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# Delaware Register of Regulations

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- Proposed
- Final

### Governor:

- Executive Orders
- General Notices
- 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 February 15, 2006.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

9 DE Reg. 1036-1040 (01/01/06)

Refers to Volume 9, pages 1036-1040 of the *Delaware Register* issued on January 1, 2006.

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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## INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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advance notice of its regulation-making proceedings.

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

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

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

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

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

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

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

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9 DE Reg. 1253 (Final)

2930 Council on Real Estate Appraisers..... 9 DE Reg. 1040 (Prop.)

3000 Board of Mental Health and Chemical Dependency Professionals..... 9 DE Reg. 231 (Prop.)

9 DE Reg. 1106 (Final)

3100 Board of Funeral Services..... 9 DE Reg. 262 (Final)

9 DE Reg. 373 (Prop.)

3500 Board of Examiners of Psychologists..... 9 DE Reg. 452 (Final)

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3600 Board of Registration of Geologists..... 9 DE Reg. 1107 (Final)

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3700 Board of Examiners of Speech/Language Pathologists, Audiologists &

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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.

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**DEPARTMENT OF AGRICULTURE**  
**DIVISION OF POULTRY AND ANIMAL HEALTH**

Statutory Authority: 3 Delaware Code, Section 407(a) (3 **Del.C.** §407(a))

**PUBLIC NOTICE**

The Delaware Department of Agriculture proposes these regulations pursuant to 3 **Del.C.** §407(a). The proposed regulations contain general sanctions in regard to the National Scrapie Eradication Program, including at risk animals, official identification, tagging requirements, and disease reporting. These regulations are intended to more clearly define Delaware's role in the National Scrapie Eradication Program. The proposed regulations will be considered at a public hearing scheduled for March 30, 2006 at 1:30 p.m. at the Delaware Department of Agriculture Building, Conference Room #1. Copies of the proposed regulations may be obtained from the State Veterinarian's office. Comments may be submitted in writing to G. Robert Moore, on or before 1:00 p.m. on March 30, 2006 and/or in person at the hearing. The Delaware Department of Agriculture is located at 2320 S. DuPont Highway, Dover, DE 19901 and the phone number is 302-698-4500.

**902 Scrapie Regulations****1.0 Purpose**

Delaware Department of Agriculture Scrapie Disease Regulations to qualify the State of Delaware as a Scrapie Consistent State under 9CFR 79.6

**2.0 Authority**

Title 3, Chapter 71 of the Delaware Code:

The Delaware Department of Agriculture shall protect the health of the domestic animals of the State, and determine and employ the most efficient and practical means for detection, prevention, suppression, control, or eradication of dangerous, contagious or infectious diseases among domestic animals, to include a blood test and injection test for the determination of the existence of any contagious or infectious disease. For these purposes it may establish, maintain, enforce, and regulate such quarantine and other measures relating to the movement and care of animals and their products, the disinfection of suspected localities and articles and the destruction of

animals, as it deems necessary, and may adopt from time to time all such regulations as are necessary and proper for carrying out the purposes of this chapter and Chapter 73 of this title. In the case of a contagious disease, the Department or its authorized agents may put under quarantine the entire herd containing the suspected or diseased animal or animals.

**3.0 Definitions:**

"Animal" means a sheep or goat.

"Department" means the Delaware Department of Agriculture.

"High Risk Animal" means any genetically susceptible exposed animal; female offspring of a scrapie positive animal and any female that poses a risk based on the epidemiology of the flock.

"Low Risk Goat" is a goat that is not scrapie positive, not suspect, not high risk, not exposed, or commingled with sheep; and from an area flock with no history of scrapie.

"Scrapie Positive Animal" is an animal for which a diagnosis of scrapie has been made by a laboratory approved by the Department and the USDA.

"Scrapie Suspect Animal" is a sheep or goat suspected of having scrapie by an accredited veterinarian or a Department or USDA, APHIS, VS representative.

"Official Identification" is an identification mark or device approved by the USDA and the Department; this may be eartag, tattoo, brand, or microchip. When a registration tattoo is used for identification, the registration paper must accompany the animal.

"Designated Scrapie Epidemiologist" means a state or federal veterinarian with knowledge of scrapie epidemiology selected to coordinate and evaluate the scrapie eradication program.

"Scrapie Exposed" is any animal that has been with a scrapie positive female animal or resided in an infected source flock.

"CVI" is a Certificate of Veterinary Inspection.

**4.0 Scrapie Import Requirements for Sheep and Goats.**

4.1 All animals must be identified on an official certificate of veterinary inspection (CVI) issued by an accredited veterinarian; the certificate shall include a statement that "this flock has been inspected and found to be free of any infectious or contagious diseases and that there has been no cases of scrapie in this flock or herd during the past year".

4.2 Delaware is included in the National Scrapie Eradication Program. All eligible animals must have an official scrapie identification.

4.3 The following animals are exempt from official scrapie identification:

4.3.1 Sheep and goat wethers.

4.3.2 Slaughter goats.

4.3.3 Slaughter goats under 18 months of age.

4.3 No sheep or goat may be removed from slaughter channels unless it is identified to the flock of birth and the animal is not scrapie-exposed or from an infected or source flock, and is from a scrapie consistent state.

4.4 An animal must have official scrapie identification upon transfer of ownership, when first commingling or interstate commerce occurs, or before joining with animals within the state but, from a different flock.

4.5 Scrapie is a reportable disease in the State of Delaware.

4.5.1 State animal health officials shall be notified, by the flock owner or veterinarian, within 24 hours when a clinically suspicious animal or test is found. State officials will notify the Area VS office of a suspicious animal.

4.5.2 When a clinical or test suspect, or test positive animal is found, the animal and entire flock will be placed under quarantine until the status of the animal is determined. The suspect animal(s) must be officially identified under the direction of a State or Federal representative. Owners must allow the collection and submission of tissues from all scrapie-suspect animals to a laboratory authorized by USDA, APHIS, VS to conduct scrapie tests. If the suspect animal is euthanized, after diagnostic tissues are collected, the carcass must be

completely destroyed under the supervision of State or Federal officials.

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**THOROUGHBRED RACING COMMISSION**

Statutory Authority: 3 Delaware Code Section 10171; 29 Delaware Code, Section 4815(b)(3)c  
(3 **Del.C.** §10171; 29 **Del.C.** §4815(b)(3)c

**PUBLIC NOTICE**

The Delaware Jockeys' Health and Welfare Board, pursuant to 3 **Del.C.** §10005, proposes to add rules to define eligibility of Delaware Jockeys for Health insurance coverage pursuant to 29 **Del.C.** §4815(b)(3)c. The Commission will hold a public hearing on the proposed rule change on March 20, 2006 at the Horseman's office in Delaware Park at 12:30 PM. Written comments should be sent to John Wayne, Administrator of Thoroughbred Racing, Delaware Park, 777 Delaware Park Boulevard, Wilmington, DE 19804.

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

1.1 These regulations are authorized pursuant to 3 **Del.C.** §10171 and 29 **Del.C.** §4815(b)(3)c which established a Delaware Jockeys' Health and Welfare Benefit Board (hereinafter "the Board") and Delaware Jockeys' Health and Welfare Benefit Fund (hereinafter "the Fund").

1.2 The Delaware Jockeys' Health and Welfare Benefit Board shall consist of 1 member of the Delaware Thoroughbred Racing Commission, 1 member from the licensed agent under Chapter 1010 of Title 3 or Chapter 4 of Title 28, 1 member of the Delaware Horsemen's Association, 1 representative from the organization that represents the majority of the jockeys who are licensed and ride regularly in Delaware, and 2 jockeys who are licensed and ride regularly in Delaware. The Chairman of the Thoroughbred Racing Commission shall serve as an *ex officio* member, and vote on matters in the event of a tie vote on any issue. All members shall be appointed by the Thoroughbred Racing Commission, and shall serve a two year term.

1.3 The Board shall elect a Chairperson from among the appointed members of the Board. The Chairperson shall serve a two year term and may serve consecutive terms. The Chairperson shall be the presiding officer at all meetings of the Board.

1.4 The Board shall administer the Fund pursuant to these Regulations and other reasonable criteria for benefit eligibility.

1.5 A special fund of the State has been established and will be known as the "Delaware Jockeys' Health and Welfare Benefit Fund." The Fund shall consist of the proceeds transferred from the licensed video lottery agent and the purse account pursuant to 29 **Del.C.** §4815(b)(3)c. The proceeds transferred to the Fund will be maintained in an account established in the Department of Agriculture.

1.6 The Fund will be invested by the State Treasurer consistent with the investment policies established by the Cash Management Policy Board. All income earned by the Fund will be reinvested in the Delaware Jockeys' Health and Welfare Benefit Fund.

1.7 The Board shall use the Fund to provide for jockeys who regularly ride in Delaware, health benefits for active, disabled and retired jockeys. The Board may also expend usual and customary expenses for administrative purposes from the Fund.

1.8 The Thoroughbred Racing Commission's Administrator of Racing will provide administrative support to the Board and keep minutes of all the meetings of the Board and preserve all records of the Board. The Board's Office will be considered as part of the Office of the Thoroughbred Racing Commission.

1.9 The Board can propose to amend these regulations by an affirmative vote of the majority of the Board.

**2.0 Eligibility Criteria for Health Coverage**

2.1 The Board will pay from the Fund for health coverage for active jockeys who regularly ride in Delaware, eligible retired jockeys, and disabled Delaware jockeys.

**Active Delaware Jockeys**

2.1.1 An Active Delaware Jockey, who regularly rides in Delaware, is eligible for health insurance coverage under the fund, if the jockey had twenty-five (25) mounts in a Delaware Park season at Delaware Park; and

2.1.1.1 If the jockey's Delaware Park mounts are less than 50 in a Delaware Park season, then 80% of that jockey's total mounts during the regular Delaware Park season must be at Delaware Park.

2.1.1.2 If the jockey's Delaware Park mounts are less than 100 but more than 50 in a Delaware Park season, then 50% of that jockey's total mounts during the regular Delaware Park season must be at Delaware Park.

2.1.1.3 If the jockey's Delaware Park mounts are 100 or more in a Delaware Park season, the jockey is eligible for health insurance coverage, regardless of the amount of total mounts at other tracks.

**Retired Delaware Jockeys**

2.1.2 A Retired Delaware Jockey is eligible for health insurance coverage under the Fund if:

2.1.2.1 The Jockey was receiving health insurance coverage as a retired jockey provided by the Delaware Thoroughbred Racing Commission's health insurance plan with the Jockey's Guild on January 1, 2006; or

2.1.2.2 The Jockey rode a minimum of 100 mounts at Delaware Park during the regular Delaware Park season for at least seven years and had at least 5,000 career mounts at any track.

**Disabled Delaware Jockeys**

2.1.3 A disabled Delaware Jockey's spouse and dependents qualify for health benefits if the disabled jockey meets all of the following requirements:

- Qualification as an active Delaware jockey as defined by Rule 2.1.1 for at least three years preceding determination of permanent disability; and
- Be deemed permanently disabled by Social Security and qualify for Medicare as a result of an injury sustained during the regular Delaware Park season on the premises of Delaware Park, and arising in the course of his/her participation as a licensed jockey.

2.2 A jockey and/or the jockey's family who meets the eligibility requirements of either an active Delaware jockey, a retired Delaware jockey, or a disabled Delaware jockey's family will be entitled to health coverage beginning on the first of the month after it can be determined the eligibility requirement has been met, and continuing until December 31<sup>st</sup> of the next calendar year.

2.3 The Board will pay from the Fund for health coverage for the dependents of active jockeys who regularly ride in Delaware, eligible retired jockeys, and disabled Delaware jockeys.

2.3.1 Eligibility for coverage for dependants will be determined by the company providing the insurance coverage.

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**DEPARTMENT OF EDUCATION**  
**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 1220(a) (14 Del.C. §1220(a))  
14 DE Admin. Code 275

**PUBLIC NOTICE**

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

**275 Charter Schools****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** 275 Charter Schools 4.2.1.3 and 4.2.2.1 based on recommendations made by a task force created by House Resolution 78 from the 142<sup>nd</sup> General Assembly to review the Standards for Licensing and Chartering and the Continued Licensing of Charter Schools.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation provides a high standard for charter schools concerning student achievement.

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

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses student achievement not students' legal rights.

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

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

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

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

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

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

**275 Charter Schools*****(Break in Continuity of Sections)*****4.0 Standards and Criteria for Granting Charter****4.1 Applicant Qualifications**

4.1.1 The Applicant must demonstrate that its board of directors has and will maintain collective experience, or contractual access to such experience, in the following areas:

4.1.1.1 Research based curriculum and instructional strategies, to particularly include the curriculum and instructional strategies of the proposed educational program.

4.1.1.2 Business management, including but not limited to accounting and finance.

4.1.1.3 Personnel management.

4.1.1.4 Diversity issues, including but not limited to outreach, student recruitment, and instruction.

4.1.1.5 At risk populations and children with disabilities, including but not limited to students eligible for special education and related services.

4.1.1.6 School operations, including but not limited to facilities management.

4.1.2 The application must identify the certified teachers, the parents and the community members who have been involved in the preparation of the application and the development of the proposed Charter School.

4.1.3 The Applicant's bylaws must be submitted with the application and must demonstrate that:

4.1.3.1 The Charter Holder's board of directors will include a certificated teacher employed as a teacher at the Charter School and a Parent of a currently enrolled student of the school no later than the school's First Instructional Day;

4.1.3.2 The Applicant's business is restricted to the opening and operation of: Charter Schools, before school programs, after school programs and educationally related programs offered outside the traditional school year.

4.1.3.3 The board of directors will meet regularly and comply with the Freedom of Information Act, 29 **Del.C.** Ch. 100 in conducting the Charter School's business.

#### 4.2 Student Performance

##### 4.2.1 Minimum Requirements

4.2.1.1 The Applicant must agree and certify that it will comply with the requirements of the State Public Education Assessment and Accountability System pursuant to 14 **Del.C.** §§151, 152, 153, 154, and 157 and Department rules and regulations implementing Accountability, to specifically include the Delaware Student Testing Program.

4.2.1.2 The Applicant must demonstrate that it has established and will apply measurable student performance goals on the assessments administered pursuant to the Delaware Student Testing Program (DSTP), and a timetable for accomplishment of those goals.

4.2.1.3 ~~At a minimum, the~~ Applicant must agree and certify that the Charter School's average student performance on the DSTP assessments in each content area will meet the statewide average student performance of students in the same grades for each year of test administration, unless the student population meets the criteria established in Section 4.2.2.

##### 4.2.2 Special Student Populations

4.2.2.1 An Applicant for a charter proposing enrollment preferences for students at risk of academic failure shall comply with the minimum performance goals established in Subsections 4.2.1.2 and 4.2.1.3. This requirement may be waived where the Applicant demonstrates to the satisfaction of the Department and State Board that the Charter School will primarily serve at risk students and will apply performance goals and timetables which are appropriate for such a student population.

4.2.2.2 An Applicant for a charter proposing an enrollment preference other than a preference for students at risk of academic failure shall comply with the Section. 4.2.1. In addition, the Department, with the approval of the State Board, may require such an Applicant to establish and apply additional and higher student performance goals consistent with the needs and abilities of the student population likely to be served as a result of the proposed enrollment preferences.

4.2.3 If the Applicant plans to adopt or use performance standards or assessments in addition to the standards set by the Department or the assessments administered pursuant to the DSTP, the application must specifically identify those additional standards or assessments and include a planned baseline acceptable level of performance, measurable goals for improving performance and a timetable for accomplishing improvement goals for each additional indicator or assessment. The use of additional performance standards or assessments shall not replace, diminish or otherwise supplant the Charter School's obligation to meet the performance standards set by the Department or to use the assessments administered pursuant to the DSTP.

#### 4.3 Educational Program

4.3.1 The application must demonstrate that the school's proposed program, curriculum and instructional strategies are aligned to State content standards, meet all grade appropriate State program requirements, and in the case of any proposed Charter High School, includes driver education. The educational program shall include the provision of extra instructional time for at risk students, summer school and other services required to be provided by school districts pursuant to the provisions of 14 **Del.C.** §153. Nothing in this subsection shall prevent an Applicant from proposing high school graduation requirements in addition to the state graduation requirements.

4.3.2 The application must demonstrate that the Charter School's educational program has the potential to improve student performance. The program's potential may be evidenced by:

4.3.2.1 Academically independent, peer reviewed studies of the program conducted by persons or entities without a financial interest in the educational program or in the proposed Charter School;

4.3.2.2 Prior successful implementation of the program; and

4.3.2.3 The Charter School's adherence to professionally accepted models of student development.

4.3.3 The application must demonstrate that the Charter School's educational program and procedures will comply with applicable state and federal laws regarding children with disabilities, unlawful discrimination and at risk populations, including but not limited to the following showings.

4.3.3.1 The school's plan for providing a free appropriate public education to students with disabilities in accordance with the Individuals with Disabilities Education Act, with 14 **Del.C.** Ch. 31 and with 14 **DE Admin. Code** 925, specifically including a plan for having a continuum of educational placements available for children with disabilities.

4.3.3.2 The school's plan for complying with Section 504 of the Rehabilitation Act of 1973 and with the Americans with Disabilities Act of 1990.

4.3.3.3 The school's plan for complying with Titles VI and VII of the Civil Rights Act of 1964.

4.3.3.4 The school's plan for complying with Title IX of the Education Amendments of 1972.

#### 4.4 Economic Viability.

4.4.1 The application must demonstrate that the school is economically viable and shall include satisfactory documentation of the sources and amounts of all proposed revenues and expenditures during the school's first three years of school operation after opening for instructional purposes. There must be a budgetary reserve for contingencies of not less than 2.0% of the total annual amount of proposed revenues. In addition, the application shall document the sources and amounts of all proposed revenues and expenditures during the start up period prior to the opening of the school.

4.4.2 The Department may require that the Applicant submit data demonstrating sufficient demand for Charter School enrollment if another Charter School is in the same geographic area as the Applicant's proposed school. Such data may include, but is not limited to, enrollment waiting lists maintained by other Charter Schools in the same geographic area and demonstrated parent interest in the Applicant's proposed school.

4.4.3 The application shall identify with specificity the proposed source(s) of any loan(s) to the Applicant including, without limitation, loans necessary to implement the provisions of any major contract as set forth below, and the date by which firm commitments for such loan(s) will be obtained.

4.4.4 The application shall contain a timetable with specific dates by which the school will have in place the major contracts necessary for the school to open on schedule. "Major contracts" shall include, without limitation, the school's contracts for equipment, services (including bus and food services, and related services for special education), leases of real and personal property, the purchase of real property, the construction or renovation of improvements to real property, and insurance. Contracts for bus and food services must be in place no later than August 1st of the year in which the school proposes to open and August 1st of each year thereafter. Contracts for the lease or purchase of real property, or the construction or renovation of improvements to real property must be in place sufficiently far in advance so that the Applicant might obtain any necessary certificate of occupancy for the school premises no later than June 15th of the year in which the school proposes to open.

4.4.5 Reserved

#### 4.5 Attendance, Discipline, Student Rights and Safety

4.5.1 The application must include a draft "Student Rights and Responsibilities Manual" that meets applicable constitutional standards regarding student rights and conduct, including but not limited to discipline, speech and assembly, procedural due process and applicable Department regulations regarding discipline.

4.5.1.1 The "Student Rights and Responsibilities Manual" must comply with the Gun Free Schools Act of 1994 (20 U.S.C.A. §8921) and Department Regulation 878.

4.5.1.2 The application must include a plan to distribute the "Student Rights and Responsibilities Manual" to each Charter School student at the beginning of each school year. Students who enroll after the beginning of the school year shall be provided with a copy of the "Student Rights and Responsibilities Manual" at the time of enrollment.

4.5.2 The application must include the process and procedures the Charter School will follow to comply with the following laws:

4.5.2.1 14 **Del.C.** Ch. 27 and applicable Department regulations regarding school attendance, including a plan to distribute attendance policies to each Charter School student at the beginning of each school year. Students who enroll after the beginning of the school year shall be provided with a copy of the attendance policy at the time of enrollment.

4.5.2.2 11 **Del.C.** Ch. 85 and applicable Department regulations regarding criminal background checks for public school related employment.

4.5.2.3 14 **Del.C.** §4112 and applicable Department regulations regarding the reporting of school crimes.

4.5.2.4 The Family Educational Rights and Privacy Act (FERPA) and implementing federal and Department regulations regarding disclosure of student records.

4.5.2.5 The provision of free and reduced lunch to eligible students pursuant to any applicable state or federal statute or regulation.

4.5.3 The requirement that the Applicant provide for the health and safety of students, employees and guests will be judged against the needs of the student body or population served. Except as otherwise required in this regulation, the Applicant must either agree and certify that the services of at least one (1) full time nurse will be provided for each facility in which students regularly attend classes, or demonstrate that it has an adequate and comparable plan for providing for the health and safety of its students. Any such plan must include the Charter School's policies and procedures for routine student health screenings, for administering medications to students (including any proposed self administration), for monitoring chronic student medical conditions and for responding to student health emergencies. Any applicant which receives funding equivalent to the funding provided to school districts for one or more school nurses shall provide its students the full time services of a corresponding number of registered nurses.

**6 DE Reg. 274 (9/1/02)**

**7 DE Reg. 928 (1/1/04)**

**\*Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Department of Education is available at: <http://http://www.state.de.us/research/AdminCode/title14/index.shtml>.**

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**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 1008

**PUBLIC NOTICE**

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

**1008 DIAA Junior High and Middle School Interscholastic Athletics****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 1008 DIAA Junior High and Middle School Interscholastic Athletics.

The amendments add a new section, 2.7.5 and add the phrase "immediately preceding the school year" after "June 15" to section 2.1.1.1 in order clarify the eligibility rules for sports participation.

In section 6.0 sub titles and numbering are amended in order to clarify the references to student attendance at athletic clinics and camps. Spelling and a Delaware Code reference have also been corrected.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses eligibility for participation in interscholastic athletics and student attendance at athletic clinics and camps not state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses eligibility for participation in interscholastic athletics and student attendance at athletic clinics and camps not equitable education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses eligibility for participation in interscholastic athletics and student attendance at athletic clinics and camps not students' health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses eligibility for participation in interscholastic athletics and student attendance at athletic clinics and camps not students' legal rights.

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

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

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

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

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

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

**1008 DIAA Junior High and Middle School Interscholastic Athletics****2.0 Eligibility: No Student Shall Represent a School in an Interscholastic Scrimmage or Contest if He/She Does Not Meet the Following Requirements**

**2.1 Eligibility, Grades and Age**

2.1.1 The junior high and middle school interscholastic program shall include grades 6 to 8, inclusive. No junior high or middle school student who has completed a season at the junior high or middle school level shall compete in the same sport at the senior high school level during the same school year. A junior high or middle school student who participates in a varsity or sub varsity game at the high school level shall be ineligible to participate at the junior high or middle school level in the same sport.

2.1.1.1 Eighth grade students who become 15 years of age on or after June 15 immediately preceding the school year in a school terminating in the eighth grade shall be eligible for all sports during the current school year provided all other eligibility requirements are met.

2.1.1.2 Permission shall be granted for 15 year old eighth grade students in a school terminating in the eighth grade who are ineligible for junior high or middle school competition to participate in the district high school athletic program provided they meet all other eligibility requirements. In determining the age of a contestant, the birth date as entered on the birth record of the Bureau of Vital Statistics shall be required and shall be so certified on all eligibility lists.

2.1.2 Requests for waiver of the age requirement shall be considered only for participation on an unofficial, non scoring basis in non contact sports.

**2.2 Eligibility, Residence**

2.2.1 With the exception of boarding school students, a student must be living with his/her custodial parent(s) legal guardian(s) or Relative Caregiver in the attendance zone of the school which he/she attends in order to be eligible for interscholastic athletics in that school. In cases of joint custody, the custodial parent shall be the parent with actual physical placement as determined by court action. In the case of shared custody the parents must commit to sending the student to a particular school for the year. Maintaining multiple residences to circumvent this requirement shall render the student ineligible.

2.2.1.1 A student who, pursuant to established school board policy or administrative procedure, remains in a school he/she has been attending after his/her legal residence changes to the attendance zone of a different school in the same school district, may exercise, prior to the first official student day of the subsequent academic year, a one time election to remain at his/her current school and thereby not lose athletic eligible. If a student chooses to remain at his/her current school and then transfers to the school in his/her new attendance zone on or after the first official student day of the subsequent academic year, he/she shall be ineligible for ninety (90) school days.

2.2.1.2 A student who changes residence to a different attendance zone after the start of the last marking period and, pursuant to established school board policy or administrative procedure, is granted permission to continue attending his/her present school, the student shall retain his/her athletic eligibility in that school for the remainder of the school year provided all other eligibility requirements are met.

2.2.1.3 A student may be residing outside of the attendance zone of the school which he/she attends if the student is participating in the Delaware School Choice Program as authorized by 14 **Del.C.**, Ch.4.

2.2.1.4 A student who is a non resident of Delaware shall be eligible to attend a public school, charter school or career technical school if, in accordance with 14 **Del.C.** §607, his/her custodial parent, legal guardian or Relative Caregiver is a full time employee of that district.

2.2.1.5 Notwithstanding 2.2.1, a student shall be eligible at a public school, charter school or career technical school if he/she is enrolled in accordance with 14 **Del.C.** §202(f), the Relative Caregivers School Authorization.

2.2.1.5.1 An exception would be a student whose Relative Caregiver does not provide the documentation required by the Relative Caregiver School Authorization (proof of relation and proof of full time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the Relative Caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

2.2.1.6 Notwithstanding 2.2.1, a student who is homeless as defined in the McKinney-Vento Act, 42 U.S.C. 11434a(2) shall be eligible to participate at the public school in which he/she is enrolled.

**2.3 Eligibility, Enrollment and Attendance**

2.3.1 A student must be legally enrolled in the junior high or middle school which he/she represents in order to participate in a practice, scrimmage, or contest.

2.3.2 Students with disabilities who are placed in special schools or programs administered by a school district or charter school which sponsors junior high or middle school interscholastic athletics.

2.3.2.1 Definitions:

“**Campus**” means a contiguous land area containing one or more school buildings.

“**Special School or Program**” means a school or program approved by the Department of Education with the approval of the State Board of Education to serve students with disabilities, but does not include alternative schools.

“**Student With a Disability**” means a “child with a disability” as that term in the Administrative Manual for Special Education Services (AMSES), 14 **DE Admin. Code** 925.

2.3.2.2 A student with a disability who is placed in a special school or program administered by a school district or charter school which sponsors junior high or middle school interscholastic athletics shall be eligible to participate in interscholastic athletics as follows:

2.3.2.2.1 If the special school or program sponsors the interscholastic sport in question, the student shall be eligible to participate only at the school or program.

2.3.2.2.2 If the special school or program does not sponsor the interscholastic sport in question and the student is served in a regular junior high or middle school for all or part of the school day, the student shall be eligible only at that regular junior high or middle school.

2.3.2.2.3 If the special school or program does not sponsor the interscholastic sport in question, and the student is served exclusively in the special school or program, and the special school or program is located on the campus of a regular junior high or middle school, the student shall be eligible only at the regular junior high or middle school on the same campus.

2.3.2.2.4 If the special school or program does not sponsor the interscholastic sport in question, and the student is served exclusively in the special school or program, and the special school or program is not located on the campus of a regular junior high or middle school the student shall be eligible only at the regular junior high or middle school designated to serve the special school's or program's students.

2.3.2.2.4.1 School districts or charter schools which administer special schools or programs and have multiple middle schools or junior high schools shall decide which of its regular middle schools or junior high schools shall be designated to serve special school or program students in these circumstances.

2.3.3 A student who is participating in the Delaware School Choice Program, as authorized by 14 **Del.C.** Ch. 4, is obligated to attend the choice school for a minimum of two (2) years unless the student's custodial parent(s), legal guardian(s) or Relative Caregiver relocate to a different school district or the student fails to meet the academic requirements of the choice school. If a student attends a choice school for less than two (2) years and subsequently returns to his/her home school, the student must receive a release from the choice district in order to legally enroll at his/her home school. Without a release, the student would not be legally enrolled and consequently would be ineligible to participate in interscholastic athletics.

2.3.4 A student may not participate in a practice, scrimmage, or contest during the time a suspension, either in school or out of school, is in effect or during the time he/she is assigned to an alternative school for disciplinary reasons.

2.3.5 A student who is not legally in attendance at school due to illness or injury shall not be permitted to participate in a practice, scrimmage, or contest on that day.

2.3.6 A Student who fails to complete a semester or absence for one or more semesters for reasons other than personal illness or injury shall be ineligible for ninety (90) school days from his/her reentry to school.

2.3.7 An eligible student who practices in violation of 2.2.2 through 2.2.5 shall. When he/she regains her eligibility, be prohibited from practicing, scrimmaging or competing for an equivalent number of days.

#### 2.4 Eligibility, Transfers

2.4.1 A student who has not previously participated in interscholastic athletics (previous participation is defined as having practiced, scrimmaged or competed in grades 6 through 8), is released by a proper school authority from a sending school, has completed the registration process at the receiving school, and is pursuing an

approved course of study shall be eligible immediately upon registration provided he/she meets all other DIAA eligibility requirements.

2.4.2 If a student has previously participated in interscholastic athletics, he/she shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school unless one of the following exceptions applies:

2.4.2.1 The transfer is within a school district and is approved by the district's superintendent pursuant to established school board policy or administrative procedure. This provision shall not apply to a student who transfers to his/her home school from a "choice school" within the district and who has not completed the two year attendance requirement unless he/she satisfies the conditions stipulated in 2.4.2.5.1 through 2.4.2.5.4. This provision shall also not apply to a student who transfers from a "choice school" to another "choice school" within the district (1.4.6.1).

2.4.2.2 The transfer is caused by court action, court action being an order from a court of law affecting legally committed students. In the case of a transfer of guardianship or custody, the transfer shall be the result of a court order signed by a judge, commissioner, or master of a court of competent jurisdiction. A petition for the transfer of guardianship or custody, an affidavit, (except as permitted by 2.4.2.3) or a notarized statement signed by the affected parties shall not be sufficient to render the student eligible to participate in interscholastic athletics.

2.4.2.3 The transfer is in accordance with 14 **Del.C.** §202(f), the Caregivers School Authorization.

2.4.2.3.1 An exception would be a student whose Relative Caregiver does not provide the documentation required by the Relative Caregiver School Authorization (proof of relation and proof of full time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the Relative Caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

2.4.2.4 The transfer is the result of a change in residence by the custodial parent(s) legal guardian(s) or Relative Caregiver from the attendance zone of the sending school to the attendance zone of the receiving school. A change in residence has occurred when all occupancy of the previous residence has ended. A student who transfers shall be eligible in the receiving school immediately when the custodial parent(s) legal guardian(s) or Relative Caregiver has established a new legal residence in another public school attendance zone.

2.4.2.5 The transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year provided:

2.4.2.5.1 The student has completed the registration process at the receiving school prior to the first official student day of the academic year. The first official student day shall be defined as the first day on which students in any grade in that school are required to be in attendance.

2.4.2.5.2 The student has not attended class, excluding summer school, or participated in a scrimmage or contest at the sending school since the close of the previous academic year.

2.4.2.5.3 The student's legal residence is located in the attendance zone of the receiving school.

2.4.2.5.4 All other DIAA eligibility requirements have been met.

2.4.2.6 The transfer is the result of the student being homeless as defined in the McKinney-Vento Act, 42 U.S.C. 11434a(2).

2.4.2.6.1 Notwithstanding the above, the student shall be ineligible under the ninety (90) school day ineligibility clause where the student's homeless status is created by the student or his/her family for the primary reason of:

2.4.2.6.1.1 Seeking a superior team;

2.4.2.6.1.2 Seeking a team more compatible with the student's abilities; or

2.4.2.6.1.3 Dissatisfaction with the philosophy, policies, methods or actions of a coach or administrator pertaining to interscholastic athletics; or

2.4.2.6.1.4 Avoiding disciplinary action imposed by the school of origin related to affecting interscholastic athletic participation.

2.4.3 Transfer Because of a Change in the Program of Study or Financial Hardship. If a waiver of the ninety (90) school day ineligibility clause is requested due to a desired change in the program of study or financial

hardship, the parent(s), legal guardian(s) or Relative Caregiver's responsible for providing documentation to the DIAA Board of Directors to support the request.

2.4.3.1 Documentation for Change in Program of Study: Documentation for change in program of study (a multi year hierarchical sequence of courses with a common theme or subject matter leading to a specific outcome) shall include:

2.4.3.1.1 The student's schedule;

2.4.3.1.2 The student's transcript;

2.4.3.1.3 Current course descriptions from both the sending and receiving schools;

2.4.3.1.4 A statement from the principal of the sending school indicating that a significant part of the student's desired program of study will not be offered and that it will place the student at a definite disadvantage to delay transfer until the end of the current school year; and

2.4.3.1.5 A statement from the principals of both the sending and receiving school that the student is not transferring for athletic advantage (2.4.5).

2.4.3.2 Documentation for Financial Hardship: Documentation for financial hardship shall include:

2.4.3.2.1 Proof of extreme financial hardship caused by significant loss of income and increased expenses; and

2.4.3.2.2 A statement from the principal of both the sending and receiving schools that the student is not transferring for athletic advantage (2.4.5).

2.4.4 Transfer Because of a Custody Change: In cases of joint or shared custody when a primary residence is established, a change in a student's primary residence without court action subjects the student to the ninety (90) school day ineligibility clause.

2.4.5 A change of custody or guardianship for athletic advantage shall render a student ineligible under the ninety (90) school day ineligibility clause if the reason for his/her transfer is one of the following: to seek a superior team, to seek a team more compatible with his/her abilities, dissatisfaction with the philosophy, policies, methods, or actions of a coach or administrator pertaining to interscholastic athletics, or to avoid disciplinary action imposed by the sending school related to or affecting interscholastic athletic participation.

2.4.6 A student who transfers from a public, private, career technical school or charter school to a school of choice, as authorized by 14 **Del.C.**, Ch. 4 shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year.

2.4.6.1 A student who transfers from a school of choice to another school of choice shall be ineligible to participate in interscholastic athletics during his/her first year of attendance at the receiving school unless the receiving school sponsors a sport(s) not sponsored by the sending school in which case the student shall be eligible to participate in that sport only.

2.4.7 A student who transfers from a school of choice to either a private school, public school, career technical school or, after completing his/her two year commitment, to a public charter school, shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year.

2.4.8 If a student transfers with fewer than ninety (90) school days left in the academic year, he/she shall be ineligible for the remainder of the school year but shall be eligible beginning with the subsequent fall sports season provided he/she is in compliance with all other eligibility requirements.

## 2.5 Eligibility, Amateur Status

2.5.1 A student may not participate in an interscholastic sport unless he/she is considered an amateur in that sport. A student forfeits his/her amateur status if he/ she does any of the following:

2.5.1.1 Knowingly plays on or against a professional team which is defined as a team having one or more members who have received or are receiving directly or indirectly monetary consideration for their athletic services.

2.5.1.2 Signs a professional contract, accepts reimbursement for expenses to attend a professional tryout, or receives financial assistance in any form from a professional sports organization.

2.5.1.3 Enters competition under an assumed name. The surname and given name used by any player in the first game of interscholastic competition shall be used during the remainder of the student's

interscholastic career. Any change in spelling or use of another name shall be regarded as an attempt to evade this rule unless the change has been properly certified by the player to the principal of the school.

2.5.1.4 Receives remuneration of any kind or accepts reimbursement for expenses in excess of the actual and necessary costs of transportation, meals, and lodging for participating in a team or individual competition or an instructional camp or clinic. Reimbursement for the aforementioned expenses is permitted only if all of the participants receive the same benefit.

2.5.1.5 Receives cash or a cash equivalent (savings bond, certificate of deposit, etc.), merchandise (except as permitted by 9.1.4) or a merchandise discount (except for discount arranged by school for part of team uniform) a reduction or waiver of fees, a gift certificate, or other valuable consideration as a result of his/her participation in an organized competition or instructional camp or clinic. Accepting an event program or a complimentary item(s) (T shirt, hat, equipment bag, etc.) that is inscribed with a reference to the event, has an aggregate retail value of no more than \$150.00, and is provided to all of the participants, shall not jeopardize his/her amateur status.

2.5.1.6 Sells or pawns awards received.

2.5.1.7 Uses his/her athletic status to promote or endorse a commercial product or service in a newsprint, radio, or television advertisement or personal appearance.

2.5.2 Accepting compensation for teaching lessons, coaching, or officiating shall not jeopardize his/her amateur status.

2.5.3 A student who forfeits his/her amateur status under the provisions of this rule is ineligible to participate at the interscholastic level in the sport in which the violation occurred. He/she may be reinstated after a period of up to 180 school days provided that during the suspension, he/she complies with all of the provisions of this rule. The suspension shall date from the time of the last offense.

## 2.6 Eligibility, Passing Work

2.6.1 In order to be eligible for participation in interscholastic athletics, including practices, a student must pursue a regular course of study or its equivalent as approved by the local governing body, and must be passing at least four (4) courses. Two (2) of those courses must be in the areas of English, Mathematics, Science, or Social Studies.

2.6.1.1 A student who is receiving special education services and is precluded from meeting the aforementioned academic requirements due to modifications in the grading procedure or course of study, shall be adjudged eligible by the principal if he/she is making satisfactory progress in accordance with the requirements of his/her individualized education plan (IEP).

2.6.2 A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in interscholastic athletics, including practices, for the next marking period.

2.6.2.1 In the case of a conflict between the marking period grade and the final grade, the final grade shall determine eligibility.

2.6.2.2 The final accumulation of credits shall determine eligibility for the first marking period of the following school year. When a student makes up a failure or earns the required credit(s) during the summer, he/she shall become eligible provided he/she successfully completes the course work prior to the first official student day of the school year.

2.6.2.3 Written verification of the successful completion of a correspondence course must be received before a student shall regain his/her eligibility.

2.6.3 A student forfeits or regains his/her eligibility, in accordance with the provisions of this rule, on the day report cards are issued.

2.6.4 Local school boards and nonpublic schools may establish more stringent requirements for academic eligibility than the minimum standards herein prescribed.

2.6.5 An ineligible student who practices in violation of 2.6.1, 2.6.2 or 2.6.3, shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

## 2.7 Eligibility, Years of Participation

2.7.1 No student shall represent a school in athletics after four (4) consecutive semesters from the date of his/her first entrance into the seventh grade in schools which restrict participation in interscholastic athletics to students in grades 7 and 8 unless a waiver is granted for hardship reasons.

2.7.1.1 No student shall have more than two (2) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or in a spring sport or combination of spring sports.

2.7.1.2 **"Hardship"** shall be defined as extenuating circumstances peculiar to the student athlete caused by unforeseen events beyond the election, control or creation of the student athlete, his/her family, or school which (1) deprive him/her of all or part of one of his/her opportunities to participate in a particular sports season; (2) preclude him/her from completing the academic requirements for graduation within the normal period of eligibility; and (3) deprive him/her of all or part of one of his/her opportunities to participate in a particular sport. The waiver provision is intended to restore eligibility that has been lost as a result of a hardship situation. Injury, illness or accidents, which cause a student to fail to meet the basic requirements, are possible causes for a hardship consideration.

2.7.1.2.1 A waiver shall not be granted under this section where DIAA finds that the student was academically eligible pursuant to DIAA's minimum passing work standards but was ineligible to participate under more stringent locally adopted academic standards and where the local school board has adopted its own waiver or exemption policy.

2.7.1.2.2 A clear and direct causal relationship must exist between the alleged hardship condition and the failure of the student to complete the academic requirements for promotion within the normal period of eligibility and the loss of all or part of one of his/ her opportunities to participate in a particular sports season.

2.7.1.2.3 The burden of proof rests with the student in conjunction with the waiver process as described in 14 **DE Admin. Code** 1006. Claims of extended illness, debilitating injury, emotional stress, etc., must be accompanied by appropriate documentation. Evidence must be submitted to verify that the student or his/her parent(s) or court appointed legal guardian(s) sought assistance to ameliorate the effects of the hardship condition.

2.7.2 No student shall represent a school in athletics after six (6) consecutive semesters from the date of his/her first entrance into the sixth grade in schools which permit students in grades 6, 7 and 8 to participate in interscholastic athletics unless a waiver is granted for hardship reasons

2.7.2.1 No student shall have more than three (3) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or in a spring sport or combination of spring sports.

2.7.2.2 Participation on the part of a sixth grade student shall be at the discretion of the individual school.

2.7.2.3 Sixth grade students shall not be permitted to participate in football unless the conference develops a classification system that is approved by the DIAA Board of Directors.

2.7.3 Students below the sixth grade shall not be permitted to practice, scrimmage, or compete on junior high or middle school interscholastic teams.

2.7.4 Participation shall be defined as taking part in a school sponsored practice, scrimmage, or contest on or after the first allowable date for practice in that sport.

2.7.5 In the event of a student that transfers between the types of schools described in 2.7.1 and 2.7.2, no student shall represent a school in athletics after six (6) consecutive semesters from the date of student's first entrance into sixth grade.

## 2.8 Student Eligibility Report Forms

2.8.1 Member schools shall use eligibility forms approved by the Executive Director. A copy of the original eligibility report and subsequent addenda must be either received by the Executive Director or postmarked prior to the first contest for which the students listed are eligible. Failure to file an eligibility report as prescribed shall result in a \$15.00 fine against the school.

2.8.1.1 In the case of a student who met all DIAA eligibility requirements but was omitted from the eligibility report due to administrative or clerical error, he/she shall be adjudged eligible and the school assessed a \$10.00 fine.

## 2.9 Use of an Eligible Athlete:

2.9.1 If a school uses an ineligible athlete, the administrative head or his/her designee shall notify the opposing school(s) or event sponsor, in the case of a tournament or meet, and the Executive Director in writing of the violation and the forfeiture of the appropriate game(s), match(es) or point(s) won.

2.9.2 The deliberate or inadvertent use of an ineligible athlete in the sports of soccer, football, volleyball, field hockey, basketball, baseball, softball, and lacrosse shall require the offending school to forfeit the contest(s) in which the ineligible athlete participated.

2.9.2.1 If the infraction occurs during a tournament, the offending school shall be replaced by its most recently defeated opponent. Teams eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament. Team and individual awards shall be returned to the event sponsor and team and individual records and performances shall be nullified.

2.9.2.2 The offending school may appeal to the DIAA Board of Directors for a waiver of the forfeiture penalty. If the forfeiture penalty is waived, the offending school shall be reprimanded and fined \$200.00 unless the athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withheld information or provided false information that caused him/her to be eligible for interscholastic competition. The burden of proof, in both cases, rests entirely with the offending school. A forfeit shall constitute a loss for the offending school and a win for its opponent for purposes of standings. A forfeit shall be automatic and not subject to refusal by the offending school's opponent.

2.9.3 The deliberate or inadvertent use of an ineligible athlete in the sports of cross country, wrestling, swimming, track, golf, and tennis shall require the offending school to forfeit the matches won and points earned by the ineligible athlete or by a relay team of which he/she was a member. The points contributed by an ineligible athlete to his/her team score shall be deleted and the contest score as well as any affected placements will be adjusted according to the rules of that sport.

2.9.3.1 If the infraction occurs during a tournament, the ineligible athlete shall be replaced by his/her most recently defeated opponent or next highest finisher. Contestants eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

2.9.3.2 Individual awards earned by the ineligible athlete and team awards, if necessary because of adjustments in the standings, shall be returned to the event sponsor. Individual records and performances by the ineligible athlete shall be nullified.

2.9.4 If an ineligible athlete participates in interscholastic competition contrary to DIAA rules but in accordance with a temporary restraining order or injunction against his/her school or DIAA, and the injunction is subsequently vacated, stayed, or reversed, or the courts determine that injunctive relief is not or was not justified, or the injunction expires without further judicial determination, the penalties as stipulated in 2.9.1 and 2.9.2 shall be imposed.

2.9.5 The intentional use of an ineligible athlete by a member school or repeated indifference to its responsibility to determine the eligibility of its athletes will subject the school to additional penalties which may include suspension for the number of days up to the length of the school year from the date the charge is substantiated.

2.9.6 If a coach knowingly withholds information or provides false information that causes an athlete to be eligible for interscholastic competition, the coach shall be suspended from coaching in any sport at any DIAA member school for up to the number of days up to the length of the school year from the date the charge is substantiated.

2.9.7 If an athlete or his/her parent(s), legal guardian(s), or Relative Caregiver knowingly withholds information or provides false information that causes him/her to be eligible for interscholastic competition, the athlete shall be suspended from participation in any sport at any DIAA member school for up to the number of days up to the length of the school year from the date the charge is substantiated.

#### 2.10 Determination of Student Eligibility and the Appeal Procedures

2.10.1 In cases of uncertainty or disagreement, the eligibility of a student shall be determined initially by the Executive Director. If the Executive Director determines that the student is ineligible, the school and the student shall be notified and the student suspended immediately from participation in interscholastic athletics.

2.10.2 The school and the student shall be informed that the decision of the Executive Director may be appealed to the DIAA Board of Directors.

2.10.3 Decisions of the DIAA Board of Directors to affirm, modify, or reverse the eligibility rulings of the Executive Director may be appealed to the State Board of Education in accordance with the procedure described in 14 DE Admin. Code 1006.10.1.3.

*(Break in Continuity of Sections)*

**6.0 Out of Season Athletic Camps and Clinic Sponsorship, Commercial Camps and Clinics and Open Gyms, Conditioning Programs and Non School Competition**

**6.1 ~~Out of Season~~ Athletic Camps and Clinic Sponsorship**

6.1.1 DIAA does not restrict a student's decision to attend an out of season athletic camp or clinic. However, schools, school organizations, coaches, or school related groups, such as booster clubs, may not sponsor an athletic camp or clinic which limits membership to their own district, locale, or teams. Coaches employed by an out of season athletic camp or clinic may only instruct their own athletes in accordance with 7.5.

**6.2 Team Attendance at Out of Season Commercial Camps and Clinics**

6.4.4-2.1 School related groups, such as booster clubs, which desire to sponsor the attendance of their school's enrolled students at an out of season athletic camp or clinic, may do so with the approval of the local school board or governing body. The disbursement of funds to pay for camp or clinic related expenses (fees, travel costs, etc.) shall be administered by the principal or his/her designee and the funds shall be allocated according to the following guidelines:

6.4.4-2.1.1 All students and team members shall be notified of the available sponsorship by announcement, publication, etc.

6.4.4-2.1.2 All applicants shall share equally in the funds provided.

6.4.4-2.1.3 All applicants shall be academically eligible to participate in interscholastic athletics.

6.4.4-2.1.4 All applicants shall have one year of prior participation in the sport for which the camp or clinic is intended or, absent any prior participation, he/she shall be judged by the coach to benefit substantially from participation in the camp or clinic.

**6.23 Individual Attendance at Commercial Camps and Clinics**

6.23.1 Commercial camps and clinics are defined as a camp or clinic operated for profit which provides coaching or other sports training for a fee.

6.23.2 A student may participate in a commercial camp or clinic, including private lessons, both during and out of the designated sport season provided the following conditions are observed:

6.23.2.1 The student must participate unattached and may not wear school uniforms.

6.23.2.2 The student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

6.23.2.3 The school may not provide transportation or pay fees.

6.23.2.4 The school coach may not require his/her athletes to participate in a camp or clinic or provide instruction to his/her returning athletes in a camp or clinic except as in accordance with 7.5.

**6.34 Open Gym Programs**

6.34.1 A member school may open its gymnasium or other facility for informal, recreational activities in accordance with the following provisions:

6.34.1.1 The open gym must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

6.34.1.2 Student participation must be voluntary and the open gym must not be a prerequisite for trying out for a particular team.

6.34.1.3 The activities must be unstructured and student generated. Organized drills in the skills or techniques of a particular sport are prohibited. Organized competition with fixed team rosters is also prohibited.

6.34.1.4 A coach may not predetermine that the open gym will include only his/her sport and publicize the open gym as being restricted to that sport. It is the responsibility of the adult supervisor to permit as many different activities as the facility can effectively and safely accommodate.

6.34.1.5 A coach may open the facility and distribute playing equipment but may not instruct, officiate, participate, organize the activities, or choose teams in his/ her assigned sport.

6.34.1.6 Playing equipment is restricted to that which is customarily used in a contest in a particular sport. Playing equipment which is only used in a practice session is prohibited.

6.34.1.7 The participants must provide their own workout clothing.

6.45 Conditioning Programs

6.45.1 A member school may conduct a conditioning program in accordance with the following provisions:

6.45.1.1 The conditioning program must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

6.45.1.2 Student participation must be voluntary. The conditioning program must not be a prerequisite for trying out for a particular team.

6.45.1.3 Permissible activities include stretching, lifting weights, jumping rope, running, calisthenics, aerobics, and similar generic conditioning activities. Organized drills in the skills or techniques of a particular sport are prohibited.

6.45.1.4 A coach may not provide instruction in sport specific skills or techniques.

6.45.1.5 Sport specific equipment is prohibited.

6.45.1.6 The participants must provide their own workout clothing.

6.56 Non School Competition in which Participants are Competing Unattached and are Not Representing Their Schools

6.56.1 A student may participate on a nonschool team or in a non-school individual event both during and out of the designated sport season. However, the student owes his/her primary loyalty and allegiance to the school team of which he/she is a member. A school shall have the authority to require attendance at practices and contests and students not in compliance shall be subject to disciplinary action as determined by the school.

6.56.2 Participation on a non school team or in a non school individual event shall be subject to the following conditions:

6.56.2.1 With the exception of organized intramurals, the student may not wear school uniforms.

6.56.2.2 With the exception of organized intramurals, the student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

6.56.2.3 The school or a school affiliated support group may not provide transportation.

6.56.2.4 The school or a school affiliated support group may not pay entry fees or provide any form of financial assistance.

6.56.2.5 The school coach may not require his/her athletes to participate in non school competition or provide instruction to his/her athletes in non school competition except as in 7.5.

6.56.3 14 Del.C. §122(15)(b)(14) requires written parental permission prior to participation on a similar team during the designated sport season. Written authorization must be on file in the student's school prior to engaging in a tryout, practice, or contest with a similar team. Consent forms shall be available in all member schools. Similar teams shall include organized intramural teams as well as non school teams in that sport.

**\*Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Department of Education is available at: <http://http://www.state.de.us/research/AdminCode/title14/index.shtml>.**

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**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 1220(a) (14 Del.C. §1220(a))  
14 DE Admin. Code 275

**PUBLIC NOTICE**

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

**1009 DIAA Senior High School Interscholastic Athletics****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** 1009 DIAA Senior High School Interscholastic Athletics. The amendments clarify age eligibility in 2.1.1, clarify when the fall sports season begins in 4.1.1 and in section 6.0 sub titles and numbering are amended in order to clarify the references to student attendance at athletic clinics and camps. A reference to the Delaware Code is also amended in 6.6.3

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses eligibility for participation in interscholastic athletics, the start of the fall sports season and student attendance at athletic clinics and camps not state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses eligibility for participation in interscholastic athletics, the start of the fall sports season and student attendance at athletic clinics and camps not equitable education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses eligibility for participation in interscholastic athletics, the start of the fall sports season and student attendance at athletic clinics and camps not students' health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses eligibility for participation in interscholastic athletics, the start of the fall sports season and student attendance at athletic clinics and camps not students' legal rights.

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

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

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

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

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

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

**1009 DIAA Senior High School Interscholastic Athletics****2.0 Eligibility: No Student Shall Represent a School in an Interscholastic Scrimmage or Contest if He/She Does Not Meet the Following Requirements****2.1 Eligibility, Age**

2.1.1 Students who become 19 years of age on or after June 15 immediately preceding the school year shall be eligible for all sports during the current school year provided all other eligibility requirements are met. In determining the age of a contestant, the birth date as entered on the birth record of the Bureau of Vital Statistics shall be required and shall be so certified on all eligibility lists.

2.1.1.1 Requests for a waiver of the age requirement shall only be considered for participation on an unofficial, nonscoring basis in non contact or non collision sports

**2.2 Eligibility, Residence**

2.2.1 With the exception of boarding school students, a student must be living with his/her custodial parent(s), legal guardian(s), or Relative Caregiver in the attendance zone of the school which he/she attends, or be a student 18 years of age or older and living in the attendance zone of the school which he/she attends (2.2.1.7) in order to be eligible for interscholastic athletics in that school. In cases of joint custody, the custodial parent shall be the parent with actual physical placement as determined by court. In the case of shared custody the parents must commit to sending the student to a particular school for the year. Maintaining multiple residences in order to circumvent this requirement shall render the student ineligible.

2.2.1.1 A student who, pursuant to established school board policy or administrative procedure, remains in a school he/she has been attending after his/her legal residence changes to the attendance zone of a different school in the same school district, may exercise, prior to the first official student day of the subsequent academic year, a one time election to remain at his/her current school and thereby not lose athletic eligibility. If a student chooses to remain at his/her current school and then transfers to the school in his/her new attendance zone on or after the first official student day of the subsequent academic year, he/ she shall be ineligible, for ninety (90) school days.

2.2.1.2 A student who changes residence to a different attendance zone after the start of the last marking period and, pursuant to established school board policy or administrative procedure, shall be granted permission to continue attending his/her present school, the student shall retain his/her athletic eligibility in that school for the remainder of the school year provided all other eligibility requirements are met.

2.2.1.3 A student shall be permitted to complete his/her senior year at the school he/she is attending and remain eligible even though a change of legal residence to the attendance zone of another school has occurred. This provision shall refer to any change of legal residence that occurs after the completion of the student's junior year.

2.2.1.4 A student may be residing outside of the attendance zone of the school which he/she attends if the student is participating in the Delaware School Choice Program as authorized by 14 **Del.C.**, Ch.4.

2.2.1.5 A student who is a non resident of Delaware shall be eligible to attend a public school, charter school or career technical school if, in accordance with 14 **Del.C.** §607, his/her custodial parent or court appointed legal guardian or Relative Caregiver is a full time employee of that district.

2.2.1.6 Notwithstanding 2.2.1, a student shall be eligible at a public or career technical school if he/she is enrolled in accordance with 14 **Del.C.** §202(f), the Caregivers School Authorization.

2.2.1.6.1 An exception would be a student whose Relative Caregiver does not provide the documentation required by the Relative Caregiver School Authorization (proof of relation and proof of full time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the Relative Caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

2.2.1.7 A student who reaches the age of majority (18) and leaves his/her parents' place of residency and jurisdiction thereof, and moves to another attendance zone to continue his/her high school education shall be ineligible to participate in athletics for 90 school days commencing with the first day of official attendance on or

after their 18<sup>th</sup> birthday. This provision shall not apply to a student participating in the Delaware School Choice Program, as authorized by 14 **Del.C.** Ch. 4, provided the student's choice application was properly submitted prior to his/her change of residence.

2.2.1.8 Notwithstanding 2.2.1, a student who is homeless as defined in the McKinney-Vento Act, 42 U.S.C. 11434a(2) shall be eligible to participate at the public school in which he/she is enrolled.

### 2.3 Eligibility, Enrollment and Attendance

2.3.1 A student must be legally enrolled in the high school which he/she represents in order to participate in a practice, scrimmage or contest.

2.3.2 A shared time student who attends two (2) different schools during the regular school day shall be eligible to participate only at his/her home school. A student's home school shall be the school at which he/she is receiving instruction in the core academic areas and at which he/she is satisfying the majority of his/her graduation requirements; not a school at which he/she is receiving only specialized educational instruction such as vocational training.

2.3.3 Students with disabilities who are placed in special schools or programs

#### 2.3.3.1 Definitions:

**"Campus"** means a contiguous land area containing one or more school buildings.

**"Special School or Program"** means a school or program approved by the Department of Education with the approval of the State Board of Education to serve students with disabilities, but does not include alternative schools.

**"Student With a Disability"** means a "child with a disability" as that term is defined in the Administrative Manual for Special Education Services (AMSES), 14 **DE Admin. Code** 925.

2.3.3.2 A student with a disability who is placed in a special school or program shall be eligible to participate in interscholastic athletics as follows:

2.3.3.2.1 If the special school or program sponsors the interscholastic sport in question, the student shall be eligible to participate only at the school or program.

2.3.3.2.2 If the special school or program does not sponsor the interscholastic sport in question and the student is served in a regular high school for all or part of the school day, the student shall be eligible only at that regular high school.

2.3.3.2.3 If the special school or program does not sponsor the interscholastic sport in question, and the student is served exclusively in the special school or program, and the special school or program is located on the campus of a regular high school, the student shall be eligible only at the regular high school on the same campus.

2.3.3.2.4 If the special school or program does not sponsor the interscholastic sport in question, and the student is served exclusively in the special school or program, and the special school or program is not located on the campus of a regular high school, the student shall be eligible only at the regular high school designated to serve the special school's or program's students.

2.3.3.2.4.1 School districts or charter schools which administer special schools or programs and have multiple high schools shall decide which of its regular high schools shall be designated to serve special school or program students in these circumstances.

2.3.4 A student who is participating in the Delaware School Choice Program, as authorized by 14 **Del.C.** Ch. 4, is obligated to attend the choice school for a minimum of two (2) years unless the students custodial parent(s), legal guardian(s) or Relative Caregiver relocate to a different school district or the student fails to meet the academic requirements of the choice school. If a student attends a choice school for less than two (2) years and subsequently returns to his/her home school, the student must receive a release from the "choice district" in order to legally enroll at his/her home school. Without a release, the student would not be eligible legally enrolled and consequently would be ineligible to participate in interscholastic athletics.

2.3.5 A student may not participate in a practice, scrimmage, or contest during the time a suspension, either in school or out of school, is in effect or during the time he/she is assigned to an alternative school for disciplinary reasons.

2.3.6 A student who is not legally in attendance at school due to illness or injury shall not be permitted to

participate in a practice, scrimmage, or contest on that day.

2.3.7 A student who fails to complete a semester or is absent for one or more semesters for reasons other than personal illness or injury shall be ineligible for ninety (90) school days from the date of his/her reentry to school.

2.3.8 An ineligible student who practices in violation of 2.2.2 through 2.2.5 shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

#### 2.4 Eligibility, Transfers

2.4.1 A student who has not previously participated in interscholastic athletics (previous participation is defined as having practiced, scrimmaged, or competed in grades 9 through 12) is released by a proper school authority from a sending school, has completed the registration process at the receiving school, and is pursuing an approved course of study shall be eligible immediately upon registration provided he/she meets all other DIAA eligibility requirements.

2.4.2 If a student has previously participated in interscholastic athletics, he/she shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school unless one of the following exceptions applies:

2.4.2.1 The transfer is within a school district and is approved by the district's superintendent pursuant to established school board policy or administrative procedure. This provision shall not apply to a student who transfers to his/her home school from a "choice school" within the district and who has not completed the two year attendance requirement unless he/she satisfies the conditions stipulated in 2.4.2.5.1 through 2.4.2.5.4. This provision shall also not apply to a student who transfers from a "choice school" to another "choice school" within the district.

2.4.2.2 The transfer is caused by court action, court action being an order from a court of law affecting legally committed students. In the case of a transfer of guardianship or custody, the transfer shall be the result of a court order signed by a judge, commissioner, or master of a court of competent jurisdiction. A petition for the transfer of guardianship or custody, an affidavit, (except as permitted by 2.4.2.3), or a notarized statement signed by the affected parties shall not be sufficient to render the student eligible to participate in interscholastic athletics.

2.4.2.3 The transfer is in accordance with the student being placed with a Relative Caregiver as per **14 Del.C. §202(f)**, the Caregivers School Authorization.

2.4.2.3.1 An exception would be a student whose relative caregiver does not provide the documentation required by the Relative Caregiver School Authorization (proof of relation and proof of full time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the relative caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

2.4.2.4 The transfer is the result of a change in residence by the custodial parent(s) legal guardian(s) or Relative Caregiver from the attendance zone of the sending school to the attendance zone of the receiving school. A change in residence has occurred when all occupancy of the previous residence has ended. A student who transfers shall be eligible in the receiving school immediately, when the custodial parent(s) legal guardian(s) or Relative Caregiver has established a new legal residence in another public school attendance zone.

2.4.2.5 The transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year provided that the following has occurred:

2.4.2.5.1 The student has completed the registration process at the receiving school prior to the first official student day of the academic year. The first official student day shall be defined as the first day on which students in any grade in that school are required to be in attendance.

2.4.2.5.2 The student has not attended class, excluding summer school, or participated in a scrimmage or contest at the sending school since the close of the previous academic year.

2.4.2.5.3 The student's legal residence is located in the attendance zone of the receiving school.

2.4.2.5.4 All other DIAA eligibility requirements have been met.

2.4.2.6 The transfer is the result of the student being homeless as defined in the McKinney - Vento Act, 42 U.S.C. 11434a(2).

2.4.2.6.1 Notwithstanding the above, the student shall be ineligible under the ninety (90) school day ineligibility clause where the student's homeless status is created by the student or his/her family for the primary reason of:

2.4.2.6.1.1 Seeking a superior team; or

2.4.2.6.1.2 Seeking a team more compatible with the student's abilities; or

2.4.2.6.1.3 Dissatisfaction with the philosophy, policies, methods or actions of a coach or administrator pertaining to interscholastic athletics; or

2.4.2.6.1.4 Avoiding disciplinary action imposed by the school of origin related to or affecting interscholastic athletic participation.

2.4.3 Transfer Because of Promotion or Administrative Assignment: Transfer because of promotion or administrative assignment to the ninth grade from a school whose terminal point is the eighth grade, or to the tenth grade from a junior high school whose terminal point is the ninth grade, shall not constitute a transfer. Students so promoted or administratively assigned shall be eligible.

2.4.4 Transfer Because of a Change in the Program of Study or Financial Hardship: If a waiver of the ninety (90) school day ineligibility clause is requested due to a desired change in the program of study or financial hardship, the parent(s), legal guardian(s) or Relative Caregiver is responsible for providing documentation to the DIAA Board of Directors to support the request.

2.4.4.1 Documentation for change in the program of study (a multi year, hierarchical sequence of courses with a common theme or subject matter leading to a specific outcome) shall include:

2.4.4.1.1 The student's schedule;

2.4.4.1.2 The student's transcript;

2.4.4.1.3 Current course descriptions from both the sending and receiving schools;

2.4.4.1.4 A statement from the principal of the sending school indicating that a significant part of the student's desired program of study will not be offered and that it will place the student at a definite disadvantage to delay transfer until the end of the current school year; and

2.4.4.1.5 A statement from the principals of both the sending and receiving schools that the student is not transferring for athletic advantage (2.4.6).

2.4.4.2 Documentation for Financial Hardship: Documentation for financial hardship shall include:

2.4.4.2.1 Proof of extreme financial hardship caused by significant and unexpected reduction in income or increase in expenses; and

2.4.4.2.2 A statement from the principals of both the sending and receiving schools that the student is not transferring for athletic advantage (2.4.6).

2.4.5 Transfer Because of Custody Change: In cases of joint or shared custody when a primary residence is established, a change in a student's primary residence without court action subjects the student to the ninety (90) school day ineligibility clause.

2.4.6 A change of custody or guardianship for athletic advantage shall render a student ineligible under the ninety (90) school day ineligibility clause if the reason for his/her transfer is one of the following: to seek a superior team, to seek a team more compatible with his/her abilities, dissatisfaction with the philosophy, policies, methods, or actions of a coach or administrator pertaining to interscholastic athletics or to avoid disciplinary action imposed by the sending school related to or affecting interscholastic athletic participation.

2.4.7 A student who transfers from a public, private, career technical, or charter school to a school of choice, as authorized by 14 **Del.C.** Ch. 4, shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year.

2.4.7.1 A student who transfers from a school of choice to another school of choice shall be ineligible to participate in interscholastic athletics during his/her first year of attendance at the receiving school unless the receiving school sponsors a sport(s) not sponsored by the sending school in which case the student shall be eligible to participate in that sport(s) only.

2.4.8 A student who transfers from a school of choice to either a private school, career technical school or, after completing his/her two year commitment, to a public charter school shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of

the receiving school's academic year.

2.4.9 If a student transfers with fewer than ninety (90) school days left in the academic year, he/she shall be ineligible for the remainder of the school year but shall be eligible beginning with the subsequent fall sports season provided he/she is in compliance with all other eligibility requirements.

#### 2.5 Eligibility, Amateur Status

2.5.1 A student may not participate in an interscholastic sport unless he/she is considered an amateur in that sport. A student forfeits his/her amateur status if he/ she does any of the following:

2.5.1.1 Knowingly plays on or against a professional team which is defined as a team having one or more members who have received or are receiving directly or indirectly monetary consideration for their athletic services.

2.5.1.2 Signs a professional contract, accepts reimbursement for expenses to attend a professional tryout, or receives financial assistance in any form from a professional sports organization.

2.5.1.3 Enters a competition under an assumed name. The surname and given name used by any player in his/her first game of interscholastic competition shall be used during the remainder of the student's interscholastic career. Any change in spelling or use of another name shall be regarded as an attempt to evade this rule unless the change has been properly certified by the player to the principal of the school.

2.5.1.4 Receives remuneration of any kind or accepts reimbursement for expenses in excess of the actual and necessary costs of transportation, meals, and lodging for participating in a team or individual competition or an instructional camp or clinic. Reimbursement for the aforementioned expenses is permitted only if all of the participants receive the same benefit.

2.5.1.5 Receives cash or a cash equivalent (savings bond, certificate of deposit, etc.), merchandise (except as permitted by 9.1.4) or a merchandise discount, (except for discount arranged by school for part of team uniform) a reduction or waiver of fees, a gift certificate, or other valuable consideration as a result of his/her participation in an organized competition or instructional camp or clinic. Accepting an event program or a complimentary item(s) (t shirt, hat, equipment bag, etc.) that is inscribed with a reference to the event, has an aggregate retail value of no more than \$150.00, and is provided to all of the participants, shall not jeopardize his/her amateur status.

2.5.1.6 Sells or pawns awards received.

2.5.1.7 Uses his/her athletic status to promote or endorse a commercial product or service in a newsprint, radio, or television advertisement or personal appearance.

2.5.2 Accepting compensation for teaching lessons, coaching, or officiating shall not jeopardize his/her amateur status.

2.5.3 A student who forfeits his/her amateur status under the provisions of this rule is ineligible to participate at the interscholastic level in the sport in which the violation occurred. He/she may be reinstated after a period of up to the number of days in the school year provided that during the suspension, he/she complies with all of the provisions of this rule. The suspension shall date from the time of the last offense.

#### 2.6 Eligibility, Passing Work

2.6.1 In order to be eligible for participation in interscholastic athletics, including practices, a student must pursue a regular course of study or its equivalent as approved by the local governing body, and must be passing at least five (5) credits. Two (2) of those credits must be in the areas of English, Mathematics, Science, or Social Studies.

2.6.1.1 A student who is receiving special education services and is precluded from meeting the aforementioned academic requirements due to modifications in the grading procedure or course of study, shall be adjudged eligible by the principal if he/she is making satisfactory progress in accordance with the requirements of his/her individualized education plan (IEP).

2.6.2 In the case of a student in the twelfth grade, he/she must be passing all courses necessary for graduation from high school in order to be eligible for participation. A course necessary for graduation shall be any course, whether taken during or outside the regular school day, that satisfies an unmet graduation requirement.

2.6.3 A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in interscholastic athletics, including practices, for the next marking period.

2.6.3.1 In the case of a conflict between the marking period grade and the final grade, the final grade

shall determine eligibility.

2.6.3.2 The final accumulation of credits shall determine eligibility for the first marking period of the following school year. When a student makes up a failure or earns the required credit(s) during the summer, he/she shall become eligible provided he/she successfully completes the course work prior to the first official student day of the school year.

2.6.3.3 Written verification of the successful completion of a correspondence course must be received before a student shall regain his/her eligibility.

2.6.4 A student forfeits or regains his/her eligibility, in accordance with the provisions of this rule, on the day report cards are issued.

2.6.5 Local school boards and nonpublic schools may establish more stringent requirements for academic eligibility than the minimum standards herein prescribed.

2.6.6 An ineligible student who practices in violation of 2.6.1, 2.6.2, 2.6.3 or 2.6.4 shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

#### 2.7 Eligibility, Years of Participation

2.7.1 No student shall represent a school in athletics after four (4) consecutive years from the date of his/her first entrance into the ninth grade unless a waiver is granted for hardship reasons.

2.7.1.1 No student shall have more than four (4) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or in a spring sport or combination of spring sports.

2.7.1.2 **"Hardship"** shall be defined as extenuating circumstances peculiar to the student athlete caused by unforeseen events beyond the election, control or creation of the student athlete, his/her family, or school which (1) deprive him/her of all or part of one of his/her opportunities to participate in a particular sports season; (2) preclude him/her from completing the academic requirements for graduation within the normal period of eligibility; and (3) deprive him/her of all or part of one of his/her opportunities to participate in a particular sport. The waiver provision is intended to restore eligibility that has been lost as a result of a hardship situation. Injury, illness or accidents, which cause a student to fail to meet the basic requirements, are possible causes for a hardship consideration.

2.7.1.2.1 A waiver shall not be granted under this section where DIAA finds that the student was academically eligible pursuant to DIAA's minimum passing work standards but was ineligible to participate under more stringent locally adopted academic standards and where the local school board has adopted its own waiver or exemption policy.

2.7.1.2.2 A clear and direct causal relationship must exist between the alleged hardship condition and the failure of the student to complete the academic requirements for graduation within the normal period of eligibility and the loss of all or part of one of his/ her opportunities to participate in a particular sports season.

2.7.1.2.3 The burden of proof rests with the student in conjunction with the waiver process as described in 14 **DE Admin. Code** 1006.9. Claims of extended illness, debilitating injury, emotional stress, etc., must be accompanied by appropriate documentation. Evidence must be submitted to verify that the student or his/ her parent(s) or court appointed legal guardian(s) sought assistance to ameliorate the effects of the hardship condition.

2.7.2 Satisfactory completion of studies in accordance with promotion policies established by the local governing body shall determine when a student is beyond the eighth grade. If the eighth grade is part of the same administrative unit as grades 9 through 12, participation on the part of an eighth grade student toward five (5) years of eligibility shall be at the discretion of the individual school.

2.7.2.1 Eighth grade students who are enrolled or transfer to schools that meet the above criteria begin their five years of eligibility for senior high school athletic participation the first year they enter eighth grade.

2.7.3 Seventh grade students shall not be permitted to participate on senior high school interscholastic teams.

#### 2.7.4 Participation of Postgraduates

2.7.4.1 Participation shall be defined as taking part in a school sponsored practice, scrimmage or

contest on or after the first allowable date for practice in that sport.

2.7.4.2 Postgraduates shall not be eligible to participate in interscholastic athletics. All graduates of recognized senior high schools shall be considered postgraduates.

2.7.4.3 A regularly enrolled student taking courses in an institution of higher education shall be eligible provided he/she meets all other DIAA requirements.

2.7.4.4 Students whose commencement exercises are prior to the completion of the school's regular season schedule and the state tournament shall be eligible to compete.

## 2.8 Eligibility of Foreign Exchange Students and International Students

2.8.1 Notwithstanding 2.2, 2.3, and 2.4, foreign exchange students and international students may be eligible to participate in interscholastic athletics upon arrival at their host school provided they have not attained the age of 19 prior to June 15 and are enrolled as participants in a recognized foreign exchange program.

2.8.1.1 All foreign exchange programs which are included on the Advisory List of International Educational Travel and Exchange Programs of the Council on Standards for International Educational Travel (CSIET) and are two (2) semesters in length shall be considered as recognized.

2.8.1.2 Students participating in programs not included on the CSIET list shall be required to present evidence that the program is a bona fide educational exchange program before it shall be considered as recognized.

2.8.2 International students who are not participating in a foreign exchange program are considered to be transfer students and are ineligible to compete in interscholastic athletics unless they are in compliance with all DIAA eligibility requirements including 2.2.

2.8.3 Once enrolled, foreign exchange and other international students must comply with all DIAA eligibility rules.

2.8.3.1 Athletic recruitment of foreign exchange students or other international students by a member school or any other entity is prohibited, and any such students recruited shall be ineligible.

## 2.9 Student Eligibility Report Forms

2.9.1 Member schools shall use eligibility forms approved by the Executive Director. A copy of the original eligibility report and subsequent addenda must be either received by the Executive Director or postmarked prior to the first contest for which the students listed are eligible. Failure to file an eligibility report as prescribed shall result in a \$15.00 fine against the school.

2.9.1.1 In the case of a student who met all DIAA eligibility requirements but was omitted from the eligibility report due to administrative or clerical error, he/ she shall be adjudged eligible and the school assessed a \$10.00 fine.

## 2.10 Use of an Ineligible Athlete:

2.10.1 If a school uses an ineligible athlete, the administrative head or his/her designee shall notify the opposing school(s) or event sponsor, in the case of a tournament or meet, and the Executive Director in writing of the violation and the forfeiture of the appropriate game(s), match(es), and point(s) won.

2.10.2 The deliberate or inadvertent use of an ineligible athlete in the sports of soccer, football, volleyball, field hockey, basketball, baseball, softball, and lacrosse shall require the offending school to forfeit the contest(s) in which the ineligible athlete participated.

2.10.2.1 If the infraction occurs during a tournament, including a state championship, the offending school shall be replaced by its most recently defeated opponent. Teams eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament, team and individual awards shall be returned to the event sponsor and team and individual records and performances shall be nullified.

2.10.2.2 The offending school may appeal to the DIAA Board of Directors for a waiver of the forfeiture penalty. If the forfeiture penalty is waived, the offending school shall be reprimanded and fined \$200.00 unless the athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withheld information or provided false information that caused him/her to be eligible for interscholastic competition. The burden of proof, in both instances, rests entirely with the offending school. A forfeit shall constitute a loss for the offending school and a win for its opponent for purposes of standings and playoff eligibility and shall be automatic and not subject to refusal by the offending school's opponent.

2.10.3 The deliberate or inadvertent use of an ineligible athlete in the sports of cross country, wrestling,

swimming, track, golf, and tennis shall require the offending school to forfeit the matches won and points earned by the ineligible athlete or by a relay team of which he/she was a member. The points contributed by an ineligible athlete to his/her team score shall be deleted and the contest score as well as the affected placements will be adjusted according to the rules of the sport.

2.10.3.1 If the infraction occurs during a tournament, including a state championship, the ineligible athlete shall be replaced by his/her most recently defeated opponent or the next highest finisher. Contestants eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

2.10.3.1.1 Individual awards earned by the ineligible athlete and team awards, if necessary because of adjustments in the standings, shall be returned to the event sponsor. Individual records and performances by the ineligible athlete shall be nullified.

2.10.4 If an ineligible athlete participates in interscholastic competition contrary to DIAA rules but in accordance with a temporary restraining order or injunction against his/her school and DIAA, and the injunction is subsequently vacated, stayed, or reversed, or the courts determine that injunctive relief is not or was not justified, or the injunction expires without further judicial determination, the penalties stipulated in 2.10.1 and 2.10.2 shall be imposed.

2.10.5 The intentional use of an ineligible athlete by a member school or repeated indifference to its responsibility to determine the eligibility of its athletes will subject the school to additional penalties which may include suspension for the amount of days up to length of the school year from the date the charge is substantiated.

2.10.6 If a coach knowingly withholds information or provides false information that causes an athlete to be eligible for interscholastic competition, the coach shall be suspended from coaching in any sport at any DIAA member school for the amount of days up to length of the school year from the date the charge is substantiated.

2.10.7 If an athlete or his/her parent(s), legal guardian(s) or Relative Caregiver knowingly withholds information or provides false information that causes him/ her to be eligible for interscholastic competition, the athlete shall be suspended from participation in any sport at any DIAA member school for up to the amount of days up to the length of the school year from the date the charge is substantiated.

#### 2.11 Determination of Student Eligibility and the Appeal Procedures

2.11.1 In cases of uncertainty or disagreement, the eligibility of a student shall be determined initially by the Executive Director. If the Executive Director determines that the student is ineligible, the school and the student shall be notified and the student suspended immediately from participation in interscholastic athletics.

2.11.2 The school and the student shall be informed that the decision of the Executive Director may be appealed to the DIAA Board of Directors.

2.11.3 Decisions of the DIAA Board of Directors to affirm, modify, or reverse the eligibility rulings of the Executive Director may be appealed to the State Board of Education in accordance with 14 **DE Admin. Code** 1006.11.

#### 9 DE Reg. 126 (7/1/05)

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

## **4.0 Sports Seasons, Practices Sessions and Maximum Game Schedules and Designated Sports Seasons**

### 4.1 Sports Seasons

4.1.1 The fall sports season shall begin ~~with the first approved day for practice~~ on or after August 15th and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. A conference championship game must also be completed before the start of the state tournament in that sport and practice for any fall sport shall not begin earlier than ~~24 days before August 15th.~~ The first allowable competition date in the fall sports season shall be 21 days before the first Friday after Labor Day.

4.1.1.1 The first three (3) days of football practice shall be primarily for the purpose of physical conditioning and shall be restricted to non contact activities. Coaches may introduce offensive formations and defensive alignments, run plays "on air," practice non contact phases of the kicking game, and teach non contact positional skills. Protective equipment shall be restricted to helmets, mouth guards, and shoes. The use of

dummies, hand shields, and sleds in contact drills is prohibited. Blocking, tackling, and block protection drills which involve any contact between players are also prohibited.

4.1.1.2 No member school shall participate in spring football games nor shall a member school conduct football practice of any type outside of the regular fall sports season except when participating in the state tournament. "Organized football" or "organized football practice" shall be defined as any type of sport which is organized to promote efficiency in any of the various aspects of football. Touch football, featuring blocking, tackling, ball handling, signaling, etc. shall be considered "organized football" and shall be illegal under the intent of this rule.

4.1.2 The winter sports season shall begin with the first approved day for practice and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport and practice for any winter sport shall not begin earlier than 21 days before the first Friday in December.

4.1.3 The spring sports season shall begin on March 1 and ends with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport and practice for any spring sport shall not begin earlier than March 1.

4.1.4 A school which participates in a game prior to the first allowable date or after the start of the state championship shall be required to forfeit the contest and be assessed a \$100.00 fine.

4.1.5 A school which conducts practice prior to the first allowable date shall pay a fine of \$100.00 per illegal practice day.

4.1.6 No member school shall participate in a post season contest without the written approval of the Executive Director.

#### 4.2 Practice Sessions

4.2.1 A practice session shall be defined as any instructional activity on the field, court, mat, or track or in the pool, weight room, or classroom such as team meetings, film reviews, blackboard sessions, warmup and cool down exercises, drills or mandatory strength training. Member schools shall conduct a minimum of 21 calendar days of practice under the supervision of the school's certified, emergency or approved volunteer coaching staff prior to the first scheduled contest in all sports.

4.2.2 Practice sessions shall be limited to two (2) hours on official school days. Split sessions may be conducted but practice time shall not exceed two hours for any individual athlete. The two hour practice limitation does not include time for noninstructional activities such as dressing, showering, transportation, or training room care.

4.2.3 Practicing on holidays and weekends shall be left to the discretion of the individual schools and conferences. However there should be one day of no activity (practice, scrimmage, or contest) during any seven day period.

4.2.4 A student shall be required to practice for a period of at least seven (7) calendar days prior to participating in a contest. However, if a student has been participating in a state tournament during the preceding sports season and is unable to begin practicing at least seven (7) calendar days before his/her team's first contest, he/she shall be exempt from this requirement.

4.2.5 A school which exceeds the two hour practice limitation shall pay a \$100.00 fine.

#### 4.3 Maximum Game Schedules and Designated Sports Seasons:

4.3.1 The maximum number of regularly scheduled interscholastic contests or competition dates for each team and individual in the recognized sports and their sports season shall be designated by the DIAA Board of Directors.

4.3.2 The third contest or competition date in a week shall be held on Friday (no early dismissal permitted), Saturday or Sunday. This requirement is waived when a school is closed for the entire week such as during winter or spring vacation.

4.3.2.1 A team shall not participate in two different cross country, indoor track or outdoor track meets on the same day.

4.3.2.2 Participation in a triangular meet shall count as two contests and participation in a quadrangular meet shall count as three contests toward the seasonal limitation.

4.3.2.3 Participation in any part of a quarter or half shall count as a quarter or half toward the weekly and daily limitations in that sport. However, in the case of football, participation on a free kick or a play from a scrimmage kick formation shall not count as a quarter. Overtime periods shall be considered as part of the fourth quarter or second half.

4.3.3 A week shall be designated as starting on Monday and ending on Sunday for all sports except football. A football week shall begin the day of the varsity game and end the day preceding the next varsity game or the following Friday.

4.3.3.1 The preceding game limitations, with the exception of the individual daily limitation, shall not prohibit the rescheduling of postponed games at the discretion and convenience of the member schools involved provided the game was postponed due to inclement weather, unplayable field conditions, failure of the assigned officials to appear for the game, breakdown of the bus or van carrying the visiting team, or any other circumstances beyond the control of site management which preclude playing the game. However, a team may not participate in more than four (4) contests or competition dates in a week.

4.3.4 The maximum number of regularly scheduled contests for each of the recognized sports, except football, shall be exclusive of conference championships, playoffs to determine tournament state berths, and the state tournament or meet. The maximum number of regularly scheduled football contests shall be exclusive of the state tournament.

4.3.4.1 Any playoffs to determine state tournament berths shall be under the control and supervision of the DIAA tournament committee.

4.3.5 A student shall participate in a particular sport for only one season during each academic year.

4.3.6 A school which participates in more than the allowable number of contests in a season shall be suspended from the state playoffs or, if a nonqualifying team, fined \$200.00.

4.3.6.1 A school which exceeds the weekly contest limitation shall be required to forfeit the contest and pay a \$100.00 fine.

4.3.6.2 A student who exceeds the weekly or daily contest limitation shall be considered an ineligible athlete and the school subject to the process stipulated in 2.10.

**9 DE Reg. 126 (7/1/05)**

*(Break in Continuity of Sections)*

**6.0 Out of Season Athletic Camps and Clinics Sponsorship, Commercial Camps and Clinics and Open Gyms, Conditioning Programs and Non School Competition**

**6.1 Out of Season Athletic Camps and Clinic Sponsorship**

6.1.1 DIAA does not restrict a student's decision to attend an out of season athletic camp or clinic. However, schools, school organizations, coaches, or school related groups, such as booster clubs, may not sponsor an athletic camp or clinic which limits membership to their own district, locale, or teams. Coaches employed by an out of season athletic camp or clinic may only instruct their returning athletes in accordance with 47.5.

**6.2 Team Attendance at Out of Season Commercial Camps and Clinics**

6.4-12.1 School related groups, such as booster clubs, which desire to sponsor the attendance of their school's enrolled students at an out of season athletic camp or clinic, may do so with the approval of the local school board or governing body. The disbursement of funds to pay for camp or clinic related expenses (fees, travel costs, etc.) shall be administered by the principal or his/her designee and the funds shall be allocated according to the following guidelines:

6.4-2.1.1 All students and team members shall be notified of the available sponsorship by announcement, publication, etc.

6.4-2.1.2 All applicants shall share equally in the funds provided.

6.4-2.1.3 All applicants shall be academically eligible to participate in interscholastic athletics.

6.4-2.1.4 All applicants shall have one year of prior participation in the sport for which the camp or clinic is intended or, absent any prior participation, he/she shall be judged by the coach to benefit substantially from participation in the camp or clinic.

**6.23 Individual Attendance at Commercial Camps and Clinics:**

6.23.1 Commercial camps and clinics are defined as a camp or clinic operated for profit which provides coaching or other sports training for a fee.

6.23.2 A student may participate in a commercial camp or clinic, including private lessons, both during and out of the designated sport season provided the following conditions are observed:

6.23.2.1 The student must participate unattached and may not wear school uniforms.

6.23.2.2 The student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

6.23.2.3 The school may not provide transportation or pay fees.

6.23.2.4 The school coach may not require his/her athletes to participate in a camp or clinic, or provide instruction to his/her returning athletes in a camp or clinic except as provided in 7.5.

**6.34 Open Gym Programs**

6.34.1 A member school may open its gymnasium or other facility for informal, recreational activities in accordance with the following provisions:

6.34.1.1 The open gym must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

6.34.1.2 Student participation must be voluntary and the open gym must not be a prerequisite for trying out for a particular team.

6.34.1.3 The activities must be unstructured and student generated. Organized drills in the skills or techniques of a particular sport are prohibited. Organized competition with fixed team rosters is also prohibited.

6.34.1.4 A coach may not predetermine that the open gym will include only his/her sport and publicize the open gym as being restricted to that sport. It is the responsibility of the adult supervisor to permit as many different activities as the facility can effectively and safely accommodate.

6.34.1.5 A coach may open the facility and distribute playing equipment but may not instruct, officiate, participate, organize the activities, or choose teams in his/ her assigned sport.

6.34.1.6 Playing equipment is restricted to that which is customarily used in a contest in a particular sport. Playing equipment which is only used in a practice session is prohibited.

6.34.1.7 The participants must provide their own workout clothing.

**6.45 Conditioning Programs**

6.45.1 A member school may conduct a conditioning program in accordance with the following provisions:

6.45.1.1 The conditioning program must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

6.45.1.2 Student participation must be voluntary. The conditioning program must not be a prerequisite for trying out for a particular team.

6.45.1.3 Permissible activities include stretching, lifting weights, jumping rope, running, calisthenics, aerobics, and similar generic conditioning activities. Organized drills in the skills or techniques of a particular sport are prohibited.

6.45.1.4 A coach may not provide instruction in sport specific skills or techniques.

6.45.1.5 Sport specific equipment is prohibited.

6.45.1.6 The participants must provide their own workout clothing.

**6.56 Non-School Competition in which Participants are Competing Unattached and are Not Representing Their Schools**

6.56.1 A student may participate on a non school team or in a non school individual event both during and out of the designated sport season. However, the student owes his/her primary loyalty and allegiance to the school team of which he/she is a member. A school shall have the authority to require attendance at practices and contests and students not in compliance shall be subject to disciplinary action as determined by the school.

6.56.2 Participation on a non school team or in a non school individual event shall be subject to the following conditions:

6.56.2.1 With the exception of organized intramurals, the student may not wear school uniforms.

6.56.2.2 With the exception of organized intramurals, the student may use only school equipment

whose primary purpose is to protect the wearer from physical injury.

6.56.2.3 The school or a school affiliated support group may not provide transportation.

6.56.2.4 The school or a school affiliated support group may not pay entry fees or provide any form of financial assistance.

6.56.2.5 The school coach may not require his/her athletes to participate in non school competition or provide instruction to his/her athletes in non school competition except as in 7.5.

6.56.3 14 **Del.C.** §122(b)(15 14) requires written parental permission prior to participation on a similar team during the designated sport season. Written authorization must be on file in the student's school prior to engaging in a tryout, practice, or contest with a similar team. Consent forms shall be available in all member schools. Similar teams shall include organized intramural teams as well as non school teams in that sport.

**\*Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Department of Education is available at: <http://http://www.state.de.us/research/AdminCode/title14/index.shtml>.**

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## DEPARTMENT OF ELECTIONS FOR KENT COUNTY

Statutory Authority: 15 Delaware Code, Section 5522(b) (15 **Del.C.** §5522(b))

### PUBLIC NOTICE

#### Security and Integrity of the Absentee Voting Process

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 15 of the **Delaware Code**, Section 5522 (b), the Department of Elections for Kent County is proposing a regulation to ensure the security and integrity of the procedures set forth in Chapter 55 and that the counting process for absentee ballots is not subject to improper influences.

Any person who wishes to submit written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulation shall submit same to Joyce L. Wright, Director of Kent County Department of Elections, 100 Enterprise Place, Suite 5, Dover, DE 19904 by March 31, 2006.

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

#### Citation:

Delaware Code, Title 15, Chapter 55

#### Summary of Proposed Regulation

The proposed regulation establishes standards for protecting and securing voted and un-voted absentee ballots, procedures for processing absentee ballots returned to the Department by mail or by a person, procedures for processing absentee ballots voted in the office, security of the Absentee Ballot Room on the day of the election, procedures for processing the absentee ballots during the tally process, and security of the voted ballots following the tabulation of the votes. These standards and procedures combined with the requirements in Chapter 55 protect the integrity of the absentee ballot process.

#### Security and Integrity of the Absentee Voting Process

#### 1.0 Purpose:

Pursuant to Delaware Code, Title 15, §5522 (b) this regulation shall ensure the security and integrity of the

absentee procedures set forth in Chapter 55 of **Delaware Code**, Title 15 and that the counting process for Absentee Ballots is not subject to improper influences.

## **2.0 General**

2.1 This regulation applies to members of the Board of Elections for Kent County, employees of the Department of Elections for Kent County whether merit, casual/seasonal, or temporary (hired through a third party), Election Officers, absentee judges, and all persons observing the tabulating of Absentee Ballots.

2.2 This regulation applies to general, special and primary elections.

2.3 The Department shall designate a room that locks, or an area where the Department can secure voted and un-voted Absentee Ballots and control access as the Absentee Ballot Room.

2.4 In the absence of the Administrative Director and/or Deputy Administrative Director, the Department's most senior employees of the same political party as the absent Administrative Director and/or Deputy Administrative shall perform the duties of that person or persons as specified in this regulation.

2.5 The Department shall create the various logs required by this regulation.

2.6 The Department shall create an *Absentee Ballot Reconciliation Sheet* for use in accounting for the disposition of voted Absentee Ballots for an Election District and for security of the Carrier Envelope.

2.7 The Department shall establish teams for handling the return of Absentee Ballots, the mailing of Absentee Ballots, and in-person absentee voting. Individuals may serve on more than one team.

2.8 The Department shall train all persons involved in the Absentee Voting process on all relevant tasks. The Department shall document that the training took place, the date of the training, persons who attended the training and the name of the Instructor.

2.9 For the purposes of this regulation, the term tabulation means equipment that counts the votes on a ballot (a tabulator or scanner) or hand counting of ballots.

2.10 The tabulation of Absentee Ballots for an election shall begin at 7 a.m. on the day of the election and shall continue until the polls have closed or tabulation is complete whichever is later.

2.11 No one shall release absentee results to any challenger or observer until after the polls have closed.

2.12 The term "Chapter 55" as used in this regulation refers to **Delaware Code**, Title 15, Chapter 55.

## **3.0 Ballot Security**

3.1 The Department shall store all voted and un-voted ballots in a locked Absentee Filing Cabinet/s. The keys to these containers shall be in the custody of the Department's Administrative Director, Deputy Administrative Director.

3.2 The Department may leave the ballot cabinet/s unlocked during business hours.

3.3 The Department shall restrict access to the Absentee Filing Cabinet/s from the day that Absentee Ballots are first available to the day prior to an election to those persons employed by the Department of Elections.

3.4 Persons unlocking and locking ballot the Absentee Filing Cabinet/s shall record such actions on the log established for that purpose by the Department.

3.5 The Department of Elections for Kent County has an open policy during business hours for any political party on the ballot to inspect the Department's ballot security procedures and practices anytime during the Election Cycle.

3.6 No one shall write on a returned Ballot Envelope except as provided in this regulation.

## **4.0 Processing Absentee Ballots Returned to the Department**

4.1 In accordance with Chapter 55, voters may return Absentee Ballots mailed to them by mail, in person or by a person designated by the absentee voter.

4.2 The Department employees handling returned ballots shall:

4.2.1 Remove Ballot Envelopes from the Mailing Envelopes and attach by paper clip to the Ballot Envelope any material other than the Ballot Envelope that is in the Mailing Envelope;

4.2.2 Time stamp the back of each returned Ballot Envelope;

4.2.3 Attach a *Post-it Note* (or equivalent product) noting any Ballot Envelope discrepancy to the front of the Ballot Envelope;

4.2.4 Attempt to notify the voter by phone or email of the problem(s) and of the action that the voter can take to correct the problem;

4.2.5 Record the return of each Ballot Envelope in accordance with Department procedures; and

4.2.6 File each returned ballot alphabetically by Election District in the appropriate container.

### **5.0 Processing Absentee Ballots Voted at the Department**

The Department employees handling in-office voting shall:

5.1 Verify the absentee voter's identity and mark the form of identity shown by the voter on the voter's affidavit;

5.2 Instruct the absentee voter in the proper procedure for marking the ballot, putting the ballot into the Ballot Envelope, sealing the Ballot Envelope, and signing the front of the Ballot Envelope;

5.3 Make sure that the absentee voter has put the ballot in the Ballot Envelope, sealed the Ballot Envelope and signed the front of the Ballot Envelope;

5.4 Time stamp the back of each Ballot Envelope;

5.5 Record the return of each Ballot Envelope in accordance with Department procedures; and

5.6 File each returned ballot alphabetically by Election District in the appropriate container.

### **6.0 Absentee Ballot Room Security on Election Day**

6.1 No challenger or observer shall bring into the Absentee Ballot Room a cell phone that is on, a camera, a briefcase, any paper except for a list of voters he/she may challenge, a list of absentee voters or a pad or notebook for taking notes.

6.2 No Department member, Board member, Absentee Judge or another person present in an official capacity shall bring a cell phone that is on into the Absentee Ballot Room.

6.3 No challenger, observer, Department member, Board member or Absentee Judge shall use any writing instrument in the Absentee Voting Room except as provided by the Department.

6.4 Challengers:

6.4.1 For a Primary Election, each candidate on the ballot may authorize in writing two challengers at a time to observe the tabulation process and to make challenges.

6.4.2 For a General Election, each party on the ballot may authorize in writing two challengers at a time to observe the tabulation process and to make challenges.

6.4.3 Challengers have the same authority and responsibilities as provided in **Delaware Code**, Title 15.

6.5 Citizens may observe the tabulation process. If more citizens than the room can accommodate appear to observe the tabulation process, the Department shall restrict the number of observers in order to maintain a safe and orderly environment.

6.6 The Department shall remove all un-voted ballots from the Absentee Filing Cabinets.

6.7 The Department shall remove all loose materials from the Absentee Ballot Room.

6.8 The Department shall provide green pens for use by Department staff and Absentee Judges, and red pens for use by challengers and observers.

6.9 The Department shall establish an area where challengers and other persons may observe the tabulation process.

6.10 Challengers and other persons observing the tabulation process shall enter or depart the Absentee Voting Room by the front door unless escorted by the Administrative Director, Deputy Administrative Director or a member of the Board of Elections for Kent County.

6.11 No person except for an Absentee Judge, an employee of the Department of Elections for Kent County, a member of the Board of Elections for Kent County or another State employee acting in an official capacity shall touch an Absentee Ballot during the tabulation process. The Department shall expel any other person who touches or attempts to touch an Absentee Ballot from the Absentee Ballot Room and not permit him/her to return.

6.12 No one shall remove any voted Absentee Ballots from the Absentee Ballot Room except as authorized by this regulation and/or by **Delaware Code**, Title 15.

6.13 The Administrative Director or Deputy Administrative Director may escort members of the media in and around the Absentee Ballot Room.

**7.0 Tabulation Process**

7.1 A person or persons designated by the Department shall announce the ED that the Absentee Judges will process and ask if there are any challenges. If a challenger challenges a voter, the Absentee Judges processing the ED shall hear the challenge and then by majority vote determine whether to count the ballot.

7.2 Challengers shall make challenges before the Absentee Judges open the Ballot Envelope for the person that they are challenging.

7.3 A Challenger may make challenges for reasons stated in Chapter 55, §5513.

7.4 A Department member shall give the Absentee Ballots and a check sheet for an ED to a team of Absentee Judges starting with ED 09-08 and continuing in order and shall record the team to which he/she issued an ED's Absentee Ballots.

7.5 The Department shall assign each team of Absentee Judges a specific tabulator to use for tabulating ballots.

7.6 Each Absentee Judge team shall check the ballots received against the check sheet and report any discrepancies to the Administrative Director, the Deputy Administrative Director.

7.7 The Absentee Judge team shall examine each Ballot Envelope and determine whether to count the ballot in accordance with Chapter 55, §5514.

7.7.1 If the Absentee Judges determine that they shall not count a ballot for a reason set forth in Chapter 55, §5514 (a) before opening the Ballot Envelope, they shall write the word REJECTED, the reason the ballot was rejected and their initials on the Ballot Envelope.

7.7.2 If the Absentee Judges determine that they shall not count a ballot for a reason set forth in Chapter 55, §5514 (a) after opening the Ballot Envelope, they shall put the ballot back into the envelope then write the word REJECTED, the reason the ballot was rejected and their initials on the Ballot Envelope.

7.7.3 If the Absentee Judges know that a person who has voted by Absentee Ballot is dead, they shall write the words REJECTED DECEASED and their initials on the Ballot Envelope.

7.8 The Absentee Judges shall then open the remaining Ballot Envelopes, remove the absentee ballots therein and place them face down on the table.

7.8.1 If there are two or more ballots in the Ballot Envelope, the Absentee Judges shall put the ballots back into the Ballot Envelope and write the word REJECTED, the reason that they rejected the ballot and their initials on the Ballot Envelope.

7.8.2 If there is no ballot in the Ballot Envelope, the Absentee Judges shall write the word REJECTED, the reason that they rejected the ballot and their initials on the Ballot Envelope.

7.9 Absentee Judges shall put Ballot Envelopes that have been marked as "REJECTED" into the Carrier Envelope for the ED that they are processing and enter the information about the rejection of the Ballot Envelope on to the appropriate log and/or documentation for the ED.

7.10 The Absentee Judges shall tabulate the remaining ballots.

7.11 If the tabulator or scanner cannot tabulate a ballot or ballots, the Absentee Judges shall tally those ballot or ballots on two *Absentee Vote Tally Sheets*.

7.12 Absentee Judges shall record Write-in votes on the Write-in portion of the *Absentee Vote Tally Sheets* or on a separate *Write-in Vote Tally Sheets* as determined by the Department as most suitable for the election.

7.13 After the Absentee Judges have tabulated all of the Absentee Ballots for an ED, they shall put the ballots, the *Ballot Envelopes* and one copy of the *Absentee Vote Tally Sheet* and *Write-in Vote Tally Sheet* (if used) into the *Carrier Envelope* for the ED. They shall then write security seal number for the seal with which they shall secure the *Carrier Envelope* on the *Absentee Ballot Reconciliation Sheet* and put the *Absentee Ballot Reconciliation Sheet* into the *Carrier Envelope*. The Absentee Judges shall then seal the *Carrier Envelope* with the appropriate security seal and put the *Carrier Envelope* in the appropriate transport device.

7.14 Absentee Judges who processed an ED shall process any other Absentee Ballots that the Department receives for that ED prior to the close of the polls in accordance with the above procedures.

**8.0 After the Polls are Closed and the Ballots Tabulated**

8.1 The Department shall secure the second copies of the *Absentee Ballot Reconciliation Sheets*, *Absentee Vote Tally Sheets* and *Write-in Vote Tally Sheets* (if used) in sealed and/or locked containers. The Department may

use these documents as necessary during the canvass process. If the Department opens any containers holding these documents during the canvass process, the Department shall reseal or lock it/them at the conclusion of the canvass process. The Department shall keep the containers sealed or locked until the February 1 following the election unless a court of competent jurisdiction orders the Department to open one or more of the containers.

8.2 After the close of the polls and the Department has tabulated all of the Absentee Ballots, the Department shall seal the transport devices containing the *Carrier Envelopes* (ballot boxes) and record the seal numbers on a transfer log.

8.3 Upon turning the transport devices over to representatives of Superior Court, the Department shall obtain a signature acknowledging receipt of the transport devices.

8.4 No one shall open a *Carrier Envelope* that the Department has sealed except in the presence of the Administrative Director, Deputy Administrative Director, and a Deputy Attorney General to correct an error. The officials opening the *Carrier Envelope* shall fully explain the circumstance on the *Absentee Ballot Reconciliation Sheet* and shall then reseal *Carrier Envelope* with another security seal.

### **9.0 Coordination with Polling Places**

9.1 The Department shall publish after 12 Noon the day before an election a list of absentee voters that contains the names of everyone to whom it issued an Absentee Ballot. The Department shall also establish a process by which it distributes the portion of the list of absentee voters for an Election District to that Election District before the opening of the Polls on the day of the election.

9.2 The Department shall make available a copy of the list of absentee voters to each major political party and if requested at least five days before the day of the election to any minor political party on the ballot. The Department shall place a copy of the list in the Absentee Ballot Room for use by those observing the Absentee Ballot tabulation.

9.3 Election Officers shall update *Poll Lists* in the polling place with the information on the list of absentee voters.

9.3.1 Election Officers shall not permit persons on the list of absentee voters shown as having returned their Absentee Ballot to vote at the Polling Place.

9.3.2 Election Officers shall not permit persons who have not returned their Absentee Ballots and who appear to vote at their Polling Place to vote at the Polling Place until he/she has received permission for that person to vote from the Absentee Ballot Room.

9.4 The Department shall have at least two well-trained persons answering inquiries about absentee voting from the Polling Place and processing all Absentee Ballots returned on the day of the election.

9.4.1 The Department shall authorize a person whose Absentee Ballot the Department has not received to the Department to vote at their Polling Place.

9.4.2 The Department shall not authorize a person who returned his/her Absentee Ballot to the Department to vote at his/her Polling Place.

9.4.3 The Department shall maintain a log of the name and other pertinent information of every person who the Department authorized to vote in accordance with paragraph "a" above.

9.4.4 The Department shall compare the names of persons who return their ballots on the day of the election against the names on the log noted above. If the Department receives a ballot for a person that it authorized to vote at his/her Polling Place, Absentee Judges shall write the word "REJECTED", the reason it rejected the ballot and the initials of the persons rejecting the ballot on the Ballot Envelope.

### **10.0 After the Canvass**

10.1 Following the canvass of a Primary Election, the Department shall keep the *Carrier Envelopes* and all Absentee Voting documents in sealed containers for at least 22 months following the date of the election. The Department shall then destroy the *Carrier Envelopes*, the material therein and all other Absentee Voting documents in accordance with Department policy.

10.2 Following the canvass of a General or Special Election, the Department shall keep the *Carrier Envelopes* in sealed transport devices until February 1 next. The Department shall then keep the *Carrier Envelopes* and all Absentee Voting documents in sealed containers for at least 22 months following the date of the

election. The Department shall then destroy the *Carrier Envelopes*, the material therein and all other Absentee Voting documents in accordance with Department policy.

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**DEPARTMENT OF ELECTIONS FOR SUSSEX COUNTY**  
Statutory Authority: 15 Delaware Code, Section 5522(b) (15 Del.C. §5522(b))

**PUBLIC NOTICE**

**Security and Integrity of the Absentee Voting Process**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 15 of the **Delaware Code**, Section 5522 (b), the Department of Elections for Sussex County is proposing a regulation to ensure the security and integrity of the procedures set forth in Chapter 55 and that the counting process for absentee ballots is not subject to improper influences.

Any person who wishes to submit written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulation shall submit same to Kenneth McDowell, Director of Sussex County Department of Elections, 119 N. Race Street, Georgetown, DE 19947 by March 31, 2006.

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

**Citation:**

Delaware Code, Title 15, Chapter 55

**Summary of Proposed Regulation**

The proposed regulation establishes standards for protecting and securing voted and un-voted absentee ballots, procedures for processing absentee ballots returned to the Department by mail or by a person, procedures for processing absentee ballots voted in the office, security of the Absentee Ballot Room on the day of the election, procedures for processing the absentee ballots during the tally process, and security of the voted ballots following the tabulation of the votes. These standards and procedures combined with the requirements in Chapter 55 protect the integrity of the absentee ballot process.

**Security and Integrity of the Absentee Voting Process**

**1.0 Purpose:**

Pursuant to **Delaware Code**, Title 15, §5522 (b) this regulation shall ensure the security and integrity of the absentee procedures set forth in Chapter 55 of **Delaware Code**, Title 15 and that the counting process for Absentee Ballots is not subject to improper influences.

**2.0 General**

2.1 This regulation applies to members of the Board of Elections for Sussex County, employees of the Department of Elections for Sussex County whether merit, casual/seasonal, or temporary (hired through a third party), Election Officers, absentee judges, and all persons observing the tabulating of Absentee Ballots.

2.2 This regulation applies to general, special and primary elections.

2.3 The Department shall designate a filing cabinet/s that locks, or an area where the Department can secure voted and un-voted Absentee Ballots.

2.4 In the absence of the Administrative Director and/or Deputy Administrative Director, the Department's

employees shall perform the duties of that person or persons as specified in this regulation.

2.5 The Department shall create the various logs required by this regulation.

2.6 The Department shall create an *Absentee Ballot Reconciliation Sheet* for use in accounting for the disposition of voted Absentee Ballots for an Election District and for security of the Carrier Envelope.

2.7 The Department's employees shall establish teams for handling the return of Absentee Ballots, the mailing of Absentee Ballots, and in-person absentee voting.

2.8 For the purposes of this regulation, the term tabulation means equipment that counts the votes on a ballot (a tabulator or scanner) or hand counting of ballots.

2.9 The tabulation of Absentee Ballots for an election shall begin at 7 a.m. on the day of the election and shall continue until the polls have closed or tabulation is complete whichever is later.

2.10 No one shall release absentee results to any challenger or observer until after the polls have closed.

2.11 The term "Chapter 55" as used in this regulation refers to **Delaware Code**, Title 15, Chapter 55.

### **3.0 Ballot Security**

3.1 The Department shall store all voted and un-voted ballots in a locked Absentee Filing Cabinet/s. The keys to these containers shall be in the custody of the Department's Administrative Director, Deputy Administrative Director.

3.2 The Department may leave the ballot cabinet/s unlocked during business hours.

3.3 The Department shall restrict access to the Absentee Filing Cabinet/s from the day that Absentee Ballots are first available to the day prior to an election to those persons employed by the Department of Elections.

3.4 Persons unlocking and locking ballot the Absentee Filing Cabinet/s shall record such actions on the log established for that purpose by the Department.

3.5 The Department of Elections for Sussex County has an open policy during business hours for any political party on the ballot to inspect the Department's ballot security procedures and practices anytime during the Election Cycle.

3.6 No one shall write on a returned Ballot Envelope except as provided in this regulation.

### **4.0 Processing Absentee Ballots Returned to the Department**

4.1 In accordance with Chapter 55, voters may return Absentee Ballots mailed to them by mail, in person or by a person designated by the absentee voter.

4.2 The Department employees handling returned ballots shall:

4.2.1 Remove Ballot Envelopes from the Mailing Envelopes and attach by paper clip to the Ballot Envelope any material other than the Ballot Envelope that is in the Mailing Envelope;

4.2.2 Time stamp the back of each returned Ballot Envelope;

4.2.3 Attach a *Post-it Note* (or equivalent product) noting any Ballot Envelope discrepancy to the front of the Ballot Envelope;

4.2.4 Attempt to notify the voter by phone or email of the problem(s) and of the action that the voter can take to correct the problem;

4.2.5 Record the return of each Ballot Envelope in accordance with Department procedures; and

4.2.6 File each returned ballot alphabetically by Election District in the appropriate container.

### **5.0 Processing Absentee Ballots Voted at the Department**

The Department employees handling in-office voting shall:

5.1 Verify the absentee voter's identity and mark the form of identity shown by the voter on the voter's affidavit;

5.2 Instruct the absentee voter in the proper procedure for marking the ballot, putting the ballot into the Ballot Envelope, sealing the Ballot Envelope, and signing the front of the Ballot Envelope;

5.3 Make sure that the absentee voter has put the ballot in the Ballot Envelope, sealed the Ballot Envelope and signed the front of the Ballot Envelope;

5.4 Time stamp the back of each Ballot Envelope;

5.5 Record the return of each Ballot Envelope in accordance with Department procedures; and

5.6 File each returned ballot alphabetically by Election District in the appropriate container.

**6.0 Absentee Ballot Room Security on Election Day**

6.1 No challenger or observer shall bring into the Absentee Ballot Room a cell phone that is on, a camera, a briefcase, any paper except for a list of voters he/she may challenge, a list of absentee voters or a pad or notebook for taking notes.

6.2 No Department member, Board member, Absentee Judge or another person present in an official capacity shall bring a cell phone that is on into the Absentee Ballot Room.

6.3 No challenger, observer, Department member, Board member or Absentee Judge shall use any writing instrument in the Absentee Voting Room except as provided by the Department.

**6.4 Challengers:**

6.4.1 For a Primary Election, each candidate on the ballot may authorize in writing two challengers at a time to observe the tabulation process and to make challenges.

6.4.2 For a General Election, each party on the ballot may authorize in writing two challengers at a time to observe the tabulation process and to make challenges.

6.4.3 Challengers have the same authority and responsibilities as provided in **Delaware Code**, Title 15.

6.5 Citizens may observe the tabulation process. If more citizens than the room can accommodate appear to observe the tabulation process, the Department shall restrict the number of observers in order to maintain a safe and orderly environment.

6.6 The Department shall remove all un-voted ballots from the Absentee Filing Cabinets.

6.7 The Department shall remove all loose materials from the Absentee Ballot Room.

6.8 The Department shall provide green pens for use by Department staff and Absentee Judges, and red pens for use by challengers and observers.

6.9 The Department shall establish an area where challengers and other persons may observe the tabulation process.

6.10 Challengers and other persons observing the tabulation process shall enter or depart the Absentee Voting Room by the front door unless escorted by the Administrative Director, Deputy Administrative Director or a member of the Board of Elections for Kent County.

6.11 No person except for an Absentee Judge, an employee of the Department of Elections for Kent County, a member of the Board of Elections for Kent County or another State employee acting in an official capacity shall touch an Absentee Ballot during the tabulation process. The Department shall expel any other person who touches or attempts to touch an Absentee Ballot from the Absentee Ballot Room and not permit him/her to return.

6.12 No one shall remove any voted Absentee Ballots from the Absentee Ballot Room except as authorized by this regulation and/or by **Delaware Code**, Title 15.

6.13 The Administrative Director or Deputy Administrative Director may escort members of the media in and around the Absentee Ballot Room.

**7.0 Tabulation Process**

7.1 A person or persons designated by the Department shall announce the ED that the Absentee Judges will process and ask if there are any challenges. If a challenger challenges a voter, the Absentee Judges processing the ED shall hear the challenge and then by majority vote determine whether to count the ballot.

7.2 Challengers shall make challenges before the Absentee Judges open the Ballot Envelope for the person that they are challenging.

7.3 A Challenger may make challenges for reasons stated in Chapter 55, §5513.

7.4 A Department member shall give the Absentee Ballots and a check sheet for an ED to a team of Absentee Judges starting with ED 09-08 and continuing in order and shall record the team to which he/she issued an ED's Absentee Ballots.

7.5 The Department shall assign each team of Absentee Judges a specific tabulator to use for tabulating ballots.

7.6 Each Absentee Judge team shall check the ballots received against the check sheet and report any discrepancies to the Administrative Director, the Deputy Administrative Director.

7.7 The Absentee Judge team shall examine each Ballot Envelope and determine whether to count the ballot in accordance with Chapter 55, §5514.

7.7.1 If the Absentee Judges determine that they shall not count a ballot for a reason set forth in Chapter 55, §5514 (a) before opening the Ballot Envelope, they shall write the word REJECTED, the reason the ballot was rejected and their initials on the Ballot Envelope.

7.7.2 If the Absentee Judges determine that they shall not count a ballot for a reason set forth in Chapter 55, §5514 (a) after opening the Ballot Envelope, they shall put the ballot back into the envelope then write the word REJECTED, the reason the ballot was rejected and their initials on the Ballot Envelope.

7.7.3 If the Absentee Judges know that a person who has voted by Absentee Ballot is dead, they shall write the words REJECTED DECEASED and their initials on the Ballot Envelope.

7.8 The Absentee Judges shall then open the remaining Ballot Envelopes, remove the absentee ballots therein and place them face down on the table.

7.8.1 If there are two or more ballots in the Ballot Envelope, the Absentee Judges shall put the ballots back into the Ballot Envelope and write the word REJECTED, the reason that they rejected the ballot and their initials on the Ballot Envelope.

7.8.2 If there is no ballot in the Ballot Envelope, the Absentee Judges shall write the word REJECTED, the reason that they rejected the ballot and their initials on the Ballot Envelope.

7.9 Absentee Judges shall put Ballot Envelopes that have been marked as "REJECTED" into the Carrier Envelope for the ED that they are processing and enter the information about the rejection of the Ballot Envelope on to the appropriate log and/or documentation for the ED.

7.10 The Absentee Judges shall tabulate the remaining ballots.

7.11 If the tabulator or scanner cannot tabulate a ballot or ballots, the Absentee Judges shall tally those ballot or ballots on two *Absentee Vote Tally Sheets*.

7.12 Absentee Judges shall record Write-in votes on the Write-in portion of the *Absentee Vote Tally Sheets* or on a separate *Write-in Vote Tally Sheets* as determined by the Department as most suitable for the election.

7.13 After the Absentee Judges have tabulated all of the Absentee Ballots for an ED, they shall put the ballots, the *Ballot Envelopes* and one copy of the *Absentee Vote Tally Sheet* and *Write-in Vote Tally Sheet* (if used) into the *Carrier Envelope* for the ED. They shall then write security seal number for the seal with which they shall secure the *Carrier Envelope* on the *Absentee Ballot Reconciliation Sheet* and put the *Absentee Ballot Reconciliation Sheet* into the *Carrier Envelope*. The Absentee Judges shall then seal the *Carrier Envelope* with the appropriate security seal and put the *Carrier Envelope* in the appropriate transport device.

7.14 Absentee Judges who processed an ED shall process any other Absentee Ballots that the Department receives for that ED prior to the close of the polls in accordance with the above procedures.

## **8.0 After the Polls are Closed and the Ballots Tabulated**

8.1 The Department shall secure the second copies of the *Absentee Ballot Reconciliation Sheets*, *Absentee Vote Tally Sheets* and *Write-in Vote Tally Sheets* (if used) in sealed and/or locked containers. The Department may use these documents as necessary during the canvass process. If the Department opens any containers holding these documents during the canvass process, the Department shall reseal or lock it/them at the conclusion of the canvass process. The Department shall keep the containers sealed or locked until the February 1 following the election unless a court of competent jurisdiction orders the Department to open one or more of the containers.

8.2 After the close of the polls and the Department has tabulated all of the Absentee Ballots, the Department shall seal the transport devices containing the *Carrier Envelopes* (ballot boxes) and record the seal numbers on a transfer log.

8.3 Upon turning the transport devices over to representatives of Superior Court, the Department shall obtain a signature acknowledging receipt of the transport devices.

8.4 No one shall open a *Carrier Envelope* that the Department has sealed except in the presence of the Administrative Director, Deputy Administrative Director, and a Deputy Attorney General to correct an error. The officials opening the *Carrier Envelope* shall fully explain the circumstance on the *Absentee Ballot Reconciliation Sheet* and shall then reseal *Carrier Envelope* with another security seal.

**9.0 Coordination with Polling Places**

9.1 The Department shall publish after 12 Noon the day before an election a list of absentee voters that contains the names of everyone to whom it issued an Absentee Ballot. The Department shall also establish a process by which it distributes the portion of the list of absentee voters for an Election District to that Election District before the opening of the Polls on the day of the election.

9.2 The Department shall make available a copy of the list of absentee voters to each major political party and if requested at least five days before the day of the election to any minor political party on the ballot. The Department shall place a copy of the list in the Absentee Ballot Room for use by those observing the Absentee Ballot tabulation.

9.3 Election Officers shall update *Poll Lists* in the polling place with the information on the list of absentee voters.

9.3.1 Election Officers shall not permit persons on the list of absentee voters shown as having returned their Absentee Ballot to vote at the Polling Place.

9.3.2 Election Officers shall not permit persons who have not returned their Absentee Ballots and who appear to vote at their Polling Place to vote at the Polling Place until he/she has received permission for that person to vote from the Absentee Ballot Room.

9.4 The Department shall have at least two well-trained persons answering inquiries about absentee voting from the Polling Place and processing all Absentee Ballots returned on the day of the election.

9.4.1 The Department shall authorize a person whose Absentee Ballot the Department has not received to the Department to vote at their Polling Place.

9.4.2 The Department shall not authorize a person who returned his/her Absentee Ballot to the Department to vote at his/her Polling Place.

9.4.3 The Department shall maintain a log of the name and other pertinent information of every person who the Department authorized to vote in accordance with paragraph "a" above.

9.4.4 The Department shall compare the names of persons who return their ballots on the day of the election against the names on the log noted above. If the Department receives a ballot for a person that it authorized to vote at his/her Polling Place, Absentee Judges shall write the word "REJECTED", the reason it rejected the ballot and the initials of the persons rejecting the ballot on the Ballot Envelope.

**10.0 After the Canvass**

10.1 Following the canvass of a Primary Election, the Department shall keep the *Carrier Envelopes* and all Absentee Voting documents in sealed containers for at least 22 months following the date of the election. The Department shall then destroy the *Carrier Envelopes*, the material therein and all other Absentee Voting documents in accordance with Department policy.

10.2 Following the canvass of a General or Special Election, the Department shall keep the *Carrier Envelopes* in sealed transport devices until February 1 next. The Department shall then keep the *Carrier Envelopes* and all Absentee Voting documents in sealed containers for at least 22 months following the date of the election. The Department shall then destroy the *Carrier Envelopes*, the material therein and all other Absentee Voting documents in accordance with Department policy.

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**PROPOSED REGULATIONS**

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF SOCIAL SERVICES**

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

**PUBLIC NOTICE****Case Processing Procedures**

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 case processing procedures.

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 and Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by March 31, 2006.

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 Changes**

DSSM 2007, *Stop Payments for TANF, GA and RCA Benefits* and DSSM 2008, *Replacement Benefits – TANF, GA, RCA*: Procedurally, DSS has denied requests for replacement checks when the requests were made after the stale date on the check. The stale date is sixty (60) days from the date of the check. *Stale date* means the date the check is no longer valid for cashing. If the issue date is 1/1/06, the check is good for sixty (60) days until 3/1/06 and, 3/2/06 becomes the stale date. If a client cashes the check on or after the stale date, they will not receive reimbursement from the state. DSS is updating the DSSM to reflect this procedure.

DSS also added the requirement to sign and return an affidavit within ten (10) days of the date of the reported loss to align the procedures with the food stamp program.

Currently, a client could request a benefit replacement for a check they claim they did not receive a year ago. The client could request a replacement check in December but not sign an affidavit until three months later.

**DSS PROPOSED REGULATIONS #06-09  
REVISIONS:****2007 Stop Payments for TANF, GA and RCA Benefits**

The following procedures are used to place a stop payment on a check that is reported by a client as lost, stolen, or not received by the 5th of the month.

1. The client must sign the ~~affidavit form~~ Affidavit of Forgery and Request for Replacement of Lost Checks (Form 124) indicating that the check was not received, or was lost or stolen. Form 124 must have the benefit number and the benefit amount to be replaced. Form 124 is to have a notary signature.

2. The worker completes Form 230, Stop Payment or Rescind Payment, ~~in the case of either~~ for each TANF, General Assistance, and RCA checks not received.

3. Form 230 and Form 124 are forwarded to DMS.

4. DMS investigates claims of checks that were not received, lost, or stolen. DMS will mail a replacement check to the recipient four working days after the receipt of the affidavit and Form 230, if the original check has not been cashed. (Note: In rare instances, DMS will send a replacement check to the pool ~~must be specified and a when requested~~. A reason must be given for distribution by the pool.)

**2008 Replacement Benefits - TANF, GA, RCA**

The client must sign the Affidavit of Forgery and Request for Replacement of Lost Check (Form 124) attesting to the loss and submit the affidavit to DSS within ten days of the report of the loss.

The household will not receive a replacement check if the affidavit is not received by DSS within ten days of the report of the loss. If the tenth day falls on a weekend or holiday, DSS will consider the affidavit as received timely if it is received on the next business day.

The household will not receive a replacement check if the date of request exceeds the stale date on the check. The stale date on checks is sixty (60) days.

DSS will provide replacement benefits within ten days of the reported loss or within four working days of receiving the affidavit, whichever is later.

The procedures listed below are followed in order to replace benefits. They apply to both closed and open cases.

1. The DCIS II screen that reflects the current status of the case (open or closed), Form 124, and Form 230 (~~in the case of an assistance check~~) are sent to the Payments Section, DMS, Third Floor Annex, Administration Building, Herman M. Holloway, Sr. Health and Social Services Campus.

If the replacement is to be issued in an amount different from the original benefit, the pool supervisor must indicate on a separate sheet of paper the amount of the replacement benefit, the reason for the different amount, and sign it.

2. Upon receipt of Form 124 and Form 230, the Payments Section will issue the benefit via the DCIS II system and mail it to the recipient. Note: ~~in~~ In order to issue a replacement benefit for a closed case, the Payments Section will have to reopen the case. Once the replacement benefit has been issued, the Payments Section will return the case to a closed status.

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**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**

The Delaware Board of Accountancy in accordance with 24 **Del.C.** §105(a)(1) has proposed changes to its rules and regulations. The proposal amends multiple sections of the rules and regulations to conform to changes in practice requirements resulting from the enactment of Senate Bill 27 with House Amendment 1 in July of 2005. The proposed changes to the rules and regulations also contain provisions for online renewal and attestation of having fulfilled continuing education requirements.

A public hearing will be held on April 26, 2006 at 9:00 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 regulations may obtain a copy from the Delaware Board of Accountancy, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

**100 Board of Accountancy**
**1.0 General Provisions**

1.1 Pursuant to 24 **Del.C.** Ch. 1, the Delaware Board of Accountancy (“the Board”) is authorized to, and has adopted, these Rules and Regulations. The Rules and Regulations are applicable to all certified public accountants, public accountants, permit holders and applicants to the Board.

1.2 Information about the Board, including its meeting dates, may be obtained by contacting the Board’s Administrative Assistant Specialist at the Division of Professional Regulation, Cannon Building, 861 Silver Lake Boulevard, Ste. 203, Dover, Delaware 19904-2467, telephone (302) ~~739-4522~~ 744-4500. Requests to the Board may be directed to the same office.

1.3 The Board’s President shall preside at all meetings of the Board and shall sign all official documents of the Board. In the President’s absence, the Board’s Secretary shall preside at meetings and perform all duties usually performed by the President.

1.4 The Board may seek counsel, advice and information from other governmental agencies and such other groups as it deems appropriate.

1.5 The Board may establish such subcommittees as it determines appropriate for the fair and efficient processing of the Board’s duties.

1.6 The Board reserves the right to grant exceptions to the requirements of the Rules and Regulations upon a showing of good cause by the party requesting such exception, provided that the exception is not inconsistent with the requirements of 24 **Del.C.** Ch. 1.

1.7 Board members are subject to the provisions applying to “honorary state officials” in the “State Employees’, Officers’ and Officials’ Code of Conduct,” found at 29 **Del.C.** Ch. 58. No member of the Board shall: (1) serve as a peer reviewer in a peer review of a licensee; or (2) be an instructor in an examination preparation course or school or have a financial interest in such an endeavor.

**2.0 Professional Conduct**

2.1 A certified public accountant, or a public accountant holding a certificate or permit issued by this Board, agrees to comply with the Rules of Conduct contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants. All changes in the Rules and Interpretations made by the American Institute of Certified Public Accountants (“AICPA”) shall automatically be made a part of these Rules and Regulations unless specifically rejected by the Board.

**43.0 Applications**

43.1 An application for examination, certificates, permits to practice and renewals of permits to practice shall be submitted on forms approved by the Board.

43.2 The Board may require additional information or explanation when it has questions about an applicant’s qualifications or application materials. An application is not complete or in proper form until the Board has received all required and requested documents, materials, information and fees.

3.3 Applicants requesting to sit for the Uniform Certified Public Accountant Examination or its successor examination must demonstrate that they meet the good character and education requirements of 4.1.1 and 4.1.4 of these Rules and Regulations.

**5.0 Examination and Certificate 4.0 Requirements for a Certificate and Permit to Practice Certified Public Accountancy**

54.1 Each applicant for a certificate and permit to practice certified public accountancy must provide the Board with the following:

54.1.1 A statement under oath or other verification satisfactory to the Board that the applicant is of good character as that term is defined in 24 **Del.C.** §107(a)(1).

54.1.2 Evidence in a form satisfactory to the Board that the applicant has successfully passed the Uniform Certified Public Accountant Examination or its successor examination as established by the AICPA and the National Association of State Boards of Accountancy (“NASBA”).

54.1.3 Evidence in a form satisfactory to the Board that the applicant has successfully completed the AICPA self-study program "Professional Ethics for CPAs," or its successor course, with a grade of not less than 90%.

54.1.4 Evidence in a form satisfactory to the Board that the applicant holds a Master's Degree, a Baccalaureate Degree or an Associate Degree, with a concentration in accounting.

54.1.4.1 The applicant also must, upon request, submit proof that the college or university granting the degree was, at the time of the applicant's graduation, accredited by the Middle States Association of Colleges and Secondary Schools or by another comparable regional accrediting association. A degree granted by a college or university not so accredited at the time of applicant's graduation will not be accepted. Graduates of non-United States (U.S.) degree programs will be required to have their credentials evaluated by a credential evaluation service acceptable to the Board, to determine equivalency to U.S. regional accreditation.

54.1.4.2 The concentration in accounting must be completed at an accredited college or university and consist of at least 21 semester hours of accounting, auditing, and federal taxation, either as part of applicant's Associate, Baccalaureate or Master's Degree program or subsequent to the completion of the program. Each applicant must have completed courses in accounting (including introductory, intermediate, advanced, and cost accounting), auditing, and federal taxation as components of the 21 hour concentration in accounting. Courses must have been completed in all three areas (i.e. accounting, auditing, and federal taxation). Courses in other business subjects, such as banking, business law, computer science, economics, finance, insurance, management and marketing will not be accepted as accounting courses for this purpose.

5.1.4.3 ~~Except for applicants applying under Section 5.2 of these Rules and Regulations, the educational qualification required by this subsection contemplates satisfactory completion of all required courses of study by the final date for accepting applications for the examination at which the applicant intends to sit.~~

4.1.5 Evidence in a form satisfactory to the Board that the applicant meets the experience requirements provided in 24 Del.C. §107(a)(5) and Regulation 5.0 of these Rules and Regulations, as applicable.

~~5.2 Applicants requesting to sit for the the Uniform Certified Public Accountant Examination or its successor examination must demonstrate that they meet the good character and education requirements of Sections 5.1.1 and 5.1.4 of these Rules and Regulations.~~

**7 DE Reg. 494 (10/01/03)**

## **6.0 Requirements for Permit to Practice Certified Public Accountancy**

~~6.1 For purposes of Section 6.0 of these Rules and Regulations, the term "certificate holder" shall be defined as the holder of a certificate of certified public accountant issued by any jurisdiction.~~

~~6.2 Each applicant for a permit to practice certified public accountancy must provide the Board with the following:~~

~~6.2.1 A statement under oath or other verification satisfactory to the Board that the applicant has not engaged in any acts that would be grounds for discipline by the Board;~~

~~6.2.2 A certified statement from the licensing authority, or comparable agency, that the applicant has no pending disciplinary proceedings or complaints against him or her in each jurisdiction where the applicant currently or previously held a certificate or permit to practice;~~

~~6.2.3 Evidence in a form satisfactory to the Board that the applicant holds a valid certificate; and~~

~~6.2.4 Evidence in a form satisfactory to the Board that the applicant meets the experience requirements provided in 24 Del.C. §108(e)(2) and Sections 6.3, 6.4 and 6.5 of these Rules and Regulations, as applicable.~~

## **5.0 Experience Requirements for Permit to Practice Certified Public Accountancy**

~~6.35.1 Applicants who hold a master's degree pursuant to the terms of 24 Del.C. §107, shall meet the following standards and requirements for qualifying experience pursuant to 24 Del.C. §108(e)(2)7(a)(5):~~

~~6.35.1.1 Qualifying experience for holders of a master's degree shall include the provision of any type of service or advice involving the use of accounting, attest, compilation, internal audit, management advisory, financial advisory, tax or consulting skills.~~

~~6.35.1.1.1 "Management advisory" experience shall be limited to the fields of accounting, financial or business matters.~~

6.35.1.1.2 "Consulting skills" shall be limited to providing accounting, financial or business advice.

6.35.1.2 Qualifying experience shall be verified by a certified public accountant who holds a valid permit to practice, except as noted in ~~Rule 6.6.4~~ 5.4.1. The verification shall be notarized.

6.45.2 Applicants who hold a baccalaureate degree pursuant to the terms of 24 Del.C. §107, shall meet the following standards and requirements for qualifying experience pursuant to 24 Del.C. §108(e)(2)7(a)(5):

6.45.2.1 Qualifying experience for holders of a baccalaureate degree shall include experience in engagements resulting in the preparation and issuance of financial statements, including appropriate footnote disclosures, and prepared in accordance with generally accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants.

6.45.2.1.1 "Standards" shall include generally accepted auditing standards and/or Statements on Standards for Accounting and Review Services (SSARS), appropriate to the level of engagement.

6.45.2.2 Experience in internal audit may be used in lieu of or in addition to the experience described in 6.4.15.2.1.

6.45.2.3 Qualifying experience shall be verified by a certified public accountant who holds a valid permit to practice, except as noted in ~~Rule 6.6.15.4.1~~. The verification shall be notarized.

6.5.3 Applicants who hold an associate degree pursuant to the terms of 24 Del.C. §107, shall meet the following standards and requirements for qualifying experience pursuant to 24 Del.C. 108(e)(2)7(a)(5):

6.5.3.1 The applicant shall submit evidence of extensive experience obtained in engagement, resulting in the preparation and issuance of financial statements prepared in accordance with generally accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants.

6.5.3.1.1 "Standards" shall include generally accepted auditing standards and/or Statements on Standards for Accounting and Review Services (SSARS), appropriate to the level of engagement.

6.5.3.2 Qualifying experience shall be verified by a certified public accountant who holds a valid permit to practice, except as noted in ~~Rule 6.6.15.4.1~~. The verification shall be notarized.

6.65.4 Each applicant, regardless of educational level, must submit an affidavit from each employer with whom qualifying experience is claimed, setting forth the dates of employment, describing the nature of applicant's duties by area and affirming that the applicant discharged his or her duties in a competent and professional manner. The affidavit must be signed by the supervising Certified Public Accountant(s) and include a statement indicating the jurisdiction of his or her certificate and/or license. If the applicant has worked for multiple CPAs, the signature of a qualifying CPA is sufficient. However, the applicant must be able to furnish information concerning permits of other supervising CPAs as requested by the Board.

6.65.4.1 In cases in which any part of the required experience has been obtained in the practice of public accountancy, the affidavit may be from the responsible supervisor at each employer with whom such experience is claimed, or from the applicant himself or herself where the qualifying experience is claimed as an owner or principal of a firm engaged in the practice of public accountancy. Each affidavit shall include the dates of employment, describe the nature of the applicant's duties, state the approximate time devoted to each, and affirm that the applicant discharged his or her duties in a competent and professional manner. In the case of a sole practitioner, the Board reserves the right to require the sole practitioner to provide additional documentation verifying his or her qualifying experience. The affidavit shall be notarized.

6.7-5.5 Only experience obtained after the conferring of the degree under which the candidate applies shall be accepted. A "year" of qualifying experience shall consist of fifty (50) weeks of full-time employment. Two weeks of part-time experience, as defined herein, shall be equivalent to one week of full time employment. A period of full-time employment of less than ten consecutive weeks or part-time employment of less than sixteen consecutive weeks will not be recognized. Full-time employment shall be no less than thirty-five (35) hours per week; part-time employment shall be no less than 320 hours worked during a sixteen week period with a minimum of ten (10) hours per week.

**3 DE Reg. 1668 (6/1/00)**

**5 DE Reg. 119 (7/1/01)**

**76.0 Requirements for Permit to Practice Public Accountancy**

76.1 Each applicant for a permit to practice public accountancy must provide the Board with the following:

76.1.1 A statement under oath or other verification satisfactory to the Board that the applicant is of good character as that term is defined in 24 **Del.C.** §107(a)(1).

76.1.2 Evidence in a form satisfactory to the Board that the applicant holds, as a minimum, an associate degree with a concentration in accounting. The provisions of ~~Sections 54.1.4.1 and 54.1.4.2~~ of these Rules and Regulations also apply to applicants for permits to practice public accountancy.

76.1.3 Evidence in a form satisfactory to the Board that the applicant has successfully passed the accounting examination given by the Accreditation Council for Accountancy and Taxation, which is the examination recognized by the National Society of Public Accountants, or both the ~~Accounting and Reporting and the Auditing Regulation and Auditing and Attestation~~ portions of the Uniform Certified Public Accounting Examination.

76.1.4 Evidence in a form satisfactory to the Board that the applicant has successfully completed the AICPA self-study program "Professional Ethics for CPAs," or its successor course, with a grade of not less than 90%.

76.1.5 A statement under oath or other verification satisfactory to the Board that the applicant has not engaged in any acts that would be grounds for discipline by the Board.

76.1.6 A certified statement from the licensing authority, or comparable agency, that the applicant has no pending disciplinary proceedings or complaints against him or her in each jurisdiction where the applicant currently or previously held a permit to practice.

**7.0 Certificate Holders**

7.1 Any person holding a valid Delaware certificate issued on or before June 30, 1985 remains a certificate holder. Even if a prior permit to practice has lapsed, he or she is deemed by statute (24 **Del.C.** §122(c)) to have achieved sufficient education and experience and may obtain a permit to practice by applying to the Board.

7.1.1 If the certificate holder chooses to obtain a permit to practice, he or she is subject to the Delaware Accountancy statute and Rules and Regulations for those individuals holding permits to practice, including biennial renewal and continuing professional education.

7.1.2 If the certificate holder chooses to remain a certificate holder, he or she may use the designation "CPA" under limited circumstances as described in Regulation 8.0 Use of Designations.

7.2 Any person issued a certificate after July 1, 1985 and those applicants who meet the requirements of 24 **Del.C.** §122(d) on or before January 1, 2006 will remain certificate holders. He or she may obtain a permit to practice by meeting the experience requirements as established in the Board's statute and Rules and Regulations.

7.2.1 If the certificate holder chooses to obtain a permit to practice, he or she is subject to the Delaware Accountancy statute and Rules and Regulations for those individuals holding permits to practice, including biennial renewal and continuing professional education.

7.2.2 If the certificate holder chooses to remain a certificate holder, he or she may use the designation "CPA" under limited circumstances as described in Regulation 8.0 Use of Designations.

7.3 Except for those applicants submitting completed applications to sit for the Uniform Certified Public Accounting Examination prior to January 1, 2006, there shall be no new certificates issued or new applications accepted for certificates only after that date.

**~~3.0~~ 8.0 Use of Designations**

38.1 Designation "Certified Public Accountant" and the Abbreviation "CPA" in the Practice of Certified or Public Accountancy:

38.1.1 Only the following individuals and entities may use the designation "certified public accountant", the abbreviation "CPA", and other designations which suggest that the user is a certified public accountant, in the practice of certified or public accountancy:

38.1.1.1 An individual who is registered with the Board and holds a certificate of certified public accountant and a current permit to practice.

38.1.1.2 A sole proprietorship, partnership, corporation, or any other entity authorized under Delaware law or a similar statute of another state which is registered with the Board and holds a current firm permit

to practice.

~~38.2~~ Designation "Certified Public Accountant" and the abbreviation "CPA" by certificate holders who do not maintain a permit to practice:

~~38.2.1~~ An individual who holds a certificate of certified public accountant but does not maintain a permit to practice may use the designation "certified public accountant" or the abbreviation "CPA" ~~on business cards and stationery~~ if:

~~38.2.1.1~~ The certificate of certified public accountant has not been suspended or revoked and is in good standing; ;

~~38.2.1.2~~ The individual does not engage in the practice of certified or public accountancy and does not offer to perform certified or public accountancy services; ; and

~~8.2.1.3~~ The individual places the words "not in public practice" adjacent to their CPA title on any business card, letterhead or any other document or device, with the exception of their CPA certificate on which their CPA title appears.

~~3.2.1.3~~ The individual does not hold himself or herself out to be in the practice of certified or public accountancy when performing or offering to perform accounting, bookkeeping, tax or accounting related matters.

~~3.2.1.4~~ The individual does not engage in solicitations or advertising, including listings and advertisements in phone directories, newspapers, or other media (including electronic), in which the individual uses the designation "certified public accountant" or the abbreviation "CPA".

~~3.2.1.5~~ The individual does not publicly display a certificate of certified public accountant to imply that he or she is licensed in the practice of certified or public accountancy or offering to perform certified or public accountancy services.

~~3.2.1.6~~ The individual is employed by a government, or an academic institution, corporation, or company not engaged in the practice of certified or public accountancy and uses the designation "certified public accountant" or the abbreviation "CPA" on business cards and stationery provided:

~~3.2.1.6.1~~ The business cards and stationery indicate the name of the employer and the title of the person; and

~~3.2.1.6.2~~ The business cards or stationery are not used to solicit certified or public accountancy services or accounting related business.

~~3.2.2~~ An individual who holds a certificate of certified public accountant but not a permit to practice may not refer to his or her business as "John/Jane Doe, CPA" or have business cards imprinted "John/Jane Doe, CPA, and Company or Institution, Title" with the intent to offer certified or public accountancy services.

~~3.2.3~~ An individual who holds a certificate of certified public accountant, but not a permit to practice, may not perform a service related to accounting, including bookkeeping and tax returns, while holding him or herself out as a certified public accountant without a permit to practice. Similarly, an individual may not prepare income tax returns and refer to his or her business or sign tax returns as "John/Jane Doe, CPA" without a permit to practice. Such individual may put up a sign reading "John/Jane Doe, Tax Preparer" and prepare and sign tax returns as "John/Jane Doe".

~~3-8.3~~ Designation "Public Accountant" and the abbreviation "PA"

~~3-8.3.1~~ Only the following individuals and entities may use the designation "public accountant," the abbreviation "PA", and other designations which suggest that the user is a public accountant, in the practice of public accountancy.

~~3-8.3.1.1~~ An individual who is registered with the Board and holds a permit to practice public accountancy in good standing.

~~3-8.3.1.2~~ A sole proprietorship, partnership, corporation, or any other entity authorized under Delaware law or a similar statute of another state which is registered with the Board and holds a current firm permit in good standing to practice public accountancy.

~~3-8.3.2~~ An individual may not refer to his or her business or sign tax returns as "John/Jane Doe, PA" without a permit to practice public accountancy.

~~3-8.4~~ No person, sole proprietorship, partnership, corporation, or any other entity authorized under Delaware law or a similar statute of another state shall hold him/her/itself or otherwise use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant",

"licensed public accountant", "registered public accountant", or any other title or designation likely to be confused with "certified public accountant" or "public accountant", or any other abbreviations of any prohibited titles or designations likely to be confused with "CPA" or "PA". It is not a violation of this clause for an individual on whom has been conferred, by the Internal Revenue Service, the title enrolled agent to use that title or the abbreviation "EA".

**3-8.5** No person, sole proprietorship, partnership, or corporation, or any other entity authorized under Delaware law or a similar statute of another state shall use a title, certification or specialized designation that includes the word "accredited" or "certified" or an abbreviation of such a title, certification or designation or otherwise claim a qualification unless that designation has been conferred by a bona fide organization after evaluation of the individual's credentials and competencies. This includes such certifications and designations as "Certified Financial Planner™", "CFP", "CVA", "ABV", etc.

**5 DE Reg. 2090 (05/01/02)**

**89.0 Reciprocity**

**89.1** An applicant seeking a permit to practice through reciprocity shall demonstrate that he or she meets requirements of 24 **Del.C.** §109(a) and must provide the Board with the following:

**89.1.1** A statement under oath or other verification satisfactory to the Board that the applicant has not engaged in any acts that would be grounds for discipline by the Board; and

**89.1.2** A certified statement from the licensing authority, or comparable agency, that the applicant has no pending disciplinary proceedings or complaints against him or her in each jurisdiction where the applicant currently or previously held a certificate or permit to practice.

**89.2** The provisions of ~~Section 6.35.1~~ of these Rules and Regulations shall also apply to the experience required by 24 **Del.C.** §109(a)(3) for the granting of a permit by reciprocity.

**89.3** An applicant seeking a certificate through reciprocity shall demonstrate that he or she meets the requirements of 24 **Del.C.** §~~144~~109 and must provide the Board with the following:

**89.3.1** A certified statement from the licensing authority, or comparable agency, of the jurisdiction through which the applicant seeks reciprocity that the applicant holds a valid certificate with no past or pending disciplinary proceedings or complaints against him or her; and

**89.3.2** Copies of the law and rules or regulations establishing the requirements for certification in the jurisdiction through which the applicant seeks reciprocity.

**910.0 Firm Permits to Practice**

**910.1 Definitions**

**910.1.1** "Firm" means a sole proprietorship, partnership, corporation or any other entity authorized under Delaware law or a similar statute of another state.

**910.1.2** The term "principal of a firm" is defined as any individual who has an equity interest in the firm.

**910.2** Each firm which intends to be or is engaged in the practice of certified public accountancy or the practice of public accountancy in this State shall be required to obtain and maintain a valid permit to practice. Individuals not currently practicing certified public accountancy or public accountancy shall not be required to obtain a firm permit to practice until such time as that person begins to perform certified public accounting or public accounting services in this State or for clients located in this State.

**910.3** Each applicant for issuance or renewal of a firm permit to practice certified public accountancy shall be required to show that: 1) each principal who performs services in this State, who performs services for a client(s) located in this State, or who is responsible for the accounting work in this State, holds a valid Delaware individual permit to practice certified public accountancy; and 2) each employee holding a certificate who performs services in this State or who performs services for a client(s) located in this State, except for employees who have not as yet accumulated sufficient experience to qualify for a permit under 24 **Del.C.** §1087, holds a valid Delaware individual permit to practice certified public accountancy. For purposes of 24 **Del.C.** §111 and this Section of the Rules and Regulations, employees of a firm with its principal offices outside of Delaware that work in excess of eighty (80) hours in this State or who work for a client(s) in this State must have an individual permit to practice.

**910.4** Each applicant for issuance or renewal of a firm permit to practice public accountancy shall be required

to show that: 1) each principal who performs services in this State, who performs services for a client(s) located in this State, or who is responsible for the accounting work in this State, holds a valid individual permit to practice public accountancy; and 2) each employee holding a certificate who performs services in this State or who performs services for a client(s) located in this State, except for employees who have not yet met the requirements to qualify for a permit under 24 **Del.C.** §110, holds a valid individual permit to practice public accountancy. For purposes of 24 **Del.C.** §111 and this Section of the Rules and Regulations, employees of a firm with its principal offices outside of Delaware that work in excess of eighty (80) hours in this State or who work for a client(s) in this State must have an valid Delaware individual permit to practice.

**910.5** An applicant for issuance or renewal of a firm permit to practice certified public accountancy or public accountancy shall be required to register each office of the firm within this State with the Board, and to show that each such office is under the charge of a person holding a valid Delaware permit to practice.

**910.6** Each holder of or applicant for a firm permit to practice certified public accountancy or public accountancy shall notify the Board in writing within thirty (30) days after its occurrence of: 1) any change in the identities of principals who work regularly within this State; 2) any change in the number or location of offices within this State; 3) any change in the identity of the persons supervising such offices; and 4) any issuance, denial, revocation or suspension of a permit issued by any other State to the firm or to any principal or employee regulated by the Board.

**910.7** Certified public accounting and public accounting firms practicing as corporations organized pursuant to Delaware law must be organized in compliance with The Professional Service Corporation Act, 8 **Del.C.** §601, et. seq.

**910.8** All firms and accountants practicing in firms shall be bound by professional responsibility standards no less stringent than those stated in 8 **Del.C.** §608. Each applicant for issuance or renewal of a firm permit to practice certified public accountancy or public accountancy shall be required to cause a duly authorized individual to verify under oath that upon issuance by the Board of a firm permit to practice, the firm will be bound by professional standards no less stringent than those stated in 8 **Del.C.** §608.

**910.9** Certified public accounting and public accounting firms may not practice using firms names that are misleading as to organization, scope, or quality of services provided.

#### **5 DE Reg. 2090 (05/01/02)**

#### **4011.0 Continuing Education**

**4011.1** Hours Required: Each permit holder must have completed at least 80 hours of acceptable continuing professional education each biennial reporting period of each year ending with an odd number. The eighty hours of acceptable continuing professional education submitted must have been completed in the immediately preceding two-year period—and must include a minimum of sixteen (16) credit hours in accounting and/or auditing and a minimum of sixteen (16) credit hours in taxation and four (4) credit hours in a Delaware specific ethics course approved by the Board as set forth in 11.8.

**4011.2** Reporting Requirements: The Board will mail permit renewal forms which provide for continuing professional education reporting to all permit holders. Each candidate for renewal shall submit a summary of their continuing education hours, along with any supporting documentation requested by the Board, to the Board at least 60 days prior to the permit renewal date set by the Division of Professional Regulation Beginning in 2006, license renewal may be accomplished online at [www.dpr.delaware.gov](http://www.dpr.delaware.gov). Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the continuing education requirements of section 11.0.

**11.2.1** Attestation may be completed electronically if the renewal is accomplished online. In an alternative, paper renewal documentation that contains attestation of completion can be submitted.

**11.2.2** License selected for random audit will be required to supplement the attestation with attendance verification pursuant to 11.6.

**4011.3** Proration: Prorated continuing professional education regulations consisting of less than eighty hours shall only apply to the first permit renewal, thereafter all permit holders are required to complete at least eighty hours of acceptable continuing professional education biennially.

**4011.3.1** If the initial permit was issued less than one year prior to the renewal date, there shall be no continuing education requirement for that period.

4011.3.2 If the initial permit was issued at least one year, but less than two years prior to the renewal date, the continuing education requirement shall be 40 hours for that period.

4011.4 Exceptions: The Board has the authority to make exceptions to the continuing professional education requirements for reasons including, but not limited to, health, military service, foreign residency, and retirement.

4011.5 Qualified Programs.

4011.5.1 General Determination: The overriding consideration in determining if a specific program qualifies as a continuing professional education program is whether it is a formal program of learning which contributes directly to the professional competence of the permit holder.

4011.5.2 Formal Programs: Formal programs requiring class attendance will qualify only if:

4011.5.2.1 An outline is prepared in advance and the plan sponsor agrees to preserve a copy for five years or the outline is provided to the participant or both.

4011.5.2.2 The program is at least an hour (a fifty-minute period) in length.

4011.5.2.3 The program is conducted by a qualified instructor or discussion leader.

4011.5.2.4 A record of registration or attendance is maintained for five years or the participant is furnished with a statement of attendance, or both.

4011.5.3 Programs deemed approved: Provided the criteria in Sections 4011.5.1 and 4011.5.2 of these Rules and Regulations are met, the following are deemed to qualify for continuing professional education:

4011.5.3.1 Programs approved by National Association of State Boards of Accountancy (NASBA);

4011.5.3.2 Professional development programs of national, state and local accounting organizations;

4011.5.3.3 Technical sessions at meeting of national, state and local accounting organizations and their chapters;

4011.5.3.4 University or college courses:

4011.5.3.4.1 Credit courses: each semester hour credit shall equal 5 hours of continuing professional education.

4011.5.3.4.2 Non-credit courses: each classroom hour shall equal one hour of continuing professional education;

4011.5.3.5 Programs of other organizations (accounting, industrial, professional, etc.);

4011.5.3.6 Other organized educational programs on technical and other practice subjects including "in-house" training programs of public accounting firms.

4011.5.4 Correspondence and Individual Study Programs: Formal correspondence or other individual study programs which provide evidence of satisfactory completion will qualify, with the amount of credit to be determined by the Board. The Board will not approve any program of learning that does not offer sufficient evidence that the work has actually been accomplished. The maximum credit toward meeting the continuing professional education requirement with formal correspondence or other individual study programs shall not exceed 30% of the total requirement.

4011.5.5 Instructors and Discussion Leaders: Credit for one hour of continuing professional education will be awarded for each hour completed as an instructor or discussion leader plus two additional hours of credit for each classroom hour for research and preparation to the extent that the activity contributes to the professional competence of the registrant as determined by the Board. No credit will be awarded for repeated offerings of the same subject matter. The maximum credit toward meeting the continuing professional education requirement as an instructor or discussion leader shall not exceed 50% of the total requirement.

4011.5.6 Published Articles and Books: One hour credit will be granted for each 50 minute period of preparation time on a self-declaration basis to a maximum of 20 hours in each biennial reporting period. A copy of the published article must be submitted to the Board upon request.

4011.5.7 Committee, Dinner, Luncheon and Firm Meetings. One hour credit will be granted for each 50 minutes of participation. Credit will only be granted for those meetings which are structured as a continuing education program.

4011.6 Control and Reporting

~~10.6.4 Each applicant for permit renewal shall provide a signed statement under penalty of perjury, disclosing the following information pertaining to the educational programs submitted in satisfaction of the continuing education requirements:~~

11.6.1 Random audits will be performed by the Board to ensure compliance with the CE requirements. Licensees selected for audit shall be required to submit attendance verification including:

- 4011.6.1.1 school, firm or organization conducting course;
- 4011.6.1.2 location of course;
- 4011.6.1.3 title of course or description of content;
- 4011.6.1.4 dates attended; and
- 4011.6.1.5 hours claimed.

4011.6.2 The Board may verify information submitted by applicants by requesting submission of the documentation to be retained by the applicant and/or sponsor and may revoke permits for which deficiencies exist. If a Continuing Professional Education Statement submitted by an applicant for permit renewal is not approved, or if upon verification, revocation is being considered, the applicant will be notified and may be granted a period of time in which to correct the deficiencies. Any license revocation or denial of application for license renewal will proceed in accordance with the provisions of the Administrative Procedures Act, 29 Del.C. §10101, *et. seq.*

4011.7 Evidence of Completion- Retention

4011.7.1 Primary responsibility for documenting the requirements rest with the applicant. Evidence in support of the requirements should be retained for a period of five years after completion of the educational activity.

4011.7.2 Sufficiency of evidence includes retention of course outlines and such signed statements of attendance as may be furnished by the sponsor.

4011.7.3 For courses taken for scholastic credit in accredited universities or colleges, evidence of satisfactory completion of the course will satisfy the course outline and attendance record.

4011.7.4 For non-credit courses at accredited universities or colleges, a statement of the hours of attendance signed by the instructor or an authorized official of the sponsoring institution, must be obtained and retained by the applicant. Course outlines may be retained by the sponsoring institution for a period of five years in lieu of retention of the outlines by the applicant.

4011.8 Composition of Continuing Professional Education: The biennial continuing professional education requirement shall include a minimum of sixteen (16) credit hours in accounting and/or auditing and a minimum of sixteen (16) credit hours in taxation and four (4) credit hours in a Delaware specific ethics course approved by the Board. The remaining forty-four (44) credit hours may be satisfied by general subject matters so long as they contribute to the professional competence of the individual practitioner. Such general subject matters include, but are not limited to, the following areas:

- Accounting
- Administrative Practice
- Auditing
- Business Law
- Communication Arts
- Computer Science
- Economics
- Finance, Production and Marketing
- Management Services Mathematics, Statistics, Probability, and Quantitative Applications in Business
- Personnel Relations, Business Management and Organization
- Social Environment of Business
- Specialized Areas of Industry
- Taxation

**8 DE Reg. 1583 (5/1/05)**

#### **4412.0 Additional Provisions Concerning Examinations**

4412.1 All examinations required under 24 Del.C. Ch. 1 and these Rules and Regulations shall be graded by the applicable grading service of the organization offering the examination.

4412.2 Applications to sit for the ~~May or November~~ Uniform Certified Public Accountant examination ("CPA examination") shall be submitted in completed form to the Board's designated agent by the dates determined by

the Board's designated agent.

~~412.3~~ The CPA examination shall be in the subjects of accounting and reporting, financial accounting and reporting, auditing, and business law, and in such other or additional subjects that may be covered in successor examinations as may be required to qualify for a certificate.

~~412.4~~ Rules for Examination.

~~11.4.1~~ Examinations shall be in writing.

~~11.4.2~~ Applicants are permitted to use pencil and eraser. Calculators provided at the exam site are the only mechanical devices allowed.

~~11.4.3~~ At any examination, an applicant must prepare and submit to the Board papers on all required subjects for which he or she does not have current credit for certification or permit, whichever is applicable.

~~11.4.4~~12.4.1 An applicant who commits an act of dishonesty or otherwise engages in any other form of misconduct, will be expelled from the examination room and may be denied the right to sit for future examinations.

~~11.4.5~~12.4.2 Applicants will be informed in writing of the results achieved in each examination section.

~~412.5~~ Passing Grade on the Uniform CPA Examination

~~412.5.1~~ An applicant for a certificate who receives a grade of 75 or higher in all four subjects at ~~one~~ examination shall be deemed to have passed the Uniform Certified Public Accountant Examination.

~~412.5.2~~ An applicant who is taking only the Accounting and Reporting (ARE) and Financial Accounting and Reporting (FARE) sections of the CPA examination in order to apply for a permit to practice public accounting, who receives a grade of 75 or higher in both required subjects, shall be deemed to have passed the applicable parts of the CPA examination.

~~11.6~~ Conditional Status for Subjects passed in this State

~~11.6.1~~ An applicant who sits for all required parts of either examination and who receives a grade of 75 or higher in one or more, but less than all subjects passed may attain conditional status under the following circumstances:

~~11.6.1.1~~ To attain conditional status, the applicant must obtain a grade of 75 or higher in two subjects and obtain a grade of at least 50 in all subjects not passed. This minimum grade requirement is waived if three subjects are passed at a single examination.

~~11.6.1.2~~ To add to conditional status, the applicant must obtain a grade of at least 50 in all subjects not passed. Although a grade of less than 50 prevents the applicant from adding to his or her conditional status, it alone does not remove or cancel conditional status previously attained.

~~11.6.1.3~~ To pass the examination via conditional status, an applicant must pass the remaining subjects within 5 consecutive examinations following the attainment of conditional status. The conditional period may be extended at the discretion of the Board, if an applicant is unable to sit for a given examination because of health, military service or other circumstances generally beyond the applicant's control.

~~11.6.1.4~~ An applicant who fails to pass all subjects required during the 5 consecutive examinations following the attainment of conditional status, shall forfeit all credits and shall, upon application as a new applicant, be examined again in all subjects.

~~41.7~~12.6 Transfer of Credit for Subjects Passed in Another Jurisdiction

~~41.712.6.1~~ An applicant who has passed one or more subjects sections of either the examination in another jurisdiction will be permitted to transfer to this jurisdiction credit for the parts sections so passed under the following conditions, ~~and provided the requirements of Section 11.6 of these Rules and Regulations have been met:~~

~~41.712.6.1.1~~ At the time he or she sat for the examination in the other jurisdiction, he or she met all the requirements of the statute and regulations to sit for the examination in Delaware; and

~~41.712.6.1.2~~ At the time he or she makes application to sit for the examination in Delaware, he or she meets all the requirements of the Delaware statute and regulations; and

~~41.712.6.1.3~~ Credit for any subject of the examination which is transferred from some other jurisdiction to Delaware will be treated as if that credit had been earned in Delaware on the same date such credit was earned in the other jurisdiction, ~~and all time requirements of Delaware conditional status will be applied to it.~~

~~41.712.6.2~~ The Board will require satisfactory evidence from the transferring jurisdiction as to the validity of the credit.

44-812.6.3 If an applicant has passed all subjects sections of either the examination in one or more other jurisdictions, but does not possess a certificate or permit from one of the jurisdictions in which a subject was passed, transfer of credit will only be permitted if a satisfactory explanation of such lack of a certificate or permit is furnished to the Board in writing. The Board may require a written explanation of why no certificate or permit was issued from the jurisdiction in which the final subject section was successfully completed.

#### 44-812.7 Computer-Based Examination

44-812.7.1 Effective with the implementation of the computer-based examination, a candidate may take the required test sections individually and in any order. Except as provided in sections 44-8.2 and 44-8.3 12.7.3 of these rules, credit for any test section(s) passed shall be valid for eighteen months from the actual date the candidate took the test section, without having to attain a minimum score on any failed test section(s) and without regard to whether the candidate has taken other test sections. The candidate shall also be subject to the following:

44-812.7.1.1 Candidates must pass all four test sections of the Uniform CPA Examination within a rolling eighteen-month period, that begins on the date that the first test section is passed.

44-812.7.1.2 Candidates cannot retake a failed test section(s) in the same examination window. An examination window refers to a three-month period in which candidates have an opportunity to take the examination (comprised of two months in which the examination is available to be taken and one month in which the examination will not be offered while routine maintenance is performed and the item bank is refreshed). Thus, candidates will be able to test two out of three months within an examination window.

44-812.7.1.3 In the event all four test sections of the examination are not passed within the rolling eighteen month period, credit for any test section(s) passed outside the eighteen-month period will expire and that test section(s) must be retaken.

~~44-8.2 Effective with the implementation of the computer based examination, candidates having earned conditional credits on the paper and pencil examination will retain conditional credits for the corresponding test sections of the computer based examination as follows:~~

~~Paper and Pencil Examination~~

~~Auditing~~

~~Financial Accounting and~~

~~Reporting (FARE)~~

~~Accounting and Reporting (ARE)~~

~~Business Law and Professional~~

~~Responsibilities (LPR)~~

~~Computer Based Examination~~

~~Auditing and Attestation~~

~~Financial Accounting and~~

~~Reporting (FARE)~~

~~Regulation~~

~~Business Environment and~~

~~Concepts~~

~~Such candidates will be allowed until October 31, 2005, or eighteen months from the administration of the last paper and pencil examination, whichever is longer, to complete any of the remaining test sections of the examination before the credits earned under the paper and pencil examination expire and the candidate loses credit.~~

12.7.2 Effective October 31, 2005 all credits earned under a paper and pencil examination are no longer valid and will not be accepted.

44-812.7.3 The Board may extend the ~~term of conditional credit validity~~ eighteen-month time period set forth in 12.7.1.1 in cases of substantial hardship as determined by the Board in its discretion.

44-812.7.4 A candidate shall be deemed to have passed the examination once the candidate holds, at the same time, valid credit for passing each of the four test sections of the examination. For purposes of this Regulation, credit for passing a test section of the computer-based examination is valid from the actual date of the testing event for that test section, regardless of the date the candidate actually received notice of the passing grade.

#### 7 DE Reg. 494 (10/01/03)

#### 4213.0 Excepted Practices; Working Papers

4213.1 Excepted Practices: The offering or rendering of data processing services by mechanical or electronic means is not prohibited by 24 Del.C. §14520. However, the exception applies only to the processing of accounting data as furnished by the client and does not include the classification or verification of such accounting data or the analysis of the resulting financial statement by other than mechanical or electronic equipment not prohibited by this

Section. The rendering of advice or assistance in regard to accounting controls, systems and procedures is exempt only as it pertains to the specific equipment or data processing service being offered. The exemption does not cover study and/or advice regarding accounting controls, systems and procedures in general. Persons, partnerships or corporations offering or performing data processing services or services connected with mechanical or electronic equipment are subject to all provisions of 24 **Del.C.** Ch. 1.

**4213.2** Working Papers: For purposes of 24 **Del.C.** §120, the term "working papers" does not properly include client records. In some instances, a permit holder's working papers may include data which should be part of the client's books and records, rendering the client's books and records incomplete. In such instances, that portion of the working papers containing such data constitutes part of the client's records and should be made available to the client upon request.

#### **4314.0 Hearings**

**4314.1** Disciplinary proceedings against any certificate or permit holder may be initiated by an aggrieved person by submitting a complaint in writing to the Director of the Division of Professional Regulation as specified in 29 **Del.C.** §8807(h)(1)-(3).

**4314.1.1** A copy of the written complaint shall be forwarded to the administrative assistant for the Board. At the next regularly scheduled Board meeting, a contact person for the Board shall be appointed and a copy of the written complaint given to that person.

**4314.1.2** The contact person appointed by the Board shall maintain strict confidentiality with respect to the contents of the complaint and shall not discuss the matter with other Board members or with the public. The contact person shall maintain contact with the investigator or deputy attorney general assigned to the case regarding the progress of the investigation.

**4314.1.3** In the instance when the case is being closed by the Division, the contact person shall report the facts and conclusions to the Board without revealing the identities of the parties involved. No vote of the Board is necessary to close the case.

**4314.1.4** If a hearing has been requested by the Deputy Attorney General, a copy of these Rules and Regulations shall be provided to the respondent upon request. The notice of hearing shall fully comply with 29 **Del.C.** §§10122 and 10131 pertaining to the requirements of the notice of proceedings. All notices shall be sent to the respondent's address as reflected in the Board's records.

**4314.1.5** At any disciplinary hearing, the respondent shall have the right to appear in person or be represented by counsel, or both. The Respondent shall have the right to produce evidence and witnesses on his or her behalf and to cross examine witnesses. The Respondent shall be entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of documents on his or her behalf.

**4314.1.6** No less than 10 days prior to the date set for a disciplinary hearing, the Department of Justice and the accused shall submit to the Board and to each other, a list of the witnesses they intend to call at the hearing. Witnesses not listed shall be permitted to testify only upon a showing of reasonable cause for such omission.

**4314.1.7** If the respondent fails to appear at a disciplinary hearing after receiving the notice required by 29 **Del.C.** §§10122 and 10131, the Board may proceed to hear and determine the validity of the charges against the respondent.

#### **4314.2 General procedure**

**4314.2.1** The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. All testimony at any hearing shall be under oath.

**4314.2.2** Strict rules of evidence shall not apply. All evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs shall be admitted.

**4314.2.3** An attorney representing a party in a hearing or matter before the Board shall notify the Board of the representation in writing as soon as practical.

**4314.2.4** Requests for postponements of any matter scheduled before the Board shall be submitted to the Board's office in writing at least three (3) days before the date scheduled for the hearing. Absent a showing of exceptional hardship, there shall be a maximum of one postponement allowed to each party to any hearing.

#### **5 DE Reg. 2090 (05/01/02)**

**4415.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals**

4415.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

4415.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

4415.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

4415.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

4415.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

4415.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

4415.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

4415.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

4415.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

4415.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

4415.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such

treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/ her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

4415.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

4415.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

4415.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

4415.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

4415.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

4415.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

4415.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

#### **4516.0 Crimes Substantially Related to the Practice of Accountancy:**

4516.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of accountancy in the State of Delaware without regard to the place of conviction:

- 4516.1.1 Aggravated menacing. 11 Del.C. §602(b)
- 4516.1.2 Reckless endangering in the first degree. 11 Del.C. §604
- 4516.1.3 Abuse of a pregnant female in the second degree. 11 Del.C. §605.
- 4516.1.4 Abuse of a pregnant female in the first degree. 11 Del.C. §606.
- 4516.1.5 Assault in the second degree. 11 Del.C. §612
- 4516.1.6 Assault in the first degree. 11 Del.C. §613.
- 4516.1.7 Assault by abuse or neglect. 11 Del.C. §615.
- 4516.1.8 Gang participation. 11 Del.C. §616.
- 4516.1.9 Terroristic threatening; felony. 11 Del.C. §621(a) and (b).
- 4516.1.10 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11

Del.C. §626.

- 4516.1.11 Murder by abuse or neglect in the second degree. 11 Del.C. §633.
- 4516.1.12 Murder by abuse or neglect in the first degree. 11 Del.C. §634.
- 4516.1.13 Murder in the second degree. 11 Del.C. §635.
- 4516.1.14 Murder in the first degree. 11 Del.C. §636.
- 4516.1.15 Promoting suicide. 11 Del.C. §645.
- 4516.1.16 Unlawful sexual contact in the second degree. 11 Del.C. §768.
- 4516.1.17 Unlawful sexual contact in the first degree. 11 Del.C. §769.
- 4516.1.18 Rape in the fourth degree. 11 Del.C. §770.
- 4516.1.19 Rape in the third degree. 11 Del.C. §771.

- 4516.1.20 Rape in the second degree. 11 **Del.C.** §772.
- 4516.1.21 Rape in the first degree. 11 **Del.C.** §773.
- 4516.1.22 Sexual extortion. 11 **Del.C.** §776.
- 4516.1.23 Continuous sexual abuse of a child. 11 **Del.C.** §778.
- 4516.1.24 Dangerous crime against a child. 11 **Del.C.** §779.
- 4516.1.25 Unlawful imprisonment in the first degree. 11 **Del.C.** §782.
- 4516.1.26 Kidnapping in the second degree. 11 **Del.C.** §783.
- 4516.1.27 Kidnapping in the first degree. 11 **Del.C.** §783A.
- 4516.1.28 Arson in the second degree. 11 **Del.C.** §802.
- 4516.1.29 Arson in the first degree. 11 **Del.C.** §803.
- 4516.1.30 Burglary in the third degree. 11 **Del.C.** §824.
- 4516.1.31 Burglary in the second degree. 11 **Del.C.** §825.
- 4516.1.32 Burglary in the first degree. 11 **Del.C.** §826.
- 4516.1.33 Possession of burglar's tools or instruments facilitating theft. 11 **Del.C.** §828.
- 4516.1.34 Robbery in the second degree. 11 **Del.C.** §831.
- 4516.1.35 Robbery in the first degree. 11 **Del.C.** §832.
- 4516.1.36 Carjacking in the second degree. 11 **Del.C.** §835.
- 4516.1.37 Carjacking in the first degree. 11 **Del.C.** §836.
- 4516.1.38 Shoplifting; felony. 11 **Del.C.** §840.
- 4516.1.39 Use of illegitimate retail sales receipt or Universal Product Code Label; felony. 11 **Del.C.** §840A.
- 4516.1.40 Theft. 11 **Del.C.** §841.
- 4516.1.41 Theft; lost or mislaid property; mistaken delivery. 11 **Del.C.** §842.
- 4516.1.42 Theft; false pretense. 11 **Del.C.** §843.
- 4516.1.43 Theft; false promise. 11 **Del.C.** §844.
- 4516.1.44 Theft of services. 11 **Del.C.** §845.
- 4516.1.45 Extortion. 11 **Del.C.** §846.
- 4516.1.46 Misapplication of property; felony. 11 **Del.C.** §848.
- 4516.1.47 Receiving stolen property. 11 **Del.C.** §851.
- 4516.1.48 Identity theft. 11 **Del.C.** §854.
- 4516.1.49 Forgery. 11 **Del.C.** §861.
- 4516.1.50 Possession of forgery devices. 11 **Del.C.** §862.
- 4516.1.51 Falsifying business records. 11 **Del.C.** §871.
- 4516.1.52 Tampering with public records in the second degree. 11 **Del.C.** §873.
- 4516.1.53 Tampering with public records in the first degree. 11 **Del.C.** §876.
- 4516.1.54 Offering a false instrument for filing. 11 **Del.C.** §877.
- 4516.1.55 Issuing a false certificate. 11 **Del.C.** §878.
- 4516.1.56 Defrauding secured creditors. 11 **Del.C.** §891.
- 4516.1.57 Fraud in insolvency. 11 **Del.C.** §892.
- 4516.1.58 Interference with levied-upon property. 11 **Del.C.** §893.
- 4516.1.59 Issuing a bad check; felony. 11 **Del.C.** §900.
- 4516.1.60 Unlawful use of credit card; felony. 11 **Del.C.** §903.
- 4516.1.61 Reencoder and scanning devices. 11 **Del.C.** §903A.
- 4516.1.62 Deceptive business practices. 11 **Del.C.** §906.
- 4516.1.63 Criminal impersonation. 11 **Del.C.** §907.
- 4516.1.64 Criminal impersonation, accident related. 11 **Del.C.** §907A.
- 4516.1.65 Criminal impersonation of a police officer. 11 **Del.C.** §907B.
- 4516.1.66 Unlawfully concealing a will. 11 **Del.C.** §908.
- 4516.1.67 Securing execution of documents by deception. 11 **Del.C.** §909.
- 4516.1.68 Debt adjusting. 11 **Del.C.** §910.
- 4516.1.69 Fraudulent conveyance of public lands. 11 **Del.C.** §911.

- 4516.1.70 Fraudulent receipt of public lands. 11 **Del.C.** §912.
- 4516.1.71 Insurance fraud. 11 **Del.C.** §913.
- 4516.1.72 Health care fraud. 11 **Del.C.** §913A.
- 4516.1.73 Home improvement fraud. 11 **Del.C.** §916.
- 4516.1.74 New home construction fraud. 11 **Del.C.** §917.
- 4516.1.75 Unauthorized access. 11 **Del.C.** §932.
- 4516.1.76 Theft of computer services. 11 **Del.C.** §933.
- 4516.1.77 Interruption of computer services. 11 **Del.C.** §934.
- 4516.1.78 Misuse of computer system information. 11 **Del.C.** §935.
- 4516.1.79 Destruction of computer equipment. 11 **Del.C.** §936.
- 4516.1.80 Unrequested or unauthorized electronic mail or use of network or software to cause same. 11

**Del.C. §937.**

- 4516.1.81 Failure to promptly cease electronic communication upon request. 11 **Del.C.** §938.
- 4516.1.82 Dealing in children. 11 **Del.C.** §1100.
- 4516.1.83 Sexual exploitation of a child. 11 **Del.C.** §1108.
- 4516.1.84 Unlawfully dealing in child pornography. 11 **Del.C.** §1109.
- 4516.1.85 Possession of child pornography. 11 **Del.C.** §1111.
- 4516.1.86 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112.
- 4516.1.87 Sexual solicitation of a child. 11 **Del.C.** §1112A.
- 4516.1.88 Criminal non-support and aggravated criminal non-support. 11 **Del.C.** §1113.
- 4516.1.89 Bribery; felony. 11 **Del.C.** §1201
- 4516.1.90 Receiving a bribe; felony. 11 **Del.C.** §1203.
- 4516.1.91 Giving unlawful gratuities. 11 **Del.C.** §1205.
- 4516.1.92 Receiving unlawful gratuities. 11 **Del.C.** §1206.
- 4516.1.93 Improper influence. 11 **Del.C.** §1207.
- 4516.1.94 Official misconduct. 11 **Del.C.** §1211.
- 4516.1.95 Profiteering. 11 **Del.C.** §1212.
- 4516.1.96 Perjury in the second degree. 11 **Del.C.** §1222.
- 4516.1.97 Perjury in the first degree. 11 **Del.C.** §1223.
- 4516.1.98 Making a false written statement. 11 **Del.C.** §1233.
- 4516.1.99 Terroristic threatening of public officials or public servants; felony. 11 **Del.C.** §1240.
- 4516.1.100 Hindering prosecution; felony. 11 **Del.C.** §1244.
- 4516.1.101 Falsely reporting an incident; felony. 11 **Del.C.** §1245.
- 4516.1.102 Promoting prison contraband; felony. 11 **Del.C.** §1256.
- 4516.1.103 Bribing a witness. 11 **Del.C.** §1261.
- 4516.1.104 Bribe receiving by a witness. 11 **Del.C.** §1262.
- 4516.1.105 Tampering with a witness. 11 **Del.C.** §1263.
- 4516.1.106 Interfering with child witness. 11 **Del.C.** §1263A.
- 4516.1.107 Bribing a juror. 11 **Del.C.** §1264.
- 4516.1.108 Bribe receiving by a juror. 11 **Del.C.** §1265.
- 4516.1.109 Tampering with a juror. 11 **Del.C.** §1266.
- 4516.1.110 Misconduct by a juror. 11 **Del.C.** §1267.
- 4516.1.111 Tampering with physical evidence. 11 **Del.C.** §1269.
- 4516.1.112 Unlawful grand jury disclosure. 11 **Del.C.** §1273.
- 4516.1.113 Hate crimes; felony. 11 **Del.C.** §1304.
- 4516.1.114 Stalking; felony. 11 **Del.C.** §1312A.
- 4516.1.115 Violation of privacy; felony. 11 **Del.C.** §1335.
- 4516.1.116 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 **Del.C.** §1338.
- 4516.1.117 Adulteration. 11 **Del.C.** §1339.
- 4516.1.118 Possessing a destructive weapon. 11 **Del.C.** §1444.
- 4516.1.119 Unlawfully dealing with a dangerous weapon; felony. 11 **Del.C.** §1445.

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**PROPOSED REGULATIONS**


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- 4516.1.120 Possession of a deadly weapon during commission of a felony. 11 **Del.C.** §1447.  
 4516.1.121 Possession of a firearm during commission of a felony. 11 **Del.C.** §1447A.  
 4516.1.122 Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C.** §1448.  
 4516.1.123 Engaging in a firearms transaction on behalf of another. 11 **Del.C.** §1455.  
 4516.1.123 Organized Crime and Racketeering. 11 **Del.C.** §1504.  
 4516.1.125 Victim or Witness Intimidation 11 **Del.C.** §3532 and 3533.  
 4516.1.126 Financial exploitation of residents or patients; felony. 16 **Del.C.** §1136(b)  
 4516.1.127 Prohibited acts A under the Uniform Controlled Substances Act. 16 **Del.C.** §4751(a), (b) and (c).  
 4516.1.128 Prohibited acts B under the Uniform Controlled Substances Act. 16 **Del.C.** §4752(a) and (b).  
 4516.1.129 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 **Del.C.** §4753A (a)(1)-(9).  
 4516.1.130 Prohibited acts under the Uniform Controlled Substances Act. 16 **Del.C.** §4756(a)(1)-(5) and (b).  
 4516.1.131 Distribution to persons under 21 years of age. 16 **Del.C.** §4761.  
 4516.1.132 Distribution, delivery, or possession of controlled substance within 1,000 feet of school property. 16 **Del.C.** §4767  
 4516.1.133 Drug paraphernalia; felony. 16 **Del.C.** §4771 (b) and (c) [manufacture and sale, delivery to a minor].  
 4516.1.134 Attempt to evade or defeat tax. 30 **Del.C.** §571.  
 4516.1.135 Failure to collect or pay over tax. 30 **Del.C.** §572.  
 4516.1.136 Failure to file return, supply information or pay tax. 30 **Del.C.** §573.  
 4516.1.137 Fraud and false statements. 30 **Del.C.** §574.  
 4516.1.138 Misdemeanors [tax related]. 30 **Del.C.** §576.  
 4516.1.139 Obtaining benefit under false representation; felony. 31 **Del.C.** §1003.  
 4516.1.140 Reports, statements and documents; felony. 31 **Del.C.** §1004.  
 4516.1.141 Kickback schemes and solicitations. 31 **Del.C.** §1005.  
 4516.1.142 Conversion of payment. 31 **Del.C.** §1006.  
 4516.1.143 Violations of the Securities Act. 6 **Del.C.** §7322.  
 4516.1.144 Attempt to Intimidate. 11 **Del.C.** §3534.  
 4516.1.145 Alteration, Theft or Destruction of Will. 12 **Del.C.** §210.  
 4516.1.146 Financial exploitation of infirm adult; felony. 31 **Del.C.** §3913.  
 4516.2 Crimes substantially related to the practice of accountancy shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

**8 DE Reg. 1269 (03/01/05)**

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**DEPARTMENT OF TRANSPORTATION**  
**DIVISION OF PLANNING**

Statutory Authority: 17 Delaware Code, Section 1021 (17 **Del.C.** §1021 et seq.)

**PUBLIC NOTICE**

**Delaware Safe Routes to School Regulations**

## Background

Under Title 17 of the **Delaware Code**, Section 1021 and 1022, and Public Law 109-59, the Delaware Department of Transportation (DeIDOT), through its Division of Planning, is seeking to establish a Safe Routes to School Program (Program) and has developed draft Program Guidelines.

These Guidelines establish the Program and outline how DeIDOT will administer the Program. It defines the purpose of the Program, funding availability and eligibility, and how projects will be selected.

## Public Comment Period

The Department will take written comments on the draft Safe Routes to School Program Guidelines from March 1, 2006 through March 31, 2006.

Any requests for copies of the Draft Program Guidelines, or any questions or comments regarding this document should be directed to:

Erin Fasano, Project Planner  
Division of Planning  
Delaware Department of Transportation  
PO Box 778  
Dover, DE 19903  
(302) 760-2236 (telephone)  
(302) 739-2251 (fax)  
[erin.fasano@state.de.us](mailto:erin.fasano@state.de.us)

## Delaware Safe Routes to School

### **1.0 Introduction**

Delaware's Safe Routes to School (SRTS) Program was established September 10, 2002 when Governor Ruth Ann Minner signed Senate Bill 353 of the 141<sup>st</sup> General Assembly of Delaware (73 Del. Laws, c. 435). As directed, the Department of Transportation (DeIDOT) began developing a program that would enable DeIDOT to work with schools to encourage children to walk and bicycle to school safely. Three years later similar federal legislation was passed (Pub. L. No. 109-59). Delaware's legislation authorizes DeIDOT to make SRTS grants available for bicycle and pedestrian safety and traffic calming measures in the vicinity of schools (17 Del.C. §1022).

The federal SRTS program was established August 10, 2005 under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). This law describes the purpose of the program as follows: (1) to enable and encourage children, including those with disabilities, to walk and bicycle to school; (2) to make bicycling and walking to school a safer and more appealing transportation alternative, thereby encouraging a healthy and active lifestyle from an early age; and, (3) to facilitate the planning, development and implementation of projects and activities that will improve safety and reduce traffic, fuel consumption, and air pollution in the vicinity of schools (Pub. L. No. 109-59, §1404 (b)). The federal program employs a multi-faceted approach that addresses infrastructure needs as well as implements non-infrastructure activities to achieve the program goals. These Program Requirements establish the Delaware Department of Transportation SRTS program and outline how DeIDOT will administer the program. This document provides information regarding eligible recipients of funding, the availability of funds, and the project selection process.

### **2.0 Eligibility**

#### 2.1 Eligible Participants

Any public or public charter school recognized by the Department of Education may participate in the SRTS program; however, participation is restricted to projects and activities that benefit elementary and middle school children in grades kindergarten through eighth grade.

#### 2.2 Eligible Funding Recipients

Funding is available to the organization or agency that is administering the SRTS program; this may be the participating school or an organization acting on behalf of the participating school. Eligible funding recipients include state, regional, or local agencies, including nonprofit organizations, and schools or school districts. An organization may receive funding to implement part or all aspects of a SRTS program at a school or multiple schools, as long as the organization is able to demonstrate that the funding request is based on a comprehensive SRTS plan that addresses a set of core components.

### **3.0 Program Components**

#### **3.1 SRTS Plan**

A comprehensive program is established by developing a SRTS plan. A plan should be created with a group representing different aspects of the school community. This group or committee may include parents, teachers, school administrators, neighboring residents, and local government representatives. The committee works through a process to identify areas of concern or need, and then prioritizes activities and projects. SRTS program participants are encouraged to utilize the "Delaware Safe Routes to School Program Sourcebook" when developing a SRTS plan. The "Delaware Safe Routes to School Program Sourcebook" provides guidance on how to develop a SRTS plan and references other resources. It is available on the DeIDOT website (URL address to be determined).

#### **3.2 The "5 E's"**

The "5 E's" are divided into infrastructure projects (the Engineering component), and the non-infrastructure activities, which are the remaining components of Education, Enforcement, Encouragement, and Evaluation. A general description of the components that make up the "5 E's" is provided below.

**3.2.1 Engineering** – Creating operational and physical improvements to the infrastructure surrounding schools that reduce speeds and potential conflicts with motor vehicle traffic, and establish safer and fully accessible crossings, walkways, trails and bikeways.

**3.2.2 Education** – Teaching children about the broad range of transportation choices, instructing them in important lifelong bicycling and walking safety skills, and launching driver safety campaigns in the vicinity of schools.

**3.2.3 Enforcement** – Partnering with local law enforcement to ensure traffic laws are obeyed in the vicinity of schools (this includes enforcement of speeds, yielding to pedestrians in crossings, and proper walking and bicycling behaviors), and initiating community enforcement such as crossing guard programs.

**3.2.4 Encouragement** – Using events and activities to promote walking and bicycling.

**3.2.5 Evaluation** – Monitoring and documenting outcomes and trends through the collection of data, including the collection of data before and after the intervention(s).

### **4.0 Project Funding**

DeIDOT is expected to receive \$1 million dollars in federal monies each year for five federal fiscal years (FY 2005 – FY 2009) to administer the SRTS Program. While the majority of these funds will be expended towards infrastructure (capital) projects, ten to thirty percent must be dedicated to non-infrastructure projects. No matching funds from the participant are required.

### **5.0 Funding Limitations**

**5.1** There is no limit on the number of projects for which a sponsor can submit proposals. However, no project or activity will be eligible for funding unless it has been identified through a SRTS planning process and identified in a SRTS plan.

**5.2** Individual SRTS projects may be funded up to \$125,000. If a project has been identified in the SRTS plan that exceeds this limit, the project shall not be administered or funded through the SRTS Program. Instead, DeIDOT will seek to combine the project with other ongoing work in the area, or submit the project to compete for funding with other Delaware capital improvement projects

### **6.0 Eligible Costs**

#### **6.1 Infrastructure Costs**

Infrastructure projects should directly support increased safety and convenience for elementary and middle school children, in kindergarten through eighth grades, to bicycle and/or walk to school. Project limits must be within two miles of the participating school. Planning; design; engineering expenses, including consultant services associated with developing the project; and construction costs are eligible infrastructure expenses. Eligible projects include:

- sidewalk improvements;
- traffic calming and speed reduction improvements;
- pedestrian and bicycle crossing improvements;
- on-street bicycle facilities;
- off-street bicycle and pedestrian facilities;
- secure bicycle parking facilities; and,
- traffic diversion improvements in the vicinity of schools.

#### **6.2 Non-infrastructure Costs**

The federal legislation requires that all non-infrastructure activities that are eligible for funding must be "activities to encourage walking and biking to school." Eligible activities include:

- costs for assistance in developing SRTS plans (funding for assistance shall not exceed \$10,000 per school);
- traffic education and enforcement within the school zone of a participating school;
- student sessions and materials on bicycle and pedestrian safety, health, and environment;
- modest incentives, promotional activities, and prizes for SRTS contests (no single prize shall exceed \$50);
- costs for data gathering, analysis, and evaluation reporting;
- photocopying, printing, mailing, and survey costs;
- costs to employ a program manager to run a citywide, countywide, or district wide program that includes numerous schools; and,
- other costs as approved by DeIDOT.

#### **7.0 Project Selection and Prioritization**

7.1 Limits on funding have been set to enable more participants to develop a SRTS program, without having to prioritize applications. However, if popularity of the Program creates a demand for funding that outweighs Delaware's limited resources, DeIDOT shall implement the evaluation process for project selection as set out in the Delaware legislation. At such time, the following factors will be used to rate submitted proposals: (1) demonstrated needs of the applicant; (2) potential for reducing child injuries and fatalities; (3) potential of the proposal for encouraging increased walking and bicycling among students; and, (4) completion of a "Safe Routes to School" plan that identifies safety hazards, and current and potential walking and bicycling routes to school, and involves students, parents, teachers, local transportation agencies, law enforcement agencies and school officials in the plan development process.

7.2 Proposals for SRTS funding will be accepted continually. DeIDOT will arrange a meeting with each project sponsor to discuss the eligibility of any proposed project and activities. DeIDOT shall provide a written response to all applicants.

7.3 All inquiries are welcome. The state coordinator is available to provide information, answer questions, participate in meetings, and assist potential SRTS participants in initiating a SRTS program. Please direct any questions or comments to:

Safe Routes to School Program, Division of Planning  
Delaware Department of Transportation  
P.O. Box 778  
Dover, DE 19903  
(302) 760-2121 (telephone), (302) 739-2251 (fax)

**DIVISION OF PLANNING**

Statutory Authority: 17 Delaware Code Section 508; Chapters 1 and 5  
(17 Del.C. 508, Chps. 1 & 5)

**PUBLIC NOTICE****Standards and Regulations for Subdivision Streets and State Highway Access****Background**

The Delaware Department of Transportation through its Planning Division has developed revised regulations for access to State-maintained roads and for planning, design, construction, and acceptance for maintenance of subdivision streets. These regulations, Standards and Regulations for Subdivision Streets and State Highway Access, revise, update, and consolidate the Rules and Regulations for Subdivision Streets, enacted in December 1981, and the Standards and Regulations for Access to State Highways, enacted in August 1983. These regulations define the requirements which apply to:

- New subdivisions and land development
- Changed or expanded subdivisions and land development
- Any new access on to a State-maintained road
- Modifications to an existing access
- Assessment of the impacts of traffic
- Off-site improvements

A public workshop will be held on March 22, 2006 at the DeIDOT Administration Building

The Department will take comments on the Regulations from March 1, 2006 through March 31, 2006.

Any requests for copies of the Regulations, or any questions or comments regarding these Regulations should be directed to:

Theodore Bishop, Assistant Director of Planning  
Delaware Department of Transportation  
PO Box 778  
Dover, DE 19903  
(302) 760-2122 (telephone)  
(302) 739-2251 (fax)  
theodore.bishop@state.de.us

**\*Please Note: Due to the size of the proposed regulation, it is not being published here. To obtain a copy, contact either the Department of Transportation or the Registrar's Office.**

**PDF Version (Adobe Acrobat Reader required)**

**HTML Version**

**DIVISION OF PLANNING**

Statutory Authority: 17 Delaware Code Section 507; Chapters 1 and 5  
(17 Del.C. §507, Chps. 1 & 5)

**Development Related Improvements Requiring New Rights-of-Way****Background**

The Delaware Department of Transportation through its Planning Division has developed regulations in response to Senate Bill 284 (74 Del.Laws, c. 404) which was signed into law on July 22, 2004. These regulations, Developer Related Improvements Requiring New Rights-of Way, address the provision of transportation improvements necessitated by new development when the improvements would not otherwise be possible due to right-of-way constraints.

The regulations define under what conditions DelDOT will use its real estate process to acquire right-of-way for such improvements, enforce safe operating conditions during construction, involve the public in the planning process, and assure compliance with applicable rules and requirements.

A public workshop will be held on March 23, 2006 at the DelDOT Administration Building from 4:00 pm until 7:00 pm.

The Department will take comments on the Regulations from March 1, 2006 through March 31, 2006.

Any requests for copies of the Regulations, or any questions or comments regarding these Regulations should be directed to:

Theodore Bishop, Assistant Director of Planning  
Delaware Department of Transportation  
PO Box 778  
Dover, DE 19903  
(302) 760-2122 (telephone)  
(302) 739-2251 (fax)  
theodore.bishop@state.de.us

**Development Related Improvements Requiring New Rights-of-way****BACKGROUND**

Developers proposing real estate rezoning or subdivision applications in Delaware municipalities and counties are required to improve the local transportation system that serves the property if their proposed development triggers the need for the improvement. Many developers are able to make the necessary improvements, while others are hindered by their inability to secure the necessary road right-of-way. Often, prior development along the roadway has already absorbed the capacity created when the road was first built and the surrounding landowners may not feel that there is any benefit in selling the needed right-of-way to enable the next round of development. Prior to these regulations, state law did not authorize acquisition of rights-of way necessary for development-related improvements.

Fundamentally these road improvements are for the public good, as the general public will receive the travel benefits. The need for improvements is most often triggered by new development in combination with pre-existing traffic growth patterns in the area. DelDOT's plan for making roadway improvements is outlined in its Capital Transportation Program (CTP). The needed roadway improvement may be on a different schedule or it may not be in the CTP at all. A further concern is implementing roadway improvements without sufficient public involvement. When the project is DelDOT's, DelDOT utilizes a formal public participation process. However, when a private sector developer carries out the improvements, a similar public participation process may not be followed, or at best it is insufficient.

**MAJOR ISSUES**

The regulations herein address the following issues and barriers to development:

- Developer's inability to secure right-of-way for necessary improvements.
- DeIDOT's Capital Transportation Program
- (CTP) schedule being different than the developer's schedule or not including the needed improvement.
- Lack of a public participation process during the consideration of development-related improvements.
- Lack of clarity and definition regarding DeIDOT's role in assuring project quality.

**1.0 Purpose**

The Delaware State Senate passed SB 284 on June 8, 2004 and the Delaware House of Representatives passed it on July 1, 2004. SB 284 was signed into law on July 22, 2004 and it is codified at 17 Del.C. Section 507.

Section 507 directs DeIDOT to establish rules and regulations to determine where and under what conditions it will:

- Use its real estate process to acquire the necessary right-of-way for improvements;
- Enforce the maintenance of safe operating conditions for the public during construction;
- Involve the public and inform them of the reason for and scope of improvements; and
- Assure compliance with applicable environmental and legal requirements.

Developers whose proposals trigger the need for improvements, or necessitate an acceleration of the timing of previously recognized DeIDOT projects, shall contribute funds towards the necessary right-of-way acquisitions. Improvements are limited to those that do not negatively impact the State's ability to meet the conformity requirements of the Clean Air Act.

DeIDOT's use of this authority is limited to areas where the State's own land use policies support the type and scale of the proposed development. As part of the approval process for transportation improvements built pursuant to this authority, DeIDOT is required to consult with area representatives of state and local government. DeIDOT retains the discretionary authority to use the provisions of Section 507 and its implementing regulations, or to decide not to make use of this authority in a given instance.

**2.0 Relationship to Strategies for State Policies and Spending**

Delawareans are concerned about the threat of sprawl, traffic congestion, loss of farmland and open space, diminished air and water quality, and a shortage of affordable housing.

Strategies for State Policies and Spending was adopted by Governor Ruth Ann Minner and published by the Office of State Planning Coordination to coordinate land use decision-making with the provision of infrastructure and services in a manner that makes the best use of Delaware's natural and fiscal resources. There are two fundamental policies that guide the State Strategies:

- State spending should promote quality, efficiency, and compact growth; and
- State policies should foster order and resource protection, not degradation.

Strategies for State Policies and Spending includes a map that serves as a graphic representation of the areas favored for growth. The map depicts four investment levels, of which the first three are appropriate locations for the application of these regulations: Level 1, Level 2, and Level 3. Level 3, however, is intended for longer term phased growth or land preservation. For a full description of the investment levels as well as the map, please visit: [www.state.de.us/planning/strategies](http://www.state.de.us/planning/strategies). The strategies of the State's Livable Delaware initiative build on the foundation laid by the Strategies for State Policies and Spending. They are intended to encourage growth in areas that the State has agreed are most appropriate for and capable of accommodating this growth in an efficient and

cost-effective manner, with a focus on existing communities and growth areas. Through these regulations, detailed herein, DeIDOT is empowered to secure right-of-way for roadway improvements that are consistent with and support this key objective of Livable Delaware.

### **3.0 Regulatory Procedures**

The construction of the necessary transportation improvements may occur in one of the following two ways:

Alternative One: DeIDOT shall enter into an agreement with the entity seeking development approval whereby they assume direct responsibility for the planning, design, construction, and inspection of off-site improvements. The agreement must include terms giving DeIDOT appropriate provisions for quality assurance and quality control. This is the preferred alternative.

Alternative Two: If DeIDOT determines that the aforementioned agreement is not feasible and practical, DeIDOT may assume responsibility for the scheduling, planning, design, construction, and inspection of the off-site improvements as a DeIDOT project. The following include, but are not limited to, reasons that may cause DeIDOT to assume responsibility for the project:

- The project is particularly complex. The project will still be wholly funded by the entity seeking development approval.
- The project is already in the DeIDOT's CTP, planning and design are complete, but right-of-way has not been acquired. The developer shall contribute funds towards the necessary right-of-way acquisition and be responsible for any additional costs incurred as a result of the portion of the project being modified.

#### **3.1 Project Eligibility**

If a project is not in DeIDOT's CTP and found to need right-of-way, it may be eligible for Alternative One. In order to be eligible, the improvements must be offsite (non-entrance and outside the limit of construction at the entrance) and must meet all of the following conditions:

- The development project for which the improvements are required must
  - Be consistent with the local comprehensive plan;
  - Be consistent with Strategies for State Policies and Spending, including location in a Level 1, 2, or 3 State Strategy investment area; and
  - Be in conformance with the requirements of the Clean Air Act (CAA) regulations.
- The need for the transportation improvement project must be documented and confirmed during the land use process prior to the developer receiving preliminary plan approval from the local land use agency.

The need and eligibility are confirmed through completion of the following checklist:

#### **Fig.A.1 Transportation Improvement Checklist**

<u>Preliminary Plan Approval</u>	<u>Yes</u>	<u>No</u>
<u>Consistent with Comprehensive Plan</u>	<u>Yes</u>	<u>No</u>
<u>State Strategies Level 1, 2, or 3 Investment Area</u>	<u>Yes</u>	<u>No</u>
<u>In conformance with Clean Air Act Regulations</u>	<u>Yes</u>	<u>No</u>

When the project has been found to be eligible, DeIDOT may still choose to defer or deny advancement of the project. Project deferral may be considered in cases where a project is located in an active transportation study area, or in an area where a study is about to be initiated, where the results could have a significant impact on or eliminate the need for the subject project.

Project denial may be considered in cases where the project would cause abutting property to lose access or be reduced in value to the extent that it would be rendered economically un-viable. Deferral or denial under these

conditions shall be at DeIDOT's discretion.

### 3.2 Plan Preparation

Plan preparation for preliminary engineering and final design of transportation improvements (also known as "construction plans") shall be in accordance with Section 4.5 of the *Standards and Regulations for Subdivision Streets and State Highway Access Manual*.

Right-of-Way (ROW) plans shall be in accordance with *DeIDOT's Right-of-Way Manual*. Additionally, right-of-way shall be verified through deed research and examination of plot plans. *The Standards and Regulations for Subdivision Streets and State Highway Access* contains the right-of-way plan checklist.

### 3.3 Public Input Process

Public input for land development is most critical during the exploratory sketch plan phase of the land use process at the local land use agency. During the design of transportation improvements, DeIDOT will solicit public input in a formal setting and provide information such as the implementation process, maintenance and protection of traffic (MOT), and potential impacts (e.g. travel time charts showing different alternative routes and project showing how long the public will be inconvenienced).

DeIDOT's Public Involvement Policy O-03 illustrates the range and levels at which the public has an opportunity to participate in the planning process. This policy states that public involvement processes shall be proactive and provide complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement. DeIDOT shall consult with state and local governmental representatives once the concept plan is submitted. DeIDOT is committed to educating the public about transportation issues, services and projects, as well as soliciting information, reaching consensus, and providing a way for the general public to express their needs, ideas, concerns, and perspectives relating to the transportation system.

Public input under this road improvement process shall be in accordance with DeIDOT's Public Involvement Policy O-03.

Regardless of whether a developer or DeIDOT takes the lead in making the transportation improvement, a minimum of one public meeting is required. One meeting shall be held after preliminary plan review. The need for other meetings, for example showing implementation and maintenance of traffic, will be determined by DeIDOT and included in the agreement between DeIDOT and the entity seeking development approval. The scope of the meeting can vary, depending on the impacts of the proposed transportation improvements. All adjacent property owners shall be notified in writing 14days prior to the public meeting, and offered an opportunity to comment. A notice shall be placed in a local newspaper of general circulation advertising the public meeting as well as an estimate of how long and to what extent the public will be affected by the project.

### 3.4 Review Process

The developer's engineer shall prepare and submit to DeIDOT for review and approval all construction plans, right-of-way plans, specifications, and estimates for the project. The design of roadway improvements shall be in accordance with the latest standards published by the American Association of State Highway and Transportation Officials (AASHTO), *DeIDOT's Road Design Manual*, *DeIDOT's Standards and Regulations for Subdivision Streets and State Highway Access*, and the *Manual on Uniform Traffic Control Devices (MUTCD)*. Where conflicts exist, DeIDOT's Road Design Manual shall take precedence.

The plan submissions will be required to undergo separate reviews for construction and right-of-way plans:

- The construction plan submission will consist of a preliminary, semi-final, and final (or contract) plan submission. The submittals shall include design plans, specifications and cost estimates for construction of the project.
- The right-of-way plan submissions shall include a semi-final and final plan submission.

The developer's engineer shall establish review dates with concurrence from DeIDOT for construction and right-of-way plans. He or she shall also coordinate with the utility companies to determine existing utility locations and possible relocations.

Existing deeds and plot plans shall be acquired to establish and verify the existing right-of-way. The engineer shall attest to the right-of-way shown on the plans.

The engineer will work through DeIDOT's Development Coordination Section and the Pavement Management Section for pavement evaluation and design verification. This may include the need for pavement cores and subgrade soils analysis.

The engineer will work with DeIDOT's Design Services for hazardous material and/or contaminated site delineation. The engineer shall prepare, apply for, and obtain all necessary permits and environmental or historic documentation required by federal, state, and local authorities. Copies of the permits and supporting documentation shall be provided to DeIDOT prior to a Notice to Proceed being issued for construction of the project.

### 3.4.1 Inspection

Depending on the size and impact of the project on the abutting state-maintained roadway, the level of inspection will vary. Off-site improvement project inspection shall be in accordance with Section 6.6 of the Standards and Regulations for Subdivision Streets and State Highway Access Manual

### 3.5 Real Estate Process

DeIDOT's Real Estate right-of-way acquisition process can be used to secure roadway improvements triggered by development. Land acquisition shall be in accordance with DeIDOT's most current Real Estate Management Manual. DeIDOT engages the property owners and tenants in a process of notification, appraisal, and negotiations.

Based on the complexity, DeIDOT's Real Estate Section will determine whether an appraisal is necessary or if a valuation waiver can be used. In instances where temporary access to a property is required, DeIDOT shall determine the lease value of the property for the duration of the project.

#### Process Steps:

3.5.1 Notification: property owners and tenants will be notified in one or both of the following ways: they will be contacted by a DeIDOT Real Estate representative or notified of public workshops.

3.5.2 Valuation: property owners will receive fair market value for any land and/or buildings they are required to sell. A qualified, licensed independent appraiser may complete the appraisal, which is approved by an independent authority (DeIDOT). Property owners may, at their own cost, obtain their own appraisal.

3.5.3 Negotiations: a DeIDOT Real Estate representative will contact the property owner with a plan showing the amount of land needed and written confirmation of the amount of compensation being offered. The property owner will be given 60 calendar days to consider the offer. If the offer is accepted, both parties (DeIDOT and the seller) sign a binding contract and settlement is held.

3.5.4 Acquisition: A deed of conveyance is signed over when the check is delivered at settlement. If the fair market value offer is not accepted, state law recognizes the right of the property owner to refuse the purchase offer and to have the value of the property established through the courts utilizing DeIDOT's power of eminent domain.(the right of the government to acquire private property for public use). That approach will only be used as an action of last resort.

### 3.6 Design and Construction Administration

#### 3.6.1 Alternative One

The developer shall hire a registered engineering firm possessing a Certificate of Authorization for all offsite improvement projects. If the developer designs the transportation improvements (Alternative One), the developer shall provide DeIDOT with 100% of the right-of-way costs upon completion of the preliminary engineering and final determination of right-of-way. DeIDOT will acquire the determined right-of way in accordance with the real estate process in section B.3.5 and DeIDOT's Real Estate Management Manual.

The developer shall hire a qualified contractor as determined by DeIDOT to implement the identified improvements.

The developer shall also enter into a construction inspection agreement with a firm currently under contract to provide such services with DeIDOT.

#### 3.6.2 Alternative Two

If DeIDOT designs and constructs the transportation improvements (Alternative Two), the developer shall provide DeIDOT with a certified check for the estimated total cost of preliminary engineering and final design costs as approved by DeIDOT. The design fee shall be paid to DeIDOT upon final determination of the required improvements and at the same time as final site plan and preliminary entrance plan is submitted for

DeIDOT's review and approval.

Prior to DeIDOT acquiring right-of-way for the offsite improvements, the developer shall provide DeIDOT with security in the amount of 100% of the estimated final construction and right-of-way acquisition costs as approved by DeIDOT. DeIDOT shall issue a Notice to Proceed (NTP) for the construction after the right-of-way acquisition is completed.

The following forms of security shall be acceptable:

- Surety Bond issued by a bonding company licensed in Delaware.
- Commercial letter of credit issued by a lending institution licensed in Delaware.
- Certified check with escrow agreement.

These regulations address the identified need for transportation improvements triggered by new development in cases where such improvements would not otherwise be possible due to right-of-way constraints. In addition to providing a process for meeting a public transportation need, these regulations also establish under what conditions this process may be utilized in support of land use and transportation infrastructure coordination.

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**Symbol Key**

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

**Final Regulations**

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

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

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**DEPARTMENT OF AGRICULTURE  
HARNESS RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 10000 (3 Del.C. §10000)  
3 DE Admin. Code 501

**ORDER****501 Harness Racing Rules and Regulations**

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 January 17, 2006, the Commission makes the following findings and conclusions:

**SUMMARY OF THE EVIDENCE**

1. The Commission posted public notice of the proposed amendments in the January 1, 2006 *Register of Regulations* and for two consecutive weeks in the Delaware Business Review and Delaware State News. The Commission proposed to change rule 8.9.15.2.1 to clarify the testing procedure for TCO2.

2. The Commission received no written comments during January 2006. The Commission held a public hearing on January 17, 2006 and received public comments from Sal DiMario, Steven Warrington, Dr. Kim Fincher, and Fred Hertrich. Mr. DiMario asked for clarification on language of the rule. Mr. DiMario felt if there is a need for the second sample to be taken and tested, that intent should be stated. Mr. Warrington protested, as he felt Dr. Soma's evaluation of the use of the vacutainer syringe was incorrect. Dr. Fincher said we have been through this discussion before and have followed Dr. Soma's recommendation, which is that the vacutainer does not affect the level of the base excess. Fred Hertrich asked for further clarification on the current procedure; Dr. Fincher explained that the horseman is notified and can watch the second sample be tested, due to the temperature issue.

Mr. Hertrich suggested this procedure be inserted in the rule.

#### FINDINGS OF FACT AND CONCLUSIONS

3. 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.

4. The Commission has considered the public comments at the January 17, 2006 hearing. The Commission does not find those comments require further revisions of the proposed rules. The Commission finds that the new rule 8.9.15.2.1 clarifies the procedures currently in place at the track, and brings the written rule in line with the original intent of the testing procedure.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on March 1, 2006.

IT IS SO ORDERED this \_\_\_\_\_ day of February, 2006.

Beth Steele, Chair  
Robert L. Everett, Commissioner  
Mary Ann Lambertson, Commissioner  
George P. Staats, Commissioner  
Kenneth Williamson, Commissioner

\* Please note that no changes were made to the regulation as originally proposed and published in the January 2006 issue of the *Register* at page 1031 (9 DE Reg. 1031). Therefore, the final regulation is not being republished. Please refer to the January 2006 issue of the *Register* or contact the Harness Racing Commission.

A complete set of the rules and regulations for the Harness Racing Commission are available at: <http://www.state.de.us/research/AdminCode/title3/500/index.shtml#TopOfPage>

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

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

### ORDER

#### 2000.6 Supplemental Applications

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Cash Assistance and Food Stamp Programs. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10113 and its authority as prescribed by 31 Delaware Code Section 512.

#### NATURE OF THE EXEMPT REGULATION:

#### Citations

- 29 Del.C. §10113, *Adoption of Regulations; Exemptions*

- Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193)

**Summary of Proposed Changes**

The purpose of this amendment is to update the policy at DSSM 2000.6, *Supplemental Applications*. DSS is not changing existing policies or procedures, but clarifying the DSSM to revise a misleading statement about when to add new individuals to existing households. The changes for clarification and process purposes include removing language and correcting grammatical errors.

**FINDINGS OF FACT:**

The Department finds that these changes are exempt from the procedural requirements of the Administrative Procedures Act (Title 29 Chapter 101).

**THEREFORE, IT IS ORDERED**, that the proposed revision regarding clarification changes to the policies of the Cash Assistance and Food Stamp Programs be adopted informally as an exempt regulation and shall become effective March 10, 2006.

Vincent P. Meconi, Secretary, DHSS, 2/14/06

**DSS EXEMPT REGULATION #06-07  
REVISIONS:****2000.6 Supplemental Applications**

For cash assistance cases in which an individual is being added to an existing open assistance unit, add the person to the unit effective the date that the new member was reported to DSS. A separate face-to-face interview will not be required, but when adding the individual review eligibility factors such as income, resources, and relationship. DSS will verify that the individual resides in the home. DSS will add the individual to the most recent application with a note listing the date of report. A prorated supplemental cash assistance benefit will be issued effective the date the person was added to the assistance unit.

When an individual is being opened in a new assistance unit, the payee will need to add that person to the most recent application. In this case, the signature of the payee on the application will be required. DSS will review the application for eligibility. A prorated cash assistance benefit will be issued from the date the individual was opened.

Adding newborns to the assistance unit is effective the date of the child's birth whether or not the payee needs to resign the most recent application.

Example: Mrs. Jones is open in an A1 case with her two children. On 5/15<sub>1</sub> she reports that she had a baby born on 5/14. DSS will add the baby to the most recent application and request verification for eligibility. The baby is added to her A1 case effective 5/14. A TANF supplement is issued from 5/14 - 5/31. The Food Stamp supplement is issued from 5/1 - 5/31.

Example: Mrs. Jones is open in an A1 case with two of her children. On 6/13<sub>1</sub> she reports that her 14 year old son is no longer living with his father but living with her. DSS will add her son to the most recent application and review for eligibility. Her son is added to the TANF assistance unit and the Food Stamp household effective the date of report which is 6/13. A TANF supplemental benefit is issued from 6/13 - 6/30. The Food Stamp supplement is issued from 6/1 - 6/30.

Example: Mrs. Jones and her children are open in an A1 case. On 3/23<sub>1</sub> she reports that her niece is now living with her. DSS will set up an A2 case for her niece with Mrs. Jones as payee. DSS will add the niece to the most recent application. DSS will need to review eligibility factors and have Mrs. Jones resign the application. The effective date of the cash assistance benefit is when the eligibility factors have been reviewed, verified, and the application has been signed by Mrs. Jones.

For Food Stamps, add the individual to the household effective the ~~date~~ first of the month in which the new household member was reported to DSS. ~~However, a~~ A full supplement is issued for the month a new household member is added to the food stamps. Food Stamp supplements cannot be prorated during a certification period. DSS will need to verify eligibility factors even though a new application and signature by the payee is not required.

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**DIVISION OF SOCIAL SERVICES**

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

**ORDER****2014.1 Definitions; 3001 Definitions****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding case processing procedures. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10113 and its authority as prescribed by 31 **Delaware Code** Section 512.

**NATURE OF THE EXEMPT REGULATION:****Citations**

- 29 **Del.C.** §10113, *Adoption of Regulations; Exemptions*
- Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193)

**Summary of Proposed Changes:**

The purpose of this amendment is to update the policies at DSSM 2014.1, *Definitions: Budgeting Procedures for TANF, GA, RCA, FS*, and DSSM 3001, *Definitions: Technical Eligibility for Cash Assistance*. DSS is not changing existing policies or procedures. The changes for clarification and process purposes include removing language, renumbering, correcting grammatical and typographical errors.

**FINDINGS OF FACT:**

The Department finds that these changes are exempt from the procedural requirements of the Administrative Procedures Act (Title 29 Chapter 101).

**THEREFORE, IT IS ORDERED**, that the proposed revision regarding clarification changes to the policies of case processing procedures be adopted informally as an exempt regulation and shall become effective March 10, 2006.

Vincent P. Meconi, Secretary, DHSS, 2/14/06

**DSS EXEMPT REGULATION #06-08****REVISIONS:****2014.1 Definitions**

The following definitions are applicable to this section:

1. Prospective budgeting means to determine eligibility or to compute the benefit level for a payment/

issuance month based on the Division's best estimate of income and circumstances which will exist in that month. The worker will base the estimate on the Division's reasonable expectation and knowledge of current, past, or future circumstances verified through the employer, recent ~~pay stubs~~ pay stubs, award letters, the applicant or other income source.

2. Budget month means the calendar month for which the Division uses income or circumstances to compute the amount of the benefit.

NOTE: In prospective budgeting, the budget month and the payment/issuance month are the same.

3. Payment/issuance month means the calendar month for which benefits are paid.

4. Beginning/initial month means those months at initial application in which benefits may be calculated differently than on-going months.

A month in which an applicant household is determined eligible and would have received a benefit except for the \$10 restriction will be a benefit considered as an initial month.

A month is in which an applicant household is ineligible for the month of application, but eligible for the following month, will not be counted as an initial month for food stamps or TANF/GA.

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

### **3001 Definitions**

The following words and terms, when used in the context of these policies, will, unless clearly indicated otherwise, have the following meanings:

~~BA.~~ Benefits (Non-Time-Limited) - the receipt of TANF benefits that are not subject to a time limitation.

Benefits (Time-Limited) - the receipt of TANF benefits for a limited period of time.

~~GB.~~ Caretaker (Needy) - a parent or non-parent included in the grant who is caring for a needy child. Needy caretakers are required to comply with the CONTRACT OF MUTUAL RESPONSIBILITY to receive benefits. Needy caretakers are subject to the time limit requirements.

Caretaker (Non-needy) - a non-parent, not included in the grant, who is caring for a needy child. Non-needy caretakers are required to comply with the CONTRACT OF MUTUAL RESPONSIBILITY to receive benefits. Non-needy caretakers are not subject to the time limit requirements. These caretakers will receive benefits under the Children's Program.

~~DC.~~ Children's Program - the name of the agency's program for persons who receive non-time-limited benefits. Persons in this program are not subject to the usual time limits for the receipt of benefits. However, persons in this program must comply with a non-work-related CONTRACT OF MUTUAL RESPONSIBILITY, e.g., participation in parenting classes, school attendance for the child or immunizations as necessary.

D. Contract Of Mutual Responsibility - an agreement between the TANF client and the agency which sets obligations and expectations between the TANF client and agency in exchange for benefits.

E. Cumulative Months - the total number of months, not necessarily consecutive months, which make up a particular time period.

~~F. Demonstration Project - another way to refer to the new welfare program prior to it becoming "TEMPORARY ASSISTANCE TO NEEDY FAMILIES."~~Delaware's Temporary Assistance for Needy Families (TANF) Program - the title of Delaware's welfare reform program.

G. Employable - the ability to engage in activities necessary to acquire and retain a job, at a wage level at least equal to the minimum wage; an employable person is physically and mentally able to participate in employment or activities necessary to seek and obtain employment, e.g. job search, job training, job readiness, etc. While an individual is employable the receipt of benefits is time-limited.

H. Employment (Subsidized) - a public or private sector job for which the employer receives a grant or allotment to pay all or a portion of the employee's wage.

Employment (Unsubsidized) - a public or private sector job for which the employer receives no grant or allotment to pay either all or a portion of the employee's wage.

I. Good Cause - An adult recipient may have legitimate reasons for not cooperating either in the development of the Contract of Mutual Responsibility or the requirements as set forth in the Contract. The adult

recipient has "good cause" when either a circumstance or condition exists in either her/his personal or family situation beyond which she/he has no control, and which would prevent cooperation and/or participation.

Good cause for quitting a job would include but not necessarily be limited to:

- On the job discrimination;
- Health and/or safety risk.

J. H.B. 251 (1995) - House Bill 251 established the Delaware Welfare Employment Program. This is a program where the agency places TANF clients in jobs with local employers while subsidizing the client's salary up to the State's minimum wage for a maximum of six months.

JK. Pay After Performance - A work experience program required for families with employable adults where the adult has not found employment or has lost a job. Families who were continuously on TANF prior to 01/01/2000 will have 24 months before being required to enter into this program. Families reapplying on or after 01/01/2000 will immediately enter this program. Participants will work to earn TANF benefits.

L. Sanction - a financial penalty for TANF client's failure or refusal without good cause to meet her/his work requirements. If the client refuses or fails to meet work related requirements (job search, training, etc.) or quits a job without good reason, for the 1st offense the penalty is 1/3 reduction of the grant; the second offense is a 2/3 reduction; and the 3rd is permanent loss of the entire grant. If the TANF client refuses or fails to attend a Contract of Mutual Responsibility requirement (e.g., participate in parenting education) the penalty is a \$50.00 reduction in the grant for each month the client refuses or fails to participate.

KM. Suitable Employment - employment that provides income at least equal to the payment standard after deduction of work expenses, the TANF work deduction and child care as paid, and provides wages at least equal to the minimum wage. Individuals will be expected to work at jobs that are below their skill levels, if such positions provide the only available employment.

LN. Two Parent Program - able-bodied parents and their children who meet the standard of need and all TANF eligibility requirements, except deprivation, will be eligible for cash benefits. Eligibility for this program is based on need; there is no deprivation requirement. Cash benefits are time limited and both parents must comply with a Contract of Mutual Responsibility.

When one parent in an intact family is incapacitated, the family should not be placed in the two-parent program.

MO. Unemployable - the inability to engage in activities necessary to work for at least the minimum wage; the person is prohibited because s/he is physically or mentally disabled. An unemployable individual cannot participate in employment or activities necessary to seek and obtain employment, e.g., job search, job training, job readiness, etc.

The determination and duration of unemployability are made by a health care professional (e.g., doctor, nurse, nurse practitioner, therapist, etc.). Periods of unemployability are not counted toward the cumulative months of benefit eligibility under the time-limited program.

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## DIVISION OF SOCIAL SERVICES

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

### ORDER

#### 3006.4 TANF Employment and Training Activities Which Constitute Participation Under TANF

##### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding changes to Delaware's Temporary Assistance for Needy Families (TANF) Employment and Training policies. 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 January 2006 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2006 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**Summary of Proposed Change:**

**Citation:**

- Senate Bill 101, 140<sup>th</sup> General Assembly: Delaware Welfare Reform Education and Training Assistance Act

**Background:**

Senate Bill 101, effective July 2, 1999, allows participants in Delaware's Temporary Assistance for Needy Families (TANF) program to engage in secondary education, post-secondary education, and vocational training as part of the work activity requirement. The participants in this program must be enrolled as full-time students, must be students in good standing, and will be required to have a combination of credit hours and work hours equaling at least 20 hours per week while they are in school. Participants must attend accredited or approved programs and will receive the same support services while in school, such as child care and transportation, as do other TANF participants. By enabling TANF participants to pursue secondary education, post-secondary education, and vocational training, Delaware will create a workforce that is more financially stable and less likely to need public assistance again, while at the same time increasing its tax revenue as these same people earn higher wages.

**Summary of Proposal:**

DSSM 3006.4, *TANF Employment and Training Activities Which Constitute Participation Under TANF* is updated to include 1.5 hours of study time for each credit hour in the calculation of participation for students who are attending education or training classes and do *not* meet the Blevins Bill requirements in section 3006.6. This change will help TANF E&T students meet their required participation.

**Summary of Comments Received With Agency Response**

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observation.

The regulations propose to add an authorization to count study time. TANF is an important program for low-income persons with disabilities and since this initiative will foster vocational studies, facilitate acquisition of college degrees, and support implementation of the Ticket to Work Act, Council **strongly endorses** the proposed regulation.

**Agency Response:** DSS thanks the Councils for their endorsement.

**FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the January 2006 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual regarding changes to Delaware's Temporary Assistance for Needy Families (TANF) Employment and Training policies regarding students who do not meet the Blevins Bill requirements are adopted and shall be final effective March 10, 2006.

Vincent P. Meconi, Secretary, DHSS, 2/14/06

\* Please note that no changes were made to the regulation as originally proposed and published in the January 2006 issue of the *Register* at page 1033 (9 DE Reg. 1033). Therefore, the final regulation is not being republished. Please refer to the January 2006 issue of the *Register* or contact the Division of Social Services for additional information.

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**DIVISION OF SOCIAL SERVICES**

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

**ORDER****4002.2 Available Resources; 4002.5 Excluded Resources****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the rules in the Division of Social Services Manual (DSSM) used to determine eligibility for cash assistance as it relates to the special Education and Business Investment Accounts (EBIAs). 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 January 2006 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2006 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**Citation:**

- Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996

**Background:**

In addition to the current resource limit, families are allowed to establish special Education and Business Investment Accounts (EBIAs) of up to \$5,000.00, including interest. Families contribute directly to their EBIA's. Funds in such accounts are not considered as a resource. Withdrawals from such accounts must be for approved purposes, as defined in TANF. If funds are withdrawn for non-approved purposes, the money will be counted as a resource in the month received. Approved reasons for withdrawal of funds for self-sufficiency needs include, but are not limited to dependent care expenses, security deposit for an apartment or house, or vehicle repair costs.

**Summary of Proposal**

DSSM 4002.2, *Available Resources* and DSSM 4002.5, *Excluded Resources*: Language is revised and new language is added:

- To reiterate that EBIA's up to \$5000 are excluded for TANF;
- To clarify that Saving for Education, Entrepreneurship and Down payment (SEED) accounts are considered EBIA's; and,
- To clarify that SEED accounts are excluded as a resource for TANF, GA, or Food Stamps.

**SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE**

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations.

Since the resource exemption would facilitate independence and opportunities for vocational training, the

Councils **endorse** this proposed regulation. The only caveat is that DSS may wish to verify that the \$500,000 figure in Par. 14, line 2, is accurate. Perhaps, it should be \$5,000 based on other references in Par. 14.

**Agency Response:** The figure in Par. 14, line 2 should be \$5,000. This was a publication error. The final order text shows \$5,000. DSS thanks the Councils for their endorsement.

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

The Department finds that the proposed changes as set forth in the January 2006 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to the special Education and Business Investment Accounts (EBIAs) is adopted and shall be final effective March 10, 2006.

Vincent P. Meconi, Secretary, DHSS, 2/14/06

\* **Please note that no changes were made to the regulation as originally proposed and published in the January 2006 issue of the *Register* at page 1034 (9 DE Reg. 1034). Therefore, the final regulation is not being republished. Please refer to the January 2006 issue of the *Register* or contact the Division of Social Services for additional information.**

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

### **DIVISION OF AIR AND WASTE MANAGEMENT**

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.** Ch. 60)  
7 **DE Admin. Code** 1201

**Secretary's Order No.: 2006-A-0005**

#### **1201 Accidental Release Prevention Regulation**

Date of Issuance: **February 13, 2006**

Effective Date of the Amendment: **March 11, 2006**

#### **I. Background**

A public hearing was held on December 5, 2005, to receive comment on proposed amendments to the existing Delaware No. 1201 entitled, "Accidental Release Prevention Regulation". The Department is planning to amend the Delaware regulation pertaining to this matter to include the 1999, 2000, and 2004 amendments made by the Environmental Protection Agency (EPA) to the Accidental Release Prevention Requirements contained in Federal Rule 40 CFR Part 68. In addition, several minor changes and corrections are proposed for the "Additional Delaware Accident Release Prevention Provisions" contained in Section 6 of the Regulation. Specifically, this includes minor changes to the "Delaware only" lists, and simplifying the Delaware risk management plan submission requirements.

Of note is the fact that Federal amendments pertaining to this issue are already in effect, and this proposed Delaware amendment will have no impact on them. The main purpose of this proposed amendment is to correct the existing Delaware regulation, and to bring it into agreement with the most recent Federal rule changes.

In preparation for the hearing, a public workshop was held by the Emergency Prevention and Response Branch of the Department on September 29, 2005, at which time several minor comments were received and

addressed. At both the time of the hearing, and subsequent to the hearing (the record was held open through December 15, 2005 for public comment), the Department received no public comments or concerns about these proposed amendments. Following the close of the record on December 15, 2005, the Air Quality Management section of the Department confirmed in its memorandum to the Hearing Officer dated January 6, 2006 that no additional public comment had been received with regard to this matter. 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 Report to the Secretary dated February 10, 2006, and that report is expressly incorporated herein by reference.

## **II. Findings and Conclusions**

On the basis of the record developed in this matter, it appears that the Department has provided a sound basis with regard to the proposed regulatory action concerning the amendment to Regulation No. 1201. Furthermore, the Department provided the public with numerous opportunities to offer comments with respect to this issue, with both a workshop offered prior to the public hearing, and an additional period of time during which the record was left open subsequent to the hearing for any additional concerns or comments to be provided by the public, should anyone wish to contribute same.

## **III. Order**

It is hereby ordered that the proposed adoption of the amendment to Regulation No. 1201, "Accidental Release Prevention" should be promulgated in final form in accordance with the customary and established rule-making procedure required by law.

## **IV. Reasons**

The adoption of the proposed amendment will allow the inclusion of Federal amendments made in 1999, 2000, and 2004 by the EPA to the Accidental Release Prevention Requirements contained in Federal Rule 40 CFR Part 68, thereby bringing the existing Delaware regulation into overall agreement with the most recent Federal rule changes. Moreover, the amendments to existing Regulation 1201 will result in clarification for the benefit of owners and/or operators of facilities containing substance(s) on Delaware's designated list of extremely hazardous substances, and will assist the Department in furtherance of the policy and purposes of 7 **Del.C.**, Ch. 60.

John A. Hughes, Secretary

**\* Please note that no changes were made to the regulation as originally proposed and published in the November 2005 issue of the *Register* at page 696 (9 DE Reg. 696). Therefore, the final regulation is not being republished. Please refer to the November 2005 issue of the *Register* or contact the Division of Air and Waste Management for additional information.**

**DEPARTMENT OF STATE  
DIVISION OF PROFESSIONAL REGULATION**

Statutory Authority: 24 Delaware Code, Section 4006(a)(1) (24 **Del.C.** §4006(a)(1))  
24 **DE Admin. Code** 2930

**ORDER**

A public hearing was held on February 21, 2006 before the Council on Real Estate Appraisers after due notice was published in the *Delaware Register of Regulations* on January 1, 2006 (9 **DE Reg.** 1040 01-01-06) and two Delaware newspapers. The Council considered the proposed changes to the Rules and Regulations during its regularly scheduled meeting that followed. The proposed changes, in part, implement House Bill 73 of the 143<sup>rd</sup> General Assembly.

**Summary of the Evidence and Information Submitted**

Ben Henson, Executive Director, from The Appraisal Subcommittee, offered written comments in a letter dated February 13, 2006 which are summarized herein.

There are clerical changes necessary to 4.2.4 ('within' in lieu of 'with') and 7.1.1 ('its' in lieu of 'it'). In addition, the correct address of the Appraisal Foundation is 1155 15<sup>th</sup> Street, NW, Suite 1111, Washington, D.C. 20005. He requests changes in Regulation 2.0 **Appraiser Licensing and Certification.**

Proposed Regulation 2.3.2.1 should read "the seven (7) hour National USPAP Update Course, or its equivalent as determined through the AQB Course Approval Program or by an alternate method established by the AQB and"

Proposed Regulation 2.3.5 should read "Continuing education credit may be awarded for participation in field trips, conferences, and trade association meetings if those activities specifically relate to real estate appraisal education."

Current Regulation 2.3.7 should be replaced with "The Delaware Council on Real Estate Appraisers may approve the content of a distance education course after approval of the delivery mechanism is approved from one of the following sources:

2.3.7.1 AQB approved organizations providing approval of course design and delivery, such as the International Distance Education Certification Center (IDEC);

2.3.7.2 A college that qualifies for content approval and awards academic credit for the distance education course; or

2.3.7.3 A qualifying college for content approval with a distance education delivery program that approves the course design and delivery that incorporates interactivity;

No verbal comment was received at the public hearing.

**Findings of Fact With Respect to the Evidence and Information Submitted**

The Council finds that the proposed changes are necessary to implement House Bill 73 codified in Chapter 40 of Title 24 of the **Delaware Code.**

The published proposal will be modified to incorporate the changes recommended by the Executive Director of The Appraisal Subcommittee except that the Council retains the 8 hour limit in proposed 2.3.5. In addition, the clerical changes should be made as noted above to Regulations 4.2.4 and 7.1.1. The Council finds that the changes are non-substantive. Accordingly, the Council finds that further publication of the draft is not required.

**Decision and Effective Date**

The Council on Real Estate Appraisers hereby adopts the proposed Regulations as modified herein to be

effective 10 days after publication of this order in the Delaware *Register of Regulations*.

#### **Text and Citation**

The text remains as published in 9 **DE Reg.** 1040 (01-01-06) with the following substitutions:

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

2.3.2.1 the seven (7) hour National USPAP Update Course, or its equivalent as determined through the AQB Course Approval Program or by an alternate method established by the AQB, and

2.3.5 Continuing education credit may be awarded for participation in field trips, conferences, and trade association meetings, excluding travel time, that relate to real estate appraisal education, but for no more that eight (8) hours per licensure period.

2.3.7 The Delaware Council on Real Estate Appraisers may approve the content of a distance education course after approval of the delivery mechanism is approved from one of the following sources:

2.3.7.1 AQB approved organizations providing approval of course design and delivery, such as the International Distance Education Certification Center (IDECC);

2.3.7.2 A college that qualifies for content approval and awards academic credit for the distance education course; or

2.3.7.3 A qualifying college for content approval with a distance education delivery program that approves the course design and delivery that incorporates interactivity;

SO ORDERED THIS 21st day of February, 2006.

#### **COUNCIL ON REAL ESTATE APPRAISERS**

Donald E. West, Chair

Charles Witt, Vice Chair

George Fantini

Richard W. Bauermeister

Stephen R. Huston

#### **2930 Council on Real Estate Appraisers**

### **1.0 Application for Appraiser License or Certificate**

#### 1.1 Application

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

#### 1.2 Filing and Fees

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

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

1.2.2.1 Initial application and licensure for appraiser trainee license

1.2.2.2 Initial application and licensure for licensed real property appraiser license

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

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

1.2.2.5 Renewal fee

- 1.2.2.6 Duplicate license and certificate fee
- 1.2.2.7 Roster-fee
- 1.2.2.8 Federal Appraiser Registry fee
- 1.2.2.9 Letter of Good Standing
- ~~1.2.2.10 Copies of the Uniform Standards of Professional Appraisal Practice~~

1.2.3 Fees shall be made payable to the "State of Delaware," and mailed to the Delaware Council on Real Estate Appraisers, Cannon Building, Suite 203, 861 Silver Lake Boulevard, Dover, Delaware 19904. For further information, please contact the Administrative Assistant to the Council at (302) ~~739-4522~~ 744-4500.

**4 DE Reg. 1504 (3/1/01)**

## **2.0 Appraiser Licensing and Certification**

### 2.1 Qualifications for Appraiser Licensure and Certification

~~2.1.1 Applicants for certification as a state certified general or residential real property appraiser shall satisfy the qualification requirements stated in 24 Del.C. §2936, which adopts by reference "Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73, and any subsequent amendments thereto or any regulations promulgated thereunder" and "qualification criteria established by the Appraiser Qualifications Board of the Appraisal Foundation and any subsequent amendments thereto." A summary of the criteria set by the Appraiser Qualification Board (AQB) is available from the Division of Professional Regulation and designated "Informational Supplement to the Regulations." The Supplement is regularly updated by the Council but the most current information is available directly from the AQB whose address and website are provided on the Supplement. The qualifications for licensure or certification shall be the criteria established by the Appraisal Qualifications Board (AQB) of The Appraisal Foundation for:~~

- ~~2.1.1.1 certified general real property appraiser;~~
- ~~2.1.1.2 certified residential real property appraiser;~~
- ~~2.1.1.3 licensed real property appraiser; and~~
- ~~2.1.1.4 trainee real property appraiser.~~

~~2.1.2 Applicants for licensure as a State licensed real property appraiser shall satisfy the qualification criteria established by the Appraisal Qualifications Board of the Appraisal Foundation and any subsequent amendments thereto. A summary of the criteria set by the Appraiser Qualification Board (AQB) is available from the Division of Professional Regulation and designated "Informational Supplement to the Regulations." The Supplement is regularly updated by the Council but the most current information is available directly from the AQB whose address and website are provided on the Supplement.~~

~~2.1.3 Applicants for licensure as a state licensed appraiser trainee shall satisfy the qualification criteria established by the Appraisal Qualifications Board of the Appraisal Foundation and any subsequent amendments thereto. A summary of the criteria set by the Appraiser Qualification Board (AQB) is available from the Division of Professional Regulation and designated "Informational Supplement to the Regulations." The Supplement is regularly updated by the Council but the most current information is available directly from the AQB whose address and website are provided on the Supplement~~

~~2.1.2 A summary of the criteria set by the AQB is available from the Division of Professional Regulation and designated "Informational Supplement to the Regulations." The Supplement is regularly updated by the Council but the most current information is available directly from The Appraisal Foundation, [4029 Vermont Avenue, NW, Suite 900 1155 15th Street, NW, Suite 1111] Washington, DE 20005-[3517] or at [www.appraisalfoundation.org](http://www.appraisalfoundation.org).~~

~~2.1.3 Effective January 1, 2008 all applicants for certification or licensure must meet the 2008 qualifications criteria established by the AQB.~~

### 2.2 License and Certificate Renewal

2.2.1 In September of each odd numbered year, the Division of Professional Regulation will send renewal notices to the mailing address on file of all licensees and certificate holders. Certificates and licenses will expire on October 31st of each odd numbered year.

2.2.2 As a condition of renewal, all licensees and certificate holders, either resident or reciprocal, shall be required to satisfy the continuing education requirements set forth in rule 2.3 of this Section.

2.2.3 A licensee or certificate holder shall not perform appraisals after a license has expired. A licensee or certificate holder may renew a certificate or license within 12 months of its expiration. After 12 months, the individual must reapply as a new applicant.

2.2.4 A licensee or certificate holder may apply for inactive status for a period not to exceed 6 years if he or she is not performing appraisals in Delaware.

2.2.4.1 Persons with in an inactive license or certificate must complete the same continuing education requirement as active licensees or certificate holders. Evidence of completion is due at renewal as provide in Rule 2.3.

2.2.4.2 An inactive license or certificate can be reactivated by notifying the Council in writing.

## 2.3 Continuing Education

2.3.1 As a prerequisite to renewal, all licensees and certificate holders are required to present evidence of continuing education satisfactory to the Council according to the following schedule:

2.3.1.1 no continuing education is required for fewer than 12 months of licensure required;

2.3.1.2 fourteen (14) hours of continuing education are required after at least 12 months but fewer than 24 months of licensure; and

2.3.1.3 twenty-eight (28) hours of continuing education are required after 24 months of licensure.

~~2.3.2 As a prerequisite to renewal of all licensees and certificate holders, a seminar dealing with updating of Uniform Standards of Professional Appraisal Practice (USPAP) or a seminar dealing with USPAP shall be required in each license period. A minimum of four (4) hours will be required. The seminars must be approved by the Council. This provision will be superseded by the 7 hour National SUSPAP Update Course which will be required for any renewal after October 31, 2003. All licensees and certificate holders, except as provided in 2.3.1.1, must complete as a condition of each renewal:~~

2.3.2.1 the seven (7) hour National USPAP Update Course [or its equivalent as determined through the AQB Course Approval Program or by an alternate method established by the AQB]and

2.3.2.2 a two (2) hour course on Delaware Law, Rules and Regulations

2.3.3 Programs must be structured to maintain or increase an appraiser's skill, knowledge, and competency in real estate appraising. The following topics are appropriate but not exclusive:

2.3.3.1 Influences on real estate value

2.3.3.2 Legal consideration of appraisal

2.3.3.3 Types of value

2.3.3.4 Real estate markets and analysis

2.3.3.5 Valuation process

2.3.3.6 Property description

2.3.3.7 Highest and best use

2.3.3.8 Appraisal math & statistics

2.3.3.9 Sales comparison approach

2.3.3.10 Site value

2.3.3.11 Cost approach

2.3.3.12 Income approach

2.3.3.12.1 Estimation of income and expenses

2.3.3.12.2 Operating statement ratios

2.3.3.12.3 Direct capitalization

2.3.3.12.4 Cash flow estimates

2.3.3.12.5 Measures of cash flow

2.3.3.12.6 Discounted cash flow analysis

2.3.3.12.7 Gross rent multiplier analysis

2.3.3.13 Valuation of partial interests

2.3.3.14 Appraisal standards and ethics

2.3.3.15 Narrative report writing

2.3.3.16 Appraisal Statistical concepts

2.3.3.17 Ad valorem taxation

- 2.3.3.18 Arbitration
- 2.3.3.19 Business courses related to real estate appraisal
- 2.3.3.20 Development cost estimating
- 2.3.3.21 Ethics and standards of professional practice
- 2.3.3.22 Land use planning, zoning and taxation
- 2.3.3.23 Management, leasing, brokerage, timesharing
- 2.3.3.24 Property development
- 2.3.3.25 Real estate appraisal (valuations/evaluations)
- 2.3.3.26 Real estate financing and investment
- 2.3.3.27 Real estate law
- 2.3.3.28 Real estate litigation
- 2.3.3.29 Real estate appraisal related computer applications
- 2.3.3.30 Real estate securities and syndication
- 2.3.3.31 Real property exchange
- 2.3.3.32 Delaware law and regulations

2.3.4 Continuing education credit, up to 14 hours per licensure cycle, may also be granted for participation, other than as a student, in:

2.3.4.1 Teaching, including preparation time up to the number of hours spent teaching, for example, a 3 hour class can be submitted for 6 hours if the preparation time was at least 3 hours.

2.3.4.2 Program development

2.3.4.3 Authorship of textbooks

2.3.5 **[Continuing education credit may be awarded for participation in] F**field trips, conferences, and trade association meetings**;** ~~if those activities specifically relate to real estate appraisal education excluding travel time, that relate to real estate appraisal may qualify but for no more than either (9) hours per licensure period.]~~

2.3.6 A creditable hour is defined as fifty minutes out of each sixty minute segment. The educational offering must be at least two hours.

2.3.7 ~~[Distance learning courses may be approved by Council for content as long as the provider fulfils one of the following requirements: The Delaware Council on Real Estate Appraisers may approve the content of a distance education course after approval of the delivery mechanism is approved from one of the following sources:]~~

2.3.7.1 ~~[The course is presented in an instructional setting with a person qualified to answer questions, provide information, and monitor attendance; or AQB approved organizations providing approval of course design and delivery, such as the International Distance Education Certification Center (IDECC);]~~

2.3.7.2 ~~[The course is offered by an accredited college or university that offers distance learning in other disciplines or by an institution approved by the American Council on Education's program on Non-collegiate Sponsored Instruction. The student must successfully complete a written examination. If the examination is not required for accreditation, the student must complete the course mechanisms that demonstrate mastery and fluency; or A college that qualifies for content approval and awards academic credit for the distance education course; or]~~

2.3.7.3 ~~[The course has been certified for delivery and design by the International Distance Educations Certification Center (IDEC). A qualifying college for content approval with a distance education delivery program that approves the course design and delivery that incorporates interactivity;]~~

2.3.8 Educational offerings that have documented approval by the AQB or another state are automatically approved when they are submitted to the Council with a certificate of attendance. In cases where the educational offering has not been approved by the AQB or another state, either the provider or the appraiser must apply to the Council for approval using a form approved by the Council. Applicants seeking pre-approval must submit all required documentation 60 days before the scheduled offering.

2.4 Duplicate License or Certificate Fee

2.4.1 By submitting a written request to the Council and paying the appropriate fee as set by the Division

of Professional Regulation, a licensee or certificate holder may obtain a duplicate real property appraiser license, certificate or pocket card to replace an original license, certificate or pocket card which has been lost, damaged, destroyed, or if the name of the licensee or certificate holder has been lawfully changed. An official certified copy (~~notarized~~) of a marriage license, divorce decree or court order of a name change must accompany a request for a change of name.

#### 2.5 Federal Appraiser Registry

Licensees and certificate holders are required to be enrolled in the federal roster or registry of state licensed and state certified real property appraisers. The fee established for that purpose shall be paid biennially by the license or certificate holder to the State of Delaware.

**4 DE Reg. 1504 (3/1/01)**

**6 DE Reg. 1668 (6/1/03)**

### 3.0 Examination

#### 3.1 Examination

3.1.1 The Council shall review each application to determine whether the applicant is qualified under 24 Del.C. §4008 to sit for the examination. ~~Such review shall consider the applicant's education and whether the applicant has been convicted of a felony, substance abuse or fraud within the last five years preceding the date of application. If the applicant meets the education requirement for the license or certificate applied for and has not been convicted of a felony, substance abuse or fraud within the last five years preceding the date of application, the applicant shall be entitled to take the appropriate examination.~~

3.1.2 Applicants for licensure as a state licensed real property appraiser and for certification as a state certified residential or general real property appraiser shall successfully complete the examination as endorsed by the AQB and approved by the Council on Real Estate Appraisers. ~~The prerequisites to sit for the applicable examination are completion of the education/classroom hour requirement and not having been convicted of a felony, substance abuse or fraud within the five years preceding the date of the application.~~

3.1.3 The passing scores on the examinations shall be the scores recommended as passing by Assessment Systems, Inc., the successor agency or company then contracted by the Division of Professional Regulation for administering the examination as endorsed by the Council on Real Estate Appraisers.

**4 DE Reg. 1504 (3/1/01)**

### 4.0 General Appraisal Practice

#### 4.1 Administrative Responsibilities

4.1.1 A State licensed real property appraiser shall utilize the term "State licensed real property appraiser"; a State certified residential real property appraiser shall utilize the term "State certified residential real property appraiser"; and a State certified general real property appraiser shall utilize the term "State certified general real property appraiser" when performing and signing appraisals. The terms "certified" or "licensed" shall not be used in connection with appraisals or appraisers in any other form. A State licensed appraiser trainee shall use the term "State licensed appraiser trainee" or "appraiser trainee" and shall only co-sign appraisals along with a State licensed or State certified real property appraiser. Approved abbreviations are as follows:

DE Cert Gen followed by the certification number,

DE Cert Res followed by the certification number,

DE Lic Appr followed by the license number,

DE Appr Trainee followed by the license number.

4.1.2 The real property appraiser license or certificate of a State licensed or State certified real property appraiser shall be prominently displayed at the appraiser's place of business.

4.1.3 The biennial license or certificate renewal pocket card issued by the Council to each State licensed or State certified real property appraiser shall be retained by the licensee or certificate holder as evidence of licensure or certification.

4.1.4 When advertising or otherwise holding himself/herself out as a real property appraiser, a State licensed real property appraiser shall identify himself/herself as a "State licensed real property appraiser." A State certified residential real property appraiser shall identify himself/herself as a "State certified residential real property

appraiser". A State certified general real property appraiser shall identify himself/herself as a "State certified general real property appraiser." A State licensed real estate appraisal trainee shall identify himself/herself as a "State licensed real estate appraiser trainee."

4.1.5 Licensure or certification as a real property appraiser is granted only to persons and does not extend to a business entity. ~~A State licensed or State certified real property appraiser doing business as a partnership, association, corporation, or other business entity shall not represent in any manner to the public that the partnership, association, corporation, or other business entity is either licensed or certified by the State of Delaware to engage in the business of real estate appraising.~~

4.1.6 All licensees and certificate holders shall notify the Council in writing of each change of business address, residence address, or trade name within ten (10) days of said change. The address shall be sufficiently descriptive to enable the Council to correspond with and locate the licensee or certificate holder.

4.1.7 Each written appraisal report prepared by or under the direction of a State licensed or State certified real property appraiser shall bear the signature of the State licensed or State certified appraiser, the license or certificate number of the licensee or certificate holder in whose name the appraisal report is issued, and the appropriate title such as ~~"State licensed appraiser trainee"~~ (as co-signer only), "State licensed real property appraiser," "State certified residential real property appraiser," or the designation "State certified general real property appraiser," or the approved abbreviations as specified in Rule 4.1.1. Said certified or licensed appraiser shall be fully responsible for the content of the report prepared under his or her direction. Where applicable, each appraisal report shall also indicate whether or not the State licensed or State certified appraiser has personally inspected the property, and shall identify any other person who assists in the appraisal process other than by providing clerical assistance.

4.1.8 Each State certified or State licensed appraiser shall be responsible for the proper maintenance and retention of the appraisal records.

#### 4.2 Responsibilities of Supervisors of State Licensed Trainees

4.2.1 A state licensed appraiser trainee may assist in the completion of an appraisal report, including an opinion of value, and may co-sign an appraisal, provided that he/she is actively and personally supervised by a state certified or licensed real property appraiser, provided that the appraisal report is reviewed and signed by the state certified or licensed real property appraiser, and provided that the licensed or certified appraiser accepts total responsibility for the appraisal report. An appraiser trainee is permitted to have more than one supervising appraiser.

4.2.2 A state licensed or state certified real property appraiser may employ a person(s) as a state licensed appraiser trainee(s) to assist in the performance of real estate appraisals, provided that the state licensed or state certified real property appraiser:

4.2.2.1 Provides direct supervision of the state licensed appraiser trainee as defined in the Uniform Standards of Professional Appraisal Practice (USPAP); "Direct Supervision" means to:

- 4.2.2.1.1 personally inspect with the trainee the interior and exterior of each property appraised;
- 4.2.2.1.2 personally review each appraisal report prepared by the trainee;
- 4.2.2.1.3 accept full responsibility for the report;
- 4.2.2.1.4 assign work to the trainee only if the trainee is competent to perform such work; and
- 4.2.2.1.5 approve and sign the report as being independently and impartially prepared and in compliance with USPAP, these rules and regulations, and applicable statutory requirements;

4.2.2.2 Reviews all appraisal reports and supporting data used in connection with appraisals in which the services of a state licensed appraiser trainee is utilized;

4.2.2.3 Complies with all provisions of 4.1.7 regarding appraisal reports;

4.2.2.4 Reviews and approves ~~an~~ a trainee's experience log maintained pursuant to 4.3.2.2. The supervisor shall make available to the trainee a copy of any appraisal report that the trainee ~~signed~~ assisted in preparing that is requested for review by the Council;

4.2.2.5 Supervises no more than three (3) trainees whose application for exemption has not been approved by the Council pursuant to Rule 4.2.3. Beginning January 1, 2008, a supervising appraiser shall not supervise more than three trainees at one time regardless of their status concerning exemption;

4.2.2.6 Signs an affidavit affirming that he/she is a State licensed or certified Real Property Appraiser

and that he/she shall comply with all rules and policies regarding supervisory appraisers; and

4.2.2.7 Immediately advises the Council in writing when the certified or licensed appraiser is no longer supervising the trainee. The writing shall include the last known address of the appraiser trainee along with a copy of the letter from the supervisor to the trainee advising the trainee that his/her employment has been terminated or the letter of resignation from the trainee to the supervisor, whichever is applicable.

4.2.3 After the trainee ~~successfully completes seventy five (75) hours of education on real estate matters satisfactory to the Council, and~~ has obtained two hundred fifty (250) hours of residential appraising or one thousand (1,000) hours of non-residential appraising experience as defined by the Appraisal Qualifications Board in its appraisal qualifications criteria, the supervisor and the trainee may jointly apply to the Council on a form provided by the Council, for an exemption that would allow the supervisor to sign the report without inspecting the property as provided by Rule 4.2.2.1.1, provided the trainee is competent to perform the inspection.

4.2.4 Beginning January 1, 2008, any person who has been subject to disciplinary action within the preceding two years that affects the supervisor's legal eligibility to engage in appraisal practice shall not be eligible to supervise trainees.

#### 4.3 Responsibilities of State Licensed Appraiser Trainees

4.3.1 All appraiser trainees must be licensed as required under 24 **Del.C.** Ch. 29 40.

4.3.2 A State licensed trainee may assist in the performance of real estate appraisals provided that:

4.3.2.1 The trainee shall only work under the direct supervision of one or more State licensed or state certified real property appraiser(s); an individual who is no longer supervised shall not engage in the act of appraising until a new license is issued showing a new supervisor;

4.3.2.2 The trainee shall maintain an appraisal experience log on a form provided by the Council and certified by the supervising appraiser;

4.3.2.3 The trainee shall inspect the property and participate in the appraisal process in order to ~~sign the appraisal and to~~ receive experience credit for the hours spent. The appraisal shall be signed by the trainee as follows:

Assisted by:

\_\_\_\_\_, Trainee

Name: \_\_\_\_\_

License Number: \_\_\_\_\_

The trainee shall place on the "other" line in the signature section of the appraisal forms, his or her license # and the title "appraiser Trainee" in the appropriate places. For example:

"or other (describe) **Appraiser Trainee** State# **X4-xxx**"

4.3.2.4 The trainee shall ensure that the log is available at all times for inspection by the Council; and

4.3.2.5 When performing appraisal assignments, the trainee shall carry on his/her person the license issued by the Council.

#### **4 DE Reg. 1504 (3/1/01)**

### 5.0 Temporary Practice and Reciprocity

#### 5.1 Temporary Practice

The ~~Council~~ Division of Professional Regulation may grant temporary licensing or certification privileges to an appraiser licensed or certified in another state in accordance with ~~24 Del.C. §2935(a)~~ 24 Del.C. §4010.

#### 5.2 Reciprocity

The Council may grant a reciprocal license in accordance with ~~24 Del.C. §2935(b)~~ §4011 to applicants certified or licensed in another state whose requirements for certification or licensure are substantially ~~equivalent~~ similar to the State of Delaware ~~without being registered with and duly licensed or certified by the Council on Real Estate Appraisers.~~

**6.0 Guidelines for Qualifying Mass Appraisal Experience****6.1 Qualifying Mass Appraisal Experience**

6.1.1 ~~The Delaware Council on Real Estate Appraisers (“Council”) has developed an application for ad valorem tax assessors to apply mass appraisal experience toward licensure or certification. The application is different from the application for independent fee appraisers, and, therefore, the Council has prepared this document as supplemental explanation of the mass appraisal experience guidelines set forth in the Tax Assessor’s Application for Real Estate Appraiser License or Certificate. The State of Delaware under 24 Del.C. §2934(c), sets forth specifically:~~

~~“(c) The Council on Real Estate Appraisers is required to include in its regulations educational experience and testing requirements for licensure and certification of real estate appraisers that ensure protection of the public interest. Educational experience and testing requirements for certified and licensed appraisers must specifically meet the criteria established under Title XI of the Financial Institutions Reform Recovery Act of 1989, public Law 101-73, and any subsequent amendments thereto or any regulations promulgated thereunder. (67 Del. Laws, C. 381 ss1; 68 Del. Laws, c. 140, ss 5-7, 15.)”~~

6.1.2 Further, The Appraiser Qualifications Board of the Appraisal Foundation has issued as additional explanation “Interpretations/Clarifications” to accompany the qualifying criteria for appraiser licensure and certification, which specifically sets forth:

~~“Experience credit should be awarded to ad valorem appraisers who demonstrate that they (1) use techniques similar to those used by appraisers to value properties and (2) effectively use the appraisal process.~~

Qualifying mass appraisal experience must conform to USPAP Standard 6. Credit will be given for experience that demonstrates proficiency in appraisal principles, techniques, or skills used by appraisers practicing under USPAP Standard 1.

6.1.3 2 Components of the mass appraisal process that should be given credit are highest and best use analysis, model specification (developing the model), and model calibration (developing adjustments to the model). Other components of the mass appraisal process, by themselves, shall not be eligible for experience credit.

6.1.4 3 ~~Mass appraisals shall be performed in accordance with USPAP Standard 6.”~~ In order to evaluate the experience qualifications of ad valorem tax assessors with mass appraisal experience, the Council will review such applications considering the above - mentioned criteria, and shall review work samples for compliance with USPAP Standard 6. It is important to note that any individual appraisal reports prepared in conformity with USPAP Standards 1 and 2 are fully creditable as appraisal experience ~~using the hourly scheme set forth in the category for Full Appraisals in the Real Property Tax Assessor’s Application for Real Estate Appraiser License or Certificate.~~ Such reports are often prepared by ad valorem appraisers for defense of value work. Ad valorem appraisers are encouraged to apply for experience credit for full appraisals as well as for mass appraisal experience. An hour of experience is defined as actual verifiable time spent performing tasks in accordance with the Council Rules and Regulations. USPAP Standard 6 sets forth in detail the required work and the reporting of that work for ad valorem tax purposes. Unlike the fee appraiser who prepares and signs a report for each value estimate, the ad valorem appraiser typically prepares analyses and reports that support the appraisals for groups of properties. These efforts are focused on the specification and calibration of models (validation schedules) for these groups of properties.

6.1.5 ~~Mass appraisal experience hours are awarded for completing appraisals pursuant to the USPAP Standard 6. Currently, a minimum of 2,000 hours is required for all applicants for licensure, a minimum of 2,500 hours is required for all applicants for certified residential, and a minimum of 3,000 hours is required for all applicants for certified general, of which a minimum of 1,000 hours must be obtained in non-residential valuation if applying for the General Certification. The State of Delaware has the same qualification criteria as published by the Appraiser Qualifications Board of the Appraisal Foundation.~~

6.1.6 4 ~~As stated in the Real Property Tax Assessor’s Application for Real Estate Appraiser License or Certificate, a~~ Applicants seeking mass appraisal experience credit must demonstrate their experience using one of the following options:

6.1.6-1 4.1 Develop the mass appraisal system (model specification and calibration that includes highest and best use analysis) or;

6.1.6-2 4.2 Adjust an existing mass appraisal system to local market conditions (model calibration that includes highest and best use analysis).

6.1.7 5 Data collection for purposes of mass appraisal, defined as the on-site collection of property characteristics, is not by itself creditable as appraisal experience. However, as part of mass appraisal model specification and/or calibration, the applicant accepts responsibility for the accuracy of market (sales) data used to develop and/or calibrate the models. Therefore, it is important that the applicant have a working familiarity with the range of properties in the sales sample and thus creditable experience is allowed for sales verification work in conjunction with the mass appraisal model specification/calibration process.

6.1.8 6 The applicant must have a documented data collection manual that specifies how each property characteristic was measured. For each property characteristic that influences the final value for any property, a complete specification of the variable must be available in the mass appraisal model (schedule) documentation. This documentation must detail how each property characteristic influences value and it must provide a basis in terms of market evidence for using these characteristics.

6.1.9 7 If the applicant is using an existing mass appraisal system, either mass appraisal vendor supplied or a commercial cost service, documentation must exist which supports how the valuation system was calibrated to local market conditions. If the cost approach is used, documentation must exist which illustrates the extraction of depreciation schedules from local market analysis.

6.1.408 If the applicant develops the mass appraisal model (schedule) specification, evidence derived directly from the local market must be available that supports the use of each property characteristic. For property characteristics included in the model that have a marginal influence on value (items generally included for public relations purposes), such items should be specifically identified and their contribution to value detailed.

#### 6.2 Mass Appraisal Experience Log

6.2.1 Applicants seeking mass appraisal experience credit must complete the Mass Appraisal Experience Log on a form approved by the Council.

#### **4 DE Reg. 1504 (3/1/01)**

### **7.0 Standards of Appraisal Practice**

#### 7.1 Appraisal Standards

7.1.1 In performing the acts and services of a state licensed or state certified real property appraiser, every appraiser trainee, state licensed and state certified real property appraiser shall comply with those appraisal practice standards known as the "Uniform Standards of Professional Appraisal Practice" (USPAP) and any subsequent amendments thereto, promulgated by the Appraisal Standards Board of the Appraisal Foundation or [~~it~~ **its**] successor organization, which standards are hereby adopted by reference.

7.1.2 Copies of the "Uniform Standards of Professional Appraisal Practice" are available ~~upon request to The Appraisal Foundation, 1029 Vermont Avenue, N.W., Suite 900 Washington, D.C. 20005-3517 and are made available by the Council from time to time.~~ from The Appraisal Foundation, Distribution Center, P.O. Box 381, Annapolis Junction, MD 20701-09381. An electronic version is available from the Foundation Store at the website of The Appraisal Foundation at [www.Appraisalfoundation.org](http://www.Appraisalfoundation.org).

### **8.0 Complaints and Hearing Procedures**

#### 8.1 Complaints

The Council incorporates by reference the procedures for investigation of complaints by the Division of Professional Regulation as set forth in 29 **Del.C.** §8807.

#### 8.2 Hearing Procedures

8.2.1 All hearings shall be in accordance with the Administrative Procedures Act, 29 **Del.C.** §§10121-10129.

#### **4 DE Reg. 1504 (3/1/01)**

### **9.0 Public Disclosure**

#### 9.1 Public Notice

9.1.1 All meetings shall be convened in compliance with the Freedom of Information Act (FOIA) in 29 **Del.C.** Ch. 100.

#### 9.2 Meeting Minutes

Minutes shall be kept of all meetings in accordance with the Freedom of Information Act.

9.2.1 Said minutes shall include a record of those present.

9.2.2 The minutes shall also include a record by individual members, on each vote taken, as well as any action agreed upon.

9.2.3 It shall be the responsibility of the Council's Administrative Assistant to prepare said minutes and keep a copy on file with the Division of Professional Regulation.

#### 9.3 Council Records

9.3.1 It shall be the responsibility of the ~~Council's Administrative Assistant~~ Division of Professional Regulation to maintain the Council's records and to make them accessible to the general public.

9.3.2 ~~No citizen of the State of Delaware person~~ shall be denied reasonable access to the public records of the Council. Copies of records may be obtained from the Administrative Assistant at a cost per page as established by the Division.

9.3.3 ~~The Council shall not be obligated to disclose to the general public any matter which intrudes upon an individual's personal or private affairs which is not a public record in which the public has not legitimate interest. Records will be open to the public in reference to as provided in the Freedom of Information Act.~~

**4 DE Reg. 1504 (3/1/01)**

### 10.0 Change and Modification to Rules and Regulations

10.1 The Council may, change or modify these Rules and Regulations as provided in 29 **Del.C.** §§10111-10119.

**4 DE Reg. 1504 (3/1/01)**

### 11.0 Severability

11.1 ~~If any part of these rules and regulations is held invalid, unconstitutional or otherwise contrary to law, then it shall be severable and the remaining portions hereof shall remain and continue in full force and effect.~~

~~4 DE Reg. 1504 (3/1/01)~~

#### **Crimes Substantially Related to the Practice of Real Estate Appraisal.**

11.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of real estate appraisal in the State of Delaware without regard to the place of conviction:

11.1.1 Murder in the second degree; class A felony. 11 **Del.C.** §635

11.1.2 Murder in the first degree; class A felony. 11 **Del.C.** §636

11.1.3 Unlawful sexual contact in the third degree; class A misdemeanor. 11 **Del.C.** §767

11.1.4 Unlawful sexual contact in the second degree; class G felony. 11 **Del.C.** §768

11.1.5 Unlawful sexual contact in the first degree; class F Felony. 11 **Del.C.** §769

11.1.6 Rape in the fourth degree; class C felony. 11 **Del.C.** §770

11.1.7 Rape in the third degree; class B felony. 11 **Del.C.** §771

11.1.8 Rape in the second degree; class B felony. 11 **Del.C.** §772

11.1.9 Rape in the first degree; class A felony. 11 **Del.C.** §773

11.1.10 Continuous sexual abuse of a child; class B felony. 11 **Del.C.** §778

11.1.11 Dangerous crimes against a child. 11 **Del.C.** §779

11.1.12 Burglary in the third degree; class F felony. 11 **Del.C.** §824

11.1.13 Burglary in the second degree; class D felony. 11 **Del.C.** §825

11.1.14 Burglary in the first degree; class C felony. 11 **Del.C.** §826

11.1.15 Robbery in the second degree; class E felony. 11 **Del.C.** §831

11.1.16 Robbery in the first degree. 11 **Del.C.** §832

11.1.17 Theft; class G felony; class A misdemeanor. 11 **Del.C.** §841

11.1.18 Theft; lost or mislaid property; mistaken delivery. 11 **Del.C.** §842

11.1.19 Theft; false pretense. 11 **Del.C.** §843

11.1.20 Theft; false promise. 11 **Del.C.** §844

11.1.21 Theft of services. 11 **Del.C.** §845

- 11.1.22 Identity theft; class E felony; class D felony. 11 Del.C. §854
- 11.1.23 Endangering the welfare of a child; class E or G felony. 11 Del.C. §1102
- 11.1.24 Sexual exploitation of a child; class B felony. 11 Del.C. §1108
- 11.1.25 Unlawfully dealing in child pornography; class D felony. 11 Del.C. §1109
- 11.1.26 Sexual offenders; prohibitions from school zones. 11 Del.C. §1112
- 11.1.27 Sexual solicitation of a child; class C felony. 11 Del.C. §1112A
- 11.1.28 Bribery; class E felony. 11 Del.C. §1201
- 11.1.29 Receiving a bribe; class E felony. 11 Del.C. §1203
- 11.1.30 Perjury in the second degree; class F felony. 11 Del.C. §1222
- 11.1.31 Perjury in the first degree; class D felony. 11 Del.C. §1223
- 11.1.32 Making a false written statement; class A misdemeanor. 11 Del.C. §1233
- 11.1.33 Possession of a deadly weapon during commission of a felony; class B felony. 11 Del.C. §1447
- 11.1.34 Possession of a firearm during commission of a felony; class B felony. 11 Del.C. §1447A

11.2 Crimes substantially related to the practice of appraisal shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

## **12.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals**

12.1 If the report is received by the chairperson of the regulatory Council, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Council, or that chairperson's designate or designates.

12.2 The chairperson of the regulatory Council or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

12.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Council chairperson or that chairperson's designate(s).

12.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Council or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Council.

12.5 Failure to cooperate fully with the participating Council chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Council chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

12.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

12.6.1 Entry of the regulated professional into a treatment program approved by the participating Council. Council approval shall not require that the regulated professional be identified to the Council. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated

professional's progress.

12.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Council or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Council or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

12.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

12.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Council, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Council in addition to the administrative costs associated with the Voluntary Treatment Option.

12.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Council's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

12.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

12.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Council may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

12.8 The participating Council's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

12.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

12.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Council shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

12.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

12.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Council's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

**4 DE Reg. 1504 (3/1/01)**

## DEPARTMENT OF STATE PUBLIC SERVICE COMMISSION

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

### ORDER NO. 6839

IN THE MATTER OF THE SALE, RESALE, AND  
OTHER PROVISIONS OF INTRASTATE  
TELECOMMUNICATIONS SERVICES (OPENED  
MAY 1, 1984; REOPENED NOVEMBER 17, 1998;  
REOPENED JULY 24, 2001; REOPENED  
AUGUST 9, 2005)

PSC REGULATION DOCKET NO. 10

IN THE MATTER OF THE DEVELOPMENT OF  
REGULATIONS FOR THE FACILITATION OF  
COMPETITIVE ENTRY INTO THE  
TELECOMMUNICATIONS LOCAL EXCHANGE  
SERVICE MARKET (OPENED NOVEMBER 21, 1995;  
REOPENED NOVEMBER 17, 1998;  
REOPENED JULY 24, 2001;  
REOPENED AUGUST 9, 2005)

PSC REGULATION DOCKET NO. 45

**AND NOW**, to-wit, this 7<sup>th</sup> day of February, 2006, the Commission having received and considered the Findings and Recommendations of the Hearing Examiner previously designated in the above-captioned matters, and which Findings and Recommendations were submitted after a duly noticed public evidentiary hearing;

**AND WHEREAS**, the Hearing Examiner recommends approval of the proposed amendments to Rules 4 and 10 of the "Rules for the Provision of Telecommunications Services," upon consideration of the evidence in the record;

Now, therefore, **IT IS ORDERED**:

1. That the Commission hereby adopts and approves in its entirety the Findings and Recommendations of the Hearing Examiner, which is attached hereto as Exhibit "A."
2. That the Commission adopts the proposed amendments to Rules 4 and 10 of the "Rules for the Provision of Telecommunications Services," the exact text and citation of which are attached hereto as Exhibits "B" and "C," respectively.
3. That the Secretary shall transmit this Order, together with the exact text of the amendments to Rules 4 and 10 of the "Rules for the Provision of Telecommunications Services" to the Registrar of Regulations for publication on or before March 10, 2006.
4. That the effective date of this Order shall be the later of March 11, 2006, or ten days after the date of publication in the *Register of Regulations* of this Order and the final text of amendments to Rules 4 and 10 of the "Rules for the Provision of Telecommunications Services."
5. 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  
Jaymes B. Lester, Commissioner  
Joann T. Conaway, Commissioner  
Dallas Winslow, Commissioner  
Jeffrey J. Clark, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

### FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

Ruth Ann Price, duly appointed Hearing Examiner in this Docket pursuant to 26 **Del.C.** §502 and 29 **Del.C.** ch. 101, by Commission Order No. 6690, dated August 9, 2005, reports to the Commission as follows:

#### I. Appearances

On behalf of the Public Service Commission Staff ("Staff"):

Constance F. McDowell, Chief of Technical Services

On behalf of the Division of the Public Advocate ("DPA"):

John Citrolo, Deputy Director

#### II. Background

1. By PSC Order No. 6690 (Aug. 9, 2005), the Public Service Commission (the "Commission") proposed to amend Rules 4(f) and 10 of its "Rules for the Provision of Telecommunications Services" (initially adopted by PSC Findings, Opinion and Order No. 5833 (Nov. 6, 2001)).<sup>1</sup> The amendment to Rule 4(f), denominated as Rule 4(f)(iii), would permit telecommunications carriers to comply with their security obligations imposed by Rules 4(f)(i) and 4(f)(ii) by obtaining an irrevocable stand-by Letter of Credit. The proposed amendment to Rule 10 is designed to reduce the financial filing requirements for certain carriers who intend to issue long-term securities or debt obligations.

2. PSC Order No. 6690 further directed that the Commission Secretary forward the proposed amendments to the Delaware Registrar of Regulations for publication, which was done on September 1, 2005. Tr. 450.

3. Publication of the proposed rulemaking and evidentiary hearing was published in the form required by the Commission in *The News Journal* newspaper on August 29, 2005 and in the *Delaware State News* newspaper on August 30, 2005. Tr. 445-446, Exhs. 1 & 2.

4. Interested persons or entities had until September 30, 2005 to file comments. No comments were filed in response to this rulemaking. Tr. 448.

5. A duly noticed evidentiary hearing was conducted on October 19, 2005, in Wilmington. No members of the public attended the evidentiary hearing. Tr. 443. John Citrolo, Deputy Director, attended on behalf of the Division of the Public Advocate. The record, as developed at the hearing, consists of a 13-page verbatim transcript and four exhibits.

6. I have considered all of the record evidence and, based thereon, I submit for the Commission's consideration these findings and recommendations.

#### III. Summary of Evidence

7. Constance S. McDowell, the Commission's Chief of Technical Services, testified regarding the need for the amendments. By way of background, Ms. McDowell testified that as Chief of Technical Services she supervises the Commission's analysts, engineers, economists, and complaint investigators. Tr. 444. She also investigates applications filed by utilities and makes recommendations to the Commissioners regarding proposed actions. Id.

8. Mrs. McDowell summarized the need for the new Rules stating that the intrastate portion of the Rules have been in effect since 1984. Tr. 446. The local exchange portion of the Rules was made effective in 1995. Id. In 2001, the current version of the Rules was approved by the Commission. Id.

9. Ms. McDowell noted that given the changing regulatory climate for telecommunications companies, the

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1. In November 6, 2001, the Commission adopted its "Rules For The Provision of Competitive Intrastate Telecommunications Services" ("Rules"). Although the Rules do not apply to all telecommunications companies, they do provide a unified set of regulations applicable to most carriers providing service in the state.

Commission's Staff found that changes were needed in the Rules allowing companies to use irrevocable Letters of Credit, rather than bonds, to guarantee customer deposits and to reduce the Staff's workload in reviewing filings for financings and the sale and acquisition of major assets. Id.

#### IV. Summary of the Proposed Amendments

##### A. Rule 4

10. Rule 4 entitled "Certification" of the Commission's "Rules for the Provision of Telecommunications Services," sets forth the basic requirements for a local exchange telecommunications carrier's application for a Certificate of Public Convenience and Necessity ("CPCN"). Rule 4 provides that it is critically important for a prospective carrier to demonstrate that it has the financial viability to guarantee its service and its customer deposits and advances.

11. Staff proposes to include a new subsection under Rule 4(f), entitled "Bonds" of the Rules pertaining to certification of carriers. The new section, Rule 4(f)(iii), provides an alternate method for carriers to comply with the general \$10,000 performance bond requirement of Rule 4(f)(1) or the surety bond for deposits stated in Rule 4(f)(ii). Exh. 3. Instead of providing a performance bond (Rule 4(f)(i)) or a surety bond (Rule 4(f)(ii)) to the Commission, Rule 4(f)(iii) provides that carriers may file an irrevocable stand-by Letter of Credit in the amounts stated in Rules 4(f)(i) and 4(f)(ii). Exh. 3.

12. Proposed Rule 4 (f)(iii) sets forth the requirements for an acceptable letter of credit which shall include that it must be irrevocable, issued by a Delaware bank or a confirming bank doing business in Delaware and, in cases of dispute, that Delaware law will apply. The Commission must be named as the beneficiary of the Letter of Credit and the instrument must contain language that obligates the issuer to pay a Commission-mandated monetary obligation.

13. Current Rule 4(f)(i) provides that applicants for a CPCN may post a \$10,000 performance bond, which must be renewed annually. The bonding requirement ensures that there are funds available to cover advance payments made by customers, as well as abandonment fees that are due when a carrier declares bankruptcy or abandons service. Exh. 3.

14. Rule 4(f)(ii) provides that in order to collect customer deposits or to demand any security for payment, a telecommunications carrier doing business in Delaware must file a bond with the Commission guaranteeing the payment of all deposits and advances. Submission of this bond is a condition precedent to the Commission's issuance of a CPCN.

##### B. Rule 10

15. Staff also proposes to amend Rule 10, "Reports to the Commission," which sets forth the obligations of intrastate carriers to file annual and periodic reports with the Commission. In general, all intrastate carriers must file an annual report with the Commission. Exh. 4, Rule 10(a). The Annual Report must include the customary financial information, such as a balance sheet, statement of operations, and supporting schedules. In addition, in order to give the Commission a complete picture of the carrier's financial status, the Annual Report must include, among other things, such items as the information used by the utility to calculate its Delaware tax liability, the company's intrastate revenues, and its intrastate access and billing and collection costs for each service category. Exh. 4, Rule 10(ii), (iv) & (v).

16. Staff proposes to amend the Commission's Rule 10 by including a new section, Rule 10(e), entitled "Forbearance From Filing Applications for Approval Under 26 Del.C. §215(a) and 215(b)." Rule 10(e) waives certain filing requirements under 26 Del.C. §215(a) and §215(b). Section 215 governs a public utility's ability to sell or transfer property that it uses in the performance of its public utility service. Section 215 provides that a public utility must first obtain Commission approval before it can either directly or indirectly dispose of or alienate its plant or equipment, or modify or dilute its corporate securities structure. Section 215(a) and (b) provides as follows:

**§215. Merger, mortgage or transfer of property; issuance of securities; assumption of obligation of another; transfer of control; exceptions.**

(a) No public utility, without having first obtained the approval of the Commission, shall:

(1) Directly or indirectly merge or consolidate with any other person or company, or sell,

lease, assign, or mortgage except by supplemental indenture in accordance with the terms of a mortgage outstanding September 1, 1949, or otherwise dispose of or encumber any essential part of its franchises, plant, equipment or other property, necessary or useful in the performance of its duty to the public; or

(2) Issue any stocks, stock certificates, or notes, bonds or other evidences of indebtedness payable in more than 1 year from the date thereof; or

(3) Assume any obligation or liability as guarantor, endorser, surety or otherwise in respect of any security of any other person or corporation, payable or maturing more than 1 year after the date of such issue or assumption of liability.

(b) No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust or other entity, whether or not organized under the laws of this State, shall acquire control, either directly or indirectly, of any public utility doing business in this State, without having first obtained the approval of the Commission. Any such acquisition of control without such prior authorization shall be void and of no effect. As used herein the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a public utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise. Control shall be presumed to exist if any such individual or entity, directly or indirectly, owns 10% or more of the voting securities of the public utility. This presumption may be rebutted by a showing that such ownership does not in fact confer control.

Under Section 215, the Delaware legislature has delegated to the Commission global supervisory authority over the assets of the public utilities that it regulates to ensure that companies' managers' decisions to alienate assets or to change the capital structure are prudent and in the best interests of ratepayers.

17. Staff's proposal to modify the financial reporting requirements imposed by 26 **Del.C.** §215 does not seek to abandon the filing requirements by all carriers. Pursuant to Rule 10, Staff proposes to extend forbearance from regulation under Section 215 to a discrete set of "qualifying" telecommunications carriers. See Rule 10(e). A "qualifying" carrier must hold a CPCN for at least one year, but it cannot: (1) offer or provide local exchange voice service; (2) have earned more than \$2,500,000 in annual gross intrastate revenues in the preceding year; or (3) have its principal operations' office located in Delaware.

18. Staff's proposed relaxation of the Section 215 reporting requirements does not extend to transactions involving acquisitions, mergers, consolidations, or transfers of control with nonqualified entities. Exh. 4, Rule 10 (e)(ii). Qualifying carriers must still report to the Commission under Section 215 where:

(a) a qualified carrier and a nonqualified carrier are parties to a merger;

(b) a qualified carrier will acquire, merge with, or consolidate with a nonqualified carrier;

(c) a nonqualified carrier will acquire, merge with, or consolidate with a qualifying carrier; or

(d) after the completion of the acquisition, merger, consolidation, or transfer of control, the qualifying carrier and nonqualified carriers are owned by the same corporate entity. Exh. 4, Rule 10(e)(ii).

19. The qualifying carrier is not relieved of its requirement to notify the Commission within ten (10) days of the consummation of an acquisition, merger, consolidation, or transfer of control if it changes its corporate or trade name. Exh. 4, Rule 10(e)(v).

20. All carriers, qualifying and nonqualifying, must file with the Commission their intent to abandon service. Further, all carriers created as a result of an acquisition, merger, consolidation, or transfer of control must file for a CPCN in order to provide telecommunications service in the State. Exh. 4, Rule 10(e)(vi).

21. The forbearance from filing contemplated by Staff in its proposed amendment of Rule 10 is applicable to transactions between entities that are both qualifying carriers. By definition, these carriers provide limited services and have a small presence in Delaware.

## **V. Findings and Recommendations**

22. The Commission has the authority and jurisdiction to promulgate and amend regulations under 26 **Del.C.** §209(a) and 29 **Del.C.** §10111 et seq. Pursuant to 26 **Del.C.** §209(a), the Commission may fix "just and

reasonable” regulations governing any public utility.

23. Further, under the Delaware Administrative Procedures Act, 29 **Del.C.** §§1011 et seq., in the interests of the public welfare, administrative agencies are authorized to promulgate regulations concerning the agency.

24. The “Telecommunication Regulatory Authorization Act of 1992,” 26 **Del.C.** §703(3) (2004 Supp.), authorized the Commission to modify its traditional rate of return regulatory requirements where to do so would “promote efficiency in public and private resource allocation.” This legislation expresses the Delaware legislature’s desire to allow the Commission to promulgate streamlined reporting requirements so long as its regulatory supervision of utilities results in financially viable companies and in low cost and efficient service to ratepayers.

25. The amendments proposed by Staff, as outlined above, streamline certain reporting requirements and allow companies to use irrevocable Letters of Credit, rather than bonds, to guarantee customer deposits. These modifications are consistent with the changing regulatory climate for telecommunications companies and serve to reduce Staff’s workload in reviewing filings for financings and asset transfers.

26. For all of the above reasons, I recommend that the Commission adopt, as just and reasonable, Staff’s proposed amendments to the “Rules for the Provision of Telecommunications Services” as attached hereto as Attachment “A.” A proposed form of Order implementing the above recommendation is attached hereto as Attachment “B” for the Commission’s consideration.

**\* Please note that no changes were made to the regulation as originally proposed and published in the September 2005 issue of the *Register* at page 375 (9 DE Reg. 375). Therefore, the final regulation is not being republished. Please refer to the September 2005 issue of the *Register* or contact the Public Service Commission for additional information.**

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**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER NUMBER EIGHTY:**

**RE: Executive Order Number Eighty Reallocation of State Private Activity Bond Volume Cap for Calendar Year 2005 and Initial Suballocation of State Private Activity Bond Volume Cap for Calendar Year 2006**

**WHEREAS**, pursuant to 29 **Del.C.** §5091, the State's private activity bond volume cap ("Volume Cap") for 2005 under §103 of the Internal Revenue Code of 1986 (the "Code") has been allocated among various state and local government issuers; and

**WHEREAS**, pursuant to Executive Order Number Sixty-Four, \$119,590,000 of the Volume Cap for 2005 which had been allocated to the State of Delaware was further sub-allocated between the Delaware Economic Development Authority and the Delaware State Housing Authority; and

**WHEREAS**, the allocation of Volume Cap in Executive Order Number Sixty-Four is subject to modification by further Executive Order; and

**WHEREAS**, the State's Volume Cap for 2005 and 2006 is allocated among the various State and local government issuers by 29 **Del.C.** §5091 (a); and

**WHEREAS**, Kent County has reassigned \$23,920,000 of its unallocated Volume Cap for 2005 to the State of Delaware; and

**WHEREAS**, Sussex County has reassigned \$23,920,000 of its unallocated Volume Cap for 2005 to the State of Delaware; and

**WHEREAS**, the City of Wilmington has reassigned \$29,895,000 of its unallocated Volume Cap for 2005 to the State of Delaware; and

**WHEREAS**, the Delaware Economic Development Authority has \$59,795,000 of unused Volume Cap for 2005, previously allocated by Executive Order Number Sixty-Four; and

**WHEREAS**, pursuant to 29 **Del.C.** §5091 (b), the State's \$123,310,000 Volume Cap for 2006 is to be sub-allocated by the Governor between the Delaware State Housing Authority and the Delaware Economic Development Authority; and

**WHEREAS**, the Secretary of Finance recommends (i) that the \$77,735,000 unallocated Volume Cap for 2005 reassigned to the State of Delaware by other issuers be sub-allocated to the Delaware State Housing Authority for carry forward for use in future years; and (ii) that the \$59,795,000 of unallocated Volume Cap reassigned by the Delaware Economic Development Authority be sub-allocated to the Delaware State Housing Authority for carry forward for use in future years; and (iii) that the State's Volume Cap for 2006 of \$123,310,000 be allocated equally between the Delaware State Housing Authority and the Delaware Economic Development Authority; and

**WHEREAS**, the Chairperson of the Delaware Economic Development Authority and the Chairperson of the Delaware State Housing Authority concur in the recommendations of the Secretary of Finance,

**NOW, THEREFORE, I**, Ruth Ann Minner, by the authority vested in me as Governor of the State of Delaware, do hereby declare and order as follows:

1. The \$77,735,000 of unallocated Volume Cap for 2005 that has been reassigned by Kent County, Sussex County and the City of Wilmington to the State of Delaware is hereby sub-allocated to the Delaware State Housing Authority for carry forward use, in addition to the \$59,795,000 previously sub-allocated to the Delaware State Housing Authority for 2005 under Executive Order Number Sixty-Four. Additionally, the \$59,795,000 of Volume Cap for 2005 previously allocated to the Delaware Economic Development Authority is allocated to the Delaware State Housing Authority, providing the Delaware State Housing Authority with a total carry forward amount of \$197,325,000.

2. The \$123,310,000 allocation to the State of Delaware of the 2006 Volume Cap is hereby sub-allocated: \$61,655,000 to the Delaware State Housing Authority and \$61,655,000 to the Delaware Economic Development Authority.

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**GOVERNOR'S EXECUTIVE ORDERS**

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3. The aforesaid sub-allocations have been made with due regard to actions taken by other persons in reliance upon previous sub-allocations to bond issuers.

Approved: January 23, 2006

Ruth Ann Minner,  
Governor

ATTEST:  
Harriet Smith Windsor, Secretary of State

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**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER NUMBER EIGHTY-ONE:**

**RE: Continuing Equal Opportunity Hiring Standards And Practices For Delaware Government**

**WHEREAS**, Delaware law and/or executive order prohibit discrimination in state employment based on gender, race, color, religion, national origin, age, marital status, disability, sexual orientation, or Vietnam Era veterans status; and

**WHEREAS**, the State of Delaware is committed to providing equal employment opportunities to all Delawareans; and

**WHEREAS**, the State of Delaware is committed to maintaining a high quality workforce that draws upon the talents of our diverse citizenry to operate our government effectively for the benefit of the State's citizens; and

**WHEREAS**, the State of Delaware has succeeded over the years in diversifying its workforce; and

**WHEREAS**, the State of Delaware must continue to vigorously promote equal employment opportunity and a discrimination free workplace; and

**WHEREAS**, the State of Delaware can only achieve equal opportunity and a diverse workforce by continuing and improving an equal employment opportunity program that enforces sound recruitment and promotion practices throughout state government,

**I, RUTH ANN MINNER, GOVERNOR OF THE STATE OF DELAWARE, DO HEREBY ORDER AND DECLARE**, this 1st day of February, 2006:

1. The State of Delaware's commitment to equal employment opportunity is hereby affirmed and heads of each Department and Agency within the Executive Branch (collectively "Executive Branch Agencies") are directed to pursue diligently the recruitment and promotion of qualified applicants from diverse backgrounds and to be vigilant in complying with the laws prohibiting discrimination in employment.

2. The work atmosphere in Executive Branch Agencies shall be one that fosters mutual respect and understanding among persons of different gender, race, color, religion, national origin, marital status, disability, sexual orientation or Vietnam Era Veterans status.

3. Paragraphs 1 and 2 of this Executive Order are directives from the Governor to Executive Branch Agencies. They will be vigorously enforced by the Governor. However, they are not intended to and shall not create independent causes of action for or on behalf of persons who allege a lack of compliance with those paragraphs.

4. The Governor's Council on Equal Employment Opportunity (hereinafter "Council") is continued. The function of the Council shall be to assist in the monitoring and evaluation of the Executive Branch Agencies' implementation of and compliance with this Executive Order, and to provide advice and recommendations to the Director of Office of Management & Budget and the Governor.

a. The Council shall consist of eight members. One half of the Council's members shall be members

of the Delaware Human Relations Commission who shall be nominated by the Chairperson of the Human Relations Commission and appointed by the Governor. One half of the Council's members shall be appointed by the Governor. All members of the Council shall serve at the pleasure of the Governor. The Chairperson of the Council shall be appointed by the Governor from among the Council's members, and shall serve as Chairperson at the pleasure of the Governor.

b. The Council shall receive staff support from Human Resource Management and the Office of Human Relations. The Division of Vocational Rehabilitation shall advise the Council on matters regarding persons with disabilities.

c. The Council shall furnish on October 30 of each year a written annual report to the Governor and the Director of the Office of Management & Budget on the progress being made in improving the diversity of the State's workforce and recommend any additional action which, in the Council's judgment, should be undertaken. Such report shall be available to the public.

5. On behalf of the Office of Management & Budget, Human Resource Management shall maintain the central managerial role over all diversity and equal employment matters in the Executive Branch and shall accept overall responsibility for the implementation and management of the policies and procedures set forth in this Order. The Director of Human Resource Management shall:

a. establish the duties and responsibilities of the Equal Employment Opportunity/Affirmative Action Administrator and of Agency equal employment officers ("EEO officers");

b. prepare and submit an annual Executive Department Affirmative Action plan, to include short and long term strategies;

c. hold Agencies accountable for their implementation of this Order;

d. act as the State of Delaware's liaison with the EEOC for federal reporting requirements; and

e. communicate and coordinate diversity and equal opportunity initiatives across Agencies.

#### **AFFIRMATIVE ACTION PLANS**

6. The head of each Executive Branch Agency shall maintain an Affirmative Action Plan which shall be filed annually with Human Resource Management and the Council on or before September 15.

7. Each Affirmative Action Plan referred to in paragraph 6 shall be in a form prescribed by Human Resource Management to ensure compliance with federal laws, state laws, and this Order. Each plan shall include, but shall not be limited to, the following provisions:

a. A specific statement of goals and objectives designed to assure equal employment opportunities in hiring and promotion and to eliminate any unlawful discrimination in Agency employment;

b. A specific statement of action steps designed to address any documented under-representation of minorities or women in the Agency as compared to Delaware's labor pool. Such action steps shall include:

(i.) Specific proposals for recruiting minorities and women for employment in the Agency to the extent that they are underrepresented in the Agency when compared to the relevant statewide labor market.

(ii.) Specific proposals for assuring that hiring practices are conducted consistently with the objectives of this Order.

(iii.) Specific proposals for assuring that all promotional opportunities are offered in a manner consistent with this Order.

(iv.) Specific proposals for staff participation in training programs on interview techniques and acceptable hiring practices.

(v.) Specific proposals for employee participation in career enhancement programs and seminars.

(vi.) Specific statements regarding the applicability of the following outreach, training, and accountability measures to the Agency's recruitment and retention efforts:

A. Job fairs

B. College and university outreach

C. Professional group outreach

D. Advertising

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**GOVERNOR'S EXECUTIVE ORDERS**

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- E. Employee recognition programs
  - F. Formal and informal mentoring
  - G. Internal leadership programs
  - H. Participation in statewide programs
  - I. Professional development for existing staff, including tuition reimbursement programs, attendance at conferences and seminars, and internal training opportunities.
  - J. Inclusion of recruitment and retention of women and minorities in Agency's strategic and staff plans.
  - K. Statements of Agency policy
  - L. Creation or continuation of Agency diversity committees.
  - M. Specific efforts of top leadership within the Agency
  - N. Internal communications efforts within the Agency
- c. A designation of the EEO officer within the Agency to carry out diversity and equal employment opportunity functions for the Executive Branch Agency.
8. Each Executive Branch Agency shall make available a summary or full copy of its Affirmative Action Plan to any employee upon request.

**RECRUITMENT AND PROMOTION OF A DIVERSE WORKFORCE**

9. To support the recruitment of a diverse workforce, the Director of Human Resource Management or designee shall:
- a. Assist Executive Branch Agencies in updating their Affirmative Action Plans in accordance with federal guidelines;
  - b. Develop, coordinate, and implement professional recruiting efforts throughout State government designed to increase the number of qualified women and minority candidates for State employment for positions and opportunities where women and minorities are under-represented. Human Resource Management shall develop a statewide directory of organizations that can serve as resources for the identification of qualified women and minority candidates in particular fields, so that these organizations can be notified regarding specific vacant positions;
  - c. Review and revise employment hiring procedures and Merit Rules to ensure a selection process that is fair, non-discriminatory and equitable;
  - d. Require Agencies filling merit positions at paygrade 15 and above to use an interview team of at least three members. When feasible, such a team should be diverse in its composition;
  - e. Work with the State Manager of Training and Development to facilitate Statewide training and technical assistance programs to ensure compliance with State and Federal equal opportunity laws and this Order, and to inculcate effective recruitment and career development procedures; and
  - f. Work with the EEO officers and personnel officers of the various Executive Branch Agencies to review job classifications within those Agencies, and the qualifications of the employees of such Agencies, with a view toward eliminating any artificial barriers to hiring and promotion, and targeting appropriate employee career development seminars.

**REPORTING REQUIREMENTS**

10. Each Executive Branch Agency shall:
- a. Be held accountable for compliance with this Order by including the measures and statements required in this Order in each manager's performance plan and each relevant Agency strategic plan;
  - b. Retain a record of all applicants who voluntarily divulge protected class information. The information required shall be prescribed by Human Resource Management and, to the extent practicable, shall be in a format consistent with the terminology and categories used in federal EEO standard forms;
  - c. Ask each terminating employee to participate in an exit interview to determine the reasons for that employee's termination and retain records of such interviews; and

d. Report to Human Resource Management information requested by Human Resource Management concerning the Agency's Affirmative Action Plan.

11. Human Resource Management shall:

- a. Maintain a comprehensive, statewide, on-line, user-friendly system that allows continuous monitoring of the diversity of the State's workforce across all paygrades;
- b. Work with the Council to ensure the publication of clear information regarding the composition of the State's workforce;
- c. Submit a quarterly report to the Council; and
- d. Assist the Council in preparing its annual report.

### **PUBLIC ACCOUNTABILITY**

12. The Council, with the assistance of Human Resource Management and the Human Relations Commission staff, shall:

a. Establish a schedule for conducting an intensive review of each Executive Branch Agency in need of review based on criteria established by the Council, to assess compliance with the terms of this Executive Order, the Agency's Affirmative Action Plan, and equal opportunity laws. The review criteria shall be used to determine which Agencies will appear before the Council in priority order. The review shall involve an in-depth consideration of Agency promotion, hiring and recruiting practices. Each reviewed Agency shall receive a detailed report identifying those practices and policies of the Agency that are constructive and those practices and policies which need improvement or elimination, with specific recommendations for the Agency to consider. The Council shall incorporate a summary of the results of these reviews in its annual report, as required by paragraph 4 of this Order. From these annual reviews, Human Resource Management shall submit to each Executive Branch Agency a guidance memorandum identifying successful practices used by the reviewed Agencies to increase the diversity of their workforce and examples of policies and practices that hindered the State's attempt to create a more diverse workforce.

b. Publish, as a part of its annual report, an overall report on the composition of the State's workforce and the State's effectiveness in complying with equal employment laws and this Order.

### **COMPLAINTS**

13. Each Agency shall include in its Affirmative Action Plan a description of a mechanism or complaint procedure to permit and encourage employees to discuss any problems resulting from alleged bias, discrimination, lack of equal employment opportunity or any similar matters with appropriate division or Agency supervisory personnel. The procedure shall provide for the lodging of employee complaints and for a response to be made within a specified reasonable period of time. Employees shall be advised of their right to file a formal complaint with the Labor Law Enforcement Section of the Department of Labor. Employees shall receive such assistance with the complaint as may be requested from their Agency EEO officer.

14. Human Resource Management shall:

a. Post a public notice, in conspicuous locations or bulletin boards, of all cabinet Departments, major offices, divisions or Agencies which shall affirm the State's commitment to equal opportunity and advise all State employees and applicants for State employment that any complaints of discrimination should be promptly reported to the State Equal Employment Opportunity/Affirmative Action Program Administrator and the Labor Law Enforcement Section of the Department of Labor; and

b. Provide on the application form for state employment a statement of the state's commitment to equal employment opportunity and instructions as to how complaints of discrimination may be reported.

15. The complaint process for employment discrimination cases shall fall into two categories: informal and formal.

a. An informal complaint is filed with Human Resource Management by written or oral communication with the State Equal Employment Opportunity/Affirmative Action Program Administrator requesting the State Equal Employment Opportunity/Affirmative Action Program Administrator to attempt to facilitate resolution

of the complaint. Human Resource Management will determine whether or not the complaint appears to fall within the jurisdiction of the Labor Law Enforcement Section of the Department of Labor and may require a formal charge of discrimination within the time limits prescribed by statute.

b. The State Equal Employment Opportunity/Affirmative Action Program Administrator will inquire into such cases by working through the designated Agency EEO officer and appropriate management staff, as deemed appropriate by the Cabinet Secretary. Based on the determination, the State Equal Employment Opportunity/Affirmative Action Program Administrator will respond in writing to the complainant. For allegations of violations to Title VII of the Civil Rights Act of 1964 as amended, the Age Discrimination in Employment Act of 1967 as amended, Vietnam Era Veterans Readjustment Assistance Act of 1979, the Americans with Disabilities Act of 1990, or Title 19 of the Delaware Code relating to discrimination in employment, the complainant will be advised and/or referred to the Labor Law Enforcement Section of the Department of Labor for investigation into filing a formal complaint even if a resolution is reached through Human Resource Management. Nothing in this Order shall be construed to bar mediation of a complaint by the State Human Relations Commission; however, such mediation shall not affect or in any way toll relevant time limitations.

#### **REPEAL OF PREVIOUS EXECUTIVE ORDERS**

16. Executive Order No. 10, dated January 30, 2001 is hereby repealed.

#### **APPLICABILITY OF EXECUTIVE ORDER**

17. This Order shall apply to all Cabinet Departments and Executive Agencies of the State. The members of the General Assembly and the Judiciary are also encouraged to adopt this Order.

18. No provision of this Order is intended to create any individual right or legal cause of action which does not already exist under state or federal law.

Ruth Ann Minner,  
Governor

ATTEST:  
Harriet Smith Windsor, Secretary of State

Approved: February 1, 2006

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**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

#### **EXECUTIVE ORDER NUMBER EIGHTY-TWO**

**RE: Implementing Strategies To Address Energy Restructuring**

**WHEREAS**, the Delaware Public Service Commission previously had regulatory authority over the electric generation business of Delmarva Power & Light Company ("Delmarva") and the Delaware Electric Cooperative ("DEC") in Delaware; and

**WHEREAS**, the Electric Utility Restructuring Act of 1999 (the "Act") deregulated the generation, supply and sale of electricity, including all related facilities and assets; and

**WHEREAS**, to help ease the transition to a competitive retail electric supply market, the Act provided for rate caps to be instituted, which included a rate decrease of 7.5 percent for Delmarva residential customers; and

**WHEREAS**, the rate caps provided by the Act were originally scheduled to be lifted on October 1, 2002 for Delmarva's commercial and industrial customers, October 1, 2003 for Delmarva's residential customers and April 1, 2005 for all DEC customers; and

**WHEREAS**, in accordance with a settlement agreement in the proceeding to review the merger of PEPSCO Holdings, Inc. and Delmarva, the Public Service Commission extended the rate caps for all Delmarva customers until May 1, 2006; and

**WHEREAS**, the lifting of rate caps for Delmarva customers on May 1, 2006 could lead to a rate increase of greater than 50 percent for residential customers; increase electric rates for small and mid-sized commercial customers by up to 67 percent; and increase electric rates for large commercial and industrial customers by as much as 118 percent that do not choose alternative suppliers; and

**WHEREAS**, the regional wholesale electric supply market prices are at historic highs, experiencing substantial volatility and appear to be adversely affected by natural gas price fluctuations, lack of sufficient regional fuel diversity, significant weather events, and world political situations; and

**WHEREAS**, it is vital that the State of Delaware undertake aggressive efforts to promote energy efficiency, whether through the Green Energy Fund or other incentives; and

**WHEREAS**, retail electricity markets in restructured states have not developed in any meaningful way to date, except for the largest industrial companies,

**NOW, THEREFORE, I, RUTH ANN MINNER**, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order the following:

1. The Public Service Commission shall examine the feasibility of (a) deferring, for a fixed or a phased-in period, pending electricity rate increases; (b) requiring Delmarva to build generation, or enter into long term supply contracts, to meet up to 100 percent of supply options under traditional rate base, rate of return regulation; (c) requiring Delmarva to conduct integrated resource planning to ensure fuel diversity and least cost supply alternatives; and (d) requiring Delmarva to implement demand side management, conservation and efficiency programs. The examination by the Public Service Commission shall also include its assessment of the need for legislation to accomplish any of these potential options. The results of this analysis shall be submitted to the Office of the Governor no later than March 8, 2006.

2. The Department of Natural Resources and Environmental Control, the Public Service Commission and the Public Advocate shall launch a consumer education program designed to educate citizens on the pending rate increases as well as energy conservation techniques. This education program shall be coordinated concurrently with the Public Service Commission's Consumer Energy Education Group.

3. The Department of Natural Resources and Environmental Control shall develop policies and programs that promote clean distributed generation technologies, coal gasification, combined heat and power applications and other steps toward reducing overall energy costs and/or enhancing energy efficiency in Delaware. The Department shall report on the development of such policies and programs to the Office of the Governor no later than March 8, 2006.

4. The Delaware Economic Development Office shall coordinate with the various Chambers of Commerce and other business organizations in Delaware to ensure that small and medium size businesses have access to programs that ease the transition and access to deregulated energy markets and aggregate the electric use of commercial customers to strengthen their competitive positions and help defray costs.

5. The Office of Management and Budget and the Department of Natural Resources and Environmental Control, Energy Office shall develop a strategy to implement procedures to enable the State to purchase electricity on the deregulated energy market to coincide with the lifting of electricity rate caps on May 1, 2006. Included in this strategy shall be recommendations for legislation to enable any of these options to be accomplished including enabling the State to purchase a portion of its electricity from "Green" energy sources as well as the Energy Office completing the State's energy consumption profile. The strategy and recommendations shall be submitted to the Office of the Governor not later than March 8, 2006.

6. The Office of Management and Budget shall work with reorganized school districts, vocational-technical school districts, charter schools, and institutions of higher education to develop the means and methods to aggregate electricity consumption for the purpose of executing unified energy supply contracts on the

deregulated market. The Office of Management and Budget shall also explore cooperation with Delaware's counties and municipalities in an effort to identify cost-effective ways to aggregate consumption among governmental facilities.

7. The Office of Management and Budget and the Department of Natural Resources and Environmental Control, Energy Office shall develop the strategy and procedures to implement energy savings and conservation techniques including the use of performance contracting and demand-side management. The Office of Management and Budget and Energy Office shall report on its progress on a quarterly basis beginning on April 1, 2006.

8. The Department of Finance and the Department of Natural Resources and Environmental Control, Energy Office shall develop proposals for the enactment of tax credits, rebates, low-interest loans and other direct economic incentives to foster the adoption of energy efficiency technologies by the State's residential and commercial consumers of electricity. Such proposals shall be presented to the Office of the Governor not later than March 8, 2006.

9. The Public Service Commission and DNREC shall investigate modifications to the Public Benefit Charge on various classes of electricity bills to fund a portion of the economic incentives identified by the Department of Finance and the Energy Office to foster the adoption of energy efficiency technologies.

Ruth Ann Minner,  
Governor

ATTEST:  
Harriet Smith Windsor, Secretary of State

Approved and adopted this 6th day of February, 2006.

**DEPARTMENT OF EDUCATION****NOTICE OF SUBMISSION OF SPECIAL EDUCATION GRANT APPLICATION AND PUBLIC COMMENT PERIOD****Exceptional Children and Early Childhood Education Group**

The Secretary of Education has submitted an "Application Packet for Receiving Federal Fiscal Year 2006 Grant Award under Part B of the *Individuals with Disabilities Education Act* (IDEA)" to the United States Department of Education. Beginning Tuesday, February 21, 2006, the Application Packet may be viewed on the Delaware Department of Education's web site at [http://www.doe.state.de.us/exceptional\\_child/forms.htm](http://www.doe.state.de.us/exceptional_child/forms.htm), by accessing the document titled "2006 Part B Application." The Application Packet will also be available for public review at the Department of Education's Exceptional Children and Early Childhood Education (Special Education) offices at the Townsend Building, 401 Federal Street, Suite 2, Dover, Delaware, 19901. Copies of the Application Packet will also be placed in the New Castle Public Library, Wilmington Public Library, Kent County Public Library, and Lewis Public Library by Tuesday, February 21, 2006.

The Application Packet will be available for public review for 60 days. Written public comments about the Application Packet will be accepted until April 2, 2006. Persons wishing to present their views may do so in writing to Martha Toomey, Director, Exceptional Children and Early Childhood Work Group, Department of Education, 401 Federal Street, Suite 2, Dover, DE 19901.

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**DEPARTMENT OF FINANCE**  
**DIVISION OF REVENUE**

Statutory Authority: 12 Delaware Code, Section 1154 (12 **Del.C.** §1154)

**Technical Information Memorandum 2006-01**  
**An Act To Amend Title 30 Relating To Realty Transfer Tax Pertaining To Merger Transactions**

House Bill 330, with Amendment No. 2, is designed to close the "merger" exception established in a recent Delaware Supreme Court decision, pertaining to Realty Transfer Tax. House Bill 330 makes it clear that merger transactions and all kinds of indirect dealings in intangible property that are properly characterized as a sale of real property under §5401(7) are intended to be taxed under the Realty Transfer Tax.

The Amendment makes technical corrections to House Bill No. 330 and codifies existing practice with respect to the treatment of publicly traded limited liability company membership interest. Because House Bill No. 330 is clearly intended to be liberally construed to effectuate its remedial purpose of limiting avoidance of realty transfer tax through dealings in intangible interests, this Amendment also strikes seemingly unnecessary language.

The Amendment also ensures that formally written and executed merger agreements occurring before the date of enactment will be grandfathered under current law.

Finally, this Amendment also clarifies that merger transactions governed by House Bill No. 330 include only those that involve the beneficial transfer of real estate in Delaware.

This Amendment is effective for all agreements to merge and other indirect dealings in intangible interests subject to formal written agreements entered into on or after 1:30 pm on January 26, 2006.

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## CALENDAR OF EVENTS/HEARING NOTICES

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### DEPARTMENT OF AGRICULTURE DIVISION OF POULTRY AND ANIMAL HEALTH PUBLIC NOTICE

The Delaware Department of Agriculture proposes these regulations pursuant to 3 **Del.C.** §407(a). The proposed regulations contain general sanctions in regard to the National Scrapie Eradication Program, including at risk animals, official identification, tagging requirements, and disease reporting. These regulations are intended to more clearly define Delaware's role in the National Scrapie Eradication Program. The proposed regulations will be considered at a public hearing scheduled for March 30, 2006 at 1:30 p.m. at the Delaware Department of Agriculture Building, Conference Room #1. Copies of the proposed regulations may be obtained from the State Veterinarian's office. Comments may be submitted in writing to G. Robert Moore, on or before 1:00 p.m. on March 30, 2006 and/or in person at the hearing. The Delaware Department of Agriculture is located at 2320 S. DuPont Highway, Dover, DE 19901 and the phone number is 302-698-4500.

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### THOROUGHBRED RACING COMMISSION NOTICE OF PUBLIC HEARING

The Delaware Jockeys' Health and Welfare Board, pursuant to 3 **Del.C.** §10005, proposes to add rules to define eligibility of Delaware Jockeys for Health insurance coverage pursuant to 29 **Del.C.** §4815(b)(3)c. The Commission will hold a public hearing on the proposed rule change on March 20, 2006 at the Horseman's office in Delaware Park at 12:30 PM. Written comments should be sent to John Wayne, Administrator of Thoroughbred Racing, Delaware Park, 777 Delaware Park Boulevard, Wilmington, DE 19804.

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### DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, March 16, 2006 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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### DEPARTMENT OF ELECTIONS FOR KENT COUNTY NOTICE OF PUBLIC COMMENT PERIOD

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 15 of the **Delaware Code**, Section 5522 (b), the Department of Elections for Kent County is proposing a regulation to ensure the security and integrity of the procedures set forth in Chapter 55 and that the counting process for absentee ballots is not subject to improper influences.

Any person who wishes to submit written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulation shall submit same to Joyce L. Wright, Director of Kent County Department of Elections, 100 Enterprise Place, Suite 5, Dover, DE 19904 by March 31, 2006.

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

**DEPARTMENT OF ELECTIONS FOR SUSSEX COUNTY****NOTICE OF PUBLIC COMMENT PERIOD**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 15 of the **Delaware Code**, Section 5522 (b), the Department of Elections for Sussex County is proposing a regulation to ensure the security and integrity of the procedures set forth in Chapter 55 and that the counting process for absentee ballots is not subject to improper influences.

Any person who wishes to submit written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulation shall submit same to Kenneth McDowell, Director of Sussex County Department of Elections, 119 N. Race Street, Georgetown, DE 19947 by March 31, 2006.

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

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF SOCIAL SERVICES****NOTICE OF PUBLIC HEARING**

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

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 and Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by March 31, 2006.

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.

DSSM 2007, *Stop Payments for TANF, GA and RCA Benefits* and DSSM 2008, *Replacement Benefits – TANF, GA, RCA*: Procedurally, DSS has denied requests for replacement checks when the requests were made after the stale date on the check. The stale date is sixty (60) days from the date of the check.

*Stale date* means the date the check is no longer valid for cashing. If the issue date is 1/1/06, the check is good for sixty (60) days until 3/1/06 and, 3/2/06 becomes the stale date. If a client cashes the check on or after the stale date, they will not receive reimbursement from the state. DSS is updating the DSSM to reflect this procedure.

DSS also added the requirement to sign and return an affidavit within ten (10) days of the date of the reported loss to align the procedures with the food stamp program.

Currently, a client could request a benefit replacement for a check they claim they did not receive a year ago. The client could request a replacement check in December but not sign an affidavit until three months later.

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## CALENDAR OF EVENTS/HEARING NOTICES

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### DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

#### NOTICE OF PUBLIC HEARING

#### 100 Board of Accountancy

The Delaware Board of Accountancy in accordance with 24 **Del.C.** §105(a)(1) has proposed changes to its rules and regulations. The proposal amends multiple sections of the rules and regulations to conform to changes in practice requirements resulting from the enactment of Senate Bill 27 with House Amendment 1 in July of 2005. The proposed changes to the rules and regulations also contain provisions for online renewal and attestation of having fulfilled continuing education requirements.

A public hearing will be held on April 26, 2006 at 9:00 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 regulations may obtain a copy from the Delaware Board of Accountancy, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

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### DIVISION OF PROFESSIONAL REGULATION

#### 300 Board of Architecture NOTICE OF PUBLIC HEARING

The Delaware Board of Architecture in accordance with 24 **Del.C.** §306 has proposed changes to its rules and regulations to clarify the late renewal process for continuing education requirements.

The public hearing originally scheduled for March 1, 2006 at 1:30 p.m. has been rescheduled to April 5, 2006 at 1:30 p.m. The hearing will be held in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Landscape Architecture, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

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## DEPARTMENT OF TRANSPORTATION

### DIVISION OF PLANNING

#### NOTICE OF PUBLIC COMMENT PERIOD

#### Delaware Safe Routes to School Regulations

Under Title 17 of the **Delaware Code**, Section 1021 and 1022, and Public Law 109-59, the Delaware Department of Transportation (DelDOT), through its Division of Planning, is seeking to establish a Safe Routes to School Program (Program) and has developed draft Program Guidelines.

These Guidelines establish the Program and outline how DelDOT will administer the Program. It defines the purpose of the Program, funding availability and eligibility, and how projects will be selected.

The Department will take written comments on the draft Safe Routes to School Program Guidelines from

March 1, 2006 through March 31, 2006.

Any requests for copies of the Draft Program Guidelines, or any questions or comments regarding this document should be directed to:

Erin Fasano, Project Planner  
Division of Planning  
Delaware Department of Transportation  
PO Box 778  
Dover, DE 19903  
(302) 760-2236 (telephone)  
(302) 739-2251 (fax)  
[erin.fasano@state.de.us](mailto:erin.fasano@state.de.us)

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**DIVISION OF PLANNING**  
**NOTICE OF PUBLIC HEARING**

**Standards and Regulations for Subdivision Streets and State Highway Access**

The Delaware Department of Transportation through its Planning Division has developed revised regulations for access to State-maintained roads and for planning, design, construction, and acceptance for maintenance of subdivision streets. These regulations, Standards and Regulations for Subdivision Streets and State Highway Access, revise, update, and consolidate the Rules and Regulations for Subdivision Streets, enacted in December 1981, and the Standards and Regulations for Access to State Highways, enacted in August 1983. These regulations define the requirements which apply to:

- New subdivisions and land development
- Changed or expanded subdivisions and land development
- Any new access on to a State-maintained road
- Modifications to an existing access
- Assessment of the impacts of traffic
- Off-site improvements

A public workshop will be held on March 22, 2006 at the DelDOT Administration Building

The Department will take comments on the Regulations from March 1, 2006 through March 31, 2006.

Any requests for copies of the Regulations, or any questions or comments regarding these Regulations should be directed to:

Theodore Bishop, Assistant Director of Planning  
Delaware Department of Transportation  
PO Box 778  
Dover, DE 19903  
(302) 760-2122 (telephone)  
(302) 739-2251 (fax)  
[theodore.bishop@state.de.us](mailto:theodore.bishop@state.de.us)

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**DIVISION OF PLANNING**  
**NOTICE OF PUBLIC HEARING**

**Development Related Improvements Requiring New Rights-of-Way**

The Delaware Department of Transportation through its Planning Division has developed regulations in response to Senate Bill 284 (74 Del.Laws, c. 404) which was signed into law on July 22, 2004. These regulations, Developer Related Improvements Requiring New Rights-of Way, address the provision of transportation improvements necessitated by new development when the improvements would not otherwise be possible due to right-of-way constraints.

The regulations define under what conditions DeIDOT will use its real estate process to acquire right-of-way for such improvements, enforce safe operating conditions during construction, involve the public in the planning process, and assure compliance with applicable rules and requirements.

A public workshop will be held on March 23, 2006 at the DeIDOT Administration Building from 4:00 pm until 7:00 pm.

The Department will take comments on the Regulations from March 1, 2006 through March 31, 2006.

Any requests for copies of the Regulations, or any questions or comments regarding these Regulations should be directed to:

Theodore Bishop, Assistant Director of Planning  
Delaware Department of Transportation  
PO Box 778  
Dover, DE 19903  
(302) 760-2122 (telephone)  
(302) 739-2251 (fax)  
theodore.bishop@state.de.us

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