on or before March 1 for the previous calendar year shall be the final alternative franchise tax, less any estimated tax payments made for the taxable year, plus any additional tax due to underpayment of estimated alternative franchise tax or installment. If the final alternative franchise tax is not paid by March 1, a penalty for late payment of the final alternative franchise tax shall be assessed.

**6.0 Additional Tax Due to Underpayment of Estimated Alternative Franchise Tax or Installment**

- 6.1 In the case of any underpayment of alternative estimated franchise tax or an installment of estimated alternative tax required by Chapter 11 of Title 5 of the **Delaware Code**, there shall be added to the tax for the taxable year an amount determined at the rate of 0.05 percent per day upon the amount of the underpayment for the period of the underpayment. The amount of the underpayment shall be the excess of:
  - 6.1.1 The amount of the estimated alternative franchise tax or installment payment which would be required to be made if the estimated alternative tax were equal to 80 percent of the tax shown on the final return for the taxable year, or if no return were filed, 80 percent of the tax for such year; over
  - 6.1.2 The amount, if any, of the estimated alternative tax or installment paid on or before the last date prescribed for payment.
- 6.2 The period of the underpayment shall run from the date the estimated alternative franchise tax or installment was required to be paid to the earlier of the date when such estimated alternative tax or installment is paid or the date of the final payment of tax for the year;
- 6.3 Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated alternative franchise tax or any installment shall not be imposed if the total amount of all payments of estimated alternative tax made on or before the last date prescribed for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated alternative tax were the tax shown on the final return of the banking organization or trust company for the preceding taxable year.

**7.0 Penalty - Late Payment of Final Alternative Franchise Tax**

- 7.1 In the case of a late payment of final alternative franchise tax as required by Chapter 11 of Title 5 of the **Delaware Code**, there shall be added to the tax a penalty in an amount determined at the rate of 0.05 percent per day until required payment is made.

**8.0 Election to be listed as a "Subsidiary Corporation"**

- 8.1 Regulation No. 1101 shall apply to elections to be treated as a subsidiary corporation pursuant to Section 1101A(c)(3) of Title 5 of the **Delaware Code**.
- 8.2 Any corporation which has elected to be treated as a "subsidiary corporation" of a banking organization or trust company pursuant to Section 1101A(c)(3) of Title 5 of the **Delaware Code** and has filed with the State Bank Commissioner the required election form in accordance with Regulation No. 1101 shall provide a report of income for each electing corporation as of December 31 of each year to be submitted in conjunction with the final alternative franchise tax return due January 30; provided, however, that a banking organization may file this report on or before any later date allowed

by the Federal Financial Institutions Examination Council guidelines for filing its Report of Condition and Income.

- 8.3 As long as the election remains in effect, the ownership and employment tests must be met. Therefore, the election form in Regulation No. 1101 must be completed each year for each Electing Corporation and submitted with the final alternative franchise tax return.

**9.0 Election by a Subsidiary Corporation of a Banking Organization or Trust Company to be Taxed in Accordance with Chapter 19 of Title 30**

- 9.1 Regulation No. 1113 shall apply to elections to be taxed in accordance with Chapter 19 of Title 30 pursuant to Section 1101A(c)(2) of Title 5 of the Delaware Code.

**10.0 Election by an Edge Act Corporation to be Taxed in Accordance with Chapter 19 of Title 30**

- 10.1 Regulation No. 1113 shall apply to elections to be taxed in accordance with Chapter 19 of Title 30 pursuant to Section 1101A(c)(4) of Title 5 of the **Delaware Code**.

**11.0 Instructions for Filing an Amendment to the Final Alternative Franchise Tax Return**

- 11.1 Filing. To amend a previously filed final alternative tax return, or to elect the alternative franchise tax method as provided in Section 1101A(a) of Title 5 of the Delaware Code, place a check mark (✓) in the box provided on Form 1114F and complete the return in accordance with Section 4 of this regulation. Attach a complete copy of the original filing along with a statement of explanation for all changes.

**10 DE Reg. 1046 (12/01/06)**

Amendments to Schedule 2 for Forms 1114E and 1114F in Regulation 1114

(Alternative Franchise Tax)

Effective Date: February 11, 2012

10. Location benefit tax table

(a) Minimum location benefit tax	<del>\$2,000,000</del> <u>\$1,600,000</u>
(b) First \$5,000,000,000 of line 9 at <del>0.015%</del> <u>0.012%</u>	_____
(c) Next \$15,000,000,000 of line 9 at <del>0.010%</del> <u>0.008%</u>	_____
(d) Next <del>\$80,000,000,000</del> <u>\$70,000,000,000</u> of line 9 at <del>0.005%</del> <u>0.004%</u>	_____

**DEPARTMENT OF TRANSPORTATION**

**DIVISION OF PLANNING AND POLICY**

Statutory Authority: 29 Delaware Code, Section 8404(8); (29 **Del.C.** §8404(8))

**ORDER**

**AND NOW, THIS** 26th Day of January, 2012, in accordance with 29 **Del.C.** §8404(8), for the reasons stated below, this ORDER is adopted promulgating new regulations setting forth the procedures to be followed for release of crash data and/or information related to sites identified under the Highway Safety Improvement Program (HSIP).

**Nature of Proceedings**

In December, 2011, the Delaware Department of Transportation (DelDOT) published proposed regulations to be followed by DelDOT personnel in releasing crash data and/or information related to sites identified under the Highway Safety Improvement Program (HSIP) to the public. Comments received pointed out typographical/clerical

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errors only, which have been corrected in the document published here.

## Findings of Fact and Conclusions of Law

DelDOT developed new procedures for release of crash data and information related to sites identified under the Highway Safety Improvement Program to the public. The procedures comply with the provisions of 29 **Del.C.** §8404(8). As intended by the Department, these procedures will be the guidelines followed by DelDOT staff in releasing crash data and/or information related to sites identified under the HSIP.

The Department believes that the adoption of these procedures is appropriate.

## Decision and Order Concerning the Regulations

**NOW THEREFORE**, under the above-described statutory authority, and for the reasons set forth above, the Secretary of the Delaware Department of Transportation does hereby ORDER that these regulations be adopted and promulgated as set forth below.

The effective date of this Order is ten days from the date of its publication in the Delaware Register of Regulations, in accordance with 29 **Del.C.** §10118(g).

Shailen Bhatt, Secretary

## 2306 Crash Data Release

### Authority

29 **Del.C.** §10002(g)(6) states that any records that are specifically exempted from public disclosure by statute or common law shall not be deemed public in accordance with the Freedom of Information Act.

21 **Del.C.** §313(b) of the Delaware Code, states that accident reports shall not be open to public inspection.

23 USC§409 states, "Notwithstanding any other provision of law, reports, surveys, schedules, lists or data compiled or collected for the purpose of identifying, evaluating or planning the safety enhancement of potential accident sites, hazardous roadway conditions or railway-highway crossings, pursuant to sections 130, 144 and 148 of this title or for the purpose of developing any highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists or data."

29 **Del.C.** §8404(8) states, "The Secretary [of the Department of Transportation] shall have the following powers, duties and functions: ...to establish and to promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State. No such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof."

### 1.0 Purpose

This regulation describes the requirements and procedures to be followed by all DelDOT employees with respect to releasing, to any entity or personnel outside of DelDOT, crash data and/or information related to sites identified under the Highway Safety Improvement Program (HSIP). For purposes of this regulation, the HSIP includes the Hazard Elimination Program (HEP), High Risk Rural Roads Program (HRRRP), the Highway-Rail Grade Crossing Safety Program (HRGX) and the Transparency Report

### 2.0 Definitions

"Crash (Accident) Rates" - A distribution of the numerical data of the number of crash occurrences per year.

"Crash (Accident) Report" - The State of Delaware Uniform Traffic Collision Report supplied by the Delaware Department of Safety and Homeland Security and the Delaware Criminal Justice Information System (DELJIS) via the E-Crash program, on which all reported crashes involving an impaired driver,

apparent property damage to the extent of \$1,500 or more or personal injury or death to a person, when such crashes occur within that agency's jurisdiction.

**“Crash (Accident) Summaries”** - A summary of the numerical data classified by several crash criteria such as Manner of Impact, Surface Conditions, Lighting Conditions, Weather Conditions, Time of Day, Day of Week etc. that pertains to the crash events.

**“GIS (Geographical Information System) Crash Data”** - The geographic location of a crash as well as the attributes that are related to the crash. This data can be used to conduct analyses and produce maps of the crash data.

**“Highway Safety Improvement Program (HSIP)”** - The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) established 23 USC §148 to create the Highway Safety Improvement Program (HSIP) as a core Federal Highway Administration (FHWA) program. The overall purpose of the program is to achieve a significant reduction in traffic fatalities and incapacitating injuries through the implementation of infrastructure-related highway safety improvements on all state-maintained roadways. Components of Delaware's HSIP include the Strategic Highway Safety Plan (SHSP), the Hazard Elimination Program (HEP), the High Risk Rural Roads Program (HRRRP), the Highway-Rail Grade Crossing Safety Program (HRGX), and the Transparency Report.

**“Requestor”** - Any person, employee, consultant, or other state agency, who requests crash data for analytical purposes.

**“State Agency”** - Any department of State Government that is recognized under the applicable sections of Delaware Code. This includes the Federal Highway Administration, Office of Highway Safety, Wilmington Area Planning Council and the Dover/Kent County Metropolitan Planning Organization for the purposes of this regulation.

### **3.0 Regulation**

The Delaware Department of Safety and Homeland Security are the owners of all crash data received by DeIDOT. Given the responsibilities of DeIDOT, crash data is transferred from the Department of Safety and Homeland Security databases to DeIDOT databases and the use of this data by DeIDOT is solely for the purposes of reviewing crash data to make engineering decisions to improve safety on the roadways under the jurisdiction of the Department. Given the sensitive personal nature of this data, it is important that this data and all HSIP-related information be handled with the utmost responsibility and not released outside of the Department except for Department business purposes. DeIDOT personnel must ensure that all released crash data, associated police reports, and HSIP-related information be used for official purposes only and shall not be transmitted, copied, distributed or provided to any other entity or personnel unless written approval is received from the Delaware Department of Transportation Traffic Safety Programs Section or the Statistics and Research Section in the Division of Planning.

The purpose of this regulation is to outline a list of personnel or entities that request such privileged information on a regular basis as well as define the level of disclosure or exemption that should be followed based on the requestor (see Table 1: Crash Data Release Guideline Matrix).

When data is approved to be released to any requestor outside of DeIDOT, a concurrence letter shall be prepared by the DeIDOT section that is releasing the data, and this letter shall be signed by the requestor and returned to DeIDOT prior to the data being released. This concurrence letter shall be a binding agreement between DeIDOT and the requestor and shall require the requestor to seek approval from DeIDOT to release the data to a third party individual or agency. A copy of the concurrence letter shall be provided electronically to the Deputy Attorney General assigned to DeIDOT, the DeIDOT Safety Programs Manager in the Traffic Section and the Manager of the Statistics and Research Section in Planning. An example of a concurrence letter is provided at the end of this regulation.

### **4.0 Responsibility**

The Division of Planning shall have primary responsibility for implementation of this regulation since they are the distributors of crash data.

**5.0 Effective Date**

This regulation shall become effective ten (10) days after it is published in its final adopted form in the Register of Regulations in accordance with 29 **Del.C.** §10118(e).

**Table 1: Crash Data Release Guideline Matrix**

Requestor	Raw Crash Data (Number of Crashes Only)	Crash Rates	Crash Summaries	Crash Reports	GIS Crash Layers	HSIP Site Listing
Citizen	Yes	Yes	Yes	No	No	No
Legislator	Yes	Yes	Yes	No	No	Yes
DeIDOT (internal operations)	Yes	Yes	Yes	Yes	Yes	Yes
DeIDOT Consultant	Yes	Yes	Yes	Yes	Yes	Yes
Non-DeIDOT Consultant <sup>1</sup>	Yes	Yes	Yes	Yes	No	No
Other State Agency	Yes	See Note 2	Yes	No	See Note 2	See Note 2
Media	Yes	No	Yes	No	No	No

**NOTES:**

1. Non-DeIDOT Consultant must provide proof that the work they are doing involves state maintained roadways (i.e., developer's consultant)
2. This data may be released to FHWA, Office of Highway Safety, WILMAPCO or Dover/Kent County MPO. Release of **[date data]** to other state agencies requires the approval of the Safety Programs Manager.

**Example Concurrence Letter**

September 7, 2011

Mr. John Smith  
 Sample Area Planning Council (SAPCO)  
 123 Main Avenue  
 Newark, Delaware 19711

Dear Mr. Smith:

The Delaware Department of Transportation (DeIDOT) has received your request for crash data. As you might be aware, the ~~[Delaware State Police]~~ Delaware Department of Safety and Homeland Security] are the sole owners of the crash data and DeIDOT is strictly the end user of the data. Hence, any information contained within the requested crash data are privileged, confidential and/or exempt from disclosure under applicable law. As such, any crash data that will be provided is for SAPCO business use only and shall not be transmitted, copied, distributed or provided to any other entity unless written approval is received from the Delaware Department of Transportation.

DeIDOT will release the requested crash data on the terms and conditions set forth herein. By your signature below, SAPCO acknowledges that this letter has been read and understood and agrees to terms and conditions stated in this letter.

The requested crash data will be released as soon as the letter is signed and sent back at your earliest convenience. Future requests for crash data should be sent to my office for review, and the request should be in the form of a letter and on SAPCO letterhead. Should you have any questions regarding this information, please contact me at (302) 659-4073 or by e-mail at Adam.Weiser@state.de.us.

Sincerely,

Donna Robinson  
Statistics, Planning & Research  
Division of Planning

Cc: Tyrone Crittenden, Planning Supervisor  
Frederick Schranck, Deputy Attorney General  
Adam Weiser, Safety Programs Manager

Concurrence Date

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**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER****EXECUTIVE ORDER  
NUMBER THIRTY-THREE**

**TO: Heads Of All State Departments And Agencies**  
**RE: Creating The Delaware Council Of Faith-Based Partnerships To Improve Communications And Collaboration Between And Among Faith-Based Organizations And Government Service Provider**

**WHEREAS**, Delaware's religious traditions have been a foundation of strong communities across our state, and religious institutions have helped contribute to the development of our citizens and our communities by addressing issues of poverty, crime, violence, lack of education, homelessness and other social ills;

**WHEREAS**, faith-based organizations have a reach that extends well beyond their congregations, and they can bring unique skills, services, and resources to bear to assist many of the most vulnerable persons in our communities;

**WHEREAS**, there are many opportunities for faith-based organizations to partner with executive branch agencies and other government entities to further strengthen our communities by promoting public safety, sponsoring use of parks and recreation facilities, extending services to youth and families at risk, promoting education and graduation, and extending awareness of health care needs;

**WHEREAS**, establishing partnerships between executive branch agencies and faith-based organizations may lead to many additional opportunities to deliver services to Delaware citizens more effectively than either government or faith-based organizations can do alone;

**WHEREAS**, Lieutenant Governor Matt Denn and his Director of Community Engagement and Programs, Raina Allen, have worked to build strong relationships between and among faith-based organizations and government entities, foundations and other supporting organizations;

**WHEREAS**, strong communications between and among various faith-based organizations and the communities they serve can also be facilitated by a council dedicated to building partnerships with executive branch agencies, and those communications can facilitate a collaborative approach to addressing the social and economic ills that affect our communities;

**WHEREAS**, any organization that is facilitating conversations between state government and faith-based organizations must be broadly representative of a diversity of religious traditions and institutions to reach the largest number of persons within those faith communities;

NOW, THEREFORE, I, JACK A. MARKELL, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby DECLARE and ORDER that:

1. The Delaware Council of Faith-Based Partnerships (the "Council") is hereby created.
2. The Council shall be composed of no less than 9 members. Eight or more members shall be appointed by, and serve at the pleasure of, the Governor. One member shall be appointed by, and serve at the pleasure of, the Lieutenant Governor. The membership of the Council shall reflect the religious and geographic diversity of the people of the State of Delaware.
3. The Governor shall designate one or more members of the Council to serve as Chairperson(s). Members of the Council shall receive no compensation. The Council shall adopt and make public procedures and standards for the conduct of its affairs, consistent with this Order.
4. All executive branch state agencies and departments shall cooperate with the Council when requested. The Council may call and rely upon the expertise of individuals and entities outside of its membership for research, advice, support or other functions necessary and appropriate to accomplish its mission.
5. The Council shall have the following powers, duties and functions:
  - Work closely with faith-based and community-based groups, charitable organizations, private foundations, voluntary associations, educational institutions, and other non-profit service organizations to promote volunteerism and community service;
  - Develop partnerships between faith-based groups and executive branch agencies that will facilitate the missions of those organizations in areas such as education, social services, health, and housing;

- Provide a forum for the exchange of ideas and information among faith-based organizations whereby such organizations can work together to improve delivery of services in the community;
- Promote innovation and model programs and initiatives, and share best practices among faith-based groups and organizations;
- Coordinate Council activities with those administered by private, faith-based and governmental organizations to ensure that services are rendered efficiently and that they are not duplicated; and
- Develop sustainable funding through private sources to support the objectives of the Council and the collaborative efforts to which Delaware faith-based organizations are devoted.

6. The Council shall ensure that all of its activities are in compliance with applicable laws regarding the freedom of religion, including the requirements of the Bill of Rights of the Delaware Constitution and the Constitution of the United States.

7. The Council shall report any recommendations to the Office of the Governor and/or the affected state agency on a periodic basis.

APPROVED this 4th day of January, 2012

Jack A. Markell,  
Governor

**DEPARTMENT OF AGRICULTURE  
THOROUGHBRED RACING COMMISSION****1002 Delaware Jockeys' Health and Welfare Benefit Board Regulations  
PUBLIC NOTICE**

The Delaware Jockey's Health and Welfare Benefit Board, in accordance with 3 **Del.C.** §10103(c) has proposed changes to its rules and regulations. The proposed change for Rule 2.1.1 amends active Delaware Jockey eligibility requirement by increasing the minimum required number of mounts in a racing season from 25 to 50. A public hearing will be held on March 14, 2012, beginning at 9:00 AM, in the second floor conference room of the Horsemen's Office, located on the grounds of Delaware Park, 777 Delaware Park Boulevard, Wilmington, Delaware 19804, where members of the public may offer comments. Anyone wishing to receive a copy of the proposed regulations may obtain a copy from the Delaware Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804. Persons wishing to submit written comments may forward these to the attention of John F. Wayne, Executive Director, at the above address. The final date to receive comments will be March 14, 2012, during the public hearing. Copies are also published online at the *Register of Regulations* website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml).

**DEPARTMENT OF EDUCATION  
PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, February 16, 2012 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
DIVISION OF SOCIAL SERVICES****Civil Unions  
PUBLIC NOTICE**

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

Signed into law by the Governor on May 11, 2011, Senate Bill #30 is an Act that creates the recognized legal relationship of civil union in Delaware for eligible persons. This Act further recognizes as civil unions for all purposes under Delaware law legal unions between two persons of the same sex entered into in jurisdictions outside of Delaware provided that such union and the parties thereto meet the Delaware eligibility requirements to enter into a civil union in the State of Delaware. Parties who enter into a lawful civil union in Delaware, or whose legal union is recognized as a civil union under Delaware law, will have all of the same rights, benefits, protections and responsibilities as married persons under Delaware law. It is not the intent of the Delaware General Assembly to revise the definition or eligibility requirements of marriage under Delaware law or to require any religious institution to perform solemnizations of civil unions.

The purpose of the proposal is to clarify Division of Social Services (DSS) policies for the Temporary Assistance for Needy Families (TANF), General Assistance (GA), and Refugee Cash Assistance (RCA) programs to ensure the rights and responsibilities of parties to a civil union are consistent and equal to partners in marriage. Parties to a civil union have the same eligibility and responsibilities as partners in a marriage when applying for, or participating in, Delaware's Cash Assistance programs.

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.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by March 1, 2012.

## **DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

### **DIVISION OF WATERSHED STEWARDSHIP**

#### **5101 Delaware Sediment and Stormwater Regulations**

#### **PUBLIC NOTICE**

Substantial revisions to the *Delaware Sediment and Stormwater Regulations* are proposed to address April 2005 recommendations of Governor Minner's Task Force on Surface Water Management. The regulations have been revised to address stormwater volume management, conveyance adequacy, operation and maintenance of stormwater management facilities, and to establish performance standards for sediment and stormwater practices.

Upon the effective date of revised regulations, the *Regulations Governing the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay, and Little Assawoman Bay Watersheds*, effective November 11, 2008, Section 5.0 Sediment and Stormwater Controls, may be affected.

The Department of Natural Resources and Environmental Control (DNREC) Division of Watershed Stewardship will conduct a public hearing on the proposed revisions to the *Delaware Sediment and Stormwater Regulations Regulation No. 5101 Sediment and Stormwater Regulations*, to address the April 2005 recommendations of Governor Minner's Task Force on Surface Water Management.

The public hearing on this proposed revision of **Regulation No. 5101 Sediment and Stormwater Regulations** will be held Thursday, March 1, 2012, at 6:00 p.m. in the DNREC Auditorium, Richardson and Robbins Building, 89 Kings Highway, Dover, DE 19901.

The proposed regulation revisions may be inspected at the following locations:

Department of Natural Resources and Environmental Control  
89 Kings Highway  
Dover, DE 19901

Kirkwood Library  
6000 Kirkwood Highway  
Wilmington DE 19808

Kent County Public Library  
497 South Red Haven Lane  
Dover, DE 19901

Georgetown Public Library  
123 West Pine Street,  
Georgetown, DE 19947

The proposed regulation revisions may be inspected on the DNREC Division of Watershed Stewardship's Sediment and Stormwater Program website: <http://www.dnrec.delaware.gov/swc/Pages/SedimentStormwater.aspx>

For additional information or any appointments to inspect the proposed regulation revisions at DNREC, please contact Elaine Webb, DNREC Sediment and Stormwater Program, 89 Kings Highway, Dover, DE 19901, (302) 739-9921, [Elaine.Webb@state.de.us](mailto:Elaine.Webb@state.de.us). Review of the documents at the libraries will occur during the libraries' scheduled operating hours.

Interested parties shall submit comments in writing on the proposed regulation revisions by the end of the comment period, as designated by the hearing officer at this hearing, to Elaine Webb and/or statements and testimony may be presented either orally or in writing at the March 1, 2012 public hearing. It is requested that those interested in presenting statements at the public hearing register in advance and that written statements and

comments be addressed to:

Elaine Webb  
DNREC – Sediment and Stormwater Program  
89 Kings Highway  
Dover, DE 19901

**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**300 Board of Architecture**  
**PUBLIC NOTICE**

The Delaware Board of Architects in accordance with 24 **Del.C.** §306(a)(1) has proposed changes to its rules and regulations. The proposal amends multiple sections of the rules and regulations to address continuing education requirements, add appropriate definitions and conform requirement for eligibility for examination and registration to NCARB standards.

Members of the public can offer comments on the proposed changes by submitting their comments in writing to the Board of Architects, Attn: Nicole Williams, 861 Silver Lake Boulevard, Suite 203, Dover, Delaware 19904. The final date to receive written comments will be March 1, 2012. Anyone wishing to receive a copy of the proposed regulations may obtain a copy from the Board of Architects at the above address. The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the written comment period.

**DIVISION OF PROFESSIONAL REGULATION**  
**1100 Board of Dentistry and Dental Hygiene**  
**PUBLIC NOTICE**

The Board of Dentistry and Dental Hygiene (“the Board”) in accordance with 24 **Del.C.** §1106(a)(1) has proposed amendments to Rule 5.0 *Supervision*. The proposed amendments require that a dentist must perform a clinical exam of a patient at least once within in a 12 month period to be in compliance with the requirements of general supervision. The proposal also makes a technical correction to a statutory reference that has changed as result of revisions to the Board’s statute.

A public hearing will be held on March 22, 2012 at 3:15 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Dentistry and Dental Hygiene, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

**DIVISION OF PROFESSIONAL REGULATION**  
**1770 Respiratory Care Advisory Council**  
**PUBLIC NOTICE**

The Respiratory Care Advisory Council of the Delaware Board of Medical Licensure and Discipline (“Council”) in accordance with 24 **Del.C.** §1775(c) is proposing changes to Regulation 8.5.1.2 to clarify that a maximum number of eight (8) contact hours of continuing education may be obtained by taking courses in Basic Life Support (BLS), Advanced Cardiac Life Support (ACLS), Pediatric Advanced Life Support (PALS) and the Neonatal Resuscitation Program (NRP).

A public hearing will be held on March 14, 2012 at 3:00 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public may offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Respiratory Care Advisory Council, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward the written comments to the Council at the above address. The final date to receive written comments will be at the public hearing.

Pursuant to 24 **Del.C.** §1775(c) the Council will consider forwarding the proposed regulations to the Board of Medical Licensure and Discipline for final approval following the public hearing.

**DIVISION OF PROFESSIONAL REGULATION**  
**1790 Acupuncture Advisory Council**  
**PUBLIC NOTICE**

Consistent with a recent statutory amendments providing for the licensure of Acupuncture Detoxification Specialists (ADS), the Acupuncture Advisory Council ("Council") of the Board of Medical Licensure and Discipline ("Board") in accordance with 24 **Del.C.** §1796(c) and 29 **Del.C.** Chapter 101, has developed and is proposing to recommend to the Board the approval of regulations regarding the practice of acupuncture detoxification using the National Acupuncture Detoxification Association (NADA) or equivalent organization's auricular point protocol in the State of Delaware. The proposed regulations clarify the provisions of 24 **Del.C.** §1799F regarding initial licensure, practice settings, renewal and demonstrating continued competency at the time of renewal.

A public hearing will be held on Thursday, April 19, 2012 at 3:15 p.m. in the second floor Conference Room C of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public may offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Medical Licensure and Discipline, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward the written comments to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Council may vote on whether to promulgate the proposed regulations subject to the approval of the Board immediately following the public hearing.