
Delaware Register of Regulations

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"Caesar Rodney's Ride," by Jack Lewis
on display at Legislative Hall, Dover, Delaware

IN THIS ISSUE:

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Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before December 15, 2006.

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

10 **DE Reg.** 524-527 (09/01/06)

Refers to Volume 10, pages 524-527 of the *Delaware Register* issued on September 1, 2006.

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

DIVISION OF RESEARCH STAFF

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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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Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF AGRICULTURE THOROUGHBRED RACING COMMISSION

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

PUBLIC NOTICE

The Delaware Thoroughbred Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to amend the following rules:

- Rule 6.0 to better describe license structure and requirements.
- Rule 11.1.1 to require eligibility at the time of entry and starting of a race; and
- Rule 15 to clarify policy and procedure surrounding the use, testing and penalty for prohibited substances and impermissible levels of acceptable substances.

The Commission will hold a public hearing on the proposed rule change on February 27, 2007. Written comments may be sent via e-mail to: john.wayne@state.de.us, or via regular U.S. postal delivery to: John F. Wayne, Executive Director, Delaware Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, DE 19804.

1001 Thoroughbred Racing Rules and Regulations

(Break in Continuity of Sections)

6.0 Owners

6.1 Registration-Required Licensing Requirements for Owners:

6.1.1 ~~No horse may be entered or raced in Delaware unless the Owner or each of the part Owners has been granted a current Owner's registration by the Commission, except that for good cause shown, a temporary registration may be issued which will be valid for entering and racing pending administrative processing and final action by the Commission on such Owner's registration application, but in no event shall such temporary registration be considered valid longer than two weeks subsequent to the date such registration application was~~

~~submitted. Each person who has a five percent or more ownership or beneficial interest in a horse is required to be licensed.~~

~~6.1.2 An applicant for an owner's license shall own or lease a horse which is eligible to race, registered with the racing secretary and under the care of a trainer licensed by the Commission. An owner shall notify the stewards of a change in trainer of his/her horse. A horse shall not be transferred to a new trainer after entry.~~

~~6.1.3 A horse owner of any age may apply for an owner's license. If younger than 18 years of age, an applicant for an owner's license shall submit a notarized affidavit from his/her parent or legal guardian stating that the parent or legal guardian assumes responsibility for the applicant's financial, contractual and other obligations relating to the applicant's participation in racing.~~

~~6.1.4 If the Commission or its designee has reason to doubt the financial responsibility of an applicant for an owner's license, the applicant may be required to complete a verified financial statement.~~

~~6.1.5 Each licensed owner is responsible for disclosure to the Commission or its designee of the true and entire ownership of each of his/her horses registered with the racing secretary. Any change in ownership or trainer of a horse registered with the racing secretary shall be approved by the stewards. Each owner shall comply with all licensing requirements.~~

~~6.1.6 The Commission or its designee may refuse, deny, suspend or revoke an owner's license for the spouse or member of the immediate family or household of a person ineligible to be licensed as an owner, unless there is a showing on the part of the applicant or licensed owner, and the Commission determines that participation in racing will not permit a person to serve as a substitute for an ineligible person. The transfer of a horse to circumvent the intent of a Commission rule or ruling is prohibited.~~

~~6.2 Requirements for Owner's Registration Licensing Requirements for Multiple Owners:~~

~~6.2.1 In addition to satisfying the requirements applicable to Permittee, et al., imposed by Rule 2.0, in order to be eligible for registration as an Owner, a person also: If the legal owner of any horse is a partnership, corporation, limited liability company, syndicate or other association or entity, each shareholder, member or partner shall be licensed as required in of this rule.~~

~~6.2.1.1 Must be an individual 18 years of age or older.~~

~~6.2.1.2 All Owners and Trainers shall carry workmen's compensation insurance covering all their employees. This paragraph is intended to include all individuals employed by Owners and Trainers in the training and racing of horses.~~

~~6.2.1.3 Must own or have under lease a horse eligible to race and be prepared to prove such upon call of the Stewards.~~

~~6.2.1.4 Must not engage in any activity directly or indirectly involving the racing performance of horses on Licensee's grounds owned and trained by others.~~

~~6.2.1.4.1 The Commission or its designee, may deny, suspend or revoke an Owner's registration for the spouse, or any member of the immediate family or household, of a person ineligible to be registered as an Owner, unless there is a showing by the applicant or registered Owner, and the Commission so finds, that his participation in racing as an Owner will in no way circumvent the intent of this Rule by permitting a person, under the control or direction of a person ineligible for an Owner's registration, to serve in effect as the alter ego of such ineligible person.~~

~~6.2.1.4.1 A registered Owner or Trainer may personally serve as a Farrier or Jockey for horses he owns or are registered in his care, provided he has received from the Stewards a certification of his fitness as a competent Farrier or Jockey.~~

~~6.2.1.5 All owners must first secure the services of a Trainer licensed by the Commission before any horse owned by the individual or a partnership may be entered to race at a meet licensed by the Commission.~~

~~6.2.2 Each partnership, corporation, limited liability company, syndicate or other association or entity shall disclose to the Commission all owners holding a five percent or greater beneficial interest, unless otherwise required by the Commission.~~

~~6.2.3 Each partnership, corporation, limited liability company, syndicate or other association or entity which includes an owner with less than a five percent ownership or beneficial interest shall file with the Commission an affidavit which attests that, to the best of their knowledge, every owner, regardless of their ownership or beneficial interest, is not presently ineligible for licensing or suspended in any racing jurisdiction.~~

PROPOSED REGULATIONS

6.2.4 To obtain an owner's license, an owner with less than a five percent ownership or beneficial interest in a horse shall establish a bona fide need for the license and the issuance of such license shall be approved by the stewards.

6.2.5 Application for joint ownership shall include a designation of a managing owner and a business address. Receipt of any correspondence, notice or order at such address shall constitute official notice to all persons involved in the ownership of such horse.

6.2.6 The written appointment of a managing owner or authorized agent shall be filed with the Commission.

6.3 Ownership Disclosure:

~~6.3.1 Registered Owners and Trainers shall be held jointly responsible for making a full disclosure of the entire ownership of each horse in their care.~~

~~6.3.2 Such disclosure shall identify in writing all individual persons who directly, or indirectly, through a lien, lease, partnership, corporate stockholding, syndication or other joint venture, hold any present or reversionary right, title or interest in and to such horse, and those individual persons who by virtue of any form of interest might exercise control over such horse or can benefit from the racing of such horse; the degree and type of such ownership held by each individual person shall be designated.~~

~~6.3.3 Such disclosure shall be made when registering each horse with the Racing Secretary upon arrival on Licensee's grounds, or at time of entry, whichever event occurs first, and shall be revised immediately upon any subsequent change in such ownership.~~

~~6.3.4 Such disclosure together with all written agreements and affidavits setting out oral agreements pertaining to the ownership of or rights in and to a horse shall be attached to the registration certificate for such horse and filed with the Racing Secretary who shall be responsible for the care and security of such papers while such horse is located on Licensee's grounds.~~

~~6.3.5 Such disclosure is made for the benefit of the public and all documents pertaining to the ownership or lease of a horse filed with the Racing Secretary shall be available for public inspection.~~

~~6.3.6 The Stewards shall review the ownership of each horse entered to race and insure that each registration certificate is properly endorsed by the transferor to the present Owner. For racing purposes, the Stewards may determine the validity of all leases, transfers, and agreements pertaining to the ownership of a horse and may call for adequate evidence of ownership at any time. The Stewards may declare any horse ineligible to race if the ownership or control of such horse is in question.~~

6.4 Joint Ownership:

~~6.4.1 No more than four individual persons may be registered as Owners of a single horse.~~

~~6.4.2 In the event more than four individual persons own interests in a single horse, through a partnership, corporation, syndication or other joint venture, then such individual persons may designate in writing a member of the partnership, corporation, syndicate or joint venture to represent the entire ownership of and be responsible for such horse as the registered Owner thereof.~~

~~6.4.3 Such agreement or lease shall accompany the application for an Owner's registration. Each person designated as representing the entire ownership of a horse must be registered.~~

~~6.4.4 The Commission may deny, suspend or revoke the registration of any Owner whose ownership of a horse is qualified or limited in part by rights or interests in or to such horse held or controlled by any other individual person or persons ineligible to be registered as an Owner thereof.~~

6.5 Leases:

~~6.5.1 Horses may be raced under lease provided the lease agreement is annexed to the horse's registration certificate and is approved by the Stewards. The validity of a lease for the purposes of racing a horse in Delaware may be suspended temporarily or voided by the Stewards at any time. No lease may be approved by the Stewards for racing purposes unless:~~

~~6.5.1.1 Lessee is registered as an Owner;~~

~~6.5.1.2 Each of the signatures of the lessors and lessees on the lease agreement is subscribed and sworn to before a notary public;~~

~~6.5.1.3 Term of the lease is for no less than one year, unless sooner terminated by claim or retirement of the subject horse;~~

~~6.5.1.4 Conditions of the lease specify, as to parties to the lease, whether the subject horse can be entered in a race to be claimed. If agreeable to lessor that the subject horse may be entered to be~~

claimed, conditions of the lease must specify the minimum price for which the subject horse can be entered and identify the name of the recipient of the claiming price;

6.53.1.5 Conditions of the lease specify that, upon a claim of the subject horse, the lease shall terminate and all rights in and to such horse shall pass to claimant as a bona fide purchaser;

6.53.1.6 After reviewing the full ownership of such leased horses, the interests of all persons involved in such lease, and the terms and conditions of such lease, the Stewards in their discretion find that such lease:

6.53.1.6.1 Completely divests lessors or sublessors of further control or direction of the racing performance of such horse while under lease; and

6.53.1.6.2 The resultant program listing of lessee would not mislead the betting public by reason of the absence in the program listing of the name of a person or persons possessing a beneficial interest in such leased horse.

6.64 Racing Colors:

6.64.1 Owners shall be responsible for designing and providing individual racing colors, consisting of jackets and caps of distinctive color and pattern to be worn by Jockeys during a race, such racing colors to be registered with the Licensee or its Registrar.

6.64.2 Racing colors must be registered annually, the application therefor to accompany application for an Owner's registration.

6.64.3 Registration of racing colors shall be at the discretion of Licensee. Disputes as to rights to particular racing colors shall be determined by the Commission. Licensee or its Registrar may refuse to accept for registration racing colors which:

6.64.3.1 Are not readily distinguishable by color and pattern from racing colors currently registered with Licensee or with the Jockey Club; and

6.64.3.2 Include advertising, promotional, or cartoon symbols or words or which, in the opinion of the Commission, are not in keeping with the traditions of the Turf.

~~6.6.3.34.4~~ No horse may be raced in racing colors other than those registered in the name of the horse's Owner without special permission of the Stewards. If an Owner races two or more horses in the same race, jackets shall be identical while caps shall be varied in color or design. Any deviation from registered colors granted by the Stewards shall be immediately announced.

~~6.6.3.44.5~~ Owners and Trainers shall be jointly responsible for the condition of racing colors, insuring that they are neat, clean and in good repair and that an adequate number of sets of racing colors are placed in the care of the Clerk of Scales.

~~6.6.3.54.6~~ The Clerk of Scales and the Valet serving a Jockey shall be jointly responsible for having the correct jacket and cap on each rider when leaving the Jockey room for the paddock.

~~6.6.3.64.7~~ Racing colors are not assignable and registration thereof may be cancelled upon the death of an Owner or upon the revocation or suspension of his Owner's registration.

6.75 Unauthorized Employees:

6.75.1 No Owner or Trainer may employ or contract with a person who holds no permit or authorization to perform an activity on Licensee's grounds for which a permit or authorization is required. An Owner shall immediately notify the Racing Secretary upon change of Trainer during a race meeting.

6.86 Authorized Agent:

6.86.1 A registered Owner may, as a principal, authorize any person, as an agent, to act in such Owner's behalf in all matters pertaining to racing in this State and ownership of horses on Licensee's grounds, as provided by these Rules, *infra*. A registered Owner, as a principal, shall be jointly liable and responsible with his Authorized Agent for all acts and omissions of such Authorized Agent, serving in such Owner's behalf in a racing matter, until written notification from such Owner revoking such agency is received by Licensee or its Registrar.

6.97 Suspension:

6.97.1 In the event the registration of an Owner is suspended or revoked, all horses owned wholly or in part by such Owner shall not be permitted to race during such suspension unless such horses are irrevocably transferred to a registered Owner and such transfer is approved by the Stewards as completely and permanently divesting such suspended former Owner of control of or benefit from the subsequent racing of such horses.

6.408 Partnerships:

6.408.1 Partnerships must be registered with Licensee or its Registrar. Partnership papers shall set forth the following:

6.408.1.1 The name and address of every person having an interest in the horse or horses involved;

6.408.1.2 The relative proportion of such interests;

6.408.1.3 To whom the winnings are payable;

6.408.1.4 In whose name the horse or horses shall run;

6.408.1.5 With whom the power of entry and declaration rests;

6.408.1.6 The terms of any contingency, lease or any other arrangement; and

6.408.1.7 The names of the horse or horses involved. Any partner transacting

business on behalf of a partnership must own an interest therein at least equal to that owned by any other partner. All partnership registrations must be signed by all of the partners or by their authorized agent.

6.408.1.8 Any alteration in a recorded partnership must be reported in writing to Licensee or its Registrar and signed by all the partners or their authorized agent. All the parties in a partnership and each of them shall be jointly and severally liable for all stakes, fees and other obligations.

6.449 Duty to Pay Accounts:

6.449.1 Owners having unpaid jockey or other fees at the close of a race meeting shall be billed by Licensee within twenty (20) days of the close of the race meet with a duplicate copy of the bill to the Trainer. Such accounts shall be paid within thirty (30) days from billing date. At the expiration of the thirty (30) day period, it shall be the duty of Licensee to notify the Racing Commission or the Stewards, in writing, of all delinquent accounts, at which time all Owners with outstanding accounts will be suspended until such fees are paid. (Also, see Rule 11.12).

4 DE Reg. 174 (07/01/00)

5 DE Reg. 1694 (03/01/02)

7 DE Reg. 766 (12/01/03)

(Break in Continuity of Sections)

11.0 Entries, Subscriptions, Delegations

11.1 Entering and Eligibility Required:

11.1.1 No horse shall be qualified to start in any race unless such horse has been and continues to be duly entered therein. Entries or subscriptions for any horse, or the transfer of same, may be refused or cancelled by the Licensee without notice or reason given therefor.

11.1.2 A horse must be eligible at the time of entry.

11.1.3 A horse must be eligible at the time of starting.

**** (Break in Continuity within section, Sections 11.2 through 11.14 are not being amended.)***

(Break in Continuity of Sections)

15.0 Medication; Testing Procedures

15.1 Prohibition and Control of Medication:

15.1.1 Horses should not compete under the influence of drugs or therapeutic medications. However, horses, in training, like all athletes, may require the administration of therapeutic medications at times to diagnose or treat illness or injury. Certain drugs have no therapeutic use in horses in training, and these drugs should not be administered to horses in training, nor should they be permitted at any concentration in post-race samples. In this context:

15.1.1.1 No horse participating in a race shall carry in its body any substance foreign to the natural horse, except as hereinafter provided.

15.1.1.2 No foreign substance shall be administered to a horse (entered to race) by injection, oral administration, rectal infusion or suppository, or by inhalation within twenty-four (24) hours prior to the scheduled post time for the first race, except as hereinafter provided.

15.1.1.3 No person other than a veterinarian shall have in his possession any equipment for hypodermic injection, any substance for hypodermic administration or any foreign substance which

can be administered internally to a horse by any route, except for an existing condition as prescribed by a veterinarian.

15.1.1.4 Notwithstanding the provisions of Rule 15.1.1.3 above, any person may have in his possession within a race track enclosure, any chemical or biological substance for use on his own person, provided that, if such chemical substance is prohibited from being dispensed by any Federal law or law of this State without a prescription, he is in possession of documentary evidence that a valid prescription for such chemical or biological substance has been issued to him.

15.1.1.5 Notwithstanding the provisions of Rule 15.1.1.3 above, any person may have in his possession within any race track enclosure, any hypodermic syringe or needle for the purpose of administering a chemical or biological substance to himself, provided that he has notified the Stewards: (1) of his possession of such device; (2) of the size of such device; and (3) of the chemical substance to be administered by such device and has obtained written permission for possession and use from the Stewards.

15.1.2 Definitions:

The following terms and words used in these Rules are defined as:

15.1.2.1 Hypodermic Injection shall mean any injection into or under the skin or mucous, including intradermal injection, subcutaneous injection, submucosal injection, intramuscular injection, intravenous injection and intraocular (intraconjunctival) injection.

15.1.2.2 Foreign Substances shall mean all substances except those which exist naturally in the untreated horse at normal physiological concentration, and shall also include substances foreign to a horse at levels that cause interference with testing procedures.

15.1.2.3 Veterinarian shall mean a veterinary practitioner authorized to practice at the race track.

15.1.2.4 Horse includes all horses registered for racing under the jurisdiction of the Commission and for the purposes of these Rules shall mean stallion, colt, gelding, ridgling, filly or mare.

15.1.2.5 Chemist shall mean the Commission's chemist.

15.1.2.6 Test Sample shall mean any body substance including, but not limited to, blood or urine taken from a horse under the supervision of the Commission's Veterinarian and in such manner as prescribed by the Commission for the purpose of analysis.

15.1.2.7 Race Day shall mean the 24-hour period prior to the scheduled post time for the first race.

15.1.3 Foreign Substances:

15.1.3.1 No horse participating in a race shall carry in its body any foreign substance except as provided in Rule 15.1.3.1.3:

15.1.3.1.1 A finding by the chemist that a foreign substance is present in the test sample shall be prima facie evidence that such foreign substance was administered and carried in the body of the horse while participating in a race. Such a finding shall also be taken as prima facie evidence that the Trainer and agents responsible for the care or custody of the horse has/have been negligent in the handling or care of the horse.

15.1.3.1.2 A finding by the chemist of a foreign substance or an approved substance used in violation of Rule 15.1 in any test sample of a horse participating in a race shall result in the horse being disqualified from purse money or other awards, except for purposes of pari-mutuel wagering which shall in no way be affected.

15.1.3.1.3 A foreign substance of accepted therapeutic value may be administered as prescribed by a Veterinarian when test levels and guidelines for its use have been established by the Veterinary-Chemist Advisory Committee of the National Association of State Racing Commissioners and approved by the Commission. Aminocaproic acid may be present in a horse's body while it is participating in a race, subject to all the provisions of these Rules.

15.1.3.1.4 The only approved non-steroidal anti-inflammatory drug (NSAID) that may be present in a horse's body while it is participating in a race is phenylbutazone/oxypfenbutazone in the level stated in 15.1.3.1.5 or 15.1.3.1.6. The presence of any other NSAID at any test level is forbidden.

Revised: 1/6/92.

15.1.3.1.5 The test level of phenylbutazone under this Rule shall not be in excess of two point five (2.5) micrograms (mcg) per milliliter (ml) of plasma without penalties in the following format:

PROPOSED REGULATIONS

Micrograms per milliliter	Penalties
0 to 2.5	No action
2.6 to 4.9	First Offense \$250.00 <u>\$500.00</u> fine
2.6 to 4.9	Second Offense within 365 days \$500.00 <u>\$1,000.00</u> fine
2.6 to 4.9	Third Offense within 365 days \$500.00 <u>\$1,000.00</u> fine and/or Suspension and/or Loss of Purse
5.0 and Over	Fine, Suspension, Loss of Purse

15.1.3.1.6 The test level for oxphenbutazone under this Rule shall not be in excess of two (2) micrograms (mcg) per milliliter (ml) of plasma.

Micrograms per milliliter	Penalties
0 to 2.5	No action
2.6 to 4.9	First Offense \$250.00 <u>\$500.00</u> fine
2.6 to 4.9	Second Offense within 365 days \$500.00 <u>\$1,000.00</u> fine
2.6 to 4.9	Third Offense within 365 days \$500.00 <u>\$1,000.00</u> fine and/or Suspension and/or Loss of Purse
5.0 and Over	Fine, Suspension, Loss of Purse

15.1.3.1.7 No bleeder medication otherwise permissible under this Rule may be administered to a horse within one hour of the scheduled post time of the horse's race. The administration of salix to a horse on race day will be governed by Rule 15.2.

15.1.3.1.8 If a horse is to receive one or more bleeder medications, aminocaproic acid and/or salix, the trainer shall declare said use at the time of entry.

15.1.3.1.9 A veterinarian administering bleeder medications shall report the administration of such medications on the same form that is used to report the administration of salix.

15.1.3.1.10 The race program shall denote what medication(s) have been administered to a horse in the race and the past performance lines in the program, if any, shall denote any medications administered to said horse in those races.

15.1.3.1.11 Any horse running on permissible bleeder medication under these Rules shall remain on the medication for a period of not less than sixty (60) days before being permitted to race without the permissible bleeder medication.

15.1.3.1.12 The detection of permissible bleeder medications (salix and/or aminocaproic acid) in a horse following the running of a race which was not declared or reported to the Stewards, may result in the disqualification of the horse and other disciplinary action imposed upon the trainer and administering veterinarian. Conversely, the absence of bleeder medication following the running of a race in which was declared and reported by a trainer and/or veterinarian, may result in the disqualification of the horse and other disciplinary action imposed upon the trainer and administering veterinarian.

15.1.3.1.13 Erythropietin (EPO)

A finding by the official chemist that the antibody of Erythropietin (EPO) was present in a post-race test specimen of a horse shall be promptly reported in writing to the Stewards. The Stewards shall notify the owner and trainer of the positive test result for Erythropietin antibodies. The Stewards shall notify the Commission Veterinarian of the name of the horse for placement on the Veterinarian's List, pursuant to Rule 5.32, if the positive test result indicates that the horse is unfit to race. Any horse placed on the Veterinarian's List pursuant to this Rule shall not be permitted to enter a race until the owner or trainer, at their own expense, provides proof of a negative test result for EPO antibodies from a laboratory approved by the Commission provided said test sample is obtained under collection procedures acceptable to the Commission or its designee under these Rules.

Notwithstanding any inconsistent provision of these Rules, a horse shall not be subject to disqualification from the race and from any share of the purse in the race and the

trainer of the horse shall not be subject to application of trainer's responsibility based on the finding by the laboratory that the antibody of Erythropoietin was present in the sample taken from that horse.

** (Break in Continuity within section, Sections 15.2 through 15.9 are not being amended.)*

15.10 Procedure for Taking Specimens:

15.10.1 Horses from which specimens are to be drawn shall be taken to the detention area at the prescribed time and remain there until released by the Commission veterinarian. Only the owner, trainer, groom, or hotwalker of horses to be tested shall be admitted to the detention area without permission of the Commission veterinarian.

15.10.1.1 Blood samples must be collected at a consistent time, preferable not later than one hour post-race.

15.10.2 Stable equipment other than equipment necessary for washing and cooling out a horse shall be prohibited in the detention area.

15.10.2.1 Buckets and water shall be furnished by the Commission veterinarian.

15.10.2.2 If a body brace is to be used, it shall be supplied by the responsible trainer and administered only with the permission and in the presence of the Commission veterinarian.

15.10.2.3 A licensed veterinarian shall attend a horse in the detention area only in the presence of the Commission veterinarian.

15.10.3 One of the following persons shall be present and witness the taking of the specimen from a horse and so signify in writing:

15.10.3.1 The owner;

15.10.3.2 The responsible trainer who, in the case of a claimed horse, shall be the person in whose name the horse raced; or

15.10.3.3 A stable representative designated by such owner or trainer.

15.10.4 All urine containers shall be supplied by the Commission laboratory and shall be sealed with the laboratory security seal which shall not be broken, except in the presence of the witness as provided by Rule 15.10.3.

15.10.5 Blood vacutainers will also be supplied by the Commission laboratory in sealed packages as received from the manufacturer.

15.10.6 Samples taken from a horse, by the Commission veterinarian or his assistant at the detention barn, shall be collected and in double containers and designated as the "primary" and "secondary" samples.

15.10.6.1 These samples shall be sealed with tamper-proof tape and bear a portion of the multiple part "identification tag" that has identical printed numbers only. The other portion of the tag bearing the same printed identification number shall be detached in the presence of the witness.

15.10.6.2 The Commission Veterinarian shall:

15.10.6.2.1 Identify the horse from which the specimen was taken.

15.10.6.2.2 Document the race and day, verified by the witness; and

15.10.6.2.3 Place the detached portions of the identification tags in sealed envelope for delivery only to the stewards.

15.10.6.3 After both portions of samples have been identified in accordance with this section, the "primary" sample shall be delivered to the official chemist designated by the Commission.

15.10.6.3.1 Laboratories conducting post-race sample analysis must have access to LC/MS instrumentation for screening and/or confirmation purposes.

15.10.6.4 The "secondary" sample shall remain in the custody of the Commission veterinarian at the detention area and urine samples shall be frozen and blood samples refrigerated in a locked refrigerator/freezer.

15.10.6.5 The Commission veterinarian shall take every precaution to ensure that neither the Commission chemist nor any member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all testing.

15.10.6.6 When the Commission chemist has reported that the "primary" sample delivered contains no prohibited drug, the "secondary" sample shall be properly disposed.

PROPOSED REGULATIONS

15.10.6.7 If after a horse remains a reasonable time in the detention area and a specimen can not be taken from the horse, the Commission veterinarian may permit the horse to be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the Commission veterinarian.

15.10.6.8 If one hundred (100) milliliters (ml.) or less of urine is obtained, it will not be split, but will be considered the "primary" sample and will be tested as other "primary" samples.

15.10.6.9 Two (2) blood samples shall be collected in ~~twenty (20) milliliters~~ vacutainers two (2) DTRC approved sample receptacles, one for the "primary" and one for the "secondary" sample.

15.10.6.10 In the event of an initial finding of a prohibited drug or in violation of these Rules, the Commission chemist shall notify the Commission, both orally and in writing, and an oral notice shall be issued by the Commission to the owner and trainer or other responsible person no more than twenty-four (24) hours after the receipt of the initial finding, unless extenuating circumstances require a longer period, in which case the Commission shall provide notice as soon as possible in order to allow for testing of the "secondary" sample.

15.10.6.10.1 If testing of the "secondary" sample is desired, the owner, trainer, or other responsible person shall so notify the Commission in writing within 48 hours after notification of the initial positive test or within a reasonable period of time established by the Commission after consultation with the Commission chemist. The reasonable period is to be calculated to insure the integrity of the sample and the preservation of the alleged illegal substance.

15.10.6.10.2 Testing of the "secondary" samples shall be performed at a referee laboratory selected by representatives of the owner, trainer, or other responsible person from a list of not less than two (2) laboratories approved by the Commission.

15.10.6.11 The Commission shall bear the responsibility of preparing and shipping the sample, and the cost of preparation, shipping, and testing at the referee laboratory shall be assumed by the person requesting the testing, whether it be the owner, trainer, or other person charged.

15.10.6.11.1 A Commission representative and the owner, trainer, or other responsible person or a representative of the persons notified under these Rules may be present at the time of the opening, repackaging, and testing of the "secondary" sample to ensure its identity and that the testing is satisfactorily performed.

15.10.6.11.2 The referee laboratory shall be informed of the initial findings of the Commission chemist prior to the making the test.

15.10.6.11.3 If the finding of the referee laboratory is proven to be of sufficient reliability and does not confirm the finding of the initial test performed by the Commission chemist and in the absence of other independent proof of the administration of a prohibited drug to the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

15.10.6.12 The Commission veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause the specimens to be delivered only to the Commission chemist as soon as the possible after sealing, in a manner so as not to reveal the identity of a horse from which the sample was taken.

15.10.6.13 If an Act of God, power failure, accident, strike or other action beyond the control of the Commission occurs, the results of the primary official test shall be accepted as prima facie evidence.

15.11 Commission Chemist:

15.11.1 The Commission's Chemist, who shall be a member of the Association of Official Racing Chemists, shall conduct tests on specimens provided him in order to detect and identify prohibited substances therein and report on such in such a manner, and according to such procedures, as the Commission from time to time may approve and/or prescribe.

15.12 Prohibited Practices

15.12.1 The following conduct shall be prohibited for all licensees:

15.12.1.1 The possession and/or use of a drug, substance, or medication, specified below, on the premises of a licensed race track under the jurisdiction of the Commission for which a recognized analytical method has not been developed to detect and confirm the administration of such substance including but not limited to erythropoietin, darbepoietin, and perfluorocarbon emulsions; or the use of which may endanger the health and welfare of the horse or endanger the safety of the ~~rider~~ driver; or the use of which may adversely affect the integrity of racing.

15.12.1.2 The possession and/or use of a drug, substance, or medication on the premises of a facility under the jurisdiction of the regulatory body that has not been approved by the United States Food and Drug Administration (FDA) for use in the United States.

15.12.1.3 The practice, administration, or application of Intermittent Hypoxic Treatment by External Device which is performed on the premises of a facility under the jurisdiction of the Commission, and which may endanger the health, safety, and welfare of the horse or endanger the safety of the jockey, or the use of which may adversely affect the integrity of racing. Intermittent Hypoxic Treatment is the administration of hypoxic gas to a horse for the purpose of enhancing aerobic metabolism by simulating training at a high altitude.

15.12.1.4 The use of a nasogastric tube (a tube longer than six inches, inserted in a horse's nostril) for the administration of any substance within the 24-hour period considered raceday is forbidden without prior permission of the Commission.

15.12.1.5 The possession and/or use of blood doping agents, including but not limited to the following list, ~~on the premises of a facility under the jurisdiction of the Commission is forbidden~~ Erythropietin (EPO); Darbepietin (DPO); Oxyglobin; Hemopure or any other substance that abnormally enhances the oxygenation of equine body tissue is considered a prohibited practice that endangers the health and welfare of a horse and/or the safety and welfare of a driver. The possession and/or use of such substances on the premises of a facility under the jurisdiction of the Commission is strictly forbidden.

15.13 Testing for Prohibited Substances that Abnormally Enhance Oxygenation

15.13.1 Horses may be tested for Erythropietin (EPO), Darbepietin (DPO), Oxyglobin, Hemopure or any other substance that abnormally enhances the oxygenation of equine body tissue as follows:

15.13.1.1 Once a horse is entered to race:

15.13.1.2 Any horse that was entered or raced within sixty (60) days of entry and/or race:

15.13.1.3 Any horse showing the presence of EPO, DPO and/or like antibodies:

15.13.1.4 Any horse in the care, custody, and control of a trainer having a horse that has tested positive for EPO, DPO and like substances through a screening test; and

15.13.1.5 Any horse that expires, consistent with DTRC Rules 10.7.1 through and inclusive of 10.7.6.

15.13.2 Two blood samples shall be collected in DTRC approved sample receptacles; one is the primary sample; and the other is the secondary sample.

15.13.3 In the event that the presence of EPO, DPO and/or any EPO analogues is determined to be present in a primary sample, the primary sample shall be sent to a DTRC approved laboratory for a confirmation test.

15.13.4 The trainer and/or owner of any horse that tests positive for the confirmed presence of EPO, DPO, Oxyglobin, Hemopure or any other substance that abnormally enhances the oxygenation of equine body tissue has the right to request a testing of the secondary sample consistent with DTRC Rule 15.10.6.10.1 through and inclusive of DTRC Rule 15.1.6.13.

15.13.5 Upon positive notification from the confirmatory laboratory of the primary sample, if uncontested by the trainer; or notification of confirmation in the secondary sample, the trainer shall be summarily suspended and any/all horses entered, by the trainer, to race shall be scratched. Notice of a hearing shall be delivered to the trainer within twenty-four (24) hours

15.13.6 The following penalties and disciplinary measures may be imposed for the confirmed presence of EPO, DPO, Oxyglobin, Hemopure or any other substance that abnormally enhances the oxygenation of equine body tissue:

15.13.7 In the absence of extraordinary circumstances, a penalty of \$5,000 and/or a 10 year suspension, forfeiture of the purse money and assessment for cost of the drug testing may be imposed.

15.14 Shock Wave Therapy/Instruments

15.14.1 No person may possess on a licensee's race track an instrument used for shock wave therapy.

15.14.2 No horse may be treated with any form of shock wave therapy within ten (10) days of racing (the day of the treatment shall be considered the first day in counting the number of days).

~~15.43~~ 14.3 The administration of shock wave therapy may only be performed by a licensed veterinarian. A veterinarian using shock wave therapy shall document and report each treatment on his daily medication report.

~~15.43~~ 14.4 A Trainer or Veterinarian who has been found to have violated any of the above provisions of this Rule shall be subject to appropriate disciplinary action by the stewards and/or Commission including but not limited to a maximum suspension of ninety (90) days.

~~15.44~~ 15 Blood Gas Testing

~~15.44~~ 15.1 The Commission may use a testing machine that measures carbon dioxide levels in pre-race samples using a Base Excess testing protocol. A trainer whose horse is selected for blood gas testing and fails to report for the test will be penalized as if there was a positive test result.

~~15.44~~ 15.2 Under this protocol, the prohibitive Base Excess concentrations are as follows: Base Excess level of 10.0 mmol/l (mEq/l) or higher for non-furosemide (Salix) treated horses and Base Excess (BE) level of 12.0 mmol/l (mEq/l) or higher for furosemide (Salix) treated horse. The level of uncertainty will be included before it is considered a violation of these Rules. The level of uncertainty is 0.4 mmol/l (mEq/l) and a positive test report must include this level of uncertainty. A horse must show a Base Excess (BE) level of 10.4 mmol/l (mEq/l) or higher for non-furosemide (Salix) treated horse and Base Excess (BE) level of 12.4 mmol/l (mEq/l) or higher for furosemide (Salix) treated horse, in order for a violation to be reported under this Rule.

~~15.44~~ 15.3 A licensee has the right, pursuant to the quarantine procedure outlined at 15.15, or by such other procedures as may be established from time to time by the Commission, to attempt to prove that a horse has a naturally high carbon dioxide level in excess of the above-mentioned levels.

~~15.45~~ 16 Quarantine Procedure for Carbon Dioxide Positive Tests (Prerace Or Postrace)

~~15.45~~ 16.1 Detention/Quarantine of Horses: The owner or trainer must request use of the quarantine procedure by sending written notice to the Stewards within forty-eight (48) hours of notification of the positive carbon dioxide test report. The owner or trainer will then be permitted, totally at his/her own expense, to make the necessary scheduling arrangements with the Stewards and the Commission Veterinarian. The horse in question will be quarantined on the grounds for periodic blood gas testing by the DTRC (up to three days) at the trainer's expense. All caretaker activities for the horse in question will be the responsibility of the horse's trainer.

~~15.45~~ 16.2 Procedure: The owner or trainer will be responsible for providing the DTRC with a minimum check for \$1,500.00 to cover the costs for the quarantine. A professionally trained Track Security Officer must be with the horse at all times, and the Security Officer must be knowledgeable about the importance of monitoring all activity pertaining to the quarantined horse.

~~15.45~~ 16.3 The quarantine of a horse is subject to the following mandatory requirements:

~~15.45~~ 16.3.1 The owner or trainer will be required to deposit sufficient funds with the DTRC Stewards to cover the costs of the quarantine of the horse. The minimum quarantine cost will be \$1,500, and this figure may be higher if additional special circumstances are required for a particular horse. None of these procedures will be initiated until the Commission has in its possession a certified check or other method of payment acceptable to the Commission. The owner or trainer is responsible for all costs for the quarantine, including but not limited to, the costs of: stall bedding, daily cleaning of the stall, feed and hay, stall rent, hourly guard salary, portable toilet rental, veterinary charge, courier or shipping charges to the laboratory, laboratory analysis costs. Unused funds will be returned to the trainer.

~~15.45~~ 16.3.2 The expected period of the quarantine will be seventy-two hours.

~~15.45~~ 16.3.3 The owner or trainer is required to execute a reasonable liability waiver form if requested to do so by the track for the quarantine of the horse on track grounds.

~~15.45~~ 16.3.4 The owner or trainer is obligated to reimburse the track if the racing association is required to purchase additional insurance to cover risks from the quarantine of the trainer's horse. The owner or trainer is also responsible for any additional costs required by the track to pad or otherwise specially equip the quarantine stall.

~~15.45~~ 16.3.5 All activity of the quarantined horse is observed, documented, and recorded by security officers for the track and the DTRC.

~~15.45~~ 16.3.6 The Commission will be responsible for arranging for and providing for bedding, feed, water, and daily cleaning of the stall, all of which are at the owner's expense. Feed for the horse will be purchased by DTRC officials as specified by the owner or trainer. Samples of the feed will be retained by the DTRC designated official.

~~15.45~~ 16.3.7 Each bale of hay/straw will be intact and uncut for inspection of contraband. Four small samples of hay are to be taken from the bale of hay used to feed the animal (one from each end of the bale of hay and two from the middle of the bale of hay). These samples with the ingredient tags from the bag of feed used by the horse will be retained by the DTRC designated official.

~~15.45~~ 16.3.8 Every trainer, groom, or caretaker is subject to continuous observation and may be searched when with the horse for contraband.

~~15.45~~ 16.3.9 Horses may be trained, but if leg paints or salves are used, they must be new and in unopened containers, and the track Security Officer must monitor the preparation of the horse.

~~15.45~~ 16.3.10 A Security Officer must observe the horse during training and ensure that it does not leave the track except to return to the quarantine stall.

~~15.45~~ 16.3.11 A sick horse must only be determined ill by the Commission's Veterinarian and the quarantine of the horse will be terminated. Any bills incurred for the quarantine of the horse prior to the illness and termination of the detention will be prorated.

~~15.45~~ 16.3.12 Stalls for the quarantine of horses are designated by the Stewards of the DTRC, in cooperation with the racetrack.

~~15.45~~ 16.3.13 Trainers can restrict water based on previous pre-race preparation schedules.

~~15.45~~ 16.3.14 Trainers are expected to train their horse in the same manner as the horse was trained on previous racing events. The horse will be equipped with all the items that it would normally carry, taken to the paddock, and handled in a manner similar to previous racing events.

~~15.45~~ 16.3.15 Blood samples will be taken from the quarantined horse by the Commission Veterinarian, as he or she deems appropriate and necessary during the quarantine period. A blood sample should be taken when the horse first enters the quarantine stall and again at the pre-arranged time between sixty (60) and seventy-two (72) hours. At the discretion of the Commission, another sample may be taken between the initial sample and the sample taken at the cessation of the quarantine period. Blood samples will only be taken from the horse that is at rest for a period of time approved by the Commission Veterinarian. The owner or trainer or his/her representative must be present and witness the collection of the blood samples. Blood samples will be shipped promptly to the Commission's designated testing laboratory, pursuant to the Commission's standard chain-of-custody procedures.

~~15.45~~ 16.3.16 At the conclusion of the quarantine period, the party requesting the quarantine will be provided timely notice of the test results from the DTRC. The trainer may present such evidence at a hearing before the Stewards if he or she attempts to prove that the horse has a naturally high carbon dioxide level.

1 DE Reg. 508 (11/01/97)

1 DE Reg. 1184 (02/01/98)

3 DE Reg. 754 (12/01/99)

4 DE Reg. 179 (07/01/00)

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

4 DE Reg. 1821 (05/01/01)

6 DE Reg. 641 (11/01/02)

6 DE Reg. 1205 (03/01/03)

7 DE Reg. 766 (12/01/03)

7 DE Reg. 1540 (05/01/04)

8 DE Reg. 1699 (06/01/05)

10 DE Reg. 546 (09/01/06)

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

<http://www.state.de.us/research/AdminCode/title3/1000/1001/index.shtml#TopOfPage>

PROPOSED REGULATIONS

NUTRIENT MANAGEMENT

Statutory Authority: 3 Delaware Code, Section 2221 (3 **Del.C.** §2221
3 **DE Admin. Code** 1201

PUBLIC NOTICE

1201 Nutrient Management Certification Regulations

Pursuant to 29 **Del.C.** §10115, I hereby recommend the proposed modifications to the nutrient handling certification regulations and mandate regulations to be posted in the *Register of Regulations* during the month of January, 2007.

Synopsis:

Nutrient Management Certification Regulation Amendments (Exhibit A): Certification by the Delaware Nutrient Management Program, 2320 S. Dupont Hwy., Dover, DE 19901, is required (3 **Del.C.** §2201 - 2290) for all who apply fertilizer and/or animal manure greater than 10 acres or who manage animals greater than 8,000 pounds of live animal weight. The proposed changes to the certification regulations establish nutrient handling requirements for certain nutrient handlers. The proposed regulation addresses application timing and placement for commercial inorganic fertilizer and organic fertilizer

Comments on the proposed changes will be accepted from January 1, 2007 until January 31, 2007. Any comments should be provided to the Nutrient Management Program office located at 2320 S. Dupont Hwy., Dover, DE 19901, ATTN: William Rohrer. A hearing for the proposed regulations will be conducted at the Delaware Department of Agriculture on January 22, 2007 at 4:00 PM. A meeting to accept the proposed changes was held at the Nutrient Management Full Commission meeting on December 12, 2006 at 7:00 p.m. The accepted changes are indicated below.

Amendments: Paragraphs 6.0 - 14.0, reference 1200 Nutrient Management, 1201 Nutrient Management Certification Regulations; Paragraph 4.0, reference Nutrient Management, 1203 Mandatory Nutrient Management Plan Reporting Implementation Regulations.

1201 Nutrient Management Certification Regulations

PREAMBLE

These regulations have been developed pursuant to 3 **Del.C.** Ch. 22. That statute established the Delaware Nutrient Management Commission and authorized the Commission to develop, review, approve, and enforce nutrient management regulations, including regulations governing the certification of persons who conduct certain activities that involve the generation or application of nutrients to lands or water, or who are involved in providing advice or consultation regarding such application of nutrients. These regulations were developed by the Commission and the Delaware Department of Agriculture. They are adopted with the guidance, advice, and consent of the Commission.

1.0 Authority

These regulations are promulgated pursuant to the authority provided by 3 **Del.C.**, Ch. 22, §2221.

2.0 Purpose

The purpose of these regulations is to establish certification requirements for certain generators or handlers of nutrients, or who engage in advising or consulting with others regarding the formulation, application, or scheduling of nutrients within the State of Delaware.

3.0 Definitions

For purposes of these regulations, the following words or terms shall have the meanings as indicated:

"**Animal Feeding Operation**" or "**AFO**" means any area or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period.

"**Animal Unit**" shall be as defined by the United States Department of Agriculture Natural Resources Conservation Service, and is approximately 1,000 lbs. "average" live body weight.

"**Applicant**" means any person seeking a certificate from the Commission.

"**Apply, Applying**", or any derivation of the word "apply", as it relates to the application of nutrients, means the human controlled mechanical conveyance of nutrients to land for the purpose of applying organic and/or inorganic nutrients.

"**Certification**" means the recognition by the Commission that a person has met the qualification standards established by the Commission and has been issued a written certificate authorizing such person to perform certain functions specified in these regulations.

"**Commercial Nutrient Handler**" means a person who applies organic or inorganic nutrients to lands or waters in the State as a component of a commercial or agricultural business in exchange for a fee or service charge.

"**Commercial Processor**" means any individual, partnership, corporation, association or other business unit that controls, through contracts, vertical integration or other means, several stages of production and marketing of any agricultural commodity.

"**Commission**" or "**DNMC**" means the Delaware Nutrient Management Commission.

"**Credit**" represents a unit of measuring education for certification as defined by the Commission and is dependent upon such factors as curricula intensity and class time.

"**Direct Supervision**" refers to actions by a person who is certified with the State Nutrient Management Program and directs individuals within the same organization/company in applying nutrients. Direct supervisors hold responsibility for nutrient application actions for those under his/her supervision.

"**Fertilizer**" means any synthetic or carbon based substance that is added to the soil to supply one or more plant nutrients.

"**Frozen**" relates to frozen ground and is the top 2-inches of surface area receiving nutrients where the moisture has changed to ice for a period of 72 consecutive hours or a condition where any ice formation below the 2-inch zone restricts the natural flow of moisture through the soil profile.

"**Nutrient Consultant**" means a person who is engaged in the activities of advising or consulting with another person who is required to have a certificate under these regulations, regarding the formulation, application, or scheduling of organic or inorganic nutrients within the State. Provided, however, any employee of any federal, State or local government agency or the University of Delaware, or other organization duly recognized by the Commission for such purpose, who provides advice or consultation in his/her capacity as such an employee, without compensation, shall not be deemed to be a nutrient consultant unless such advice and consultation constitutes a direct and substantial part of a nutrient management plan developed pursuant to these regulations.

"**Nutrient Generator**" means a person who owns or operates a facility within the State that produces organic or inorganic nutrients.

"**Nutrient Management Plan**" or "plan" means a plan by a certified nutrient consultant to manage the amount, placement, timing, and application of nutrients in order to reduce nutrient loss or runoff and to maintain the productivity of soil when growing agricultural commodities and turfgrass.

"**Nutrients**" means nitrogen, nitrate, phosphorus, organic matter, and any other elements necessary for or helpful to plant growth.

"**Person**" means any individual, partnership, association, fiduciary, or corporation or any organized group of persons, whether incorporated or not.

"**Private Nutrient Handler**" means a person in the State who applies organic or inorganic nutrients to lands or waters he/she owns, leases, or otherwise controls.

"**Program Administrator**" or "Nutrient Management Program Administrator" means the exempt employee of the Delaware Department of Agriculture who is responsible for the operation of the State Nutrient Management Program.

"**Secretary**" means the Secretary of the Delaware Department of Agriculture or his/her designee.

"**State Nutrient Management Program**" or "**SNMP**" means all the nutrient management program elements developed by the Commission, whether or not reduced to rules or regulations.

4.0 Certification Categories And Activities Requiring Certification

4.1 No later than January 1, 2004, any person who engages in any of the following activities must have the applicable certificate or certificates required by and issued pursuant to these regulations, as follows:

4.1.1 Nutrient generator certification - A nutrient generator who owns or operates any animal feeding operation in excess of eight animal units must have a nutrient generator certificate.

4.1.2 Private nutrient handler certification - A private nutrient handler who, on an annual basis, applies nutrients to 10 acres or greater of land or waters owned, leased, or otherwise controlled by such handler must have a private nutrient handler certificate.

4.1.3 Commercial nutrient handler certification - A commercial nutrient handler who, on an annual basis, applies nutrients to 10 acres or greater of land or waters of the state must have a commercial nutrient handler certificate.

4.1.4 Nutrient consultant certification - A nutrient consultant who is engaged in the provision of nutrient management advice or the formulation of a nutrient management plan or in nutrient management planning as it relates to the application or disposal of nutrients at or from a specific site in the State of Delaware must have a nutrient consultant certificate.

4.2 These certification requirements shall not apply to individuals who perform services under the direct supervision of a certified person, provided that the certified person assures that such individuals act in accordance with the standards or practices which the certified person would follow if such person performed the service. Nor shall the certification requirements of this section apply to persons who utilize a person certified under these regulations to conduct the activities identified in this section, provided that such persons do not engage in any of the activities themselves and the certified person is certified at the time the activities are undertaken.

4.3 Conditional certifications may be issued for any reason specified by the Commission and shall be issued for periods not to exceed one year.

5.0 Certification Requirements

5.1 Any person who seeks a certification shall file with the Commission an application on a form provided by the Commission, along with the application fee. The minimum requirements for the certifications follow.

5.2 Nutrient generator certificates - To obtain a nutrient generator certificate, the applicant must take and successfully complete at least 6 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.

5.3 Private nutrient handler - To obtain a private nutrient handler certificate, the applicant must take and successfully complete at least 9 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.

5.4 Commercial nutrient handler - To obtain a commercial nutrient handler certificate the following criteria must be satisfied:

5.4.1 The applicant must take and successfully complete at least 12 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.

5.4.2 The applicant must pass a written test approved by the Commission.

5.5 Nutrient consultant - To obtain a nutrient consultant certificate the following criteria must be satisfied:

5.5.1 The applicant must take and successfully complete at least 12 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.

5.5.2 The applicant must pass a written test approved by the Commission.

6.0 Nutrient Handling Requirements

6.1 The application of Nitrogen and Phosphorus fertilizers shall be prohibited by anyone holding certification or required to be certified pursuant to 3 Del.C. §2242 and section 4.0 herein, when one of the following conditions exist:

6.1.1 The surface area of application is impervious such as sidewalks, roads and other paved areas and the misdirected fertilizer is not removed on the same day of application;

6.1.2 The surface area is covered by snow or frozen; or

6.1.3 The date of application is between December 7 and February 15.

6.2 An exemption is hereby established for the application of Nitrogen provided the rate does not exceed 1 lb./1,000 ft² or 43 lbs./acre and provided the following conditions exist:

6.2.1 The crop receiving fertilizer is actively growing; and

6.2.2 The operation is managed under a current nutrient management plan.

6.3 An exemption is hereby established for the application of Nitrogen to small grain crops that receive more than 43 lbs./acre provided that the application rate is documented in the nutrient management plan and annual report.

6.4 An exemption is hereby established for animal feeding operations that are limited by manure storage provided the application rate is documented in the nutrient management plan and the annual report.

67.0 Reciprocity

67.1 Notwithstanding the requirements of Section 5.0, supra, any person may obtain a certificate under these regulations if all the following requirements are satisfied.

67.2 The applicant must submit an application for the applicable certificate on a form provided by the Commission, along with the application fee.

67.3 The applicant must have a valid certificate or equivalent authorization, such as a license for the certificated activity, from another state or organization that requires qualifications at least as rigorous as those required under these regulations and approved by the Commission.

67.4 The applicant must pass a test approved by the Commission related to specific Delaware Nutrient Management requirements. The Commission may in its sole discretion waive this test requirement.

78.0 Continuing Education

78.1 After a certificate is issued, the certificate holder must take and successfully complete continuing education courses approved by the Commission or Program Administrator in accordance with the following:

78.1.1 Nutrient generator - 6 credits of continuing education in each three-year period following the issuance of the certification.

78.1.2 Private nutrient handlers - 6 credits of continuing education in each three-year period following the issuance of the certification.

78.1.3 Commercial nutrient handlers - 6 credits of continuing education in each three-year period following the issuance of the certification.

78.1.4 Nutrient consultants - 5 credits of continuing education each year following the issuance of the certification.

78.2 Failure to satisfy the continuing education requirements may result in the revocation of a certificate or non-renewal of the certificate.

78.3 Any dispute regarding continuing education credits may be directed to the Commission which will determine whether a hearing is necessary to resolve the dispute.

9 DE Reg. 966 (12/01/05)

89.0 Duration Of Certificates And Certification Fees

89.1 Certificates normally will be issued and renewed for periods of three years for nutrient generators, private nutrient handlers, and commercial nutrient handlers. Certified nutrient consultants will be issued and renewed certifications annually.

89.2 Certificate fees are due with the application. The fee for a one-year certificate issued to nutrient consultants shall be \$100.00. The certificate fee for commercial nutrient handlers for a three-year certificate shall be \$150.00.

89.3 No fee will be charged for certification of a nutrient generator or a private nutrient handler.

910.0 Suspensions, Modifications, And Revocations

910.1 The Commission may, after notice and opportunity for hearing, suspend, modify, or revoke any certificate where the Commission has reasonable grounds to believe that the certificate holder is responsible for violations of the nutrient management statute (Title 3, Chapter 22, of the **Delaware Code**) or Commission regulations. The Commission shall furnish the person accused of a violation with notice of the time and place of the hearing, which notice shall be served personally or by registered mail directly to such person's place of business or last known address with postage fully paid no sooner than 10 days but within 21 days of the time fixed for the hearing.

4011.0 Certification Renewals

4011.1 At least 60 days before the expiration of a certificate, the certificate holder shall file an application with the Commission for renewal of the certificate, along with the certification fee.

4011.2 Nutrient consultants must file with the application and fee evidence that the consultant prepared at least one nutrient management plan during the preceding three-year period. If no such plan was prepared, the certificate shall not be renewed.

4011.3 The certificate holders must also supply with the application and renewal fee evidence that they have complied with the continuing education and record keeping and reporting requirements contained in these regulations.

4011.4 Absent good cause for failure to timely file an application for renewal in compliance with these requirements, the certificate holder must reapply for the certificate in the same manner required for the issuance of the original certificate.

4011.5 Decisions to refuse renewal of a certificate shall be final and conclusive unless appealed to the Commission pursuant to Section 2262, Chapter 22, of the **Delaware Code**.

4112.0 Appeals To The Secretary

All decisions of the Commission under this regulation shall be final and conclusive unless appealed to the Secretary pursuant to Section 2263, Chapter 22, of the **Delaware Code**. Provided, however, that the denial of a certificate pursuant to Sections 2243 or 2245, Chapter 22, of the **Delaware Code** shall first be appealed to the Commission which shall hold a hearing.

4213.0 Record Keeping.

4213.1 Nutrient generators shall record and keep the following available for inspection by the Secretary or the Commission:

4213.1.1 A contemporaneously recorded log that contains the dates, approximate quantities, locations, and disposition (stored, shipped, etc.) of nutrients that are applied to land or transported from land owned, leased or otherwise controlled by the Nutrient Generator.

4213.1.2 A copy of any applicable nutrient management plan.

4213.2 Private nutrient handlers shall record and keep the following available for inspection by the Secretary or the Commission:

4213.2.1 A contemporaneously recorded log showing the dates, locations, approximate quantities, acreage and methods of nutrient application.

4213.2.2 A copy of any applicable nutrient management plan.

4213.3 Commercial nutrient handlers shall prepare and keep available for inspection by the Secretary or the Commission, a contemporaneously recorded log showing the dates, locations, approximate quantities, acreage, and methods of nutrient application.

4213.4 Nutrient consultants shall prepare and/or keep available for inspection by the Secretary or the Commission, copies of any written materials prepared by the nutrient consultants or at their direction that establish how nutrients are to be managed at specific sites within Delaware, such as nutrient management plans.

4213.5 The information required in this section shall be kept and maintained for a period of 6 years.

4314.0 Effective Date.

These regulations shall become effective on January 10, 2001

4 DE Reg. 1117 (01/01/01)

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 101

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

101 Delaware Student Testing Program

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 101 Delaware Student Testing Program. For the graduating class of 2007 the amendments clarify the requirements for receiving a Distinguished Diploma including the Other Academic Indicators that may be used. For the graduating class of 2008 the amendments clarify the requirements for receiving a high school diploma including the Other Academic Indicators that may be used. These changes are found in section 6.0.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday, January 31, 2007 to Carol O'Neill Mayhew, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, DE 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is intended to help improve student achievement as measured against state achievement standards by increasing the requirements for graduation.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure that all students receive an equitable education by setting high standards for all students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses student achievement not health and safety issues.

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

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation?

There is no cost to the State and to the local school boards of compliance with the regulation.

101 Delaware Student Testing Program

1.0 Definition

The Delaware Student Testing Program (DSTP) shall include the assessments of all students in grades 2 to 10 in the areas of reading and mathematics, grades 3 to 10 in the area of writing and the assessments of all students in grades 4, 6, 8, and 11 in the areas of science and social studies. The DSTP shall also include the participation of Delaware students in the National Assessment of Educational Progress (NAEP) as determined by the Department of Education. All districts and charter schools shall participate in all components of the DSTP including field test administrations.

1.1 All students in said grades shall be tested except that students with disabilities and English Language Learners (ELLs) shall be tested according to the Department of Education's Guidelines for the Inclusion of Students with Disabilities and English Language Learners (ELLs), as the same, may from time to time be amended hereafter.

1.2 The Department of Education shall determine the dates upon which the DSTP will be administered, and will advise the school districts and charter schools of those dates.

10 DE Reg. 676 (10/01/06)

2.0 Levels of Performance

There shall be five levels of student performance relative to the State Content Standards on the assessments administered to students in grades 3 through 10 in reading, mathematics and writing and to students in grades 4, 6, 8 and 11 in social studies and science. There shall be three levels of performance for students in grade 2 in reading and mathematics. The cut points for Distinguished, Exceeds the Standard, Meets the Standard and Below the Standard shall be determined by the Department of Education with the consent of the State Board of Education, using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work in making the recommendation. Said levels are defined and shall be determined as follows:

2.1 Distinguished Performance (Level 5): A student's performance in the tested domain is deemed exceptional. Students in this category show mastery of the Delaware Content Standards beyond what is expected of students performing at the top of the grade level. Student performance in this range is often exemplified by responses that indicate a willingness to go beyond the task, and could be classified as "exemplary." The cut points for Distinguished Performance shall be determined by the Department of Education, with the consent of the State Board of Education.

2.2 Exceeds the Performance Standard (Level 4): A student's performance in the tested domain goes well beyond the fundamental skills and knowledge required for students to Meet the Performance Standard. Students in this category show mastery of the Delaware Content Standards beyond what is expected at the grade level. Student performance in this range is often exemplified by work that is of the quality to which all students should aspire, and could be classified as "very good." The cut points for Exceeds the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.

2.3 Meets the Performance Standard (Level 3): A student's performance in the tested domain indicates an understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students in this category show mastery of the Delaware Content Standards at grade level. Student performance in this range can be classified as "good." The cut points for Meets the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.

2.4 Below the Performance Standard (Level 2): A student's performance in the tested domain shows a partial or incomplete understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Below the Performance Standard may require additional instruction in order to succeed in further academic pursuits, and can be classified as academically "deficient." The cut points for Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.

2.5 Well Below the Performance Standard (Level 1): A student's performance in the tested domain shows an incomplete and a clearly unsatisfactory understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Well Below the Performance Standard have

demonstrated broad deficiencies in terms of the standards indicating that they are poorly prepared to succeed in further academic pursuits and can be classified as "very deficient." The cut points for Well Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.

7 DE Reg. 51 (07/01/03)

8 DE Reg. 425 (09/01/04)

10 DE Reg. 676 (10/01/06)

3.0 Other Indicators of Student Performance

3.1 Local school districts and charter schools may consider other indicators of student performance relative to the state content standards pursuant to 14 **Del.C.** §153(b) when determining the placement of students who score at Level 1 or Level II on a mandated retake of a portion of the DSTP. Pursuant to 14 **Del.C.** §153(d)(2) and 153(d)(12), local school districts and charter schools may also consider other indicators of student performance relative to the state content standards when determining if a student may advance to the next grade level without attending summer school. The only other indicators of student performance that may be considered by a local school district or charter school are: student performance on district administered tests pursuant to 14 **Del.C.** §153(e)(1); student performance on end of course assessments; student classroom work products and classroom grades supported by evidence of student work that demonstrates a student's performance pursuant to 14 **Del.C.** §153(a).

3.2 Any local school district or charter school planning to use other indicators of student performance shall submit the proposed indicators to the Department of Education by September 1st of each year.

3.2.1 Any such submission must include a demonstration of how an indicator of student performance aligns with and measures state content standards and the level of performance required to demonstrate performance equivalent to meeting state content standards.

3.2.2 Any proposed indicators of student performance must be approved by the Department of Education following consultation with the Student Assessment and Accountability Committee and the State Board of Education.

3.3 An academic review committee composed of educators in the student's local school district or charter school may then determine if a student has demonstrated proficient performance relative to the state content standards using evidence from the other indicators of student performance as approved by the Department of Education.

3.3.1 The academic review committee shall be composed of two classroom teachers from the student's tested grade, one classroom teacher from the grade to which the student may be promoted, one guidance counselor or other student support staff member and two school building administrators.

3.3.2 The supervisor of curriculum or instruction for the school district or charter school or his/her designee shall chair the committee.

3.3.3 Placement of students with disabilities who are eligible for special education and related services is determined by the student's IEP team.

7 DE Reg. 325 (09/01/03)

10 DE Reg. 676 (10/01/06)

4.0 Individual Improvement Plan (IIP)

4.1 The following students are required to have an Individual Improvement Plan:

Students who score below Level 3 Meets the Standard, on the reading portion of the 2nd, 3rd, 4th, 5th, 6th, 7th, or 8th grade Delaware Student Testing Program or the mathematics portion of the 6th, 7th, or 8th grade Delaware Student Testing Program shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and the student's parent, guardian or Relative Caregiver.

4.2 The Individual Improvement Plan shall be on a form adopted by the student's school district or charter school. The IIP shall be placed in a student's cumulative file and shall be updated based on the results of further assessments. Such assessments may include further DSTP results as well as local assessments, classroom observations or inventories. For students with an Individualized Education Program (IEP), the IEP shall serve as the Individual Improvement Plan (IIP).

4.3 The Individual Improvement Plan shall at a minimum identify a specific course of study for the student that the school will provide and the academic improvement activities that the student shall undertake to

help the student progress towards meeting the standards. Academic improvement activities may include mandatory participation in summer school, extra instruction and mentoring programs.

4.4 The Individual Improvement Plan shall be prepared by school personnel and signed by the teacher(s), principal or designee and the student's parent, guardian or Relative Caregiver who must sign and return a copy of the student's Individual Improvement Plan to the student's school by the end of the first marking period.

4.5 Disputes initiated by a student's parent or legal guardian or Relative Caregiver concerning the student's IIP shall be decided by the academic review committee. Any dispute concerning the content of a student's IEP is subject to resolution in conformity with the Regulations, Children with Disabilities.

7 DE Reg. 51 (07/01/03)

8 DE Reg. 425 (09/01/04)

10 DE Reg. 676 (10/01/06)

5.0 Summer School Programs for Students in Grades 3, 5, and 8 as required pursuant to 14 Del.C. §153

5.1 Summer school programs shall be provided by the student's district of residence with the following exceptions:

5.1.1 Where a student attends another district as a result of school choice or attends a charter school the district of choice or charter school shall provide the summer school program.

5.1.2 Where by mutual agreement of both districts or a charter school and the student's parent, guardian or Relative Caregiver another district provides services.

5.1.3 Where by mutual agreement of the student's school district or a charter school and the student's parent, guardian or Relative Caregiver, the parent, guardian or Relative Caregiver arranges for summer school instruction to be provided outside the public school system. Under such conditions the parent, guardian or Relative Caregiver shall be responsible for the cost of providing nonpublic school instruction unless the districts or the charter school and parents or guardian agree otherwise. Requirements for secondary testing shall be met.

5.1.4 Where a student has been offered admission into a career technical school district or charter school that district or charter school may provide summer school services.

8 DE Reg. 425 (09/01/04)

9 DE Reg. 1175 (02/01/06)

6.0 ~~High School Diploma Index as Derived from the 10th Grade Assessments Pursuant to 14 Del.C. §152~~ State of Delaware High School Diploma Requirements

6.1 ~~Students who graduate from a Delaware public high school, as members of the class of 2004 and beyond through and including the class of 2007 shall be subject to the diploma index for a distinguished diploma as stated herein.~~

~~6.1.1 Beginning in 2002 for the graduating class of 2004, the Department shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in reading, writing, and mathematics.~~

~~6.1.2₁ Beginning in 2005 for the graduating class of 2006, the Department shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in reading, writing, mathematics and the grade 11 Delaware Student Testing Program performance levels in science and social studies.~~

6.2 A student may choose to participate in additional scheduled administrations of the DSTP in order to improve his/her diploma index. The highest earned performance level in each content area will be used in calculating the diploma index.

6.3 The diploma index shall be calculated by multiplying the earned performance level in each content area by the assigned weight and summing the results.

~~6.3.1 Beginning with the year 2002, the assigned weights shall be .40 for reading, .40 for mathematics, and .20 for writing for the graduating class of 2004 and 2005.~~

~~6.3.2₁ Beginning with the year 2005, the assigned weights shall be .20 for reading, .20 for mathematics, .20 for writing, .20 for science and .20 for social studies for the graduating class of 2006 and beyond.~~

6.4 Students who graduate as members of the class of 2006 through and including the class of 2007 shall qualify for a State of Delaware Distinguished High School diploma or a traditional State of Delaware High School diploma as follows:

6.4.1 A student shall be awarded a Distinguished State Diploma upon attainment of a diploma index greater than or equal to 4.0 and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.4.1.1 Beginning with the graduating class of 2006 through and including the graduating class of 2007, "Other Academic Indicators" may be substituted for specific content area DSTP scores. The Other Academic Indicators shall be:

6.4.1.1.1 SAT ~~Verbal Reasoning Test Verbal~~ score or the SAT Reasoning Test Reading score between 544 and 621 representing a Performance Level 4 on the reading portion of the diploma index;

6.4.1.1.2 SAT ~~Verbal Reasoning Test Verbal~~ score or the SAT Reasoning Test Reading score of 622 or higher representing a Performance Level 5 on the reading portion of the diploma index;

6.4.1.1.3 SAT Reasoning Test Mathematics score between 547 and 617 representing a Performance Level 4 the mathematics portion of the diploma index;

6.4.1.1.4 SAT Reasoning Test Mathematics score of 618 or higher representing a Performance Level 5 on the mathematics portion of the diploma index;

6.4.1.1.5 SAT ~~# Reasoning Test Writing~~ score or SAT Subject Test Writing score between 554 and 646 representing a Performance Level 4 on the writing portion of the diploma index;

6.4.1.1.6 SAT ~~# Reasoning Test Writing~~ score or SAT Subject Test Writing score of 647 or higher representing a Performance Level 5 on the writing portion of the diploma index;

6.4.1.1.7 Advanced Placement score of 3 representing a Performance Level 4 on the diploma index; and

6.4.1.1.8 Advanced Placement score of 4 or 5 representing a Performance Level 5 on the diploma index.

6.4.1.1.9 Advanced Placement scores may be substituted for specified content areas including, but not limited to, Advanced Placement English Literature and Composition for the reading portion of the diploma index; Advanced Placement English Language and Composition for the writing portion of the diploma index; Advanced Placement Calculus AB, BC or Statistics for the mathematics portion of the diploma index; Advanced Placement Biology, Chemistry, Environment Science, or Physics B and C for the science portion of the diploma index; and Advanced Placement Economics (macro, micro), European History, Government and Politics Comp, Government and Politics U.S., Human Geography, Psychology, U.S. History, or World History for the social studies portion of the diploma index.

6.4.1.1.10 Other nationally administered tests which have scores that can be converted to the SAT scale may be used if the converted score is equal to or higher than the SAT cut score.

6.4.2 A student who does not qualify for a Distinguished diploma based solely on the diploma index may request the high school submit official documentation of the Other Academic Indicators to the Department.

6.4.3 A student shall be awarded a traditional State of Delaware Diploma provided the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.5 Students who graduate from a Delaware public high school, as members of the class of 2008 and beyond shall meet the following requirements for receipt of a traditional State of Delaware diploma:

6.5.1 The student shall meet all of the requirements as specified in 14 DE Admin Code 505, and shall meet any other additional criteria as determined by the local district or charter school; and

6.5.2 The student shall demonstrate proficient levels of performance relative to the State content standards in reading, writing, mathematics, science and social studies. The student may demonstrate proficient levels of performance through the calculated diploma index or Other Academic Indicators as follows:

6.5.2.1 The student shall have a diploma index of 3.0 or higher.

6.5.2.1.1 The Department shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in reading, writing, and mathematics and the grade 11 Delaware Student Testing Program performance levels in science and social studies.

6.5.2.1.2 The diploma index shall be calculated by multiplying the earned performance level in each content area by the assigned weight of .20 for each content area and summing the results.

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6.5.2.1.3 A student with less than a 3.0 diploma index based on the 10th grade assessments in reading, writing and mathematics shall be required to retest in at least one of the content areas the student received a score below Performance Level 3. A student may choose to participate in additional scheduled administrations of the DSTP in order to improve his/her diploma index. The highest earned performance level in each content area will be used in calculating the diploma index.

6.5.2.2 The student may use Other Academic Indicators as a substitute for specific content area DSTP scores. A student shall be required to retest in any content area the student received a score below Performance Level 3 before any other academic indicator can be used as a substitute for that content area.

6.5.2.2.1 SAT Reasoning Critical Reading score between 200 and 334 representing a Performance Level 1 on the reading portion of the diploma index;

6.5.2.2.2 SAT Reasoning Critical Reading score between 335 and 430 representing a Performance Level 2 on the reading portion of the diploma index;

6.5.2.2.3 SAT Reasoning Critical Reading score between 431 and 543 representing a Performance Level 3 on the reading portion of the diploma index;

6.5.2.2.4 SAT Reasoning Critical Reading score between 544 and 621 representing a Performance Level 4 on the reading portion of the diploma index;

6.5.2.2.5 SAT Reasoning Critical Reading score between 622 and 800 representing a Performance Level 5 on the reading portion of the diploma index;

6.5.2.2.6 SAT Reasoning Test Mathematics score between 200 and 414 representing a Performance Level 1 the mathematics portion of the diploma index;

6.5.2.2.7 SAT Reasoning Test Mathematics score between 415 and 477 representing a Performance Level 2 the mathematics portion of the diploma index;

6.5.2.2.8 SAT Reasoning Test Mathematics score between 478 and 546 representing a Performance Level 3 the mathematics portion of the diploma index;

6.5.2.2.9 SAT Reasoning Test Mathematics score between 547 and 617 representing a Performance Level 4 on the mathematics portion of the diploma index;

6.5.2.2.10 SAT Reasoning Test Mathematics score between 618 and 800 representing a Performance Level 5 on the mathematics portion of the diploma index;

6.5.2.2.11 SAT Reasoning Test Writing score between 200 and 394 representing a Performance Level 1 on the writing portion of the diploma index;

6.5.2.2.12 SAT Reasoning Test Writing score between 395 and 474 representing a Performance Level 2 on the writing portion of the diploma index;

6.5.2.2.13 SAT Reasoning Test Writing score between 475 and 553 representing a Performance Level 3 on the writing portion of the diploma index;

6.5.2.2.14 SAT Reasoning Test Writing score between 554 and 646 representing a Performance Level 4 on the writing portion of the diploma index;

6.5.2.2.15 SAT Reasoning Test Writing score between 647 and 800 representing a Performance Level 5 on the writing portion of the diploma index;

6.5.2.2.16 Advanced Placement score of 3 representing a Performance Level 4 on the diploma index; and

6.5.2.2.17 Advanced Placement score of 4 or 5 representing a Performance Level 5 on the diploma index.

6.5.2.2.18 Advanced Placement scores may be substituted for specified content areas including, but not limited to, Advanced Placement English Literature and Composition for the reading portion of the diploma index; Advanced Placement English Language and Composition for the writing portion of the diploma index; Advanced Placement Calculus AB, BC or Statistics for the mathematics portion of the diploma index; Advanced Placement Biology, Chemistry, Environment Science, or Physics B and C for the science portion of the diploma index; and Advanced Placement Economics (macro, micro), European History, Government and Politics Comp, Government and Politics U.S., Human Geography, Psychology, U.S. History, or World History for the social studies portion of the diploma index.

6.5.2.2.19 ACT English Plus Reading score of 25 or lower representing a Performance Level 1 on the reading portion of the diploma index;

6.5.2.2.20 ACT English Plus Reading score between 26 and 35 representing a Performance Level 2 on the reading portion of the diploma index;

6.5.2.2.21 ACT English Plus Reading score between 36 and 47 representing a Performance Level 3 on the reading portion of the diploma index;

6.5.2.2.22 ACT English Plus Reading score between 48 and 57 representing a Performance Level 4 on the reading portion of the diploma index;

6.5.2.2.23 ACT English Plus Reading score of 58 or higher representing a Performance Level 5 on the reading portion of the diploma index;

6.5.2.2.24 ACT Mathematics score of 17 or lower representing a Performance Level 1 on the mathematics portion of the diploma index;

6.5.2.2.25 ACT Mathematics score of 18 and 19 representing a Performance Level 2 on the mathematics portion of the diploma index;

6.5.2.2.26 ACT Mathematics score between 20 and 23 representing a Performance Level 3 on the mathematics portion of the diploma index;

6.5.2.2.27 ACT Mathematics score between 24 and 27 representing a Performance Level 4 on the mathematics portion of the diploma index; and

6.5.2.2.28 ACT Mathematics score of 28 or higher representing a Performance Level 5 on the mathematics portion of the diploma index.

6.5.3 A student who does not demonstrate proficient performance relative to the state content standards pursuant to Sections 6.5.2.1 or 6.5.2.2 of this regulation by January 1 of the year in which he/she is scheduled to graduate; or has enrolled from another state or nonpublic school in Delaware during the year in which the student is scheduled to graduate shall have the school or charter school academic review committee review additional Other Academic Indicators of student performance for purposes of satisfying 6.5.2 of this regulation. The only Other Academic Indicators of student performance that may be considered by a local school district or charter school are: student performance on district administered tests pursuant to 14 Del.C. §153(e)(1); student performance on end of course assessments; student classroom work products and classroom grades supported by evidence of student work that demonstrates a student's performance pursuant to 14 Del.C. §153(a). The district or charter school shall make the determination of whether the student has demonstrated proficient performance relative to the state content standards pursuant to 6.5.2.1 or 6.5.2.2.

6.5.3.1 Any local school district or charter school planning to use Other Academic Indicators of student performance shall submit the other academic indicators to the Department of Education, for recording and filing purposes only, by September 1st of each year.

6.5.3.2 An academic review committee composed of educators in the student's local school district or charter school may then determine if a student has demonstrated proficient performance relative to the state content standards using evidence from the Other Academic Indicators of student performance.

6.56 Parent, Guardian or Relative Caregiver Notification: Within 30 days of receiving student performance levels and diploma indices, school districts and charter schools shall provide written notice of the same and the consequences thereof to the student's parent, guardian or Relative Caregiver.

7 DE Reg. 51 (07/01/03)

8 DE Reg. 425 (09/01/04)

9 DE Reg. 1175 (02/01/06)

7.0 Security and Confidentiality

In order to assure uniform and secure procedures, the Delaware Student Testing Program shall be administered pursuant to the Delaware Student Testing Program Coordinators Handbook, as the same, may from time to time be amended hereafter.

7.1 Every district superintendent, district test coordinator, school principal, school test coordinator and test administrator shall sign the certification provided by the Department of Education regarding test security before, during and after test administration.

7.2 Violation of the security or confidentiality of any test required by the **Delaware Code** and the Regulations of the Department of Education shall be prohibited.

7.3 Procedures for maintaining the security and confidentiality of a test shall be specified in the appropriate test administration materials in 14 **Del.C.** §170 through §174.

7.4 Procedures for Reporting Security Breaches

7.4.1 School Test Coordinators shall report any questionable situations to the District Test Coordinators immediately.

7.4.2 District Test Coordinators shall report all situations immediately to the State Director of Assessment and Analysis.

7.4.2.1 Within 5 days of the incident the District Test Coordinator shall file a written report with the State Director of Assessment and Analysis that includes the sequence of events leading up to the situation, statements by everyone interviewed, and any action either disciplinary or procedural, taken by the district.

7.4.2.2 Following a review of the report by the State Director of Assessment and Analysis and the Associate Secretary of Education for Assessment and Accountability, an investigator from the State Department of Education will be assigned to verify the district report.

7.4.2.3 Within 20 working days of the receipt of the report from the District Test Coordinator, the assigned investigator shall meet with the district personnel involved in the alleged violation. The meeting will be scheduled through the District Test Coordinator and the investigator shall be provided access to all parties involved and to any witnesses.

7.4.2.4 The investigator shall report the findings to the Associate Secretary for Assessment and Accountability. Following the review the Associate Secretary shall make a ruling describing any recommendations and or required actions.

7.4.2.5 The ruling shall be delivered within 20 working days of the receipt of all reports and information and records shall be kept of all investigations.

10 DE Reg. 676 (10/01/06)

8.0 Procedures for Reviewing Questions and Response Sheets from the Delaware Student Testing Program (DSTP)

8.1 School personnel, local school board members and the public may request to review the Delaware Student Testing Program (DSTP) questions. In order to review the DSTP questions individuals shall make a request in writing to the State Director of Assessment and Analysis for an appointment at the Department of Education.

8.1.1 At the time of the appointment, the individual shall: provide proper identification upon arrival, sign a confidentiality document, remain with a Department of Education staff member while reviewing the test questions and take nothing out of the viewing area.

8.1.2 The Department of Education's responsibility is to do the following: schedule the review at a mutually agreeable time, notify the local district that the review has been requested, review the procedures for looking at the DSTP questions, assist the individual(s) as requested and keep records of all reviews.

8.1.3 In cases where more than one individual is requesting to view the DSTP questions, the local school district shall send a representative to sit in on the review.

8.2 A student's parent, guardian or Relative Caregiver may request to view the test questions and that student's responses. In order to review the DSTP questions and that student's responses, the student's parent, guardian or Relative Caregiver shall make a request in writing to the State Director of Assessment and Analysis for an appointment at the Department of Education. The Department shall be allowed sufficient time to secure a copy of student responses from the test vendor.

8.2.1 At the time of the appointment, the individual shall: provide proper identification upon arrival, sign a confidentiality document, remain with a Department of Education staff member while reviewing the test questions and take nothing out of the viewing area.

8.2.2 The Department of Education's responsibility is to do the following: schedule the review at a mutually agreeable time, notify the local district that the review has been requested, review the procedures for looking at the DSTP questions, assist the individual(s) as requested and keep records of all reviews.

8.2.3 In the case of the stand alone writing response, the student's parent, guardian or Relative Caregiver may go to the local school district or charter school to view the test responses.

4 DE Reg. 464 (09/01/00)

5 DE Reg. 620 (09/01/01)

8 DE Reg. 425 (09/01/04)

9.0 Invalidations and Special Exemptions

9.1 Invalidations for students in grades 2 through 10 for reading and mathematics, grades 3 through 10 for writing and grades 4, 6, 8 and 11 for science and social studies: Invalidations are events or situations that

occur during the administration of the DSTP assessments which may result in a statistically unreliable score report for a student. Invalidation may occur as a result of either: intentional student conduct, including but not limited to cheating and disruptive behavior; or unforeseen and uncontrollable events, including but not limited to onset of illness.

9.1.1 Reporting of situations that occur during testing.

9.1.1.1 The school building principal or designee shall notify the District Test Coordinator in writing within 24 hours of events or situations that the principal reasonably believes may result in an invalid score report for a student(s).

9.1.1.2 The District Test Coordinator shall notify the Department of Education staff person assigned to the district for test security purposes as soon as the Coordinator learns of events or situations which may result in invalidation(s).

9.1.1.2.1 The District Test Coordinator shall submit a DSTP Incident Report Form within three business days of the events. Written reports from the building principal or designee and any staff must be included with the DSTP Incident Report.

9.1.1.3 The Director of Assessment for the Department of Education shall determine whether the reported events warrant invalidating a student(s) score and such decision shall be final.

9.1.1.3.1 If the Director determines that the events also warrant a security investigation the matter will be referred to the Department of Education staff person assigned to the district for test security purposes.

9.1.2 Consequences of invalidations.

9.1.2.1 Whenever the Director of Assessment for the Department of Education determines that a student's assessment test score is invalid as a result of an intentional act of the student, the student will be assigned a performance level 1 (well below standard) for that assessment and will be subject to such consequences as may otherwise be imposed pursuant to law for students who score at performance level 1 of the assessment; the assessment test score of any such student shall be reported and counted in the test scores of the student's school for all purposes, including school and district accountability.

9.1.2.2 Whenever the Director of Assessment for the Department of Education determines that a student's assessment test score is invalid as a result of an event which is unforeseen and beyond the control of the student and if the student is unable to participate in a regularly scheduled test make up, the student shall not be subject to any of the consequences as would otherwise be imposed pursuant to law; the assessment score of any such student shall not be reported or counted in the test scores of the student's school for any purpose, including school and district accountability.

9.2 Special Exemptions for students in grades 2 through 10 for reading and mathematics, grades 3 through 10 for writing and grades 4, 6, 8 and 11 for science and social studies: A special exemption may be available when a student's short term, physical or mental condition prevents the student from participating in the DSTP assessments even with accommodations, or when an emergency arising before the start of the test prevents the student's participation.

9.2.1 Special exemptions for students who are tested according to the Department of Education's Guidelines for Inclusion of Students with Disabilities and English Language Learners (ELLs) are also available as provided in the Guidelines.

9.2.2 Requests for special exemptions based on physical or mental condition.

9.2.2.1 Special exemptions based on a student's physical or mental condition may be available for students suffering from terminal illnesses or injuries or receiving extraordinary short term medical treatment for either a physical or psychiatric condition. Requests for exemptions on these grounds shall be accompanied by a signed statement from the student's treating physician which; describes the nature of the terminal condition or extraordinary treatment; confirms that the terminal condition or the extraordinary treatment arose more than 60 calendar days before the test administration for which the exemption is requested and has substantially prevented the student from accessing educational services since its inception ; and confirms that the condition or treatment is expected to be resolved or completed within 12 months of the test administration.

9.2.2.2 The District Test Coordinator shall submit a Request for Special Exemption to the Director of Assessment for the Department of Education at least 60 calendar days before the first day of testing. A copy of the physician's statement required in the preceding subsection shall be maintained as documentation at the school or district.

9.2.2.2.1 The Director of Assessment shall convene a review committee of

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not less than three Department of Education staff to review requests for special exemptions. The Director shall submit a recommendation on each request to the Associate Secretary for Assessment and Accountability.

9.2.2.2 The Associate Secretary shall decide whether a request for a special exemption based on physical or mental conditions should be granted. The Associate Secretary shall notify the District Test Coordinator of the decision. The Associate Secretary's decision shall be final.

9.2.3 Request for special exemptions based on emergency.

9.2.3.1 Emergencies are unforeseen events or situations arising no more than 60 calendar days before the start of the test administration. They may include, but are not limited to, death in a student's immediate family, childbirth, accidents, injuries and hospitalizations.

9.2.3.2 Special exemptions due to an emergency may be requested for the entire test or for one or more content areas, as the district determines appropriate.

9.2.3.3 The District Test Coordinator shall notify the Director of Assessment for the Department of Education as soon as the Coordinator learns of events or situations which may result in a request for a special exemption due to an emergency.

9.2.3.3.1 The District Test Coordinator shall submit a DSTP Request for Special Exemption to the Director of Assessment for the Department of Education within 7 calendar days of the last day for make up testing. Requests for exemptions on these grounds shall be accompanied by a signed statement from the student's treating physician that shall be maintained as documentation in the school or district.

9.2.3.3.2 The Director of Assessment shall convene a review committee of not less than three Department of Education staff to review requests for special exemptions due to an emergency. The Director shall submit a recommendation on each request to the Associate Secretary for Assessment and Accountability.

9.2.3.3.3 The Associate Secretary shall decide whether a request for a special exemption based on an emergency should be granted. The Associate Secretary shall notify the District Test Coordinator of the decision. The Associate Secretary's decision shall be final.

9.2.4 Consequences of Special Exemptions.

9.2.4.1 Any special exemption granted by the Department of Education is limited to the testing period for which it was requested and does not carry forward to future test administrations.

9.2.4.2 Students who are granted a special exemption shall be included in the participation rate calculation for school and district accountability pursuant to 14 **DE Admin Code** 103.2.4 unless their medical condition prevents them from being in school during the testing period.

9.2.4.3 Students who are granted a special exemption shall not be subject to any of the student testing consequences for students in grades 2 through 8 for the testing period to which the exemption applies.

5 DE Reg. 2115 (05/01/02)

8 DE Reg. 425 (09/01/04)

10 DE Reg. 676 (10/01/06)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1001

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

1001 Participation in Extra Curricular Activities

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 **DE Admin. Code** 1001 in order to add charter schools to

the regulation and to correct the references to the Delaware Interscholastic Athletic Association (DIAA) regulations. Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday, January 31, 2007, to Carol O'Neill Mayhew, Education Associate, Regulation Review, Department of Education, at 401 Federal Street - Suite 2, Dover, DE 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

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

1001 Participation in Extra Curricular Activities**1.0 Academic Eligibility Criteria**

Local school districts and charter schools shall establish their own academic eligibility criteria for participation in ~~extra-curricular activities~~ for all extra curricular activities except for interscholastic athletics. The academic eligibility criteria for interscholastic athletics is established in 14 **DE Admin. Code** 1009.42.6 DIAA Senior High School Interscholastic Athletics, and in 14 **DE Admin. Code** 1008.42.6 DIAA Junior High and Middle School Interscholastic Athletics.

Comment: In establishing and implementing academic eligibility criteria applicable to students with disabilities, districts are reminded that some flexibility may be contemplated by Federal guidelines. See 34 CFR Sec. 104.4.

1 DE Reg. 173 (8/1/97)

6 DE Reg. 279 (9/1/02)

PROPOSED REGULATIONS

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 340

Education Impact Analysis Pursuant To 14 Del.C. Section 122(d) **360 Certification Early Childhood Special Education Teacher**

A. Type of Regulatory Action Required

Repeal

B. Synopsis of Subject Matter of the Regulation

The Professional Standards Board in cooperation and collaboration with the Department of Education seeks the approval of the State Board of Education to repeal 14 Del.C. §360 Certification Early Childhood Teacher Special Education. This regulation has been replaced by 14 Del.C. §1570 Standard Certificate Early Childhood Teacher Special Education, Birth to Grade 2.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on January 27, 2007 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 repeal of the regulations help improve student achievement as measured against state achievement standards? The repealed regulations concern certification for educators, not student achievement.
2. Will the repeal of the regulations help ensure that all students receive an equitable education? The repealed regulations concern certification regulations for educators, not equitable education for students.
3. Will the repeal of the regulations help to ensure that all students' health and safety are adequately protected? The repealed regulations concern certification of educators, not students' health and safety.
4. Will the repeal of the regulations help to ensure that all students' legal rights are respected? The repealed regulations address educator certification, not students' legal rights.
5. Will the repealed regulations preserve the necessary authority and flexibility of decision makers at the local board and school level? The repeal of the regulations will preserve the authority and flexibility of decision makers at the local board and school level.
6. Will the repealed regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The repeal of the regulations 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 regulations to be repealed rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.
8. Will the repeal of the regulations 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 repeal of the regulations 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 repeal of regulations? The repeal of regulations is designed to reduce the burden placed on school districts.
10. What is the cost to the state and to the local school boards of compliance with the repeal of the regulations? There will be no cost to the state or to local school boards resulting from the repeal of the regulations.

~~360 Certification Early Childhood Teacher Special Education~~

Effective July 1, 1978

~~1.0 Standard License~~

~~The following shall be required for the Standard License for those teaching young children with disabilities (3 to 6 years of age) who are mildly and moderately disabled:~~

- ~~1.1 Bachelor's degree from an accredited college and,~~
- ~~1.2 Professional Education~~

- ~~1.2.1 Completion of a program in Young Preschool Exceptional Children or,~~
- ~~1.2.2 Completion of a teacher education program for Exceptional Children and,
 - ~~1.2.2.1 Three semester hours Preschool Programming for Exceptional Children~~
 - ~~1.2.2.2 Three semester hours Child Development (unless covered in program)~~
 - ~~1.2.2.3 Three semester hours Language Development (unless covered in program)~~
 - ~~1.2.2.4 Limited Standard License issued upon completion of a program for Exceptional~~~~

~~Children with remaining courses listed above to be completed within three years or,~~

- ~~1.2.3 Completion of a teacher education program in Early Childhood and,
 - ~~1.2.3.1 Three semester hours Introduction to Exceptional Children~~
 - ~~1.2.3.2 Three semester hours Preschool Program for Exceptional Children~~
 - ~~1.2.3.3 Three semester hours Language Development (unless covered in program)~~
 - ~~1.2.3.4 Limited Standard License issued upon completion of a program for Early~~~~

~~Childhood with the remaining courses listed above to be completed within three years or,~~

- ~~1.2.4 Completion of a teacher education program in Elementary Education and,
 - ~~1.2.4.1 Three semester hours Introduction to Exceptional Children~~
 - ~~1.2.4.2 Six semester hours Child Development (unless covered in program)~~
 - ~~1.2.4.3 Three semester hours Preschool Programming for Exceptional Children~~
 - ~~1.2.4.4 Three semester hours Assessment of Young Children or Educational Diagnosis of~~~~

~~Exceptional Children~~

- ~~1.2.4.5 Three semester hours Language Development (unless covered in program)~~
- ~~1.2.4.6 Three semester hours Student Teaching Preschool Exceptional Children or~~

~~internship in lieu of student teaching~~

- ~~1.2.4.7 Limited Standard License issued upon completion of a program in Elementary~~

~~Education and two of the courses listed above with the remaining courses to be completed within three years or,~~

- ~~1.2.5 Completion of a teacher education program in Secondary Education and,
 - ~~1.2.5.1 Six semester hours Child Growth and Development~~
 - ~~1.2.5.2 Three semester hours Language Development~~
 - ~~1.2.5.3 Three semester hours Introduction to Exceptional Children~~
 - ~~1.2.5.4 Three semester hours Preschool Programming for Exceptional Children~~
 - ~~1.2.5.5 Three semester hours Assessment of Young Children or Educational Diagnosis of~~~~

~~Exceptional Children~~

- ~~1.2.5.6 Three semester hours Methods of Teaching Reading~~
- ~~1.2.5.7 Three semester hours Methods of Teaching Mathematics~~
- ~~1.2.5.8 Three semester hours Behavior Management~~
- ~~1.2.5.9 Six semester hours Student Teaching Preschool Exceptional Children or~~

~~internship in lieu of student teaching~~

- ~~1.2.5.10 The Limited Standard License may be issued upon completion of a program in~~

~~Secondary Education and four of the first six courses listed above with the remaining courses listed above to be completed within three years.~~

~~2.0 Present Preschool Exceptional Children Teachers Protected~~

~~2.1 Those teachers authorized to teach classes of preschool exceptional children prior to April 20, 1978 on the basis of a standard exceptional children teaching License and who have the recommendation of the local district superintendent shall be authorized to continue in such a teaching assignment in the district where the assignment was authorized. Authorization to teach in this circumstance does not constitute a License transferable to any other school district.~~

~~3.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

PROPOSED REGULATIONS

**DEPARTMENT OF FINANCE
DIVISION OF REVENUE**

Statutory Authority: 30 Delaware Code, Section 354 (30 Del.C. §354)

PUBLIC NOTICE**301 Publication of Tax Information****SUBJECT:** "PUBLICATION OF TAX INFORMATION"30 **Del.C.** § 359(b). A NEW ENACTMENT OF THE 143RD GENERAL ASSEMBLY**DATED:** October 5, 2006**AUTHORITY:**

This regulation is promulgated pursuant to the authority given the Secretary of Finance, State of Delaware (the Department) in section 354 of Title 30 of the **Delaware Code** as well as section (8) of the new act.

Questions have arisen about the application and interplay between sections (b)(2) and (b)(4) of the act as they relate to the publication of names when in the case of entities other than natural persons the Department is contemplating publishing the names of 25% owners, beneficial owners, or responsible officers of such entities. Particularly, the Department has been asked if the word "taxpayer" appearing in the first line of section (b)(2) and in section (b)(4) means only "the entities other than natural persons" referred to in last part of section (b)(2) and whether the word "taxpayer" as used in section (b)(2) includes those individual 25% owners, beneficial owners or responsible officers of the entities whose names the Department intends to publish?

REGULATION:

The Department interprets the word "taxpayer" appearing in sections (b)(2) and (4) to include within its scope those individual 25% owners, beneficial owners and responsible officers of entities other than natural persons. Therefore, before one of their names can be published the liability against the individual owner, beneficial owner or responsible officer must be reduced to judgment.

DISCUSSION:

The specific requirement of subsection (b)(4) given the plain meaning of the words that appear therein is that a taxpayer's liability must be reduced to judgment before that taxpayer's name can be published. The Secretary of Finance understands the provisions of subsection (b)(4) to be a precautionary measure intended to insure that the taxpayer is aware of the taxpayer's personal responsibility for a tax liability that has become fixed, liquidated and final by being reduced to judgment. To that extent, any judgment against the taxpayer must be final, that is, not subject to appeal or further appeal. Because subsection (b)(4) requires that notice of the judgment be given to the same persons who are described in subsection (b)(2), that is, taxpayers, taxpayer's owners, beneficial owners or officers, it is concluded that the limitations imposed by subsection (b)(4), that is, that the liability be reduced to judgment and that sixty day advance notice be given, apply to the persons described in subsection (b)(2), namely, 25% owners, beneficial owners or officers as well as to taxpayers themselves.

Questions or comments about this regulation may be directed to Deputy Director Colleen Yegla at c.yegla@state.de.us or by phone to (302) 577-8680. The deadline for receipt of public comments is November 30, 2006.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Long Term Care Medicaid

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend existing rules in the Division of Social Services Manual (DSSM) to comply with the transfer of assets provisions mandated by the Deficit Reduction Act (DRA) of 2005 (Public Law 109-171).

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 and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 (new fax number) by January 31, 2007.

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

SUMMARY OF PROPOSED AMENDMENT

Statutory Authority

Deficit Reduction Act of 2005 (Public Law 109-171), enacted on February 8, 2006

Background

On February 8, 2006, the Deficit Reduction Act (DRA) of 2005 was signed into law. The DRA made changes to certain Medicaid eligibility provisions in Section 1917(c)(1)(B)(i) of Social Security Act affecting Long Term Care services and supports.

Summary of Proposals

The DRA contains a number of provisions necessitating changes to Delaware rules. This regulatory action incorporates the mandatory provisions as it relates to: 1) *Requirement to Impose Partial Months of Ineligibility*; and 2) *Authority for States to Accumulate Multiple Transfers into One Penalty Period*.

Revised and clarified policy changes are summarized as follows:

1) *Requirement to Impose Partial Months of Ineligibility*

Prior to enactment of the DRA, States had the option to impose penalty periods for transfers in a month that were less than the State's average monthly cost to a private patient of nursing facility services in the State, or to impose no penalty period for such "partial month" transfers. Additionally, some States elected not to impose a penalty for transfers made within a month that were under a certain threshold e.g., \$500. In States that elected to impose no penalty period for such partial month transfers, individuals were able to transfer amounts less than the average monthly cost of nursing facility services in successive months, but never incur a penalty.

To address this, section 6016(a) of the DRA amended section 1917(c)(1)(E) of the Act, to add a new subsection (iv) that prohibits a State from rounding down or otherwise disregarding any fractional period of ineligibility. The result is that States are now required to impose penalty periods even in the case of smaller asset transfers, where the period of ineligibility would be less than a full month. In imposing penalties on such transfers, if the calculation of the penalty period produces a fractional amount, the penalty must include a partial month disqualification based upon the relationship between that fractional amount and the monthly nursing home rate used to calculate the penalty period.

2) *Authority for States to Accumulate Multiple Transfers into One Penalty Period*

While the DRA prohibits States from rounding down or disregarding fractional periods of ineligibility, it does give States the option to combine multiple transfers for less than fair market value in more than one month and

impose a single period of ineligibility, rather than applying multiple penalty periods. This flexibility is the result of a new subsection (H), added to section 1917(c)(1) of the Act by section 6016(b) of the DRA. Under subsection (H), States may treat the total, cumulative value of all uncompensated transfers made within the look-back period as a single transfer and calculate a single period of ineligibility, which would begin on the earliest date applicable under section 1917(c)(1)(D).

States must include information about whether they elect to combine multiple fractional transfers into a single transfer in their State Medicaid Plans.

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

**DMMA PROPOSED REGULATION #06-55
REVISIONS:**

20350.4 Multiple Transfers

OBRA 93 provides that the penalty period will be based on the total, cumulative uncompensated value of the assets transferred. When a single asset is transferred, or a number of assets are transferred ~~during the same month~~, the penalty period is calculated using the total value of the asset(s). When assets are transferred at different times, use the following methods for calculating the penalty periods. This policy applies to assets that were transferred on or after 2/8/06 and applications that were filed on or after 4/1/06.

20350.4.1 Transfers Made So That Penalty Periods Overlap

When assets have been transferred in amounts and/or frequency that would make the calculated penalty periods overlap, add together the value of all assets transferred to calculate a single penalty period. ~~The single penalty period will begin on the first day of the month in which the first transfer was made.~~ Fractional periods of ineligibility shall not be rounded down or otherwise disregarded when determining the penalty for a transfer of assets.

~~**20350.4.2 Transfers Made So That Penalty Periods Would Not Overlap**~~

~~When multiple transfers are made in such a way that the penalty periods for each would not overlap, treat each transfer as a separate event, with its own penalty period.~~

**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)

PUBLIC NOTICE

SAN # 2006-03

1. **Title of of the Regulations:**
Regulation No. 1113 Open Burning

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

On April 15, 2004, the United States Environmental Protection Agency designated Delaware's Sussex County as Non-Attainment for meeting the 8-hour national ambient air quality standard for Ozone. The Delaware Department of Natural Resources and Environmental Control's Air Quality Management Section has drafted language to include Sussex County in the Ozone Season Open Burning Ban as well as expand the open burning ban timeframe from June 1st - August 31st in the current regulation, to May 1st - September 30th, and to clarify the

prohibitions in the existing regulation and their interaction with other applicable laws and regulation.

The changes mentioned above constitute the primary amendments to the regulation. However, due to the expansion of the burning ban statewide, the format of the entire regulation required changing because the prohibitions that were attributable to certain areas no longer exists. As a result, the approach taken to the amendment is to delete the existing regulation in its entirety and adopt a new version. Except for the expansion detailed above, the only changes made are to clarify the implementation of the regulation, based on experience of staff, and are not intended to be more stringent.

3. Possible Terms of the Agency Action:

None

4. Statutory Basis or Legal Authority to Act:

7 **Delaware Code**, Chapter 60, Environmental Control

5. Other Regulations that may be Affected by the Proposal:

Regulation No. 21 - Section 10 Emission Standards For Asbestos
PM2.5 SIP And Regional Haze SIP

6. Notice of Public Comment:

Public Hearing scheduled January 31, 2007 beginning at 6:00 pm DNREC Auditorium, Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901

7. Prepared By:

Valerie Gray (302) 739-9402, December 14, 2006
Email - Valerie.gray@state.de.us

**Regulation No. 13
Open Burning**

02/08/95

4.0 Prohibitions—All Counties

- 1.1- No person shall cause or allow the disposal of refuse by open burning.
- 1.2- No person shall cause or allow open burning in the conduct of a salvage operation.
- 1.3- No person shall cause or allow the open burning of fallen leaves.

02/08/95

2.0 Prohibitions—Specific Counties

2.1 Kent and New Castle Counties:

2.1.1 No person shall cause or allow open burning from June 1 through August 31.

2.1.2 The Department may grant permission to conduct open burning between June 1 and August 31 for circumstances that threaten the health, safety or welfare of any person or persons. Such circumstances must pose a more serious threat than the health threat posed by the open burning. Permission will be granted to applicants on a case-by-case basis.

02/08/95

3.0 General Restrictions—All Counties

3.1 Open burning, as permitted by this regulation, may be conducted without prior approval of the Department, except as provided in Sections 3.2.3, 3.2.4, and 3.9.

3.2 No person shall cause or allow open burning except for the purposes of:

3.2.1 Domestic burning of branches and limbs that have been cut from trees or shrubbery originating on the premises and conducted by individuals domiciled on the premises;

3.2.2 The clearing of land in agricultural or silvicultural operations to cultivate and/or prepare the soil for the purpose of producing crops or supporting livestock;

3.2.3 Prescribed burning for conservation practices, wildlife habitat management, or plant, pest,

PROPOSED REGULATIONS

or disease control, provided that:

~~3.2.3.1 The applicant documents to the satisfaction of the Department that prescribed burning is the most effective method to achieve this purpose; and~~

~~3.2.3.2 Permission to burn is given by the Department before such burning takes place;~~

~~3.2.4 The burning of wooden buildings solely for fire fighting instruction conducted by authorized fire companies, provided that:~~

~~3.2.4.1 The company documents to the satisfaction of the Department that all refuse has been removed from the building prior to burning; and~~

~~3.2.4.2 Permission to burn is given by the Department before such burning takes place.~~

~~3.3 No person shall conduct any open burning allowed by this regulation without giving prior notice to the Fire Call Board for the county in which the fire will occur.~~

~~3.4 No person shall conduct open burning as permitted by this regulation when, in the judgement of the Department:~~

~~3.4.1 A condition of air stagnation exists;~~

~~3.4.2 Any national ambient air quality standard may be violated; or~~

~~3.4.3 The open burning causes unreasonable interference with a person's health, safety, comfort, or use or enjoyment of his or her real property.~~

~~3.5 Upon notification by the Department, open burning shall be terminated immediately.~~

~~3.6 All fires shall remain under supervision until completely extinguished.~~

~~3.7 Tires, waste oil, or any oil heavier than No. 2 shall not be used as an auxiliary fuel. Only the minimum amount of auxiliary fuel needed to initiate the fire shall be used.~~

~~3.8 Open burning, as permitted by this regulation, may be conducted only between the hours of 8:00 am and 4:00 pm.~~

~~3.9 Burning outside of the hours permitted in Section 3.8 may be conducted, provided that:~~

~~3.9.1 The applicant documents to the satisfaction of the Department that burning outside of the permissible hours will lead to smoke reduction, or a more efficient, complete, or safer burn; and~~

~~3.9.2 Permission to burn during the extended hours is given by the Department before such burning takes place.~~

~~02/08/95~~

4.0 Exemptions—All Counties

~~4.1 The following operations are exempt from Sections 1.0 through 3.0 of this regulation provided that they are not used for the disposal of refuse and are of a minimum size sufficient for their intended purpose:~~

~~4.1.1 Fires used for cooking of food for human consumption, provided that only unpainted/untreated wood, charcoal, propane, or natural gas is burned;~~

~~4.1.2 Fires used for recreational purposes such as campfires, provided that only unpainted/untreated wood is burned;~~

~~4.1.3 Ceremonial fires, provided that only unpainted/untreated wood is burned;~~

~~4.1.4 Flares;~~

~~4.1.5 Backburning to control or suppress wildfires;~~

~~4.1.6 Fire fighting instruction conducted by the Delaware State Fire School.~~

1113 Open Burning

~~xx/xx/07~~

1.0 Purpose.

~~The purpose of this regulation is to control air emissions by establishing rules for open burning activities.~~

~~xx/xx/07~~

2.0 Applicability.

~~This regulation applies to all open burning activity in Delaware.~~

~~xx/xx/07~~

3.0 Definitions.

The following words and terms, when used in this regulation, shall have the following meanings:

"10-Day Notification" means a notification that shall be made in accordance with 40 CFR Section 61.145.

"Standard for Demolition and Renovation" of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), as adopted through July 1, 2006.

"Agricultural operations" means an activity on land currently used or intended to be used primarily for the purpose of obtaining a profit in money by raising, harvesting and selling crops or by raising and selling livestock or poultry. Agricultural operation also means activities conducted by not-for-profit agricultural research organizations, which activities are necessary to serve that purpose. It does not include the construction and use of structures customarily provided in conjunction with the agricultural operation.

"Asbestos" means any or all of the forms of asbestos including Actinolite, Amosite, Anthophyllite, Chrysotile, Crocidolite, or Tremolite.

"Asbestos containing material" means asbestos or any material containing asbestos.

"Ceremonial fires" means bonfires used for ceremonies sponsored by educational, cultural, or religious institutions.

"Code Orange Day" means a day which has been designated by the Department as a "Code Orange" day for expected pollution intensity.

"Code Red Day" means a day which has been designated by the Department as a "Code Red" day for expected pollution intensity.

"Department" means the Department of Natural Resources and Environmental Control as defined in Title 29, Delaware Code, Chapter 80, as amended.

"Friable asbestos material" means any material that contains more than 1% asbestos by weight and that can be crumbled, pulverized, or reduced to powder, when dry, by hand pressure.

"Fuel" means any combustible matter including, but not limited to coal, gas, oil, and refuse.

"Garbage" means animal or vegetable waste matter originating in houses, kitchens, restaurants, hotels, produce markets or similar installations.

"Incineration" means the process of igniting and burning solid, semi solid, liquid, or gaseous combustible waste to their products of combustion.

"Industrial waste" means any waste produced by a manufacturing process.

"Material" means any gas, liquid, or solid or any combination thereof.

"Open burning" means any outdoor fire or outdoor smoke-producing process from which the products of combustion are emitted directly into the ambient air. This does not include incinerators, boilers, or heaters used in process operations.

"Person" means any individual, firm, association, organization, partnership, business trust, corporation, company, contractor, supplier, installer, developer, user or owner or operator, or any Federal, State or Local governmental agency or public district or any officer or employee thereof.

"Prescribed burning" means open burning of undisturbed vegetation for the specific purpose of conservation practices, wildlife habitat management, or plant, pest or disease control under such conditions that the fire is confined to a predetermined area.

"Private dwelling" means a domestic residence housing no more than three (3) families and where no commercial or industrial activity is conducted.

"Recreational purposes" means any purpose which, in the judgment of the Department, fulfills a physical or social need, including, but not limited to, camping, ceremonies, and religious rites.

"Refuse" means garbage, rubbish, or trade waste.

"Rubbish" means waste solids or liquids including but not necessarily limited to, rags, clothes, leather, rubber, carpets, excelsior, paper, ashes, furniture, tin cans, glass, crockery, masonry, tires, or waste oil.

"Salvage operation" means any business, trade or industry engaged entirely or partially in salvaging or reclaiming any product or material, including, but not necessarily limited to metal, chemicals, motor vehicles, shipping containers or drums.

"Silviculture" means the care and cultivation of forest trees.

"Solid fuel" means a fuel which is fired as a solid, such as anthracite or semi anthracite, bituminous or sub bituminous coal, lignite, coke, wood, or any solid by product of a manufacturing process that may be substituted for any of the above specifically mentioned fuels.

"Solid waste" means refuse, more than 50 percent of which is municipal type waste consisting of a

mixture of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustibles and noncombustible materials such as glass and rock.

"Trade waste" means any solid, liquid, or gaseous waste material or rubbish resulting from construction, land clearing for construction or development, building operations, or the prosecution of any business, trade, or industry including, but not necessarily limited to, wood, plastic products, cartons, paint, grease, oil and other petroleum products, chemicals or cinders.

"Waste oil" means used or spent oil or solvents or other volatile hydrocarbons, including but not limited to crankcase oil.

xx/xx/07

4.0 Prohibitions and Related Provisions

4.1 No person shall cause or allow open burning of refuse.

4.2 No person shall cause or allow open burning in the conduct of a salvage operation.

4.3 No person shall cause or allow the open burning of fallen leaves.

4.4 No person shall cause or allow open burning otherwise permitted by this regulation when, in the judgment of any Department employee, fire marshal or law enforcement officer:

4.4.1 A condition of air stagnation exists or a Code Red or Code Orange has been issued; or

4.4.2 The open burning impacts a person's health, comfort, use, or enjoyment of his or her real property.

4.5 No person shall conduct any open burning allowed by this regulation without giving prior notice to the Fire Call Board for the county in which the fire will occur.

4.6 No person shall use tires, waste oil, off-specification oil or any oil heavier than No. 2 as an auxiliary fuel for an open burn.

4.7 Any person causing or allowing open burning shall remain present and closely supervise all fire(s) at all times until the fire(s) are completely extinguished.

4.8 No person shall use more than the minimum amount of auxiliary fuel needed to initiate an open burn.

4.9 Upon being instructed to do so by any Department employed enforcement officer, fire marshal, fire officer in charge or law enforcement officer, any person shall immediately cease open burning and shall immediately extinguish all active open burning on their property or under their control.

4.10 No person shall cause or allow any open burning when a burn ban has been issued by the Delaware State Fire Marshal, even though the activities would have otherwise been permitted by this Regulation.

4.11 This regulation shall not be construed to permit open burning where it is otherwise prohibited.

4.12 No person shall burn for the purpose of land clearing except as permitted in 6.2.2 of this regulation.

xx/xx/07

5.0 Season and Time Restrictions

5.1 No person shall cause or allow any open burning from May 1 through September 30, without prior written approval by the Department. The Department may grant approval to conduct open burning between May 1 and September 30 for circumstances that threaten the health, safety, or welfare of a person or persons. The applicant must demonstrate to the satisfaction of the Department that such circumstances pose a more serious threat than the health threat posed by the open burning. Approval will be granted to applicants on a case-by-case basis.

5.2 No person shall cause or allow open burning, as permitted by this regulation, except between the hours of 8:00 a.m. and 4:00 p.m.

5.3 Burning outside of the hours permitted in 5.2 of this regulation may only be conducted, if the person causing or allowing the fire meets the following criteria:

5.3.1 In order to burn during extended hours, the person causing or allowing the open burn must submit an application to the Department containing documentation sufficient to satisfy the Department that burning outside of the permissible hours will lead to smoke reduction, or a more efficient, complete, or safer burn; and

5.3.2 Approval to burn during extended hours is given by the Department before such burning takes place.

xx/xx/07

6.0 Allowable Open Burning

6.1 Open burning, as permitted by this regulation, may be conducted without prior approval of the Department, except as provided in 5.1, 5.3, 6.2.2, 6.2.3, and 6.2.4 of this regulation.

6.2 Subject to other restrictions in this regulation, open burning may occur for the exclusive purposes of:

6.2.1 Domestic burning of brush, branches, and limbs that have been cut from trees or shrubbery originating on the premises and conducted by individuals domiciled in a private dwelling on the premises, of a size no greater than 27 cubic feet of material, in total, to be burned and where burning is conducted as far as practicable from any adjacent property;

6.2.2 Clearing land in agricultural use and clearing land in silvicultural operations of vegetative material in order to cultivate and/or to prepare the soil for the purpose of producing crops or supporting livestock, provided that:

6.2.2.1 The applicant documents to the satisfaction of the Department that burning in the most effective method to achieve this purpose; and

6.2.2.2 Permission to burn is given in writing by the Department before such burning takes place; and

6.2.2.3 The ability to utilize open burning for purposes of clearing land pursuant to this section shall not apply to land on which residential, industrial or commercial house, dwellings or other structures are constructed with a period of five years after the land clearing by burning takes place. In the even a person is found to have violated the requirements of 6.2.2, in that actions are taken after the burn sot that the burn no longer qualifies as allowable because it falls outside the scope of this exception, the Department, in addition to pursuing an enforcement action for violating this regulation, may recover through its enforcement action an amount equal to the savings that the violator incurred by clearing the land by burning as opposed to using traditional clearing methods.

6.2.3 Prescribed burning for conservation practices, wildlife habitat management, or plant, pest, or disease control, provided that:

6.2.3.1 The applicant documents to the satisfaction of the Department that prescribed burning is the most effective method to achieve this purpose; and

6.2.3.2 Permission to burn is given by the Department before such burning takes place;

6.2.4 The demolition by intentional burning of a structure solely for fire fighting instruction conducted by authorized fire companies, provided that:

6.2.4.1 The fire company documents to the satisfaction of the Department that all building fixtures such as hot water heaters, boilers and air conditioning units, all materials including household appliances and/or refuse, have been removed from the building prior to burning any portion of the building; and

6.2.4.2 The fire company documents that any internal asbestos containing materials (including pipe coverings and other insulation) and any external asbestos containing materials (including siding) have been removed from the building prior to burning any portion of the building, and that the 10-day notification of this demolition activity, as required by EPA and the Department has been submitted; and

6.2.4.3 The fire company documents that it is familiar with the Delaware State Fire Prevention Regulations and it will comply with those regulations and all other applicable health and safety regulations; and

6.2.4.4 Permission to burn is given by the Department before such burning takes place.

xx/xx/07

7.0 Exemptions.

The following operations are exempt from 4.5 of this regulation, and from all provisions of 5.0 and 6.0 of this regulation, provided that the fire is no larger than reasonably necessary to meet the purpose of the activity:

7.1 Fires used for cooking of food for human consumption of a size no greater than 10 cubic feet of material, in total, to be burned, where only the following materials are burned: unpainted and untreated wood, charcoal, propane, or natural gas;

7.2 Recreational fires such as campfires of a size no greater than 27 cubic feet of material, in total, to be burned, where only unpainted and untreated wood is burned;

7.3 Ceremonial fires of a size no greater than 27 cubic feet of material, in total, to be burned, by established groups or tribes, provided that only unpainted and untreated wood is burned;

7.4 Emergency signaling flares:

7.5 Emergency burning or use of any other appropriate technique, by governmental agencies or fire companies to control or suppress on-going fires:

7.6 Fire fighting instruction conducted by the Delaware State Fire School and by established fire companies on a case-by-case basis after submitting an application and obtaining specific approval of that application from the Air Quality Management Section of the Department.

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

200 Board of Landscape Architects

Statutory Authority: 24 Delaware Code, Section 205 (24 **Del.C.** §205)

24 DE Admin. Code 200

PUBLIC NOTICE

The Delaware Board of Landscape Architects in accordance with 24 **Del.C.** §205 has proposed amendments to rule 6.0 *Renewal of Licenses* and rule 7.0 *Continuing Education as a Condition of Biennial Renewal* of its rules and regulations. The proposed amendments enable licensees to renew their licenses online and attest that they have completed the required continuing education. Documentation of having completed the required continuing education must still be maintained by the licensee but it will only be required to be produced in the event the licensee is randomly selected for continuing education audit post renewal.

A public hearing will be held on February 8, 2007 at 9:15 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Landscape Architects, 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.

200 Board of Landscape Architects

(Break in Continuity of Sections)

6.0 Renewal of Licenses

6.1 Each application for license renewal or request for inactive status shall be submitted on or before the expiration date of the current licensing period. However, a practitioner may still renew his or her license within 60 days following the license renewal date upon payment of a late fee set by the Division. Upon the expiration of 60 days following the license renewal date an unrenewed license shall be deemed lapsed and the practitioner must reapply pursuant to the terms of 24 **Del.C.** §210(b).

6.2 It shall be the responsibility of all licensees to keep the Board and the Division informed of any change in name, home or business address.

6.3 Renewal may be effected by:

6.3.1 filing a renewal application prescribed by the Board and provided by the Division of Professional Regulation. Beginning in 2009, license renewal may be accomplished online at www.dpr.delaware.gov;

6.3.2 providing other information as may be required by the Board to ascertain the licensee's good standing;

6.3.3 attesting on the renewal application to the completing of continuing education as required by Rule 6.0.

6.3.4 payment of fees as determined by the Division of Professional Regulation.

Statutory Authority: 24 Del.C. §210.

7.0 Continuing Education as a Condition of Biennial Renewal

7.1 General Statement: Each licensee shall be required to meet the continuing education requirements of these guidelines for professional development as a condition for license renewal. Continuing education obtained by a licensee should maintain, improve or expand skills and knowledge obtained prior to initial licensure, or develop new and relevant skills and knowledge.

7.1.1 In order for a licensee to qualify for license renewal as a landscape architect in Delaware, the licensee must have completed 20 hours of continuing education acceptable to the Board within the previous two years, or be granted an extension by the Board for reasons of hardship. Such continuing education shall be obtained by active participation in courses, seminars, sessions, programs or self-directed activities approved by the Board.

7.1.1.1 For purposes of seminar or classroom continuing education, one hour of acceptable continuing education shall mean 60 minutes of instruction.

7.1.2 All courses, seminars, sessions and programs are acceptable for continuing education credit if sponsored by organizations listed in Rule 7.1.3. All other continuing education credits will be reviewed at the time of renewal. All self-directed activities for continuing education credit allowed by rule 7.6 must be pre-approved and submitted by the licensee 60 days prior to the activity on the form provided in 7.3 and 7.4.

7.1.2.1 Each course, seminar, session, program, or self-directed activity to be recommended for approval by the Board shall have a direct relationship to the practice of landscape architecture as defined in the **Delaware Code** and contain elements which will assist licensees to provide for the health, safety and welfare of the citizens of Delaware served by Delaware licensed landscape architects.

7.1.3 Continuing Education courses offered or sponsored by the following organizations will be automatically deemed to qualify for continuing education credit:

7.1.3.1 American Society of Landscape Architects (National and local/chapter levels)

7.1.3.2 Council of Landscape Architectural Registration

7.1.4 Erroneous or false information attested to by the licensee shall constitute grounds for denial of license renewal.

7.2 Effective Date: The Board shall commence requiring continuing education as a condition of renewal of a license for the license year commencing on February 1, 1995. The licensee shall be required to successfully complete twenty (20) hours of continuing education within the previous two calendar years (example: February 1, 1993 through January 31, 1995).

~~7.3 For licensing periods beginning February 1, 2001 and thereafter, documentation as required by Rule 7.4 of all continuing education hours must be submitted to the Board on or before November 1 of the year preceding the biennial renewal date of the licenses. A license shall not be renewed until the Board has approved twenty (20) hours of continuing education classes as provided in Rule 7.1 or has granted an extension of time for reasons of hardship. Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the Requirement of Rule 6.0.~~

~~7.3.1 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.~~

~~7.3.2 Licensees selected for random post renewal audit will be required to supplement the attestation with attendance verification pursuant to Rule 6.3.~~

~~7.3.3 The continuing education period will be from October 31st to November 1st of each biennial licensing period.~~

~~7.3.4 Each licensed landscape architect shall complete, biennially, 20 units of continuing education as a condition of license renewal.~~

~~7.4.1 Reporting: The licensee shall submit a completed Verification of Continuing Education Form provided by the Division of Professional Regulation to the Board. Documentation: Each licensee must retain copies of all supporting materials documenting proof of continuing education compliance for submission to the Board upon request. Supporting materials 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 Board reserves its right to request additional information and/or documentation to verify continuing education compliance.~~

7.5 Hardship: The Board will consider any reasonable special request from individual licensees for

continuing education credits and procedures. The Board may, in individual cases involving physical disability, illness, or extenuating circumstances, grant an extension, not to exceed two (2) years, of time within which continuing education requirements must be completed. In cases of physical disability or illness, the Board reserves the right to require a letter from a physician attesting to the licensee's physical condition. No extension of time shall be granted unless the licensee submits a written request to the Board prior to the expiration of the license.

7.6 Self-directed Activities: For renewal periods beginning February 1, 2001, the following rules regarding self-directed activity shall apply. The Board will have the authority to allow self-directed activities to fulfill the continuing education requirements of the licensees. However, these activities must result in a book draft, published article, delivered paper, workshop, symposium, or public address within the two (2) year reporting period. Self-directed activities must advance the practitioner's knowledge of the field and be beyond the practitioner's normal work duties. Instructors will not be granted CE credit for studies customarily associated with their usual university or college instruction teaching loads.

7.6.1 The Board may, upon request, review and approve credit for self-directed activities in a given biennial licensing period. A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity. Any self-directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee. Determination of credit will be made by the Board upon review of the completed final project.

7.7 Exemptions: New licensees by way of uniform national examination or by way of reciprocity shall be exempt from the continuing education requirements set forth herein for their first renewal period.

Statutory Authority: 24 **Del.C.** §205(12).

5 DE Reg. 446 (08/01/01)

8 DE Reg. 1431 (04/01/05)

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

**[http://www.state.de.us/research/AdminCode/title24/
200%20Board%20of%20Landscape%20Architecture.shtml](http://www.state.de.us/research/AdminCode/title24/200%20Board%20of%20Landscape%20Architecture.shtml)**

DIVISION OF PROFESSIONAL REGULATION

700 Board of Chiropractic

Statutory Authority: 24 Delaware Code, Sections 706(a)(1) and (10)

(24 **Del.C.** §706(a)(1) and (10))

24 DE Admin. Code 700

PUBLIC NOTICE

The Delaware Board of Chiropractic, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §706(a)(1), proposes changes to its Regulation 3.0 affecting the certification in a chiropractic specialty. Specifically, the amendments specify two nationally recognized certification bodies whose requirements for practitioner specialization are acceptable to the Board.

A public hearing is scheduled for Thursday, February 15, 2007 at 8:30 a.m. in the second floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Sandra Wagner at the above address. The final date to submit written comments will be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Sandra Wagner at the above address or by calling (302) 744-4532.

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

700 Board of Chiropractic

(Break in Continuity of Sections)

3.0 Certification

Certification in any nationally recognized specialty for a licensee requires a minimum of ~~one hundred (100)~~ or more hours of certified training beyond and in addition to any courses or training received toward a degree of Doctor of Chiropractic. Certification in any nationally recognized chiropractic specialty or technique requires that the licensee shall have completed all requirements for recognition as a practitioner of such chiropractic specialty or technique by the American Chiropractic Association, the International Chiropractic Association, or any Board-approved nationally recognized certification body.

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

**[http://www.state.de.us/research/AdminCode/title24/
700%20Board%20of%20Chiropractic.shtml#TopOfPage](http://www.state.de.us/research/AdminCode/title24/700%20Board%20of%20Chiropractic.shtml#TopOfPage)**

DIVISION OF PROFESSIONAL REGULATION

1900 Board of Nursing

Statutory Authority: 24 Delaware Code, Section 1906(1) (24 Del.C. §1906(1))

24 DE Admin. Code 1900

Notice of Public Hearing

The Delaware Board of Nursing in accordance with 24 Del.C. §1906(1) has proposed changes to its rules and regulations related to Regulation 15.0 "Offenses Substantially Related to the Practice of Nursing." The Board has re-evaluated the list of offenses in Regulation 15.0 as the result of statutory changes to 24 Del.C. §§1910 and 1914 which require more than 5 years to have elapsed since the applicant for licensure has discharged all imposed sentences with regard to the offenses in Regulation 15.0. The Board is proposing to delete a number of the offenses and/or to limit the consideration of certain offenses to felony convictions.

A public hearing will be held on February 21, 2007 at 9:00 a.m. The public hearing will be held in the Corporate Training Center (CTC) Room 400, the Delaware Technical Community College, 1832 N. DuPont Hwy, Dover DE 19901 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 Nursing, 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.

(Break in Continuity of Sections)

1900 Board of Nursing

15.0 Offenses substantially related to the practice of Nursing.

The Board finds that for purposes of licensing, renewal, reinstatement and discipline, the conviction of any of the following crimes, or of the attempt to commit or a conspiracy to commit or conceal the following crimes or substantially similar crimes in another state or jurisdiction, is deemed to be substantially related to the practice of Nursing in the State of Delaware without regard to the place of conviction:

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

"**Conviction**" means a verdict of guilty by whether entered by a judge or jury, or a plea of guilty or a plea of nolo contendere or other similar plea such as a "Robinson" or "Alford" plea unless the individual has been

discharged under §4218 of Title 11 of the **Delaware Code** (probation before judgment) or under §1024 of Title 10 (domestic violence diversion program) or by §4764 of Title 16 (first offenders controlled substances diversion program).

“**Jurisdiction**” means substantially similar crimes in another state or jurisdiction includes all crimes prohibited by or punishable under Title 18 of the United States Code Annotated (U.S.C.A.) such as, but not limited to, Federal Health Care offenses.

15.2 Any crime which involves the use of physical force or violence toward or upon the person of another and shall include by way of example and not of limitation the following crimes set forth in Title 11 of the **Delaware Code Annotated**:

Inchoate Crimes

15.2.1	§501	Criminal solicitation in the third degree
15.2.2	§502	Criminal solicitation in the second degree
15.2.3	§503	Criminal solicitation in the first degree
15.2.4	§511	Conspiracy in the third degree
15.2.5	§512	Conspiracy in the second degree
15.2.6	§513	Conspiracy in the first degree

Assaults and Related Offenses

15.2.7	§601.	Offensive touching; <u>Class A Misdemeanor</u>
15.2.8	§602.	Menacing;
15.2.9	§603.	Reckless endangering in the second degree;
15.2.10	§604.	Reckless endangering in the first degree;
15.2.11	§605.	Abuse of a pregnant female in the second degree;
15.2.12	§606.	Abuse of a pregnant female in the first degree;
15.2.13	§611.	Assault in the third degree;
15.2.14	§612.	Assault in the second degree;
15.2.15	§613.	Assault in the first degree;
15.2.16	§614.	Assault on a sports official.
15.2.17 <u>16</u>	§615.	Assault by abuse or neglect;
15.2.18 <u>17</u>	§621.	Terroristic threatening;
15.2.19 <u>18</u>	§625.	Unlawfully administering drugs;
15.2.20 <u>19</u>	§626.	Unlawfully administering controlled substance or counterfeit substance or

narcotic drugs;

15.2.24 <u>20</u>	§627.	Prohibited acts as to substances releasing vapors or fumes;
15.2.22 <u>21</u>	§629.	Vehicular assault in the first degree;
15.2.23. <u>22</u>	§630.	Vehicular homicide in the second degree;
15.2.24 <u>23</u>	§630A.	Vehicular homicide in the first degree;
15.2.25 <u>24</u>	§631.	Criminally negligent homicide;
15.2.26 <u>25</u>	§632.	Manslaughter;
15.2.27 <u>26</u>	§633.	Murder by abuse or neglect in the second degree;
15.2.28 <u>27</u>	§634.	Murder by abuse or neglect in the first degree;
15.2.29 <u>28</u>	§635.	Murder in the second degree;
15.2.30 <u>29</u>	§636.	Murder in the first degree;
15.2.34 <u>30</u>	§645.	Promoting suicide.

Abortion and Related Offenses

15.2.32 <u>31</u>	§651.	Abortion;
15.2.33 <u>32</u>	§652.	Self-abortion;
15.2.34 <u>33</u>	§653.	Issuing abortifacient articles.

Sexual Offenses

15.2.35 <u>34</u>	§763.	Sexual harassment;
15.2.36 <u>35</u>	§764.	Indecent exposure in the second degree;
15.2.37 <u>36</u>	§765.	Indecent exposure in the first degree;
15.2.38 <u>37</u>	§766.	Incest;
15.2.39 <u>38</u>	§767.	Unlawful sexual contact in the third degree;
15.2.40 <u>39</u>	§768.	Unlawful sexual contact in the second degree;

- 15.2.41 ~~40~~ §769. Unlawful sexual contact in the first degree;
- 15.2.42 ~~41~~ §770. Rape in the fourth degree;
- 15.2.43 ~~42~~ §772. Rape in the second degree;
- 15.2.45 ~~44~~ §773. Rape in the first degree;
- 15.2.46 ~~45~~ §776. Sexual extortion;
- 15.2.47 ~~46~~ §777. Bestiality;
- 15.2.48 ~~47~~ §778. Continuous sexual abuse of a child;
- 15.2.49 ~~48~~ §780. Female genital mutilation.

Kidnapping and Related Offenses

- 15.2.50 ~~49~~ §781. Unlawful imprisonment in the second degree;
- 15.2.51 ~~50~~ §782. Unlawful imprisonment in the first degree;
- 15.2.52 ~~51~~ §783. Kidnapping in the second degree;
- 15.2.53 ~~52~~ §783A. Kidnapping in the first degree;
- 15.2.54 ~~53~~ §785. Interference with custody;

Coercion

- 15.2.55 ~~54~~ §791. Acts constituting coercion;

15.3 Any crime which involves dishonesty or false, fraudulent or aberrant behavior and shall include by way of example and not of limitation the following crimes listed in Title 11 of the **Delaware Code Annotated**:

Arson and Related Offenses

- 15.3.1 §801. Arson in the third degree;
- 15.3.2 §802. Arson in the second degree;
- 15.3.3 §803. Arson in the first degree;
- 15.3.4 §804. Reckless burning or exploding;
- ~~15.3.5 §805. Cross or religious symbol burning;~~
- 15.3.6 ~~5~~ §811. Criminal mischief, Class A Misdemeanor, Felony.

Criminal Trespass and Burglary

- 15.3.7 ~~6~~ §820. Trespassing with intent to peer or peep into a window or door of another;
- 15.3.8 ~~7~~ §824. Burglary in the third degree;
- 15.3.9 ~~8~~ §825. Burglary in the second degree;
- 15.3.10 ~~9~~ §826. Burglary in the first degree;
- 15.3.11 ~~10~~ §828. Possession of burglar's tools or instruments facilitating theft;

Robbery

- 15.3.12 ~~11~~ §831. Robbery in the second degree;
- 15.3.13 ~~12~~ §832. Robbery in the first degree.
- 15.3.14 ~~13~~ §835. Carjacking in the second degree;
- 15.3.15 ~~14~~ §836. Carjacking in the first degree;

Theft and Related Offenses

- 15.3.16 ~~15~~ §840. Shoplifting; Felony
- ~~15.3.17 §840A. Use of illegitimate retail sales receipt or Universal Product Code Label.~~
- 15.3.18 ~~16~~ §841. Theft;
- 15.3.19 ~~17~~ §842. Theft; lost or mislaid property; mistaken delivery.
- 15.3.20 ~~18~~ §843. Theft; false pretense.
- 15.3.21 ~~19~~ §844. Theft; false promise.
- 15.3.22 ~~20~~ §845. Theft of services.
- 15.3.23 ~~21~~ §846. Extortion;
- ~~15.3.24 §848. Misapplication of property;~~
- 15.3.25 ~~22~~ §849. Theft of rented property;
- 15.3.26 ~~23~~ §850. Use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices.
- 15.3.27 ~~24~~ §851. Receiving stolen property;
- ~~15.3.28 §853. Unauthorized use of a vehicle;~~
- 15.3.29 ~~25~~ §854. Identity theft;
- ~~15.3.30 §859. Larceny of livestock;~~
- 15.3.31 ~~26~~ §860. Possession of shoplifter's tools or instruments facilitating theft;

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Forgery and Related Offenses

- 15.3.~~32~~ 27 §861. Forgery
 15.3.~~33~~ 28 §862. Possession of forgery devices;

Offenses Involving Falsification of Records

- 15.3.~~34~~ 29 §871. Falsifying business records;
 15.3.~~35~~ 30 §873. Tampering with public records in the second degree;
 15.3.~~36~~ 31 §876. Tampering with public records in the first degree;
 15.3.~~37~~ 32 §877. Offering a false instrument for filing;
 15.3.~~38~~ 33 §878. Issuing a false certificate;

Bribery Not Involving Public Servants

- 15.3.~~39~~ 34 §881. Bribery;
 15.3.~~40~~ 35 §882. Bribe receiving;

Frauds on Creditors

- 15.3.~~41~~ 36 §891. Defrauding secured creditors;
 15.3.~~42~~ 37 §892. Fraud in insolvency;
 15.3.~~43~~ 38 §893. Interference with levied-upon property;

Other Frauds and Cheats

- 15.3.~~44~~ 39 §900. Issuing a bad check; Felony.
 15.3.~~45~~ 40 §903. Unlawful use of credit card; Felony.
 15.3.~~46~~ 41 §903. A Re-encoder and scanning devices;
 15.3.~~47~~ 42 §906. Deceptive business practices;
 15.3.~~48~~ 43 §907. Criminal impersonation;
 15.3.~~49~~ 44 §907A. Criminal impersonation, accident related;
 15.3.~~50~~ 45 §907B. Criminal impersonation of a police officer;
 15.3.~~51~~ 46 §908. Unlawfully concealing a will;
 15.3.~~52~~ 47 §909. Securing execution of documents by deception;
 15.3.~~53~~ 48 §913. Insurance fraud;
 15.3.~~54~~ 49 §913A. Health care fraud;
~~15.3.55~~ ~~§916. Home improvement fraud;~~
~~15.3.56~~ ~~§917. New home construction fraud;~~

Computer Related Offenses

- 15.3.~~57~~ 50 §932. Unauthorized access.
 15.3.~~58~~ 51 §933. Theft of computer services.
 15.3.~~59~~ 52 §934. Interruption of computer services.
 15.3.~~60~~ 53 §935. Misuse of computer system information.
 15.3.~~61~~ 54 §936. Destruction of computer equipment.
 15.3.~~62~~ 55 §937. Unrequested or unauthorized electronic mail or use of network or software to cause same.

15.4 Any crime which involves misuse or abuse of children or animals and shall include by way of example and not of limitation the following crimes listed in Title 11 of the **Delaware Code** Annotated:

Child Welfare; Sexual Offenses, Animal Offenses

- 15.4.1 §1100. Dealing in children;
 15.4.2 §1101. Abandonment of child;
 15.4.3 §1102. Endangering the welfare of a child;
 15.4.4 §1105. Endangering the welfare of an incompetent person;
 15.4.5 §1106. Unlawfully dealing with a child;
 15.4.6 §1107. Endangering children;
 15.4.7 §1108. Sexual exploitation of a child;
 15.4.8 §1109. Unlawfully dealing in child pornography;
 15.4.9 §1111. Possession of child pornography;
 15.4.10 §1112. Sexual offenders; prohibitions from school zones.
 15.4.11 §1112A. Sexual solicitation of a child;
 15.4.12 §1113. Criminal non-support and aggravated criminal non-support.
~~15.4.13~~ ~~§1114. Body piercing; tattooing or branding;~~

15.4.14	§1114A. Tongue splitting;
15.4.15	§1116. Sale or distribution of tobacco to minors;
15.4.16	§1117. Notice;
15.4.17	§1118. Distribution of samples to minors;
15.4.18	§1124. Purchase or receipt of tobacco products to minors.
15.4.19 <u>13</u>	§1325. Cruelty to animals;
15.4.20	§1325A. The unlawful trade in dog or cat by products;
15.4.24 <u>14</u>	§1326. Animals; fighting and baiting prohibited;
15.4.22 <u>15</u>	§1327. Maintaining a dangerous animal;

15.5 Any crime which involves offenses against the public order the commission of which may tend to bring discredit upon the profession and which are thus substantially related to one's fitness to practice such profession and shall include by way of example and not of limitation the following crimes listed in Title 11 of the **Delaware Code Annotated**:

Bribery and Improper Influence

15.5.1	§1201. Bribery;
15.5.2	§1203. Receiving a bribe;
15.5.3	§1205. Giving unlawful gratuities;
15.5.4	§1206. Receiving unlawful gratuities;
15.5.5	§1207. Improper influence;
15.5.6	§1211. Official misconduct
15.5.7	§1212. Profiteering

Perjury and related offenses

15.5.8	§1221. Perjury in the third degree;
15.5.9	§1222. Perjury in the second degree;
15.5.10	§1223. Perjury in the first degree;
15.5.11	§1233. Making a false written statement; class
15.5.12	§1239. Wearing a disguise during commission of a felony
15.5.13	§1240. Terroristic threatening of public officials or public servants
15.5.14	§1243. Obstructing fire-fighting operations;
15.5.15	§1244. Hindering prosecution;
15.5.16	§1245. Falsely reporting an incident;
15.5.17	§1246. Compounding a crime;
15.5.18	§1249. Abetting the violation of driver's license restrictions;
15.5.19	§1250. Offenses against law-enforcement animals;
15.5.20	§1253. Escape after conviction;
15.5.21	§1254. Assault in a detention facility;
15.5.22	§1256. Promoting prison contraband;
15.5.23	§1257. Resisting arrest; <u>Felony</u>
15.5.24	§1257A. Use of an animal to avoid capture;
15.5.25	§1259. Sexual relations in detention facility;
15.5.26	§1260a. Misuse of prisoner mail;

Offenses Relating to Judicial and Similar Proceedings

15.5.27 <u>26</u>	§1261. Bribing a witness;
15.5.28 <u>27</u>	§1262. Bribe receiving by a witness;
15.5.29 <u>28</u>	§1263. Tampering with a witness;
15.5.30 <u>29</u>	§1263A. Interfering with child witness;
15.5.34 <u>30</u>	§1264. Bribing a juror;
15.5.32 <u>31</u>	§1265. Bribe receiving by a juror;
15.5.33 <u>32</u>	§1266. Tampering with a juror;
15.5.34 <u>33</u>	§1267. Misconduct by a juror;
15.5.35 <u>34</u>	§1269. Tampering with physical evidence;
15.5.36 <u>35</u>	§1271. Criminal contempt;
15.5.37 <u>36</u>	§1271A. Criminal contempt of a domestic violence protective order;
15.5.38 <u>37</u>	§1273. Unlawful grand jury disclosure;

PROPOSED REGULATIONS

15.6 Any crime which involves offenses against a public health order and decency which may tend to bring discredit upon the profession, specifically including the below listed crimes from Title 11 of the **Delaware Code Annotated** which evidence a lack of appropriate concern for the safety and well being of another person or persons in general or sufficiently flawed judgment to call into question the individuals ability to make health care decisions or advise upon health care related matters for other individuals.

Disorderly Conduct and Related Offenses

- 15.6.1 §1302. Riot;
- 15.6.2 §1304. Hate crimes;
- 15.6.3 §1311. Harassment;
- 15.6.4 §1312. Aggravated harassment;
- 15.6.5 §1312A. Stalking;
- 15.6.6 §1313. Malicious interference with emergency communications;
- ~~15.6.7 §1315. Public intoxication;~~
- ~~15.6.8 §1321. Loitering;~~
- ~~15.6.9.7 §1322. Criminal nuisance;~~
- ~~15.6.10 §1323. Obstructing public passages;~~
- ~~15.6.11 §1324. Obstructing ingress to or egress from public buildings;~~
- ~~15.6.12.8 §1331. Desecration;~~
- ~~15.6.13.9 §1332. Abusing a corpse;~~
- 15.6.14 10 §1333. Trading in human remains and associated funerary objects.
- ~~15.6.15.11 §1335. Violation of privacy;~~
- 15.6.16 12 §1338. Bombs, incendiary devices, Molotov cocktails and explosive devices;
- 15.6.17 13 §1339. Adulteration;
- 15.6.18 14 §1340. Desecration of burial place.

Offenses Involving Public Indecency

- 15.6.19 15 §1341. Lewdness;
- 15.6.20 16 §1342. Prostitution;
- 15.6.24 17 §1343. Patronizing a prostitute prohibited.
- 15.6.22 18 §1351. Promoting prostitution in the third degree;
- 15.6.23 19 §1352. Promoting prostitution in the second degree;
- 15.6.24 20 §1353. Promoting prostitution in the first degree;
- 15.6.25 21 §1355. Permitting prostitution;

Obscenity

- 15.6.26 22 §1361. Obscenity; acts constituting;
- 15.6.27 23 §1365. Obscene literature harmful to minors;
- ~~15.6.28 §1366. Outdoor motion picture theatres;~~

Offenses Involving Gambling

- ~~15.6.29 §1403. Advancing gambling in the first degree;~~
- ~~15.6.30 §1404. Providing premises for gambling;~~
- ~~15.6.31 §1405. Possessing a gambling device; class A misdemeanor.~~
- ~~15.6.32 §1406. Being concerned in interest in keeping any gambling device;~~
- ~~15.6.33 §1411. Unlawfully disseminating gambling information;~~

15.7 Any crime which involves the illegal possession or the misuse or abuse of narcotics, or other addictive substances and those non-addictive substances with a substantial capacity to impair reason or judgment and shall include by way of example and not of limitation the following crimes listed in Chapter 47 of Title 16 of the **Delaware Code Annotated**:

- 15.7.1 §4751. Prohibited acts A;
- 15.7.2 §4752. Prohibited acts B;
- 15.7.3 §4752A. Unlawful delivery of noncontrolled substance.
- 15.7.4 §4753. Prohibited acts C.
- 15.7.5 §4753A Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs.
- 15.7.6 §4754. Prohibited acts D;
- 15.7.7 §4754A. Possession and delivery of noncontrolled prescription drug.

- 15.7.8 §4755. Prohibited acts E;
- 15.7.9 §4756. Prohibited acts;
- 15.7.10 §4757. Hypodermic syringe or needle; delivering or possessing; disposal; exceptions;
- 15.7.11 §4758. Keeping drugs in original containers.
- 15.7.12 §4761. Distribution to persons under 21 years of age;
- 15.7.13 §4761A. Purchase of drugs from minors;
- 15.7.14 §4767. Distribution, delivery, or possession of controlled substance within 1,000 feet of school property;
- 15.7.15 §4768. Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship;
- 15.7.16 §4774. Penalties

15.8 Any crime which involves the misuse or illegal possession or sale of a deadly weapon or dangerous instrument and shall include by way of example and not of limitation the following crimes listed in Title 11 of the **Delaware Code** Annotated:

Offenses Involving Deadly Weapons and Dangerous Instruments

- 15.8.1 §1442. Carrying a concealed deadly weapon;
- 15.8.2 §1443. Carrying a concealed dangerous instrument;
- 15.8.3 §1444. Possessing a destructive weapon;
- 15.8.4 §1445a. Unlawfully dealing with a dangerous weapon;
- 15.8.5 §1446. Unlawfully dealing with a switchblade knife;
- 15.8.6 §1447. Possession of a deadly weapon during commission of a felony;
- 15.8.7 §1447A. Possession of a firearm during commission of a felony;
- 15.8.8 §1448. Possession and purchase of deadly weapons by persons prohibited;
- 15.8.9 §1448A. Criminal history record checks for sales of firearms
- 15.8.10 §1449. Wearing body armor during commission of felony;
- 15.8.11 §1450. Receiving a stolen firearm;
- 15.8.12 §1451. Theft of a firearm;
- 15.8.13 §1452. Unlawfully dealing with knuckles-combination knife;
- 15.8.14 §1453. Unlawfully dealing with martial arts throwing star;
- 15.8.15 §1454. Giving a firearm to person prohibited;
- 15.8.16 §1455. Engaging in a firearms transaction on behalf of another;
- 15.8.17 §1456. Unlawfully permitting a minor access to a firearm;
- 15.8.18 §1457. Possession of a weapon in a Safe School and Recreation Zone;
- 15.8.19 §1458. Removing a firearm from the possession of a law enforcement officer;
- 15.8.20 §1459. Possession of a weapon with a removed, obliterated or altered serial number.
- 15.8.21 §1471. Prohibited Acts

Offenses Involving Organized Crime and Racketeering

- 15.8.22 §1504. Criminal Penalties for Organized Crime & Racketeering

Offenses Involving Intimidation of Victims or Witnesses

- 15.8.23 §3532. Acts of Intimidation: Class E felony
- 15.8.24 §3533. Aggravated act of intimidation, Class D felony

Other Crimes

- 15.8.25 Title 16 §1136 Violations – neglect or abuse of patient or resident of nursing facilities
- 15.8.26 Title 23 §2305 Penalties; jurisdiction
- 15.8.27 Title 30 §571 Attempt to evade or defeat tax,
- 15.8.28 Title 30 §572 Failure to collect or pay over tax;
- 15.8.29 Title 30 §573 Failure to file return, supply information or pay tax;
- 15.8.30 Title 30 §574 Fraud and false statements; §576 Misdemeanors
- 15.8.31 Title 31 §1007 Penalties
- ~~15.8.32 Title 21 §2118A Unlawful possession or manufacture of proof of insurance, penalties~~
- ~~15.8.33 Title 21 §2133 Penalties' jurisdiction of justices of the peace~~
- ~~15.8.34 Title 21 §2315 False statements~~
- 15.8.35 32Title 21 §2316 Altering or forging certificate of title, manufacturer's certificate of origin,

registration card, vehicle warranty or certification sticker or vehicle identification plate

~~15.8.36 Title 21 §2620 False statements; incorrect or incomplete information~~

~~15.8.37 Title 21 §2703 License to operate a motorcycle, motorbike, etc.~~

~~15.8.38 Title 21 §2710 Issuance of a Level 1 Learner's Permit and Class D operator's license to persons under 18 years of age~~

~~15.8.39 Title 21 §2722 Restricted licenses based on driver's physical limitations~~

~~15.8.40 33 Title 21 §2751 Unlawful application for or use of license or identification card~~

~~15.8.41 34 Title 21 §2752 False statements~~

~~15.8.42 Title 21 §2753 Operation of vehicle by unlicensed minor~~

~~15.8.43 35 Title 21 §2754 Employment of unlicensed person~~

~~15.8.44 36 Title 21 §2755 Authorizing or permitting the operation of a motor vehicle by another~~

~~15.8.45 37 Title 21 §2756 Driving vehicle while license is suspended or revoked;~~

~~15.8.46 38 Title 21 §2758 Driving during period of denial; penalties~~

~~15.8.47 39 Title 21 §2760 Duplication, reproduction, altering, or counterfeiting of driver's licenses~~

or identification cards

~~15.8.48 40 Title 21 §2810 Driving after judgment prohibited; penalty; jurisdiction~~

~~15.8.49 41 Title 21 §2814 Additional penalty when convicted of an offense which would render an~~

individual an habitual offender

~~15.8.50 42 Title 21 §3107 False statements~~

~~15.8.51 Title 21 §4103 Obedience to authorized person directing traffic~~

~~15.8.52 Title 21 §4112 Interference with official traffic control devices or railroad signs or signals or other street signs~~

~~15.8.53 Title 21 §4127 Unlawful evasion of Delaware Turnpike and the Korean War Veterans Memorial Highway; harassment of toll collectors; penalty; appeal; jurisdiction; payment of minimum fine before trial~~

~~15.8.54 Title 21 §4166 Overtaking and passing school bus; stop signal devices~~

~~15.8.55 Title 21 §4172 Speed exhibitions; drag races and other speed contests~~

~~15.8.56 43 Title 21 §4172A Malicious mischief by motor vehicle~~

~~15.8.57 Title 21 §4175 Reckless driving~~

~~15.8.58 Title 21 §4175A Aggressive driving~~

~~15.8.59 44 Title 21 §4177 Driving a vehicle while under the influence or with a prohibited alcohol content; evidence; arrests; and penalties, Felony~~

~~15.8.60 45 Title 21 §4177J Drinking while driving prohibited~~

~~15.8.61 Title 21 §4177L Driving by persons under the age of 21 after consumption of alcohol; penalties-~~

~~15.8.62 46 Title 21 §4177M Operating a commercial motor vehicle with a prohibited blood alcohol concentration or while impaired by drugs~~

~~15.8.63 Title 21 §4183 Parking areas for vehicles being used by persons with disabilities~~

~~15.8.64 Title 21 §4198J Bicycling on highways under influence of drugs or alcohol~~

~~15.8.65 Title 21 §4198O Operation of electric personal assistive mobility devices (EPAMD)~~

~~15.8.66 Title 21 §4201 Duty of driver involved in accident resulting in property damage or injury~~

~~15.8.67 Title 21 §4202 Duty of driver involved in accident resulting in injury or death to any person~~

~~15.8.68 Title 21 §4203 Duty to report accidents; evidence~~

~~15.8.69 Title 21 §4601 Introduction, sale, distribution or advertisement for sale to public of motor~~

vehicle master keys; penalties

~~15.8.70 Title 21 §4604 Possession of motor vehicle masters keys, manipulative keys, key cutting devices, lock picks or lock picking devices and hot wires~~

~~15.8.71 Title 21 §6420 Penalties; jurisdiction~~

~~15.8.72 Title 21 §6701 Injuring vehicle or obstructing its operation~~

~~15.8.73 Title 21 §6703 Tampering with vehicle~~

~~15.8.74 47 Title 21 §6704 Receiving or transferring stolen vehicle~~

~~15.8.75 48 Title 21 §6705 Removed, falsified or unauthorized identification number on vehicle, bicycle or engine; removed or affixed license/registration plate with intent to misrepresent identify, Felony~~

~~15.8.76 49 Title 21 §6708 Possession of blank title; blank registration card; vehicle identification~~

plate; warranty sticker and registration card

~~15.8.77~~ ~~50~~ Title 21 §6709 Removal of warranty or certification stickers; vehicle identification plates; confidential vehicle identification numbers

~~15.8.78~~ ~~51~~ Title 21 §6710 Unlawful possession of assigned titles, assigned registration cards, vehicle identification plates and warranty stickers

Supplementary List of Offenses

~~Title 2, Transportation~~

~~15.8.79~~ ~~§309~~ Dangerous Flying

~~15.8.80~~ ~~§310~~ Hunting from Aircraft,

~~Title 3, Agriculture~~

~~15.8.81~~ ~~§1041~~ Willfully or maliciously starting fires

~~15.8.82~~ ~~§1044~~ Obstructing person in performance of duty

~~15.8.83~~ ~~§8713~~ Offenses involving meat and poultry inspection including bribery or attempted bribery or assaulting or impeding any person in the performance of his duties

~~15.8.84~~ ~~52~~ ~~§8715~~ Penalties generally — misdemeanor; felony if offensive involves fraud or distribution or attempted distribution of adulterated article.

Title 4, Alcoholic Liquors

~~15.8.85~~ ~~53~~ §901 Offenses carrying penalty of imprisonment for 3 to 6 months – including peddling of alcoholic liquors, dispensing liquor from a disorderly house, selling alcoholic liquor without a license, claiming to have a license, keeping or selling for beverage purposes any solid or liquor containing alcohol not originally manufactured for use as a beverage

~~15.8.86~~ ~~54~~ §903 Offenses carrying penalty of fine of not more than \$100.00 or imprisonment for 1 month on failure to pay fine – including selling beer to which other alcohol has been added or selling adulterated alcoholic liquor; selling alcoholic liquor in time, manner or quantity not authorized by license; selling alcoholic beverage in dining room or bedroom not fitted equipped in manner prescribed by Commissioner/Division; selling alcoholic beverages without complying with specific provisions of statute; selling an alcoholic liquor at a time not authorized; selling alcoholic liquor to prohibited person; allowing alcoholic beverage to be consumed in liquor store; failing to post license conspicuously; keeping or transporting alcoholic liquor in contravention of the statute; selling a product containing alcoholic liquor as medicine after being notified by the Commissioner that a product is being used for beverage purposes; not having a license and inducing the public to believe person has license; buying or receiving alcoholic liquor from person not authorized to sell such liquor and keeping such liquor; obtaining during time when sale is forbidden any alcoholic liquor from a licensee for sale; causing a disturbance or bringing or drinking alcoholic liquor in a place where such is prohibited; buying alcoholic liquor from another person; being a licensee, failing to post conspicuously a sign warning against drinking during pregnancy

~~15.8.87~~ ~~55~~ §904 Offenses Concerning Certain Persons [forbidding direct or indirect sales to and purchases by a person under age of 21] (classified misdemeanor)

~~15.8.88~~ ~~56~~ §907 Interference with Officer or Inspector (classified misdemeanor)

Title 6, Commerce and Trade

~~15.8.89~~ ~~57~~ §2581 Civil Penalty: Disposition of Funds [re: enhanced penalties assessed for prohibited trade practices against infirm or elderly] (unclassified misdemeanor)

~~15.8.90~~ ~~§4619~~ Penalties [for improper sale of secondhand watches] (unclassified misdemeanor)

~~15.8.94~~ ~~58~~ §4909A Enforcement and Remedies [providing for enhanced penalties for Auto Repair Fraud victimizing the infirm or elderly] (unclassified misdemeanor)

~~15.8.92~~ ~~59~~ §5132 Hindering or Obstructing [DOA] Officer (unclassified misdemeanor)

~~15.8.93~~ ~~60~~ §5133 Impersonation of [DOA] Officer (unclassified misdemeanor)

~~15.8.94~~ ~~61~~ §5134 Offenses and Penalties [involving possession or use of false weights] (unclassified misdemeanor)

~~15.8.95~~ ~~62~~ §7322 Criminal Penalties [for violation of the Securities Act] (class E, F, or G felony depending on the amount of investor loss)

Title 7, Conservation

~~15.8.96~~ ~~63~~ §707 Hunting or Shooting from Motor Vehicle, Boats or Farm Machinery (class C or B environmental misdemeanor)

~~15.8.97~~ ~~64~~ §710 Use of Silencer on Gun (class C environmental misdemeanor)

~~15.8.98~~ ~~65~~ §711 Hunting with Automatic – Loading Gun (class C environmental misdemeanor)

- 15.8.99 ~~66~~ §719 Discharge of Firearms on or near Public Roads and Public Rights-of-Way (class C misdemeanor)
- 15.8.400 ~~67~~ §1710 Poisoning of Dogs (unclassified misdemeanor)
- 15.8.404 ~~68~~ §1717 Unauthorized Acts against a Service Guide or Seeing Eye Dog (class D felony)
- ~~15.8.102 §1739 Violations by Owners of Dangerous or Potentially Dangerous Dogs (unclassified misdemeanor)~~
- 15.8.403 ~~69~~ §5409 Prohibited Acts [involving Disposition of Human Remains] (unclassified misdemeanor)
- 15.8.404 ~~70~~ §6015 Interference with Department Personnel (unclassified misdemeanor)
- ~~15.8.105 §6025 [Improper Disposal of] Solid Waste (unclassified misdemeanor)~~
- 15.8.406 ~~71~~ §6304 Prohibitions [relating to generation, storage, disposal, transportation, and treatment of hazardous waste] (unclassified misdemeanor)
- 15.8.407 ~~72~~ §6315 Interference with Department [DNREC] Personnel (unclassified misdemeanor)
- Title 11, Crimes
- 15.8.408 ~~73~~ §2402 Interception of Communications Generally; Divulging Contents of Communications (class misdemeanor, class F felony, class D felony, depending on specifics of violation)
- 15.8.409 ~~74~~ §2403 Manufacture, Possession or Sale of Intercepting Device (class F felony)
- 15.8.440 ~~75~~ §2410 Breaking and Entering, Etc. to Place or Remove Equipment (class F felony)
- 15.8.444 ~~76~~ §2412 Obstruction, Impediment or Prevention of Interception (class F felony)
- 15.8.442 ~~77~~ §2421 Obtaining, Altering or Preventing Authorized Access (class B misdemeanor, class A misdemeanor for 2nd offense)
- 15.8.444 ~~78~~ §2422 Divulging Contents of Communications (class F felony)
- 15.8.445 ~~79~~ §2431 Installation and Use Generally [of pen trace and trap and trace devices] (class A misdemeanor)
- 15.8.446 ~~80~~ §3532 Act of Intimidation [of victim of or witness to crime] (class E felony)
- 15.8.447 ~~81~~ §3533 Aggravated Act of Intimidation (class D felony)
- 15.8.448 ~~82~~ §3534 Attempt to Intimidate (class E felony, class D felony, depending on the nature of the act attempted)
- 15.8.449 ~~83~~ §4374 Disclosure of Expunged Records (class B misdemeanor)
- 15.8.420 ~~84~~ §6562 Furnishing Contraband [to DOC prisoners] (unclassified misdemeanor)
- 15.8.424 ~~85~~ §8523 Penalties [for violation of reporting provision re: SBI] (class A misdemeanor, class E felony, depending on the specifics of the offense)
- 15.8.422 ~~86~~ §8562 Penalties [for failure of child-care provider to obtain information required under §8561 or for those providing false information] (class A misdemeanor, class G felony depending on the specifics of the offense)
- 15.8.423 ~~87~~ §8572 Penalties [for providing false information when seeking employment in a public school] (class G felony)
- 15.8.424 ~~88~~ §9016 Filing False Claim [under Victims' Compensation Fund] (class A misdemeanor)
- Title 12, Decedents' Estates
- 15.8.425 ~~89~~ §210 Alteration, Theft or Destruction of Will (class E felony)
- Title 14, Education
- 15.8.426 ~~90~~ §9303 Hazing Prohibited (class B misdemeanor)
- Title 16, Health & Safety Nature of the Offense
- 15.8.427 ~~91~~ §914 Penalty for Violation [of reporting requirements involving abuse under §903] (unclassified misdemeanor)
- 15.8.428 ~~92~~ §2513 Penalties [relating to improper health-care decisions] (misdemeanor, class felony for falsification, destruction of a document to create a false impression that measures to prolong life have been authorized)
- ~~15.8.129 §3317 Treatment of Meats with Unlawful Drugs and Preparations [prior to sale] unclassified misdemeanor)~~
- ~~15.8.130 §7103 General Provisions [regarding sale, purchase, etc. of explosives] (unclassified misdemeanor)~~
- 15.8.434 ~~93~~ §7112 Penalties [for violations of chapter other than §7103] (unclassified

misdemeanor, felony depending on nature of the offense)

~~15.8.132 94~~ §7416 Penalties [for violating statute governing Radiation Control] (unclassified misdemeanor)

Title 23, Navigation and Waters

~~15.8.133 §2202 Child Safety on Recreational Boats (unclassified misdemeanor)~~

~~15.8.134 95~~ §2303 Operation of a Vessel or Boat while under the Influence of Intoxicating Liquor and/or Drugs (unclassified misdemeanor, class G felony, depending on number of offenses) (Class G Felony)

Title 24, Professions and Occupations Deadly Weapons Dealers

~~15.8.135 96~~ §903 Sale to Persons under 21 or Intoxicated Persons (unclassified misdemeanor)

~~Title 30, State Taxes Motor Carriers Fuel Purchase Law~~

~~15.8.136 §5215 False Statements (unclassified misdemeanor)~~

Title 31, Welfare

~~15.8.137 §2117 [Interference] Relating to the Blind and "Seeing Eye Dogs" (unclassified misdemeanor)~~

~~15.8.138 97~~ §3913 Violations [knowing or reckless abuse of an infirm adult] (class A misdemeanor, class G felony for exploitation of infirm adult's resources valued at \$500 to \$5000, class E felony if resources are valued from \$5000 to \$10,000, class D felony if resources are valued over \$10,000 or if abuse or neglect results in bodily harm, class A felony if abuse or neglect results in death)

15.9 Any crime which is a violation of Title 24, Chapter 19 (Nurse Practices Act) as it may be amended from time to time.

15.10 The Board reserves the jurisdiction and authority to modify this regulation as and if it becomes necessary to either add or delete crimes including such additions as may be required on an emergency basis under 29 **Del.C.** §10119 to address imminent peril to the public health, safety or welfare. The Board also specifically reserves the jurisdiction to review any crime committed by an applicant for licensure with regard to the temporal proximity of the crime or the conviction to the application and to determine whether the period of time involved has been so long as to negate any reasonable conclusion or determination that the crime for which the individual was convicted has a direct bearing on the individual's fitness or ability to perform one or more of the duties and responsibilities necessarily related to nursing or to otherwise determine that sufficient restitution has been made for the offense committed.

8 DE Reg. 1089 (02/01/05)

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

<http://www.state.de.us/research/AdminCode/title24/1900%20Board%20of%20Nursing.shtml#TopOfPage>

DIVISION OF PROFESSIONAL REGULATION

3300 Board of Veterinary Medicine

Statutory Authority: 24 Delaware Code, Section 3306(a) (24 **Del.C.** §3306(a))

24 DE Admin. Code 3300

PUBLIC NOTICE

The Board of Veterinary Medicine pursuant to 24 **Del.C.** §3306 purposes to change Professional Regulation 9.1.2. The Board will hold a public hearing on February 13, 2007. Written comments should be sent to Jennifer Myer, Administrative Assistant to the Board of Veterinary Medicine, Division of Professional Regulation, Cannon Building, 861 Silver Lake Boulevard, Suite 203, Dover, DE 19904-2467.

The proposed changes are for the purpose of allowing and facilitating online continuing education attestation.

3300 Board of Veterinary Medicine**(Break in Continuity of Sections)****9.0 Continuing Education for Veterinarians (24 Del.C. §3309(b))**

9.1 Any veterinarian actively licensed to practice in the State of Delaware shall meet the following continuing education requirements to the satisfaction of the Board.

9.1.1 Twenty-four (24) hours of approved certified continuing education credits must be completed for the immediate two year period preceding each biennial license renewal date.

9.1.2 The number of credit hours shall be submitted to the Board with each biennial license renewal application. ~~on the proper reporting form supplied by the Board. The continuing education credit hours shall be submitted to the Board no later than 60 days prior to the biennial license renewal date. The Board may audit the continuing education credit hours submitted by a licensee.~~

9.1.2.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 9.1.1.

9.1.2.2 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion can be submitted;

9.1.2.3 Licensees selected for random audit are required to supplement the attestation with attendance verification as provided in 9.1.2.4.

9.1.2.4 A log of CE on a form approved by the Board shall be maintained during the licensure period to be submitted if the renewal application is selected for CE audit. Random audits will be performed by the Board to ensure compliance with the CE requirement. Licensees selected for the random audit shall submit the log and attendance verification.

9.1.3 A veterinarian may apply to the Board in writing for an extension of the period of time needed to complete the continuing education requirement for good cause such as illness, extended absence from the country, or unique personal hardship which is not the result of professional negligence.

9.1.4 The Board has the power to waive any part of the entire continuing education requirement. Exemptions to the continuing education requirement may be granted due to prolonged illness or other incapacity. Application for exemption shall be made in writing to the Board by the applicant for renewal and must be received by the Board no later than 60 days prior to the biennial license renewal date.

9.2 Continuing Education Requirements for Reinstatement of Lapsed License

9.2.1 Any veterinarian whose license to practice in the State of Delaware has lapsed and who has applied for reinstatement shall meet the following continuing education requirements to the satisfaction of the Board.

9.2.1.1 *Lapse of 12 to 24 months.* Twenty-four (24) hours of continuing education credits must be completed. The 24 hours of continuing education credits must have been completed within 2 years prior to the request for reinstatement.

9.2.1.2 *Lapse of over 24 months.* Thirty-six (36) hours of continuing education credits must be completed. The 36 hours of continuing education credits must have been completed within 4 years prior to the request for reinstatement.

9.3 Continuing Education Requirements for Reinstatement of Inactive License

9.3.1 Twenty-four (24) hours of continuing education credits must be submitted for licensees on the inactive roster who wish to remove their license from inactive status. The 24 hours of continuing education credits must have been completed within 2 years prior to the request for removal from inactive status.

9.4 The Board may approve continuing education courses or sponsors upon written application on Board supplied forms. In addition, the Board may approve continuing education courses or sponsors on its own motion.

9.5 The following organizations are approved for formal continuing education activities.

9.5.1 AVMA.

9.5.2 AVMA accredited schools.

9.5.3 Federal/State/County Veterinary Associations & USDA.

9.5.4 *Compendium on Continuing Education for the Practicing Veterinarian*; NOAH; VIN.

9.5.5 Registry of Approved Continuing Education (RACE) courses.

9.6 Accreditation by the Board of continuing education courses will be based upon program content. Continuing education courses shall be directed toward improvement, advancement, and extension of professional skill and knowledge relating to the practice of veterinary medicine.

9.6.1 University course work, subject to Board approval.

9.6.2 Veterinary course work completed prior to graduation may be approved for continuing education credit for the first renewal period after graduation provided the course work was completed no more than 2 1/2 years before the renewal date.

9.6.3 Government Agencies.

9.6.4 Other forms of CE as long as and the activity is approved by the Board.

9.7 The Board may at any time re-evaluate an accredited course or sponsor and withdraw future approval of a previously accredited continuing education course or sponsor.

10 DE Reg. 884 (11/01/06)

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

**[http://www.state.de.us/research/AdminCode/title24/
3300%20Board%20of%20Veterinary%20Medicine.shtml#TopOfPage](http://www.state.de.us/research/AdminCode/title24/3300%20Board%20of%20Veterinary%20Medicine.shtml#TopOfPage)**

DEPARTMENT OF TRANSPORTATION

DIVISION OF PLANNING

Statutory Authority: 17 Delaware Code Section 507; Chapters 1 and 5
(17 Del.C. §507, Chps. 1 and 5)

PUBLIC NOTICE

Utilities Manual Proposed Revision Regulations

The Delaware Department of Transportation through its Transportation Solutions - Utilities Section has developed revised regulations for the installation, adjustment, and maintenance of utility lines and appurtenances within the rights-of-way of Delaware's highways. These regulations define the requirements which apply to utility accommodation along or within the rights-of-way of State-controlled highways, and State-maintained streets and roads within suburban developments or within the incorporated limits of a municipality.

The Utilities Manual revises and updates the DelDOT Utilities Design Manual, effective in October 1995.

The Departments will take written comments on the Regulations from January 1, 2007 through January 31, 2007. Any requests for copies of the Utilities Manual, or any questions or comments regarding this document should be directed to:

Francis Hahn, Utilities Engineer
Delaware Department of Transportation
PO Box 778
Dover, DE 19903
(302) 760-2269 (telephone) (302) 739-8282 (fax)
fran.hahn@state.de.us

***Please Note: Due to the size of the proposed regulation, it is not being published here. A PDF version is available at the website listed below:**

**www.state.de.us/research/register/january2007/dotutilities.pdf
(Adobe Acrobat Reader required)**

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
 14 **DE Admin. Code** 201, 205 and 210

Regulatory Implementing Order

201 School Shared Decision Making Transition Planning Grants
205 District Shared Decision Making Transition Planning Grants
210 Approval of School Improvement Grants
201 District and School Shared Decision Making

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** 201 School Shared Decision Making Transition Planning Grants, 205 District Shared Decision Making Transition Planning Grants, and 210 Approval of School Improvement Grants as per 14 **Del.C.** Ch. 8 by combining them into a single regulation, 14 **DE Admin. Code** 201 District and School Shared Decision Making.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on October 19, 2006, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities recommending some changes to add clarity to the regulation. At this time the Department declines to make any changes other than combining the three regulations into a single regulation. At some point in the future it may be necessary to make substantive changes to these regulations.

The Councils also expressed concerns with how the Department's regulations are advertised in the monthly publication of the *Register of Regulations*. The Department will add the cut off date for comments as well as the name and address of the person that should receive the comments as part of the "Synopsis of Subject Matter of the Regulation" section of the Impact Analysis.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 201, 205 and 210 in order to combine them into a single regulation, 14 **DE Admin. Code** 201 District and School Shared Decision Making.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 201, 205 and 210. Therefore, pursuant to 14 **Del.C.** Ch.8, 14 **DE Admin. Code** 201, 205 and 210 attached hereto as *Exhibit "B"* are hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 201, 215 and 210 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** 201, 205 and 210 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulations shall be cited as 14 **DE Admin. Code** 201 District and School Shared Decision Making 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.** Ch.8 on December 21, 2006. 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 21st day of December 2006.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 21st day of December 2006

STATE BOARD OF EDUCATION

Jean W. Allen, President

Mary B. Graham, Esquire

Barbara Rutt

Dr. Claibourne D. Smith

Richard M. Farmer, Jr., Vice President

Gregory A. Hastings

Dennis J. Savage

* Please note that no changes were made to the regulation as originally proposed and published in the November 2006 issue of the *Register* at page 773 (10 DE Reg. 773). Therefore, the final regulation is not being republished. Please refer to the November 2006 issue of the *Register* or contact the Department of Education for more information.

A complete set of the rules and regulations for the Department of Education are available at:
<http://www.state.de.us/research/AdminCode/title14/index.shtml#TopOfPage>

FINAL REGULATIONS

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 247

Regulatory Implementing Order

247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internships and Academic Seminars

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to adopt 14 DE Admin. Code 247 in order to define the terms and the procedures used for the operation of The Washington Center (TWC) for Internships and Academic Seminars internship program.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on October 19, 2006, in the form hereto attached as *Exhibit "A"*. No Comments were received.

II. Findings of Facts

The Secretary finds that it is appropriate to adopt 14 DE Admin. Code 247 in order to define the terms and the procedures used for the operation of The Washington Center (TWC) for Internships and Academic Seminars internship program.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to adopt 14 DE Admin. Code 247. Therefore, pursuant to 14 Del.C. Ch. 34, 14 DE Admin. Code 247 attached hereto as *Exhibit "B"* is hereby adopted. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 247 hereby adopted 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 247 adopted hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 247 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. Ch. 34 on December 7, 2006. 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 7th day of December 2006.
DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Jean W. Allen, President
Mary B. Graham, Esquire
Barbara Rutt
Dr. Claibourne D. Smith

Richard M. Farmer, Jr., Vice President
Gregory A. Hastings
Dennis J. Savage

* Please note that no changes were made to the regulation as originally proposed and published in the November 2006 issue of the *Register* at page 779 (10 DE Reg. 779). Therefore, the final regulation is not being republished. Please refer to the November 2006 issue of the *Register* or contact the Department of Education for more information.

A complete set of the rules and regulations for the Department of Education are available at:
<http://www.state.de.us/research/AdminCode/title14/index.shtml#TopOfPage>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 372

Regulatory Implementing Order

372 Certification Administrative Support Personnel (Formerly Secretarial Personnel)

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 DE Admin. Code 372 in order to clarify the language of the regulation and to remove the requirement that support staff take the state budget and accounting course in order to receive a pay supplement. Sections 3.0 and 4.0 have been added to address the application procedures and denial of the certificate. The title has been changed to Support Personnel Salary Supplements for Additional Training and the number of the regulation has been changed from 372 to 750 placing it in the 700 section of the Administrative Code.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on October 19, 2006, in the form hereto attached as *Exhibit "A"*. No Comments were received.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 372 in order to remove the requirement that support staff take the state budget and accounting course in order to receive a pay supplement. It is also amended to add Sections 3.0 and 4.0 in order to address the application procedures and the denial of the certificate. The title has been changed to Support Personnel Salary Supplements for Additional Training and the number of the regulation has been changed from 372 to 750 placing it in the 700 section of the Administrative Code.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 372. Therefore, pursuant to 14 Del.C. §1309, 14 DE Admin. Code 372 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 372 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 372 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 750 Support Personnel Salary Supplements for Additional Training 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. §1309 on

December 7, 2006. 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 7th day of December 2006.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Jean W. Allen, President
Mary B. Graham, Esquire
Barbara Rutt
Dr. Claibourne D. Smith

Richard M. Farmer, Jr., Vice President
Gregory A. Hastings
Dennis J. Savage

* Please note that no changes were made to the regulation as originally proposed and published in the November 2006 issue of the *Register* at page 785 (10 DE Reg. 785). Therefore, the final regulation is not being republished. Please refer to the November 2006 issue of the *Register* or contact the Department of Education for more information.

A complete set of the rules and regulations for the Department of Education are available at:
<http://www.state.de.us/research/AdminCode/title14/index.shtml#TopOfPage>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 371

REGULATORY IMPLEMENTING ORDER

371 Teacher of the Hearing Impaired

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** 371 Standard Certificate Teacher of the Hearing Impaired. It is necessary to amend this regulation as part of the review cycle of all certification regulations, part of which is the necessity to move the certification criteria into Title 14 Education 1500 Professional Standards Board. This regulation sets forth the requirements in 14 **DE Admin. Code** 1572 for a Standard Certificate Teacher of Students Who Are Deaf or Hard of Hearing.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on October 25, 2006 in the form hereto attached as Exhibit "A". The notice invited written comments. Comments were received from the Governor's Council for Exceptional Children and the State Council for Persons with Disabilities. As a result, the amended regulation title was altered to be more people-first and a redundant section of the regulation was removed.

II. Findings of Facts

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

III. Decision to Amend the Regulation

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

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1572 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 7TH DAY OF DECEMBER, 2006

Harold Roberts, Chair
Sandra Falatek
Karen Gordon
Barbara Grogg
Lori Hudson
Mary Mirabeau
Karen Schilling Ross
Kathleen Thomas

Edward Czerwinski
Mary Furbush
Richard Gregg
Leslie Holden
Carla Lawson
Gretchen Pikus
Michael Thomas
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 21ST DAY OF DECEMBER, 2006

STATE BOARD OF EDUCATION

Jean W. Allen, President
Mary B. Graham, Esquire
Barbara Rutt
Dr. Claibourne D. Smith

Richard M. Farmer, Jr., Vice President
Gregory A. Hastings
Dennis J. Savage

~~371 Certification Teacher of the Hearing Impaired~~

~~July 1, 1993~~

~~1.0 Standard License~~

~~The following shall be required for the Standard License:~~

~~1.1 Bachelor's or Master's degree in a teacher education program in the area of Hearing Impairment (Deaf Education) or;~~

~~1.2 Bachelor's degree with a minimum of 33 credit hours in the following: Methods of Teaching Reading to the Deaf Methods of Teaching Language to the Deaf (6 semester hours) Methods of Teaching Speech to the Deaf Aural Rehabilitation Audiology Psycho, Social and Educational Aspects of Deafness Survey and Introduction, Education of Exceptional Children Human Growth and Development Manual Communications, 6 semester hours in the area of special education, or proficiency as determined by an agency authorized by the Department of Education, and an additional 6 semester hours in the area of special education Methods of Teaching Multihandicapped Deaf Children Tests and Measurements for Exceptional Children and Adults~~

~~2.0 Limited Standard License~~

~~The following shall be required for the Limited Standard License.~~

~~2.1 The Limited Standard License may be issued for a period of three years at the request of a Delaware public school district to a person who has a Bachelor's degree but is no more than 12 semester hours from completion of the requirements in 1.2.~~

~~3.0 Licenses that may be issued for this position include Standard and Limited Standard~~

~~1572 Standard Certificate Teacher of [Students Who Are the Deaf and or] Hard of Hearing~~

~~1.0 Content~~

~~This regulation shall apply to the requirements for a standard certificate for Teacher of [Students Who Are the Deaf and or] Hard of Hearing pursuant to 14 Del.C., §1220.~~

(Break in Continuity of Sections)

~~3.0 Standard Certificate~~

~~The Department shall issue a Standard Certificate as a Teacher of [Students Who Are the Deaf and or] Hard of Hearing to an educator who holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003 who has met the following requirements:~~

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

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

~~[3.1.2 Meeting the requirements set forth in the relevant Department or Standards Board regulation governing the issuance of a Standard Certificate in the area for which a Standard Certificate is sought; or]~~

~~3.1.[32] Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in Deaf Education; or~~

~~3.1.[43] Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or~~

~~3.1.[54] Holding a master's degree in deaf education from a program approved by the Council for Education of the Deaf offered through a regionally accredited college or university; or~~

~~3.1.[65] Holding a bachelor's degree from a regionally accredited college or university in any content area and for applicants applying after June 30, 2006 for their first standard certificate, satisfactory completion of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) credits or their equivalent must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and~~

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

3.3 Met the requirements for licensure and holding a valid and current license or certificate from another state as a Teacher of the Deaf and Hard of Hearing:

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

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

3.5 If additional criteria are imposed by a specific regulation in the area for which a Standard Certificate is sought, the additional requirements must also be met.

***Please Note: As the rest of the sections were not amended since the proposal in the November 2006 issue, they are not being published here. Please refer to the November 2006 Register, page 781 (10 DE Reg. 781) for more information. A complete set of the rules and regulations for the Professional Standards Board is available at: <http://www.state.de.us/research/AdminCode/title14/1500/index.shtml#TopOfPage>**

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 1579

REGULATORY IMPLEMENTING ORDER

1579 Standard Certificate Teacher of Students With Visual Impairments

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 adopt 14 DE Admin. Code 1579 Standard Certificate Teacher of Students with Visual Impairments. A section of regulation 1562 Standard Certificate Teacher Exceptional Children Special Education Secondary addressed certification requirements for Teacher of the Visually Impaired. Working with the Division of Visual Impairment, it was determined that a separate regulation was appropriate. This regulation sets forth the requirements for a Standard Certificate Teacher of Students with Visually Impairments.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on April 27, 2006 in the form hereto attached as Exhibit "A". The notice invited written comments. Comments received initiated a change in the proposed title to make it more 'people-first' and a reference to an existing statute was added to make the regulation compliant.

II. Findings of Facts

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

III. Decision to Adopt the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to adopt the regulation. Therefore, pursuant to 14 Del.C. §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 Del.C. §122(e), the regulation hereby adopted 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 adopted shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1579 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

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

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 2ND DAY OF NOVEMBER, 2006

Harold Roberts, Chair
Sandra Falatek
Karen Gordon
Barbara Grogg
Lori Hudson
Mary Mirabeau
Karen Schilling Ross
Kathleen Thomas

Edward Czerwinski
Mary Furbush
Richard Gregg
Leslie Holden
Carla Lawson
Gretchen Pikus
Michael Thomas
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 21ST DAY OF DECEMBER, 2006

STATE BOARD OF EDUCATION

Jean W. Allen, President
Mary B. Graham, Esquire
Barbara Rutt
Dr. Claibourne D. Smith

Richard M. Farmer, Jr., Vice President
Gregory A. Hastings
Dennis J. Savage

1579 Standard Certificate Teacher of [Students with Visual Impairments ~~the Visually Impaired, Birth to Age 21~~]

1.0 Content

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Teacher of **[Students with Visual Impairments ~~the Visually Impaired, Birth to Age 21~~]**. This regulation does not apply to Orientation and Mobility Specialists who are certified by the Academy of Certification of Vision Rehabilitation and Education Professionals.

2.0 Definitions

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

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

"Department" means the Delaware Department of Education.

"Educator" means a person licensed and certified by the State under 14 **Del.C.** §1202 to engage in the

practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board approved by the State Board. The term 'educator' does not include substitute teachers.

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

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

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

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

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

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

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

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

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

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

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

3.0 Standard Certificate

In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Teacher of **[Students with Visual Impairments ~~the Visually Impaired, Birth to Age 21]~~ the Visually Impaired, Birth to Age 21, to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License, or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, who has met [the requirements set forth below and in Del.C. §206(d) ~~the following requirements]~~:**

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

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

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

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

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

3.1.~~5~~**4.1** A minimum of fifteen (15) graduate or undergraduate credits from a regionally accredited college or university, taken either as part of a degree program or ~~[apart from in addition to]~~

it, to include:

- | | |
|--------------------------|---|
| 3.1. [54.1].1 | <u>Anatomy and Physiology of the Eye;</u> |
| 3.1. [54.1].2 | <u>Braille and Nemeth Code. [preferably including instruction in Braille];</u> |
| 3.1. [54.1].3 | <u>Orientation/Mobility for the Teacher of the Visually Impaired;</u> |
| 3.1. [54.1].4 | <u>Education for the Visually Impaired;</u> |
| 3.1. [54.1].5 | <u>Assistive Technology; or</u> |
| 3.1. [54.1].6 | <u>Diagnosis/Assessment/IEP Development.</u> |

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

3.3 Met the requirements for licensure and holding a valid and current license or certificate from another state as a Teacher of the Visually Impaired;

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

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

4.0 Multiple Certificates

Educators may hold certificates in more than one area.

5.0 Application Requirements

An applicant for a Standard Certificate shall submit:

5.1 Official transcripts; and

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

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

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

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

6.0 Application Procedures for License Holders

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

7.0 Effect of Regulation

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

8.0 Validity of a Standard Certificate

A Standard Certificate is valid regardless of the assignment or employment status of the holder of a certificate or certificates, and is not subject to renewal. It shall be revoked in the event the educator's Initial,

Continuing, or Advanced License or Limited Standard, Standard, or Professional Status Certificate is revoked in accordance with 14 DE Admin. Code 1514. An educator whose license or certificate is revoked is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.

9.0 Secretary of Education Review

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

DEPARTMENT OF JUSTICE FRAUD AND CONSUMER PROTECTION UNIT

Statutory Authority: 11 Delaware Code, Section 854A(e) (11 **Del.C.**, §854A(e))

BEFORE THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

ORDER

IN RE: IDENTITY THEFT PASSPORT

A public hearing was held to receive comments related to the Identity Theft Passport program authorized under 11 **Del.C.** §854A. Notice was provided as required under the Administrative Proceedings Act in the *Register of Regulations* at 10 **DE Reg.** 811(11/01/06) and two newspapers of general circulation. 29 **Del.C.** §10115.

The Director of Consumer Protection was designated by the Attorney General to conduct the public hearing held at 10 a.m. on December 4, 2006 in the Carvel State Office Building, 6th floor, 820 N. French St., Wilmington, DE 19801.

Summary of the Evidence and Information Submitted

There was no verbal comment at the public hearing. The written comment marked as Exhibit 1 follows:

1. The Consumer Data Industry Association (CDIA) submitted a letter dated November 16, 2006. The CDIA is an international trade association representing over 400 consumer data companies and include organizations involved in credit reporting, mortgage reporting, check verification, fraud prevention, risk management, employment reporting, tenant screening and collection services. Generally, the CDIA supports the concept of an ID theft passport program but has reservations about provisions that affect a consumer reporting agency. The law provides that a consumer reporting agency "must accept the passport as an official notice of a dispute and must include notice of the dispute in all future reports that contain disputed information caused by the identity theft." 11 **Del.C.** §584A(b)(3).¹

1. 11 **Del.C.** §854A. Identity theft passport; application; issuance.

(b)A victim of identity theft may present that victim's identity theft passport issued under subsection (a) of this section to the following:

(3) A consumer reporting agency, as defined in §603(f) of the federal Fair Credit Reporting Act (15 U.S.C. §1681a(f)), which must accept the passport as an official notice of a dispute and must include notice of the dispute in all future reports that contain disputed information caused by the identity theft

The CDIA believes that the passport does not provide enough information to begin the dispute process that is required under the Fair Credit Reporting Act (FCRA) in 15 U.S.C. §1681i.² A consumer who wants to dispute information with a credit reporting agency needs to provide a social security number, date of birth, and specific information about fraudulent accounts. The CDIA also notes that the organization furnishing the information to the credit reporting agency is not required to accept the passport as a notice of dispute.

Finally, the CDIA believes that §854A(b)(3) is preempted by 15 U.S.C. §1681t(b)(5)(C) which relates to §1681c-2³.

Recommended Findings of Fact With Respect to the Evidence and Information

1. While the ID theft passport may not present as much information as a reporting agency might ultimately need to perform the reinvestigation required under 15 U.S.C. §1681(1), it is a sufficient trigger for reinvestigation. It is direct notice from the consumer and it confirms that a police report was filed. The reinvestigation can be terminated if the consumer does not subsequently provide sufficient information for the investigation. 15 U.S.C. §1681(a)(3)(A).

2. It should be noted that there was some confusion about the numbering of the sections of the law in the written comment. The section numbers included in this order do not precisely correspond to the section numbers provided by the commenter but rather to the substance of the sections in the letter.

Generally, the FCRA does not preempt State law except where there is inconsistency. Section 1681c-2 requires, *inter alia*, a consumer reporting agency to block information resulting from an alleged identity theft not later than 4 days after receipt of:

- “(1) appropriate proof of the identity of the consumer;
- (2) a copy of an identity theft report;
- (3) the identification of such information by the consumer; and
- (4) a statement by the consumer that the information is not information relating to any transaction by the consumer.”

Under Delaware law neither the requirement that the passport is a notice of dispute to a credit reporting agency, nor the requirement that the notice is included in reports containing disputed information, is inconsistent with the FCRA. Once the information is blocked under the FCRA, there is no requirement under Delaware law that the notice of dispute appear in the report which no longer contains disputed information.

3. Finally, and most importantly, the comment made by the CDIA to proposed Rule 4.1.3 is really a comment that is addressed to 11 **Del.C.** §854A(b)(3) since the rule is a recitation of the Delaware Identity Theft

2. 15 U.S.C.A. §1681(i). Procedure in case of disputed accuracy

Reinvestigations of disputed information

Reinvestigation required.—

(A) In general. – If the completeness or accuracy of any item of information contained in a consumer’s file at a consumer reporting agency is disputed by the consumer and the consumer notifies the agency directly of such dispute, the agency shall reinvestigate free of charge and record the current status of the disputed information, or delete the item from the file in accordance with paragraph (5), before the end of the 30-day period that is relevant to the reinvestigation....

3. 15 U.S.C.A. §1681t. Relation to State Laws.

In general

Except as provided in subsection (b) and (c) of this section, this subchapter does not annul, alter, affect, or exempt any person subject to the provisions of his subchapter from complying with the laws of any State with respect to the collection, or use of any information on consumers, or for the prevention or mitigation of identity theft, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of any inconsistency.

(a) General exceptions. – No requirement or prohibition may be imposed under the laws of any State –

(5) with respect to the conduct required by the specific provision of—

(C) section 1681c-2 of this title;

Passport law with the federal citations omitted. The Attorney General is empowered to adopt regulations under 11 **Del.C.** §854A(e). Those regulations can implement, but not change, the law.

Recommended Action

After considering the provisions in the law providing for an Identity Theft Passport and the comment received, it is the recommendation of the Director of Consumer Protection that the Attorney General make the proposed findings and adopt the proposed rules as published pursuant to his authority in 11 **Del.C.** §854A (e).

Barbara J. Gadbois
Director of Consumer Protection

ORDER AND EFFECTIVE DATE

After review of the law and comment as well as the recommendation of the Director of Consumer Protection, I hereby adopt the recommended findings of fact and the rules implementing 11 **Del.C.** §854A as proposed in 10 **DE Reg.** 811 (11/01/06) to be effective 10 days following publication of this final order in the *Register of Regulations*.

* Please note that no changes were made to the regulation as originally proposed and published in the November 2006 issue of the *Register* at page 645 (10 DE Reg. 811). Therefore, the final regulation is not being republished. Please refer to the November 2006 issue of the *Register* or contact the Fraud and Consumer Protection Unit for more information.

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

500 Board of Podiatry

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

ORDER

The Board of Podiatry ("Board") was established to protect the general public, specifically those persons who are direct recipients of services regulated by 24 **Del.C.**, Chapter 5, from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered. The Board was further established to maintain minimum standards of practitioner competency and delivery of services to the public. The Board is authorized by 24 **Del.C.** §506(a)(1) to promulgate regulations to effectuate those objectives.

Pursuant to 24 **Del.C.** §506(a)(1), the Board proposed to amend its regulations 5.0 and 6.0 relating to In-Training licensure and online license renewal. Specifically, the amendments to regulation 5.0 Licenses (Renewal, Inactive, Temporary) aid implementation of the new In-Training license in 24 **Del.C.** §513(d) created by Senate Bill 32 and signed into law on February 1, 2006. The amendments to regulation 6.0 Continuing Education provide for the online renewal of licenses, including the attestation of completion of continuing education requirements by licensees and the random post-renewal audit of licensees by the Board to check the veracity of attestations. Regulation 5.2.4 was created in relation to online renewal. Minor grammatical, typographic, or stylistic amendments are also included.

Pursuant to 29 **Del.C.** §10115, notice of the public hearing and a copy of the proposed amendments was published in the *Delaware Register of Regulations*, Volume 10, Issue 2 on August 1, 2006. However, notice was not published in two (2) Delaware newspapers of general circulation, as required by 29 **Del.C.** §10115, so the public hearing could not be conducted on September 21, 2006 as originally scheduled. The public hearing was rescheduled for November 16, 2006. Notice of the rescheduled public hearing was published in the *Delaware Register of Regulations*, Volume 10, Issue 4 on October 1, 2006 and in two (2) Delaware newspapers of general

circulation at least 20 days prior to the rescheduled hearing.

Pursuant to such notices, the Board conducted a public hearing on November 16, 2006.

Summary of the Evidence and Information Submitted

No written or verbal comments were received.

Findings of Fact

The Board finds that the proposed regulations effectively implement the new In-Training license.

Decision and Effective Date

The Board hereby adopts the proposed amendments to the regulations to be effective 10 days following final publication of this order in the *Register of Regulations*.

Text and Citation

The text of the final regulations is attached hereto as Exhibit A and is formatted to show the amendments. A non-marked up version of the regulations as amended is attached hereto as Exhibit B.

IT IS SO ORDERED this 16th day of November, 2006 by the Board of Podiatry of the State of Delaware.

Jonathan Contompasis, D.P.M., President	Nathaniel Gibbs
Jeffrey Barton, D.P.M.	Lawrence Nicholson

* Please note that no changes were made to the regulation as originally proposed and published in the August 2006 issue of the *Register* at page 309 (10 DE Reg. 309). Therefore, the final regulation is not being republished. Please refer to the August 2006 issue of the *Register* or contact the Board of Podiatry for more information.

A complete set of the rules and regulations for the Board of Podiatry are available at:

<http://www.state.de.us/research/AdminCode/title24/500%20Board%20of%20Podiatry.shtml#TopOfPage>

DIVISION OF PROFESSIONAL REGULATION

3100 Delaware Board of Funeral Services

Statutory Authority: 24 Delaware Code, Section 3105(a)(1) (24 **Del.C.** §3105(a)(1))

24 DE Admin. Code 3100

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on October 25, 2006 at a scheduled meeting of the Delaware Board of Funeral Services to receive comments regarding proposed amendments to Regulation 9.0: *Continuing Education Regulations*. The regulation, as amended, provides licensees the ability to renew their license online, attesting to the completion of the requisite continuing education. The regulations also set forth procedures for audit and verification of completed continuing education. In addition, the changes give the Board the ability to determine the appropriate action with respect to licensees who fail to comply with the continuing education requirements as of the time of renewal based on the particular facts and circumstances. Finally, the changes eliminate the Board's Continuing Education Committee and clarify that the Board will not review requests for approval of continuing education credits from programs that are deemed to be automatically approved as set forth in the Board's Rules and Regulations. The proposed regulation was published in the *Register of Regulations*, Vol. 10, Issue 3, September 1, 2006.

Summary of the Evidence and Information Submitted

No written comments were received. One member of the public commented at the hearing that the Rules and Regulations should make clear that programs approved by the Academy of Professional Funeral Service Practitioners are automatically approved by the Board pursuant to the Rules. The Board clarified that the specific programs that are automatically approved are identified in the Rules and Regulations.

Findings of Fact and Conclusions of Law

The Board considered the proposed changes and the public comment at the hearing. The Board finds that the proposed amendments to the Rules and Regulations are necessary to allow for online renewal and to clarify the process for verification of completion of continuing education. The Board further finds that the Continuing Education Committee is no longer necessary due to the previous change to Rule 9.4.2, which now provides that all continuing education programs approved by the Academy of Funeral Service Practitioners (AFSP) or other state boards that license funeral directors, are automatically approved.

Pursuant to 24 Del.C. §3105, the Board has statutory authority to promulgate regulations clarifying specific statutory sections of its statute. The amendments to Rule 9.0: *Continuing Education Regulations* clarify the provisions of 24 Del.C. §3111 with regard to renewal of licensure and required continuing education.

Decision and Effective Date

The Board hereby adopts the changes to Regulation 9.0 be effective 10 days following publication of this order in the *Register of Regulations*.

Text and Citation

The text of the revised rule remains as published in *Register of Regulations*, Vol. 10, Issue 3, September 1, 2006, and as attached hereto as Exhibit A.

SO ORDERED this 29th day of November, 2006.

BOARD OF FUNERAL SERVICES

William Doherty II, President, Professional Member

Robert C. Hutchinson, Jr., Secretary, Professional Member

Thomas R. Trader, Professional Member

Bennie Smith, Professional Member

Austin L. Grice, Jr., Public Member

Rose Pritchett, Public Member

* Please note that no changes were made to the regulation as originally proposed and published in the September 2006 issue of the *Register* at page 528 (10 DE Reg. 528). Therefore, the final regulation is not being republished here. Please refer to the September 2006 issue of the *Register* or contact the Delaware Board of Funeral Services for more information.

A complete set of the rules and regulations for the Board of Funeral Services are available at:

[http://www.state.de.us/research/AdminCode/title24/
3100%20Board%20of%20Funeral%20Services.shtml#TopOfPage](http://www.state.de.us/research/AdminCode/title24/3100%20Board%20of%20Funeral%20Services.shtml#TopOfPage)

DIVISION OF PROFESSIONAL REGULATION**4400 Delaware Manufactured Home Installation Board**

Statutory Authority: 24 Delaware Code, Section 4416(b)(1) (24 Del.C. §4416(b)(1))
24 DE Admin. Code 4400

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, public hearings were held on September 11, 2006 and November 13, 2006 at regularly scheduled meetings of the Delaware Manufactured Home Installation Board regarding the adoption of proposed rules and regulations to implement the Board's statute, which was passed by and Act of the 143rd General Assembly and signed into law by the Governor on July 21, 2005. The proposed regulations were published in the *Register of Regulations*, Vol. 10, Issue 2, August 1, 2006. The revised proposed regulations were published in the *Register of Regulations*, Vol. 10, Issue 4, October 1, 2006.

Summary of the Evidence and Information Submitted

No written comments were received. The public was given the opportunity to comment on the proposed regulations at two public meetings.

September 11, 2006 Public Comment

The following comments were made at the public hearing on September 11, 2006:

(1) Kevin Reinike questioned whether the identifying information required to be placed on work vehicles identifying licensees could be abbreviated, because the designation is lengthy. He also questioned whether multiple license numbers could be listed on a work vehicle, or only one licensee per vehicle. Finally, he commented that it would be difficult to have a licensed installer on site to supervise every subcontractor, and questioned whether that was really necessary.

(2) Robert Smith, an electrical inspector with First State Inspection Agency, questioned what happens if neither the municipality nor the county wants to take the responsibility to perform the inspection. The commenter also questioned whether the installation inspector would be responsible to inspect other areas, such as plumbing and HVAC connections.

(3) Tom Morse, from New Dimension Homes, stated that the Board must be specific about the requirements for footers and tie-downs. He also commented that the installer should not be liable for the work done by other professions, and the Board should be clear about the responsibilities assumed by the licensed installer who signs off on the installation. Mr. Morse stated that in West Virginia, the retailer is held responsible for everything. Finally, he commented that the Board needs to make clear what guidelines, such as manufacturer's manuals, the installer must follow, and that the inspector needs access to that manual.

(4) Richard Dewitt, from a manufactured home dealer, echoed the thought that the inspectors need access to the manufacturer's installation manual in order to properly inspect the installation.

(5) Mike Bethel, from New Dimension Homes, stated that installers shouldn't be held responsible for work performed by contractors in other professions, such a drywall installation.

(6) Mr. Blanton was concerned that if a licensed installer is required to be present on the site to oversee all subcontractors, then that is going to increase the cost of the installation, because the installer is going to have to be compensated for that time.

(7) Butch Van Drunen, who is an installer, was concerned that the training course is not clear about which regulations must be followed, such as FEMA guidelines versus the manufacturer's installation manual. The same commenter was concerned that installers are going to have to be told the time frame in which inspectors will come out to perform the inspections, so that they can determine the appropriate time to perform the work. This is a particular concern with respect to digging footers, which can fill up with water and can also be a hazard for children.

(8) Ken Martin, who has been setting up manufactured housing for about 25 years, was concerned about holding installers responsible for the work of various different professions, which would make

them more like a general contractor than they are currently. He was also concerned that if one contractor is required to oversee the entire job from start to finish, then it will put subcontractors that currently perform one specific aspect of the set-up, such as footers, out of business. It would also take power away from park owners to determine who they want to perform specific aspects of the total job, such as footers.

(9) Brian Mummert, a subcontractor who works with a lot of dealerships installing skirting, agreed that requiring one licensee to oversee the entire job would put a lot of subcontractors that specialize like he does out of business. It takes control away from park owners, who sometimes like to specify who they want to do portions of the job. Licensed installers may choose the least expensive subcontractor rather than the one that the park owner would prefer. Also, if people who now typically only perform specific aspects of the job, such as footers, can only work if they get an installer's license, then they may start carrying out entire installations, which they may not be qualified to do.

(10) William Raither, a manufactured home owner, who has had issues with the installation of his own home, felt strongly that the dealers, rather than the installers, are the ones who should be held responsible for the set up of the home. He has had many issues with his new home, which has not cleared inspection and has major problems. Mr. Raither also questioned the appropriateness of Mr. Eggleston's participation on the Board in light of his position with an industry organization.

(11) Jim Cain, from Capital Homes, expressed concern that following plans for the specific model number of the home, rather than for the specific serial number of the home, would not necessarily produce the correct installation. He felt that soil conditions must be taken into account to correctly install the home. He also expressed concern that small companies would find it very difficult to have one installer on the same site for the duration of an installation. They often have five installations going on at a time, and this would pose a real problem. They use subcontractors, and it would be difficult for them to have a licensed installer on site all of the time to oversee subcontractors. He also does not feel it is appropriate to hold the licensed installers responsible for the work of subcontractors.

(12) Clay Fulton, who runs the insurance agency Delmarva Underwriters, which specializes in surety bonds, noted that he has begun to get questions about the bond requirement and he attended the hearing to learn more about the issue. He also noted that several professions are required to be bonded to impose financial responsibility.

(13) Butch Van Drunen from Butch's Mobile Homes spoke again. He stated that he believed that a licensed installer should be present at all times during the installation, because that is the way to ensure that the installation is performed correctly. He does foresee difficulties with small businesses having a licensed installer on multiple sites at all times, but it is important because it is a dangerous business.

(14) Ken Martin spoke again and asked why, for example, plumbers and electricians, who have much more complex code requirements, are not required to be present for the entire job, whereas this Board is contemplating requiring a licensed installer to be present and overseeing the same job from start to finish.

(15) Brian Van Drunen questioned whether it is necessary to require multiple licensees who are all employed by the same business to each be bonded individually.

(16) Kevin Reinike, of Reybolt Homes, spoke again and commented that they intended to have licensed installers perform the installations, but that they would also be licensed and put their own license number on the installation sticker.

(17) Dave Sherman, with Clayton Homes, expressed concern about whether it is appropriate to allow a company, rather than a natural person, to hold a license. If a company can hold a license, he foresees problems identifying a person to hold accountable in the future, if something goes wrong with an installation, particularly due to employee turnover. He feels that individuals should be held responsible, rather than companies.

(18) Tom Morse, with Mason Homes, emphasized the need to clarify the role of the installer as opposed to other contractors working on the home. He also pointed out the danger in the profession. He expressed concern that the training course did not clarify the appropriate installation methods.

(19) Richard Dewitt spoke again, and noted that the work of other contractors, such as electricians, would continue to be inspected under other applicable codes. This process will not eliminate the requirement that the work of other contractors must pass inspection.

(20) Robin Miller, from Capital Homes, expressed concern about the training course, citing a specific issue that arose at the class he attended. He suggested that the Board consider other educators.

November 13, 2006 Public Comment

The following comments were made on the revised proposed regulations at the public hearing on November 13, 2006:

(1) Kevin Reinike expressed concern that the training course was not adequate. He stated that the State of Pennsylvania has a much more detailed training course, covering more topics. The Board should consider a new education provider. He heard from several people who attended one course that they felt they were not correctly informed about particular aspects of the installation.

(2) Butch Van Drunen was concerned about the time frame for which a licensed installer would be held responsible for issues that arise with the home. He believes the Board should consider providing a time limit for the installer's liability.

(3) Rob Smith expressed concern about who would be authorized to perform inspections. Currently his company performs inspections under contract with a government agency. He is concerned that his company would not be permitted to inspect manufactured home installations under the Board's statute.

(4) Sam Trice expressed concern that the Board's website was not up-to-date with information about the licensing process.

Findings of Fact and Conclusions of Law

The Board considered the proposed regulations and the public comments at each of the hearings. Pursuant to 24 **Del.C.** §4416, the Board has statutory authority to promulgate rules and regulations to implement or clarifying specific sections of its statute. At the September public hearing, many members of the public expressed concerns about the duties and responsibilities of installers in relation to other professions that may perform work on a manufactured home prior to the issuance of the certificate of occupancy, and also about the responsibility of installers in relation to that of retailers. The Board notes that the statute defines an "installation," and that the proposed rules and regulations further clarified that installers would not be responsible for the work of other professions that were already subject to their own inspections, or whose work fell outside of the definition of an "installation." The Board has determined that drywall work, interior trim work, and carpet seaming do not fall within the definition of "installation." The installation of skirting is also outside the definition of "installation" of a manufactured home, and the Board's statute and rules and regulations do not apply to those who install skirting.

The regulations further clarify that only natural persons, and not corporations or other business entities, can hold a license. The Board noted that the statute provides the Board the power to license installers and certify inspectors; however, the Board has no authority to license retailers as occurs in some other jurisdictions. Placing any responsibility on retailers, unless otherwise licensed as installers, falls outside of the Board's powers at this time.

Comments were received about the education course. The Board appreciates the feedback of those who spoke on this topic, and will relay them to the education provider. The regulations do not identify a specific course or course provider. Instead, the rules and regulations provide guidelines for the content of the training and continuing education courses. Using those guidelines, the Board will determine whether or not a particular course that has been submitted for approval can be used to obtain a license or for continuing education. Because of this structure, the Board did not feel that the rules and regulations needed to be altered at this time to address concerns about the training course.

Several members of the public were concerned that they had no clear guidance regarding which laws, regulations or guidelines they should follow to properly install a manufactured home. The Board noted that the statute identifies which information is to be relied on, and therefore which information trumps other requirements. If the home has a manufacturer's installation manual, the law requires the installer to follow the manual, unless the law specifies a more stringent standard. The Board has set certain minimum standards for footers in its regulations, which must be adhered to if they exceed the requirements in the manufacturer's installation manual. Also, more stringent FEMA standards always override specifications in the manufacturer's installation manual.

Two main concerns were voiced about the installation inspections: (1) who would perform them; and (2) whether they would have the necessary information to do so. The statute provides that the counties are responsible for performing the inspections unless a municipality affirmatively indicates to the county that the municipality will perform the inspection. For those that felt that an adequate inspection could not be performed unless the inspector had a copy of the manual, the Board determined that installers would have to supply the

inspectors with the information necessary to inspect the home, either at the time of inspection or in advance. In addition, with respect to Regulation 9.2, the installer must supply a copy of the design, verified to be consistent with the soil conditions. It will be up to the inspection agency to determine when and how they want this information. The Board also feels that the licensed installer need not be present when the footers are inspected.

The Board understands the concern about the license information required on a licensee's work vehicle. The statute indicates the size of the lettering and prohibits any abbreviation. The statute also specifies that each licensee must place the designation on his or her work vehicle. Because these requirements are in the statute, the Board cannot change them in the rules and regulations.

Several comments at the September meeting expressing concern about the impracticality and increased costs associated with requiring one licensed installer to be on site to oversee the entire installation of a particular home. In addition, because it is common for an installer to hire a subcontractor to install footers, this requirement would significantly harm the business of those subcontractors, if not put them out of business. The Board determined to revise the regulations to clarify that a licensed installer must oversee all aspects of an installation, but it need not be the same installer for the entire job. However, the installer that signs the installation sticker will be responsible for the installation, and it will be incumbent upon that installer to be certain that the home was installed correctly, and that any subcontractors performed their tasks properly.

The Board also revised the proposed regulations to eliminate the requirement for a performance bond; instead, the Board will require a license or surety bond. Although the statute specifies that an applicant must provide proof of a "performance bond", the Board understands that it is impractical, if not impossible to obtain a performance bond before an applicant had obtained his or her license. A performance bond is typically a bond that is specific to a particular job, and ensures that a particular job will be completed. A performance bond is often required for a private company engaged in a government construction project. The Board feels that it satisfies the intent of the bond requirement by requiring all applicants to show proof of a license or surety bond, and will propose legislation to change the statute accordingly.

The Board determined that the two changes noted above, which affected proposed Regulation 1.0 and 3.1.4, were substantive. The Board determined to revise the proposed regulations and hold another public hearing to determine whether or not to adopt the revised proposed regulations. The Board published the proposed regulations, as revised, in the October 1, 2006 *Register of Regulations*.

The revised proposed regulations were considered at the November 13, 2006 public hearing. At the November hearing, members of the public commented on four topics: (1) the education provider, (2) the responsibility undertaken by the licensed installer, (3) whether private companies contracting with a government entity would be able to perform inspections; and (4) the lack of information about the licensing process. First, the Board noted the concerns about the training course; however, the regulations do not specify a particular course provider. The Board has the ability to approve other courses that are submitted to them if those courses meet the qualifications in the regulations. The regulations describe the type of training course that would be acceptable, and state that the Board will review requests from educational providers and determine whether or not courses submitted for approval could be used to satisfy the training or the continuing education requirement; therefore, this issue does not involve a change to the rules and regulations at this time, as noted above. Second, with respect to the scope of the installer's responsibility, the Board again felt that the definition of installation in the statute, as explained in the regulations, addressed the fact that installers would not be responsible for work that was subject to its own codes and inspection process, or that otherwise fell outside the definition of an "installation." The Board does not feel that it is appropriate to place a time limit on the installer's responsibility. Whether or not an installer is responsible for problems that arise with a manufactured home will depend on the facts and circumstances of each individual case. Third, the issue of who may perform inspections is specifically addressed in the statute, and the Board cannot alter the requirements by regulation. Finally, the Board noted the questions about information on the website, and clarified the area on the website where prospective licensees can obtain the necessary information.

In summary, at the November meeting, the Board again considered the proposed rules and regulations and the public comments. The comments raised at the November meeting did not implicate the language of the proposed rules and regulations. After deliberations, the Board determined that it had the authority to promulgate the regulations to implement and clarify its statute, and voted unanimously to adopt the regulations as published in the October *Register of Regulations*.

Decision and Effective Date

The Board hereby adopts the rules and regulations, as published in the *Register of Regulations*, Vol. 10, Issue 4, October 1, 2006, to be effective 10 days following publication of this order in the *Register of Regulations*.

Text and Citation

The text of the revised rule remains as published in the *Register of Regulations*, Vol. 10, Issue 4, October 1, 2006, and as attached hereto as Exhibit A.

SO ORDERED this 11th day of December, 2006.

DELAWARE MANUFACTURED HOME INSTALLATION BOARD

Allan Redden, President
 William Dale Hammond, Vice President
 Estella Class, Education Officer
 James W. Brockton, Complaint Officer
 Charles Eggleston
 Van Milligan
 Jill Fuchs
 Victor Kennedy

* Please note that no changes were made to the regulation as originally proposed and published in the October 2006 issue of the *Register* at page 634 (10 DE Reg. 634). Therefore, the final regulation is not being republished. Please refer to the October 2006 issue of the *Register* or contact the Delaware Manufactured Home Installation Board for more information.

PUBLIC SERVICE COMMISSION

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

ORDER NO. 7078

AND NOW, this 21st day of November, 2006;

IN THE MATTER OF THE ADOPTION OF		
RULES AND REGULATIONS TO IMPLEMENT		
THE PROVISIONS OF 26 DEL.C. CH. 10		
RELATING TO THE CREATION OF A COMPETITIVE		PSC REGULATION DOCKET NO. 49
MARKET FOR RETAIL ELECTRIC SUPPLY SERVICE		
(OPENED APRIL 27, 1999 AND		
RE-OPENED JANUARY 7, 2003)		

WHEREAS, in 1999, the Commission originally adopted "Rules for Certification and Regulation of Electric Suppliers (the "Rules")," for the purpose of establishing the required rules, regulations, and standards for electric suppliers, who, as a result of the "Electric Utility Restructuring Act of 1999" ("Restructuring Act"), were allowed to compete with Delmarva Power & Light Company ("DP&L") for the supply of electric service in the State of Delaware (see PSC Order No. 5207 (Aug. 31, 1999)); and

WHEREAS, in PSC Order No. 6098 (Jan. 7, 2003), the Commission directed Staff to undertake a full review of the Rules promulgated in 1999 and report back to the Commission regarding any proposed amendments to the Rules Staff believed were appropriate in light of recent statutory and regulatory changes (i.e., PSC Regulation Docket No. 56 -- renewable portfolio standards and House Bill No. 6 -- amendments to the

Restructuring Act), and after consultation with interested electric suppliers; and

WHEREAS, on March 14, 2006 by PSC Order No. 6869, the Commission directed publication of notice of the proposed amendments to the Rules and set the deadline of May 1, 2006 for the filing of comments by interested parties; and

WHEREAS, the designated Hearing Examiner on May 25, 2006, held a duly noticed public hearing on the proposed amendments to the Rules and the comments received on the proposed changes from the parties participating in the proceeding; and

WHEREAS, after the public hearing, the Hearing Examiner considered additional written comments of the interested parties, as well as Staff's testimony in support of the proposed amendments to the Rules, and issued a report dated July 13, 2006 of his Findings and Recommendations to the Commission; and

WHEREAS, the Commission, in public session on August 22, 2006, reviewed the Hearing Examiner's Report and heard comment on the written exceptions filed to the Report dealing with: (1) the appropriate rescission period; and (2) what customer information, if any, should be made available to third-party suppliers; and

WHEREAS, by Order No. 7023, the Commission (in an abundance of caution) determined that the revised Rules made "substantive" changes from the proposed rules published April 1, 2006, so that, as required by 29 **Del.C.** Section 10118(c), the amended Rules were published in the October 1, 2006 issue of the *Delaware Register of Regulations* to allow for another opportunity for comment either in writing or at a public hearing; and

WHEREAS, the Commission received no new comments relating to the final proposed Rules; and

WHEREAS, the Commission held a public hearing on November 21, 2006, to consider final adoption of the Rules;

Now, therefore, **IT IS ORDERED THAT:**

1. The Commission hereby adopts and incorporates by reference, in its entirety, its prior Order No. 7023 (Sep. 5, 2006).

2. The Commission hereby adopts and approves the proposed *Rules for Certification and Regulation of Electric Suppliers* attached hereto as Exhibit "A" (being the same Regulations that were approved and published pursuant to Order No. 7023). The Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the *Delaware Register of Regulations*, the exact text of the Regulations attached hereto as Exhibit "A" for publication on January 1, 2007.

3. The effective date of this Order shall be the later of January 10, 2007, or ten days after the date of publication in the *Delaware Register of Regulations* of the Regulations attached hereto as Exhibit "A."

4. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair

Joann T. Conaway, Commissioner

Jeffrey J. Clark, Commissioner

Dallas Winslow, Commissioner

Jaymes B. Lester, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

* Please note that no changes were made to the regulation as originally proposed and published in the October 2006 issue of the *Register* at page 664 (10 DE Reg. 664). Therefore, the final regulation is not being republished. Please refer to the October 2006 issue of the *Register* or contact the Public Service Commission for more information.

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER NINETY-THREE**

Amendment To Executive Order Number Eighty-Eight Regarding The Delaware Science And Technology Council

WHEREAS, by Executive Order Number 88, dated June 20, 2006, the Delaware Science and Technology Council (the "Council") was established as a statewide organization; and

WHEREAS, it is deemed beneficial and in the best interest of the Council that the membership be increased to up to thirty (30) members, to ensure the most effective utilization of the Council.

NOW, THEREFORE, I, RUTH ANN MINNER by virtue of the authority vested in me as Governor of the State of Delaware do hereby declare and order the following:

1. Executive Order Number 88 is hereby amended by striking the first sentence in the first paragraph in section 2, and replacing it with the following sentence:

"The Council shall have up to 30 members representing leadership from the academic, public and private sectors."

2. Except as otherwise provided herein, all of the provisions of Executive Order Number 88 shall remain in full force and effect.

Approved and adopted: December 8, 2006

Ruth Ann Minner,
Governor

ATTEST:
Harriet Smith Windsor, Secretary of State

DEPARTMENT OF FINANCE DIVISION OF REVENUE

PUBLIC NOTICE

Technical Information Memorandum 2006-05 An Act To Amend Title 30 Relating To Sports Officials

House Bill 381, with House Amendment No. 1 and Senate Amendment No. 1, amends Title 19 to define sports officials of non-professional games and events as independent contractors for purposes of workers compensation. The Bill states that any person providing services as a 'sports official' at a sports event in which the players are not compensated shall not be considered employees under Title 19. For purposes of Title 19 'sports officials' includes an umpire, referee, judge, scorekeeper, timekeeper, organizer, or other person who is a neutral participant in a sports event. This exclusion does not apply to workers' compensation claims against schools, associations of schools or other organizations sponsoring a sports contest where the claimant is a sports official who is a regular employee of such school, association of schools, or other organization sponsoring the sports contest.

For purposes of occupational licensing requirements any person who meets the definition of a 'sports official', as described herein, and is a member of an organization that contracts with Delaware schools, associations of schools or other non-profit organizations sponsoring a sports contest in Delaware where the said person is a 'sports official' shall not be required to obtain an occupational business license subject as provided in §2301(e)(2) of Title 30.

DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION
NOTICE OF PUBLIC HEARING

The Delaware Thoroughbred Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to amend the following rules:

- Rule 6.0 to better describe license structure and requirements.
- Rule 11.1.1 to require eligibility at the time of entry and starting of a race; and
- Rule 15 to clarify policy and procedure surrounding the use, testing and penalty for prohibited substances and impermissible levels of acceptable substances.

The Commission will hold a public hearing on the proposed rule change on February 27, 2007. Written comments may be sent via e-mail to: john.wayne@state.de.us, or via regular U.S. postal delivery to: John F. Wayne, Executive Director, Delaware Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, DE 19804.

NUTRIENT MANAGEMENT
PUBLIC NOTICE

1201 Nutrient Management Certification Regulations

Pursuant to 29 **Del.C.** §10115, I hereby recommend the proposed modifications to the nutrient handling certification regulations and mandate regulations to be posted in the *Register of Regulations* during the month of January, 2007.

Nutrient Management Certification Regulation Amendments (Exhibit A): Certification by the Delaware Nutrient Management Program, 2320 S. Dupont Hwy., Dover, DE 19901, is required (3 **Del.C.** §2201 - 2290) for all who apply fertilizer and/or animal manure greater than 10 acres or who manage animals greater than 8,000 pounds of live animal weight. The proposed changes to the certification regulations establish nutrient handling requirements for certain nutrient handlers. The proposed regulation addresses application timing and placement for commercial inorganic fertilizer and organic fertilizer

Comments on the proposed changes will be accepted from January 1, 2007 until January 31, 2007. Any comments should be provided to the Nutrient Management Program office located at 2320 S. Dupont Hwy., Dover, DE 19901, ATTN: William Rohrer. A hearing for the proposed regulations will be conducted at the Delaware Department of Agriculture on January 22, 2007 at 4:00 PM. A meeting to accept the proposed changes was held at the Nutrient Management Full Commission meeting on December 12, 2006 at 7:00 p.m. The accepted changes are indicated below.

Amendments: Paragraphs 6.0 - 14.0, reference 1200 Nutrient Management, 1201 Nutrient Management Certification Regulations; Paragraph 4.0, reference Nutrient Management, 1203 Mandatory Nutrient Management Plan Reporting Implementation Regulations.

DEPARTMENT OF EDUCATION

The Department of Education will hold its monthly meeting on Thursday, January 18, 2007 at 9:00 a.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF FINANCE
DIVISION OF REVENUE
PUBLIC NOTICE

301 Publication of Tax Information

Questions have arisen about the application and interplay between sections (b)(2) and (b)(4) of the act as they relate to the publication of names when in the case of entities other than natural persons the Department is contemplating publishing the names of 25% owners, beneficial owners, or responsible officers of such entities. Particularly, the Department has been asked if the word "taxpayer" appearing in the first line of section (b)(2) and in section (b)(4) means only "the entities other than natural persons" referred to in last part of section (b)(2) or whether the word "taxpayer" as used in section (b)(2) includes those individual 25% owners, beneficial owners or responsible officers of the entities whose names the Department intends to publish?

Questions or comments about this regulation may be directed to Deputy Director Colleen Yegla at c.yegla@state.de.us or by phone to (302) 577-8680. The deadline for receipt of public comments is November 30, 2006.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
NOTICE OF PUBLIC HEARING

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend existing rules in the Division of Social Services Manual (DSSM) to comply with the transfer of assets provisions mandated by the Deficit Reduction Act (DRA) of 2005 (Public Law 109-171).

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 and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 (new fax number) by January 31, 2007.

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT
NOTICE OF PUBLIC HEARING

On April 15, 2004, the United States Environmental Protection Agency designated Delaware's Sussex County as Non-Attainment for meeting the 8-hour national ambient air quality standard for Ozone. The Delaware Department of Natural Resources and Environmental Control's Air Quality Management Section has drafted language to include Sussex County in the Ozone Season Open Burning Ban as well as expand the open burning ban timeframe from June 1st - August 31st in the current regulation, to May 1st - September 30th, and to clarify the prohibitions in the existing regulation and their interaction with other applicable laws and regulation.

The changes mentioned above constitute the primary amendments to the regulation. However, due to the expansion of the burning ban statewide, the format of the entire regulation required changing because the prohibitions that were attributable to certain areas no longer exists. As a result, the approach taken to the

amendment is to delete the existing regulation in its entirety and adopt a new version. Except for the expansion detailed above, the only changes made are to clarify the implementation of the regulation, based on experience of staff, and are not intended to be more stringent.

Public Hearing scheduled January 31, 2007 beginning at 6:00 pm DNREC Auditorium, Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Contact Valerie Gray (302) 739-9402, December 14, 2006. Email - Valerie.gray@state.de.us.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
200 Board of Landscape Architects
NOTICE OF PUBLIC HEARING

The Delaware Board of Landscape Architects in accordance with 24 **Del.C.** §205 has proposed amendments to rule 6.0 *Renewal of Licenses* and rule 7.0 *Continuing Education as a Condition of Biennial Renewal* of its rules and regulations. The proposed amendments enable licensees to renew their licenses online and attest that they have completed the required continuing education. Documentation of having completed the required continuing education must still be maintained by the licensee but it will only be required to be produced in the event the licensee is randomly selected for continuing education audit post renewal.

A public hearing will be held on February 8, 2007 at 9:15 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Landscape Architects, 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
700 Board of Chiropractic
NOTICE OF PUBLIC HEARING

The Delaware Board of Chiropractic, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §706(a)(1), proposes changes to its Regulation 3.0 affecting the certification in a chiropractic specialty. Specifically, the amendments specify two nationally recognized certification bodies whose requirements for practitioner specialization are acceptable to the Board.

A public hearing is scheduled for Thursday, February 15, 2007 at 8:30 a.m. in the second floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Sandra Wagner at the above address. The final date to submit written comments will be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Sandra Wagner at the above address or by calling (302) 744-4532.

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

DIVISION OF PROFESSIONAL REGULATION
1900 Board of Nursing
NOTICE OF PUBLIC HEARING

The Delaware Board of Nursing in accordance with 24 **Del.C.** §1906(1) has proposed changes to its rules and regulations related to Regulation 15.0 "Offenses Substantially Related to the Practice of Nursing." The Board has re-evaluated the list of offenses in Regulation 15.0 as the result of statutory changes to 24 **Del.C.** §§1910 and 1914 which require more than 5 years to have elapsed since the applicant for licensure has discharged all imposed sentences with regard to the offenses in Regulation 15.0. The Board is proposing to delete a number of the offenses and/or to limit the consideration of certain offenses to felony convictions.

A public hearing will be held on February 21, 2007 at 9:00 a.m. The public hearing will be held in the Corporate Training Center (CTC) Room 400, the Delaware Technical Community College, 1832 N. DuPont Hwy, Dover DE 19901 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 Nursing, 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
3300 Board of Veterinary Medicine
NOTICE OF PUBLIC HEARING

The Board of Veterinary Medicine pursuant to 24 **Del.C.** §3306 purposes to change Professional Regulation 9.1.2. The Board will hold a public hearing on February 13, 2007. Written comments should be sent to Jennifer Myer, Administrative Assistant to the Board of Veterinary Medicine, Division of Professional Regulation, Cannon Building, 861 Silver Lake Boulevard, Suite 203, Dover, DE 19904-2467.

The proposed changes are for the purpose of allowing and facilitating online continuing education attestation.

DEPARTMENT OF TRANSPORTATION
NOTICE OF PUBLIC COMMENT PERIOD

The Delaware Department of Transportation through its Transportation Solutions - Utilities Section has developed revised regulations for the installation, adjustment, and maintenance of utility lines and appurtenances within the rights-of-way of Delaware's highways. These regulations define the requirements which apply to utility accommodation along or within the rights-of-way of State-controlled highways, and State-maintained streets and roads within suburban developments or within the incorporated limits of a municipality. The Utilities Manual revises and updates the DelDOT Utilities Design Manual, effective in October 1995.

The Departments will take written comments on the Regulations from January 1, 2007 through January 31, 2007. Any requests for copies of the Utilities Manual, or any questions or comments regarding this document should be directed to:

Francis Hahn, Utilities Engineer
Delaware Department of Transportation
PO Box 778
Dover, DE 19903
(302) 760-2269 (telephone) (302) 739-8282 (fax) fran.hahn@state.de.us

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**Carl C. Danberg,
Attorney General**

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