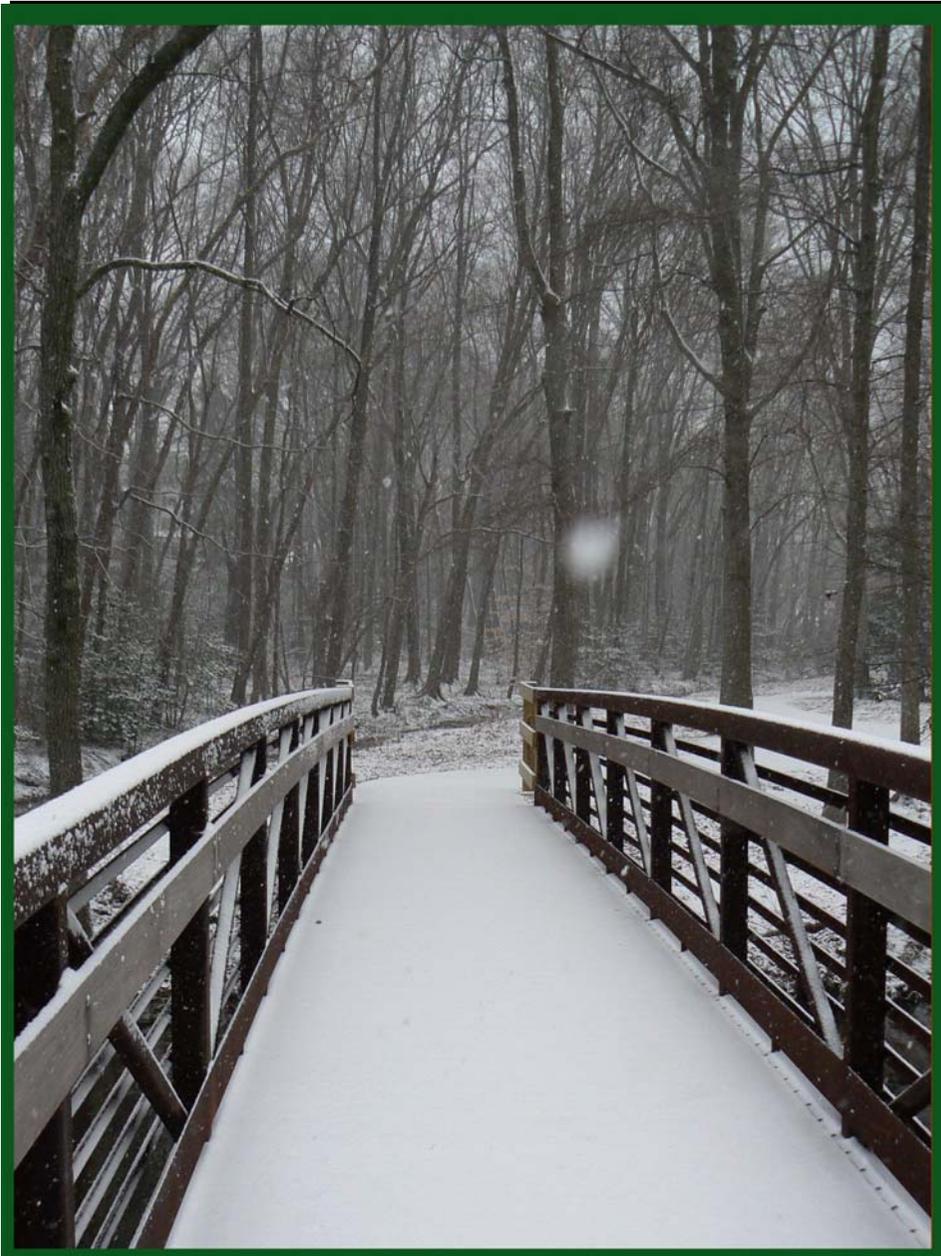

Delaware Register of Regulations

Issue Date: January 1, 2010

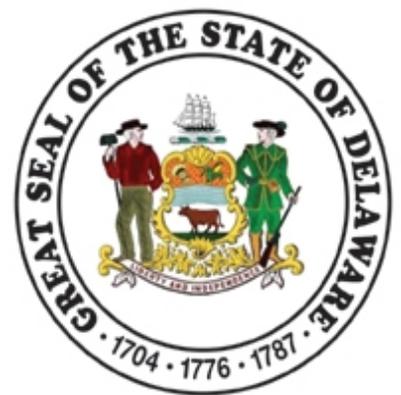
Volume 13 - Issue 7, Pages 871 - 959



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Regulations:
Proposed
Final

Calendar of Events &
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before December 15, 2009.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

13 **DE Reg.** 24-47 (07/01/09)

Refers to Volume 13, pages 24-47 of the *Delaware Register* issued on July 1, 2009.

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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
February 1	January 15	4:30 p.m.
March 1	February 15	4:30 p.m.
April 1	March 15	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 14	4:30 p.m.

DIVISION OF RESEARCH STAFF

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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 EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 612

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

612 Possession, Use or Distribution of Drugs and Alcohol

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** 612 Possession, Use or Distribution of Drugs and Alcohol to clarify parents or legal custodians shall not be required to provide or sign a form of release where the student's use and possession of an asthmatic quick relief inhaler or autoinjectable epinephrine is determined by the student's IEP or Section 504 Team to be necessary for the student's educational placement. In addition, except as provided for in a student's Section 504 Plan or IEP, the school nurse may not unilaterally impose limitations or restrictions on a student's use and possession of an asthmatic quick relief inhaler or autoinjectable epinephrine if a Section 504 or IEP Team has determined the use of the medication is necessary for the student's educational placement.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before February 3, 2010 to Susan K. Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is related to the possession, use or distribution of drugs and alcohol and does not specifically address student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is related to the possession, use or distribution of drugs and alcohol and does not specifically address equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation is related to the possession, use or distribution of drugs and alcohol and continues to ensure that all students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is related to the possession, use or distribution of drugs and alcohol and continues to ensure that all students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation is related to the possession, use or distribution of drugs and alcohol and continues to 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 is related to the possession, use or distribution of drugs and does not place unnecessary reporting or administrative requirements on decision makers on the local board or school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The reauthorized regulation preserves the decision making authority and accountability that already exists.

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 is related to the possession, use or distribution of drugs and alcohol and does not specifically address the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the possession, use or distribution of drugs and alcohol.

10. What is the cost to the State and to the local school boards of compliance with the regulation? No additional costs to the state or local boards are contemplated by the amendments to this regulation.

612 Possession, Use or Distribution of Drugs and Alcohol**1.0 The Following Policy on the Possession, Use, or Distribution of Drugs and Alcohol Shall Apply to All Public School Districts and Charter Schools**

- 1.1 The possession, use and/or distribution of alcohol, a drug, a drug like substance, a look alike substance and drug paraphernalia are wrong and harmful to students and are prohibited within the school environment.
- 1.2 Student lockers are the property of the school and may be subjected to search at any time with or without reasonable suspicion.
- 1.3 Student motor vehicle use to and in the school environment is a privilege which may be extended by school districts or charter schools to students in exchange for their cooperation in the maintenance of a safe school atmosphere. Reasonable suspicion of a student's use, possession or distribution of alcohol, a drug, a drug like substance, a look alike substance or drug paraphernalia in the school environment, may result in the student being asked to open an automobile in the school environment to permit school authorities to look for such items. Failure to open any part of the motor vehicle on the request of school authorities may result in the police being called to conduct a search, and will result in loss of the privilege to bring the vehicle on campus.

- 1.4 All alcohol, drugs, drug like substances, look alike substances and drug paraphernalia found in a student's possession shall be turned over to the principal or designee, and be made available, in the case of a medical emergency, for identification. All substances shall be sealed and documented, and, in the case of substances covered by 16 **Del.C.** Ch. 47, turned over to police as potential evidence.

12 DE Reg. 781 (12/01/08)

2.0 The Following Definitions Shall Apply to This Policy and Will be Used in All District and Charter School Policies

"Alcohol" shall mean alcohol or any alcoholic liquor capable of being consumed by a human being, as defined in 4 **Del.C.** §101 including alcohol, spirits, wine and beer.

"Distribute" "Distributing" or "Distribution" shall mean the transfer or attempted transfer of alcohol, a drug, a look alike substance, a drug like substance, or drug paraphernalia to any other person with or without the exchange of money or other valuable consideration.

"Drug" shall mean any controlled substance or counterfeit substance as defined in 16 **Del.C.** §4701 including, for example, narcotic drugs such as heroin or cocaine, amphetamines, anabolic steroids, and marijuana, and shall include any prescription substance which has been given to or prescribed for a person other than the student in whose possession it is found.

"Drug Like Substance" shall mean any noncontrolled and non prescription substance capable of producing a change in behavior or altering a state of mind or feeling, including, for example, some over the counter cough medicines, certain types of glue, caffeine pills and diet pills. The definition of drug like substance does not include tobacco or tobacco products which are governed by 14 **DE Admin. Code** 877 Tobacco Policy.

"Drug Paraphernalia" shall mean all equipment, products and materials as defined in 16 **Del.C.** §4701 including, for example, roach clips, miniature cocaine spoons and containers for packaging drugs.

"Expulsion" shall mean exclusion from school for a period determined by the local district or charter school not to exceed the total number of student days. The process for readmission shall be determined by the local district or charter school.

"Look Alike Substance" shall mean any noncontrolled substance which is packaged so as to appear to be, or about which a student makes an express or implied representation that the substance is, a drug or a noncontrolled substance capable of producing a change in behavior or altering a state of mind or feeling. See 16 **Del.C.** §4752A.

"Nonprescription Medication" shall mean any over the counter medication; some of the medications may be a "drug like substance."

"Possess" "Possessing" or "Possession" shall mean that a student has on the student's person, in the student's belongings, or under the student's reasonable control by placement of and knowledge of the whereabouts of, alcohol, a drug, a look alike substance, a drug like substance or drug paraphernalia.

"Prescription Drugs" shall mean any substance obtained directly from or pursuant to a valid prescription or order of a practitioner, as defined in 16 **Del.C.** §4701(24), while acting in the course of his or her professional practice, and which is specifically intended for the student in whose possession it is found.

"School Environment" shall mean within or on school property, and at school sanctioned or supervised activities, including, for example, on school grounds, on school buses, at functions held on school grounds, at extra curricular activities held on and off school grounds, on field trips and at functions held at the school in the evening.

"Use" shall mean that a student is reasonably known to have ingested, smoked or otherwise assimilated alcohol, a drug or a drug like substance, or is reasonably found to be under the influence of such a substance.

12 DE Reg. 781 (12/01/08)

3.0 Requirement of Each School District and Charter School to have a Policy.

Each school district and charter school shall have a policy on file and update it periodically. The policy shall include, as a minimum the following:

- 3.1 A system of notification of each student and of his/her parent, guardian or Relative Caregiver at the beginning of the school year, of the state and district policies and regulations. In addition a system for the notification of each student and his/her parent, guardian or Relative Caregiver whenever a student enrolls or re enrolls during the school year of the state and district policies and regulations.
- 3.2 A statement that state and district or charter school policies shall apply to all students, except that with respect to children with disabilities, applicable federal and state laws will be followed.
- 3.3 A written policy which sets out procedures for reporting incidents to police authorities, parents, guardians or Relative Caregivers and to the Department of Education, while maintaining confidentiality.
- 3.4 A written policy on how evidence is to be kept, stored and documented, so that the chain of custody is clearly established prior to giving such evidence over to the police.
- 3.5 A written policy on search and seizure.
- 3.6 A program of assistance for students with counseling and referral to services as needed.
- 3.7 A discipline policy which contains, at a minimum, the following penalties for infractions of state, district, and charter school drug policies.
 - 3.7.1 Use/Impairment: For a first offense, if a student is found to be only impaired and not in violation of any other policies, he/she shall be suspended for up to 10 days, or placed in an alternative setting for up to 10 days, depending upon the degree of impairment, the nature of the substance used, and other aggravating or mitigating factors. For a second or subsequent offense, a student may be expelled or placed in an alternative setting for the rest of the school year.
 - 3.7.2 Possession of alcohol, a drug, a drug like substance, and/or a look alike substance, in an amount typical for personal use, and drug paraphernalia: For a first offense, the student shall be suspended for 5 to 10 days. For a second or subsequent offense, a student may be expelled for the rest of the school year or placed in an alternative setting for the rest of the school year.
 - 3.7.3 Possession of a quantity of alcohol, a drug, a drug like substance, a look alike substance and drug paraphernalia in an amount which exceeds an amount typical for personal use, or distribution of the above named substances or paraphernalia: the student shall be suspended for 10 days, or placed in an alternative setting for 10 days. Depending on the nature of the substance, the quantity of the substance and/or other aggravating or mitigating factors, the student also may be expelled.
- 3.8 A policy in cases involving a drug like substance or a look alike substance for establishing that the student intended to use, possess or distribute the substance as a drug.
- 3.9 A policy which establishes how prescription and nonprescription drugs shall be handled in the school environment and when they will be considered unauthorized and subject to these state and local policies.
- 3.10 A policy which sets out the conditions for return after expulsion for alcohol or drug infractions.
- 3.11 Notwithstanding any of the foregoing to the contrary, all policies adopted by public school districts or charter schools relating to the possession or use of drugs shall permit a student's discretionary use and possession of an asthma quick relief inhaler ("Inhaler") or autoinjectable epinephrine with individual prescription label; provided, nevertheless, that the student uses the inhaler or autoinjectable epinephrine pursuant to prescription or written direction from a state licensed health care practitioner; a copy of which shall be provided to the school district or charter school; and further provided that the parent(s) or legal custodian(s) of such student provide the school district or charter school with written authorization for the student to possess and use the inhaler or autoinjectable epinephrine at such student's discretion, together with a form of release satisfactory to the school district or charter school releasing the school district or charter school and its employees from any and all liability resulting or arising from the student's discretionary use and possession of the inhaler or autoinjectable epinephrine and further provided that the school nurse may impose reasonable limitations or restrictions upon the

student's use and possession of the inhaler or autoinjectable epinephrine based upon the student's age, level of maturity, behavior, or other relevant considerations.

3.11.1 Parents or legal custodians shall not be required to provide or sign a form of release where the student's use and possession of an asthmatic quick relief inhaler or autoinjectable epinephrine is determined by the student's IEP or Section 504 Team to be necessary for the student's educational placement.

3.11.2 Except as provided for in a student's Section 504 Plan or IEP, the school nurse may not unilaterally impose limitations or restrictions on a student's use and possession of an asthmatic quick relief inhaler or autoinjectable epinephrine if a Section 504 or IEP Team has determined the use of the medication is necessary for the student's educational placement.

(For students who use prescribed asthmatic quick relief inhalers or autoinjectable epinephrine, see 14 DE Admin. Code 817, Administration of Medications and Treatments)

12 DE Reg. 781 (12/01/08)

4.0 Reporting Requirements and Timelines

- 4.1 Each local school district and charter school shall have an electronic copy of its current possession, use and distribution of drugs and alcohol policy on file with the Department of Education.
- 4.2 When a local school district or charter school revises its possession, use, and distribution of drugs and alcohol policy, it shall provide an electronic copy of the revised policy to the Department within thirty (30) days of the revision, even if the revision was made because of changes in Federal, state or local law, regulations, guidance or policies. 2 DE Reg. 2043 (5/1/99)

7 DE Reg. 767 (12/1/03)

12 DE Reg. 781 (12/01/08)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 736

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

736 Local School District and Charter School Citizen Budget Oversight Committees

A. Type of Regulatory Action Required

New Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 DE Admin. Code by adding a new regulation 736 Citizen Budget Oversight Committees pursuant to the requirements of House Substitute No. 1 to House Bill No. 119 of the 145th General Assembly. The regulation was first published in the November 2009 Register of Regulations and is now being re-published. The Department received several comments from several constituencies including citizens, lawmakers and the Governors Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. This republication reflects most of the concerns raised. The most common comments related to the selection committee and the ability to reject a locally developed policy. The Department did not incorporate any changes in relation to comments related to compensation for the committee members or indemnification since this is an advisory board.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before February 3, 2010 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education,

at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? This regulation establishes oversight committees for the finances of districts and charter schools pursuant to legislative action and does not specifically address student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? This regulation establishes oversight committees for the finances of districts and charter schools pursuant to legislative action and does not specifically address students receiving an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation establishes oversight committees for the finances of districts and charter schools pursuant to legislative action and does not specifically address student health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation establishes oversight committees for the finances of districts and charter schools pursuant to legislative action and does not specifically address students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation establishes oversight committees for the finances of districts and charter schools. The authority and flexibility of the decision making at the local board or school levels are preserved.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? This regulation establishes oversight committees for the finances of districts or charter schools. It is not intended that unnecessary reporting or administrative requirements are imposed 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? This regulation establishes oversight committees for the finances of the district or charter school. The financial decision making authorities do not change with this new regulation.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? This regulation establishes oversight committees for the finances of the district or charter school and is not an impediment to the implementation of other state educational policies, in particular, those addressing achievement in the core academic subjects.

9. Is there a less burdensome method for addressing the purpose of the regulation? The Department has asked for feedback from the business managers and charter directors and believes there is not a less burdensome method for compliance with the legislation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no specific costs identified with compliance with the regulation. There may be minimum costs related to the actual meetings, notices and any reproduction of material costs.

736 Local School District and Charter School Citizen Budget Oversight Committees**1.0 Purpose**

- 1.1 The purpose of this regulation is to outline procedures, criteria and responsibilities related to the local school district and charter school Citizen Budget Oversight Committees required pursuant to 14 Del.C. §1508. The Citizen Budget Oversight Committee is solely established to oversee the financial position of the local school district or charter school it is assigned to oversee. The local school board or charter school board shall retain all policy and decision-making authorities granted pursuant to Delaware Code.

PROPOSED REGULATIONS

2.0 Definitions

"Certificate of Completion" means the document provided by the Department of Education indicating the individual has attended and completed the Citizen Budget Oversight Committee training.

"Charter School" shall mean a school pursuant to 14 Del.C., Ch. 5.

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

"Trainer" means an individual approved by the Secretary of Education to provide the Citizen Budget Oversight Committee training.

3.0 Committee Members for Local School Districts

- 3.1 Each Local School District shall be required to establish a Citizen Budget Oversight Committee (Committee) no later than June 1, 2010. The Committee shall have access either electronically or in hard copy format to financial documents and financial information the Local School District has in its possession and that are relevant to the financial position of the district, with redactions permitted only to protect confidential personal information regarding students or employees.
- 3.2 The Committee shall have at least five (5) members with representation from parents, educators and taxpayers residing in the district. In addition, where possible, the Committee shall have at least two members with formal educational or vocational backgrounds amenable to oversight of school district financial statements. Further provided, Committee members shall not be compensated, except for allowable mileage for training or similar activities, for participation on such Committee.
- 3.3 Each Local School district may establish its own policy for its Citizen Oversight Budget Committee. The Local School District, if it chooses to establish its own policy, shall submit the policy to the Department within ninety (90) calendar days of the effective day of this regulation. The Associate Secretary for Finance and Services shall review the proposed policy and make a decision within fifteen (15) work days to approve or request revisions. The decision to approve or request revisions shall be based on whether the policy meets the provisions in 3.4
- 3.3.1 If the Department does not approve the submitted policy, the Department shall provide comment for areas requiring revisions within fifteen (15) work days of receipt of the proposed policy. The Local School District may submit a revised policy. If the revised policy is not subsequently approved, the Local School District shall follow the Department's Citizen Budget Oversight Committee policy for Local School Districts pursuant to 3.4. In addition, a Local School District may not resubmit a policy for approval more than one time during a fiscal year.
- 3.4 The Department's Citizen Budget Oversight Committee membership provisions shall be as follows:
- 3.4.1 Use the application form as developed and approved by the Department that delineates standard application language and additional information that includes, but is not limited to, the following:
- 3.4.1.1 Membership pursuant to 3.2;
- 3.4.1.2 Conflict of interest, and disqualification from membership upon identification thereof, criteria;
- 3.4.1.3 Selection, or removal, of the Chairperson to be determined by a majority of the membership of the committee;
- 3.4.1.4 Term length of two (2) years with option to extend to no more than three (3) additional terms based on the majority vote of the existing members of the Committee; however, a member may terminate his or her position upon written notice to the Chairperson; and
- 3.4.1.5 Experience and statement for reason for participation on the Committee.
- 3.4.2 Post the request for Committee members for at least fifteen (15) work days on its website and all school building main entrance doors;
- 3.4.3 Identify and post on its website the Selection Committee that consists of one educator from the district, one local school board member, one member of the local teacher's union, and at least two parents or community members who are not district employees or local school board members; and
- 3.4.4 Use the selection rubric developed and approved by the Department of Education.

3.5 Notwithstanding the above, a Local School District with an established citizen budget oversight committee or similar type of citizen committee established for financial oversight may submit a request to the Associate Secretary of Finance and Services for this established committee to be considered the Citizen Budget Oversight Committee pursuant to this regulation as long as the membership meets 3.2 of this regulation. The request shall be made in writing and the Associate Secretary of Finance and Services shall respond within fifteen (15) work days whether to approve such established committee to meet the requirements of this regulation. Upon the effective date of this regulation, any new members or membership solicitation shall be subject to the provisions herein.

4.0 Committee Members for Charter Schools

4.1 Each Charter School shall be required to establish its Citizen Budget Oversight Committee (Committee) no later than June 1, 2010. The Committee shall have access either electronically or in hard copy format to financial documents and financial information the Charter School has in its possession and that are relevant to the financial position of the district, with redactions permitted only to protect confidential personal information regarding students or employees.

4.2 The Committee shall have at least five (5) members with representation from educators and parents of students in the school and representation from the Department of Education. In addition, where possible, the Committee shall have at least two members with formal educational or vocational backgrounds amenable to oversight of school district financial statements. Further provided, Committee members shall not be compensated, except for allowable mileage for training or similar activities, for participation on such Committee.

4.3 Each Charter School may establish its own policy for its Citizen Oversight Budget Committee. The Charter School, if it chooses to establish its own policy, shall submit the policy to the Department within ninety (90) calendar days of the effective day of this regulation. The Associate Secretary for Finance and Services shall review the proposed policy and make a decision within fifteen (15) work days to approve or request revisions. The decision to approve or request revisions shall be based on whether the policy meets the provisions in 4.4.

4.3.1 If the Department does not approve the submitted policy, the Department shall provide comment on areas requiring revisions within fifteen (15) work days of receipt of the proposed policy. The Charter School may submit a revised policy. If the revised policy is not subsequently approved, the Charter School shall follow the Department's Citizen Budget Oversight Committee policy for Charter Schools pursuant to 4.4. In addition, a Charter School may not resubmit a policy for approval more than one time during a fiscal year.

4.4 The Department's Citizen Budget Oversight Committee membership provisions shall be as follows:

4.4.1 Use the application form as developed and approved by the Department that delineates standard application language and additional information that includes, but is not limited to, the following:

4.4.1.1 Membership pursuant to 4.2;

4.4.1.2 Conflict of interest, and disqualification from membership upon identification thereof, criteria;

4.4.1.3 Selection, or removal, of the Chairperson to be determined by a majority of the membership of the committee;

4.4.1.4 Term length of two (2) years with option to extend to no more than three (3) additional terms based on the majority vote of the existing members of the Committee; however, a member may terminate his or her position upon written notice to the Chairperson; and

4.4.1.5 Experience and statement for reason for participation on the Committee.

4.4.2 Post the request for Committee members for at least fifteen (15) work days on its website and all school building main entrance doors;

4.4.3 Identify and post on its website a Selection Committee that consists of one educator from the school, one Charter School board member, one teacher, and at least two parents or community members who are not Charter School employees or Charter School Board members; and

4.4.4 Use the selection rubric developed and approved by the Department of Education.

PROPOSED REGULATIONS

4.5 Notwithstanding the above, a Charter School with an established citizen budget oversight committee or similar type of citizen committee established for financial oversight may submit a request to the Associate Secretary of Finance and Services for this established committee to be considered the Citizen Budget Oversight Committee pursuant to this regulation as long as the membership meets 4.2 of this regulation. The request shall be made in writing and the Associate Secretary of Finance and Services shall respond within fifteen (15) work days whether to approve such established committee to meet the requirements of this regulation. Upon the effective date, any new members or membership shall be subject to the provisions herein.

5.0 Citizen Budget Oversight Committee Training

5.1 The Citizen Budget Oversight Committee Training (Training) means the educational programs developed by the Department of Education for the local school district and charter school Citizen Budget Oversight Committee members. This Training shall, at a minimum, consist of two (2) hours and cover the following topics:

- 5.1.1 Overview of education budget process and timeliness
- 5.1.2 Instruction in the basic rules of budgeting, including State of Delaware funds, local funds, and federal funds;
- 5.1.3 State Financial Management System; and
- 5.1.4 Reporting requirements.

6.0 District School Board and Charter School Board Financial Responsibility Training Requirement

6.1 Each member of a Citizen Budget Oversight Committee shall attend and receive a Certificate of Completion of the Citizen Budget Oversight Committee training within three (3) months of subsequent appointment to a Citizen Budget Oversight Committee. Provided further, additional training may be required from time to time as determined by the Department.

7.0 Schedule of School Board Financial Training

7.1 The Department shall annually publish a list of date(s) for Training. The Training shall be conducted by a Trainer as defined in this regulation.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 805

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

805 The School Health Tuberculosis (TB) Control Program

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 805 School Health Tuberculosis (TB) Control Program to update the types of testing for tuberculosis and to provide guidance for asymptomatic individuals. The Department engaged the Division of Public Health on review of the regulation and the proposed amendments.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before February 3, 2010 to Susan K. Haberstroh, Education Associate, Regulation Review, Department of

Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is related to tuberculosis testing and control and not specifically student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is related to tuberculosis testing and control and not specifically students receiving an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation is intended to ensure all students' and staff's health and safety is adequately protected, specifically regarding tuberculosis.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is related to tuberculosis testing and control and not specifically 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 preserves 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 does 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 amended regulation does not change where decision making authority and accountability is determined.

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 is consistent with other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing tuberculosis control in schools.

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

805 The School Health Tuberculosis (TB) Control Program**1.0 Definitions**

"New School Enterer" means any child between the ages of one year and twenty one (21) years entering or being admitted to a Delaware public school for the first time, including but not limited to, foreign exchange students, immigrants, students from other states and territories, and children entering from non public schools. For purposes of this regulation, "new school enterer" shall also include any child who is re-enrolled in a Delaware public school following travel or residency of one month in a location or facility identified by the Delaware Division of Public Health as an area at risk for TB tuberculosis exposure.

"School Staff and Extended Services Personnel" means all persons hired as full or part time employees in a public school ~~who are receiving compensation to work directly with students and staff.~~ This includes, but is not limited to teachers, administrators, substitutes, contract employees, bus drivers and student teachers whether compensated or not.

"Tuberculosis Risk Assessment" means a formal assessment by a healthcare professional to determine possible tuberculosis exposure through the use of a health history or questionnaire.

"Tuberculosis Test" means a Mantoux skin test, Quantiferon Gold blood test, or other test approved by the Delaware Division of Public Health.

PROPOSED REGULATIONS

“**Verification**” means a documented evaluation of the individual’s disease status.

“**Volunteers**” mean those persons who give their time to help others for no monetary reward and who share the same air space with public school students and staff on a regularly scheduled basis.

2.0 School Staff and Extended Services Personnel

- 2.1 School ~~s~~Staff and ~~e~~Extended ~~s~~Services pe rsonnel sh all p rovide th e ~~Mantoux tuberculin skin test~~ Tuberculosis Test results from a test administered within the past 12 months during the first 15 working days of employment.
- 2.1.1 ~~Tuberculin skin test~~ Tuberculosis Test requirements may be waived for public school staff and extended s ervices personnel w ho p resent a no tarized statement th at ~~tuberculin skin te sting tuberculosis testing~~ is against their religious beliefs. In su ch cases, the individual shall complete the Delaware Department of Education TB Health Questionnaire for School Employees or provide, within two (2) weeks, verification from a lice nsed health care provider or the Division of Pu blic Health that the individual does not pose a threat of transmitting tuberculosis to students or other staff.
- 2.1.1.1 If a sch ool st aff me mber o r ext ended services pe rson, wh o has ~~received~~ submitted a waiver because of religious beliefs, answers affirmatively to an y of the questions in th e Delaware Department of Edu cation TB Health Questionnaire for School Employees he/ she shall provide, within two (2) weeks, verification from a licensed health care provider or the Division of Public Hea lth th at the in dividual does not p ose a th reat of tr ansmitting tuberculosis to students or other staff.
- 2.1.2 ~~Student teachers~~ School Staff and Extended Services Personnel need not be retested if th ey move f rom district to district, ~~as part of th eir student teaching assignments~~ district to charter school, or charter school to charter school within a five year period; however, a copy of the result of the latest Tuberculosis Test shall be provided to the new district or charter school within sixty (60) days.
- 2.2 Every fifth yea r, b y Octob er 15th, all public schoo l st aff an d ext ended services p ersonnel sha ll complete the D elaware Department of Education TB Health Questionnaire for School Employees or, within two (2) we eks, p rovide ~~Mantoux tuberculin skin test~~ Tuberculosis Test r esults ad ministered within the last twelve (12) months.
- 2.2.1 If a sch ool st aff me mber o r ext ended services st aff me mber answers affirmatively to any of the questions in th e *Delaware Department of Education TB Health Questionnaire for School Employees* he/she sh all p rovide, w ithin two (2) we eks, verification fr om a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to students or other staff.
- 2.3 All documentation related to the School Health Tuberculosis (TB) Control Program shall be retained in the same manner as other confidential personnel medical information.

3.0 Volunteers

- 3.1 Volunteers shall com plete the *Delaware Department of Education’s TB Health Questionnaire for Volunteers in Public Schools* prior to their assignment and every fifth year thereafter.
- 3.1.1 If the volunteer answers affirmatively to any of the questions, he/she shall provide, within two (2) weeks, verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to the students or staff.
- 3.2 Each public school nurse shall collect and monitor all documentation related to the volunteer’s School Health Tuberculosis (TB) Control Program and store them in the school nurse’s office in a confidential manner.

4.0 New School Enterers

- 4.1 New school enterers shall show ~~proof of tuberculin~~ provide tuberculosis screening results as ~~described in 4.1.1 and 4.1.2 including from~~ either results from the Mantoux Tuberculin test or the results of a

~~tuberculosis risk assessment~~ a Tuberculosis Test or the results of a Tuberculosis Risk Assessment administered within the past 12 months prior to school entry. ~~Multipuncture skin tests will not be accepted.~~

- 4.1.1 If the new school enterer is in compliance with the other school entry health requirements, a school nurse who is trained in the use of the *Delaware Department of Education TB Risk Assessment Questionnaire for Students* may administer the questionnaire to the student's parent(s), guardian(s) or Relative Caregiver or to a new school enterer who has reached the statutory age of majority (18).
 - 4.1.1.1 If a student's parent(s), guardian(s) or Relative Caregiver or a student 18 years or older answers affirmatively to any of the questions, he/she shall, within two (2) weeks, provide proof of ~~Mantoux tuberculin skin test~~ tuberculosis testing results or provide verification from a licensed health care provider or the Division of Public Health that the student does not pose a threat of transmitting tuberculosis to staff or other students.
- 4.2 School nurses shall record and maintain documentation relative to the School Health Tuberculosis (TB) Control Program.

5.0 Tuberculosis Status Verification and Follow up

- 5.1 Tuberculosis Status shall be determined through the use of a ~~tuberculosis risk assessment, tuberculin skin test and other testing, which may include x-ray~~ Tuberculosis Risk Assessment, Tuberculosis Test or other testing, which may include x-ray or sputum culture. Individuals who either refuse the ~~tuberculin skin test~~ Tuberculosis Test or have positive reactions to the same, or give positive responses to a tuberculosis risk assessment shall provide verification from a licensed health care provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to staff or other students.
 - 5.1.1 Verification shall include Mantoux results recorded in millimeters (if test ~~were~~ was administered), or other Tuberculosis Test results, current disease status (i.e. contagious or noncontagious), current treatment (or completion of preventative treatment for TB tuberculosis) and date when the individual may return to his/her school assignment without posing a risk to the school setting.
 - 5.1.2 Verification from a health care provider or Division of Public Health shall be required only once if treatment was completed successfully.
 - 5.1.3 Updated information regarding disease status and treatment shall be provided to the public school by October 15 every fifth year if treatment was previously contraindicated, incomplete or unknown.
 - 5.1.4 Persons with a positive Tuberculosis Test, without active disease, who do not receive prophylactic treatment shall be excluded from school in the event of showing any signs or symptoms of active, infectious disease as described by the Division of Public Health.
- 5.2 In the event an individual shows any signs or symptoms of active ~~TB~~ tuberculosis infection, he/she ~~must~~ shall be excluded from school until all required medical verification is received by the school. During the specified verification and follow-up an asymptomatic individual, as described by the Division of Public Health, may remain in school until testing and evaluations are completed, but no longer than six (6) weeks.

1 DE Reg. 1971 (6/1/98)

3 DE Reg. 440 (9/1/99)

8 DE Reg. 1134 (2/1/05)

Non regulatory note: See 14 **DE Admin. Code** 930 Supportive Instruction (Homebound)

PROPOSED REGULATIONS

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

DSSM: 3033 Interim Assistance Reimbursement

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by January 31, 2010.

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

SUMMARY OF PROPOSED CHANGE

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Delaware's Cash Assistance Program. The proposed change adds new policy language to the Technical Eligibility for Cash Assistance section. Specifically, the proposed rule requires clients to participate in the Interim Assistance Reimbursement process that allows Delaware to be reimbursed for cash assistance benefits paid to cash assistance recipients while their approval for SSI benefits was pending.

Statutory Authority

- Social Security Act, Section 1631(g), *Reimbursement to States for Interim Assistance Payments*
- 20 CFR §§416.1901 - 416.1922, *Interim Assistance Provisions*
- P. L. 94 365, *The authority to repay the State for interim assistance is made permanent*
- P.L. 100-203, *Extends interim assistance reimbursement to situations in which payments are made by States or political subdivisions to persons whose SSI payments were suspended or terminated and who subsequently are found to be eligible for such benefits. Also clarifies that the payment from which the interim assistance reimbursement is paid must be the first payment of benefits relating to the interim period.*

Background

Section 1631(g) of the Social Security Act provides that a state may enter into an agreement with the Social Security Administration (SSA) to have the SSA transmit an individual's Interim Assistance Reimbursement (IAR) payment directly to the state as reimbursement for interim assistance to a Supplemental Security Income (SSI) applicant while a decision upon his/her SSI application is pending. Delaware has an Interim Assistance Reimbursement agreement with the Social Security Administration.

Summary of Proposed New Rule

DSSM 30 33, Interim Assistance Reimbursement - Requirements for Receipt of Cash Assistance by SSI Applicants: Interim Assistance Reimbursement (IAR) is the process used by the Social Security Administration to reimburse a State for the basic assistance provided by a State to an individual while either the individual's application for SSI was pending or during the period in which an individual's SSI benefits were suspended. A

portion of the individual's SSI payments are sent to the State as reimbursement if: (1) the State has an agreement with SSA to participate in IAR, (2) the individual has given SSA written authorization to have his/her SSI payment sent to the State as reimbursement, and (3) the individual is found eligible for SSI benefits or has had his/her benefits reinstated for the same period of suspense. Effective January 1, 2010, the proposed rule requires non-federally funded cash recipients to assign SSI benefits to the State for the purpose of reimbursing the State for assistance paid to the client while SSI eligibility determination was pending.

DSS PROPOSED REGULATION #09-47

NEW:

3033 Interim Assistance Reimbursement

3033.1 Requirements for Receipt of Cash Assistance by SSI Applicants

This policy applies to non-federally funded cash assistance recipients who have applied or intend to apply for SSI benefits.

1. Cash assistance applicants and recipients who are also SSI applicants are required to assign a portion of the SSI benefits they receive to the Division of Social Services to reimburse DSS for cash assistance received by the SSI applicant.
Delaware has an Interim Assistance Reimbursement (IAR) agreement with the Social Security Administration (SSA). This agreement allows Delaware's Division of Social Services (DSS) to receive reimbursement for the cash assistance provided to SSI applicants while their SSI eligibility decision was pending. The money reimbursed to the State is taken from the SSI applicant's initial and retroactive SSI benefits.
2. To be eligible for cash assistance, SSI applicants must authorize reimbursement through the IAR agreement for cash assistance received while SSI eligibility determination is pending.
3. A cash recipient is considered an SSI applicant if one or more of the following conditions exists:
 - A. The cash recipient has applied for SSI and is waiting for an eligibility decision.
 - B. The cash recipient has applied for reinstatement of SSI benefits and is waiting for a decision.
 - C. The cash recipient has received a request from DSS or another state agency to apply for SSI benefits.
 - D. The cash recipient has reported they intend to apply for SSI benefits or reinstatement of SSI benefits.
4. SSI applicants assign their SSI benefits to DSS by completing and signing a DSS approved IAR authorization form.

A cash recipient is required to complete an IAR authorization form when:

 - A. The client reports he or she intends to apply for SSI.
 - B. The client has made an application or reapplication for SSI benefits.
 - C. Documentation is provided from a health care provider that indicates the client is unable to work and the disability is expected to exceed 6 months in duration.
 - D. The client has applied or intends to apply to have SSI benefits reinstated after suspension or termination.
 - E. The IAR authorization form on file is more than 30 days old and the client has not applied for SSI.
 - F. The client is required to apply for SSI by DSS or another State agency.

PROPOSED REGULATIONS

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

DSSM: Child Care Subsidy Program 11006.5.1 Terminating Providers

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by January 31, 2010.

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

SUMMARY OF PROPOSED CHANGE

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program.

Statutory Authority

- 45 CFR §98.40, Compliance with applicable State and local regulatory requirements; and,
- 11 Del.C. Ch. 85, State Bureau of Identification

Summary of Proposed Change

DSSM 11006.5.1, Terminating Providers: this new rule, effective April 1, 2010, outlines the reasons the Division of Social Services may terminate any child care provider, including self-arranged clients.

DSS PROPOSED REGULATION #09-48

NEW:

45 CFR 98.40, 11 Del.C. Ch. 85

11006.5.1 Terminating Providers

This policy applies to all providers, including self-arranged clients.

DSS May Terminate Providers with Just Cause

1. The Division of Social Services may terminate any provider or self-arranged client from the Child Care Subsidy Program (Purchase of Care) if she or he:
 - A. Has a suspended, closed or terminated Office of Child Care Licensing (OCCL) license.
 - B. Is convicted of committing fraud against DHSS.
 - C. Charges fees not allowed by the Child Care Contract, Division policy, or a Division approved waiver; has failed to reimburse those fees and has repeated offenses in this area.
 - D. Charges Purchase of Care Plus fees when she or he is not a DSS authorized POC Plus provider.

- E. Does not keep accurate records per the DSS Child Care Contact; has had repeated offenses, has been counseled and has failed to meet the requirements of a corrective action plan agreed upon with the Child Care Monitor.
 - F. Does not keep an open bank account to receive direct deposit payments from the Child Care Subsidy Program. Direct deposit is mandatory for all DSS child care subsidy providers effective May 1, 2008.
 - 2. In addition to the items mentioned above, the Division of Social Services may terminate any relative care provider from the Child Care Subsidy Program (Purchase of Care) if she or he:
 - A. Does not complete the 45 hours of mandatory health and safety training hours within 18 months of becoming a relative or non-relative care provider as outlined in the initial orientation session.
 - B. Has an unsuitable criminal history or a member of the provider's household has an unsuitable criminal history. DSS uses Office of Child Care Licensing (OCCL) guidelines and Title 11, Chapter 85 of the Delaware Code to determine unsuitable criminal history.
-

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

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

REGISTER NOTICE SAN #2009-27

1. Title of the Regulations:

Adopt new Tidal Finfish Regulations No. 3518, Black drum Size Limit; Possession Limit; Landing Limit; Dealer Limit.

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

The Department of Natural Resources and Environmental Control (DNREC) is proposing new regulations for the management of black drum (*Pogonias cromis*). These proposed regulations would establish recreational and commercial size limits (16 or 32-inch minimum), a daily recreational creel limit (two or three fish), daily commercial landing and dealer limits (5,000 or 10,000 pounds) and an annual commercial landing quota (50,000 or 65,000 pounds).

In the absence of a coastwide interstate management plan for black drum, the States of Delaware and New Jersey have developed a bi-state plan for black drum to provide for the consistent management and regulation of the black drum resource in the Delaware River and Delaware Bay. The limited available data suggest black drum exploitation within the Delaware Estuary has increased in recent years. Adult black drum are targeted in the spring by the recreational and commercial fisheries as the species congregates to spawn in the Delaware Bay. Juvenile or young of the year black drum are landed during the late summer and fall. Adoption of these regulations will better ensure: 1) the long-term viability of the resource; 2) its continued use by current and future generations of the fishing public; 3) and the species continued role in the Delaware Estuary's ecosystem. The DNREC is legislatively limited to adopting regulations through a bi-state plan that are substantially similar to New Jersey's regulations. New Jersey is proposing to adopt more restrictive management options than presently are in place but the change in regulations are pending. DNREC will seek to adopt substantially similar regulations at the time of public hearing.

3. Possible Terms of the Agency Action:

These changes would go into effect in March, 2010 and remain in effect indefinitely unless changed.

4. Statutory Basis or Legal Authority to Act:

§903(b)(e)(2)b. 7 Delaware Code

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

No other regulations are affected.

6. Notice of Public Comment:

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901 or phone (302)-739-9914. A public hearing on these proposed regulations will be held in the Department of Natural Resources and Environmental Control auditorium at 6:00 PM on Thursday, January 21, 2010. Individuals may present their opinions and evidence either at the hearing or in writing to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901, or via email to Lisa.Vest@state.de.us.

7. Prepared By:

Craig A. Shirey Phone # 302-739-9914 December 10, 2009

3518 Black Drum Size Limit: Possession Limit: Landing Limit: Dealer Limit

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

1.0 Definition

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

"Delaware Estuary" means all those tidal waters located within an area to the north of a straight line drawn between Cape May Point, New Jersey and Cape Henlopen, Delaware, but not including the tributaries of the Delaware River and Delaware Bay.

2.0 Size limit

It shall be unlawful for a person to possess a black drum (*Pogonias cromis*) taken from the Delaware Estuary that measures less than (sixteen (16) inches **(Option A)** thirty-two (32) inches **(Option B)**), total length.

3.0 Possession Limits

- 3.1 It shall be unlawful for a recreational fisherman to take and reduce to possession more than three (3) **(Option A)** two (2) **(Option B)** black drum per day (a day being 24 hours) from the Delaware Estuary.
- 3.2 It shall be unlawful for a commercial fisherman or a vessel, regardless of the number of licensed commercial fishermen onboard that vessel, to possess or land more than 10,000 pounds **(Option A)** 5,000 pounds **(Option B)** of black drum taken from the Delaware Estuary in any one (1) day.

4.0 Landing Limit

It shall be unlawful for a commercial fisherman to sell, trade or barter or attempt to sell, trade or barter black drum or parts of black drum that are landed from the Delaware Estuary in this State after a date when the Department has determined or projected that 65,000 pounds **(Option A)** 50,000 pounds **(Option B)** of black drum have been or will be landed in this State from the Delaware Estuary by the commercial fishery in a calendar year.

5.0 Dealer limit

It shall be unlawful for a food fish dealer to accept from a commercial fisherman or a vessel more than 10,000 pounds **(Option A)** 5,000 pounds **(Option B)** of black drum harvested from the Delaware Estuary in any one (1) day.

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(b)(e)(2)b (7 Del.C., §903(b)(e)(2)b)
7 DE Admin. Code 3521

REGISTER NOTICE SAN #2009-32

1. Title of the Regulations:

To amend Tidal Finfish Regulation 3521, Weakfish Size Limits; Possession Limits; Seasons

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

A recent peer-reviewed assessment of weakfish found the stock to be depleted and at an all-time low level of abundance. Spawning stock biomass was estimated to be just three percent (3%) of an unfished stock, well below the 20% threshold for management action and the 30% target benchmark identified in the current amendment to the weakfish fisheries management plan of the Atlantic States Marine Fisheries Commission. The decline in biomass reflects a sustained rise in natural mortality after 1995 rather than fishing mortality which has been modest and stable over the same time period. Although the decline has resulted from a change in the natural mortality in recent years, it is further exacerbated by continued removals by directed commercial and recreational fisheries.

These proposed management measures were developed to discourage directed fishing, decrease bycatch mortality and reduce the coastwide harvest by approximately 50%.

3. Possible Terms of the Agency Action:

These proposed changes would go into effect March 2010 and remain in effect until changes in the weakfish population warrant further action.

4. Statutory Basis or Legal Authority to Act:

Title 7 Delaware Code § 903(e)(2)a.(3).

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

This would represent an amendment to the existing Tidal Finfish Regulation (No. 3521) Weakfish Size Limits; Possession Limits; Seasons. No other regulations are affected.

6. Notice of Public Comment:

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901 or phone (302)-739-9914. A public hearing on these proposed regulations will be held in the Department of Natural Resources and Environmental Control auditorium at 6:00 PM on Thursday, January 21, 2010. Individuals may present their opinions and evidence either at the hearing or in writing to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901, or via email to Lisa.Vest@state.de.us. The hearing record will remain open for written or email comments until 4:30 PM January 31, 2010.

7. Prepared By:

Craig A. Shirey 302-739-9914 December 11, 2009

3521 Weakfish Size Limits; Possession Limits; Seasons.

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It shall be unlawful for any person to possess weakfish, *Cynoscion regalis*, taken with a hook and line, that measure less than thirteen (13) inches, total length.
- 2.0 It shall be unlawful for any person to whom the Department has issued a commercial food fishing license and a food fishing equipment permit for hook and line to have more than ~~six (6)~~ one (1) weakfish in possession during the period beginning at 12:01 AM on May 1 and ending at midnight on October 31 except on four specific days of the week as indicated by the Department on said person's food fishing equipment permit for hook and line.

PROPOSED REGULATIONS

3.0 It shall be unlawful for any person, who has been issued a valid commercial food fishing license and a valid food fishing equipment permit for fishing equipment other than a hook and line to possess weakfish, lawfully taken by use of such permitted food fishing equipment, that measure less than twelve (12) inches, total length.

3.1 It shall be unlawful for any person, who has been issued a valid commercial food fishing license and a valid food fishing equipment permit to possess more than one hundred pounds (100 lbs) of weakfish per vessel per day (a day being 24 hours) or trip, whichever is the longer period of time.

4.0 It shall be unlawful for any person, except a person with a valid commercial food fishing license, to have in possession more than ~~six (6)~~ one (1) weakfish, not to include weakfish in one's personal abode or temporary or transient place of lodging. A person may have weakfish in possession that measure no less than twelve (12) inches, total length, and in excess of ~~six (6)~~ one (1) if said person has a valid bill-of-sale or receipt for said weakfish that indicates the date said weakfish were received, the number of said weakfish received and the name, address and signature of the commercial food fisherman who legally caught said weak fish or a bill-of-sale or receipt from a person who is a licensed retailer and legally obtained said weakfish for resale.

11 DE Reg. 514 (10/01/07)

5.0 It shall be unlawful for any person to fish with any gill net in the Delaware Bay or Atlantic Ocean or to take and reduce to possession any weakfish from the Delaware Bay or the Atlantic Ocean with any fishing equipment other than a hook and line during the following periods of time:

Every weekend day (defined as 12:01 AM on Friday through midnight Sunday) in both May and June, plus contiguous weekdays (defined as 12:01 AM Monday through midnight Thursday) at the beginning of May and the end of June, such that the total number of closure days add up to thirty four (34) days. The exact dates of closures each year shall be mailed in advance to the affected public and published annually in the Delaware Fishing Guide.

6.0 The Department shall indicate on a person's food fishing equipment permit for hook and line four (4) specific days of the week during the period May 1 through October 31, selected by said person when applying for said permit, as to when said permit is valid to take in excess of ~~six (6)~~ one (1) weakfish but not more than 100 pounds per day. These four days of the week shall not be changed at any time during the remainder of the calendar year.

11 DE Reg. 514 (10/01/07)

7.0 It shall be unlawful for any person with a food fishing equipment permit for hook and line to possess more than ~~eight (8)~~ one (1) weakfish while on the same vessel with another person who also has a food fishing equipment permit for hook and line unless each person's food fishing equipment permit for hook and line specifies the same day of the week in question for taking in excess of ~~six (6)~~ one (1) weakfish.

1 DE Reg 1770 (5/1/98)

2 DE Reg 1904 (4/1/99)

3 DE Reg 1088 (2/1/00)

4 DE Reg 1552 (3/1/01)

5 DE Reg. 2142 (5/1/02)

6 DE Reg. 1512 (5/1/03)

11 DE Reg. 514 (10/01/07)

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
100 BOARD OF ACCOUNTANCY

Statutory Authority: 24 Delaware Code, Section 105(a)(1) (24 **Del.C.** §105(a)(1))
24 **DE Admin. Code** 100

PUBLIC NOTICE

Pursuant to 24 **Del.C.** § 105(a)(1), the Board of Accountancy has proposed revisions to its rules and regulations.

A public hearing will be held on February 17, 2010 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 Board of Accountancy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board has proposed numerous revisions to the rules and regulations. A number of revisions implement amendments to the Board's licensing law, Chapter 1 of Title 24 of the Delaware Code, including the addition of the practice privilege set forth at 24 **Del.C.** §108. In addition, the amendments set forth the licensure requirements that will go into effect on August 1, 2012.

Further, specific course requirements for licensure are revised. There are various amendments to the Rules pertaining to continuing professional education. Specifically, the proposed amendments will expressly give the Board authority to sanction licensees who do not comply with continuing professional education requirements.

The Board also proposes various grammatical and typographical revisions.

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

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

100 Board of Accountancy

DIVISION OF PROFESSIONAL REGULATION
100 Delaware Gaming Control Board

Statutory Authority: 28 Delaware Code, Section 1122 (28 **Del.C.** §1122)
10 **DE Admin. Code** 101, 102 and 103

PUBLIC NOTICE

A. Type of Regulatory Action Required
Amendment to Existing Regulations

B. Synopsis of Subject Matter of the Regulation

The Delaware Gaming Board will seek public comments on the issue of whether its current Rule 1.0, Rule 3.6 and Rule 4.14 in 10 **DE Admin. Code** 101, and Rule 1.0, Rule 3.2 and Rule 6.0 in 10 **DE Admin. Code** 102, and

PROPOSED REGULATIONS

Rule 3.1.5, Rule 8.1 and Rule 11.1 in 10 **DE Admin. Code** 103 should be amended. The rules relate to the manner in which bingo may be achieved, to allow the purchase of raffle tickets by organization members, to the handling of money only by organization members in charitable gambling, to the manner of winning funds in cookie jar bingo, to the removal of references to specific forms and to the correction of a typographical error.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 31 to: Delaware Gaming Control Board, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904. A copy of these regulations is available from the above address or may be viewed at the Division of Professional Regulation business office at the same address.

Summary of Proposals

101 Regulations Governing Bingo

Currently, the definition of "cookie jar bingo" involves a chance for a player to pay a fee into a jar or container to obtain a chance to win the funds contained therein. The Board wishes to clarify and expand that definition.

Rule 3.6 currently contains a typographical error. Rather than the word "than," there appears in the Rule "t an." The rule should be changed.

Rule 4.14 currently lists eight methods of obtaining bingo. The Board has learned that new methods of obtaining bingo, such as forming the shape of a champagne glass with covered numbers, have become popular and the Board wishes to make it clear that such methods of obtaining bingo are permissible. Therefore, the Board wishes to add a new subsection to the Rule.

102 Regulations Governing Raffles

The Board wishes to expand the definition of "raffle" to allow certain types of games with Board approval.

Rule 3.2 currently prohibits the purchase of raffle tickets by organization members and their families and employees. The Board wishes to allow such purchases but to prohibit the selling of tickets to one's own family members.

Rule 6.0 currently requires an application to be submitted on a form which the Board understands no longer exists. The Board wishes to remove the reference to that form and the reference to filing applications six weeks prior to the function.

103 Regulations Governing Charitable Gambling Other Than Raffles

Rule 3.1.5 currently requires the naming of an officer of the organization to be in charge of and responsible for the accounting, use and disposition of gross receipts of an event. The Board wishes to make it clear that only members of the organization may handle the money during an event, and they need not be officers. The Board also wishes to delete certain outdated references.

Rule 8.1 currently contains a reference to an old rule no longer in existence and a redundancy. The Board wishes to remove that reference and redundancy.

Rule 11.1 currently relates to applications and requires them to be submitted on a specific form which the Board understands no longer exists. The Board wishes to remove that reference.

101 Regulations Governing Bingo

1.0 Definitions

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

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

“Board” The Delaware Gaming Control Board.

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

“Cookie Jar Bingo” A game of chance in which players pay a set fee into a cookie jar or other container and receive a number which entitles the player to a chance to win the total funds in the cookie jar or container. At the start of the event, a bingo number shall be drawn which shall serve as the “cookie jar number.” That number shall be posted for all players to see. During the games played on that occasion, if a player achieves bingo when the cookie jar number is drawn, the player shall win the funds in the cookie jar or container. If no one achieves bingo when the cookie jar number is drawn, the funds in the jar shall not be awarded. An organization may not otherwise offer a cookie jar game and may not designate the last game of the night or any other particular game as a cookie jar game at which the funds will be awarded without a person achieving bingo when the cookie jar number is drawn.

Any amounts in any cookie jar bingo games shall not be included in any prize money limitations contained in these rules. An organization may not have more than two cookie jar bingo pots at any one time. The first jar must be awarded before a third jar can be started. If two cookie jar pots each contain the maximum amount of money allowed by law, the first jar must be awarded at the same event at which the second jar reaches the allowable maximum. If the first jar has not been awarded by the final game of the night, a special final bingo game of “full card” or “black out” bingo using a separate, single card, shall be played and the jar will be won by the first person who covers all spaces on their entire card.

If at the beginning of an event when players pay their fee, one jar contains the maximum (up to \$1,000) and the second jar would go over the maximum if the fees are added, the fees shall be held and not placed in the second jar at that time. When the first jar is then won, the second jar shall be filled to a total of the maximum and the remaining fee moneys shall be placed in a new jar.

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

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

“Game” The game of bingo.

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

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

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

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

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

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

2 DE Reg. 1224 (01/01/99)

12 DE Reg. 357 (09/01/08)

13 DE Reg. 412 (09/01/09)

(Break in Continuity of Sections)

4.0 Conduct of Bingo

(Break in Continuity Within Section)

- 4.14 No arrangement of numbers shall be required to be covered in order to win the game other than the following:
- 4.14.1 one unspecified horizontal row;
 - 4.14.2 one unspecified vertical row;
 - 4.14.3 one unspecified full diagonal row;
 - 4.14.4 one unspecified row (horizontal, vertical, or diagonal);
 - 4.14.5 Two or more of the foregoing, forming a specified arrangement;
 - 4.14.6 The entire card;
 - 4.14.7 Four corners;
 - 4.14.8 Eight spaces surrounding the free space.
 - 4.14.9 Any other configuration or shape on the card established by an organization, provided the players are informed of the shape needed to win before play commences.

(Break in Continuity of Sections)

102 Regulations Governing Raffles

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

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

1.0 Definitions

“Board” The Delaware Gaming Control Board.

“Prize” Any item or items chosen by a Sponsoring Organization as the subject of a raffle, which the organization announces it will award to a person selected by chance from among those purchasing tickets to the raffle.

“Qualified Member” For the purposes of eligibility to participate in managing or otherwise assisting in the operation of raffle, a person is a bona fide member of the licensed organization only when he or she:

Has become a member prior to the commencement of the function and such membership was not dependent upon, or in any way related to the payment or consideration to participate in, any gambling activity; and

Has held full and regular membership status in the licensed organization for a period of not less than three (3) consecutive months prior to the subject function; and

Has paid any reasonable initiation or admission fees for membership, and/or any dues, consistent with the nature and purpose of the licensed organization and with the type of membership obtained and is not in arrears in payment of any such fees or dues; and

Has met all other conditions required by the licensed organization for membership and is in all respects a member in good standing at the time of the subject function; and

Is a bona fide member of a bona fide charitable or bona fide nonprofit organization affiliated with or auxiliary to his or her sponsoring organization, or to which his or her own organization is auxiliary, when he or she meets all of the standards set out above respecting his or her own organization.

“Raffle” A form of lottery in which a number of persons buy one or more chances attempting to win the same prize. Any game such as so called "Nevada cards" or "pull cards" where the amount of the prize is determined by the contents of the ticket purchased are not raffles.

An organization may conduct a raffle which will not be completed in one night. An organization may sell a chance good for an extended period of time with a series of drawings, with a chance to win a prize multiple times during that period, provided all chances are sold at the same time. However, any such raffle must first be approved by the Board.

“Related Party” Includes:

An officer, director, or trustee (or an individual having powers or responsibilities similar to those of officers, directors, or trustees) of the organization.

A spouse other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance; a child including legally adopted children; grandchildren; parents; and grandparents of parties described in (a) above.

A corporation, trust, estate or partnership more than 35% of which is owned or held by any of the preceding.

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

2.0 Disclosure

- 2.1 In any raffle conducted pursuant to 28 Del.C. §1130, the sponsoring organization must disclose the following information on the raffle ticket itself:
 - 2.1.1 A full and fair description of the prize;
 - 2.1.2 The appraised value of the prize;
 - 2.1.3 If there is a minimum number of tickets to be sold, what the minimum is and the procedure to be employed to secure a refund in the event the minimum is not reached;
 - 2.1.4 The drawing date for the raffle;
 - 2.1.5 The exact nature of the charitable purpose for which the proceeds will be used.

3.0 Obligations of the Sponsoring Organization

- 3.1 If for any reason the raffle is not completed and a prize is not awarded on the scheduled drawing date, the sponsoring organization must take all steps necessary to notify ticket purchasers of that fact and return all money received from ticket purchasers within thirty days.
- 3.2 ~~No member or employee, or immediate family member of a member or employee, of a sponsoring organization who has been directly involved in the promotion or operation of a raffle shall be permitted to purchase tickets to the raffle or win the prize. Members, employees and their immediate family members may purchase raffle tickets, but may not sell raffle tickets to members of their immediate family.~~ The sale of tickets alone shall not constitute the promotion and operation of a raffle for purposes of this section. Nothing in this section prohibits the award of a prize to a person for selling a winning ticket.
- 3.3 The sponsoring organization shall take such steps as are necessary under the circumstances to insure that each ticket purchaser has a chance to be selected as the prize winner and that prize winner is selected in an entirely random manner.
- 3.4 In cases where the sponsoring organization purchases the prize from a third party, the Board may require that the sponsoring organization arrange for an independent appraisal of the value of the prize from a person licensed to render such appraisals, or if there is no applicable licensing requirement, from a person qualified to render such appraisals.

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- 3.5 If the sponsoring organization purchases a prize from a related party, the price to be paid must be at cost or substantially less than the appraised value of the prize.
- 3.6 No sponsoring organization or its employees, members, agents or servants, shall give away tickets to a raffle without receiving the full established price for them unless all members of the public have an equal chance to receive bonus chances or books of chances when buying a certain number of chances or books of chances.
- 3.7 The sponsoring organization shall structure the raffle in such a way that it may reasonably be anticipated that the sponsoring organization will retain a percentage of the gross proceeds which is reasonable under the circumstances and shall retain all of the net proceeds (gross proceeds minus the direct expenses of the raffle) for the purpose specified in their application under 28 **Del.C.** §1130.

(Break in Continuity of Sections)

6.0 Application

- 6.1 All applications for a license to conduct a raffle shall be submitted on ~~Form BCC-2 at least six (6) weeks prior to the date of the function~~ a form approved by the Board. The information supplied must include the name, address, and phone number of the sponsoring organization, the prize to be awarded, the value of the prize, the maximum number of tickets to be sold, the cost of each raffle ticket, the date the prize will be awarded, the exact nature of the charitable purpose for which the proceeds will be used, and the name, address and phone number of the person in charge of the organization, and the person designated to be the record keeper for the raffle.
- 6.1.1 An application must be submitted sufficiently in advance of the proposed date of the function as to allow the Board to consider the application at two consecutive board meetings before deciding to approve or deny the application.
- 6.2 There shall be a license fee of \$15 for each raffle application submitted to the Board for approval.
- 6.3 The Board shall make an investigation of the qualifications of each applicant and the merits of each application. The Board shall consider the impact, if any, of the approval of a new raffle license application on existing licenses within the applicant's geographical location prior to granting the approval, and may deny the application if it concludes that a approval of the application would be detrimental to existing licensees.
- 6.4 The Board may issue a license only after it determines that:
- 6.4.1 The applicant is duly qualified to conduct raffles under the State Constitution, statutes, and rules and regulations governing raffles; and
- 6.4.2 The member or members of the applicant who intend to conduct the games are bona fide active members of the applicant and are persons of good moral character and have never been convicted of crimes involving moral turpitude; and
- 6.4.3 The proceeds are to be disposed of as provided in the State Constitution and statutes; and
- 6.4.4 No salary, compensation or reward whatever will be paid or given to any member under whom the game is conducted.
- 6.5 No raffle license application shall be effective for a period of more than one year from the date it was issued.
- 6.6 No raffle license shall be effective after the organization to which it was granted has become ineligible to conduct the game under any provision of Article II, §17A or §17B of the State Constitution.

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

12 DE Reg. 357 (09/01/08)

(Break in Continuity of Sections)

103 Regulations Governing Charitable Gambling Other Than Raffles

(Break in Continuity of Sections)

3.0 Conduct of Games

3.1 Workers.

(Break in Continuity Within Section)

- 3.1.5 ~~Officer~~ Member Responsible for Gross Receipts. ~~The Sponsoring Organization shall~~ duly designate an officer of said organization to be in full charge and primarily responsible for the proper accounting, use and disposition of all Gross Receipts. Such officer's name shall appear on the list required under §3.03(1)(b) and such officer shall be a person other than the person designated member in charge pursuant to §3.03(1)(a). A member of the organization shall be responsible for gross receipts. Only a member of the organization may touch any money taken in by the organization, and any member of the organization may handle the money. No third party vendor may in any way come into contact with any money taken in by the organization.
- 3.1.6 Payment of Workers Prohibited. No unreasonable commission, salary, compensation, reward, recompense, reimbursement of expenses or gift or other consideration shall be paid directly or indirectly, to any person for conducting or assisting in the conduct of any Function. No tip, gratuity or gift or other consideration shall be given or accepted by any person conducting or assisting in the conduct of a Function either directly or indirectly, and one or more signs prohibiting tipping shall be or more signs prohibiting tipping shall be prominently displayed in each playing area. No person shall solicit or receive any gift or donation or other consideration directly or indirectly on the premises during the conduct of a Function. Nothing in this subsection prohibits any person from sharing food and beverages made available at the functions, or the collection of bar tips for the benefit of the Sponsoring Organization.

13 DE Reg. 107 (07/01/09)

(Break in Continuity of Sections)

8.0 Limitation of Functions

- 8.1 No Sponsoring Organization shall conduct more than one Function in any single calendar month. Charitable games shall not commence prior to 1:30 p.m. The operation of a Function shall be limited to six (6) consecutive hours ~~except as permitted by §3.08(2).~~ Instant bingo is permitted during any event sponsored by the organization that is licensed to conduct it, regardless of the time ~~or time.~~
- 8.2 When a Function is conducted in conjunction with a bazaar, carnival, festival or similar affair scheduled for more than one day but less than ten consecutive days, the Function shall be considered one licensed event. The games may be operated during the hours when other activities of the bazaar, carnival, festival or similar affair are available to the public.

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

(Break in Continuity of Sections)

11.0 Application

- 11.1 All applications for a license to conduct a Function shall be submitted on ~~Form BCC-3~~ a form approved by the Board. The information supplied must include the name, address, and phone number of the Sponsoring organization, a list of the games to be conducted, the wagering limit on each game, the date and time that the function will be held, the premises where the Function will be held, the owner of the premises, the name, address, and phone number of the designated member in charge and the

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person responsible for the proper accounting and the exact nature of the charitable purpose for which the proceeds will be used.

(Break in Continuity of Sections)

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

100 Delaware Gaming Control Board

DEPARTMENT OF TRANSPORTATION DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 Delaware Code, Section 302, (21 Del.C. §302)
2 DE Admin. Code 2201

PUBLIC NOTICE

The Delaware Division of Motor Vehicles gives notice of intent to adopt proposed Division of Motor Vehicles Regulation 2201, which replaces current Regulation 2201 relating to character background reviews.

Any person who wishes to make written suggestions, briefs or other written materials concerning this proposed regulation must submit the same to Scott Vien, Chief of Driver Services, Delaware Division of Motor Vehicles, P.O. Box 698, Dover, Delaware 19903 or by fax to (302) 739-2602 by January 31, 2010.

2201 Procedure for Re-licensing Investigations Character Background Review

1.0 Authority

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

2.0 Purpose

This policy regulation establishes administrative procedures regarding the character background review process for an individual whose license has been revoked for an alcohol-related violation pursuant to 21 Del.C. §2742, §2743, and §4177. Additionally, pursuant to 21 Del.C. §4177 A(d), the Secretary shall have power and authority to refuse to issue a driver's license to any individual whose driver's license or driving privilege was revoked until such person has satisfied the Secretary that he/she has been of good behavior for the entire period of revocation and until he/she has complied with all applicable provisions of this section.

3.0 Applicability

This policy regulation interprets the following sections found in 21 Del.C. §2742, §2743, and §4177.

4.0 Substance Of Policy

- 4.1 ~~Driver Improvement staff members designated to interview, receive reference information and make a determination regarding issuance of driving authority include:~~ Any Driver Improvement staff member acceptable to the Secretary of Transportation or his designee may conduct a character background review in accordance with this regulation.

- 4.1.1 Driver Improvement Manager
- 4.1.2 Driver Improvement Assistant Manager—Hearing Officer
- 4.1.3 Driver Improvement Hearing Officer
- 4.1.4 Driver Improvement Officer
- 4.1.5 Motor Vehicle Support Supervisor—Revocations
- 4.1.6 Motor Vehicle Support Supervisor—Suspensions
- 4.2 The following individuals are required to have a favorable Character Background Review conducted prior to becoming eligible to reinstate his driving privileges:
 - 4.2.1 Any person whose blood alcohol content (BAC) at the time of arrest was .165 or above.
 - 4.2.2 Any person revoked for a second alcohol-related violation pursuant to 21 Del.C. §2742, §4177, or §4177B occurring within five (5) years from the first violation and/or third or further subsequent alcohol-related violation occurring at any time following the second violation.
 - 4.2.3 Any person revoked for a felony alcohol-related violation pursuant to 21 Del.C. §2742 or §4177.
- 4.3 ~~To begin the review process the applicant must request an application from the Division of Motor Vehicles, Revocation Section, Administration Office, Dover. The application may be mailed to the applicant when he/she is within 60 days of the eligibility date for any type of driving authority and the applicant must have satisfactorily completed the alcohol program as required pursuant to 21 Del.C. §4177D.~~
- 4.4 ~~The applicant must contact the assigned Driver Improvement staff member at the phone number listed on the application to make an appointment for an interview.~~
- 4.5 ~~The applicant will be assigned to a Driver Improvement staff member at a Motor Vehicle Facility within the county of the applicant's residence.~~
- 4.6 ~~The applicant must provide on the application, the name, address, and phone number of six individuals who will serve as a reference for the applicant. These persons must be individuals who have frequent contact with the applicant and who see the applicant on a regular basis. One reference may be a relative of the applicant. Other references may include but are not limited to: neighbors, friends, co-workers, religious leader. Employees of the Department of Transportation may not be listed or accepted as a reference.~~
- 4.7 ~~The Driver Improvement staff member shall mail a reference questionnaire to all six references listed on the application. The reference shall be given two (2) weeks to return the reference questionnaire to the Driver Improvement staff member. All reference questioners must be signed by the reference and notarized. Questionnaire that are not signed and/or not notarized will not be accepted.~~
- 4.93 ~~The Driver Improvement staff member shall review Delaware Justice Information System/Criminal Justice Information System (DELJIS/CJIS) and driving record regarding violations of the applicant. Violations received after the violation for which the character background review is being conducted that result in a conviction and/or violations currently pending should be addressed with the applicant and may be taken in to consideration when making the decision regarding issuance of any driving authority.~~
- 4.104 ~~The Driver Improvement staff member shall obtain a Problem Driver Pointer System (PDPS) printout prior to the applicant interview reinstating an applicant's driving privileges. A second PDPS print shall be made prior to the final decision regarding issuance of driving authority. The PDPS information, i.e.: "eligible" or "not" eligible shall be included on the decision form. An applicant must have a PDPS status of "eligible", thus indicating that his driving privileges are not withdrawn in any other state, prior to becoming eligible for valid driving privileges.~~
- 4.145 ~~It is the responsibility of the Driver Improvement staff member to determine whether or not driving authority should be reinstated and how such authority should be limited based on statute requirements. (IE: full driving authority, conditional license or IID license.)~~
- 4.86 ~~The Driver Improvement staff member may contact any other sources which could supply information relative to the applicant's case. These additional sources may include, but not be limited to: probation officer, alcohol program instruction, alcohol program counselor, court staff, police agency in or around~~

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- the applicant's place of residence, or any citizen that may be aware of the applicant's current drinking behavior.
- 4.427 If the Background Review reveals that the applicant may constitute a risk to the driving public relative to alcohol and/or drug abuse and/or that the applicant has not been of "Good Behavior", his/her driving privilege will not be reinstated. Such driving authority will remain withdrawn until it has been determined by this Division that all applicable requirements have been met and that the applicant no longer represents a risk to the driving public.
- 4.13 ~~The Driver Improvement staff member in the best interest of the applicant may recommend a follow-up evaluation to determine if further treatment may be needed. A copy of the "Alcohol & Drug Prevention and Treatment Information" sheet will be mailed to the applicant along with the letter regarding the Driver Improvement staff member's decision regarding driving authority.~~
- 4.447.1 For purposes of this ~~Policy Regulation~~ "Good Behavior" shall be defined by the Department as:
- 4.14.1 ~~No excessive and/or abnormal abuse of alcohol and/or other drugs during the period of revocation.~~
- 4.44.27.1.1 ~~No additional drinking and/or drug-related incidents caused by the applicant during the period of revocation (included but not limited to arrests).~~
- 4.44.37.1.2 ~~No traffic (moving) or license violations during the period of revocation.~~
- 4.14.4 ~~Favorable references from no less than three (3) individual references.~~
- 4.458 The applicant shall be denied driving authority until the applicant has satisfactorily completed all necessary requirements as defined by Delaware statute and this regulation.
- 4.8.1 The Driver Improvement staff member having information regarding an applicant's behavior regarding those items listed ~~above~~ in 4.7.1 may deny driving authority for one (1) month for the first action, three (3) months for two actions, and six (6) months for three or more actions.
- 4.468.2 Once additional time has been served, a prior violation will not be considered. However, if new violations are received during the denial period, the Driver Improvement staff member shall take the new violations into consideration as specified in 4-14 4.7.1 above.
- 4.17 ~~The Driver Improvement staff member will mail the decision letter to the applicant regarding the issuance of driving authority based on the character background review no more than 30 days from the date of the initial interview.~~
- 4.489 ~~Following the Character Background Review the Driver Improvement staff member will file a report of his/her decision regarding issuance of driving authority, along with a copy of the decision letter~~
- 4.4910 ~~Upon receipt of the character background decision, an entry will be made to the driving record regarding the outcome of the Character Background Review.~~
- 4.2011 ~~All documents will be imaged upon receipt in the Revocation Driver Improvement Section.~~
- 4.21 ~~If the applicant is not able to provide sufficient references, in lieu of the reference statements the applicant may have an alcohol evaluation by a licensed and approved alcohol treatment referral listing. The applicant would be required to abide by the evaluation and complete any additional recommended treatment. If no treatment is recommended, the applicant would be approved for the type of driving authority currently eligible.~~
- 4.2212 Any person whose blood alcohol concentration (BAC) at the time of an arrest was below .165 and/or whose arrest was his/her first alcohol-related violation shall be processed pursuant to the following:
- 4.2212.1A ~~review of the driving record and PDPS will be conducted to determine eligibility for driving authority.~~
- 4.2212.2A ~~review of the alcohol program completion will be conducted to verify acceptable completion of the program.~~
- 4.22.3 ~~No personal interview or contact of references will be required.~~
- 4.2313 If the applicant is refused issuance of a driver's license after the period of revocation has ended the alcohol program has been satisfactorily completed and after all fines and/or fees are paid, the applicant may appeal to the Superior Court of Common Pleas in the county of his/her residence.

5.0 Severability

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

6.0 Effective Date

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

DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 Delaware Code, Sections 302, 2711 and 3102(21 Del.C. §§302, 2711 and 3102)
2 DE Admin. Code 2217

PUBLIC NOTICE

The Delaware Division of Motor Vehicles gives notice of intent to adopt proposed Division of Motor Vehicles Regulation 2217, which replaces current Regulation 2217 relating to the issuance of Delaware compliant and non-compliant identification documents.

Any person who wishes to make written suggestions, briefs or other written materials concerning this proposed regulation must submit the same to Scott Vien, Chief of Driver Services, Delaware Division of Motor Vehicles, P.O. Box 698, Dover, Delaware 19903 or by fax to (302) 739-2602 by January 31, 2010.

~~2217 Interim Identification Procedure for the Division of Motor Vehicles~~

~~Whereas, the American Association of Motor Vehicle Administrators (hereinafter referred to as "AAMVA") published a Model Uniform Identification Practices Program, and~~

~~Whereas, most jurisdictions either have adopted the AAMVA Model Uniform Identification Practices Program or will adopt it in the coming year, and~~

~~Whereas, the states of Florida and Washington no longer accept Delaware's driver's license or identification cards as primary proof of identification because they deviate from the standards set forth in the AAMVA Model Uniform Identification Practices Program, and~~

~~Whereas, some driver's license and identification card applicants are prohibited from obtaining a social security card due to their immigration status and this precludes the Division of Motor Vehicles from using the social security database to verify a person's identity, and~~

~~Whereas, the Division of Motor Vehicles driver's license offices are experiencing numerous fraudulent documents provided as proof of Delaware address and proof of social security number, and~~

~~Whereas, pending legislation, Senate Bill 287, will require all driver's license and identification card applicants to be legally residing in the United States, and~~

~~Whereas, the Department of Public Safety believes an interim identification procedure is needed until such time as the Delaware General Assembly has considered Senate Bill 287,~~

~~Therefore, effective March 4, 2002, the Department of Public Safety hereby adopts the attached interim identification procedure, similar to the AAMVA Model Uniform Identification Practices Program, for individuals applying for a driver's license or identification card until such time as the Delaware General Assembly has considered Senate Bill 287. The interim procedure will be conformed to the procedure dictated by statute following consideration of Senate Bill 287.~~

4.0 Acceptable Identification Document List

Any person applying for a new driver's license (DL) or identification (ID) card is required to submit one primary document and one secondary document from the following list. A primary document must contain the full name and date of birth and must be verifiable, i.e., we must be able to contact the issuing agency to determine the authenticity of the document. Each applicant must provide the applicant's social security number, if eligible, and two proofs of the applicant's Delaware residency. All documents will be electronically verified and electronically stored.

2.0 ~~Primary Documents~~

- 2.1 ~~Photo driver's license.~~
- 2.2 ~~State/province/territory issued photo ID card.~~
- 2.3 ~~Certified microfilm/copy of driver's license or ID card.~~
- 2.4 ~~Certificate of birth (U.S. issued). Must be original or certified copy, have a raised seal and be issued by the Bureau of Vital Statistics or State Board of Health.~~
- 2.5 ~~INS documents, as follows:~~
 - 2.5.1 ~~Certificate of Naturalization (N 550, N 570, or N 578)~~
 - 2.5.2 ~~Certificate of Citizenship (N 560, N 561, or N 645)~~
 - 2.5.3 ~~Northern Marina Card (I 551)~~
 - 2.5.4 ~~American Indian Card (I 551)~~
 - 2.5.5 ~~U. S. Citizen Identification Card (I 179 or I 197)~~
 - 2.5.6 ~~Resident Alien Card (I 151, I 551, AR 3, or AR 103)~~
 - 2.5.7 ~~Temporary Resident Identification Card (K 688)~~
 - 2.5.8 ~~Non-resident Alien Canadian Border Crossing Card (I 185 or I 586)~~
 - 2.5.9 ~~Record of Arrival and Departure (in a valid Foreign Passport) (I 94 or I 94W visa waiver program)~~
 - 2.5.10 ~~Record of Arrival and Departure w/attached photo stamped "Temporary Proof of Lawful Permanent Resident" (I 94)~~
 - 2.5.11 ~~Processed for I 551 stamp (in a valid Foreign Passport)~~
 - 2.5.12 ~~Permanent Resident Re-entry Permit (I 327)~~
 - 2.5.13 ~~Refugee Travel Document (I 571)~~
 - 2.5.14 ~~Employment Authorization Card (I 688A, I 688B, I 766)~~
 - 2.5.15 ~~Canadian Immigration Record and Visa or Record of Landing (MIM 1000)~~
 - 2.5.16 ~~Court order. Must contain full name, date of birth and court seal. Examples include: adoption document, name change document, gender document, etc. Does not include abstract of criminal or civil conviction.~~
 - 2.5.17 ~~United States Military ID.~~
 - 2.5.18 ~~Valid passport, U.S. If foreign, appropriate INS document also is required.~~

3.0 ~~Secondary Documents~~

- 3.1 ~~All Primary Documents may be used as a secondary document.~~
- 3.2 ~~Driver's license/ID card, expired more than one year.~~
- 3.3 ~~Court order that does not contain the applicant's date of birth.~~
- 3.4 ~~Employer ID card.~~
- 3.5 ~~Health insurance card, i.e., Blue Cross/Blue Shield, Kaiser, HMO.~~
- 3.6 ~~IRS/State tax forms. W 2 NOT acceptable.~~
- 3.7 ~~Marriage certificate/license.~~
- 3.8 ~~Medical records from doctor/hospital.~~
- 3.9 ~~Military dependent ID.~~
- 3.10 ~~Military discharge/separation papers.~~

- ~~3.11 Gun permit.~~
- ~~3.12 Pilot's license.~~
- ~~3.13 School record/transcript. Must be certified.~~
- ~~3.14 Social security card. Metal card is NOT acceptable.~~
- ~~3.15 Social insurance card (for Canadian residents only).~~
- ~~3.16 Student ID Card. Must contain photo.~~
- ~~3.17 Vehicle title. Vehicle registration **NOT** acceptable~~
- ~~3.18 Welfare card.~~

4.0 Plus

- 4.1 Social Security Card, if eligible.
- 4.2 Two Proofs of Delaware residency.

2217 Driver License and Identification Card Application Procedures for Delaware Compliant and Delaware Non-Compliant Identification Documents

The Department of Homeland Security (DHS) Regulation 6 C FR Part 37, as amended from time to time, establishes minimum standards for the state-issued driver licenses and identification cards that are acceptable for official purposes. The Division of Motor Vehicles hereby deletes its interim Administrative Code 2217 in its entirety and incorporates the policies contained in that regulation into this more comprehensive document.

1.0 Authority.

The authority to promulgate this regulation is 21 Del.C. Sections 302, 2711 and 3102 and the Department of Homeland Security's final regulation published in 6 CFR Part 37 or its equivalent, as amended from time to time.

2.0 Purpose.

This administrative rule sets forth regulations and procedures used when issuing Delaware compliant and non-compliant driver licenses and identification cards based on the referenced statutes listed in Section 1 of this administrative rule. The applicant has the option to obtain a Delaware compliant document or Delaware non-compliant document provided the applicant meets the minimum qualifications and standards presented in this administrative code.

3.0 Definitions.

"**Birth Certificate**" means the record related to a birth that is permanently stored, either electronically or physically, at the State Office of Vital Statistics or equivalent agency in a registrant's state of birth.

"**Certified Copy of a Birth Certificate**" means a copy of the whole or part of a birth certificate registered with the state that the state considers being the same as the original birth certificate on file with the State Office of Vital Statistics or equivalent agency in a registrant's state of birth.

"**Compliant Driver License**" means a driver license that has been issued by Delaware or any other state and has been verified by the Department of Homeland Security to be compliant with 6 CFR 37 or its equivalent as amended from time to time. These compliant documents will be accepted by federal agencies for official purposes and shall bear a DHS-approved security marker that reflects the card's level of compliance.

"**Compliant Identification Card**" means an identification card that has been issued by Delaware or any other state and has been verified by the Department of Homeland Security to be compliant with 6 CFR 37 or its equivalent as amended from time to time. These compliant documents will be accepted by federal agencies for official purposes and shall bear a DHS-approved security marker that reflects the card's level of compliance.

"**DHS**" means the United States Department of Homeland Security.

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"Domestic Violence and Dating Violence" have the meanings given the terms in Section 3, Universal Definitions and Grant Provisions, of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-119 Stat. 2960, 2964, Jan. 5, 2006); codified in Section 40002, Definitions and Grant Provisions, 42 U.S.C. 13925, or state laws addressing domestic and dating violence.

"Identification Documents" includes both state-issued driver licenses and identification cards.

"Non-Compliant Driver License" means a driver license that gives the license holder the appropriate driving authority but is not in full compliance with rules established by the Secretary of the Department of Homeland Security. The card must clearly state on the front and in the machine readable zone that the card is not acceptable for official purposes.

"Non-Compliant Identification Card" means an identification document issued by the division that is not in full compliance with rules established by the Secretary of the Department of Homeland Security. The card must clearly state on the front and in the machine readable zone that the card is not acceptable for official purposes.

"Full Legal Name" means an individual's first name(s), middle name(s), and last name(s) or surname without the use of initials or nicknames unless otherwise acceptable in Section 7 of this document.

"Lawful Status" means a person in lawful status is a citizen or national of the United States or an alien, lawfully admitted for permanent or temporary residence in the United States; has conditional permanent resident status in the United States; has an approved application for asylum in the United States or has entered into the United States in a refugee status; has a valid non-immigrant status in the United States; has an application for asylum in the United States; has an application for temporary protected status (TPS) in the United States; has approved deferred action status; or has an application for lawful permanent residence (LPR) or conditional permanent resident status.

"License" means any license, temporary instruction permit, or temporary license that is Delaware compliant or Delaware non-compliant issued under the laws of this State pertaining to the licensing of individuals to operate motor vehicles.

"Material Change" means any change to the personally identifiable information of an individual as defined in Title 21 and this administrative code. Notwithstanding the definition of personally identifiable information below, a change of address of principal residence does not constitute a material change.

"Official Purpose" means accessing federal facilities, boarding federally-regulated commercial aircraft, and entering nuclear power plants.

"Passport" means a passport booklet or card issued by the United States Department of State that can be used as a travel document to gain entry into the United States and that denotes identity and citizenship as determined by the United States Department of State.

"Personally Identifiable Information" means any information which can be used to distinguish or trace an individual's identity, such as the individual's name, driver license or identification card number, social security number, biometric record, including a digital photograph or signature, alone or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as a date and place of birth or address whether it is stored in a database, on a driver license or on an identification card.

"Principal Residence Address" means the location where a person currently resides (i.e. presently resides even if at a temporary address) in conformance with the residency requirements of the state issuing the driver license or identification card, if such requirements exist.

"SAVE" means the Department of Homeland Security's Systematic Alien Verification for Entitlements system or such successor or alternate verification system at the DHS secretary's discretion.

"Sexual Assault and Stalking" have the meanings given the terms in Section 3, Universal Definitions and Grant Provisions, of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-162, 119 Stat. 2960, 2964, Jan. 5, 2006); codified at Section 40002, Definitions and Grant Provisions, 42 U.S.C. 13925, or state laws addressing sexual assault and stalking.

"Source Document(s)" means original or certified copies (where applicable) of documents presented by an applicant as required under this regulation to the Division of Motor Vehicles to apply for a driver license or identification card.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of Northern Mariana Islands.

"State Address Confidentiality Program" means any state-authorized or state-administered program that: (1) allows victims of domestic violence, dating violence, sexual assault, stalking, or a severe form of trafficking to keep, obtain, and use alternative addresses; or (2) provides confidential recordkeeping regarding the addresses of such victims or other categories of persons.

"Temporary Lawful Status" means a person in temporary lawful status is a person who has a valid non-immigrant status in the United States; has an pending application for asylum in the United States; has a pending or approved application for temporary protected status (TPS) in the United States; has approved deferred action status; or has an application for LPR or conditional permanent resident status.

"Verify" means procedures to ensure that the source document is genuine and has not been altered (i.e. "document authentication") and the identity data contained on the document is valid ("data verification").

4.0 Delaware Driver Licenses and Identification Cards.

4.1 Application document.

4.1.1 Every application for a Delaware compliant and non-compliant driver license or identification card shall be made on an application furnished by the Delaware Department of Transportation. The original application shall be verified by the applicant before a person authorized by the division to administer oaths. Employees who are specifically trained and assigned duties to issue state identification documents are hereby designated as being able to administer oaths under this section. The applicant will certify on the application if he holds a compliant or non-compliant driver license or identification card in this or any other state. The original application will be electronically scanned and stored.

4.2 Delaware Identification Documents.

4.2.1 When Delaware self certifies to the DHS, and the DHS determines that Delaware has met the requirements of 6 CFR 37 or its equivalent as amended from time to time, the division may issue Delaware compliant identification documents, which will be accepted by federal agencies for official purposes.

4.2.2 Unless otherwise specified, identification documents issued in accordance with this administrative code shall be considered compliant identification documents and shall be accepted by federal agencies for official purposes.

4.2.2.1 To be considered eligible for a compliant identification document, the division must reverify, scan, and electronically retain all original source documents of current Delaware driver license and identification card holders upon renewal or reissuance of that person's identification documents.

4.2.2.2 Unless otherwise specified, once verified, scanned, and electronically retained, a compliant identification document holder will not be required to again present the division with the original source document except in cases where a material change occurs or when an applicant's lawful status must be verified.

4.2.3 It will be clearly indicated on the face of the identification documents and in the machine readable zone that the license is either a Delaware compliant or non-compliant driver license, temporary driver license, identification card, temporary identification card or limited-term driver license.

4.3 Non-Compliant Driver Licenses and Identification Cards.

4.3.1 Non-compliant driver licenses and identification cards will clearly state on their faces and in the machine readable zones that the card is not acceptable for official purposes.

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- 4.3.2 The division may issue non-compliant identification documents and non-compliant temporary or limited-term identification documents in lieu of Delaware compliant documents to persons who:
- 4.3.2.1 Are citizens of the United States, aliens with permanent resident status, or aliens with acceptable proof of lawful status in accordance with 2 DE Admin. Code 2220 who want to operate a motor vehicle or have a state-issued identification card, but who do not need or want a Delaware compliant identification document to enter federal facilities, board federally-regulated commercial aircraft, or enter nuclear power plants;
- 4.3.2.2 Are unable to present an authorized source document and must rely upon alternative documents, when approved by the Driver Services Manager, Chief of Driver Services, Deputy Director or Director, to establish a person's name, date of birth, principal residence address, SSN or use alternative documents to demonstrate U.S. citizenship or lawful presence.
- 4.3.2.3 Have lawful status in the United States, but:
- 4.3.2.3.1 Are ineligible for a SSN because of their immigration status;
- 4.3.2.3.2 Are able to provide a temporary residential address (such as a motel or homeless shelter) but do not have a principal residence address in this State (reference Section 9);
- 4.3.2.3.3 Are able to provide documentation confirming their SSN and/or lawful status, but the division is temporarily unable to electronically verify this data.
- 4.4 Temporary or Limited-Term Documents.
- 4.4.1 The division shall issue a temporary or limited-term compliant driver license or identification card, or temporary or limited-term non-compliant driver license or identification card to those persons who have temporary lawful status in the United States in accordance with 2 DE Admin. Code 2220 and 21 Del.C., Sections 2715(a) and 3103(a). Before issuing or renewing these limited term documents, the applicant must provide valid documentary evidence, verifiable through SAVE or other DHS-approved means, that the person has lawful status in the United States. These documents may not be issued for a time period longer than the expiration of the applicant's authorized stay in the United States, or if there is no expiration date, for a period no longer than one year or no longer than the maximum term of a driver license or identification card, whichever date is less. Temporary or limited term identification documents must clearly indicate on their faces and in the machine readable zone that they are temporary or limited-term driver licenses or identification cards.
- 4.5 Renewal of Delaware Driver Licenses and Identification Cards.
- 4.5.1 Delaware compliant and non-compliant driver licenses will be renewed in person every five years and identification cards will be renewed in person every four years in accordance with 21 Del.C., Sections 2715 and 3103, unless they are designated as temporary or limited-term documents.
- 4.5.2 Delaware compliant identification documents must be renewed in person unless otherwise specified in Sections 4.5.3 and 9.2.1 of this document.
- 4.5.3 Holders of temporary or limited-term Delaware compliant or non-compliant driver licenses and identification cards must present evidence of continued lawful status and have their lawful status verified via SAVE or other methods approved by the DHS when renewing their driver licenses or identification cards. The documents must be set to expire when the individual's lawful status expires.
- 4.5.4 The division may allow a remote renewal but must ensure the Social Security number (SSN) and lawful status is verified before renewing. However, a remote renewal is prohibited when there is a material change in any personally identifiable information. The applicant must have his identification document reissued in person and present a source document that is retained and verified when material changes occur.
- 4.6 Reissued Driver Licenses and Identification Cards.
- 4.6.1 Delaware compliant and non-compliant driver licenses will be reissued in accordance with 21 Del.C., Sections 2720 and 3105.

4.6.3 Delaware compliant and non-compliant identification documents must be reissued in person unless otherwise specified in Sections 4.6.2 and 9.2.1 of this administrative code.

4.6.3 The division may allow a remote renewal but must ensure the social security number (SSN) and lawful status is verified before reissuance. However, a remote issuance is prohibited when there is a material change in any personally identifiable information. The applicant must reissue in person and present an original source document that is retained and verified when material changes occur.

5.0 Personal Identity: Name, Date of Birth and Gender.

5.1 Identity: Full Legal Name, Date of Birth and Gender.

5.1.1 The name and date of birth on the face of the license or identification card must be the same as the name and date of birth on the source document presented by the applicant to establish identity. When the individual has only one name, that name should be entered in the last name or family name field, and the first and middle name fields should be left blank. Place holders such as NFN, NMN, FNU, LNU and NA shall not be used.

5.1.2 If the names, as listed on various source documents (to substantiate the applicant's name, date of birth, gender, SSN and lawful status), are different, the applicant must contact the agency who issued the source document and change the name so that the names on all source documents match.

5.2 Identification Source Documents.

5.2.1 To establish an applicant's full legal name, date of birth, and gender, the applicant must present one or more of the following source documents:

5.2.1.1 Valid, unexpired United States passport;

5.2.1.2 Certified copy of a birth certificate filed with a state Office of Vital Statistics or equivalent agency in the individual's state of birth;

5.2.1.3 Consular Report of Birth Abroad (CRBA) issued by the United States Department of State, Form FS-240, DS-1350 or FS-545;

5.2.1.4 Valid, unexpired Permanent Resident Card (Form I-551) issued by the United States Department of Homeland Security (DHS) or Citizenship and Immigration Services (CIS);

5.2.1.5 Unexpired employment authorization document (EAD) issued by the DHS, Form I-766 or Form I-688B;

5.2.1.6 Unexpired foreign passport with a valid, unexpired United States visa affixed accompanied by the approved I-94 form documenting the applicant's most recent admittance into the United States. Applicants presenting these documents must present a SSN or demonstrate non-work authorization status;

5.2.1.7 Certificate of Naturalization issued by the DHS, Form N-550 or Form N-570;

5.2.1.8 Certificate of Citizenship, Form N-550 or Form N-561, issued by the DHS;

5.2.1.9 Compliant driver license or identification card issued in compliance with the standards established by 6 CFR 37 or its equivalent as amended from time to time;

5.2.1.10 Such other documents as the DHS may designate by notice published in the Federal Register.

6.0 Lawful Status.

6.1 All driver license and identification card applicants must establish legal presence in the United States to be eligible for a Delaware compliant or Delaware non-compliant identification document. Proof of an applicant's lawful status will be determined in accordance with 2 DE Admin. Code 2220, 2 Del.C. 21, 2715(a) and 3103(a). Any document not listed in 2 DE Admin. Code 2220 that is presented as proof of lawful status must be approved by the DHS as satisfactory evidence of lawful status. Lawful status must be verified through SAVE.

6.2 Exceptions.

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- 6.2.1 Alternate documents to demonstrate lawful status will only be allowed to demonstrate U.S. citizenship. For example, a document issued by a state Office of Vital Statistics that substantiates the person was born in that state and establishes the individual's name and date of birth in lieu of the original birth certificate.
- 6.2.2 Persons born overseas to parents who were U.S. citizens and one was a member of the U.S. military, but who are unable to provide a Consular Report of Birth Abroad, Certificate of Naturalization or Certificate of Citizenship may present military and hospital records substantiating these facts after they exhausted their attempts to obtain the aforementioned documents. They may be issued a Delaware non-compliant card upon approval from the Director or Chief of Driver Services. The driving record will be annotated to show they submitted lawful status documents under the exception provision and the documents will be retained on file.

7.0 Name change/exceptions.

- 7.1 If an applicant wants to establish a name other than the name that appears on the original source document, the applicant must provide proof of the name change by presenting a valid marriage certificate, divorce decree, adoption papers or court order substantiating the name change.
- 7.1.1 The State of Delaware does not recognize same sex marriages in this state or any other state as a valid marriage. Therefore, a same sex marriage certificate cannot be accepted as a legal document for an official name change.
- 7.2 The driving record alias file contains name changes to enable the division to verify the names the applicant used over time. The division must be notified within 30 days after the name change occurs.
- 7.3 Exceptions: Older applicants may not have birth certificates because they were born in rural areas not under the care of a physician or for other reasons. If an applicant is unable to present any of the documents listed in Section 5.2 to prove his identity and date of birth, the applicant should contact the Office of Vital Statistics in the state in which he was born to issue a "delayed or alternate" birth certificate in accordance with state procedures.
- 7.4 If the procedures listed in Section 7.3 are not feasible, as a last resort, the division may issue a non-compliant identification document provided the applicant has sufficient proof (school records, employment documents, social security card, and other records) demonstrating he has used this name, date of birth and gender consistently over a long period of time. The driving record will be annotated showing the identification documents were approved as exceptions and copies of the documents will be retained on file. Exceptions to name change procedures must be approved by Driver Services Manager, Chief of Driver Services, Deputy Director or Director.
- 7.5 Date of Birth Changes.
- 7.5.1 To establish the applicant's date of birth, an individual must present at least one document included in Section 5.2 or a court order that establishes a new date of birth.
- 7.6 Gender/gender changes.
- 7.6.1 The applicant's gender will be verified using one of the approved source documents listed in Section 5.2. To change a person's gender, the applicant must provide a letter from a physician licensed in this State or the physician who completed the gender change procedure stating a gender change has been completed and a letter from the applicant requesting the division to change his gender designation in its files.

8.0 Social Security Number (SSN).

- 8.1 Every applicant must present a valid social security source document. The SSN will be electronically verified using the Social Security On-Line Verification (SSOLV) system, and the source document will be electronically stored.
- 8.2 SSN Exception:
- 8.2.1 Those applicants whose immigration status places them in a non-working status are ineligible for a SSN. Therefore, those applicants who enter the United States with the source document listed in Section 5.2 may present a letter from the Social Security Administration (SSA) verifying that their

non-working immigration status prevents them from being issued a SSN. They are ineligible for a compliant identification card and may be issued a non-compliant identification document that expires with their immigration status expiration date until such time as they have a valid SSN. In every case, the applicant should either return home or his immigration status must be changed allowing him to work by the time he comes back to the DMV for renewal. Therefore, the immigrant must provide a verifiable SSN or an approval letter from the SSA verifying that his non-working immigration status prevents him from obtaining a SSN and new immigration documents at the time of renewal.

8.3 SSN Disclosure Statement:

8.3.1 Disclosure of the applicant's SSN is mandatory. Federal and state laws authorize such disclosure (see Public Law 109-13, and 21 Del.C., Sections 2718(a) and 3104(a)). The division will use SSNs solely for the administration of the driver license and identification card program to ensure accurate identification. SSNs will not be released to businesses or private individuals but may be released to state agencies to carry out their governmental functions. If you obtained an identification document without a SSN and have subsequently obtained a SSN, it is your responsibility to notify the Division of Motor Vehicles within 30 days.

9.0 Principal Residence Address.

9.1 The division and Delaware State Police must be able to contact every identification document holder at the physical location where he lives in this State. Therefore, every applicant must provide two documents that show the individual's name and principal Delaware residence using such documents as utility bills, auto or life insurance policies, W-2 or filed tax forms, voter registration card, bank account records, credit card statements, employment records, signed contract to purchase home in this State, rental agreement or any other document specifically approved by the Chief of Driver Services or Director. These source documents will be electronically stored and when possible, verified. The applicant should notify the division within 30 days after he changes his address. No proof is needed to change a person's address, and it can be accomplished by mail. A Delaware compliant driver license or identification card will not be issued to an applicant unless the applicant has established a principal residence address in this State at the time of application.

9.2 Principal Address Exceptions.

9.2.1 Military members.

9.2.1.1 Members of the U.S. military and their dependents that were issued a Delaware driver license or identification card may renew and retain these identification documents when transferred by the military to another state or country until such time as their active military service is terminated. They can not upgrade to a Delaware compliant document unless they appear in person and meet all other requirements. Upon renewal the division will only issue non-compliant identification documents to members of the military and their dependents living in another state unless they currently hold a Delaware compliant driver license or identification card issued by Delaware.

9.2.1.2 The eye examination is waived and the digital photograph on file will be used when the military member is unable to renew in person provided the photograph was taken within the last 16 years. Upon renewal the military member must provide the division with a valid, unexpired military ID showing his active duty status, his principal residence address, and mailing address in the out-of-state location. At times the dependent's address will be different than the military member's.

9.2.1.3 Military members and their dependents that are transferred into this State have the option of applying for a Delaware identification document or retaining their out-of-state driver license or identification card while serving in the military in this State.

9.2.2 Homeless - Temporary Lodging.

9.2.2.1 After meeting all other requirements, persons living in temporary lodging such as a homeless shelter or motel may be issued a non-compliant identification document provided they substantiate: (1) they are living in temporary quarters in this State pending

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their subsequent move into a designated principal residence address; and (2) the agency offering temporary lodging certifies they are allowed residency for 30 or more days, and they may receive mail at this address.

9.2.3 Those Living on Boats or in Recreational Vehicles.

9.2.3.1 Those applicants whose principal residence address is on a personally-owned boat and who do not have another residency in this or any other state must provide proof that the boat is registered in their name in this State; have a 12-month or longer boat slip contract with a Delaware company; and provide a valid mailing address.

9.2.3.2 Those persons whose principal residence address is in a recreational vehicle on land in this State and who do not have a residency in this or any other state must provide proof that they have a 12-month or longer contract with a recognized Delaware RV campground or trailer court, or reside at the Dover Air Force Base RV campground, and have a valid mailing address.

9.2.3.3 Those living on a boat or in a recreational vehicle will be issued a non-compliant identification document because the nature of their residency suggests frequent travel away from the place where they live and the State cannot be assured they can be easily contacted when away from their designated boat slip or campground.

9.2.4 Mailing Address.

9.2.4.1 If mail cannot be delivered to the applicant's principal residence address or if he is living in temporary quarters without mail service, he must provide the division with a mailing address. Those under the confidential address program must submit a mailing address.

9.3 Confidentiality program.

9.3.1 Law Enforcement Confidential Program.

9.3.1.1 States are not required to comply with compliant requirements when issuing compliant driver licenses or identification cards in support of federal, state, or local criminal justice agencies or other programs that require special licensing or identification to safeguard persons in support of their official duties. The Delaware State Police and DOT IT Support Section will manage the confidential licenses and identification cards for all law enforcement and criminal justice agencies. The program will follow the guidelines established under the memorandum of understanding between the Delaware State Police, Department of Transportation and Division of Motor Vehicles.

9.3.2 Victims of domestic violence, dating violence, sexual assault, stalking, or other forms of abuse may use an alternative address under the State's Victims of Abuse Address Confidentiality Program. The Victims of Abuse Address Confidentiality Program will follow the guidelines established under the memorandum of agreement between Delaware's Department of Justice, Department of Transportation and Division of Motor Vehicles.

10.0 Verification Requirements and Other Restrictions/Limitations.

10.1 Verification of Source Documents.

10.1.1 The division will verify the source documents used to determine an applicant's name, date of birth, SSN, principal residence address, lawful status, gender or any material changes to this data with the issuer of the source document whenever. An electronic validation of the document and identity data will occur as systems become available or by alternative methods approved by the DHS. All source documents and identification document applications will be scanned and electronically retained by the division.

10.1.2 A SSN check (SSOLV) and lawful status verification check (SAVE) will be conducted upon initial issue and/or renewal when a material change occurs, and whenever a new identification document is produced. If an applicant has previously proven/established United States citizenship, a SAVE check may not be required.

10.1.3 The division may not remotely reissue a Delaware compliant driver license or identification card where there has been a material change in any personally identifiable information since prior issuance. All material changes must be established by an applicant applying in person at a division

facility and presentation of an original source document that is verified before the material change is accepted.

10.1.4 A Delaware compliant or non-compliant identification document may be issued remotely as long as the SSN and lawful status is verified.

10.1.5 The division will electronically verify information that it was not able to verify at a previous issuance or renewal if the systems or processes exist to do so.

10.2 Electronic Verification Details.

10.2.1 Systematic Alien Verification for Entitlements (SAVE).

10.2.1.1 Any documents listed in Section 5.2 and issued by the DHS, including the I-94, will be verified through the SAVE system or alternate method approved by the DHS. If two DHS-issued documents are shown, only one must be verified. In the event of a non-match, the division must not issue a Delaware compliant or non-compliant identification document to an applicant and must refer the individual to the U.S. Citizenship and Immigration Services for resolution. The division will not issue a compliant or non-compliant identification document unless the applicant has lawful status in the United States.

10.2.2 Social Security On-Line Verification (SSOLV).

10.2.2.1 The division will verify SSNs with the Social Security Administration (SSA) using SSOLV or through another method approved by the DHS. In the event of a non-match with the SSA, the division will use existing procedures to resolve non-matches. If unable to resolve non-matches, the division will deny issuance to those applying for their first Delaware identification document. A Delaware compliant or non-compliant identification document will not be issued until the mismatch condition is resolved. However, upon renewal of a Delaware-issued identification document, the document holder may be issued one 60-day temporary non-compliant identification document to give him time to resolve the mismatch condition with the SSA. The division may establish procedures and exceptions through memorandums.

10.2.3 Commercial Driver License Information Systems (CDLIS).

10.2.3.1 Mandated by the Commercial Motor Vehicle Safety Act (CMVSA) of 1986, the division will verify all driver license transactions through CDLIS to ensure the applicant does not hold a commercial motor vehicle compliant or non-compliant identification document in another jurisdiction. If a match is found in another jurisdiction, the applicant must surrender his existing identification document from the other jurisdiction to obtain a Delaware compliant or non-compliant identification document. During the renewal process, if a match is found with a status of "not eligible", the applicant must downgrade his Delaware commercial compliant or non-compliant identification document to a Class D and be issued a 60-day temporary non-compliant identification document until the status becomes "eligible". At that time the applicant may be reissued his Delaware commercial compliant or non-compliant identification document.

10.2.4 Problem Driver Pointer System (PDPS).

10.2.4.1 In conjunction with the National Driver Registry (NDR), the division will verify all driver license transactions through PDPS to ensure the applicant's eligibility to obtain valid driving authority and carry a compliant or non-compliant identification document. If a match is found from another jurisdiction with a status of "not eligible" during an initial or transfer transaction, the applicant is denied a Delaware compliant or non-compliant identification document until the jurisdiction reports a status of "eligible". During an identification document change, duplicate or renewal process, if a "not eligible" status is found, the applicant is issued a 60-day temporary non-compliant identification document until the status becomes "eligible". At that time the applicant may be reissued his Delaware compliant or non-compliant identification document.

10.2.5 Electronic Verification of Vital Events (EVVE).

10.2.5.1 Birth certificates must be verified by using the EVVE system or other electronic systems whenever the system or records become available. If the document does not appear

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authentic upon inspection or the data does not match, a Delaware compliant or non-compliant identification document will not be issued until the information is verified. The applicant must return to the issuing agency for resolution.

10.2.6 Department of State Documents.

10.2.6.1 Documents issued by the Department of State will be verified with the Department of State or through methods approved by the DHS when or if the verification system becomes available.

10.2.7 Compliant Documents.

10.2.7.1 Compliant identification documents will be verified with the state of issuance when or if the verification system becomes available.

10.3 Non-Match Verification Results and System Failure Procedures.

10.3.1 Initial Issue and Transfer.

10.3.1.1 The division will deny the initial issuance of a Delaware compliant or non-compliant identification document whenever a verification check (SSOLV, SAVE or EVVS) results in a non-match condition.

10.3.2 Renewal - Missing Source Document.

10.3.2.1 A Delaware resident holding a valid driver license or identification card who is unable to present the required source documents at the time of renewal may be issued a Delaware non-compliant identification document until they can provide the required source documents and meet all other requirements for a Delaware compliant identification document. There is no additional fee for changing a non-compliant identification document to a compliant identification document.

10.3.3 Renewal - Mismatch Condition.

10.3.3.1 Should a mismatch condition occur for those applicants renewing a Delaware-issued identification document, they may be issued a 60-day temporary non-compliant identification document to give them time to resolve the problem with the issuing agency.

10.4 Renewal and Verification System Failure.

10.4.1 If an electronic verification system fails when an applicant is renewing his Delaware-issued identification document, the following may occur depending on which verification system failed:

10.4.1.1 The applicant may be denied issuance;

10.4.1.2 The applicant may be issued a 60-day temporary non-compliant identification document;

10.4.1.3 The applicant may be permitted to renew his identification document when the SAVE verification fails if all other systems have passed. However, the SAVE verification must be immediately performed when the system comes back online. The applicant's immigration documents must show an expiration date that can be used on the renewal for a Delaware non-compliant identification document. The comment section of the driving record must be annotated to reflect what transpired.

10.4.1.4 Delaware compliant identification documents require full verification of all systems for initial issuance.

10.4.2 If a verification system fails when the applicant is applying for his initial Delaware identification document, the application will be denied until the verification check is completed.

10.4.3 Regardless of the above procedures, no identification documents will be issued if there is reason to believe the applicant is attempting to commit fraud by presenting altered or fraudulent source documents or by finding non-matching or inconsistent data on various electronic databases, or by other factors that would lead a reasonable person to conclude the applicant is attempting to commit fraud. In such instances, an electronic record will be established, a digital photograph will be captured, the record will be annotated as denied, and fraudulent or altered documents will be confiscated. A division investigator or a law enforcement officer will be asked to investigate to determine future action.

10.5 Prohibition Against Holding More Than One Compliant ID Card or More Than One Driver License.

- 10.5.1 The division will ensure the applicant does not have more than one valid compliant or non-compliant driver license issued in this or any other state, thereby supporting the one driver license, one driving record concept as expressed in the Driver License Agreement.
- 10.5.2 An individual may hold only one compliant identification document. Nothing shall preclude an individual from holding a compliant driver license and a non-compliant identification card or vice versa. If a person holds a compliant identification document in another state, he will not be issued a Delaware compliant identification document in this State until the individual or division has terminated the compliant identification document issued by another state.
- 10.5.3 Problem Driver Pointer System (PDPS), Commercial Driver License Information System (CDLIS), National Law Enforcement Telecommunication System (NLETS) and other national systems may be used to electronically verify, within the limits of each network, whether or not an applicant has a valid compliant identification document issued by another state.
- 10.5.4 Motor Vehicle System software performs name and social security cross checks to identify persons who are mistakenly assigned multiple driving or identification card records on the division's files. Multiple records will be combined into one record when discovered.
- 10.5.5 An applicant's identity will be verified each time a Delaware compliant or non-compliant identification document is renewed or reissued to ensure that the individual receiving a Delaware identification document is the same individual to whom the document was originally issued.
- 10.5.6 An applicant must be denied a Delaware-issued compliant identification document until the compliant document issued by another state is terminated or soon to be terminated. If the applicant must terminate a compliant identification document issued by another state, then the division, as allowed under the Driver License Compact, may act on behalf of the applicant and inform that state that Delaware has issued a Delaware compliant identification document in this State and request the other state cancel the one issued by its agency. A Delaware compliant identification document will be issued pending the termination of the out-of-state document.

10.6 Other Restrictions/Limitations.

- 10.6.1 If the division discovers a person holds a compliant or non-compliant identification document in multiple or different names issued by this or any other state, the division may deny issuance of an identification document, investigate the matter and suspend the applicant pursuant to Title 21, Section 2733(a)(5).
- 10.6.2 An applicant cannot obtain his initial Delaware driver license or transfer a license from another state if his driver license is suspended or revoked in any state for a violation that would result in a suspension or revocation in this State. Renewal exception: Those applicants renewing a valid Delaware-issued driver license may be issued a 60-day, non-compliant temporary driver license to give them an opportunity to resolve the out-of-state suspension or revocation. Once the out-of-state suspension or revocation is cleared, the applicant may be issued a valid Class D license. If a driver holds a CDL, he must downgrade to a Class D license before being issued a temporary license.

11.0 Other Mandatory Data Collection and Source Documents Retention.

11.1 Digital photograph images.

- 11.1.1 An identification document shall not be valid unless it contains the applicant's full facial image and signature. The mandatory facial image must be captured and retained even if no identification document is issued. The applicant for an initial Delaware compliant identification document must appear in person to update his full facial digital image. Upon approval by the Director of the Division of Motor Vehicles, at the Director's discretion, the requirements for this appearance may be waived for those with an existing Delaware-issued compliant or non-compliant identification document whose full facial digital image and electronic signature is on file when circumstances prevent the applicant from appearing on or near the time of renewal or reissue provided the full facial digital image printed on the license was taken within the previous 16 years.
- 11.1.2 The digital photograph must be full faced and provide an unobstructed view of the person's facial features. This enables the photograph on the license to be used as a means of proper

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identification for motor vehicle, emergency and public safety purposes. For more specific details consult current Division photograph image procedures. Digital imaging driver license facial recognition one-to-many technology compares each digital photograph taken against all other digital photographs on file to ensure the driver license or identification card applicant does not have multiple identification documents in different or same names on file in this State. One-to-many facial comparisons will be conducted on all initial issuance and transfers of compliant and non-compliant identification documents. This same technology completes a one-to-one verification check by comparing the latest digital photograph taken against all other photographs on an applicant's current record. One-to-one facial comparisons will be conducted on all compliant and non-compliant identification document renewals. This is designed to prevent a digital photograph from appearing on another person's identification document. Whenever the facial recognition technology pinpoints potential duplication, fraud or mistaken assignment of a photo, the applicant will not be issued an identification document until the discrepancy is resolved.

11.1.3 A new digital photo image will be made every time a person appears in person to renew his identification document, have his identification document reissued, materially changed, or have his address changed on his identification document.

11.1.4 If the division issues an identification document without a photo image or one that does not meet division standards, the customer will be notified in writing that he must return to a division facility within seven days to replace the deficient document. If he fails to comply, his identification document status will be changed to "denied", and the driver will be notified of the change. Identification document holders will be denied renewal or reissued documents until the photo image meets division standards.

11.2 Signature.

11.2.1 Every holder of an identification document shall sign an application under the penalty of perjury that the information on the application is true and correct. The applicant will use his normal signature. The identification document shall not be valid until signed by the applicant. By signing the application he acknowledges the following and any other information that may be included on the application in the future:

11.2.2 He is a bona fide resident of Delaware;

11.2.3 Consent to chemical tests of his breath, blood or urine to determine the amount of alcohol or drugs in his blood;

11.2.4 That convicted sex offenders must register with the Delaware State Police within seven days after coming into this State (Megan's Law);

11.2.5 That the division will send personal information pertaining to male applicants under the age of 26 years to the Selective Service for the purpose of registration in the Selective Service System as required by federal and state laws;

11.2.6 That he is physically and mentally able to safely operate a motor vehicle;

11.2.7 That he must report if he holds a license in another state or if his driving privileges are suspended or revoked in any state.

11.3 Retaining Source Documents.

11.3.1 The source documents submitted by the applicant to the division are used to determine the person's name, date of birth, gender, SSN (if eligible), address of principal residence, unless enrolled in a state address confidentiality program, and lawful status and shall be retained by the division in either paper or electronic format. The identification document application signed by the applicant will also be retained.

11.4 Miscellaneous.

11.4.1 For identification purposes, the division will also collect the applicant's height, weight, and eye color based upon verbal information provided by the applicant.

12.0 Source Document Retention Period.

- 12.1 At a minimum the division will retain the following documents including copies of the application, declarations, source documents and documents used to establish all names recorded by the division. The division will protect any personally identifiable information collected. The division may retain these documents for a longer time period than the period specified in the following:
- 12.2 The full facial image/photograph will be retained by the Department of Transportation for at least five years if no identification document is issued and at least two years beyond the expiration date of the identification document;
- 12.3 All paper copies of source documents must be retained for a minimum of seven years;
- 12.4 Microfiche documents must be retained for a minimum of ten years;
- 12.5 Digital images of source documents must be retained for a minimum of ten years;
- 12.6 Digital, microfiche and paper identification document applications and declarations will be retained for a minimum of ten years;
- 12.7 All photograph images must be stored and be retrievable by the division if properly requested by statute or regulation;
- 12.8 Upon request by an applicant, the division may record and retain the applicant's name, date of birth, certificate numbers, date filed, and issuing agency in lieu of an image or copy of the applicant's birth certificate if such procedures are required by State law.

13.0 Division Databases.

- 13.1 The Division must maintain a motor vehicle database that contains, at a minimum:
 - 13.1.1 All data fields printed on identification documents issued by this State, individual serial numbers of the documents and SSNs;
 - 13.1.2 A record of the full legal name and recorded name, as applicable, without truncation;
 - 13.1.3 All additional data fields included in the machine readable zone (MRZ) but not printed on the identification document; and
 - 13.1.4 Motor vehicle driver's histories, including motor vehicle violations, revocations, disqualifications, suspensions, and points on driver's licenses.
 - 13.1.5 The Division must protect the security of personally identifiable information as prescribed in State law and information technology policies and procedures.

14.0 Severability.

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

15.0 Effective Date.

The following regulation shall be effective ten days from the date the order is signed, and it is published in its final form in the Register of Regulations in accordance with 29 Del.C., Section 10118(e). Delaware compliant identification documents will become available once Delaware self certifies to the DHS and the DHS determines Delaware has met the requirements of 6 CFR 3.7 or its equivalent as amended from time to time, the division may issue Delaware compliant identification documents, which will be accepted by federal agencies for official purposes.

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF AGRICULTURE

DIVISION OF ANIMAL HEALTH AND FOOD PRODUCTS INSPECTION

Statutory Authority: 3 Delaware Code, Section 7202 (3 **Del.C.** §7202)
3 **DE Admin. Code** 304

304 Exotic Animal Regulations

ORDER

I. Nature of Proceedings

Pursuant to its authority under 3 **Del.C.** §7202 and 29 **Del.C.** § 10115, the State of Delaware, Department of Agriculture's Division of Animal Health and Food Products Inspection (the "Division") proposed to adopt regulations. The Division's purpose in proposing regulations was to specify the means by which citizens of Delaware may obtain permits from the Division to possess, sell, or exhibit exotic animals within the State.

Notice of a public comment period of thirty (30) days relating to the Division's proposed regulations was published in the Delaware *Register of Regulations* for November 1, 2009 as well as in two Delaware newspapers of general circulation in accordance with 29 *Del. C.* §10115. This is the Division's Decision and Order adopting the proposed regulations.

II. Public Comments

The Division received the following public comments in response to its notice of intention to adopt the proposed regulations and offers the following responses thereto:

The Outdoor Amusement Business Association requested the creation of exemptions to the sixty (60) day rule found at proposed Regulation 7.3.4.1 to accommodate last minute invitations to exhibitors of exotics. Upon

reconsideration of the matter, the Division submits that the proposed Regulation as drafted only requires notification within the sixty-day period and not more than sixty days prior to the event. However, minor, non-substantive changes have been made to clarify the provision.

The Department of Natural Resources and Environmental Control ("DNREC") suggested the penalties for violations of the proposed regulations be set forth in the proposed regulations as administrative penalties. The Division prefers instead to set forth administrative penalties in its statute and will be submitting legislation to the Delaware General Assembly in early 2010 to accomplish what it agrees is a sensible approach to deterring improper conduct involving exotics.

The DNREC suggested that proposed Regulation 4.0 be revised by specifically designating DNREC and the SPCA as the Division's designated law enforcement agencies. Again, the Division prefers instead to designate specific agencies, including DNREC, as its enforcement agencies by amending its statute and will be submitting legislation to the Delaware General Assembly in early 2010 to accomplish what it agrees is a sensible approach to enforcing the laws regulating conduct involving exotics.

The DNREC suggested that proposed Regulation 5.0 be amended to address ongoing problems concerning the gathering and reporting of non-disease related information about exotics. On reconsideration, the Division believes further study is necessary and resolves to address this legitimate concern at a later time.

The DNREC suggested a revision to proposed Regulation 7.4.2 to make it clear that the Wildlife Rehabilitator Permit applies to native species only. The Division has agreed to make the suggested non-substantive change to the language of 7.4.2.

A public comment was received requesting that proposed Regulation 7.5.2.10.2.3, which prohibits the breeding of giant snakes, be deleted. The Division rejects the request based upon the unjustified risk of physical harm to humans and other animals attending the reproduction of such exotics and cites the Florida Everglades experience as proof of the need for the prohibition. Merely ownership of such giant snakes is allowed with possession of a proper permit, but only zoos may breed giant snakes (see proposed Regulation 6.2.1.4.1). The breeding of most snakes is allowed under the Division's proposed regulations as long as a sales permit is first obtained. The Division believes this is the soundest public policy approach and the fairest to all Delawareans.

A public comment was received requesting that the Division delete the permitting requirement for persons rescuing snakes. The Division rejects this request and cites proposed Regulation 7.4.5.3 as its basis for concluding that the commenter overlooked or misunderstood this provision. The commenter, as a rehabilitator, is allowed to possess as many as twenty snakes under a single rehabilitator permit with the option of seeking permission from the Division to increase that number.

A public comment was received concerning the breeding of rats used to feed snakes. Rat breeding is not covered by the Division's proposed regulations inasmuch as rats are not exotics.

III. Findings And Conclusions

The public was given the required notice of the Division's intention to adopt the proposed regulations and was given the opportunity to provide the Division with comments concerning them. Thus, the Division concludes that its consideration of the proposed regulations was entirely within its prerogatives and statutory authority and, having received and considered public comments that did not lead to substantive changes, is now free to adopt the proposed regulations.

IV. Order

AND NOW, this 18th day of December, 2009 it is hereby ordered that:

1. The proposed regulations are adopted;
2. The text of the proposed regulations shall be in the form attached hereto as Exhibit A;
3. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations* in accordance with 29 Del. C. §10118(e); and
4. The Division reserves unto itself the authority to issue such other and further orders concerning its practices and procedures as may be just and proper.

IT IS SO ORDERED.

Ed Kee, Secretary, Delaware Department of Agriculture

Heather Hirst, State Veterinarian, Delaware Department of Agriculture

304 Exotic Animal Regulations***(Break in Continuity of Sections)*****7.0 Permit Classes****7.1 Individual Permit**

7.1.1 When an exotic is kept as a pet, the owner or custodian of the exotic must apply to the Department for an Individual Permit on a form supplied by the Department. Individual Permits granted by the Department shall become null and void when the owner or custodian transfers ownership or custodianship of the exotic to another person. The owner or custodian must obtain a separate Individual Permit for each exotic animal kept as a pet. A background check of an owner or custodian applying for an Individual Permit may be completed by the Department.

7.1.2 An Individual Permit is not transferable, is valid for three years, and must be renewed in accordance with regulation 9.1.

7.1.3 When the owner or custodian of an exotic holds an Individual Permit for that exotic and he or she transfers ownership through gifting or adoption then he or she is not considered to be a seller and is not required to have a Sales Permit.

7.2 Accredited Zoo Permit

7.2.1 All zoos in Delaware must obtain an Accredited Zoo Permit which is not transferable.

7.2.2 All zoos in Delaware must be in keeping with the Association of Zoos and Aquariums (AZA) accreditation process.

7.2.3 An Accredited Zoo Permit is not transferable, is valid for five (5) years and must be renewed in accordance with section 9.2.

7.3 Exhibitor Permit

7.3.1 All owners or custodians (with the exception of permitted Accredited Zoos located in Delaware) that wish to present exotic animals for public viewing must obtain an Exhibitor Permit.

7.3.2 An Exhibitor Permit is not transferable, is valid for the calendar year in which it was issued and must be renewed in accordance with regulation 9.3.

7.3.3 A background check of an owner or custodian applying for an Exhibitor Permit may be completed by the Department.

7.3.4 Exotic Animal Exhibitors Duties:

7.3.4.1 Notify the Department within ~~the~~ sixty (60) day ~~period~~ prior to exhibiting exotic animals in Delaware;

7.3.4.2 Provide the Department with an annual inventory which includes an Accurate Description of each exotic animal to be exhibited. The inventory does not need to include **exempt** exotics (regulation 6.1). If changes to the annual inventory previously provided to the Department occur prior to exhibiting in Delaware then notify the Department by e-mail, fax or writing of the changed inventory by listing the addition or removal of each exotic animal;

7.3.4.3 Provide the Department with the dates of exhibition;

7.3.4.4 Provide the Department with a list of exhibition activities;

7.3.4.5 Provide the Department with a public health and safety plan, an animal attack protocol, and an animal health plan upon request;

7.3.4.6 Show proof of exotic animal permits or licenses from the state or states where the exhibitor is based to the Department upon request;

7.3.4.7 Provide valid health certificates upon request;

7.3.4.8 When applicable have a valid Delaware business license and provide proof of same upon request; and

7.3.4.9 Provide proof of knowledge of exotics' health, safety and proper care upon request.

7.4 Rehabilitator Permit

7.4.1 The Rehabilitator Permit must be obtained from the Department by an owner or a custodian who provides short term care and rehabilitation of exotic animals.

7.4.2 The applicant for the Rehabilitator Permit **[for native species]** must provide documentation that he or she holds a Wildlife Rehabilitator Permit from DNREC.

7.4.3 A Rehabilitator Permit is not transferable, is valid for three years and must be renewed in accordance with regulation 9.4.

7.4.4 A background check of an owner or custodian applying for a Rehabilitator Permit may be completed by the Department.

7.4.5 Rehabilitator Permit Holder's Duties:

7.4.5.1 By December 31st of each calendar year the exotic animal Rehabilitator must:

7.4.5.1.1 Provide the Department with a yearly inventory of every exotic currently being rehabilitated. The inventory does not need to include **exempt** exotics (regulation 6.1). The inventory must include an Accurate Description of each exotic;

7.4.5.1.2 Request in writing permission from the State Veterinarian or his/her designee for an extension of the exotic's rehabilitation time when the exotic is carried over from the prior year's inventory;

7.4.5.1.3 Identify each dead, adopted or relocated exotic from the prior year's inventory and note whether exotic has been relocated in the State of Delaware or outside the State of Delaware;

7.4.5.1.4 Identify each exotic newly acquired during the calendar year ending on December 31st. The identification should include: an Accurate Description, a brief explanation of the reason each exotic animal was acquired or born and note whether the newly acquired exotic remains in the yearly inventory, has died, has been adopted, or has been relocated in the State of Delaware or outside the State of Delaware; and

7.4.5.1.5 Include the adopter's name, address and when available, telephone and e-mail.

7.4.5.2 Provide the Department with a public health and safety plan, an animal attack protocol, an emergency evacuation plan and an animal health, proper care and rehabilitation plan upon request.

7.4.5.3 Be limited to a maximum of twenty (20) exotic animals per Class of Exotic unless a written request to exceed the maximum number is approved by the State Veterinarian within sixty (60) days of exceeding the maximum.

7.4.5.4 The rehabilitator must require at the time of an exotic's adoption that the adopter has obtained the appropriate class of Exotic Animal Permit from the Department.

7.4.5.5 The rehabilitator must verify at the time of the exotic's adoption that the adopter's name and address on a Valid Identification card is the same as noted on the appropriate class of Exotic Animal Permit presented.

7.4.5.6 Provide the adopter with written information regarding the exotic's enclosure, proper care, nutrition and welfare requirements.

7.4.5.7 The rehabilitator must inform the adopter that there may be county, city, local laws, rules and regulations that may govern or proscribe the possession of exotics in their area.

7.4.5.8 If the adopter resides outside the State of Delaware, the rehabilitator must maintain a record of the interstate transfer of ownership, including adopter's address; and the rehabilitator is responsible for notifying the appropriate state veterinarian's office or applicable state agency.

7.4.5.9 Keep a record of the adopter's name, address and when available, telephone and e-mail for three years.

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7.4.6 Adopters of Rehabilitated Exotics; Duties: When an adopter proposes to become an owner or custodian of an exotic that requires permitting by the Department the following conditions prior to becoming an owner/custodian must be met:

7.4.6.1 The adopter must obtain the appropriate class of Exotic Animal Permit from the Department prior to the time of the exotic's adoption.

7.4.6.2 The adopter must present to the rehabilitator at the time of the exotic's adoption a Valid ID with the same name and address that are on the Exotic Animal Permit.

7.5 Sales Permit

7.5.1 Owners or custodians that sell exotics in Delaware or sell exotics from Delaware to locations outside of Delaware must obtain a Sales Permit from the Department for each Class of Exotic sold.

7.5.1.1 A Sales Permit is not transferable, is valid for the calendar year in which it was issued and must be renewed in accordance with regulation 9.5.

7.5.1.2 Accredited Zoo Permit and Rehabilitator Permit holders are not required to hold a Sales Permit.

7.5.1.3 Exhibitor Permit holders engaged in the sale of exotics are required to hold a Sales Permit in accordance with regulations 7.5, 8.5, and 9.5.

7.5.1.4 With the exception stated in regulation 7.1.3, Individual Permit holders engaged in the sale of exotics or the breeding of exotics in the Herbivore or Reptile class are required to hold a Sales Permit in accordance with regulations 7.5, 8.5, and 9.5.

7.5.1.5 A background check of an owner or custodian applying for a Sales Permit may be completed by the Department.

7.5.1.6 When applicable have a valid Delaware business license and provide proof of same upon request by the Department.

7.5.1.7 Notify the Department in writing by June 30th each year of any exotic that was acquired, born or died since the prior year's (December 31st) inventory. This notification does not apply to **exempt** exotics (regulation 6.1).

7.5.2 Seller's Duties- When an owner or custodian proposes to sell an exotic that requires permitting by the Department the following conditions of sale must be met:

7.5.2.1 The seller must require at the time of the sale that the purchaser has obtained the appropriate class of Exotic Animal Permit from the Department.

7.5.2.2 The seller must verify at the time of the sale that the purchaser's name and address on a Valid Identification card is the same as noted on the appropriate class of Exotic Animal Permit presented.

7.5.2.3 The seller must provide the purchaser with written information regarding the exotic's enclosure and welfare requirements.

7.5.2.4 The seller must notify the purchaser that there may be county, city, and local laws, rules and regulations within the State of Delaware that may proscribe or govern the possession of exotics in their area.

7.5.2.5 The seller must notify the Department in writing of the purchaser's name and address, and when available, e-mail address or telephone number and an Accurate Description of the Exotic by the first of every month after the sale of an Exotic.

7.5.2.6 If the purchaser resides outside the State of Delaware, the seller must maintain a record of the interstate sale, including purchaser's address, and must notify the appropriate state veterinarian's office or applicable state agency.

7.5.2.7 A legible copy of the purchaser's sale record must be maintained by the seller for 3 years after the sale of the exotic animal.

7.5.2.8 The seller must attest in writing that all exotic animals put up for sale are in good health at the time of sale.

7.5.2.9 The seller of reptiles must be in keeping with regulation 5.1.

- 7.5.2.10 Sales permit holders are **prohibited from breeding** the following exotics in the Herbivore and Reptile classes:
- 7.5.2.10.1 Members of Herbivore class prohibited from breeding:
- 7.5.2.10.1.1 Herbivores whose average adult body weight of the species is greater than thirty pounds; and
- 7.5.2.10.1.2 All rare and endangered species.
- 7.5.2.10.2 Members of Reptile class prohibited from breeding:
- 7.5.2.10.2.1 All members of the Croc odilian group: Alligators , Caimans, Crocodiles, and Gharials;
- 7.5.2.10.2.2 All members of the Tuatara group;
- 7.5.2.10.2.3 All giant snakes when average adult body length of the species is larger than 5 feet: Anacondas, Pythons and Boas;
- 7.5.2.10.2.4 All giant lizards: Monitors (*Varanidae*);
- 7.5.2.10.2.5 All giant tortoises: Aldabras and Galapagos; and
- 7.5.2.10.2.6 All rare and endangered species.
- 7.5.3 Purchaser's Duties. When a purchaser proposes to become an owner or custodian of an exotic that requires permitting by the Department the following conditions prior to purchase must be met:
- 7.5.3.1 The purchaser must obtain the appropriate class of Exotic Animal Permit from the Department prior to the time of purchase.
- 7.5.3.2 The purchaser must present to the seller at the time of the sale a Valid ID with the same name and address that are on the Exotic Animal Permit.

***Please note that no additional changes were made to the regulation as originally proposed and published in the November 2009 issue of the *Register* at page 559 (13 DE Reg. 559). Therefore, the final regulation is not being republished here. A copy of the entire final regulation is available at:**

[304 Exotic Animal Regulations](#)

HARNES RACING COMMISSION

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

ORDER

Pursuant to 29 Del.C. §10118 and 3 Del.C. §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on November 3, 2009, the Commission makes the following findings and conclusions:

Summary of the Evidence

The Commission posted public notice of the proposed amendments to DH RC Rule 10 in the April 1, 2009 *Register of Regulations* (Volume 13, Issue 3) and for two consecutive weeks in September in *The News Journal* and *Delaware State News*. The Commission proposed to update Rule 10 in its entirety after Rules Committee review. The Commission received no written comments. The Commission held a public hearing on November 3, 2009, in which no public comments were made.

Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules. After considering the rule changes as proposed, the Commission hereby adopts the rule changes as proposed. The Commission believes that these rule changes will allow the Delaware Harness Racing Commission rules to more accurately reflect current policy and procedures.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on January 1, 2010.

IT IS SO ORDERED this 3rd day of November, 2009.

Beverly H. (Beth) Steele, Chairman
 Robert (Breezy) Brown, Commissioner
 George P. Staats, Commissioner
 Larry Talley, Commissioner

501 Harness Racing Rules and Regulations

*(Break in Continuity of Sections)***10.0 Due Process and Disciplinary Action**

10.1 General Provisions

This chapter contains the rules of procedure for ~~State Steward and judges'~~ hearings, and for Commission proceedings.

10.2 Proceedings by ~~State Steward~~ Presiding Judge or Judges*(Break in Continuity Within Section)*

10.2.3 Summary Suspension

10.2.3.1 If the ~~State Steward or judges~~ Board of Judges determine that a licensee's actions, other than those of a licensed ~~a~~ Association, constitute an immediate danger to the public health, safety or welfare, the ~~State Steward or judges~~ Board of Judges [~~the Commission Investigator~~], may summarily suspend the license pending a hearing.

(Break in Continuity Within Section)

10.2.6 Evidence

10.2.6.1 Each witness at a disciplinary hearing conducted by the ~~State Steward or judges~~ Board of Judges must be sworn by the ~~State Steward or~~ presiding judge.

10.2.6.2 The ~~State Steward or judges~~ Board of Judges shall allow a full presentation of evidence and are not bound by the technical rules of evidence. However, the ~~State Steward or judges~~ Board of Judges may disallow evidence that is irrelevant or unduly repetitive of other evidence. The ~~State Steward or judges~~ Board of Judges shall have the authority to determine, in their sole discretion, the weight and credibility of any evidence and/or testimony. The ~~State Steward or judges~~ Board of Judges may admit hearsay evidence if [~~the~~] ~~State Steward or judges~~ it determines the evidence is of a type that is commonly relied on by reasonably prudent people. The rules of privilege recognized by Delaware law apply in hearings before the ~~State Steward or judges~~ Board of Judges.

- 10.2.6.3 The burden of proof is on the person bringing the complaint to show, by a preponderance of the evidence, that the licensee has violated or is responsible for a violation of the Act or a Commission rule.
- 10.2.6.4 The ~~State Steward or judges~~ Board of Judges ~~[shall may]~~ make a tape recording of a disciplinary hearing. A copy or a transcript of the recording may be made available at the expense of the requesting person.

(Break in Continuity Within Section)

10.3 Proceedings by the Commission

(Break in Continuity Within Section)

10.3.6 Nature of Hearings

- 10.3.6.1 An appeal from a decision of the ~~State Steward or judges~~ Board of Judges shall be "de novo" **[(a new hearing shall be held with all evidence, testimony and argument to be presented at the new hearing)]**.

(Break in Continuity Within Section)

***Please note that no additional changes were made to the regulation as originally proposed and published in the April 2009 issue of the *Register* at page 1256 (12 DE Reg. 1256). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[501 Harness Racing Rules and Regulations](#)

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 735

REGULATORY IMPLEMENTING ORDER

735 Standardized Financial Reporting and Transparency

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 735 Standardized Financial Reporting to be in alignment with the additional requirements of House Substitute No. 1 to House Bill No. 119 of the 145th General Assembly. The Department solicited comments from the district business managers and charter directors and made changes based on their feedback.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Monday, November 2, 2009, in the form hereto attached as Exhibit "A". Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities endorsing the regulations with a minor editing change in § 5.3. The Governor's Advisory Council noted that "the citizens of Delaware will be able to better track expenditures in each district and follow trends of expenses." Public comments were received recommending the Department require standardized reporting forms, also to require budgets and

financial reports use object codes and intermediate budget units (IBUs). The Department requires districts and charter schools to use a Department approved reporting form. The Department anticipates the financial system tentatively scheduled to be implemented in summer 2010 will lead to further standardization of the reporting process.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 735 Standardized Financial Reporting and Transparency in order to be in alignment with the additional requirements of House Substitute No. 1 to House Bill No. 119 of the 145th General Assembly.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 735 Standardized Financial Reporting and Transparency. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 735 Standardized Financial Reporting and Transparency attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 735 Standardized Financial Reporting and Transparency 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** 735 Standardized Financial Reporting and Transparency amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 735 Standardized Financial Reporting and Transparency in the Administrative Code of Regulations for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on December 15, 2009. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of December 2009.

DEPARTMENT OF EDUCATION

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

Approved this 15th day of December 2009

735 Standardized Financial Reporting and Transparency

*Please note that no changes were made to the regulation as originally proposed and published in the November 2009 issue of the *Register* at page 572 (13 DE Reg. 572). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[735 Standardized Financial Reporting and Transparency](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 851

REGULATORY IMPLEMENTING ORDER

851 K to 12 Comprehensive Health Education Program

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education 14 **DE Admin. Code** 851 K to 12 Comprehensive Health Education Program. The regulation was amended for formatting purposes and also clarification on necessary components of the district and charter school health education programs. In addition, clarifies that charter schools are subject to these program requirements.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Monday, November 2, 2009, in the form hereto attached as Exhibit "A". Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities endorsing inclusion of the reference to "interpersonal violence prevention program" in § 1.1.7.. In response to the Councils' comments, the Department has added the phrase "and family life education" to § 1.1.3.3. The Department declines to add additional specification a round traumatic brain injury education as this is covered in the core concept of injury prevention and safety.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 851 K to 12 Comprehensive Health Education Program for formatting purposes and also clarification on necessary components of the district and charter school health education programs. In addition, clarifies that charter schools are subject to these program requirements.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 851 K to 12 Comprehensive Health Education Program. Therefore, pursuant to 14 Del.C. §122, 14 **DE Admin. Code** 851 K to 12 Comprehensive Health Education Program attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 851 K to 12 Comprehensive Health Education 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 851 K to 12 Comprehensive Health Education amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 851 K to 12 Comprehensive Health Education in the Administrative Code of Regulations for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on December 9, 2009. 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 9th day of December 2009.

DEPARTMENT OF EDUCATION

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

Approved this 9th day of November 2009

STATE BOARD OF EDUCATION

Teri Quinn Gray, President

Dennis J. Savage

G. Patrick Heffernan

Dr. Terry M. Whittaker

Jorge L. Melendez

Dr. James L. Wilson

Barbara B. Rutt

851 K to 12 Comprehensive Health Education Program

1.0 Program Requirements

- 1.1 Each school district and charter school shall have a sequential, skill-based K to 12 Comprehensive Health Education Program based on the Delaware Health Education Standards that establishes a foundation of understanding the relationship between personal behavior and health and shall include at a minimum the following:
- 1.1.1 Identification of a district level person to coordinate the district program and a coordinator in each building to assure compliance at the building level. Each charter school shall identify a person to coordinate the program for the charter school.
- 1.1.2 Appointment of persons such as teachers, parents, school nurses, community leaders, guidance counselors, law enforcement officers and others with expertise in the areas of health, family life and safe and drug free schools and communities to serve as members of the District Consolidated Application Planning Committee.
- 1.1.3 The use of the state content standards for health education for grades K to 12 ~~inclusive of~~ to address the core concepts: to tobacco, alcohol and other drugs, injury prevention and safety, nutrition and, physical activity, family life and sexuality, ~~tobacco~~, ~~emotional~~ personal health and wellness, ~~mental~~, ~~personal and consumer~~ health and community and environmental health with minimum hours of instruction as follows:
- 1.1.3.1 In grades K to 4, a minimum of thirty (30) hours in each grade of comprehensive health education and family life education of which ten (10) hours, in each grade, must address drug and alcohol education.
- 1.1.3.2 In grades 5 and 6, a minimum of thirty five (35) hours in each grade of comprehensive health education and family life education of which fifteen (15) hours, in each grade, must address drug and alcohol education.
- 1.1.3.3 In grades 7 and 8, separate from other subject areas, a minimum of sixty (60) hours of comprehensive health education **[and family life education]** of which fifteen (15) hours, in each grade, must address drug and alcohol education. If all of the 60 hours are provided in one year at grade 7 or 8, an additional fifteen hours of drug and alcohol education must be provided in the other grade.
- 1.1.3.4 In grades 9 to 12, one half (1/2) credit of comprehensive health education is required for graduation of which fifteen (15) hours of this 1/2 credit course must address drug and alcohol education. This 1/2 credit course may be provided in the 9th, 10th, 11th or 12th grade. In each of the remaining three grades, fifteen (15) hours of drug and alcohol education must be provided for all students.
- 1.1.4 Inclusion of a comprehensive sexuality education and an HIV prevention program that stresses the benefits of abstinence from high risk behaviors.

- 1.1.5 Inclusion of the core concepts of nutrition and family life and sexuality implemented through Family and Consumer Science courses.
- 1.1.6 Inclusion of research-based fire safety education in grades kindergarten through grade 6.
- 1.1.7 Inclusion of an evidence-based tobacco, alcohol, drug and interpersonal violence prevention program.
- 4.6 ~~1.1.8~~ ~~An annual staff development plan that describes~~ The use of effective instructional methods as demonstrated in sound research in the core concepts and skills inclusive of accessing information, self management, analyzing internal and external influences, interpersonal communication, decision making and goal setting and advocacy.
- 4.7 ~~1.1.9~~ A description of the method(s) used to implement and evaluate the effectiveness of the program which shall be reported every three years as part of the Quality Review for Ensuring School and Student Success in the District/School Success Plan.

3 DE Reg. 1073 (2/1/00)

8 DE Reg. 1012 (1/1/05)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES

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

ORDER

DSSM: Food Supplement Program - Decennial Census 2010

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Food Supplement Program policies in the Division of Social Services Manual (DSSM) related to the 2010 Decennial Census. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the November 2009 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 30, 2009 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

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

Statutory Authority

Section 17(b)(1) of the Food and Nutrition Act of 2008, *Research, Demonstration and Evaluation*

Background

The Food and Nutrition Service (FNS) has offered States the opportunity to participate in a demonstration project to exclude the earned income from temporary employment in the 2010 Decennial Census. The demonstration projects are intended to help ease program administration by aligning the Supplemental Nutritional Assistance Program (SNAP) policy with Medicaid policies.

Excluding the earned income of temporary census employees assists the Census Bureau with staff recruitment and retention while allowing individuals with limited or no employment history to gain valuable work experience without a reduction in SNAP benefits. Similar demonstration projects were conducted for the 1990 and 2000 Census.

Summary of Proposal

DSSM 9059, *Income Exclusions*: Food and Nutrition Service (FNS) has agreed to allow the exclusion of temporary income from the United States Census Bureau for Delaware's Food Supplement Program. The rule excludes the earnings of temporary census employees from the U. S. Census Bureau for the 2010 Census Demonstration Project. The project expires September 30, 2010.

The amendments are also proposed to update the list of reservations under Part B, item #17; and, delete repetitive text under item K. *Energy Assistance*.

Summary of Comments Received with Agency Response and Explanation Of Change

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Social Services (DSS) has considered each comment and responds as follows.

As background, in March 2009, DMMA proposed to adopt a regulation disregarding income attributable to census employment in the Medicaid and CHIP programs. DMMA noted that CMS was encouraging states to adopt such an exemption [12 DE Reg. 1153 (March 1, 2009)]. The SCPD endorsed that regulation which was adopted in May. [12 DE Reg. 1416 (May 1, 2009)]. The Division of Social Services ("DSS") now proposes to adopt a similar income exemption applicable to the Food Supplement Program. This is consistent with historical practice. The existing regulation contains an exemption for income derived from census employment in the year 2000. The proposed regulation also effects some minor revisions to the disregard for home weatherization payments.

SCPD and GACEC endorse the proposed regulation subject to one suggestion. The DMMA regulation notes that "Local Census Offices will require some staff from the fall of 2008 through the end of 2010." At 12 DE Reg. 1416. [emphasis supplied] The current regulation included an exemption for census income until December 31, 2000. At 13 DE Reg. 583. The DSS regulation proposes a September 30, 2010 cut-off. It may be preferable to adopt a December 31, 2010 cut-off for the following reasons: 1) if there is any short extension of the census project, DSS would not have to issue another regulation; 2) it would obviate any ambiguity in a application of the disregard if paychecks were received in October or November of 2010; and 3) it would apply the disregard to work done in October, November, or December, i.e., "through the end of 2010".

If DSS were disinclined to adopt such an amendment, it could at least consider the following alternative standard to obviate the prospect of issuing another regulation if the Census 2010 Project is extended:

The earnings of temporary census workers from the Bureau of Census are excluded for the Census 2010 Demonstration Project. This exclusion will apply through the scheduled conclusion of the project on September 30, 2010 and any Project extensions.

Agency Response: DSS reviewed your comments regarding the proposed language on disregarding census income for the Census 2010 Demonstration Project. The period for the demonstration project, March through July 2010, was already extended by Food and Nutrition Service to September 30, 2010 in case some census operations extended beyond the projected date of July 2010. However, the Division of Social Services has no objection to revising the text to allow for further extensions of the demonstration project. Therefore, the revised language will read as follows:

S. The earnings of temporary census workers from the Bureau of Census is excluded for the Census 2010 Demonstration Project. The disregard expires September 30, 2010, unless extended by Food and Nutrition Service.

Findings of Fact

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding the exclusion of temporary income for the 2010 Decennial Census is adopted and shall be final effective January 10, 2010.

Rita M. Landgraf, Secretary, DHSS

9059 Income Exclusions

[7 CFR 273.9(c)]

(Break in Continuity of Sections)

PART B - AMERICAN INDIAN OR ALASKA NATIVE

(Break in Continuity within Section)

~~S. The earnings of temporary census workers from the Bureau of Census is not counted as income for food stamp purposes effective April 1, 2000 through December 31, 2000~~ **excluded for the Census 2010 Demonstration Project. The [project disregard] expires September 30, 2010 [,unless extended by Food and Nutrition Service].**

***Please note that no additional changes were made to the regulation as originally proposed and published in the November 2009 issue of the *Register* at page 580 (13 DE Reg. 580). Therefore, the final regulation is not being republished. A copy of the entire final regulation is available at:**

[DSSM: Food Supplement Program - Decennial Census 2010](#)

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 and 1111 (18 Del.C. §§314 and 1111)
18 DE Admin. Code 1305

ORDER

1305 Rate Filing Procedures for Health Insurers and Health Service Corporations and Managed Care Organizations

Proposed changes to Regulation 1305 relating to Loss Ratio Filing Procedures for Health Insurers and Health Service Corporations were published in the *Delaware Register of Regulations* on November 1, 2009. The comment period remained open until December 7, 2009. There was no public hearing on the proposed changes to

Regulation 1305. Public notice of the proposed changes to Regulation 1305 in the Register of Regulations was in conformity with Delaware law.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Comment was received from the Governor's Advisory Council for Exceptional Citizens and from Golden Rule Insurance Company. The Governor's Advisory Council for Exceptional Citizens ("The Council") made a number of comments. It pointed out that the word "filing" was incorrectly stricken in Section 5.1. That non-substantive correction is made in the final version. The Council suggests the use of "Circular Letters" should be inserted within Section 6.5.2.1.2 and 3. The Department does not believe this assertion is necessary as it no longer relies on the use of Circular Letters. The Council believes that language in Section 6.3 would bar the Department from disapproving certain filings. The Department respectfully disagrees with that interpretation of the section. The Council suggests the word "or" inserted between "ratio" and "end" should be the word "at". The Department supports its use of the word "or". The Council disputes the acronyms used in Section 8.1. The acronyms are not amendments to the existing Regulation and are language unchanged by the proposed amendments, and, therefore, not open for comment. Finally, the Council believes that language contained in 18 Del.C. § 2606(c) authorizing the Commissioner to determine whether or not additional time is needed to review a filing, should be inserted in the Regulation. Language in Statute supersedes that in Regulation and the insertion is not necessary.

Golden Rule Insurance Company commends the Department for the contents of the proposed changes, but suggests the addition of the words "loss ratio guarantee" to Section 7.1.1. That addition is not necessary as the subject of 7.0 is the loss ratio guarantee. Finally, Golden Rule Insurance Company suggests Section 7.1.3 be deleted as the company believes the Regulation should apply to closed blocks of business. The Department understands the recommendation but believes the exclusion of closed blocks of business is in the public's best interest.

FINDINGS OF FACT

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

The requirements of the amended Regulation 1305 best serve the interests of the public and of insurers and they comply with Delaware law.

DECISION AND EFFECTIVE DATE

Based on the provisions of 18 Del.C. §§ 314, 1111 and 29 Del.C. §§ 10113-10118 and the record in this docket, I hereby adopt Regulation 1305 as amended and as may more fully and at large appear in the version attached hereto to be effective on January 11, 2010.

TEXT AND CITATION

The text of the proposed amendments to Regulation 1305 last appeared in the *Register of Regulations* Vol. 13, Issue 5, pages 587-593.

IT IS SO ORDERED this 14th day of December 2009.

Karen Weldin Stewart, CIR-ML
Insurance Commissioner

1305 ~~Loss Ratio~~ Rate Filing Procedures for Health Insurers and Health Service Corporations ~~for Medical and Hospital Expense incurred Insurance Policies and Group Plans~~ and Managed Care Organizations

*Please note that no changes were made to the regulation as originally proposed and published in the November 2009 issue of the *Register* at page 587 (13 DE Reg. 587). Therefore, the final regulation is not being republished. A copy of the entire final regulation is available at:

[1305 Rate Filing Procedures for Health Insurers and Health Service Corporations and Managed Care Organizations](#)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Chapter 1, (7 Del.C., Ch.1)

7 DE Admin. Code 3901

Secretary's Order No.: 2009-F-0046

3900 Wildlife Regulations

Date of Issuance: December 15, 2009

Effective Date of the Amendment: January 11, 2010

I. Background

A public hearing was held on Wednesday, December 2, 2009, at 6:30 p.m. at the Department of Natural Resources and Environmental Control ("DNREC", "Department"), 89 Kings Highway, Dover, Delaware to receive comment on a proposed amendment to Section 4.11 of the Delaware Fish and Wildlife Regulation 7 DE Admin. Code 3904: Rabbit Season. The proposed amendment would extend the rabbit hunting season in February for approximately two weeks.

In recent years, DNREC has added days to the deer hunting season in order to reduce and better control the deer population, but this action has reduced hunting opportunities for Delaware rabbit hunters because the State Wildlife Areas are often closed to rabbit hunting during deer seasons. Private lands, though technically open to rabbit hunting during most deer seasons, are often not available to rabbit hunters, again, due to deer hunting activity. Extending the rabbit season from the Monday that immediately precedes Thanksgiving through the end of February (currently, rabbit season ends on February 15th of each year) will restore this lost hunting opportunity for rabbit in Delaware.

The Department has the statutory basis and legal authority to act with regard to this proposed regulatory amendment concerning Delaware Fish and Wildlife Regulation 3904, Section 4.11: Rabbit, pursuant to 7 Del.C. §103(d). No other Delaware regulations are affected by these proposals. Additionally, it should be noted that this proposed regulatory revision has been endorsed by the Governor's Council on Wildlife and Freshwater Fish as well.

Only one comment was received by the Department from the public regarding the proposed amendment to Delaware Fish and Wildlife Regulation 3904, Section 4.11: Rabbit, which was in support of this proposed promulgation. The Department provided proper notice of the hearing as required by law. Afterwards, Hearing Officer Lisa A. Vest prepared her Hearing Officer's Report dated December 2, 2009, which is attached and expressly incorporated into this Order regarding this matter, and submitted the same to the Secretary for review and consideration.

II. Findings

The Department has provided a reasoned analysis and a sound basis in the record to support the issuance of the final regulations proposed in this matter. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Promulgation of the proposed amendment to Delaware Fish and Wildlife Regulation 3904, Section 4.11: Rabbit, would restore lost hunting opportunity for Delaware rabbit hunters by extending the rabbit season in February for approximately two weeks;
7. The Department has reviewed this proposed regulatory amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendation as proposed should be applicable to all Delaware citizens equally;
8. The Department's aforementioned proposed amendment to Delaware Fish and Wildlife Regulation 3904, Section 4.11: Rabbit, as published in the October 1, 2009 *Delaware Register of Regulations* and as set forth in Attachment "A" hereto, is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulatory amendment, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and
9. The Department shall submit the proposed regulation as a final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and shall provide written notice to the persons affected by the Order.
10. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

III. Order

Based on the record developed, as reviewed in the Hearing Officer's Report dated December 2, 2009 and expressly incorporated herein, it is hereby ordered that the proposed amendment to Delaware Fish and Wildlife Regulation 3904, Section 4.11: Rabbit, be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons

The promulgation of the amendment to Delaware Fish and Wildlife Regulation 3904, Section 4.11: Rabbit will extend the rabbit season from the Monday that immediately precedes Thanksgiving through the end of February, thus restoring the two weeks in February which had become a lost hunting opportunity for Delaware hunters.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy, purposes, and authority of 7 Del.C. §103(d).

Collin P. O'Mara, Secretary

3900 Wildlife Regulations

***Please note that no additional changes were made to the regulation as originally proposed and published in the October 2009 issue of the *Register* at page 458 (13 DE Reg. 458). Therefore, the final regulation is not being republished. A copy of the entire final regulation is available at:**

[3900 Wildlife Regulations](#)

DIVISION OF SOIL AND WATER CONSERVATION

Statutory Authority: 7 Delaware Code, Section 6010, (7 Del.C. §6010)

Secretary's Order No.: 2009-S-0047

5104 Delaware Coastal Management Program Federal Consistency Policies and Procedures

Date of Issuance: December 15, 2009

Effective Date: January 11, 2010

I. Background

A public hearing was held on Wednesday, October 28, 2009, at 6:00 p.m. at the DNREC St Jones Reserve, 818 Kitts Hummock Road, Dover, Delaware, in order for the Department of Natural Resources and Environmental Control, Division of Soil and Water Conservation (hereinafter referred to as "DNREC" and/or "Department") to receive comment on the proposed Comprehensive Update and Routine Program Implementation to the *Delaware Coastal Management Program Federal Consistency Policies and Procedures*. The *Delaware Coastal Management Program* (hereinafter referred to as "DCMP"), as dictated by the National Oceanic and Atmospheric Administration (hereinafter referred to as "NOAA") must routinely update its policies to maintain the authority to manage the coastal resources of Delaware and evaluate federal activities, permits and plans to the maximum extent to ensure practicable consistency by those pursuing these actions.

The Coastal Zone Management Act (hereinafter referred to as "CZMA") was signed in 1972 (P.L. 92-583). In response to the CZMA of 1972, Delaware prepared a Final Environmental Impact Statement (hereinafter referred to as "FEIS") for the development of a coastal program and submitted it to NOAA. In 1979, the CZMA was approved by NOAA under authority of the CZMA (15 CFR 923). The FEIS established the DCMP, as well as its goals and policies, and became Delaware's Program Document. DNREC is the State agency responsible for the administration of the State's Coastal Management Program.

Section 306 of the CZMA provides states with approved coastal management programs the authority to review federal activities (direct actions, licenses or permits, financial assistance, and Outer Continental Shelf exploration) for consistency with State Coastal Management Policies. Section 306 further provides states with a means to update their coastal programs with approval from NOAA. This procedure is called a Routine Program Change.

Many of Delaware's environmental laws and regulations have been amended and/or new ones established since the last Routine Program Change in 2004. As a result, DCMP proposes to update and/or delete existing 2004 policies accordingly at this time. This proposed Routine Program Change updates and revises the DCMP policies, and clarifies Delaware's Federal Consistency Procedures. The result is a new working document containing policies and procedures for utilization during federal consistency reviews, to wit: the 2009 DCMP Policy Document, as set forth by this proposed promulgation.

The CZMA provides that each federal agency conducting or supporting activities, whether within or outside the coastal zone, affecting any land or water use or natural resource of the coastal zone, must do so in a manner which is, to the maximum extent practicable, consistent with DCMP. Additionally, federal permits and licenses, outer continental shelf plans, and grants-in-aid which may affect Delaware's coastal zone management area must be consistent with the DCMP. The federal consistency provisions are intended to provide a means for improved federal-local coordination regarding important federal actions which could affect the coastal resources of Delaware.

Consistency reviews enable the State of Delaware to (1) plan for and manage impacts resulting from a federal project, permit or program; (2) provide for analysis of the effects of federal actions; (3) identify federal actions that could adversely affect coastal resources, general land use patterns, or public investment requirements; and (4) provide for an examination of federal actions in the context of the goals, objectives, and policy network contained in the DCMP. Consistency offers Delaware's state agencies, through the DCMP within DNREC's Division of Soil and Water Conservation, an opportunity for a positive voice in federal actions. Additionally, it ensures that state concerns and policies will be considered by federal agencies in federal development projects, the issuance of federal licenses and permits, the approval of outer continental shelf plans and programs, and the award of federal grants, loans, subsidies, insurance, or other various forms of federal aid.

The proposed changes to the existing *Federal Consistency Policies and Procedures* (hereinafter referred to as "FCPP") reflect recently updated or newly promulgated regulations and statutes of the State of Delaware (subsequent to 2004). The policies added, modified, or removed from this FCPP document were selected for their ability to protect, preserve, restore and develop Delaware's coastal resources in the most environmentally sensitive manner. All of the policies contained within the FCPP document have already been promulgated and adopted (i.e., they are existing regulations, statutes, and/or Executive Orders). There are no new regulations being introduced through this process. These proposed updates and changes to Delaware's FCPP are considered a Routine Program Change under the NOAA Statute, 15 CFR 923.84(a), as these changes are not considered substantial, pursuant to 15 CFR 923.809(d).

The Department has the statutory authority to act with regard to this proposed promulgation, pursuant to 7 Del.C., §6010, as well as 15 CFR Part 930 (Federal Consistency with Approved Coastal Management Programs) and 15 CFR 923.84(a) (Routine Program Changes to the Coastal Management Program). It should be noted that the Department received no public comments, either prior to or at the time of the public hearing held on October 28, 2009 with regard to this promulgation. Proper notice of the hearing was provided as required by law.

After the hearing, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated December 3, 2009, and that Report in its entirety is expressly incorporated herein by reference.

II. Findings

The Department has provided sound reasoning with regard to the proposed amendments to the *Delaware Coastal Management Program Federal Consistency Policies and Procedures*, as reflected in the Hearing Officer's Memorandum of December 3, 2009, which is attached hereto and expressly incorporated into this Order in its entirety. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority, 7 Del.C., Chapter 60, specifically, 7 Del.C. §6010, as well as 15 CFR Part 930 (Federal Consistency with Approved Coastal Management Programs) and 15 CFR 923.84(a) (Routine Program Changes to the Coastal Management Program) to make a determination in this proceeding;

2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;

3. The Department held a public hearing in a manner required by the law and regulations;

4. The Department received no public comment whatsoever with regard to this proposed promulgation;

5. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

6. Promulgation of these proposed amendments will incorporate two new enforceable policies into the DCMP FCPP Document, the reby updating this program to reflect recent regulatory changes within the Department's programs, to wit: (1) that no person shall construct, install, modify, rehabilitate or replace an on-site wastewater treatment and disposal system, or construct or place any dwelling, building, mobile home, manufactured home, or other structure capable of discharging wastewater on-site unless such person has a valid license and permit issued by DNREC; and (2) water quality in the Inland Bays watershed shall be protected and improved through (1) a reduction of point sources; (2) establishment of riparian buffers; (3) use of sediment and storm water controls; and (4) proper design, installation, operation, maintenance and inspection of on-site wastewater treatment and disposal systems;

7. In addition to the two new enforceable policies, promulgation of these proposed amendments will also incorporate a new advisory policy into the DCMP FCPP Document, to wit: that the DCMP supports the establishment and the maintenance of efficient public transit systems in order to reduce impacts to air quality and natural resources of the State of Delaware;

8. Furthermore, in addition to the above new policies being incorporated into the DCMP FCPP Document, this promulgation will eliminate existing duplicative and vague language, and will provide better clarity of intent for policies presently contained within this Policy Document for both the general public and the regulated community;

9. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;

10. The Department's proposed regulation, as published in the October 1, 2009 Delaware Register of Regulations and set forth with in Attachment "A" of the Hearing Officer's Memorandum and attached hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*;

11. The Department shall submit the proposed regulation as a final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

III. Order

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated December 3, 2009 and expressly incorporated herein, it is hereby ordered that the proposed amendments to the *Delaware Coastal Management Program Federal Consistency Policies and Procedures* be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons

The promulgation of the amendments to the *Delaware Coastal Management Program Federal Consistency Policies and Procedures* will incorporate two new enforceable policies into the DCMP FCPP Document, thereby updating this program to reflect recent regulatory changes within the Department's programs. It will also incorporate a new advisory policy into the DCMP FCPP Document, namely, that the DCMP supports the establishment and the maintenance of efficient public transit systems in order to reduce impacts to air quality and natural resources of the State of Delaware. Lastly, in addition to the above new policies being incorporated into the DCMP, this promulgation will eliminate existing duplicative and vague language, and will provide better clarity of intent for policies presently contained within said Policy Document for both the general public and the regulated community.

This promulgation offers Delaware's state agencies, through the DCMP within DNREC's Division of Soil and Water Conservation, an opportunity for a positive voice in federal actions. Additionally, it ensures that state concerns and policies will be considered by federal agencies in federal development projects, the issuance of federal licenses and permits, the approval of outer continental shelf plans and programs, and the award of federal grants, loans, subsidies, insurance, or other various forms of federal aid, all in furtherance of the policy and purposes of 7 Del.C., Chapter 60.

Collin P. O'Mara, Secretary

5104 Delaware Coastal Management Program Federal Consistency Policies and Procedures

~~Delaware Coastal Management Program~~

~~Comprehensive Update And Routine Program Implementation August, 2004~~

~~Program Summary Supplement to 1979 Document~~

~~Program Contact: Sarah W. Cooksey, Administrator Delaware Coastal Management Program 89 Kings Highway,
Dever, DE 19901 (302)739-3451~~

Delaware Department of Natural Resources and Environmental Control

Division of Soil and Water Conservation

Delaware Coastal Programs

FINAL REGULATIONS

Authority: National Oceanic and Atmospheric Administration – Federal Coastal Zone Management Act (15 CFR part 923, subpart H)

Delaware Coastal Management Program
Comprehensive Update and Routine Program Implementation 2009

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

[5104 Delaware Coastal Management Program Federal Consistency Policies and Procedures](#)

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1000 BOARD OF PILOT COMMISSIONERS
Statutory Authority: 23 Delaware Code, Section 102 (23 Del.C. §102)
24 DE Admin. Code 1000

REGULATORY IMPLEMENTING ORDER

I. Summary of the Evidence and Information Submitted.

The Delaware Board of Pilot Commissioners published proposed amendments to its regulations in the *Delaware Register of Regulations* on October 1, 2009. Notices of the proposed regulations were published in *The News Journal* and the *Delaware State News* in September 2009, respectively, and copies of the newspaper notices are on file with the Division of Professional Regulation. The newspaper notices invited written comments from the public but none were received. The newspaper notices also invited the public to attend a hearing on December 11, 2009 to comment on the proposed regulations. No members of the public attended the hearing.

II. Findings of Fact

The Board of Pilot Commissioners finds it necessary to adopt the amended regulations to match their provisions with existing law, and to provide for an appropriate process for the Commission to be notified of actions taken to obtain a medical waiver from the United States Coast Guard for the related Federal pilot license. During the December 11 meeting, however, the Board voted to amend portions of the proposed regulations to extend the reporting deadline, and to expand pilot responsibilities regarding the waiver request. None of the approved amendments to the draft regulations are considered to be substantive.

III. Decision To Adopt the Regulations

The Board of Pilot Commissioners hereby adopts the amended regulations pursuant to 11 Del.C. §8404(a)(14).

1000 Board of Pilot Commissioners

1.0 Delaware licensed Bay and River Pilots are required to be familiar with the 23 Del.C. Ch. 1. Pilots §100 through 138.

2.0 Original License

- 2.1 An examination shall be given to apprentices upon completion of their apprenticeship to determine their qualifications for licenses. The written examination shall be based on knowledge required to be learned by the apprentice during his/her apprenticeship.
- 2.2 No license shall be issued to any Pilot for any route for which he/she has not made required trips and passed required examination.
- 2.3 No original license will be issued for anything less than the route from entrance of Delaware Bay to Newbold Channel, and Chesapeake & Delaware Canal. All these licenses must be maintained through your pilot career.
- 2.4 The Board of Pilot Commissioners shall issue endorsements for any tributaries of the Bay and River Delaware to any Delaware licensed Pilot who has passed examination for same.

3.0 To Raise License

Fourth Class Pilots shall demonstrate their knowledge to the Commission of their thorough understanding of vessel "squat" and other deep vessel handling characteristics prior to being licensed as a Third Class Pilot.

4.0 Renewal of License

~~[Pilot Licenses are to be issued on anniversary of their original date from October 24, 1967, to comply with Delaware law. The renewal date for Pilot Licenses is November 30, or the date determined by the Division of Professional Regulation, to comply with 23 Del.C. Section 115.]~~

5.0 All Delaware Licensed Pilots must:

- 5.1 Maintain all licenses they have in hand as of 5 May 1986 throughout the remainder of their Pilot career.
- 5.2 Hold a valid radar certificate. ARPA certification is also required.
- 5.3 Provide a copy of all licenses and certificates to the Commission Secretary.
- 5.4 Notify the Commission Secretary on the form provided each Pilot that the "Rules of the Nautical Road" have been read.
- 5.5 Any pilot who fails to exercise his or her profession for any consecutive 90-day period is forbidden from piloting vessels. Such pilot may resume piloting vessels only upon certification to the Board that he or she has made such refresher trips over the route as shall be deemed necessary by the Board to assure that he or she *is fully* familiar with conditions along the route. Refresher trips shall be made in the company of a first class pilot.
- 5.6 Attend at least (40) hours of approved education every five (5) years. The course or courses of study shall total not less than 40 hours of formal training on subjects relating to navigation and piloting. All such courses may be taken at an approved education facility. The Board of Pilot Commissioners shall approve all courses before enrollment.
 - 5.6.1 The courses listed here are now approved by the Board and will continue to be approved until further notice:

Ship Handling, Port Revel
Centre De Port Revel
38136 St. Pierre de Bressieux
France

Maritime Institute of Technology
5700 Hammonds Ferry Road
Linthicum Heights, MD 21090

SCI Maritime Training
241 Water Street
New York, NY 10038

South Hampton Institute
Newtown Road, Warsash Hampshire
England

Star Center Simulation Training Assessment & Research (STAR) Center
2 West Dixie Highway
Dania Beach, FL 33004

~~[Tidewater Navigation
Mid-Atlantic Maritime Academy]
[Norfolk Virginia Beach], VA~~

- 5.7 Attend and complete at least once every five (5) years a Bridge Resource Management ("BRM") course recommended and approved by this Board or by the American Pilots Association. Classroom or simulator hours spent in attendance at a BRM course will count towards satisfaction of the requirement of subparagraph "E", above. All licensed pilots shall have passed and approved BRM course prior to July 1997.

6 DE Reg. 635 (11/01/02)

6.0 Pilots must pass a designated physical examination every year within 120 days before their date of license renewal. ~~Results of the examination shall be reported on the form provided each Pilot approved by the Board.~~ Examinations may also be ordered by the Board for any Pilot at any time for any cause. In addition, each Pilot shall report to the Commission concerning the Pilot's request for a waiver from the United States Coast Guard for any medical condition, as permitted by Federal regulation, as well as the results of any such waiver request. The initial report to the Commission shall be made at the same time that the waiver request is made to the Coast Guard, and ~~the report a copy~~ of the Coast Guard's decision on the waiver request shall be provided to the Commission within ~~three five~~ business days of the Pilot's receipt of the waiver decision.

7.0 In order to be granted a license renewal, any Pilot licensed by this Commission is and shall be required:

- 7.1 To have rendered pilotage service to not less than 52 vessels in the course of the year preceding the year for which the renewal of such license is sought; and
- 7.2 To furnish to this Commission, in writing, not later than the time when application is made to this Commission for the renewal of such license, a list of all pilotages, during the period of the license whose renewal is sought, giving:
- 7.2.1 The name of the vessel.
- 7.2.2 The date of pilotage.
- 7.3 Provided however, that this requirement shall be proportionally reduced in number, or eliminated, upon presentation of proof in form and substance satisfactory to the Commission, that during the year about to be concluded, the applicant for renewal was engaged in administrative duties connected with pilotage on the Bay and River Delaware, or was duly assigned and engaged in administrative assignments for the benefit of said pilotage, or was temporarily disabled from the performance of this duties as a Pilot or other reason deemed satisfactory to the Commission.
- 7.4 In the event that the requirement for 52 pilotages is reduced or eliminated to the satisfaction of the Commission, a number of refresher trips may be required before renewal is granted.

8.0 Docking, Undocking, and Anchoring of Vessels

- 8.1 When a vessel is docking or anchoring, a Delaware licensed pilot shall remain on the bridge, attentive to duty, until the vessel has at least one ship's line secure to the dock, or until the vessel is anchored properly and firmly within a designated anchorage area.
- 8.2 Nonetheless, nothing in these Rules shall prevent the Master of a vessel from employing the services of a docking master.

9.0 Casualty Reports

- 9.1 It shall be the personal responsibility of all Pilots licensed by this Commission to make reports of all casualties, collisions, groundings, etc. These reports shall be made to the Division of Professional Regulation's Chief Investigator, with a copy sent to the Commission's liaison to the Investigator. All such reports must be made within five days of the occurrence, except that any marine casualty involving oil spillage, pollution, or death must also be reported by telephone, facsimile transmission, or telegram to the Investigator and Commission liaison within twenty-four hours of the occurrence, to be followed thereafter by the written report. Failure to make such reports within the required time frame may result in disciplinary proceedings.
- 9.2 Pilots licensed by this Commission are also required to furnish the Investigator and Commission liaison with a copy of all written reports the pilot makes to the U. S. Coast Guard relating to a ny occurrence through the pilot's licensed route of all casualties, collisions, or groundings. These pilots must provide the Investigator and the Commission liaison with copies of any Coast Guard findings based on these reports.

10.0 Commission Recommendations

It is suggested that, in the event any of the Pilots licensed by this Commission consider it unwise for a ship which he has boarded to get under way or leave a dock either due to weather or tide conditions, and the master of the ship insists on getting under way, the Pilot should refuse to assume his duties until such a time as it is in his opinion safe to proceed.

11.0 Offshore Trip Experience Requirement for Second Class Pilots

- 11.1 Under the provisions of 23 **Del.C.** §113(b), no person shall be eligible for licensure as a first class pilot by this Board, until that person has served at least one year in each of the lower classes.
- 11.2 While holding a second or third class license, all pilots must make at least two inward bound trips on vessels rated over 100,000 summer deadweight tons, on the southeastern approach lane from "D" buoy to at least the Delaware Capes. Each such trip must be made while accompanied by a pilot holding a first class license for the Bay and River Delaware issued by either this Board or the Pennsylvania Navigation Commission. At least one of these trips must be made during darkness. Second class pilots must furnish proof of these trips to the Board at least thirty days prior to being granted their first class pilot license.

6 DE Reg. 635 (11/01/02)

12.0 Service Requirement for Advancement from License Class to a Higher License Class

- 12.1 Under 23 **Del.C.** §113(b), a licensed pilot must serve at least one year in each of the previous lower pilot license classifications before the pilot is entitled to a first class license, permitting the pilot to provide pilotage services for "ships or vessels of any practical draft of water." 23 **Del.C.** §112(1). Using the plain meaning rule of legislative interpretation, the term "serve" as used in Section 113(b) means to actively engage in the pilot profession during a full one-year term, and not merely to hold a current license for twelve months.
- 12.2 For example, if a pilot is unavailable for pilotage assignments during a one-year term, the total time for which the pilot was unavailable shall not be counted toward the one-year requirement. This circumstance will then affect the pilot's license renewal date, at the completion of the total one-year term.

6 DE Reg. 635 (11/01/02)

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))
26 DE Admin. Code 3001

IN THE MATTER OF THE ADOPTION OF RULES AND	
PROCEDURES TO IMPLEMENT THE PROVISIONS OF	
26 DEL. C. CH. 10 RELATING TO THE CREATION OF A	
COMPETITIVE MARKET FOR RETAIL ELECTRIC	PSC REGULATION DOCKET NO. 49
SUPPLY SERVICE (OPENED APRIL 27, 1999;	
RE-OPENED JANUARY 7, 2003; RE-OPENED AUGUST	
21, 2007; RE-OPENED SEPTEMBER 22, 2009	

ORDER NO. 7698

This 8th day of December, 2009, the Commission determines and Orders the following:

WHEREAS, the Commission has promulgated regulations entitled *Regulations Governing Service Supplied by Electrical Corporations*. See 26 Del. Admin. C. § 3001, *et seq.* (the "Regulations");¹ and

WHEREAS, included in the Regulations are certain rules pertaining to "net energy metering" (the "Net Energy Metering Rules"); and

WHEREAS, Senate Bill No. 85 ("SB85"), enacted into law on July 9, 2009, amended 26 Del.C. §1014 to: eliminate a customer's forfeiture of excess electric generation and allow customers to request payments from an electrical supplier for the value of excess generation; allow customers to retain ownership of "renewable energy credits;" create a new provision for farm customers with respect to net energy metering; and increase the cap on customer net energy metering generation from 1% to 5% of an electric utility's aggregated customer monthly peak demand for a given calendar year; and

WHEREAS, the amendments to Section 1014 effected by SB85 require certain amendments to the Net Energy Metering Rules; and

WHEREAS Senate Bill 153 ("SB153"), enacted into law on September 21, 2009, also amended 26 Del.C. §§1001 and 1014 to including provisions for the inclusion of "vehicle to grid," or "V2G", resources in statutory provisions pertaining to net energy metering; and

WHEREAS, Commission Staff proposed revisions to the Regulations that both effect the changes required by SB85 and SB153, as well as make certain other clarifications to the existing Regulations not related to those bills

WHEREAS, by Order No. 7652, the Commission (i) reopened this docket to consider the revisions to the Regulations proposed by Staff, (ii) caused a notice regarding the revised Regulations to be published in the Delaware Register of Regulations, as well as The News Journal and the Delaware State News, (iii) solicited public comments to the revised Regulations, and (iv) noticed a public hearing on the revised Regulations for December 8, 2009.

WHEREAS, the notice described above was published as required by Order No. 7652 and the revised Regulations were published in the Delaware Register of Regulations.

WHEREAS, the Commission has not received any comments on the revised Regulations, and the comment period has expired.

1. The Regulations have been amended several times since their original passage in 1999. See PSC Order Nos. 538 (Oct. 1, 1999), 7023 (Sept. 5, 2006), 7078 (Jan. 1, 2007), and 7435 (Sept. 2, 2008).

NOW THEREFORE, IT IS ORDER ED BY THE A FFIRMATIVE VOTE OF NOT FEWER THAN TH REE COMMISSIONERS:

1. That, pursuant to 26 *Del. C.* §§ 209(a) and 821, and 29 *Del. C.* §§ 10111 *et seq.*, the Commission hereby promulgates the revised *Regulations Governing Service Supplied by Electrical Suppliers* (the "Regulations"), a true and correct copy of which is attached hereto as Exhibit A, as official regulations as defined by 29 *Del. C.* § 1132. The revised Regulations replace the regulations existing at 26 *Del. Admin. C.* § 3001.

2. That, pursuant to 26 *Del. C.* §§ 10113 and 10118l, the Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the *Delaware Register* a copy of this Order (with the attached Regulations). An exact copy of the Regulations attached hereto shall be published as final, official regulations in the *Delaware Register*.

3. Pursuant to 29 *Del. C.* § 10118(g), the effective date of this Order shall be 10 days from the date this Order is published in its final form, in full or as a summary, in the *Delaware Register*. Delmarva Power & Light Company shall file for Commission approval any appropriate revisions to its Tariff reflecting changes implemented by the revised Regulations.

4. The Commission Secretary shall serve a copy of this Order upon Delmarva Power & Light Company.

5. That 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
Jaymes B. Lester, Commissioner
Dallas Winslow, Commissioner

ATTEST:

Alisa Carrow Bentley, Secretary

3001 Regulations Governing Service Supplied by Electrical Corporations

Effective: August 31, 1999

*Please note that no changes were made to the regulation as originally proposed and published in the November 2009 issue of the *Register* at page 614 (13 DE Reg. 614). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

[3001 Regulations Governing Service Supplied by Electrical Corporations](#)

FINAL REGULATIONS

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))
26 DE Admin. Code 3008

IN THE MATTER OF THE ADOPTION OF RULES AND	
PROCEDURES TO IMPLEMENT THE RENEWABLE	
ENERGY PORTFOLIO STANDARDS ACT, 26 DEL.C.	
26 DEL.C. §§351-363, AS APPLIED TO RETAIL	PSC REGULATION DOCKET NO. 56
ELECTRICITY SUPPLIERS (OPENED AUGUST 23, 2005;	
REOPENED SEPTEMBER 4, 2007; AUGUST 5, 2008; AND	
SEPTEMBER 22, 2009	

ORDER NO. 7699

AND NOW, this 8th day of December, 2009:

WHEREAS, in 2005 the General Assembly and the Governor enacted the “Renewable Energy Portfolio Standards Act,” 26 Del.C. §§351-364 (2006 Supp.) (the “RPS Act”), which required each electric suppliers, beginning in 2007, to annually accumulate a portfolio of “renewable energy credits” equivalent to a specified percentage of its retail electric supply sales in Delaware; and

WHEREAS 26 Del.C. §360(b) provides that unused renewable energy credits shall exist for three years from the date of their creation; and

WHEREAS, in 2006, the Commission promulgated “Rules and Procedures to Implement the Renewable Energy Portfolio Standard” (the “RPS Rules”). See Order No. 6931 (June 6, 2006);¹ and

WHEREAS the Commission has revised its RPS Rules from time to time to reflect amendments to the RPS Act. See PSC Order No. 7377 (Apr. 17, 2008); PSC Order No. 7494 (Dec. 16, 2008); and

WHEREAS, on July 8, 2009, the Governor of the State of Delaware signed into law Senate Bill No. 173, as amended by Senate Bill No. 1 (77 Del. Laws ch. 131) (July 8, 2009) (“SB 173”), which mostly updated and clarified certain provisions of the Delaware Energy Act pertaining to Delaware’s Sustainable Energy Utility (the “SEU”); and

WHEREAS, SB 173 also amended Section 360 of the RPS Act by adding a subsection that tolls the three-year limit on the existence of renewable energy credits and solar renewable energy credits during any period that those credits are held by the SEU. See 26 Del.C. §360(c); and

WHEREAS, by Order 7653, the Commission (i) proposed to revise the RPS Rules to add a provision that reflects SB 173’s change to Section 360 referenced above and to add a definition of the SEU, (ii) caused to be published in the Register of Regulations, as well as The News Journal and the Delaware State News, a notice regarding the revised RPS Rules, (iii) solicited comments regarding the revised RPS Rules, and (iv) noticed a public hearing on the revised Regulations for December 8, 2009; and

WHEREAS, the notice described above was published as required by Order No. 7653 and the revised RPS Rules were published in the Delaware Register of Regulations.

WHEREAS, the Commission has not received any comments on the revised RPS Rules, and the comment period has expired.

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

1. The RPS Rules (attached as Exhibit “B”) were formally published at 10 DE Reg. 151-157 (July 1, 2006). Municipal electric utilities and the now self-regulated Delaware Electric Cooperative, Inc. can choose to be exempt from the RPS Act’s requirements by pursuing an alternative regime for supporting “renewable energy” resources. See 26 Del.C. §§353(a), 363.

1. That, pursuant to 26 *Del.C.* §§209(a) and 821, and 29 *Del.C.* §§10111 *et seq.*, the Commission hereby promulgates the revised “Rules and Procedures to Implement the Renewable Energy Portfolio Standard” (the “RPS Rules”), a true and correct copy of which is attached hereto as Exhibit A, as official regulations as defined by 29 *Del.C.* §1132. The revised RPS Rules replace the regulations existing at 26 *Del. Admin. C.* §3008.

2. That, pursuant to 26 *Del.C.* §§10113 and 10118I, the Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the *Delaware Register* a copy of this Order (with the attached RPS Rules). An exact copy of the RPS Rules attached hereto shall be published as final, official regulations in the *Delaware Register*.

3. Pursuant to 29 *Del.C.* §10118(g), the effective date of this Order shall be 10 days from the date this Order is published in its final form, in full or as a summary, in the *Delaware Register*.

4. That 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
Jaymes B. Lester, Commissioner
Dallas Winslow, Commissioner

ATTEST:

Alisa Carrow Bentley, Secretary

3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005)

***Please note that no changes were made to the regulation as originally proposed and published in the November 2009 issue of the *Register* at page 623 (13 DE Reg. 623). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

[3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard](#)

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 **Del.C.** §209(a))
26 **DE Admin. Code** 3010

PUBLIC NOTICE

IN THE MATTER OF THE INVESTIGATION INTO THE |
ADOPTION OF PROPOSED RULES AND REGULATIONS |
TO ACCOMPLISH INTEGRATED RESOURCE PLANNING |
FOR THE PROVISION OF STANDARD OFFER SERVICE | PSC REGULATION DOCKET NO. 60
BY DELMARVA POWER & LIGHT COMPANY UNDER |
26 DEL.C. §1007(c) & (d) (OPENED AUGUST 21, 2007) |

ORDER NO. 7693

AND NOW, this 8th day December 2009, the Delaware Public Service Commission (the “Commission”) determines and Orders as follows:

In Order No. 7263 (Aug. 21, 2007), the Commission opened this docket to consider promulgating rules that will govern Delmarva Power & Light Company's ("DP&L") development of integrated resource plans, or IRPs, for its Standard Offer Service ("SOS") customers, as authorized by the Electric Utility Retail Customer Supply Act of 2006 ("the Act").¹ Pursuant to that Order, the Commission Staff drafted proposed IRP rules after consulting with the parties in DP&L's ongoing IRP docket (PSC Dckt. No. 07-20) and with the three state agencies involved in DP&L's IRP process.² On November 14, 2007, Staff submitted a set of proposed rules, entitled "Integrated Resource Planning Regulation" (hereafter, the "Proposed Regulations")

In Order No. 7318 (Dec. 4, 2007), the Commission accepted Staff's draft Proposed Regulations and initiated the formal rule-making procedure dictated by the Administrative Procedures Act. See 29 *Del.C.* §10101, *et seq.* (the "APA"). As required by the APA, the Proposed Regulations were published in the *Delaware Register*. A notice regarding the Proposed Regulations was also published in *The News Journal* and the *Delaware State News* newspapers and delivered to all public utilities affected by the Proposed Regulations.

Following the promulgation and publication of the Proposed Regulations, Commission Staff worked with various parties on revisions to the Proposed Regulations.

On August 18, 2009, the Commission entered Order No. 7628, which required the republication of the Proposed Regulations, as revised by the parties, in the *Delaware Register* as a new proposal subject to the notice requirements under the APA. See 29 *Del.C.* §10118(c). The Proposed Regulations, as revised, were thereafter republished in the September issue of the *Delaware Register*, along with a public notice requiring comments to be filed with the Commission no later than October 5, 2009.

No comments to the revised Proposed Regulations have been filed with the Commission. Accordingly, it is appropriate that the Proposed Regulations, a copy of which is attached hereto as Exhibit A, be published in the *Delaware Register* as final regulations under the APA.

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NOT FEWER THAN THREE COMMISSIONERS:

1. That, pursuant to 26 *Del.C.* §§209(a) and 821, and 29 *Del.C.* §§10111 *et seq.*, the Commission hereby promulgates the revised *Integrated Resource Planning Regulation* (the "Regulations"), a true and correct copy of which is attached hereto as Exhibit A, as official regulations, as defined by 29 *Del.C.* §1132.

2. That, pursuant to 26 *Del.C.* §§10113 and 10118l, the Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the *Delaware Register* a copy of this Order (with the attached Regulations). An exact copy of the Regulations attached hereto shall be published as final, official regulations in the *Delaware Register*.

3. Pursuant to 29 *Del.C.* §10118(g), the effective date of this Order shall be 10 days from the date this Order is published in its final form, in full or as a summary, in the *Delaware Register*.

4. The Commission Secretary shall serve a copy of this Order upon Delmarva Power & Light Company.

5. That 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
 Jaymes B. Lester, Commissioner
 Dallas Winslow, Commissioner

ATTEST:

1. See 26 *Del.C.* §1007(c)(1)c (as amended by 75 Del. Laws Ch. 242 §6 (206)).

2. Under 26 *Del.C.* §1007(c), DP&L files its IRP on a biennial basis with the Commission, the Delaware Energy Office, the Controller General, and the Director of the Office of Management and Budget.

Alisa Carrow Bentley, Secretary

*Please note that no changes were made to the regulation as originally proposed and published in the November 2009 issue of the *Register* at page 614 (13 DE Reg. 614). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

[3010 Integrated Resource Planning for the Provision of Standard Offer Service by Delmarva Power & Light Company](#)

DEPARTMENT OF TRANSPORTATION DIVISION OF MOTOR VEHICLES

Statutory Authority: 2 Delaware Code, Sections 1802; 29 Delaware Code, Section 8404
(2 Del.C. §1802 and 29 Del.C. §8404)
2 DE Admin. Code 2287

ORDER

2287 Public Carrier Regulations

I. Summary of the Evidence and Information Submitted.

The Delaware Department of Transportation, Division of Motor Vehicles published proposed amendments to its public carrier regulations in the Delaware Register of Regulations on September 1, 2009. Public comments were solicited, and requested to be sent to the Division by September 30, 2009.

II. Findings of Fact

The Division of Motor Vehicles finds it necessary to adopt the amended regulations to update their regulatory processes regarding public carriers, match their provisions with existing law, and take into account current public carrier vehicle configurations.

III. Decision To Adopt the Regulations

The Department of Transportation, on behalf of its Division of Motor Vehicles, hereby adopts the amended regulations pursuant to 2 Del.Code Section 1802, as well as 29 Del.Code Section 8404.

IV. Effective Date

These amended regulations shall go into effect January 10, 2010.
Carolann F. Wicks, P.E.
Secretary, Delaware Department of Transportation.

(Break in Continuity in Sections)

5.0 Charges, Fees and Funds

5.1 Schedule of Fees. DeIDOT hereby establishes the following schedule of fees applying to public carriers:

FINAL REGULATIONS

1.	For filing an annual financial statement or report	\$7.50
1a 2.	For late filing of an annual financial statement or report	\$100.00
2a 3.	For filing each application for a Certificate of Public Convenience and Necessity for original authority	\$75.00 <u>\$400.00</u>
2b 4.	For filing each application for an amendment to an existing Certificate (including a general rate adjustment and an increase in authorized number of vehicles <u>amended or transferred</u>)	\$75.00 <u>\$200.00</u>
3 5.	For each filing of a change in rates or tariffs, other than including a general rate increase (no fee required for filing of time schedule changes)	\$10.00 <u>\$100.00</u>
46.	For each original inspection of equipment or vehicle	\$20.00
5 7.	For each semi annual inspection of any vehicle with a capacity of 11 passengers or more	\$10.00 <u>\$20.00</u>
6 8.	For each semi annual inspection of a vehicle with a capacity of 10 passengers or less <u>Semi Annual late inspection and/or late payment</u>	[\$25.00 <u>\$10.00]</u>
9.	Fee for Replacement Medallion Set (Lost or Stolen)	\$100.00
10.	Fee for Replacement Medallion Set (Mechanical Failure or Breakdown)	\$20.00
11.	Renewal fee for authorized vehicles (per vehicle)	\$25.00

- 5.2 The fee for the six-month vehicle registration is one-half of the current yearly rate schedule for commercial vehicles (\$40.00 yearly for vehicles 5,000 pounds or less; plus \$18.00 for each 1,000 pounds over 5,000), plus an additional \$1.00 semi-annual registration fee, in accordance with 21 **Del.C.**, Ch. 21, Section 2155).
- 5.3 2 **Del.C.** Section 1802 (g) requires all public carriers to submit an annual assessment measured by a formula equal to the product of 0.0024 (2.4 mills) multiplied by the public carrier's gross operating revenues for the applicable calendar year for which the assessment is made.
- 5.4 The formula is:

$$\text{Gross Revenue} \times 0.0024 + \$7.50 \text{ filing fee} + \text{Annual Assessment due to DeIDOT}$$
- 5.5 The annual Assessment is due on or before April 1st. Late payments are subject to a \$100 penalty.
- 5.6 DeIDOT may charge any other cost or fee authorized by 3 **Del.C.** Chapter 18 necessary for it to carry out its functions.
- 5.7 The inspection of buses as provided herein applies only to buses domiciled in Delaware.

(Break in Continuity in Sections)

***Please note that no additional changes were made to the regulation as originally proposed and published in the September 2009 issue of the Register at page 405 (13 DE Reg. 405). Therefore, the final regulation is not being republished. A copy of the entire final regulation is available at:**

[2287 Public Carrier Regulations](#)

DEPARTMENT OF EDUCATION**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, January 21, 2010 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF SOCIAL SERVICES****DSSM 3033 Interim Assistance Reimbursement****PUBLIC NOTICE**

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by January 31, 2010.

DIVISION OF SOCIAL SERVICES**Child Care Subsidy Program****PUBLIC NOTICE**

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by January 31, 2010.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF FISH AND WILDLIFE****3518 Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit****PUBLIC NOTICE****REGISTER NOTICE SAN #2009-27**

The Department of Natural Resources and Environmental Control (DNREC) is proposing new regulations for the management of black drum (*Pogonias cromis*). These proposed regulations would establish recreational and commercial size limits (16 or 32-inch minimum), a daily recreational creel limit (two or three fish), daily commercial

landing and dealer limits (5,000 or 10,000 pounds) and an annual commercial landing quota (50,000 or 65,000 pounds).

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901 or phone (302)-739-9914. A public hearing on these proposed regulations will be held in the Department of Natural Resources and Environmental Control auditorium at 6:00 PM on Thursday, January 21, 2010. Individuals may present their opinions and evidence either at the hearing or in writing to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901, or via email to Lisa.Vest@state.de.us.

DIVISION OF FISH AND WILDLIFE
3521 Weakfish Size Limits; Possession Limits; Seasons
PUBLIC NOTICE

A recent peer-reviewed assessment of weakfish found the stock to be depleted and at an all-time low level of abundance. Spawning stock biomass was estimated to be just three percent (3%) of an unfished stock, well below the 20% threshold for management action and the 30% target benchmark identified in the current amendment to the weakfish fisheries management plan of the Atlantic States Marine Fisheries Commission. The decline in biomass reflects a sustained rise in natural mortality after 1995 rather than fishing mortality which has been modest and stable over the same time period. Although the decline has resulted from a change in the natural mortality in recent years, it is further exacerbated by continued removals by directed commercial and recreational fisheries.

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901 or phone (302)-739-9914. A public hearing on these proposed regulations will be held in the Department of Natural Resources and Environmental Control auditorium at 6:00 PM on Thursday, January 21, 2010. Individuals may present their opinions and evidence either at the hearing or in writing to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901, or via email to Lisa.Vest@state.de.us. The hearing record will remain open for written or email comments until 4:30 PM January 31, 2010.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
BOARD OF ACCOUNTANCY
PUBLIC NOTICE

Pursuant to 24 De I.C. §105(a)(1), the Board of Accountancy has proposed revisions to its rules and regulations.

A public hearing will be held on February 17, 2010 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 Board of Accountancy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

DIVISION OF PROFESSIONAL REGULATION
Delaware Gaming Control Board
PUBLIC NOTICE

The Delaware Gaming Board will seek public comments on the issue of whether its current Rule 1.0, Rule 3.6 and Rule 4.14 in 10 **DE Admin. Code** 101, and Rule 1.0, Rule 3.2 and Rule 6.0 in 10 **DE Admin. Code** 102, and Rule 3.1.5, Rule 8.1 and Rule 11.1 in 10 **DE Admin. Code** 103 should be amended. The rules relate to the manner in which bingo may be achieved, to allow the purchase of raffle tickets by organization members, to the handling of money only by organization members in charitable gambling, to the manner of winning funds in cookie jar bingo, to the removal of references to specific forms and to the correction of a typographical error.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 31 to: Delaware Gaming Control Board, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904. A copy of these regulations is available from the above address or may be viewed at the Division of Professional Regulation business office at the same address.

DEPARTMENT OF TRANSPORTATION
DIVISION OF MOTOR VEHICLES
2201 Procedure for Re-licensing Investigations
PUBLIC NOTICE

The Delaware Division of Motor Vehicles gives notice of intent to a dopt proposed Division of Motor Vehicles Regulation 2201, which replaces current Regulation 2201 relating to character background reviews.

Any person who wishes to make written suggestions, briefs or other written materials concerning this proposed regulation must submit the same to Scott Vien, Chief of Driver Services, Delaware Division of Motor Vehicles, P.O. Box 698, Dover, Delaware 19903 or by fax to (302) 739-2602 by January 31, 2010.

DIVISION OF MOTOR VEHICLES
2217 Interim Identification Procedure for the Division of Motor Vehicles
PUBLIC NOTICE

The Delaware Division of Motor Vehicles gives notice of intent to a dopt proposed Division of Motor Vehicles Regulation 2217, which replaces current Regulation 2217 relating to the issuance of Delaware compliant and non-compliant identification documents.

Any person who wishes to make written suggestions, briefs or other written materials concerning this proposed regulation must submit the same to Scott Vien, Chief of Driver Services, Delaware Division of Motor Vehicles, P.O. Box 698, Dover, Delaware 19903 or by fax to (302) 739-2602 by January 31, 2010.