
Delaware Register of Regulations

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IN THIS ISSUE:

Regulations:

Proposed

Final

Governor:

Appointments

General Notice

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 October 15, 2008.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

11 **DE Reg.** 759-786 (12/01/07)

Refers to Volume 11, pages 759-786 of the *Delaware Register* issued on December 1, 2007.

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

533

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
December 1	November 17	4:30 p.m.
January 1	December 15	4:30 p.m.
February 1	January 15	4:30 p.m.
March 1	February 16	4:30 p.m.
April 1	March 16	4:30 p.m.

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TABLE OF CONTENTS

Cumulative Tables.....	536
PROPOSED	
DELAWARE HEALTH CARE COMMISSION	
Delaware Health Information Network.....	540
DELAWARE VIOLENT CRIMES COMPENSATION BOARD	
Administrative Office of the Courts	
301 Violent Crimes Compensation Board Rules and Regulations.....	546
DEPARTMENT OF AGRICULTURE	
Harness Racing Commission	
501 Harness Racing Rules and Regulations, Section 7.0 Rules of the Race; Section 10.0 Due Process and Disciplinary Action.....	554
DEPARTMENT OF EDUCATION	
Office of the Secretary	
230 Promotion	556
505 High School Graduation Requirements and Diplomas.....	557
525 Requirements for Career Technical Education Programs.....	562
737 Tuition Billing for Special Schools and Programs.....	566
925 Children with Disabilities Subpart D,	569
Professional Standards Board	
1502 Professional Growth Salary Increments.....	572
1510 Issuance of Initial License.....	577
1559 Trade and Industrial Education Teacher.....	584
DEPARTMENT OF HEALTH AND SOCIAL SERVICES	
Division of Long Term Care Residents Protection	
3201 Skilled And Intermediate Care Nursing Facilities.....	592
DEPARTMENT OF INSURANCE	
803 Workers' Compensation Data Collection.....	610
1301 Internal Review, Arbitration and Independent Utilization Review of Health Insurance Claims	611
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL	
Division of Air and Waste Management	
1138 Emission Standards for Hazardous Air Pollutants for Source Categories, Section 9.0.....	620
DEPARTMENT OF SAFETY AND HOMELAND SECURITY	
Division of State Police	
3400 Board of Examiners of Constables.....	629
DEPARTMENT OF STATE	
Division of Professional Regulation	
2000 Board of Occupational Therapy Practice.....	631
3100 Board of Funeral Services.....	633
3500 Board of Examiners of Psychologists, Section 7.0 Supervised Experience.....	636
8800 Boxing and Combative Sports Entertainment.....	637
Public Service Commission	
Regulation Docket No. 61: Adoption of Rules to Establish an Intrastate Gas Pipeline Safety Compliance Program.....	655
EXECUTIVE DEPARTMENT	
Delaware Economic Development Office	
454 Procedures Governing Delaware Tourism Grant Program.....	661

TABLE OF CONTENTS

535

FINAL

DEPARTMENT OF AGRICULTURE

Harness Racing Commission

501 Harness Racing Rules and Regulations, Section 6.0 and 8.0, 666

Thoroughbred Racing Commission

1001 Thoroughbred Racing Rules and Regulations, Section 11.0 Entries,
Subscriptions, Delegations..... 667

DEPARTMENT OF EDUCATION

Office of the Secretary

255 Definitions of Public School, Private School and Nonpublic School..... 668

540 Driver Education..... 670

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air and Waste Management

1147 CO2 Budget Trading Program..... 674

Division of Water Resources

7403 Regulations Governing the Pollution Control Strategy for the Indian River, Indian River Bay,
Rehoboth Bay and Little Assawoman Bay Watersheds..... 677

GOVERNOR

Appointments 684

GENERAL NOTICE

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air and Waste Management

Delaware Visibility State Implementation Plan..... 685

CALENDAR OF EVENTS/HEARING NOTICES

Delaware Health Care Commission, Notice of Public Hearing..... 688

Delaware Violent Crimes Compensation Board, Notice of Public Hearing..... 688

Dept. of Agriculture, Notice of Public Hearing

Harness Racing Commission..... 688

State Board of Education, Notice of Monthly Meeting..... 689

Dept. of Health And Social Services, Notice of Public Hearing and Public Comment Period..... 689

Insurance Dept., Notices of Public Hearing and Public Comment Periods..... 690

Dept. of Natural Resources, Notice of Public Hearing and Comment Period

Div. of Air and Waste Management..... 691

Div. of Fish and Wildlife..... 691

Department of Safety and Homeland Security, Division of State Police

Board of Examiners of Constables, Notice of Public Hearing..... 692

Dept. of State, Notices of Public Hearings and Comment Periods

Div. of Professional Regulation

Board of Occupational Therapy Practice..... 692

Board of Funeral Services..... 693

Board of Examiners of Psychologists..... 693

Boxing and Combative Sports Entertainment..... 694

Uniform Controlled Substance Act Regulations..... 694

Public Service Commission..... 695

EXECUTIVE DEPARTMENT

Delaware Economic Development Office, Notice of Public Hearing and Public Comment Period 696

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

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

DELAWARE MANUFACTURED HOME RELOCATION AUTHORITY

201 Delaware Manufactured Home Relocation Trust Fund Regulations..... 12 **DE Reg.** 59 (Final)

DELAWARE RIVER BASIN COMMISSION

Water Code and Comprehensive Plan to Implement a Revised Water Audit Approach
to Identify and Control Water Loss..... 12 **DE Reg.** 275 (Prop.)
Water Quality Regulations, Water Code and Comprehensive Plan to Classify the
Lower Delaware River as Special Protection Waters..... 12 **DE Reg.** 310 (Final)

DELAWARE SOLID WASTE AUTHORITY

501 Regulations of the Delaware Solid Waste Authority..... 12 **DE Reg.** 375 (Prop.)

DELAWARE STATE FIRE PREVENTION COMMISSION

Delaware State Fire Prevention Regulations, Part IX, Fire Service Standards..... 12 **DE Reg.** 6 (Prop.)
Part VIII, Fire Department and Ambulance Company Administrative Standards
Chapter 1 12 **DE Reg.** 278 (Prop.)
Part IX, Fire Service Standards, Chapter 4, Minimum Requirements of the
Establishment of Fire Companies and Sub Stations..... 12 **DE Reg.** 436 (Final)

DEPARTMENT OF AGRICULTURE**Division of Animal Health and Food Products Inspection**

304 Exotic Animal Regulations..... 12 **DE Reg.** 388 (Prop.)

Harness Racing Commission

501 Harness Racing Rules and Regulations, 6.0 Type of Races
and 8.0 Veterinary Practices, Equine Health Medication..... 12 **DE Reg.** 95 (Prop.)
12 **DE Reg.** 324 (Final)

Thoroughbred Racing Commission

1001 Thoroughbred Racing Rules and Regulations, 11.0 Entries, etc..... 12 **DE Reg.** 394 (Prop.)
1001 Thoroughbred Racing Rules and Regulations, 13.0 Claiming Races..... 12 **DE Reg.** 201 (Final)

DEPARTMENT OF EDUCATION**Office of the Secretary**

103 Accountability for Schools, Districts and the State..... 12 **DE Reg.** 202 (Final)
110 Teachers and Specialists Appraisal Process (Repeal) 12 **DE Reg.** 204 (Rep.)
112 Addendum to Teachers and Specialists Appraisal Process (Repeal)..... 12 **DE Reg.** 205 (Rep.)
115 School Level Administrator Appraisal Process(Repeal) 12 **DE Reg.** 207 (Rep.)
245 Michael C. Ferguson Achievement Awards Scholarship..... 12 **DE Reg.** 398 (Prop.)
255 Definitions of Public School, Private School and Nonpublic School..... 12 **DE Reg.** 108 (Prop.)
258 Federal Programs General Complaint Procedures 12 **DE Reg.** 208 (Final)
275 Charter Schools..... 12 **DE Reg.** 211 (Final)
410 Satellite School Agreements..... 12 **DE Reg.** 61 (Final)
502 Alignment of Local School District Curricula to the State Content Standards . 12 **DE Reg.** 216 (Final)
505 High School Graduation Requirements and Diplomas..... 12 **DE Reg.** 401 (Prop.)
506 Policies for Dual Enrollment and Awarding Dual Credit..... 12 **DE Reg.** 110 (Prop.)
12 **DE Reg.** 437 (Final)
525 Requirements for Career Technical Education Programs..... 12 **DE Reg.** 113 (Prop.)
12 **DE Reg.** 439 (Final)

540 Driver Education.....	12	DE Reg.	281	(Prop.)
603 Compliance with the Gun Free Schools Act.....	12	DE Reg.	9	(Prop.)
			12	DE Reg.
605 Student Rights and Responsibilities	12	DE Reg.	325	(Final)
608 Unsafe School Choice Option for Students in Persistently Dangerous Schools and for Students who have been Victims of a Violent Felony.....	12	DE Reg.	62	(Final)
612 Possession, Use or Distribution of Drugs and Alcohol.....	12	DE Reg.	406	(Prop.)
615 School Attendance.....	12	DE Reg.	221	(Final)
716 Maintenance of Local School District and Charter School Personnel Records	12	DE Reg.	116	(Prop.)
			12	DE Reg.
745 Criminal Background Check for Public School Related Employment.....	12	DE Reg.	11	(Prop.)
			12	DE Reg.
746 Criminal Background Check for Student Teaching	12	DE Reg.	17	(Prop.)
			12	DE Reg.
881 Releasing Students to Persons Other Than Their Parent, Guardian or Relative Caregiver.....	12	DE Reg.	222	(Final)
901 Education of Homeless Children and Youth.....	12	DE Reg.	119	(Prop.)
			12	DE Reg.
915 James H. Groves High School.....	12	DE Reg.	63	(Final)

Professional Standards Board

1531 Middle Level English Language Arts Teacher.....	12	DE Reg.	332	(Final)
1532 Middle Level Mathematics Teacher.....	12	DE Reg.	333	(Final)
1533 Middle Level Science Teacher.....	12	DE Reg.	335	(Final)
1534 Middle Level Social Studies Teacher.....	12	DE Reg.	336	(Final)
1552 Career and Technical Specialist.....	12	DE Reg.	338	(Final)
1561 Bilingual Teacher.....	12	DE Reg.	339	(Final)
1562 English to Speakers of Other Languages (ESOL) Teacher.....	12	DE Reg.	341	(Final)
1572 Teacher of Students Who Are Gifted and Talented.....	12	DE Reg.	409	(Prop.)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Medicaid and Medical Assistance

DSSM: 14900 Enrollment in Managed Care.....	12	DE Reg.	446	(Final)
17800 Medical Assistance During Transition to Medicare Program.....	12	DE Reg.	270	(Emer)
			12	DE Reg.
17900 Medicaid for Workers with Disabilities.....	12	DE Reg.	446	(Final)
20800 Long Term Care - Acute Care Program (SSI).....	12	DE Reg.	123	(Prop.)
20810 Treatment of Couples in Medical Institutions.....	12	DE Reg.	224	(Final)
Pharmaceutical Services Program - Tamper-Resistant Prescription Pads.....	12	DE Reg.	20	(Prop.)
			12	DE Reg.
			342	(Final)

Title XIX Medicaid State Plan

Attachment 2.2-A, Page 18.....	12	DE Reg.	284	(Prop.)
Attachment 2.2-A, Page 23C.....	12	DE Reg.	446	(Final)
Attachment 2.6-A, Pages 12c through 12o.....	12	DE Reg.	446	(Final)
Attachment 2.6-A, Supplement 6.....	12	DE Reg.	284	(Prop.)
Medicaid Integrity Program, Page 79y (4.43).....	12	DE Reg.	226	(Final)
School-Based Health Services, Attachment 3.1-A.....	12	DE Reg.	228	(Final)
Third Party Data Exchange.....	12	DE Reg.	65	(Final)

Division of Public Health

4403 Free Standing Birthing Centers.....	12	DE Reg.	235	(Final)
4406 Home Health Agencies, Aide Only (Licensure).....	12	DE Reg.	412	(Prop.)
4410 Skilled Home Health Agencies Licensure.....	12	DE Reg.	412	(Prop.)

Division of Social Services

DSSM 1000 Responsibility for the Administration of Delaware's Assistance Programs	12	DE Reg.	126	(Prop.)
			12	DE Reg.
			453	(Final)

DEPARTMENT OF STATE

Division of Professional Regulation

300 Board of Architects.....	12 DE Reg. 70 (Final)
400 Gaming Control Board, Regulations 401, 402, 403 and 404.....	12 DE Reg. 357 (Final)
1400 Board of Electrical Examiners, Sections 1.0 through 3.0, 5.0 through 7.0, and 15.0.....	12 DE Reg. 73 (Final)
2500 Board of Pharmacy, Sections 11 and 18.....	12 DE Reg. 48 (Prop.)
2600 Examining Board of Physical Therapists and Athletic Trainers.....	12 DE Reg. 53 (Prop.)
2925 Real Estate Commission, Section 6.0, Program Criteria and Section 8.0, Provider Responsibilities.....	12 DE Reg. 503 (Final) 12 DE Reg. 74 (Final)
5300 Board of Massage and Bodywork, Sections 1.0, 2.0 and 7.0.....	12 DE Reg. 75 (Final)
Uniform Controlled Substance Act Regulations.....	12 DE Reg. 301 (Prop.)

Human Relations Commission

1501 Equal Accommodations Regulations.....	12 DE Reg. 179 (Prop.)
(Renumbered to 601)	12 DE Reg. 505 (Final)
1502 Fair Housing Regulations.....	12 DE Reg. 179 (Prop.)

Office of the State Bank Commissioner

2401 Mortgage Loan Originator Licensing.....	12 DE Reg. 430 (Prop.)
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Public Service Commission

3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standards Act (Opened August 23, 2005).....	12 DE Reg. 291 (Prop.)
Docket No. 49: The Creation of a Competitive Market for Real Electric Supply Service	12 DE Reg. 518 (Final)

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

2101 Freedom of Information Act (FOIA).....	12 DE Reg. 245 (Final)
---	------------------------

Division of Motor Vehicles

2221 Use of Translators.....	12 DE Reg. 77 (Final)
2222 School Bus Driver Qualifications and Endorsements.....	12 DE Reg. 196 (Prop.)
	12 DE Reg. 519 (Final)

Division of Transportation Solutions

Revisions to the Delaware Manual on Uniform Traffic Control Devices, Parts 1, 7, 8, and 9.....	12 DE Reg. 79 (Final)
Revisions to the Delaware Manual on Uniform Traffic Control Devices, Parts 2, 3 and 6.....	12 DE Reg. 56 (Prop.) 12 DE Reg. 358 (Final)

STATE BOARD OF PENSION TRUSTEES

The Delaware Public Employees' Retirement System

State Employees' Pension Plan, State Police Pension Plan, State Judiciary Pension Plan, County Municipal Employees' Pension Plan, and County & Municipal Police/Firefighter Pension Plan.....	12 DE Reg. 359 (Final)
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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.

DELAWARE HEALTH CARE COMMISSION

Statutory Authority: 16 Delaware Code, Section 9925(a) (16 Del.C. §9925(a))

PUBLIC NOTICE

The Delaware Health Care Commission (Commission), in accordance with 16 **Del.C.** §9925(a) and 29 **Del.C.** §10115, hereby gives notice that it shall hold a public hearing on proposed regulation of the Delaware Health Information Network (DHIN). The hearing will be held at 10:00 a.m. on Tuesday, November 25, 2008, at Delaware Technical and Community College, Corporate Training Center, Room 400B, Dover, Delaware.

The intent of the proposed regulation is to streamline and reduce the legal documentation necessary to participate in the DHIN, to introduce new regulation to address provisions of dispute resolution, patient access, and to authorize the use of DHIN by participating laboratories.

The Commission will receive oral or written input at the hearing and/or written public comment through December 1, 2008. Send written comments to Leah Jones, Delaware Health Care Commission, Margaret O'Neil Building, 410 Federal Street, Suite 7, Dover, Delaware 19901.

For a copy of the proposed regulation, visit <http://regulations.delaware.gov/register/november2008/proposed/index.shtml> or, call the Commission office at (302) 739-2730.

102 Delaware Health Information Network Regulations on Participation**1.0 Statutory Authority**

This regulation is authorized by 16 **Del.C.** §§ 9925 and 9926.

- 1.1 The Delaware Health Information Network ["DHIN"] was created by statute 16 **Del.C.** Ch. 99, Subchapter IV to be a public instrumentality of the State of Delaware to promote the design, implementation, operation and maintenance of facilities for public and private use of health care information. The DHIN is operated through a Board of Directors. In keeping with the purpose, it is now more convenient to promulgate a regulation that will provide the requirements of participation in the DHIN and replace the numerous written documents among the participants and the DHIN. The

regulation also seeks to clarify the obligations, requirements, permitted use and privacy of data for the participants.

- 1.2 As use in this regulation, the term "DHIN" refers to the entity unless the context refers to the electronic interchange system operated and maintained by the entity. Unless otherwise required any action by the entity shall be by majority vote of the quorum of the present members of the Board of Directors ["Board"]. Meetings of the Board may include members that are participating electronically or telephonically, as long as the public can hear or observe the participation of such members.

2.0 Participation and withdrawal.

- 2.1 Participation in the DHIN is voluntary and is commenced by filing with the Executive Director ["Director"] of the DHIN a document that is known as a application for participation agreement ["Application"]. The Application shall: identify the individual or entity in detail, provide its healthcare activity and purpose, shall identify the individual or individuals that have the authority to bind the entity and conduct its business affairs, and such other information as may be required by the Board. The Participation agreement shall also contain a statement that the entity agrees to be bound without reservation by this and other regulations that involve the DHIN.
- 2.2 The participation agreement along with other information that may be reasonable as determined by the Director and the Executive Committee ["Committee"] of the Board shall be reviewed by the Director and the Committee to their satisfaction. The Executive Committee may request additional information or may grant initial participation to the applying entity subject to certain conditions. The initial participation determination is subject to a subsequent ratification by the Board. If no action is taken by the Board during its next two regular meetings with a quorum present, the Board is deemed to have ratified the initial participation of the applying entity. If the Committee denies initial participation to an applying entity, it will provide the reason or reasons for denial. After such denial, the applying entity may request the Board reconsider the Committee's denial. If the Board denies reconsideration, the applying entity may then seek legal review in accordance with 29 **Del.C.** Ch. 101, Subchapter V.
- 2.3 Withdrawal from participation is commenced by filing with the Director and the Committee a document that is known as notice of withdrawal. The Board will provide the information and requirement that will comprise the notice of withdrawal. The Director, the Committee and the withdrawing entity shall seek agreement as to the effective date of withdrawal and any other reservations or conditions. If the parties cannot agree, the Committee with the subsequent ratification of the Board shall determine the effective date of withdrawal and any other conditions or reservations of the withdrawal.
- 2.4 Participation may be involuntarily terminated due to security or privacy breaches or failure or refusal to perform obligations of participation. Involuntary termination shall be subject to the procedures for dispute resolution contained below.

3.0 Privacy and security of personal health care information and obligations of participants:

- 3.1 The participants of the DHIN may have roles that functionally vary from transaction to transaction. A participant may be a "Covered Entity" or a "Business Associate", as those terms are defined in the HIPAA Regulations, in regards to different transactions with different participants. It is desirable to import the obligations of the participants under Health Insurance Portability and Accountability Act of 1996, and regulations promulgated there under ("HIPAA Regulations"), including the Standards for Privacy of Individually Identifiable Health Information and Security Regulations, 45 Code of Federal Regulations Parts 160, 162 and 164 ("Regulations"). The importation of the participants' obligations under HIPAA is more efficient than requiring numerous written documents with the possibility of omitting such a required document. Accordingly, each participant agrees to be bound as follows:

- 3.1.1 Definitions. As used in this section the following terms are defined as follows:

PROPOSED REGULATIONS

"Disclose" and "Disclosure" mean, with respect to Health Information, the release, transfer, provision of, access to, or divulging in any other manner of Health Information outside Business Associate's internal operations or to other than its employees.

"Health Information" means information that (i) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual; (ii) identifies the individual (or for which there is a reasonable basis for believing that the information can be used to identify the individual); and (iii) is received by Business Associate from or on behalf of Covered Entity, or is created by Business Associate, or is made accessible to Business Associate by Covered Entity.

"Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

"Use" or "Uses" mean, with respect to Health Information, the sharing, employment, application, utilization, examination or analysis of such Health Information within Business Associate's internal operations.

3.2 Obligations of Business Associate

- 3.2.1 Initial Effective Date of Performance. The obligations created under this section are effective upon initial participation in the DHIN.
- 3.2.2 Permitted Uses and Disclosures of Health Information. Business Associate shall Use and Disclose Health Information as necessary to perform services for Covered Entity, provided that such Use or Disclosure would not violate the Privacy Regulations if done by Covered Entity. Business Associate may Use and Disclose Health Information for the proper management and administration of Business Associate, or to carry out the legal responsibilities of the Business Associate, provided that the disclosure is required by law, or the Business Associate obtains reasonable assurances in writing from the person to whom the information is disclosed that: (i) that it will be held confidentially and used or further disclosed only for the purpose for which it was disclosed; and (ii) the person is obligated to notify Business Associate (who will notify Covered Entity) of any instances of which it is aware in which the confidentiality of the information has been breached.
- 3.2.3 Adequate Safeguards for Health Information. Business Associate warrants that it shall implement and maintain appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity and to prevent the Use or Disclosure of Health Information in any manner other than as permitted by this Agreement.
- 3.2.4 Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of Health Information by Business Associate in violation of the requirements of this Agreement.
- 3.2.5 Reporting Non-Permitted Use or Disclosure. Business Associate shall report to Covered Entity each Use or Disclosure that is made by Business Associate, its employees, representatives, agents or subcontractors that is not specifically permitted by this Agreement. The initial report shall be made by telephone call to Covered Entity's Privacy Officer within forty-eight (48) hours from the time the Business Associate becomes aware of the non-permitted Use or Disclosure, followed by a written report to the Privacy Officer no later than five (5) days from the date the

Business Associate becomes aware of the non-permitted Use or Disclosure. Business Associate shall report to Covered Entity any security incident of which it becomes aware.

- 3.2.6 Availability of Internal Practices, Books and Records to Government Agencies. Business Associate agrees to make its internal practices, books and records relating to the Use and Disclosure of Health Information available to the Covered Entity, or at the request of Covered Entity, to the Secretary of the U.S. Department of Health and Human Services ("Secretary"), in a time and manner designated by the Covered Entity or the Secretary, for purposes of determining Covered Entity's compliance with the Privacy Regulations.
- 3.2.7 Access to and Amendment of Health Information. Business Associate shall, to the extent Covered Entity determines that any Health Information constitutes a "designated record set" under the Privacy Regulations, (a) make the Health Information specified by Covered Entity available to the individual(s) identified by Covered Entity as being entitled to access and copy that Health Information, and (b) make any amendments to Health Information that are requested by Covered Entity. Business Associate shall provide such access and make such amendments within the time and in the manner specified by Covered Entity.
- 3.2.8 Accounting of Disclosures. Upon Covered Entity's request, Business Associate shall provide to Covered Entity an accounting of each Disclosure of Health Information made by Business Associate or its employees, agents, representatives or subcontractors as required by the Privacy Regulations. Any accounting provided by Business Associate under this Section 3.2.8 shall include: (a) the date of the Disclosure; (b) the name, and address if known, of the entity or person who received the Health Information; (c) a brief description of the Health Information disclosed; and (d) a brief statement of the purpose of the Disclosure. For each Disclosure that requires an accounting under this Section 3.2.8, Business Associate shall track the information specified in (a) through (d), above, and shall securely maintain the information for six (6) years from the date of the Disclosure.
- 3.2.9 Restrictions: Requests for Confidential Communications. Business Associate will comply with any agreements for confidential communications of which it is aware and to which Covered Entity agrees pursuant to 45 C.F.R. §164.522 (b) by communicating with individuals using agreed upon alternative means or alternative locations.
- 3.2.10 Disposition of Health Information Upon Termination or Expiration. Upon termination or expiration of this Agreement, Business Associate shall either return or destroy, in Covered Entity's sole discretion and in accordance with any instructions by Covered Entity, all Health Information in the possession or control of Business Associate and its agents and subcontractors. However, if Covered Entity determines that neither return nor destruction of Health Information is feasible, Business Associate may retain Health Information provided that Business Associate (a) continues to comply with the provisions of this Agreement for as long as it retains Health Information, and (b) further limits Uses and Disclosures of Health Information to those purposes that make the return or destruction of Health Information infeasible.
- 3.2.11 Term and Termination. Unless sooner terminated, this Agreement shall continue in effect so long as Business Associate continues to provide services or perform functions on behalf of Covered Entity. A material breach by Business Associate of any provision of this Agreement, as determined by Covered Entity, shall constitute a material breach of the Agreement providing grounds for immediate termination of this Agreement. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity may provide an opportunity for Business Associate to cure the breach or end the violation and may terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, or immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible. Notwithstanding the above, any breach related to the sale, transfer, or

PROPOSED REGULATIONS

use or disclosure of Health Information for commercial advantage, personal gain, or malicious harm shall be considered non-curable. Business Associate's obligations under Article II shall survive the termination or expiration of this Agreement. Nevertheless, DHIN may continue to hold data in the terminated participant's data stage for historical and other purposes.

3.2.12 No Third Party Beneficiaries. There are no third party beneficiaries to the obligations of the participants of DHIN under this section.

3.2.13 Use of Subcontractors and Agents. Business Associate shall require each of its agents and subcontractors that receive Health Information from Business Associate to execute a written agreement obligating the agent or subcontractor to comply with all the terms of this Agreement.

3.2.14 Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA Regulations and other applicable laws relating to the security or confidentiality of Health Information. The parties understand and agree that Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all Health Information that it receives or creates pursuant to this Agreement. Upon Covered Entity's request, Business Associate agrees to promptly enter into negotiations with Covered Entity concerning the terms of any amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Regulations or other applicable laws. Covered Entity may terminate this Agreement upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend this Agreement when requested by Covered Entity pursuant to this Section or (ii) Business Associate does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of Health Information that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and HIPAA Regulations.

4.0 Other obligations of participation.

4.1 Application for and participation in DHIN requires each participating entity and its agents and employees to the following in addition to the obligations imposed elsewhere.

4.1.1 The participating entities, their agents and employees shall conduct their affairs with all other participants as well as the agents and employees of DHIN with the highest level of candor, complete honesty-in-fact, civility and professionalism.

4.1.2 The participants must respond to requests for information and complaints in a reasonable period. Participants must respond to requests for information and complaints that involve security and privacy within twenty-four hours unless the Director or his or her designee extends the time.

4.1.3 The participants must provide financial support by prompt payment in accordance with their prior agreement or as may be promulgated by rule by the Board in the future.

4.1.4 The participants must promptly report Security Incidents as defined in the prior section promptly to the Director and any other effected participant.

5.0 Dispute resolution and inquiries

5.1 Any dispute that involves the DHIN or its interchange shall be subject to dispute resolution under this section. Such disputes may involve participants, the DHIN or members of the public where there is a

claim that this or other regulations or statutes were violated by any of the forgoing. A dispute may also be an inquiry or request for information that is not responded to in a reasonable manner.

- 5.2 The Chair of the Board may appoint a number of individuals subject to approval by the Committee to serve on the Dispute Resolution Committee ["DRC"]. The DRC shall be comprised of panels of no less than three or more than five members. No member may serve on a case before the DRC where that member has a conflict of interest as set forth in 29 Del.C. Chapter 58. The presiding member of the panel must be a member of the Board. The Board may promulgate rules for procedures for matters to be determined by the DRC. The DRC and the Board are authorized to grant relief to include financial penalties, suspension and termination of an entity or individual's participation or use of the DHIN.
- 5.3 Any party aggrieved by the decision of the Panel may seek review by filing written exceptions to the Panel's decision within ten days of the decision as would be computed in the Delaware Superior Court. The review shall be presented to the Board who may overturn the Panel's decision by a majority vote of a quorum of the Board.
- 5.4 A aggrieved party may seek legal review on the record only in accordance with 29 Del.C. Ch. 101, Subchapter V.

6.0 Permitted uses by participants

- 6.1 In an effort to maximize the health care benefits of the DHIN participants are authorized to utilize the system to its maximum extent possible while maintaining the required high level of security and privacy for the information. Participants are authorized to use the DHIN without regard to whether the ordering entity is a participant of the DHIN. This includes participants that are subject to the Clinical Laboratory Improvement Act ["CLIA"] and regulations promulgated thereunder.
- 6.2 Participants shall comply with the data use agreements they entered into with the DHIN. The terms, conditions and requirements of the existing and future data use agreements may be determined and amended by the Board.

7.0 Patient access

- 7.1 Individuals may be provided access to the information about them that is in the interchange in a manner and under terms and conditions that the Board shall set out by rule or procedure.
- 7.2 Individuals shall be informed of and may choose to preclude a search of their individual health information (as defined in above Section 3.1.1) in the DHIN Interchange after consultation with their health care provider and in accordance with the rules or procedures promulgated by Board.

8.0 Technical Standards

- 8.1 The Board by rule or procedure shall establish the technical requirements for participation in the DHIN. These standards shall adopt national standards to the extent such is feasible.
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PROPOSED REGULATIONS

DELAWARE VIOLENT CRIMES COMPENSATION BOARD ADMINISTRATIVE OFFICE OF THE COURTS

Statutory Authority: 11 Delaware Code, Section 9004 (11 Del.C. §9004)

PUBLIC NOTICE

The Delaware Violent Crimes Compensation Board, in accordance with 11 Del.C. Ch. 11 proposes amendments to its regulations. The proposed changes further define pecuniary loss, permanent and total disability, and include a definition for secondary victims. The proposed regulations include time frames for submitting requested documentation to the Board to support a claim. The regulations also address collateral sources of compensation.

Two public hearings are scheduled. The first public hearing will be December 2 in room 113, Tatnall Bldg., 150 William Penn Street in Dover from 1:30 - 4:00pm. The second public hearing will be held on December 9 at the Carvel State Office Bldg auditorium, 820 N French Street, Wilmington from 3:30 pm - 6:30 pm.

The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Violent Crimes Compensation Board, attn Barbara Brown, Executive Director at 240 N. James Street, Suite 203, Wilmington, De. 19804. The final date to submit written comments will be December 9 at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearings should contact Barbara Brown at the above address or by calling 302 995-8383. The Board will consider promulgating the proposed regulations following the public hearings.

301 Violent Crimes Compensation Board Rules and Regulations

1.0 Statement Of Goals (Formerly Rule III)

1.1 The Violent Crimes Compensation Board, hereby, declares that it serves a public purpose, and is of benefit to:

- 1.1.1 ~~individuals who are victimized within the State of Delaware;~~
- 1.1.2 ~~Delaware residents who are victimized without the State of Delaware in possessions or territories of the United States not having eligible crime victim compensation programs;~~
- 1.1.3 ~~Delaware residents who are victimized during acts of terrorism committed outside the United States.~~
- 1.1.4 ~~The Violent Crimes Compensation Board shall promote the welfare of victims of crime by establishing a means of meeting the additional hardships imposed upon the innocent victims of certain crimes, and the family and dependents of those victims.~~

the victims of violent crimes committed within the State of Delaware, and in States that do not have a funded Victim Compensation Program and it is the purpose of the Violent Crimes Compensation Board to promote the public welfare by establishing a means of meeting the additional hardships imposed upon the innocent victim of certain crimes, and the family and dependents of those victims and Delaware residents who are victimized by terrorist attacks committed inside or outside the United States.

2.0 Address Of The Board; Office Hours (Formerly Rule II)

- 2.1 ~~All communications of the Board shall be addressed to the "Violent Crimes Compensation Board, State of Delaware", at the office address of the Board or such other address as the Board shall otherwise make known.~~
- 2.2 ~~The office of the Board will be open from 8:00 a.m. until 4:00 p.m. of each weekday except legal holidays, and unless otherwise provided by statute or Executive Order.~~

32.0 Definitions (Formerly Rule I)

32.1 The definitions set forth in 11 **Del.C.** Ch. 90 of the Delaware Criminal Code are, hereby adopted by this Board, and incorporated by reference in these rules which reads as follows: Section 9002 "The following words, terms and phrases, when used in this Act, shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

'Board' shall mean the Violent Crimes Compensation Board as established by this Act;

'Child', shall mean an unmarried person who is under eighteen years of age, and shall include the step-child or adopted child of the victim, or child conceived prior to, but born after, the personal injury or death of the victim.

'Crime' for purposes of this Chapter shall mean:

- (1) any specific offense set forth in Chapter 5 of Title 11 of the Delaware Code, if the offense was committed after July 1, 1973, and contains the characteristics of murder, rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, manslaughter, assault, kidnapping, arson, burglary, riot, robbery, unlawful use of explosives, or unlawful use of firearms.
- (2) any specific offense set forth in Chapter 3, Title 11 of the Delaware Code if such offense was committed prior to July 1, 1973, and contains the characteristics of murder, rape, manslaughter, assault, kidnapping, arson, burglary, robbery, riot, unlawful use of explosives, or unlawful use of firearms.
- (3) Any specific offense occurring in another state possession or territory of the United States whose domicile is in Delaware is a victim, if the offense contain the characteristics of murder, rape, manslaughter, assault, kidnapping, arson, burglary, riot robbery, unlawful use of explosives or unlawful use of firearms as set forth in Chapter 5 of this title. (66 **Del. Laws**, c. 269, Section 11.)
- (4) Any specific act of delinquency by a child, which if committed by an adult would constitute a specific offense set forth in Chapter 5 of this Title, and contains the characteristics of murder, rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, manslaughter, assault, kidnapping, arson, burglary, robbery, riot, unlawful use of explosives or unlawful use of firearms.
- (5) An act of terrorism, as defined in Section 2331 of Title 18, United States Code, committed outside the United States against a resident of this State. (Effective date of amendment 4/8/97.)

'Dependent' shall mean a person wholly or substantially dependent upon the income of the victim at the time of the victim's death, or would have been so dependent but for the incompetency of the victim due to the injury from which the death resulted, and shall include a child born after the death of such victim;

'Guardian' shall mean a person who is entitled by law or legal appointment to care for and manage the person or property, or both, of a child or incompetent;

'Incompetent' shall mean a person who is incapable of managing his own affairs, as determined by the Board or by a court of competent jurisdiction;

'Personal Injury' shall mean bodily harm, or extreme mental suffering, and shall include pregnancy of the victim.

'Pecuniary Loss' in instances of personal injury shall include medical expenses, including psychiatric care, non-medical remedial care and treatment rendered in accordance with a religious method of healing; hospital expenses; loss of past earnings; and loss of future earnings because of a disability resulting from such personal injury. 'Pecuniary Loss' in instances of death of the victim shall include funeral and burial expenses and loss of support to the dependents of the victim. Pecuniary loss includes any other expenses actually and necessarily incurred as a result of the personal injury or death, but it does not include property damage. Pecuniary loss", as defined in 11 Del.C. §9002, shall include only the net amount of enumerated expenses actually and necessarily sustained as a result of personal injury or death occurring due to a crime. Compensation for increased rent or mortgage

PROPOSED REGULATIONS

payments due to relocation of the victim as a result of the crime shall be limited to the net amount of any increase.

"Permanent and total disability" for purposes of §9007(d) shall mean that a victim has sustained a personal injury that prevents the victim from working or functioning, and from which no recovery is expected, within reasonable medical certainty.

"Secondary Victim" shall mean any parent, stepparent, grandparent, son, daughter, spouse, brother or sister of the victim, sibling, halfsibling, fiancée, caretaker of the victim; any child who resides on a regular or semi-regular basis with any adult who is the victim of, or convicted of, any crime involving an act of domestic violence; the parents of a victim's spouse; or any other person who resided in the victim's household at the time of the crime or at the time of the discovery of the crime.

'Victim' shall mean a person who is injured or killed by the act of any other person during the commission of a crime as defined in this Chapter.

43.0 Quorum (Formerly Rule XXIII)

- 43.1 Three members shall constitute a quorum for all hearings and business of the Board, except a hearing in which the claimant has requested no more than \$5,000.00 compensation and in that instance a quorum of the Board shall be one (1) member. Where an opinion is divided, the majority shall prevail.

54.0 Meetings (Formerly Rule XXIV)

- 54.1 Meetings shall be held upon notice by the Chairman or the Executive Director at such time and place directed.
- 54.1.1 The Board will maintain a running agenda of all business matters to be discussed and acted upon. Following the hearing of claims, the Board, at its discretion and as time permits, may convene a session to address any matters on its running agenda.
- 54.1.2 A meeting solely for the purpose of addressing Board business shall be held within 30 days. Adopted October 17, 1991. Revised January 7, 1993.

65.0 Seal (Formerly Rule XXV)

- 65.1 The Board shall have a seal for authentication of its orders, awards and proceedings, upon which shall be inscribed the words **VIOLENT CRIMES COMPENSATION BOARD, STATE OF DELAWARE.**

76.0 Rules Of Evidence (Formerly Rule IX)

- 76.1 The Board is not bound by the Rules of Evidence. Hearsay evidence is admissible.

87.0 Availability Of Rules (Formerly Rule XX)

- 87.1 The rules of the Board shall be available to the public at the office of the Violent Crimes Compensation Board. A copy of these rules and regulations shall be, on file with all the County law libraries.

98.0 Construction Of Rules (Formerly Rule XXI)

- 98.1 These rules shall be liberally construed to accomplish the purpose of 11 **Del.C.** Ch. 90.

409.0 Amendments Of Rules (Formerly Rule XXII)

- ~~40.1.2~~ 9.1 New rules may be adopted and any rules may be amended or rescinded by the Board at a regular or special meeting following compliance with the Administrative Procedures Act, 29 Del. Laws, c. 101, Subchapter I and II.

~~40.1~~ 9.2 New rules, amendments, or revisions shall become effective the date approved by the Board in accordance with according to 11 Del. Laws, c. 90, Section 9004(d), which reads as follows: "The Board shall have the following functions, powers, and duties:

~~40.1.1~~ Section 9004(d) to adopt, promulgate, amend, and rescind such rules and regulations as are required to carry out the provisions of this Chapter."

4410.0 The Secretary; Filing Of Papers (Formerly Rule IV)

4410.1 The Secretary shall have custody of the Board's seal and official records, and shall be responsible for the maintenance and custody of the docket, files and records of the Board, and of its findings, determinations, reports, opinions, orders, rules, regulations and approved forms.

4410.2 All orders and other actions of the Board shall be authenticated or signed by the Secretary or other person as may be authorized by the Board.

4410.3 All pleadings or papers required to be filed with the Board shall be filed in the office of the Board within the time limit, if any, fixed by law or Board rule for such filing; and similarly all requests for official information, copies of official records, or opportunity to inspect public records shall be made to the Secretary of the Board.

4410.4 Crime victims case files and records maintained by the **Violent Crimes Compensation Board** shall fall under the open records provision of the Freedom of Information Act, 29 **Del. Laws**, c. 100.

4410.5 Communications addressed to the Board and all petitions, and other pleadings, all reports, exhibits, dispositions, transcripts, orders and other papers or documents, received or filed in the office kept by the Secretary, shall be stamped showing the date of the receipt or filing thereof.

4421.0 Forms (Formerly Rule XIII)

~~4211.1~~ The Board shall prepare and furnish claim forms and brochures.

44312.0 Filing Of Claims (Formerly Rule V)

~~4312.1~~ In addition to all other statutory requisites, claims must be filed on official forms which include subrogation, authorization, and consent agreements in the office of the Violent Crimes Compensation Board, ~~located at 1500 E. Newport Pike, Suite 10, Wilmington, Delaware, 19804~~ within one year of the date of the crime.

12.2 If the Board, in its investigation of a claim, requires further documentation from the claimant, such documentation must be submitted to the Board no later than 45 days of the date of the Board's request.

12.3 A victim who seeks compensation for temporary housing, rent, security deposit, furniture and/or moving expenses must submit documentation, to include an old and new lease, within 45 days of the Board's request therefor.

12.4 If the victim seeks compensation for an injury sustained while in the course and scope of employment, the victim must submit a claim for worker's compensation, and provide documentation thereof, before making application to the Board for compensation.

44413.0 Publication Of Claims (Formerly Rule XIX)

4413.1 The Board shall maintain confidentiality of records in accordance with the open records provision of the Freedom of Information Act, 29 **Del. Laws**, c. 100.

44514.0 Investigation Of Claims (Formerly Rule VIII)

4514.1 All claimants must fully cooperate with investigators or representatives of this agency in order to be eligible for an award. In the event that cooperation is refused or denied, the Board may deny a claim for lack of cooperation.

4615.0 Burden Of Proof (Formerly Rule VI)

- 4615.1 In compensation cases, the burden of proof shall be upon the petitioner, ~~it~~ it is also the victim's burden to prove that he or she was an innocent victim of a violent crime, and that he or she cooperated in the apprehension and/or conviction of the perpetrator of the crime.
- 15.2 The victim also has the burden of proving that he/she sustained a loss or incurred an expense as a result of a violent crime that is compensable according to the statutory authority and the Rules of the Board.

4716.0 Exhibits (Formerly Rule VII)

- 4716.1 Exhibits and case file documents submitted prior to or after the **Violent Crimes Compensation Board's** hearings shall be maintained in accordance with the provisions of the Department of State, Bureau of Archives and Records Management.

4817.0 Subpoenas, Etc. (Formerly Rule XIV)

- 4817.1 Any Board member, and the Executive Director, shall have the power to administer oaths, subpoena witnesses, and compel the production of books, papers, and records relevant to any investigation or hearing authorized by 11 **Del.C.** §9015.
- 4817.2 The Board or any staff member may take, or request, affidavits and dispositions of witnesses residing within or without of the State.

4918.0 Hearings (Formerly Rule X)

- 4918.1 Notice of hearings shall be posted in the office of the Violent Crimes Compensation Board seven days prior to the scheduled hearing dates. special meetings or rescheduled hearings shall be posted no later than 24 hours prior to the scheduled time.
- 4918.2 The Board may receive as evidence, any statements, documents, information or material, it finds is relevant and of such nature as to afford the parties a fair hearing. The Board may also accept police reports, hospital records and reports, physicians reports, etc., as proof of the crime and injuries sustained, without requiring the presence of the investigating officer or attending physician at the hearing.
- 4918.3 Any claimant may request to be heard by the Board following the initial claim hearing, if he/she is dissatisfied with the decision of the Board. The request to be heard before the Board must be in writing and must be received in the office of the **Violent Crimes Compensation Board** within 15 days of the Board's decision. The written statement must include any and all reasons for the dissatisfaction.
- 4918.4 The Board may arrange for a medical or mental health examination by a physician designated by the Board. A written report of such examination shall be filed by the attending physician with the Board. The physicians's fee shall be paid directly by the Board.
- 4918.5 All witnesses shall testify under oath (or by affirmation), and a record of the proceedings shall be recorded. The Board may examine the claimant and all witnesses.
- 4918.6 Claim hearings shall be open to the public. However, the Board may hold private deliberations under the following circumstances:
- 4918.6.1 When the claim to be considered derives from any sexual offense;
 - 4918.6.2 When the claim to be considered derives from any offense by a child unless such child has been deemed amenable to the jurisdiction of a criminal court;
 - 4918.6.3 When the claim to be considered derives from any matter not yet adjudicated.
- 4918.7 A claim under \$5,000.00 may be heard by one Board Member
- 4918.8 A request to reopen a claim may be heard by one Member if the repoen request for compensation is less than \$5,000.00. If the repoen request for compensation is more than \$5,000.00, the request to reopen sahl be heard by a quorum of the Board.

- ~~49~~18.9 If a claim is filed more than one (1) year after the crime occurrence, or if the claim was reported to law enforcement more than 72 hours after the commission of the crime, the claim may be reviewed by one member to accept or deny for processing.
- 18.10 Under no circumstances shall the Board reopen or reinvestigate a case after the expiration of two (2) years from the date of decision rendered by the Board.
- 18.11 Where a victim applies for additional compensation for expenses incurred more than one year from the crime occurrence, the Board may require a new physical or mental examination, in order to ascertain causal connection to the original occurrence.

~~20~~19.0 Attorneys (Formerly Rule XI)

- ~~20~~19.1 All claimants have the right to be represented before the Board by an attorney, who is licensed to practice in the State of Delaware. The attorney shall file a notice of appearance.
- ~~20~~19.2 Service upon the claimant's attorney shall be deemed as service on the party he/she represents.

~~24~~20.0 Attorney Fees (Formerly Rule XII)

- ~~24~~20.1 The attorney representing a claimant before this Board must submit an affidavit setting forth the total number of hours expended and describe the nature of the work performed.
- ~~24~~20.2 The Attorney's fees shall not exceed \$1,000.00.
- ~~24~~20.3 Attorney's fees shall be awarded at the discretion of the Board.
- ~~24~~20.4 Attorney's fees may be 15% of the total amount awarded to the victim, but not to exceed \$1000.00; or a fee based on the number of hours spent in representing the claimant. Hourly fee rate to be determined by the Board.
- ~~24~~20.5 No prior agreement between an attorney and a client to pay the attorney a fee out of the client's award will be honored by the Board. Any such arrangement is unlawful.
- ~~24~~20.6 Upon application to the Board for attorney's fees, the service rendered the injured victim, as well as the time spent and uniqueness of the case, will be considered in determining the allowance of attorney's fees.
- ~~20~~.7 The amount of any attorneys fee award shall not be included within the total compensation subject to the limits set forth in §9007(d).

~~22~~21.0 Appeal (Formerly Rule XXII)

- ~~22~~21.1 All questions relating to an appeal shall be determined in accordance with Chapter 90, Section 9005, Title 11, of the Delaware Code ~~which reads as follows:~~
- ~~22~~21.2 ~~Section 9005(c) "The Board is not compelled to provide compensation in any case, nor is it compelled to award the full amount claimed. The Board may make its award of compensation dependent upon such condition or conditions as it deems desirable.~~
- ~~22~~.3 Any claimant who is aggrieved by the Board's decision concerning compensation or any conditions attached to the award of such compensation may appeal to the Superior Court within (30) thirty days of the decision of the Board. Any appeal to Superior Court shall not be de novo.

~~23~~22.0 Denial Of Claim; Reduction (Formerly Rule XVIII)

- ~~23~~22.1 All questions relating to denial of a claim shall be determined in accordance with Chapter 90, Title 11, Section 9006, of the Delaware Code ~~which reads as follows:~~
- ~~23~~.1.1 "The Board shall deny payment of a claim for the following reasons:
- ~~23~~.1.1.1 ~~Where the claimant was the perpetrator of the crime on which the claim is based, or was the principal involved in the commission of a crime at the time when the personal injury upon which the claim is based was incurred.~~

PROPOSED REGULATIONS

- ~~23.1.1.2~~ Where the claimant incurred the personal injury on which the claim is based through collusion with the perpetrator of the crime.
- ~~23.1.1.3~~ Where the claimant refused to give reasonable cooperation to state or local law enforcement agencies in their efforts to apprehend or convict the perpetrator of the crime in question.
- ~~23.1.1.4~~ Where the claim has not been filed within one year after the personal injury on which the claim is based, unless an extension is granted by the Board.
- ~~23.1.1.5~~ Where the claimant has failed to report the crime to a law enforcement agency within 72 hours of its occurrence; provided, however, that the Board in its discretion, may waive this requirement if the circumstances of the crime render this requirement unreasonable.
- ~~23.1.1.6~~ Where the victim is injured as a result of their own suicide or attempted suicide.
- ~~23.1.1.7~~ Where the victim has sustained injuries during a drug-related crime in which the victim was an illegal participant.
- ~~23.1.1.8~~ Where the victim is delinquent in the payment of an penalty assessment levied pursuant to 11 ~~Del.C.~~ §9012, or in the payment of an order of restitution payable to the Victim Compensation Fund; provided, however, that the Board may condition payment of a claim upon the satisfaction of such delinquencies. In addition, the Board may, for hardship or other good cause, waive the provision of this paragraph in their entirety.
- ~~2322.2~~ In determining whether or not to make an award under the provisions of this Chapter, or in determining the amount of any award, the Board may consider any circumstances it deems to be relevant, including the behavior of the victim which directly or indirectly contributed to his injury or death; unless such injury or death resulted from the victim's lawful attempt to prevent the commission of a crime or to apprehend an offender. The Board is not compelled to provide compensation in any case, nor is it compelled to award the full amount claimed. The Board may make its award of compensation dependent upon such condition or conditions as it deems desirable.
- ~~23.3~~ If the victim bears any share of responsibility that caused his injury or death, the Board shall reduce the amount of compensation in accordance with its assessment of the degree of such responsibility attributable to the victim. A claim may be denied or reduced, if the victim of the personal injury in question, either through negligence or through willful and unlawful conduct, substantially provoked or aggravated the incident, giving rise to the injury.

~~2423.0~~ Dependency (Formerly Rule XVI)

- ~~2423.1~~ All questions relating to dependency shall be determined in accordance with 11 ~~Del.C.~~ Ch. 90 §9002 which reads as follows:
- ~~2423.2~~ Section 9002(d) "Dependent shall mean a person who is wholly or substantially dependent upon the income of the victim at the time of the victim's death, or would have been so dependent but for the incompetency of the victim due to the injury from which the death resulted, and shall include a child born after the death of such victim."

~~2524.0~~ Emergency Awards (Formerly Rule XV)

- ~~2524.1~~ The Board will make an emergency award only upon a showing of dire necessity. The claimant, must, in writing, request an emergency award when submitting his claim form and show just cause as to why such an award should be considered. No such award will be made until the police report is acquired.

~~2625.0~~ Mental Health Practitioner Qualifications/Licensure (Formerly Rule XXIX)

- ~~2625.1~~ To be eligible for crime victim's compensation for mental health counseling treatment, within and without the State of Delaware, a practitioner possessing an advanced degree in an applied mental health discipline must provide assessment and treatment. The advanced degree should be in Psychiatry, Psychology, Social Work, Counseling, or Psychiatric Nursing.

- ~~26.2~~ 25.2 To be eligible for crime victim's compensation for adult psychological assessments and mental health counseling treatment, within and without in the State of Delaware, a licensed psychologist or a licensed psychiatrist mental health practitioner must perform the assessment unless waived by the Board provide services.
- ~~26.3~~ To be eligible for crime victim's compensation for child psychological assessments, within and without the State of Delaware, a licensed child psychologist or a licensed child psychiatrist must perform the assessment unless waived by the Board.
- ~~26.4~~ To be eligible for crime victim's compensation for mental health counseling treatment in the State of Delaware, a licensed mental health practitioner must provide services. The five disciplines recognized by the Violent Crimes Compensation Board for payment of mental health counseling benefits ~~is~~ are: Licensed Psychiatrist, Licensed Psychologist, Licensed Clinical Social Worker, Licensed Mental Health Counselor, and Licensed Clinical Nurse Specialist.
- ~~26.5~~ 25.3 Payment for mental health treatment received outside the State of Delaware will be evaluated for practitioner's licensure on a case-by-case basis by the Violent Crimes Compensation Board.
- ~~26.6~~ 25.4 The Violent Crimes Compensation Board may consider payment for mental health counseling services rendered by an unlicensed provider if the provider is practicing under the direct supervision of a licensed practitioner in one of the disciplines recognized by the Violent Crimes Compensation Board, as set forth in ~~paragraph one, sentence two~~ Rule 27.1 above. The Violent Crimes Compensation Board will decide claims for payment of services rendered by an unlicensed practitioner on a case-by-case basis.

2 DE Reg. 1670 (3/1/99)

~~27.0~~ Mental Health Counseling Award (Formerly Rule XXVIII)

Removed March 11, 1999

2 DE Reg. 1670 (3/1/99)

~~28.0~~ Mental Suffering Award (Formerly Rule XXVI)

Removed March 11, 1999 (Prohibited by statute effective February 11, 1992)

2 DE Reg. 1670 (3/1/99)

~~29~~26.0 Burial Awards (Formerly Rule XXVII)

~~29~~26.1 The aggregate award for funeral and burial shall not exceed \$8,500.00

~~30~~27.0 Child Victim Counseling and Assessment Program (CCAP) Provisions (Formerly Rule XXX)

~~30~~27.1 For the purposes of section 9020(c), up to \$1,200.00 may be paid from the victim's compensation fund on behalf of each child victim of crime for reasonable costs incurred for psychological assessments and short-term counseling.

2 DE Reg. 1670 (3/1/99)

~~28.0~~ Collateral Sources of Compensation: Subrogation

~~28.1~~ Any award made by the Board shall be reduced by the amount, if any, of compensation the claimant has received or will receive as indemnification from any other source, including insurance of any kind. The proceeds of any life insurance policy shall not be deducted from the award. [Source: §9005(1)]

~~28.2~~ The Board shall deduct from its award the amount of any compensation for personal injury of death arising from the crime or incident and received by the victim, or by the victim's dependents. Such compensation includes payments by or on behalf of the offender, from any insurer, and from any governmental entity. The amount of compensation to be deducted from the Board's award shall be the

PROPOSED REGULATIONS

net amount of compensation paid to the victim, after deductions for costs or attorney fees. The proceeds of any life insurance policy shall not be deducted from the award. [Source: §9008(d)].

- 28.3 Where an award has been made, and the claimant subsequently receives reimbursement from any source set forth above, in Rules 31.1 and 31.2, with the exception of life insurance, the Board may recover reimbursement from the claimant, up to the amount of the award.
- 28.4 Prior to making an award, the Board shall require the claimant to execute an agreement acknowledging the claimant's understanding that any award is net of funds received from collateral sources, and further acknowledging the claimant's obligation to reimburse the Board to the extent of any such funds received from collateral sources.
- 28.5 Any attorney representing a client before the Board is bound by the Rules set forth herein regarding collateral sources of compensation.

32.0 Travel Awards

2 DE Reg. 1670 (3/1/99)

DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

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

The Delaware Harness Racing Commission, pursuant to 3 Del.C. §10005, proposes to change its Rules 7 and 10. The Commission will hold a public hearing on the proposed rule changes on December 9, 2008. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on November 1, 2008.

The proposed changes are for the purpose of updating Rules 7 and 10 to reflect current policies, practices and procedures. Copies are published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml A copy is also available for inspection at the Racing Commission office.

501 Harness Racing Rules and Regulations

(Break in Continuity of Sections)

7.0 Rules of the Race

7.1 Declarations and Drawing

(Break in Continuity of Sections)

7.1.6 Preference Dates

Preference dates shall be given to horses in all overnight events at extended pari-mutuel tracks in accordance with the following:

7.1.6.1 The date of the horse's last previous start in a purse race is its preference date with the following exceptions:

7.1.6.1.1 The preference date on a horse that has drawn to race and has been scratched is the date of the race from which scratched.

7.1.6.1.2 When a horse is racing for the first time ~~in a calendar year after August 1st ever~~, the date of its first successful qualifying race within the DHRC standards shall be

considered its preference date. ~~When a horse is racing for the first time ever, the date of its first successful qualifying race shall be considered its preference date.~~

7.1.6.1.3 Wherever horses have equal preference in a race, the actual preference of said horses in relation to one another shall be determined by backdating, up to two starts, the horse having raced closest to the draw having the least preference. If no preference is determined, preference will be determined by lot.

7.1.6.1.4 When an overnight race has been re-opened because it did not fill, all eligible horses declared into the race prior to the re-opening shall receive preference over other horses subsequently declared, irrespective of the actual preference dates, excluding horses already in to go.

7.1.6.2 This rule relative to preference is not applicable at any meeting at which an agricultural fair is in progress. All horses granted stalls and eligible must be given an opportunity to compete at these meetings.

(Break in Continuity of Sections)

10.0 Due Process and Disciplinary Action

(Break in Continuity of Sections)

10.2 Proceedings by State Steward or Judges

(Break in Continuity of Sections)

10.2.8 Effect of Rulings

10.2.8.1 Rulings against a licensee apply to another person if continued participation in an activity by the other person would circumvent the intent of a ruling by permitting the person to serve, in essence, as a substitute for the ineligible licensee.

10.2.8.2 The transfer of a horse to avoid application of a Commission rule or ruling is prohibited.

10.2.8.3 The horses of a trainer issued a full suspension (or under appeal of a full suspension) shall not be transferred for the purposes of training to a spouse, family member, assistant, current employee/employer, or household member. All trainer and owner transfers of horses from parties under a full suspension (or parties under appeal of a full suspension) to other owners or trainers must be approved by the DHRC judges or the DHRC Administrator.

(Break in Continuity of Sections)

1 DE Reg. 507 (11/01/97)

2 DE Reg. 1243 (01/01/99)

5 DE Reg. 1903 (4/1/02)

***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 Harness Racing Commission is available at:**

[Harness Racing Commission Regulations](#)

PROPOSED REGULATIONS

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 230

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

230 Promotion

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** 230 Promotion. The regulation requires that local school districts have promotion policies in place for grades K through grade 12. The local policies must also incorporate the promotion requirements as defined in the *Delaware Code* and in 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. The amendments: 1) clarify charter schools are subject to this regulation; 2) require a copy of the current promotion policy be on file with the Department; and 3) make a technical correct to a cited regulation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 3, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation supports efforts to improve student achievement by not permitting students to be promoted if they have not met academic standards except when an IEP allows for such promotion.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation applies to all students and consequences are applied in an equitable manner.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to reflect the requirements set forth in the *Delaware Code* concerning promotion reflecting the laws attention to 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 amended regulation? The regulation is required under state statute.

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.

230 Promotion

1.0 Each Local School District and Charter School Shall Have a Promotion Policy for Kindergarten Through Grade 12

- 1.1 Local school districts and charter schools must follow, at a minimum, the requirements for promotion as defined in 14 **Del.C.** §153, titled Matriculation and Academic Promotion Requirements and 14 **DE Admin. Code** 925⁷, Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs.
- 1.2 The promotion policies for grades 1 to 8 must also, at a minimum, include the following:
 - 1.2.1 Students in grades 1 to 8 must receive instruction in English Language Arts or its equivalent, mathematics, social studies and science each year as defined in the Delaware Content Standards.
 - 1.2.2 Students in grades 1 to 8 must pass 50% of their instructional program each year (excluding physical education) to be promoted to the next grade level. One of the subject areas that must be passed is English Language Arts or its equivalent. English Language Arts or its equivalent includes English as a Second Language (ESL), and bilingual classes that are designed to develop the English language proficiency of students who have been identified as LEP. Classes in English Language Arts, mathematics, science and social studies include those which employ alternative instructional methodologies designed to meet the needs of LEP students in the content areas.

2 DE Reg. 1248 (1/1/99)

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

2.0 Policy Reporting Requirements

- 2.1 Each local school district and charter school shall have an electronic copy of its current promotion policy on file with the Department of Education.
- 2.2 Each local school district and charter shall provide an electronic copy of its promotion policy to the Department of Education within ninety (90) days of any revision(s) regardless of whether said revisions were made as a result of changes to Federal, state or local law, regulations, guidance, or policies.

OFFICE OF THE SECRETARY

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

14 DE Admin. Code 505

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

505 High School Graduation Requirements and Diplomas

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** 505 High School Graduation Requirements and Diplomas to include a requirement that the local school districts and charter schools review the Student Success Plan (SSP) of students at the end of the first and second year of high school to determine if the student is "on track" to graduate. The amended regulation establishes "on track" to mean the student has earned at least three (3) core course credits and two (2) other course credits for a

total of five (5) course credits at the end of the first year, and the student has earned at least six (6) core course credits and four (4) other course credits for a total of ten (10) course credits at the end of the second year. This regulation is re-advertised in the November *Register of Regulations* because of the proposed delay of the World Language graduation requirement from the class of 2013 to the class of 2015. The requirement is being delayed until 2015 to allow for additional capacity to be built in the districts and schools.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 3, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendment outlines a process for determining whether a student is "on track" to graduate and therefore should improve student achievement. The delay in the requirement for two credits in world languages should not adversely affect student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amendment outlines a process for determining whether a student is "on track" to graduate and therefore should help ensure all students receive an equitable education. The delay in the requirement for two credits in world languages should not adversely affect the ability of a student to receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendment outlines a process for determining whether a student is "on track" to graduate and a delay of the world languages graduation requirement and does not address health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendment outlines a process for determining whether a student is "on track" to graduate and therefore should help ensure all students' legal rights are respected. The delay in the requirement for two credits in world languages should not adversely affect 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 amendment outlines a process for determining whether a student is "on track" to graduate and maintains the authority and flexibility of decision making at the local board and school level. The delay of the world languages graduation requirements does not preclude a district from this requirement at the local level thus maintaining the current authority and flexibility of the local board.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amendment outlines a process for determining whether a student is "on track" to graduate and delays the world languages graduation requirement does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for graduating does not change.

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 amendment is consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing student graduation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no additional costs to the State or to the local school boards for compliance as the data to be reviewed is readily available to the local schools.

505 High School Graduation Requirements and Diplomas

1.0 Definitions:

"**Career Pathway**" means the three (3) credits of pre planned and sequential courses required for graduation designed to develop knowledge and skills in a particular career or academic area. The Career Pathway shall be included in the Student Success Plan.

“Core Course Credit” means a credit in an English Language Arts, Mathematics, Science or Social Studies course.

“Credit” means the acquisition of skills and knowledge at a satisfactory level as determined by the district and charter school boards through 135 hours (a Carnegie Unit) of actual classroom instruction or through locally approved options contained in Section 8.0.

“Credit for Computer Literacy” means credit granted toward graduation at any point when the student can demonstrate competency in the required skill areas either through an integrated approach, a specific course, or a demonstration of accumulated knowledge over the student's educational career.

“Department” means the Delaware Department of Education.

“English Language Arts” means those components of reading, writing and oral communication that are included in the State Content Standards for high school English Language Arts as required in 14 **DE Admin. Code 501**.

“Health Education” means those components that are included in the State Content Standards for high school health education as required in 14 **DE Admin. Code 501**.

“High School” means grades 9 through 12.

“Mathematics” means those components of number sense, algebra, geometry, statistics and probability combined with problem solving, reasoning, communicating, and making connections that are included in the State Content Standards for high school mathematics as required in 14 **DE Admin. Code 501** either through integrated courses or in courses titles such as Algebra I, Algebra II, Geometry, Trigonometry, Pre-Calculus, Calculus, Discrete Mathematics, Statistics, and Probability.

“Physical Education” means those components that are included in the State Content Standards for high school physical education as required in 14 **DE Admin. Code 501**.

“Science” means those components of the nature of science which include inquiry, materials and their properties, energy and its effects, Earth in space, Earth's dynamic systems, life processes, diversity and continuity of living things, and ecology that are included in the State Content Standards for high school science as required in 14 **DE Admin. Code 501** either through integrated courses or in course titles such as Earth Science, Biology, Chemistry and Physics.

“Social Studies” means those components of civics, economics, geography, and history that are included the State Content Standards for high school social studies as required in 14 **DE Admin. Code 501** either through integrated courses or in course titles such as United States History, World History, Geography, Economics, and Civics.

“Student Success Plan (SSP)” means a plan encompassing a minimum of five years including one year beyond high school developed and updated at least annually by the student, the student's advisor, at least one other staff member and the student's parent(s) guardian(s) or relative caregiver. The student's plan includes courses needed in preparation for immediate entry into the work force or opportunities in post secondary education. The plan also includes the support services necessary for the student to graduate from high school. An additional year of high school may be an option for inclusion in the Student Success Plan.

“Support Services” means those educational interventions such as tutoring; extra time before school, in school, or after school; summer school, an extra year(s) of high school or any other strategy to provide student educational assistance.

“World Languages” RESERVED

10 DE Reg. 1802 (06/01/07)

2.0 Current Graduation Requirements

- 2.1 A public school student shall be granted a State of Delaware Diploma when such student has successfully completed a minimum of twenty two credits in order to graduate including: 4 credits in English Language Arts, 3 credits in mathematics, 3 credits in science, 3 credits in social studies, 1 credit in physical education, 1/2 credit in health, 1 credit in computer literacy, 3 credits in a Career Pathway, and 3 1/2 credits in elective courses.

10 DE Reg. 1802 (06/01/07)

3.0 Graduation Requirements Beginning with the Class of 2011 (Freshman Class of 2007-2008)

- 3.1 Beginning with the graduating class of 2011, a public school student shall be granted a State of Delaware Diploma when such student has successfully completed a minimum of twenty two (22) credits in order to graduate including: four (4) credits in English Language Arts, four (4) credits in Mathematics; three (3) credits in Science, three (3) credits in Social Studies, one (1) credit in physical education, one half (1/2) credit in health education, three (3) credits in a Career Pathway, and three and one half (3 ½) credits in elective courses.
- 3.1.1 Students shall complete mathematics course work that includes no less than the equivalent of the traditional requirements of Geometry, Algebra I and Algebra II courses.
- 3.1.2 Scientific investigations related to the State Science Standards shall be included in all three science course requirements.
- 3.1.3 During the senior year students shall maintain a credit load each semester that earns them at least a majority of credits that could be taken that semester including one (1) of the four credits required in Mathematics.
- 3.1.3.1 Senior year credits shall include regular high school course offerings, the options available in 8.0 or a combination of both.
- 3.1.3.1.1 Options for the senior year in 3.1.3.1 that the districts and charter schools provide shall be submitted to the Department with a copy to the office of the State Board of Education for review.

4.0 Monitoring Student Progress (Personalizing the High School Experience)

- 4.1 Beginning with the 2007-2008 school year, every eighth and ninth grade student shall have a Student Success Plan (SSP) developed by the student, the student's advisor, at least one other school staff member and the student's parent(s), guardian(s) or relative caregiver. Each school year thereafter a grade shall be added so that by the 2011-2012 school year, every student in grades 8 through 12 shall have a Student Success Plan. [For a student with an Individualized Education Program (IEP) the Student Success Plan (SSP) shall also incorporate the other aspects of the transition plan required by 14 DE Admin. Code 925.]
- 4.2 Each local school district and charter school shall establish a process for developing Student Success Plans that includes:
- 4.2.1 Actively monitoring student progress, on an ongoing basis and, at a minimum, by the end of each marking period in those courses required for graduation,
- 4.2.2 Providing support services if a student is failing or in danger of failing courses required for graduation, and
- 4.2.3 Annual updating of the Student Success plans by the student, the student's advisor, at least one other staff member and the student's parent(s) guardian(s) or relative caregiver] and others as appropriate.
- 4.2.4 Following the guidelines for Career and Technical Education (CTE) programs of study outlined in the CTE State Plan.
- 4.2.5 Reviewing each student's transcript at the end of the first and second year of high school to determine if the student is on track to graduate based on the following criteria:
- 4.2.5.1 At the end of the first year of high school the student has earned at least three (3) core course credits and two (2) other course credits for a total of five (5) course credits; and
- 4.2.5.2 At the end of the second year of high school the student has earned at least six (6) core course credits and four (4) other course credits for a total of ten (10) course credits.
- 4.2.5.3 For a student with an Individualized Education Program (IEP), on track to graduate shall be consistent with 4.2.5.1 and 4.2.5.2 unless otherwise determined by the student's IEP Team.

10 DE Reg. 1802 (06/01/07)

5.0 Credit Requirements Beginning with the Graduation Class of ~~2013 (Freshman Class of 2009-2010 2015~~ (Freshman Class of 2011-2012)

- 5.1 Beginning with the graduating class of ~~2013~~ 2015, a public school student shall be granted a State of Delaware Diploma when such student has successfully completed a minimum of twenty four (24) credits in order to graduate including: four (4) credits in English Language Arts, four (4) credits in Mathematics, three (3) credits in Science, three (3) credits in Social Studies, two (2) credits in a World Language, one (1) credit in physical education, one half (1/2) credit in health education, three (3) credits in a Career Pathway, and three and one half (3 ½) credits in elective courses.
- 5.2 World Language (RESERVED)
- 10 DE Reg. 1802 (06/01/07)**

6.0 Career Pathway

- 6.1 Local school districts and charter school boards shall establish policies concerning the purpose, content, development, and approval of Career Pathways.
- 10 DE Reg. 1802 (06/01/07)**

7.0 Additional Credit Requirements

- 7.1 District and charter school boards may establish additional credit requirements for graduation above the minimum number of credits required by the Department.
- 10 DE Reg. 1802 (06/01/07)**

8.0 Options for Awarding Credit Toward High School Graduation

- 8.1 District and charter school boards are authorized to award credit toward high school graduation for the following activities, on the condition that the activities incorporate any applicable state content standards. Before awarding credit for any of the following activities, the districts and charter school boards shall have adopted a policy approving the activity for credit and establishing any specific conditions for the award of credit for the activity. Such policy shall be applicable to each school within the district or each charter high school.
- 8.1.1 Courses taken at or through an accredited community college, two or four year college.
- 8.1.2 Voluntary community service as defined in 14 **Del.C.** §§8901A and 8902A.
- 8.1.3 Supervised work experience in the school and the community which meets the educational objectives or special career interest of the individual student.
- 8.1.4 Independent study.
- 8.1.5 Correspondence Courses.
- 8.1.6 Distance learning courses. These courses may be delivered by the teacher to the learner in real time, online or by video.
- 8.1.7 High school courses taken while in the middle school in conjunction with an articulated agreement between the district middle school and the district high school(s). Such credit shall also transfer to a high school in another district or to a charter school.
- 8.1.8 Course credit transferred from another high school.
- 8.1.9 Course credit earned through summer or evening school classes, as a member of the military service or as part of the James H. Groves Adult High School.
- 8.1.10 Tutoring programs taught by a teacher certified in the subject being taught.
- 8.1.11 Course credit awarded by agencies or instrumentalities of the state other than public schools which provide educational services to students. A description of the program provided to the student, grades given, and the number of clock hours of instruction or a demonstration of competency must be provided to the school district or charter school prior to receipt of credit.

9.0 High School Diplomas and the Certificate of Performance

- 9.1 A State sanctioned diploma shall be granted to students who meet the state and local district or charter school requirements for graduation pursuant to regulation 14 **Del.C.** §152.
- 9.2 A State sanctioned Certificate of Performance shall be granted to students who meet the requirements of 14 **Del.C.** §152.
- 9.3 Diplomas from one school year shall not be issued after December 31 of the next school year.
- 9.4 Duplicate diplomas or certificates of performance will not be issued, but legitimate requests for validation of the diploma or the certificate of performance will be satisfied through a letter of certification. Requests for diploma information from graduates of Delaware high schools should be directed to the high school the student was attending at the time of graduation. If the school does not have the records then the student should contact the Department in Dover for a notarized letter of certification that contains the name of the applicant, the name of the school, the date of graduation, and the diploma registry number (if available).
- 9.5 State High School Diploma for World War II Veterans Pursuant to 14 **Del.C.** §159
 - 9.5.1 "World War II Veteran" means any veteran who performed wartime service between December 7, 1941 and December 31, 1946. If the veteran was in the service on December 31, 1946, continuous service before July 16, 1947 is considered World War II.
 - 9.5.2 The Department shall provide a high school diploma to any World War II veteran who:
 - 9.5.2.1 Left a Delaware high school prior to graduation in order to serve in the armed forces of the United States.
 - 9.5.2.2 Did not receive a high school diploma, or received a G.E.D., as a consequence of such service and,
 - 9.5.2.3 Was discharged from the armed forces under honorable circumstances.
 - 9.5.3 The diploma may also be awarded posthumously if the deceased veteran meets the qualifications in 9.5.2.1 through 9.5.2.3.
 - 9.5.4 Applications for this high school diploma shall be made on forms designated by the Department and the Delaware Commission of Veterans Affairs and shall have a copy of the candidate's honorable discharge papers attached to the application.

4 DE Reg. 995 (12/01/00)

5 DE Reg. 625 (09/01/01)

7 DE Reg. 1344 (04/01/04)

10 DE Reg. 547 (09/01/06)

OFFICE OF THE SECRETARY

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

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

525 Requirements for Career Technical Education Programs

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** 525 Requirements for Career Technical Education Programs to complement changes in teacher certification regulation 14 **DE Admin. Code** 1559 Trade and Industrial Education Teacher. In addition, the title was changed to reflect the language of the federal law and formatting changes to be consistent with the *Register of Regulations*

number sequencing.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 3, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation aligns with teacher certificate and should help improve student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation aligns with teacher certificate and should help ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation aligns with teacher certificate and should ensure all students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation aligns with teacher certificate and should ensure all students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation aligns with teacher certificate and preserves the necessary authority and flexibility of decision making at the local board and school level.

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? This regulation maintains the current authority and accountability structure.

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 aligns with teacher certificate and is consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of this regulation.

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

525 Requirements for Career and Technical Education Programs

1.0 Career and Technical Education Programs

All Career and Technical Education Programs (CTE) shall meet the provisions of Delaware's State Plan for Career and Technical Education and meet the provisions of the content standards approved by the Department of Education or, if there are no approved state content standards, meet local program standards approved by the Department of Education.

6 DE Reg. 955 (2/1/03)

2.0 All Local School Districts and Charter Schools that Offer State Approved Career and Technical Education Programs Shall:

2.1 Meet the requirements within the state plan for the Carl D. Perkins Career and Technical Education Act of 2006.

2.2 Have the approval of the Department of Education before implementing new CTE courses and or pathways.

PROPOSED REGULATIONS

- 2.3 Adequately fund, support and sustain the instructional program.
- 2.4 Ensure all teachers are certified in the Career and Technical Education Program areas in which they teach.
- 2.5 Ensure that all teachers meet the Delaware Department of Education (DE DOE) Skilled and Technical Science Standards for the specific career area in which they teach.
- 2.5.1 Such standards may include, but are not limited to, holding a state professional license in the area to be taught; holding an industry recognized certification of technical competence or journey person status in the specific career area; or additional work experience.
- 2.6 Where appropriate and applicable, ensure that all teachers meet certification requirements for administering the end of Pathway Assessment in the specific career area in which they teach.
- 2.57 Make provisions for meeting the unique needs of all students.
- 2.68 Establish and maintain an active CTE advisory committee which includes labor and management personnel to assist in the development and operation of the program.
- 2.79 Use Department of Labor market projections to determine the need for new and continuing Career and Technical Education Programs.
- 2.810 Assess occupational needs and the availability of placement and employment opportunities for program completers with input from the local CTE advisory committee.
- 2.911 Use the information derived from the Student Success Plan (SSP) portfolio to determine student occupational interests, needs and educational program.
- 2.4012 Organize and financially support Career and Technical Student Organizations as integral components of Career and Technical Education Programs in public schools that complement and enrich instruction. The following career and technical student organizations are affiliated in Delaware:
- 2.4012.1 Business Professionals of America (BPA)
- 2.4012.2 Technology Student Association (TSA)
- 2.4012.3 DECA, an association of marketing students
- 2.4012.4 Family, Career and Community Leaders of America (FCCLA)
- 2.4012.5 The National FFA Organization
- 2.4012.6 Skills USA
- 2.4012.7 The Delaware Career Association (DCA)
- 2.4413 Integrate related academic content into individual career and technical education courses, and guide students through a course selection process that supports the necessary academic preparation required by the student's career path and educational goals as documented in the student's SSP.
- 2.4214 Schedule skilled and technical sciences (trade and industrial) education programs, when offered, for a minimum of two consecutive periods a day or the equivalent, five days a week for two or more years.
- 2.4315 Establish no rules practices or regulations that interfere with, prohibit or otherwise prevent students from having the opportunity to learn about, enroll in and complete a Career and Technical Education Program in a career and technical school district.
- 2.4416 Use equipment and facilities comparable to that used by local business and industry for which the Career and Technical Education Program is preparing students.
- 2.4517 Schedule Department of Education and Delaware Advisory Council on Career and Technical Education Program review and monitoring visits upon request.
- 2.4618 Report CTE program data as required by the Delaware Department of Education.
- 1 DE Reg. 1196 (2/1/98)**
- 6 DE Reg. 955 (2/1/03)**
- 8 DE Reg. 1603 (5/1/05)**
- 9 DE Reg. 1070 (01/01/06)**
- 12 DE Reg. 439 (10/01/08)**

3.0 Cooperative Education Programs

- 3.1 Cooperative Education Programs provide senior Career and Technical Education Program students with coordinated on the job training not ordinarily available in the classroom. During the student's senior year, or under unique circumstances as approved by the Department of Education, employers may provide this on the job training in occupations directly related to the Career and Technical Education Program in which the student is enrolled. For the purpose of granting credit during the school year two hours of Cooperative Education Work Experience shall equal one hour of instructional time. In a summer Cooperative Education Work Experience Program one half unit of credit shall be granted and shall be counted toward the units of credit necessary for graduation.
- 3.42 In order to qualify for Career and Technical Education funding units the Career and Technical Education Program Teacher or Career Guidance Counselor shall be provided with a full class period, each day, for every fifteen (15) students enrolled in the Cooperative Education Work Experience Program in order to make at least quarterly visits to the student's place of employment to ensure coordination between the classroom and the on the job experience.
- 3.3 In order to qualify for career and technical education funding units the school shall have on file, for each student; a training agreement that includes training objectives and is signed by a parent, guardian or Relative Caregiver, the employer, the student and a representative of the district or charter school. A State Work Permit for Minors in accordance with State Department of Labor regulations shall also be on file.
- 3.4 Students whose education is guided by an Individualized Education Program (IEP), or a Section 504 or ADA accommodation plan, may participate in Cooperative Education programs without senior year status if approved by the IEP or multidisciplinary team responsible for the plan in consultation with the Career and Technical Education Teacher Coordinator.
- 3.25 In order to qualify for career and technical education funding units the students shall; possess minimum occupational competencies specified by the Career and Technical Education Teacher Coordinator before being placed in cooperative employment, be in their senior year and be in a Cooperative Education Work Experience Program that relates directly to the student's current or completed career and technical education pathway, meet the requirements of ~~3-0~~ 3.1 through 3.4 and be supervised through on site visits by an assigned Career and Technical Education Program Teacher Coordinator or Career Guidance Counselor.

2 DE Reg. 111 (07/01/98)

6 DE Reg. 955 (02/01/03)

9 DE Reg. 1070 (01/01/06)

12 DE Reg. 439 (10/01/08)

4.0 Diversified Occupations Programs

- 4.1 Diversified Occupations Programs provide students with coordinated on the job training not ordinarily available in the classroom. During the student's junior or senior year or under unique circumstances as approved by the Department of Education, employers provide this on the job training. For the purpose of granting credit during the school year, two hours of work experience in a Diversified Occupations Work Experience Program shall equal one hour of instructional time. In a summer Diversified Occupations Work Experience Program one half unit of credit shall be granted and that credit shall be counted toward the units of credit necessary for graduation.
- 4.42 In order to qualify for career and technical education funding units a Career Technical Education Program Teacher or Career Guidance Counselor shall be provided with a full class period, each day, for every fifteen (15) students enrolled in the Diversified Occupations Work Experience Program in order to make at least quarterly on site visits to the student's place of employment to ensure coordination between the classroom and the on the job experience.
- 4.3 In order to qualify for career and technical education funding units the school shall have on file, for each student; a training agreement that includes training objectives and is signed by a parent, guardian or Relative Caregiver, the employer, the student and a representative of the district or charter

PROPOSED REGULATIONS

school. A State Work Permit for Minors in accordance with State Department of Labor regulations shall also be on file.

- 4.4 Students whose education is guided by an Individualized Education Program (IEP), or a Section 504 or ADA accommodation plan, may participate in Diversified Occupations programs without junior or senior year status if approved by the IEP or multidisciplinary team responsible for the plan in consultation with the Career and Technical Education Teacher Coordinator.
- 4.25 In order to qualify for career and technical education funding units the students shall; possess minimum readiness competencies as specified by the Career Technical Education Program Teacher Coordinator before being placed in a Diversified Occupations Work Experience Program employment situation, meet the requirements of ~~4.0~~ 4.1 through 4.4 and be actively enrolled in a Diversified Occupations Work Experience Program ~~and that~~ meets for at least one class period per week.

2 DE Reg. 111 (07/01/98)

6 DE Reg. 955 (02/01/03)

9 DE Reg. 1070 (01/01/06)

12 DE Reg. 439 (10/01/08)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 737

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

737 Tuition Billing for Special Schools and Special Programs

A. Type of Regulatory Action Required

New Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 DE Admin. Code by adding new regulation 737 Tuition Billing for Special Schools and Special Programs. The regulation is in response to the 144th General Assembly, Senate Bill 300, Section 418 below:

“Section 418. A school district operating a tuition eligible program or school may not reallocate state units earned for the special school or program, if such reallocation requires an increase in the tuition tax rate or tuition billing amount. If a reallocation of state units earned will not require such an increase, districts may reallocate positions as necessary to ensure the most efficient delivery of services, except for those instances currently prohibited by Delaware Code. Additionally the Department of Education shall be authorized to promulgate rules and regulations pertaining to tuition billings and tuition payments to include, but not be limited to, procedures to implement a specific billing and payment schedule; procedures for justification accounting for any increases from estimated to actual per pupil amounts billed; and procedures for the review of included costs to ensure appropriateness as it relates to the ratio of state to local resources.”

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before December 3, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state

achievement standards? The new regulation assists with ensuring tuition eligible programs or schools are billed consistently among districts. The Special Schools and Special Programs are designed to improve student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The new regulation assists with ensuring tuition eligible programs or schools are billed consistently among districts. The Special Schools and Special Programs are designed ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The new regulation assists with ensuring tuition eligible programs or schools are billed consistently among districts. This regulation does not specifically address students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The new regulation assists with ensuring tuition eligible programs or schools are billed consistently among districts. This regulation does not specifically address students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The new regulation assists with ensuring tuition eligible programs or schools are billed consistently among districts. The necessary and appropriate authority and flexibility of decision making is maintained 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 new regulation does not place any unnecessary reporting or administrative requirements or mandates upon decision makers at the local board or school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability decision continues to rest 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? This regulation is not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? The new regulation assists with ensuring tuition eligible programs or schools are billed consistently among districts. There is not a less burdensome method for addressing this process that ensures consistency among districts.

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

737 Tuition Billing for Special Schools and Programs

1.0 Purpose

1.1 The purpose of this regulation is to outline the process for the tuition billing and payments between local school districts and tuition generating Special Schools and Special Programs.

2.0 Definitions

In this regulation, the following terms shall have the meanings indicated below:

"Direct Services" means the provision of instructional and educational services by the authorized Special School or Special Program that are readily identifiable to that program.

"Educational Related Expenses" means those expenses that are necessary to operate the Special School or Special Program to meet the criteria for which it was established and includes, but is not limited to, Direct Services and Indirect Costs as those terms are defined herein.

"Indirect Costs" means those costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective (e.g. award, project or activity) and cannot be readily and specifically identified with a particular final cost objective without efforts disproportionate to the results achieved. If an authorized Special School or Special Program elects to apply an indirect cost rate it shall not apply a rate that exceeds the Restricted Rate approved by the Department of Education in the fiscal year.

PROPOSED REGULATIONS

“Intra-district student” means a student who is attending a Special School or Special Program operated by the school district in which the student’s parents, Relative Caregiver or legal guardian resides.

“Inter-district student” means a student who is attending a Special School or Special Program operated by any school district other than the school district in which the student’s parents, Relative Caregiver or legal guardian resides.

“Local School District” means a reorganized school district or vocational technical school district established pursuant to Chapter 10 of Title 14 of the Delaware Code.

“Special School” means a school established pursuant to 14 Del.C. §203 or that has been approved as a Special School by the Department of Education with the consent of the State Board of Education.

“Special Program” means a program established pursuant to 14 Del.C. §203 or that has been approved as a Special Program by the Department of Education with the consent of the State Board of Education.

“Time and Effort Log” means the record of actual time worked in the Special School or Special Program by a local school district employee.

“Tuition Billing form” means the standardized template developed and approved by the Department of Education, and based on current state law, to determine the tuition costs allowable per pupil attending a Special School or Special Program.

3.0 Process for Determining Tuition Eligibility

- 3.1 A local school district may charge tuition for an intra- or inter- district student enrolled in a Special School or Special Program based on the following criteria:
 - 3.1.1 The student shall be enrolled and attending the Special School or Special Program as of September 30th of the current school year; and
 - 3.1.2 The charges attributed to the Special School or Special Program shall be limited to Educational Related Expenses or those expenses that have been approved by the Department of Education.
- 3.2 A local school district operating a tuition eligible Special School or Special Program may not reallocate state units earned for the Special School or Special Program, if such reallocation requires an increase in the tuition tax rate or tuition billing amount. If a reallocation of state units earned will not require such an increase, districts may reallocate positions as necessary to ensure the most efficient delivery of services, except for those instances currently prohibited by state law, including but is not limited to, 14 Del.C., §1703(o).

4.0 Process for Tuition Billing

- 4.1 A local school district shall calculate the tuition charges by using the most current Tuition Billing forms and instructions developed and approved by the Department of Education.
- 4.2 The local school district shall submit tuition bills to the Department of Education for certification no later than November 15th of each year.
- 4.3 The Department of Education shall certify that the billing is true and correct no later than twenty (20) working days after receipt. No bill for tuition charges shall be paid until it has been certified by the Secretary of Education.
- 4.4 Upon certification, the local school district shall provide a copy of the certified tuition bill to the district(s) whose students are being served by the Special School or Special Program.
 - 4.4.1 A district may bill for its students being served by a Special School or Special Program that it operates. All stipulations within this regulation shall be followed for intra district students.
- 4.5 Any local school district that has received a tuition bill from another local school district shall pay the tuition charges no later than January 1st of the current school year.
- 4.6 All billing disputes shall be documented through written explanation and provided to the finance officer of the local school district operating the Special School or Special Program.

4.6.1 Only charges in dispute may be held; the undisputed remainder of the tuition bill shall be paid as described in 4.5.

4.6.2 Billing disputes shall be resolved and charges paid before the end of the current school year.

4.7 If any tuition bill is adjusted within the current school year after already being certified by the Department, and if the adjustments alter the Special School or Special Program's cost, individual enrollment, total enrollment or tuition rate per pupil from what was already certified, the district shall resubmit the tuition bill to the Department for approval and include reasons for change(s).

4.8 Tuition billings for a Special School or Special Program serving out-of-state students shall be submitted to the Department of Education on a form entitled "Establishment of Tuition Costs for Out-of-State/Country Students with Disabilities." The Department of Education shall certify the tuition bill in accordance with 14 Del.C., Chapter 6 and other sections of this regulation.

5.0 Tuition Billing Form and Reconciliation

5.1 For all estimated and actual tuition rate data, the sum of the sending district enrollments shall be equal to the exact number of students in the total program enrollment.

5.2 Tuition bills shall be prepared and submitted in accordance with this regulation for intra-district students served by an approved Special School or Special Program.

5.3 Tuition billings that yield an increase or decrease of 10% or more per pupil over the prior year estimate shall include a detailed explanation for the rate change.

6.0 Waivers

6.1 Tuition charges may be waived in accordance with 14 Del.C., Chapter 6.

7.0 Audit and Record Retention Requirements

7.1 The local school district shall follow the requirements for audit and record retention as prescribed by the Office of the Auditor of Accounts and Department of State – Delaware Public Archives.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 3110 (14 Del.C. §3110)
14 DE Admin. Code 925

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

925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs

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 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs to: 1) add a new subsection 20.6 that requires a parental notice and acknowledgement section in IEP forms that both identifies students eligible for 12 month programs and documents the parental option to accept a 12 month, and 2) makes changes to subsection 20.4 related to the use of the appropriate IEP form for children eligible for special education services. The amendments were made at the request of, and in consultation, with the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 2, 2009 to Susan Haberstroh, Education Associate, Regulation Review, Department of

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

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation requires the IEP form to include parental notice and acknowledgement for students eligible for 12 month programs and may improve student achievement for these students.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation requires the IEP form to include parental notice and acknowledgement for students eligible for 12 month programs and helps to ensure all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation requires the IEP form to include parental notice and acknowledgement for students eligible for 12 month programs and helps to ensure the health and safety of all students.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation requires the IEP form to include parental notice and acknowledgement for students eligible for 12 month programs and helps to ensure all students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation requires the IEP form to include parental notice and acknowledgement for students eligible for 12 month programs and preserves the necessary authority and flexibility of decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place 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 services for children with disabilities is unchanged.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the amendments.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The Department is unable to determine whether there are any additional costs to the State or to the local school boards because the requirement for 12 month services has been in state law.

925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079a)(2)). The *italicized portions* of this regulation are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

(Break in Continuity of Sections)

20.0 Definition of Individualized Education Program

20.1 General: Each child who is determined eligible for special education and related services shall have a single IEP. As used in these regulations, the term individualized education program or IEP means a

written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with 20.0 through 24.0, and that shall include:

- 20.1.1 A statement of the child's present levels of academic achievement and functional performance, including:
 - 20.1.1.1 How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for non disabled children); or
 - 20.1.1.2 For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
- 20.1.2 A statement of measurable annual goals, including academic and functional goals designed to:
 - 20.1.2.1 Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and meet each of the child's other educational needs that result from the child's disability;
 - 20.1.2.2 For children with disabilities who participate in the Alternate Assessment based on Alternate Achievement Standards (AA-AAS), a description of benchmarks or short term objectives.
- 20.1.3 A description of how the child's progress toward meeting the annual goals described in 20.1.2 will be measured; and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
- 20.1.4 A statement of the special education and related services and supplementary aids and services, based on peer reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:
 - 20.1.4.1 To advance appropriately toward attaining the annual goals;
 - 20.1.4.2 To be involved in and make progress in the general education curriculum in accordance with 20.1.1, and to participate in extracurricular and other nonacademic activities; and
 - 20.1.4.3 To be educated and participate with other children with disabilities and non disabled children in the activities described in this section;
- 20.1.5 An explanation of the extent, if any, to which the child will not participate with non disabled children in the regular class and in the activities described in 20.1.4;
- 20.1.6 A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments consistent with section 612(a)(16) of the Act; and if the IEP Team determines that the child shall take an alternate assessment, instead of a particular regular State or district wide assessment of student achievement, a statement of why the child cannot participate in the regular assessment; and the particular alternate assessment selected is appropriate for the child;
- 20.1.7 The projected date for the beginning of the services and modifications described in 20.1.4, and the anticipated frequency, location, and duration of those services and modifications; and
- 20.1.8 *A statement designating whether or not it is necessary to place the child who is transported from school by bus into the charge of a parent other authorized responsible person.*
- 20.2 *Transition services: By the middle of the 8th grade, the IEP shall include the child's strengths, interests, and preferences, postsecondary goals, high school courses of study needed to assist the child in reaching those goals, and plans to make application to high school and career technical education programs. Full transition services planning will apply by the end of the 9th grade, or prior to the child's 15th birthday, whichever comes first, unless determined appropriate at a younger age by the IEP Team, and the IEP shall be updated annually and include:*
 - 20.2.1 Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
 - 20.2.2 The transition services (including courses of study) needed to assist the child in reaching those goals.

PROPOSED REGULATIONS

- 20.3 Transfer of rights at age of majority: Beginning not later than 1 year before the child reaches the age of 18, the IEP shall include a statement that the child has been informed that the child's rights under Part B of the Act will transfer to the child on reaching the age of 18 under 14 **DE Admin. Code** 926.20.0.
- 20.4 *IEP Forms: Each public agency shall use the ~~primary and secondary~~ IEP forms developed by DOE, including but not limited to, preschool, elementary, secondary and speech only forms. ~~The primary IEP form shall be used for students beginning with preschool (age 3) and until the Secondary IEP form is used. The Preschool IEP form shall be used for children eligible for special education prior to kindergarten, the Elementary IEP form shall be used beginning in kindergarten, and The the~~ Secondary IEP form shall be used beginning in the 8th grade, or earlier, if the IEP team agrees. The requirement that public agencies use the DOE's IEP forms does not prohibit or prevent an IEP team from including on an IEP any information, service or other notation the team determines necessary to provide FAPE to a child with a disability. This section shall not be construed to require an IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.*
- 20.5 Extended school year services: A student's need for extended school year services shall be determined in accordance with 14 **DE Admin. Code** 923.6.0.
(Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6); 14 **Del.C.** §3110)
- 20.6 Twelve month program eligibility: The DOE shall include a parental notice and acknowledgement section in IEP forms described in 20.4 which both identifies students eligible for a 12-month program pursuant to Title 14 **Del.C.** §1703 and documents the parental option to accept a 12-month program. [Authority: Title 14 **Del.C.** §§1703(e), 1703(f)]

(Break in Continuity of Sections)

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

925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1502

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

1502 Professional Growth Salary Increments

A. Type of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1502 Professional Growth Salary Increments. With the amendment of the titling of certification regulation 1559 from Trade and Industrial Education Teacher to Skilled and Technical Sciences Teacher, it is necessary that Sections 2 and 8 in this regulation be reflective of that change. This regulation sets forth the requirements for Professional Growth Salary Increments.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday December 1, 2008 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

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

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

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

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

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

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

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

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

1502 Professional Growth Salary Increments

(Effective 7/1/04)

1.0 Content

This regulation shall apply to professional growth salary increments for educators, pursuant to 14 **Del.C.** §1305 ~~(g)~~(a).

7 DE Reg. 1001 (2/1/04)**2.0 Definitions**

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

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

"Critical Needs Areas" means content, specialty, or administrative areas identified by the Department as areas of shortage in Delaware schools.

"Department" means the Delaware Department of Education.

PROPOSED REGULATIONS

~~"Educator" means a public school employee who holds a license is issued under the provisions of 14 Del.C. Ch. 12, and includes teachers, specialists, and administrators, and as otherwise defined by the Standards Board and State Board, but does not include substitute teachers.~~

"Graduate Level Course" means any course which is awarded graduate level credit by a regionally accredited college or university.

"Graduate Level Course of Study" means a non matriculated but focused and coherent program of study (e.g., a certificate program) which is directly linked to professional responsibilities.

"Matriculated Graduate Credit" means credit earned from a regionally accredited college or university earned toward a master's degree or a doctorate degree.

"Skilled and Technical Sciences (STS)" is also known as Trade and Industrial Education, Career and Technical Education, Career Technical Education or Career-Technical Education.

~~"Standards Board" means the Professional Standards Board established pursuant to 14 Del.C. §1204.~~

~~"State Board" means the State Board of Education of the State pursuant to 14 Del.C. §104.~~

"Trades and Industry Teacher" means a Skilled and Technical Sciences Teacher, Trade and Industrial Education Teacher or Teacher of Trade and Industries

"Two Years of College or Technical Training" means a minimum of a high school diploma or its recognized equivalent and the satisfactory completion of the requirements for any one, or an appropriate combination of the following options in the specific career area of certification equaling (1) an Associate's degree with a major in the specific career area; (2) two years of college majoring in the specific career area with at least 50% of the major courses required for a bachelor's degree satisfactorily completed; (3) a state issued certificate indicating completion of apprenticeship hours and apprentice related training (e.g. journey papers) in the specific career area; (4) completion of four years of sequential Delaware Trade Extension courses in the specific career area; (5) completion of four years of National Center for Construction Education and Research's Contren documented training in the specific career area; (6) a 70% or above score on both the written and performance elements of a Delaware Apprentice-related Education Provider's National Center for Construction Education and Research's Contren-derived full Apprentice Equivalency test-out covering all Apprentice-related Education years in the specific career area; (7) passage of a State of Delaware Licensing Test in the specific career area, offered through the Division of Professional Regulation; (8) 576 hours of military training in the specific career area; (9) 576 hours post-secondary trade school training in the specific career area; (10) a 70% or above score on both the written and performance teacher tests for the National Occupational Competency Testing Institute in the specific career area; (11) an industry recognized certification of technical competence or journey person status in the specific career area, or (12) DOE approved equivalents.

7 DE Reg. 1001 (2/1/04)

3.0 Matriculation into Master's Degree

Educators who hold a bachelor's degree and who are enrolled in a master's degree program at a regionally accredited college or university may accrue graduate level credits toward salary increments on the basic salary schedule for educators, set forth in 14 Del.C. §1305 (a). No credits earned prior to the conferring of a bachelor's degree may be applied toward movement on the salary schedule. Credits shall be applied in the order in which they were taken and no credit may be applied more than once toward movement on the salary schedule.

- 3.1 Educators enrolled in a master's degree program at an accredited college or university may apply for movement to the bachelor's plus 15 column of the basic salary schedule for educators, set forth in 14 Del.C. §1305 (a), upon completion of 15 graduate credits toward a master's degree.
- 3.2 Educators enrolled in a master's degree program at an accredited college or university may apply for movement to the bachelor's plus 30 column of the basic salary schedule for educators, set forth in 14 Del.C. §1305 (a), upon completion of 30 graduate credits toward a master's degree.

- 3.3 Upon completion of a master's degree program at an accredited college or university, an educator may apply for movement to the master's degree column of the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a).

7 DE Reg. 1001 (2/1/04)

4.0 Post Master's Degree Course Work

- 4.1 Educators who hold a master's degree may accrue credits beyond the master's degree toward salary increments toward a master's degree plus 15 graduate credits, a master's degree plus 30 graduate credits, a master's degree plus 45 graduate credits, or a doctorate degree on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a). All credits taken must be graduate level and must be:

- 4.1.1 Earned through a graduate level course of study clearly related to the educator's professional responsibilities and otherwise approved pursuant to 14 **Del.C.** Ch. 12, or
- 4.1.2 Earned toward a second master's degree, or
- 4.1.3 Matriculated graduate credits earned toward a doctorate degree.

7 DE Reg. 1001 (2/1/04)

5.0 Use of Undergraduate and Inservice Credits

- 5.1 Educators entitled to rightward movement on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a), on the basis of inservice or undergraduate credits approved prior to July 1, 2004, shall continue to be entitled to such movement in the event of any future application for movement submitted after July 1, 2004.

- 5.1.1 For example, an educator who holds a bachelor's plus 15 or a bachelor's plus 30 approved prior to July 1, 2004 and based entirely on inservice or undergraduate credits, shall be entitled to move to a master's plus 15 or master's plus 30, whichever is applicable, upon completion of a master's degree program.
- 5.1.2 In order to use undergraduate credits toward a salary increment on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a), the credits must be completed by, and the application for salary increment submitted to, and approved by, the Office of Professional Accountability by June 30, 2004. Undergraduate credits will not be accepted for plus 15, 30 or 45 salary increments after June 30, 2004.
- 5.1.3 In order to use inservice credits toward a salary increment on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a), the credits must be completed by, and the application for salary increment submitted to, and approved by, the Office of Professional Accountability by June 30, 2004. Inservice credits will not be accepted for plus 15, 30 or 45 salary increments after June 30, 2004.

7 DE Reg. 1001 (2/1/04)

6.0 Credits Expressed as Semester Hours

All credits must be expressed in terms of semester hours. College or university credits expressed in quarter hours will be converted by the Department to semester hours by multiplying the number of quarter hours by two thirds.

7 DE Reg. 1001 (2/1/04)

7.0 Acceptable Grades

- 7.1 All grades for graduate level credit submitted for a professional growth salary increments must be a grade of "B" or better or satisfy the granting institution's standard for graduate level work. In the case of credits earned on a pass fail basis, a grade of "pass" is acceptable.

7 DE Reg. 1001 (2/1/04)

8.0 ~~Trade and Industry Teachers~~ Skilled and Technical Sciences Teachers

A bachelor's degree equivalent for ~~trade and industry~~ Skilled and Technical Sciences teachers (formerly Trade and Industrial Education) shall be two years of college or technical training and six years of work experience (14 **Del.C.** §1301). Undergraduate credit in a matriculated bachelor's degree may be accepted in lieu of graduate credit for ~~trade and industry~~ Skilled and Technical Sciences teachers who do not hold a bachelor's degree. Initial placement on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305, for ~~trade and industry~~ Skilled and Technical Sciences teachers who have completed two years of college or technical training and six years of work experience, is at the bachelor's degree level. In order to be eligible for movement on the basic salary schedule, ~~trade and industry~~ Skilled and Technical Sciences teachers must possess a Standard Certificate in Skilled and Technical Sciences.

- 8.1 Movement beyond the bachelor's degree level on the basic salary schedule for ~~trade and industry~~ Skilled and Technical Sciences teachers shall apply as follows:
- 8.1.1 Seventy-five (75) credits toward a bachelor's degree is equivalent to a bachelor's degree plus 15 credits.
 - 8.1.2 Ninety (90) credits toward a bachelor's degree is equivalent to a bachelor's degree plus 30 credits.
 - 8.1.3 A bachelor's degree is equivalent to a master's degree on the basic salary schedule.
 - 8.1.4 A master's degree is equivalent to a master's degree plus ~~fifteen~~ 15 credits on the basic salary schedule.
 - 8.1.5 A master's degree plus ~~fifteen~~ 15 credits is equivalent to a master's degree plus 30 credits on the basic salary schedule.
 - 8.1.6 A master's degree plus ~~thirty~~ 30 credits is equivalent to a master's degree plus 45 credits on the basic salary schedule.
 - 8.1.7 A master's degree plus 45 credits is equivalent to a doctorate degree on the basic salary schedule.

7 DE Reg. 1001 (2/1/04)

9.0 Alternate Routes to Certification Program

Graduate credits which are included in the approved Alternative Routes to Certification program, as defined in 14 **Del.C.**, Ch. 12, subchapter VI, are recognized as a graduate level course of study and may be applied by educators who hold master's degrees and who are enrolled in the approved Alternative Routes program toward a master's degree plus 15 credits, a master's degree plus 30 credits, a master's degree plus 45 credits or a doctorate degree on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305 (a).

7 DE Reg. 1001 (2/1/04)

10.0 Eligibility for Professional Growth Salary Increments

An applicant for a professional growth salary increment must hold a Limited Standard, Standard or Professional Status Certificate issued pursuant to General Regulations for Certification of Professional Public School Personnel and the specific regulations as adopted for certification effective July 1, 1993, or an Initial, Continuing, or Advanced License issued by the Department in accordance with 14 **Del.C.**, Ch. 12, Subchapter III. An educator employed on an Emergency Certificate pursuant to 14 **Del.C.** §1506 is eligible to receive a salary increment.

7 DE Reg. 1001 (2/1/04)

11.0 Acceptable Professional Degrees

- 11.1 In order to be applicable to professional growth salary increments, master's and doctorate degrees must be directly related to an area or specialty in which the educator is employed, which has been identified as a critical needs area in K to 12 education, or which the district or charter school, if applicable, in which the educator is employed has requested the educator to pursue. Any such request from a district or charter school, if applicable, must be in writing and must be submitted with the completed application for a salary increment.

7 DE Reg. 1001 (2/1/04)

12.0 Application Procedures

- 12.1 Upon completion of the credits required for movement on the basic salary schedule for educators, set forth in 14 **Del.C.** §1305(a), an applicant may apply for a salary increment. No applications will be considered prior to the completion of credits necessary for movement on the salary schedule.
- 12.1.1 An applicant shall secure the proper form from the local school district or charter school office, complete the form, and return it to the school district office for transmittal to the Office of Professional Accountability.
- 12.1.2 The applicant shall arrange for official transcripts to be submitted by the college or university directly to the Office of Professional Accountability or delivered by the applicant in an unopened, unaltered envelope.
- 12.1.3 An application for a salary increment for the current fiscal year (July 1 to June 30) must be received in the Office of Professional Accountability no later than June 1. This date is necessary to allow adequate time for evaluation and notification to the district payroll office for salary adjustment. Applications received after June 1 will be approved effective the first day of the next fiscal year.

7 DE Reg. 1001 (2/1/04)

13.0 Effective Date of Salary Adjustment

- 13.1 The salary adjustment shall be made after the evaluation and approval of the candidate's application by the Office of Professional Accountability. The adjustment will be authorized to be made retroactive to the first of the month following the date certified by transcript or official grade slip as to when the program or credit was completed. This date is necessary to allow adequate time for evaluation and notification to the district payroll office for salary adjustment. Applications received after June 1 will be approved effective the first day of the next fiscal year.
- 13.2 Retroactive salary adjustment may be by a single payment or by payments divided equally among all the pay periods remaining in a current fiscal year as may be determined by the district or state fiscal officers.
- 13.3 No salary increment shall be retroactive to a prior fiscal year.

7 DE Reg. 1001 (2/1/04)

Renumbered effective 6/1/07 - see Conversion Table

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1510

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

1510 Issuance of Initial License**A. Type of Regulatory Action Requested**

Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1510 Issuance of Initial License. The regulation concerns the requirements for licensure of educational personnel, pursuant to 14 **Del.C.** §1210. It is necessary to amend this regulation to only reflect the amended changes in 14 **DE Admin. Code** 1559. This regulation sets forth the requirements for the Issuance of an Initial License.

Persons wishing to present their views regarding this matter may do so in writing by the close of business

on Monday December 1, 2008 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

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

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

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

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

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

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

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

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

1510 Issuance of Initial License

1.0 Content

This regulation shall apply to the issuance of an Initial License for educators, pursuant to 14 **Del.C.** §1210.

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

2.0 Definitions

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

"Alternative Routes to Licensure and Certification" means programs approved by the Department of Education to certify or license candidates who hold bachelors' degrees appropriate to the

instructional field they desire to teach, but who did not complete a regionally accredited educator preparation program.

"Career and Technical Education" is also known as Vocational Education, Vocational Technical Education or Career Technical Education.

"Composite Score" means a total of an applicant's scores on all three (3) subtests of PRAXIS I which is equal to, or greater than, the sum of the passing scores on the three subtests. Scores from either the PRAXIS I (PPST) paper and pencil test and/or from the PRAXIS I (CPPST) computerized test may be used when applying the composite score provision. Scores from the PRAXIS I computer based test (CBT) may be used when applying the composite score provision, but may not be used in conjunction with scores from the PRAXIS I (PPST) paper and pencil test and/or with the PRAXIS I (CPPST) computerized test.

"Date of Hire" means the effective date of employment by a school district, charter school, or other employing authority.

"Department" means the Delaware Department of Education.

"Educator" means a public school employee who holds a license issued under the provisions of 14 Del.C., Ch. 12, and includes teachers, specialists, and administrators, and as otherwise defined by the Standards Board and the State Board, pursuant to 14 Del.C. §1203, but does not include substitute teachers.

"Examination of General Knowledge" means a standardized test which measures general knowledge and essential skills in mathematics or quantitative and verbal skills, including reading and writing.

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

"Jurisdiction" means a state, territory or country.

"License" means a credential which authorizes the holder to engage in the practice for which the license is issued.

"Mentoring" means activities prescribed by the Department and other employing authority in which a holder of an Initial License must engage during the three year term of the Initial License.

"Novice Applicant" means an applicant who has not previously held an Initial License in Delaware.

"PRAXIS I or PPST" means a test from Educational Testing Service of general knowledge in reading, writing, and mathematics.

"PRAXIS I CBT" means the discontinued PRAXIS I computer based test from Educational Testing Service taken between November 1993 and December 2001, with a possible score range of 300 to 335. Scores from the PRAXIS I CBT test may not be combined with scores from the PRAXIS I paper and pencil test or the PRAXIS I computerized test (CPPST) to derive a composite score.

"PRAXIS I CPPST" means the PRAXIS I computerized test from Educational Testing Service which began in January 2002. This test, which is delivered in a computer format, has a possible score range of 150 to 190. Scores from the CPPST and the PRAXIS I (PPST) paper and pencil test may be combined for a composite scores.

"Skilled and Technical Sciences (STS)" is also known as Trade and Industrial Education, Career and Technical Education, Career Technical Education or Career-Technical Education.

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

"Standards Board" means the Professional Standards Board established pursuant to 14 Del.C. §1201.

"State Board" means the State Board of Education of the State pursuant to 14 Del.C. §104.

"Student Teaching Program" means a traditional student teaching placement within a National Association of State Directors of Teacher Education and Certification or National Council for the

Accreditation of Teacher Education approved program offered by a college or university, or such alternatives as deemed appropriate to the program, such as supervised internships or other field based experience recognized as a required component of the regionally accredited educator preparation program. For the purposes of this regulation, student teaching program also means one year of teaching experience within the last year consisting of a minimum of 91 days of long term teaching experience at one assignment during which regular evaluations were conducted, evidencing at least satisfactory performance.

"**Suspension**" means the temporary removal of an Initial License for failure to pass the PRAXIS I test.

"**Trade and Industries Teacher**" means a Skilled and Technical Sciences Teacher.

"**Trade and Industries**" means Skilled and Technical Sciences.

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

7 DE Reg. 623 (11/103)

7 DE Reg. 1181 (3/1/04)

3.0 Requirements for Initial License

In accordance with 14 **Del.C.** §1210, the Department shall issue an Initial License to a novice applicant who submits evidence of (1) receipt of a bachelors degree from a regionally accredited 4 year college or university; (2) completion of a student teaching program, or one year of teaching experience consisting of a minimum of 91 days of long term teaching experience at one assignment or enrollment in an Alternative Routes to Licensure and Certification program, and (3) a passing score on an examination of general knowledge, such as PRAXIS I, or such other alternative as may be established by the Standards Board, with the approval of the State Board. For the purposes of this regulation, a bachelor's degree for a ~~trades and industry~~ Skilled and Technical Sciences teacher shall be two (2) years of college or technical training, plus six (6) years of ~~trade work~~ work experience. An Initial License shall also be issued to an applicant currently licensed as an educator in another jurisdiction with less than three years of teaching experience or to an applicant who previously held a valid Delaware Standard or Professional Status Certificate who has been out of the profession for more than three years. In addition to an Initial License, applicants must also apply for a Standard Certificate in the particular area, subject, or category in which they wish to be employed, and must verify that they possess the prescribed knowledge, skill or education to practice in that area, subject, or category. (See 14 **DE Admin. Code** 1505).

- 3.1 An applicant for an Initial License shall submit the completed application form, official transcripts, and official scores on an examination of general knowledge, such as the PRAXIS I tests in any format, as defined in 2.0, to the Department.
 - 3.1.1 Official transcripts shall be forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope.
- 3.2 Examination of General Knowledge Requirements
 - 3.2.1 An applicant seeking initial licensure in Delaware shall provide the Department with official test scores for one or more of the following tests of essential skills in reading, writing and mathematics: the PRAXIS I Tests (PPST) or such alternatives as set forth in 3.2.4 below.
 - 3.2.2 Scores of Examinations of General Knowledge.
 - 3.2.2.1 The following minimum passing scores are required in the areas of reading, writing and mathematics for each of the examinations of essential skills.
 - 3.2.2.1.1 Pre professional Skills Test (PPST) taken between July 1, 1983 and October 22, 1993: reading, 175, mathematics, 175, writing, 172.
 - 3.2.2.1.2 PRAXIS I (PPST) Paper and Pencil Tests and thereafter with a possible score range of 150 to 190 and PRAXIS I Computerized Pre Professional Skills Tests taken January 1, 2002 and thereafter, both of which have a possible score range of 150 to 190, with passing scores of: reading, 175, mathematics, 174, writing, 173.

- 3.2.2.1.3 PRAXIS I, Computer Based Tests (CBT) (Tests taken between October 23, 1993 and December 31, 2001), with passing scores of: reading, 322, mathematics, 319, writing, 319.
- 3.2.3 Individuals holding Delaware certificates issued prior to July 1, 1983 are exempt from the testing requirements.
- 3.2.4 Acceptable alternatives to the PRAXIS I test scores include:
 - 3.2.4.1 Scores from the California Test of Basic Skills (CTBS) shall be accepted in lieu of PPST or PRAXIS I scores if the test was taken as a condition of meeting certification or licensure requirements in that state and the scores total 123, with a minimum of at least 37 in each category.
 - 3.2.4.2 Scholastic Aptitude Tests (SAT) taken after April 1, 1995 and presented for exemption must meet the scores set forth below due to a recentering of the SAT.
 - 3.2.4.2.1 A minimum score of 520 on the SAT Mathematics taken prior to 4/1/95, and a minimum score of 540 on the SAT Mathematics test taken thereafter will be accepted as fulfillment of the PRAXIS I Mathematics requirement.
 - 3.2.4.2.2 A minimum score of 480 on the SAT Verbal test taken prior to April 1, 1995, and a minimum score of 560 on the SAT verbal test taken thereafter will be accepted as fulfillment of the PRAXIS I reading requirement.
 - 3.2.4.3 Graduate Record Examination (GRE) scores presented for exemption must meet the scores set forth below.
 - 3.2.4.3.1 A minimum score of 490 on the Graduate Record Examination (GRE) Verbal test will be accepted as fulfillment of the PRAXIS I reading requirement.
 - 3.2.4.3.2 A minimum score of 540 on the Graduate Record Examination (GRE) Quantitative test will be accepted as fulfillment of the PRAXIS I mathematics requirement.
 - 3.2.4.4 National Teacher Examination (NTE) Core Battery Communications Skills with a minimum score of 670 will be accepted as fulfillment of the PRAXIS I writing requirement.
- 3.2.5 Any Scholastic Aptitude Test (SAT) scores, Graduate Records Exam (GRE) scores or NTE Communication Skills scores intended to be used as an exemption for the PPST or PRAXIS I, shall be submitted within the same timeline as that required for PRAXIS I and scores must predate the employment date.
- 3.2.6 Timeline for Examination of General Knowledge
 - 3.2.6.1 An applicant for an Initial License must pass the three PRAXIS I (PPST) tests in any format or an approved alternative within the period of time from the date of hire to the end of the next, consecutive fiscal year. If proof of passage of Praxis I is not provided by the end of the next consecutive fiscal year, the Initial License shall be suspended. Notwithstanding the foregoing, the superintendent of the employing school district or charter school or other employing authority may submit to the Secretary of Education a written request for a one year extension. The request must document the effectiveness of the applicant.
 - 3.2.6.1.1 Evidence of passage of PRAXIS I within the time period of the suspension shall result in the reinstatement of the Initial License.
 - 3.2.6.1.2 If proof of passage of PRAXIS I is not provided by the end of the next consecutive fiscal year, the Initial License shall be suspended for a maximum of two years.
 - 3.2.6.1.3 Suspension
 - 3.2.6.1.3.1 An applicant who does not pass PRAXIS I during the time period of the suspension, and whose Initial License is expired, must reapply and may be issued an Initial License, valid for three years, if he/she meets the requirements for initial licensure then in effect.
 - 3.2.6.1.3.2 Notwithstanding the foregoing, the superintendent of the employing school district or charter school or other employing authority may submit to the Secretary of

PROPOSED REGULATIONS

Education a written request for a one year extension. The request must document the effectiveness of the applicant.

3.2.6.1.4 Composite Score

3.2.6.1.4.1 Scores from either the paper and pencil PRAXIS I (PPST) test or from the computerized PRAXIS I (CPPST) test, begun in January, 2002, both of which have a possible score range of 159 to 190, may be used when applying the composite score provision. Scores from the PRAXIS I computer based test (CBT), taken between November, 1993 and December 31, 2001 may be used when applying the composite score provision, but may not be used in conjunction with the paper and pencil PRAXIS I test or with the computerized PRAXIS I (CPPST) test.

3.2.6.1.4.2 An applicant for an Initial License who does not achieve a passing score on PRAXIS I, but whose score on PRAXIS I is within 2 points of the passing score on the reading, writing, or mathematics section of PRAXIS I may use a composite score to meet the requirements of passage.

3.2.6.1.4.3 Notwithstanding the use of a composite score, an applicant who seeks to teach in the secondary content area of mathematics must meet the current state passing score for the PRAXIS I mathematics test. An applicant who seeks to teach in the secondary content area of English language arts must meet the current state passing score for the PRAXIS I reading and writing tests.

3.2.6.2 An applicant in a ~~vocational trade and industry~~ Skilled and Technical Sciences specific career area must pass PRAXIS I or an approved alternative within six (6) years of the date of employment or before the expiration of the Initial License, whichever is later.

3.2.7 There is no limit on the number of times an individual may take the PPST or PRAXIS I. Once passed, a section need not be taken again.

3.2.7.1 Passing scores in each area (reading, writing, mathematics) may be attained in any testing format.

3.2.8 Submission of Scores of Examination of General Knowledge.

3.2.8.1 Test scores shall be official and sent directly from Educational Testing Service or other test vendor to the Department.

3.2.8.2 Unopened, unaltered envelopes containing PPST or PRAXIS I scores, or scores of acceptable alternatives, sent to the individual may be accepted as official. The Department shall determine whether the scores as presented are acceptable.

3.2.8.3 Direct verification from another State Department of Education shall be considered as official. An original of the grade form shall be forwarded directly from the other State Department to the Department. This method will be accepted only when official test scores from Educational Testing Service are not available.

3.3 The Department shall not act on an application for licensure if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution.

3.3.1 **"Immorality"** means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of his or her unfitness.

3.4 ~~Trades and Industry~~ Skilled and Technical Sciences Teacher Educational and Experience Requirements.

3.4.1 A bachelor's degree equivalent for a ~~trades and industry~~ Skilled and Technical Sciences teacher shall be two (2) years of college or technical training, plus six (6) years of ~~trade work~~ trade work experience. The requirement for two (2) years of college or technical training may be satisfied through the satisfactory completion of the requirements for any one or an appropriate combination of the following ~~experiences options~~ experiences options in the specific career area to be taught equaling:

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- 3.4.1.1 An associate's degree with a major in the specific ~~occupational area to be taught~~ career area; or
 - 3.4.1.2 Two years of college majoring in the specific ~~occupational~~ career area to be taught with at least 50% of the major courses required for a bachelor's degree satisfactorily completed; or
 - 3.4.1.3 A state issued certificate indicating completion of apprenticeship hours and apprentice related training (e.g. journey papers) in the specific career area; or
 - 3.4.1.4 Completion of ~~Four (4)~~ years of sequential Delaware Trade Extension courses in the specific career area; or
 - 3.4.1.5 Completion of ~~Four (4)~~ years of National Center for Construction Education and Research's Contren documented training in the specific career area; or
 - 3.4.1.6 Nine high school credits of career and technical high school training A 70% or above score on both the written and performance elements of a Delaware Apprentice-related Education Provider's National Center for Construction Education and Research's *Contren*-derived full Apprentice Equivalency test-out covering all Apprentice-related Education years in the specific career area; or
 - 3.4.1.7 Passage of the State of Delaware Licensing test in the specific career area, offered through the Division of Professional Regulation; or
 - 3.4.1.8 576 hours of military training in the specific career area; or
 - 3.4.1.9 576 hours postsecondary trade school training in the specific career area; or
 - 3.4.1.10 ~~Completing the written and performance teacher testing for the National Occupational Competency Testing Institute with a minimum score set by the Department~~ A 70% or above score on both the written and performance teacher tests for the National Occupational Competency Testing Institute in the specific career area; or
 - 3.4.1.11 An industry recognized certification of technical competence or journeyperson status in the specific career area; or
 - 3.4.1.12 DOE approved equivalents.

4.0 Validity of Initial License

- 4.1 An Initial License is valid for three (3) years, unless revoked, and may not be renewed. Notwithstanding the foregoing, an Initial License issued to an applicant in a ~~vocational trade and industry~~ Skilled and Technical Sciences specific career area is valid for up to six (6) years to provide time for completion of specified ~~college level~~ course work required for certification.
- 4.2 An Initial License issued to an applicant who is not currently employed by a school district, charter school, or other employing authority shall be inactive until such time as an applicant is employed by a public school district or charter school. Once employed, the Initial License shall be in effect for three (3) years from the date of hire until the last day of the month of issuance three (3) years later, except in the case of the ~~vocational and trade industry~~ Skilled and Technical Sciences specific career areas which shall expire on the last day of the month of issuance six (6) years later.
- 4.3 During the term of the Initial License, license holders are required to participate in mentoring and other prescribed professional development activities offered by the Department and by the school district or charter school or other employing authority in which they are employed.

5.0 Applicants with Foreign Credentials

- ~~5.1~~ Applicants graduating from foreign institutions shall provide an analysis of the degree equivalency, along with all other required application materials, which shall be reviewed by the Department.

6.0 Extension for Exigent Circumstances

The Department may extend an Initial License for a period not to exceed one (1) year, exigent circumstances warranting the necessity of such extension.

- 6.1 A license holder whose license expires during the school year may have the Initial License extended until the last day of the fiscal year upon a request from the district superintendent, charter school administrator, or other employing authority. This extension shall be considered an exigent circumstance and shall not exceed one (1) year in length.

7.0 Leave of Absence

An educator may take a leave of absence of up to three (3) years with no effect upon the validity or expiration of the Initial License.

8.0 Criminal Conviction History

An applicant shall disclose his or her criminal conviction history upon application for an Initial License. Failure to disclose a criminal conviction history is grounds for denial or revocation of an Initial License as specified in 14 Del.C. §1219.

9.0 Exceptions

This regulation shall apply to all requests for issuance of an Initial License, except as specifically addressed herein.

- 9.1 Educators employed on a Limited Standard Certificate or a Temporary Certificate issued prior to August 31, 2003 shall continue on that certificate until the requirements specified are met or the certificate expires, whichever comes first. In no case shall a Limited Standard or Temporary Certificate be valid after July 1, 2008.

10.0 Secretary of Education Review

The Secretary of Education may, at the request of the superintendent of a local school district or charter school administrator or other employing authority, review licensure credentials on an individual basis and grant a license to an applicant who otherwise does not meet the requirements for Initial License, but whose effectiveness is documented by the local school district, charter school, or other employing authority.

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

7 DE Reg. 623 (11/103)

7 DE Reg. 1181 (3/1/04)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1559

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

1559 Trade and Industrial Education Teacher

A. Type of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1559 Trade and Industrial Education Teacher. The title Trade and Industrial Education Teacher is being amended to Skilled and Technical Sciences Teacher to reflect current national titling trends in the Career and Technical area. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). This Skilled and Technical Sciences Teacher regulation is being amended into the new Standard

Certificate format and to align the certificates with the Specific Career Areas of certification. This regulation sets forth the requirements for a Skilled and Technical Sciences Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday December 1, 2008 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

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

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

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

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

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

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

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

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

~~1559 Trade and Industrial Education Teacher~~

~~1.0 Content~~

~~1.1 This regulation shall apply to the requirements for a Standard Certificate, pursuant to **14 Del.C. §1220(a)**, for Trade and Industrial Education Teacher.~~

~~2.0 Definitions~~

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

PROPOSED REGULATIONS

~~“Current Trade Experience” means successful, full-time employment within the last ten years in an occupation directly related to the specific occupational area to be taught.~~

~~“Department” means the Delaware Department of Education.~~

~~“Department Approved” means approved by the Department of Education in consultation with DOE’s supervisor for Trade and Industrial Education.~~

~~“License” means a credential which authorizes the holder to engage in the practice for which the license is issued.~~

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

~~“Two Years of College or Technical Training” means a minimum of a high school diploma or its recognized equivalent and the satisfactory completion of the requirements for any one, or an appropriate combination, of the following options in the occupational area to be taught: (1) an associate’s degree with a major in the specific occupational area to be taught; (2) two years of college majoring in the specific occupational area to be taught with at least 50% of the major courses required for a bachelor’s degree satisfactorily completed; (3) a state issued certificate indicating completion of apprenticeship hours and apprentice related training (e.g. journey papers); (4) four years of sequential Delaware Trade Extension courses; (5) four years of National Center for Construction Education and Research’s *Contron* documented training; (6) nine high school credits of career and technical high school training; (7) passage of the State of Delaware Licensing Test, offered through the Division of Professional Regulation; (8) 576 hours of military training; (9) 576 hours postsecondary trade school training; (10) completing the written and performance teacher tests for the National Occupational Competency Testing Institute at or above the minimum score set by the Department; (11) industry recognized certification of technical competence or journey person status, or (12) DOE approved equivalents.~~

~~3.0 Standard Certificate~~

~~In accordance with 14 ~~Del.C.~~ §1220(a), the Department shall issue a Standard Certificate as a Trade and Industrial Education Teacher (required for grades 9 to 12, and valid in grades 7 to 8 in a middle level school) to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:~~

~~3.1 Professional Education~~

~~3.1.1 Bachelor’s degree from a regionally accredited college or university in the occupational area to be taught and two (2) years of current trade experience in the area to be taught, and~~

~~3.1.1.1 Required Courses: 24 semester hours of course work, taken either as part of a degree program or in addition to it, from the following:~~

~~3.1.1.1.1 Educational Psychology or Human Development;~~

~~3.1.1.1.2 Career Technical Education Assessment and Course Construction;~~

~~3.1.1.1.3 Methods of Teaching Career Technical Education I or Materials and Approaches to Career Technical Education I;~~

~~3.1.1.1.4 Methods of Teaching Career Technical Education II or Materials and Approaches to Career Technical Education II;~~

~~3.1.1.1.5 Introduction to Education of Exceptional Children;~~

~~3.1.1.1.6 Behavior management or Classroom Management;~~

~~3.1.1.1.7 Instructional Technology; and~~

~~3.1.1.1.8 Multicultural Education or Diversity in the Classroom; and~~

~~3.1.1.2 Required Electives: 12 semester hours of college level course work, taken either as part of a degree program or in addition to it, or the equivalent of 12 semester hours of documented industry or skills training, or a combination thereof, taken to assist the teacher in~~

~~maintaining current craftsmanship and teaching skills in the vocational area covered by the license that include:-~~

- ~~3.1.1.2.1 Student Organizations in the Curriculum;~~
- ~~3.1.1.2.2 History and Regulations of Career Technical Education;~~
- ~~3.1.1.2.3 Student Testing and Evaluation;~~
- ~~3.1.1.2.4 Education of Exceptional Children (at a level above any previous course work)~~
- ~~3.1.1.2.5 Career Technical Guidance;~~
- ~~3.1.1.2.6 DOE approved apprenticeship, military, or trade school and extension courses appropriate to the area taught or National Occupational Competency Testing (NOCTI) Written and Performance Tests or DOE approved industry certification;~~
- ~~3.1.1.2.7 National Center for Construction Education and Research (NCCER) Instructor Certification course or DOE approved Instructor's Certification course(s);~~
- ~~3.1.1.2.8 DOE approved test based Professional Municipal License;~~
- ~~3.1.1.2.9 DOE approved test based Professional Municipal License Preparation course; or~~
- ~~3.1.1.2.10 College courses in the occupational area to be taught; or~~
- 3.1.2 Associate's degree from a regionally accredited college or university in the occupational area to be taught and four (4) years of current trade experience in the area to be taught; and
 - ~~3.1.2.1 Required Courses: 24 semester hours of course work, taken either as part of a degree program or in addition to it, from the following:~~
 - ~~3.1.2.1.1 Educational Psychology or Human Development;~~
 - ~~3.1.2.1.2 Career Technical Education Assessment and Course Construction;~~
 - ~~3.1.2.1.3 Methods of Teaching Career Technical Education I or Materials and Approaches to Career Technical Education I;~~
 - ~~3.1.2.1.4 Methods of Teaching Career Technical Education II or Materials and Approaches to Career Technical Education II;~~
 - ~~3.1.2.1.5 Introduction to Education of Exceptional Children;~~
 - ~~3.1.2.1.6 Behavior Management or Classroom;~~
 - ~~3.1.2.1.7 Instructional Technology; and~~
 - ~~3.1.2.1.8 Multicultural Education or Diversity in the Classroom; and~~
 - ~~3.1.2.2 Required Electives: 12 semester hours of college level course work, taken either as part of a degree program or in addition to it, or the equivalent of 12 semester hours of documented industry or skills training, or a combination thereof, taken to assist the teacher in maintaining current craftsmanship and teaching skills in the career technical area covered by the certificate that include:~~
 - ~~3.1.2.2.1 Student Organizations in the Curriculum;~~
 - ~~3.1.2.2.2 History and Regulations of Career Technical Education;~~
 - ~~3.1.2.2.3 Student Testing and Evaluation;~~
 - ~~3.1.2.2.4 Education of Exceptional Children (at a level above any previous course work)~~
 - ~~3.1.2.2.5 Career Technical Guidance;~~
 - ~~3.1.2.2.6 DOE approved apprenticeship, military, trade school or extension courses appropriate to the area taught or National Occupational Competency Testing (NOCTI) Written and Performance Tests or DOE approved industry certification;~~
 - ~~3.1.2.2.7 National Center for Construction Education and Research (NCCER) Instructor Certification course or DOE approved Instructor's Certification course(s);~~
 - ~~3.1.2.2.8 DOE approved test based Professional Municipal License;~~
 - ~~3.1.2.2.9 DOE approved test based Professional Municipal License Preparation course; or~~
 - ~~3.1.2.2.10 College courses in the occupational area to be taught; or~~

PROPOSED REGULATIONS

- ~~3.1.3 Two (2) years of college or technical training, plus 6 years of current trade experience in the area to be taught; and~~
- ~~3.1.3.1 Completion of a DOE approved Trade and Industrial teacher education associate's or bachelor's degree program; or~~
- ~~3.1.3.2 Required Courses 24 semester hours of course work from the following:-~~
- ~~3.1.3.2.1 Educational Psychology or Human Development;~~
- ~~3.1.3.2.2 Career Technical Education Assessment and Course Construction;~~
- ~~3.1.3.2.3 Methods of Teaching Career Technical Education I or Materials and Approaches to Career Technical Education I;~~
- ~~3.1.3.2.4 Methods of Teaching Career Technical Education II or Materials and Approaches to Career Technical Education II;~~
- ~~3.1.3.2.5 Introduction to Education of Exceptional Children;~~
- ~~3.1.3.2.6 Behavior Management or Classroom Management;~~
- ~~3.1.3.2.7 Instructional Technology; and~~
- ~~3.1.3.2.8 Multicultural Education or Diversity in the Classroom; and~~
- ~~3.1.3.3 Required Electives: 12 semester hours of college level course work or industry training or skills documentation to assist the teacher in maintaining current craftsmanship and teaching skills in the vocational area covered by the license that include:~~
- ~~3.1.3.3.1 Career Technical Student Organizations in the Curriculum;~~
- ~~3.1.3.3.2 History and Regulations of Career Technical Education;~~
- ~~3.1.3.3.3 Student Testing and Evaluation;~~
- ~~3.1.3.3.4 Education of Exceptional Children (at a level above any previous course work);~~
- ~~3.1.3.3.5 Career and Technical Guidance;~~
- ~~3.1.3.3.6 DOE approved apprenticeship, military, or trade school and extension courses appropriate to the area taught or National Occupational Competency Testing (NOCTI) Written and Performance Tests or DOE approved industry certification;~~
- ~~3.1.3.3.7 National Center for Construction Education and Research (NCCER) Instructor Certification course or DOE approved Instructor's Certification course(s);~~
- ~~3.1.3.3.8 DOE approved test-based Professional Municipal License;~~
- ~~3.1.3.3.9 DOE approved test-based Professional Municipal License Preparation course; or~~
- ~~3.1.3.3.10 College courses in the occupational area to be taught; and~~
- ~~3.1.3.4 Required General Education: 15 semester hours of general preparation from a regionally accredited college or university, with at least one course in each of the following area:~~
- ~~3.1.3.4.1 Science;~~
- ~~3.1.3.4.2 Mathematics;~~
- ~~3.1.3.4.3 Social Studies;~~
- ~~3.1.3.4.4 English Communications; and~~
- ~~3.1.3.4.5 Computer Literacy.~~
- ~~3.2 Skilled Trade Experience~~
- ~~3.2.1 A minimum of six years of successful, full-time work training experience, at least two years of which must have been within the last ten years, in the trade or industrial occupation to be taught. Full-time teaching or direct supervision in the trade or industrial occupation qualifies as current work experience, provided the applicant has at least six (6) years of successful, full-time prior work training experience.~~
- ~~3.3 Professions and Occupations License.~~
- ~~3.3.1 In trade or industrial occupations where a state license or registration is required by law, all applicants, except applicants for electrician's or plumber's trade and industrial certification must present a valid and current Delaware license or registration upon application for a standard certificate. Applicants for an electrician's or a plumber's trade and industrial certification must~~

~~present a valid and current Delaware license as part of completing certification requirements. The state license or registration must be renewed as required by law.~~

7-DE Reg. 1751 (6/1/04)

1559 Skilled and Technical Sciences Teacher

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a) for Skilled and Technical Sciences Teacher in a Specific Career Area. This certification is required for grades 9 to 12, and for grades 6 to 8 in a Middle Level school. Certificates issued are in the specific career area and qualified educators may become certified for more than one specific career area, however no general Skilled and Technical Sciences certification exists.
- 1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

- 2.1 The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.
- 2.2 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Career and Technical Education” is also known as Vocational Education, Vocational Technical Education or Career Technical Education.

“HVAC” means Heating, Ventilation, and Air-Conditioning.

“Nine (9) Career-Related Credits” means nine (9) college credits or an equivalent number of hours in professional development, technical training or certification, with one (1) credit equating to fifteen (15) hours taken either as part of a degree program or in addition to it, from a regionally accredited college or university, or a professional development provider approved by the employing school district or charter school. These credits may also be earned through a certified or licensed technical training provider or through specified technical training or verification of the equivalent knowledge and training by technical certification as specified in the Department’s current Skilled and Technical Sciences Standards in the Specific Career Area Program Certification Requirements (See 14 DE. Admin Code 525 Requirements for Career and Technical Education Programs).

“Six (6) Career and Technical Education Pedagogy Credits” means six (6) college credits taken either as part of a degree program or in addition to it, from a regionally accredited college or university from the following content areas:

- Methods of Teaching Career and Technical Education I, or Career and Technical Education Materials and Approaches I; and
- Career and Technical Student Organizations, or Career and Technical Education Materials and Approaches II.

“Specific Career Area” means a specific career area approved by the Department as a Career Technical Education Program and included in the Department’s Skilled and Technical Sciences Standards. Examples include but are not limited to the following: Automotive/Automotive Mechanical Technology/Technician; Autobody/Collision and Repair Technology/Technician; Carpentry/Carpenter; Child Care Provider/Assistant; Cosmetology/Cosmetologist, General; Dental Laboratory Technology/Technician; Electrician; HVAC-R Maintenance Technology; Licensed Practical/Vocational Nurse Training; Mason/Masonry; Medical/Clinical Assistant; Nurse/Nursing Assistant and Patient Care Assistant; Plumbing Technology/Plumber; Sheet Metal Technology/Sheetworking; and Welding Technology/Welder.

PROPOSED REGULATIONS

“Specific Career Area Program Certification Requirements” means educator requirements necessary to achieve Department approval of the Career Technical Education program. (See 14 **DE Admin. Code** 525 Requirements for Career and Technical Education Programs).

“Skilled and Technical Sciences (STS)” is also known as Trade and Industrial Education, Career and Technical Education, Career Technical Education or Career-Technical Education.

“Teacher of Trade and Industries” means a Skilled and Technical Sciences Teacher.

“Two Years of College or Technical Training” means a minimum of a high school diploma or its recognized equivalent and the satisfactory completion of the requirements for any one, or an appropriate combination of the following options in the specific career area of certification equaling (1) an Associate’s degree with a major in the specific career area; (2) two years of college majoring in the specific career area with at least 50% of the major courses required for a bachelor’s degree satisfactorily completed; (3) a state issued certificate indicating completion of apprenticeship hours and apprentice related training (e.g. journey papers) in the specific career area; (4) completion of four years of sequential Delaware Trade Extension courses in the specific career area; (5) completion of four years of National Center for Construction Education and Research’s *Contren* documented training in the specific career area; (6) a 70% or above score on both the written and performance elements of a Delaware Apprentice-related Education Provider’s National Center for Construction Education and Research’s *Contren*-derived full Apprentice Equivalency test-out covering all Apprentice-related Education years in the specific career area; (7) passage of a State of Delaware Licensing Test in the specific career area, offered through the Division of Professional Regulation; (8) 576 hours of military training in the specific career area; (9) 576 hours post-secondary trade school training in the specific career area; (10) a 70% or above score on both the written and performance teacher tests for the National Occupational Competency Testing Institute in the specific career area; (11) an industry recognized certification of technical competence or journey person status in the specific career area, or (12) DOE approved equivalents.

“Vocational Trade and Industry Area” means Skilled and Technical Sciences Area.

“Work Experience” means full time employment or work training experience in the specific Skilled and Technical Sciences career area of certification. An educator may substitute an Associate’s degree in the specific Skilled and Technical Sciences career area of certification for a maximum of one (1) year of work experience or a Bachelor’s degree in the specific Skilled and Technical Sciences career area of certification for a maximum of two (2) years of work experience. The educator may only substitute one degree for a maximum of two years work experience credit and may not use two Associates degrees to equal two years of work experience.

3.0 Standard Certificate

- 3.1 In accordance with 14 Del.C. §1220(a) the Department shall issue a Standard Certificate as a Skilled and Technical Sciences Teacher of a specific career area to an educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard or Standard Certificate issued by the Department prior to August 31, 2003; and
- 3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, with the exception of the requirement of a Bachelors degree in 3.1.5, including any subsequent amendment or revision thereto; and
- 3.1.3 Has satisfied the additional requirements in this regulation including holding a Bachelors degree or the completion of education and training equivalent to a Bachelors degree as specified in this regulation.

4.0 Educational Requirements

An educator shall also have met the following:

- 4.1 Satisfactorily completed nine (9) Career-Related Credits related to their area of certification and six (6) Career and Technical Education Pedagogy credits; and
- 4.2 **Bachelor’s Degree:**

Holds a Bachelor's degree from a regionally accredited college or university in any content area; or

4.3 Equivalent of a Bachelors Degree:

Acquired the knowledge and training equivalent to a Bachelor's Degree by meeting one of the following:

4.3.1 Associate's Degree and additional education:

Holds an Associate's degree in any content area and has met the following criteria:

4.3.1.1 Satisfactorily completed nine (9) college credits in non-duplicated courses taken either as part of a degree program or in addition to it from a regionally accredited college or university in the following content areas:

4.3.1.1.1 Career and Technical Education Pedagogy (6 credits); and

4.3.1.1.2 Special Education (3 credits); and

4.3.1.2 Satisfactorily completed twelve (12) college credits or their equivalent in professional development or technical training in non-duplicated courses taken either as part of a degree program or in addition to it from a regionally accredited college or university or from a technical training or professional development provider in any combination of the following content areas:

4.3.1.2.1 Career and Technical Education Pedagogy

4.3.1.2.2 Education Pedagogy

4.3.1.2.3 Educational Psychology

4.3.1.2.4 Special Education

4.3.1.2.5 Science

4.3.1.2.6 Mathematics

4.3.1.2.7 English

4.3.1.2.8 Computer Literacy

4.3.1.2.9 Social Studies; or

4.3.1.2.10 Education in the specific career area of certification including specifications listed in the Department's specific career area program certification requirements; or:

4.3.2 Two Years of College or Technical Training and additional education:

Satisfactorily completed Two Years of College or Technical Training and has met the following criteria:

4.3.2.1 Satisfactorily completed the requirements in 4.3.1.1 and 4.3.1.2; and

4.3.2.2 Satisfactorily completed fifteen (15) college credits in non-duplicated courses taken either as part of a degree program or in addition to it from a regionally accredited college or university, with at least one (1) course in each of the following content areas:

4.3.2.2.1 Science (3 credits)

4.3.2.2.2 Mathematics (3 credits)

4.3.2.2.3 English (3 credits)

4.3.2.2.4 Psychology (3 credits)

4.3.2.2.5 Computer Literacy (3 credits).

5.0 Experience Requirements

An educator shall also have met the following:

5.1 Acquired a minimum of six (6) years of work experience, two (2) of which must be within the last five (5) years, in the Skilled and Technical Sciences Specific Career Area of Certification; or

5.2 Acquired a minimum of six (6) years of work experience in the Skilled and Technical Sciences specific career area of certification within any time period and maintained current experience by full-time teaching in or direct supervision of the specific career area of certification for a minimum, of two (2) years within the last five (5) years.

6.0 Professional and Occupational License Requirements

An educator shall also have met the following:

- 6.1 In skilled or technical sciences occupations where a state license or registration is required by law, all applicants for Skilled and Technical Sciences certification, with the exception of the areas listed in 6.2, shall present a valid and current Delaware license or registration upon application for a Standard Certificate; and
- 6.2 Applicants for Skilled and Technical Sciences certification in the career areas of Electrician, Plumber or HVAC shall present a valid and current Delaware license as part of completing certification requirements, pursuant to 14 Del.C. §1210(f); and
- 6.3 The state license or registration shall be renewed as required by law.
-

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**Division of Long Term Care Residents Protection**

Statutory Authority: 16 Delaware Code, Section 1101 (16 Del.C. §1101)
16 DE Admin. Code 3201

PUBLIC NOTICE**3201 Skilled And Intermediate Care Nursing Facilities**

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection, has prepared draft regulations pertaining to skilled and intermediate care nursing facilities. These proposed regulations are intended to collapse into one set of regulations and replace in their entirety both the current regulations for skilled care nursing facilities and the current regulations for intermediate care nursing facilities. The proposed regulations specify required services in skilled and intermediate nursing facilities including requirements for licensing, personnel, resident services, physical plant requirements, emergency preparedness, as well as recordkeeping and reporting.

Invitation for Public Comment

Public hearings will be held as follows:

Tuesday, December 2, 2008, 10:00 AM

Division of Developmental Disability Services, Fox Run Office
2540 Wrangle Hill Road, Bear

Thursday, December 4, 2008, 10:00 AM

Department of Natural Resources & Environmental Control Auditorium
89 Kings Highway, Dover

For clarification or directions, please call Gina Loughery at 302-577-6661.

Written comments are also invited on these proposed regulations and should be sent to the following address:

Division of Long Term Care Residents Protection
3 Mill Road, Suite 308
Wilmington, DE 19806

The last time to submit written comments will be at the conclusion of the public hearing on December 4, 2008.

Please Note: The existing regulations **3201 Nursing Home Regulations for Skilled Care** and **3205 Nursing Home Regulations for Intermediate Care** are being repealed. Due to space limitations they are not being published here. A copy of the regulation is available at:

[3201 Skilled And Intermediate Care Nursing Facilities](#)

3201 Skilled And Intermediate Care Nursing Facilities

1.0 Scope

- 1.1 A Nursing facility (NF) is a residential institution, as defined in 16 Delaware Code, §1102(4), which provides services to residents which include resident beds, continuous nursing services, and health and treatment services for individuals who do not currently require continuous hospital care. Care is given in accordance with a physician's orders and requires the competence of a registered nurse (RN).
- 1.2 Nursing facilities shall be subject to all applicable local, state and federal code requirements, including but not limited to the applicable code requirements of the State Fire Prevention Commission.

2.0 Definitions

- 2.1 Activities of Daily Living (ADLs) - Normal daily activities including but not limited to ambulating, transferring, range of motion, grooming, bathing, dressing, eating and toileting.
- 2.2 Advance Directive - Written instructions such as a living will or durable power of attorney for health care, in accordance with 16 Delaware Code, Chapter 25, relating to the provision of health care should the individual become incapacitated.
- 2.3 Associated Entity - The partially or wholly owned subsidiary, parent company or partner of the applicant for licensure or any other entity identified on the corporation formation documents.
- 2.4 Department/DHSS - Department of Health and Social Services
- 2.5 Division - Division of Long Term Care Residents Protection
- 2.6 Extensive Remodeling - Renovations or alterations within the facility that modify the square footage of any room intended for resident use.
- 2.7 Food Service Manager -
 - 2.7.1 For facilities subject to 16 Delaware Code, §1164, an individual who meets the statutory requirements for a food service manager. A facility may seek a waiver of the statutory requirements if an insufficient pool of applicants exists. The facility must demonstrate the inability to hire a person who meets the requirements after a recruitment process of at least 90 days duration that included advertising in at least two newspapers of general circulation and one trade journal, offering a competitive salary. If those conditions are met, the Division may waive the education requirement for an applicant who meets the requirements of a "person in charge" as defined in the current Delaware Food Code.
 - 2.7.2 For facilities not subject to 16 Delaware Code, §1164, an individual who, at a minimum, meets the requirements of a "person in charge" as defined in the current Delaware Food Code.
- 2.8 Full-time - Forty hours per week or the standard workweek established by the facility.
- 2.9 Incident - An occurrence or event, a record of which must be maintained in facility files, which includes all reportable incidents and the additional occurrences or events listed in Section 10.5 of these regulations. (Also see Reportable Incident, Section 10.6.)
- 2.10 Nursing Home Administrator - A licensee of the Delaware Board of Examiners of Nursing Home Administrators who manages the facility on a full-time basis, and is responsible for the delivery quality care to its residents and for the implementation of the policies and procedures of the facility.
- 2.11 Nursing Services - Those curative, restorative, preventive or palliative health care services provided by certified nursing assistants, licensed practical nurses and registered nurses to assist a resident to

PROPOSED REGULATIONS

- attain or maintain his or her highest practicable physical, mental, and psychosocial well-being as determined by the resident's assessment and individual care plan.
- 2.12 Pediatric resident - A person residing in a nursing facility who is under 18 years of age and for who there is a care plan including medical care, treatment and other related services in accordance with the Regulations for Nursing Homes Admitting Pediatric Residents.
- 2.13 Physician - A medical doctor or doctor of osteopathy licensed to practice medicine in the State of Delaware.
- 2.14 Rehabilitation - The actions and services such as physical therapy, occupational therapy, speech therapy and psychosocial services provided or required to restore an ill or injured person to self-sufficiency at his or her highest attainable level.
- 2.15 Reportable Incident - An occurrence or event which must be reported immediately to the Division and for which there is reasonable cause to believe that a resident has been abused, neglected, mistreated or subjected to financial exploitation/misappropriation of their property as those terms are defined in 16 **Delaware Code**, §1131 and/or 42 CFR 483.13(c). Reportable incident also includes an occurrence or event listed in Section 10.6 of these regulations. (Also see Incident, Section 2.9.)
- 2.16 Resident - A person admitted to a nursing facility because of illness or impairment, under a physician's care, for whom there is planned continuing health care directed toward improvement in health or for whom palliative medical and nursing measures are required.
- 2.17 Restraint - A physical or chemical means of restricting or controlling a resident. Specifically, a mechanical device, material or equipment attached or adjacent to a resident's body that the resident cannot remove easily, and which restricts freedom of movement or normal access to the resident's body.
- 2.18 Satisfactory Compliance History - A sworn affidavit, as required by 16 **Delaware Code**, §1104(d), attesting to a licensure applicant's provision of quality care in a nursing facility, during the five years preceding the initial application, as determined by the absence of the following:
- 2.18.1 Termination or denial of participation in the Medicare or Medicaid program
 - 2.18.2 State licensure revocation
 - 2.18.3 Financial insolvency
 - 2.18.4 Outstanding civil actions for debt
 - 2.18.5 Outstanding civil money penalty
- 2.19 Social worker - For facilities subject to 16 **Delaware Code**, §1165, with at least 100 beds, an individual with a bachelor's degree in social work, or a bachelor's degree in a human services field including, but not limited to, sociology, special education, rehabilitation counseling, and psychology; and one year of supervised social work experience in a health care setting working directly with individuals. For facilities with fewer than 100 beds, the facility may designate the director of admissions or a nurse to assume the duties of the social worker.
- 2.20 Supervision - The oversight and direction of personnel necessary to ensure the safety, comfort and well-being of residents.

3.0 - General Requirements

- 3.1 The term "nursing home" or "nursing facility" shall not be used as part of the name of any facility in this State unless it has been so licensed by the Division.
- 3.2 Each nursing facility shall develop written policies pertaining to the services provided.
- 3.3 A nursing facility shall not adopt any policy which conflicts with applicable statutes or regulations.
- 3.4 Inspections and monitoring by the Division shall be carried out in accordance with 16 **Delaware Code**, §1107.
- 3.5 Upon receipt of a report of any violation(s) of these regulations, the facility shall submit a written plan of action to correct cited deficiencies within 10 working days or such other time period as may be specified. The plan of action shall address corrective actions and include all measures and completion dates to prevent their recurrence as follows:

- 3.5.1 How the corrective action will be accomplished for a resident(s) affected by the deficient practice;
- 3.5.2 How the facility will identify other residents having the potential to be affected by the same deficient practice;
- 3.5.3 What measures or systemic changes will be put in place to ensure that the deficient practice will not recur;
- 3.5.4 What program will be put into place to monitor the continued effectiveness of the corrective actions.
- 3.6 The Division shall be notified, in writing, upon any changes in the administrator, assistant administrator or director of nursing positions.
- 3.7 The nursing facility shall comply with 42 CFR 483.10, 483.12, 483.13, 483.15 and/or 16 Delaware Code, §1121 regarding the rights of residents. Those rights shall be made available in writing to residents, guardians, representatives or next of kin.
- 3.8 Each facility shall provide, in writing, the refund and prepayment policy at the time of admission, and in the case of residents admitted while awaiting approval of third-party payment, an exact statement of responsibility in the event of retroactive denial. The facility shall notify residents, in writing, at least 30 days prior to a rate increase.
- 3.9 A facility may require an individual who has legal access to a resident's income or resources available to pay for facility care to sign a contract to provide for facility payment from the resident's income or resources. However, in doing so, the facility shall not require a third party to incur personal financial liability for the nursing facility expenses.

4.0 Licensing Requirements And Procedures

- 4.1 Licenses and renewals shall be issued to a nursing facility which meets the requirements of 16 Delaware Code, §1104. For initial licensure, the nursing facility shall also demonstrate during a physical inspection of the premises that the facility complies with all applicable regulations.
- 4.2 A new applicant for licensure shall substantiate a satisfactory compliance history as defined in these regulations.
- 4.3 The Division may consider sanctions or other information which, in combination, may impact licensure eligibility. Accordingly, the applicant shall disclose the following:
 - 4.3.1 The imposition of temporary management by the Centers for Medicare and Medicaid Services (CMS) or any state jurisdiction against the applicant or associated entity during the preceding five years
 - 4.3.2 The imposition of immediate jeopardy by CMS against the applicant or associated entity during the preceding five years
 - 4.3.3 A substandard survey by CMS or any state jurisdiction against the applicant or associated entity during the preceding five years
 - 4.3.4 The imposition of a civil money penalty by any state jurisdiction against the applicant or associated entity during the preceding five years
 - 4.3.5 A ban on admissions by any state jurisdiction against the applicant or associated entity during the preceding five years
 - 4.3.6 A list of all facilities managed, owned or controlled by the applicant or associated entity in any jurisdiction during the preceding five years
 - 4.3.7 Information as required by 16 Delaware Code, §1104(e)
- 4.4 Financial information disclosed to the Division as required by 16 Delaware Code, §1104(e) shall not be subject to Freedom of Information Act requests except as follows:
 - 4.4.1 Any information known to the Division regarding a civil action for debt owed by a facility
 - 4.4.2 Any information known to the Division regarding current facility bankruptcy proceedings
 - 4.4.3 The name of any facility currently under intensive Division review for potential financial incapability

PROPOSED REGULATIONS

- 4.5 Each license shall be renewed on the anniversary date of initial licensure. Each license holder shall file an application for renewal at least 30 days prior to the expiration of the current license and pay the applicable fee as established in 16 **Delaware Code**, §1106(a).
- 4.6 A new license shall be required in the event of a change in the nursing home management company, building owner or controlling person as defined in 16 **Delaware Code**, §1102(1).
- 4.7 Each license shall specify the number of licensed beds. A facility seeking to change the number of licensed beds shall apply to the Division for a modified license authorizing the revised number of beds.
- 4.8 Separate licenses are required for facilities maintained in separate locations, even though operated under the same management. A separate license is not required for separate buildings maintained by the same management on the same grounds.
- 4.9 When a facility plans to construct or extensively remodel a licensed facility or convert a building to a licensed facility, it shall submit one copy of properly prepared plans and specifications for the entire facility to the Division. An approval, in writing, shall be obtained before such work is begun. After the work is completed, in accordance with the plans and specifications, a modified license to operate shall be issued. All completed construction, extensive remodeling or conversions shall remain in accordance with the plans and specifications, as approved by the Division.

5.0 Personnel/administrative

- 5.1 The administrator(s) shall be responsible for complying with all applicable laws and regulations.
- 5.2 Each nursing facility shall have a full-time administrator. When an administrator will be temporarily absent for a period of two weeks or more, a management employee shall be designated to be in charge. The Division shall be notified in writing upon such designation.
- 5.3 The nursing facility shall designate a physician to serve as the medical director who shall be responsible for implementation of resident care policies and the coordination of medical care in the facility.
- 5.4 Nursing facilities shall provide professional nursing, nursing services direct care and other services as follows:
 - 5.4.1 Nursing facilities subject to 16 **Delaware Code**, §1161 to §1165 shall provide professional nursing, nursing services direct care and other services in accordance with statutory requirements.
 - 5.4.2 Nursing facilities not subject to 16 **Delaware Code**, §1161 to §1165 shall provide professional nursing, nursing services direct care and other services as follows:
 - 5.4.2.1 The facility shall provide a sufficient number of nursing services direct care staff to provide a minimum of 2.25 hours of direct care and treatment per resident per day.
 - 5.4.2.2 In addition to the requirement above, the nursing facility shall have a full-time director of nursing who is a registered nurse. The director of nursing shall have overall responsibility for the coordination, supervision and provision of nursing services.
 - 5.4.2.3 At a minimum, a registered nurse or licensed practical nurse shall be on duty at all times during the first and second shifts.
 - 5.4.2.4 At a minimum, in the absence of a nurse on the third shift, a registered nurse or licensed practical nurse shall be on call.
 - 5.4.2.5 Facilities not subject to 16 **Delaware Code**, §1164 may increase the level of care and services for a current resident whose condition requires such an increase in the level of care and services as an alternative to discharge to another facility. Such increased care and services shall be provided by a qualified caregiver(s) whose scope of practice includes the provision of such care and services, and shall be available during any shift when the resident's needs require such care and services.
 - 5.4.2.6 All other nursing services direct caregivers shall be certified nursing assistants.
 - 5.4.2.7 At a minimum, in the absence of a nurse on the third shift, at least one certified nursing assistant shall be qualified to assist with self-administration of medication (AWSAM) and to provide basic first aid.

5.4.2.8 The facility shall employ an activities director who shall ensure the provision of activities as described in these regulations.

5.5 The facility shall have written personnel policies and procedures. Personnel records shall be kept current and available for each employee, and include the following:

5.5.1 Results of tuberculosis screening

5.5.2 Documentation of annual influenza vaccination or refusal.

5.5.3 Results of criminal background check

5.5.4 Results of mandatory drug testing

5.5.5 Result of Adult Abuse Registry check

5.5.6 Titles and hours of in-service training

5.5.7 If applicable, license number and expiration date

5.5.8 If applicable, certification expiration date

6.0 Services To Residents

6.1 General Services

6.1.1 The nursing facility shall provide to all residents the care necessary for their comfort, safety and general well-being, and shall meet their medical, nursing, nutritional, and psychosocial needs.

6.1.2 The nursing facility shall have in effect a written transfer agreement with one or more hospitals to ensure inpatient hospital care, emergency care, or other hospital services are available promptly to residents when needed.

6.1.3 The nursing facility shall have written agreements for promptly obtaining required laboratory, x-ray and other ancillary services.

6.1.4 Each nursing facility providing skilled services shall implement each resident's physician's orders obtained on the day of admission and renewed or revised at least every 30 days for the first 90 days after admission, and every 60 days thereafter. Any nursing facility not providing skilled services shall implement each resident's physician's orders obtained on the day of admission and renewed or revised every 60 days thereafter.

6.2 Financial Services

6.2.1 The facility shall deposit any residents' personal funds in excess of \$50 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on resident's funds to that account. (In pooled accounts, there shall be a separate accounting for each resident's share.)

6.2.2 The facility shall establish and maintain a system that assures a complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds which shall be available through quarterly statements and on request to the resident or his/her representative.

6.2.3 Upon the death of a resident, the facility shall convey within 30 days the resident's funds, and a final accounting of those funds to the individual or probate jurisdiction administering the resident's estate.

6.2.4 The facility shall purchase a surety bond to assure the security of resident funds.

6.3 Medical Services

6.3.1 All persons admitted to a nursing facility shall be under the care of a physician licensed to practice in Delaware.

6.3.2 All nursing facilities shall arrange for one or more licensed physicians to be called in an emergency. Names, telephone and fax numbers of these physicians shall be posted at all nurses' stations.

6.3.3 For a resident admitted or readmitted from the hospital with orders for nine or more medications (excluding over-the-counter medications), the attending physician or designee or medical director shall conduct a comprehensive medication review within 10 days.

PROPOSED REGULATIONS

- 6.3.4 All written or verbal physician orders shall be signed by the attending physician or prescriber within 10 days.
- 6.3.5 After the initial physician visit, an advanced practice nurse or physician's assistant, affiliated with the physician, may alternate with the physician, making every other required visit.
- 6.3.6 A progress note shall be written and signed by the physician or designee (an advanced practice nurse or physician's assistant) after examining the resident at each visit

6.4 Therapy Services

- 6.4.1 All specialized services such as physical therapy, occupational therapy, and speech therapy shall be ordered by the attending physician. The facility shall assure the provision of these services through a written plan of care in accordance with physician orders.
- 6.4.2 Upon completion of a specialized service, the therapist shall communicate to the interdisciplinary team in writing any maintenance program to be included in the care plan.

6.5 Nursing Administration

6.5.1 The facility's director of nursing shall:

- 6.5.1.2 Develop and/or maintain nursing policy and procedure manuals
- 6.5.1.3 Assign duties to and supervise all levels of nursing services direct caregivers
- 6.5.1.4 Coordinate nursing services with medical, therapy, dietary, pharmaceutical, recreational, and other ancillary services
- 6.5.1.5 Coordinate orientation programs for new nursing services direct caregivers (including temporary staff) and in-service education, as appropriate, for such staff. Written records of the content of each in-service program and the attendance records shall be maintained for two years
- 6.5.1.6 Participate in the selection of prospective residents by evaluating the nursing services required and the facility's ability to competently provide those required services or ensure that such an evaluation is conducted by a designated registered nurse

6.5.2 Treatments and medications ordered by a physician shall be administered using professionally accepted techniques in accordance with 24 **Delaware Code**, Chapter 19.

6.5.3 Within 14 days of admission, the facility shall make a comprehensive assessment of each resident's needs. This assessment shall include, at a minimum, the following information:

- 6.5.3.1 Identification, background and demographic information
- 6.5.3.2 Customary routine
- 6.5.3.3 Cognitive patterns
- 6.5.3.4 Communication
- 6.5.3.5 Vision
- 6.5.3.6 Mood and behavior patterns
- 6.5.3.7 Psychosocial well-being
- 6.5.3.8 Physical functioning and structural problems
- 6.5.3.9 Continence
- 6.5.3.10 Disease diagnoses and health conditions
- 6.5.3.11 Dental and nutritional status
- 6.5.3.12 Skin condition
- 6.5.3.13 Activity pursuits
- 6.5.3.14 Medications
- 6.5.3.15 Special treatments and procedures
- 6.5.3.16 Discharge potential

6.5.4 The resident assessment shall include a screening instrument for mental illness, mental retardation, and developmental disabilities to assess if an individual has an active treatment need for one of these conditions.

- 6.5.5 Based on the physician's admission orders and the admission information for each resident, an interim individual nursing care plan shall be developed within 24 hours of admission pending the completion of a comprehensive resident assessment.
- 6.5.6 A comprehensive care plan shall be developed to address medical, nursing, nutritional and psychosocial needs within 7 days of completion of the comprehensive assessment. Care plan development shall include the interdisciplinary team that includes the attending physician, an RN/LPN and other appropriate staff as determined by the resident's needs. With the resident's consent, the resident, the resident's family or the resident's legal representative may attend care plan meetings.
- 6.5.7 The assessment and care plan for each resident shall be reviewed/revised as needed when a significant change in physical or mental condition occurs, and at least quarterly. A complete comprehensive assessment shall be conducted and a comprehensive care plan shall be developed at least yearly from the date of the last full assessment.
- 6.5.8 The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.
- 6.5.8.1 The resident's comprehensive assessment shall document the medical symptom(s) potentially requiring the use of restraints.
- 6.5.8.2 The facility shall follow a comprehensive, systematic process of evaluation and care planning to ameliorate medical and psychosocial indicators prior to restraint use.
- 6.5.8.3 The resident's care plan shall document the facility's use of interventions, such as modifying the resident's environment to increase safety, and use of assistive devices to enhance monitoring in order to avoid the use of restraints.
- 6.5.8.4 Should such interventions and assistive devices fail to provide for the resident's safety, a physician's written order permitting the use of restraints shall be required and shall specify the type of restraint ordered.
- 6.5.8.5 The facility shall be accountable for the safe and effective implementation of the physician's order permitting the use of restraints.
- 6.5.8.6 When the use of restraints has been implemented, the facility shall initiate a systematic process, on an ongoing basis, documented in the care plan, in an effort to employ the least restrictive restraint.
- 6.5.8.7 In an emergency, when the resident's unanticipated violent or aggressive behavior places him/her or others in imminent danger, restraints may be used as a last resort to protect the safety of the resident or others, and such use shall not extend beyond the immediate episode.
- 6.5.9 The facility shall ensure that each nursing and ancillary staff member providing care to a resident under 16 years of age meets the standards as defined in regulations for nursing facilities admitting pediatric residents.
- 6.5.10 The facility shall ensure that all licensed or certified direct care staff receive CPR certification and shall ensure that at least one staff person with current CPR certification is present in the facility during all shifts.
- 6.6 Activities
- 6.6.1 The nursing facility's activities program shall provide diversified individual activity plans and group activities for each resident based on the comprehensive assessment as well as an activity assessment conducted by the activity director. The activities offered shall reflect the needs, interests, abilities, preferences, limitations and age of each resident.
- 6.6.2 Scheduled activities offered to residents shall include therapeutic, recreational, social and spiritual activities, educational opportunities, and interaction with community groups. They are designed to sustain resident function, prevent decline and increase life satisfaction. Activities shall be conducted in a manner that enhances quality of life, promotes choice, stimulation or solace where appropriate and physical, cognitive, social and emotional health.

PROPOSED REGULATIONS

6.6.3 If a resident's comprehensive assessment indicates a need for activities to be addressed in the resident's care plan, that care plan shall identify and specify the type of interventions which will promote the resident's well-being and assist in the achievement of the established care plan goals for the resident.

6.6.4 There shall be a mechanism for promoting each resident's awareness of the time and location of activities programs. Facility staff members shall assist in the activities program including but not limited to transporting residents to programs.

6.7 Social Services

6.7.1 The facility shall identify each resident's need for social services to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident; and shall assist each resident to obtain all required services to meet the individual resident's needs. These social services shall include, but not be limited to:

6.7.1.1 Making arrangements for obtaining needed adaptive equipment, clothing and personal items

6.7.1.2 Making referrals and obtaining services from outside entities

6.7.1.3 Assisting residents with financial and legal matters, according to facility policy

6.7.1.4 Discharge planning services

6.7.1.5 Assisting residents to determine how they would like to make decisions about their health care, and whether or not they would like anyone else to be involved in those decisions

6.7.1.6 Meeting the needs of residents who are grieving

6.8 Food Service

6.8.1 Meals

6.8.1.1 A minimum of three meals or the equivalent shall be served in each 24-hour period. Meals shall be served at regular times comparable to meal times in the community.

6.8.1.2 The facility shall offer snacks at bedtime daily.

6.8.1.3 When residents refuse a meal served, substitutes of similar nutritive value shall be offered.

6.8.1.4 Menus shall meet the nutritional needs of residents in accordance with the recommended dietary allowances of the Food and Nutrition Board, National Research Council, National Academy of Sciences.

6.8.1.5 Therapeutic diets, mechanical alterations and changes in either must be prescribed by an attending physician within 72 hours of implementation. All meals and snacks shall be served in accordance with the therapeutic diet, if prescribed.

6.8.1.6 Nutritional supplements shall be served as prescribed by the physician.

6.8.2 Menus

6.8.2.1 Menus shall be planned in advance and a copy of the current week's menu shall be posted in the kitchen and in a public area. Portion sizes shall be listed on a menu in the food service area.

6.8.2.2 Menus showing food actually served each day shall be kept on file for at least 3 months. When changes in the menu are necessary, substitutions of similar nutritive value shall be provided.

6.8.2.3 A 3-day supply of food shall be kept on the premises at all times.

6.8.2.4 A copy of a recent dietary manual shall be available for planning therapeutic menus and as a resource for staff.

6.8.3 Nutritional Assessment

6.8.3.1 The immediate nutritional needs of each resident shall be addressed upon admission.

6.8.3.2 A comprehensive nutritional assessment which includes an evaluation of each resident's caloric, protein, and fluid requirements shall be completed within 14 days of admission in consultation with a dietitian.

6.8.3.3 The facility shall have an ongoing evaluation and assessment program to meet the nutritional needs of all residents.

6.8.3.4 The facility shall obtain and document each resident's weight at least monthly.

6.9 Housekeeping and Laundry Services

6.9.1 The facility shall employ sufficient housekeeping personnel and provide the necessary equipment to maintain a safe, clean, and orderly environment, free from offensive odors, for the interior and exterior of the facility.

6.9.2 A full-time employee shall be designated responsible for housekeeping services and for supervision and training of personnel.

6.9.3 The facility shall have written policies and procedures and schedules for cleaning all areas of the facility.

6.9.4 The facility shall maintain a supply, in the amount of 3 sets per resident, of towels, washcloths, sheets and pillowcases changed weekly or whenever soiled.

6.9.5 The facility's handling, storage, processing and transporting of linens shall comply with facility infection control policies and procedures.

6.9.6 The facility shall contract with a licensed pest control vendor to ensure that the entire facility is free of insects and other vermin.

6.10 Pharmacy Services

6.10.1 Each nursing facility shall have a consultant pharmacist who shall be responsible for the general supervision of the nursing facility's pharmaceutical services.

6.10.2 For a resident admitted or readmitted from the hospital with orders for nine or more medications (excluding over-the-counter medications), the facility shall complete an on-site or off-site pharmacy review within 10 days of admission or readmission.

6.11 Medications

6.11.1 Medication Administration

6.11.1.1 All medications (prescription and over-the-counter) shall be administered to residents in accordance with orders which are signed and dated by the ordering physician or prescriber. Each medication shall have a documented supporting diagnosis. Verbal or telephone orders shall be written by the nurse receiving the order and then signed by the ordering physician or prescriber within 10 days.

6.11.1.2 Standing orders may be established for over-the-counter medications that have been approved by the resident's attending physician.

6.11.1.3 Standing orders shall be initiated by licensed nurses, but shall not be used for more than 72 hours without approval by the physician.

6.11.1.4 When any standing order is initiated, it shall be written as a complete order on the MAR for the specified time period and charted when administered.

6.11.1.5 Medications shall be given only to the individual resident for whom the prescription or order was issued, and shall be given in accordance with the prescriber's instructions.

6.11.1.6 An individual resident may self-administer medications upon the written order of the physician, following determination by the interdisciplinary team that this practice is safe. The facility shall establish policies and procedures pertaining to the security of self-administered medication.

6.11.1.7 The facility's policies and procedures shall not prohibit or restrict a resident from receiving medications from the pharmacy of the resident's choice. However, the resident and/or his representative shall be informed of any ramifications of ordering medications from other than the facility's pharmacy, such as cost differences, responsibility for delivery of medication to the facility and length of ordering time.

6.11.1.8 Only licensed nurses shall administer medications and then record the administration on the resident's Medication Administration Record (MAR) immediately after administration to that resident.

PROPOSED REGULATIONS

- 6.11.1.9 The facility shall ensure that licensed nurses administering medications count controlled substances at the beginning and end of each shift. The on-coming medication nurse shall conduct, verify, and document the controlled substance count in the presence of the off-going medication nurse.
- 6.11.1.10 Any medications removed but not administered to the resident shall not be returned to the original container. In circumstances such as refusal of drugs by the resident, the drugs shall be discarded and the refusal recorded on the resident's Medication Administration Record (MAR). If the medication is a controlled substance, the signature of the administering nurse is required on the record of the controlled substance count.
- 6.11.1.11 Each nursing home shall have available a current edition of at least one drug reference text for the nursing staff.
- 6.11.1.12 Medication shall be released to residents on discharge or transfer only by the written authorization of the resident's physician. A resident who leaves the nursing facility on a short leave may be issued a quantity of medication to meet his/her needs, with the approval of the resident's physician.
- 6.11.1.13 The barrel, plunger, needle and contents of disposable hypodermic syringes shall be properly discarded in accordance with OSHA regulations immediately after use.
- 6.11.1.14 The administrator or designee shall notify the Office of Controlled Substances in the Division of Professional Regulation and the Division of Long Term Care Residents Protection of any unexplained loss of controlled substances, syringes, needles, or prescription pads within 8 hours of discovery of such loss or theft.

6.11.2 Medication Storage and Stocks

- 6.11.2.1 Stock supplies of drugs available without a prescription (over-the-counter drugs such as antacids, aspirin, laxatives) may be kept in the facility. These over-the-counter drugs shall be labeled "house stock," and dated when sent by the supplier.
- 6.11.2.2 Prescription medications for emergency or interim use may be stocked in a secured box by the facility subject to Board of Pharmacy regulations.

6.11.3 Medication Labeling

- 6.11.3.1 Medications shall be labeled in accordance with 24 **Delaware Code**, §2522 and the regulations of the Board of Pharmacy.
- 6.11.3.2 Medications dispensed using a unit dose system shall be pharmacy-prepared or manufacturer-prepared in individually packaged and sealed doses that are identifiable and properly labeled. The label shall include, at a minimum, the brand and/or generic name of the medication, strength, and lot number and expiration date.
- 6.11.3.3 Doses of medications for individual residents shall be placed into individual resident bins, compartments or drawers and shall be subdivided by administration time, labeled with the resident's name.

6.12 Communicable Diseases

6.12.1 General Requirements

- 6.12.1.1 The facility shall follow Division of Public Health regulations for the Control of Communicable and Other Disease Conditions and Centers for Disease Control guidelines for communicable diseases.
- 6.12.1.2 The facility shall establish written policies and procedures implementing the Division of Public Health regulations and Centers for Disease Control guidelines for communicable diseases.
- 6.12.1.3 The nursing facility shall ensure that the necessary precautions stated in the policies and procedures are followed.
- 6.12.1.4 A resident, when suspected or diagnosed as having a communicable disease, shall be placed on the appropriate precautions as recommended for that disease by the Centers

for Disease Control. Residents infected or colonized with the same organism may share a room based on current standard of practice.

- 6.12.1.5 The admission of a resident with or the occurrence of a disease or condition on the Division of Public Health List of Notifiable Diseases/Conditions within a nursing facility shall be reported to the resident's physician and the facility's medical director. The facility shall also report such an admission or occurrence to the Division of Public Health's Health Information and Epidemiology office.

6.12.2 Specific Requirements for Tuberculosis

- 6.12.2.1 A resident diagnosed with active tuberculosis in an infectious stage shall not continue to reside in a nursing facility unless that facility has a room with negative pressure ventilation and staff trained to care for residents requiring respiratory isolation.
- 6.12.2.2 A resident of any facility unable to provide care as described above who is diagnosed with active tuberculosis in an infectious stage shall be transferred to an acute care hospital, and the facility shall notify the Division of Public Health's Health Information and Epidemiology office immediately.
- 6.12.2.3 All facilities shall have on file results of tuberculin tests performed on all newly admitted residents and newly hired employees, and annually thereafter on all employees. A tuberculin test as specified, done within the twelve months prior to employment, or a chest x-ray showing no evidence of active tuberculosis shall satisfy this requirement for asymptomatic individuals. If an individual was previously documented as a positive reactor or has a history of hypersensitivity to the PPD test, a negative chest x-ray shall meet this requirement.
- 6.12.2.4 The tuberculin test shall be the Mantoux test containing 5 TU-PPD stabilized with Tween, injected intradermally. Current Centers for Disease Control guidelines shall be followed for interpreting the PPD test.
- 6.12.2.5 Persons found to have a significant reaction (defined as 10 mm or more of induration) to the test shall be reported to the Division of Public Health's Health Information and Epidemiology office and managed according to recommended medical practice.
- 6.12.2.6 Persons who do not have a significant reaction to the initial tuberculin test shall be retested within 7-21 days to identify those who demonstrate delayed reactions. Initial tests done within one year of a previous test need not be repeated in 7-21 days.

6.12.3 Immunizations

- 6.12.3.1 All facilities shall have on file evidence of annual vaccination against influenza for all residents, as recommended by the Immunization Practice Advisory Committee of the Centers for Disease Control, unless medically contraindicated.
- 6.12.3.2 All facilities shall have on file evidence of vaccination against pneumococcal pneumonia for all residents older than 65 and as recommended by the Immunization Practice Advisory Committee of the Centers for Disease Control unless medically contraindicated.
- 6.12.3.3 A resident who refuses to be vaccinated against influenza or pneumococcal pneumonia shall be informed by the facility of the health risks involved. The reason for the refusal(s) shall be documented in the resident's medical record annually.

6.12.4 Employee Health

- 6.12.4.1 All employees shall receive education and training on standard precautions, use of personal protective equipment, the importance of hand hygiene, the facility's infection control policies and reporting of exposures to blood or other potentially infectious materials.
- 6.12.4.2 Personal protective equipment, as required by Centers for Disease Control guidelines, shall be made available by the facility for employee use.
- 6.12.4.3 If an accidental exposure to blood or other potentially infectious materials occurs (specifically to eye, mouth, other mucous membrane or non-intact skin), appropriate first

PROPOSED REGULATIONS

aid treatment shall be given immediately and follow-up testing and counseling initiated. A copy of the exposure incident and follow-up treatment shall be maintained in the employee's personnel file.

6.12.4.4 Facilities shall establish procedures in accordance with Division of Public Health requirements and Centers for Disease Control guidelines for exclusion from work and authorization to return to work for staff with communicable diseases.

6.13 Infection Control

6.13.1 Infection Control Committee

6.13.1.1 The nursing facility shall establish an infection control committee (or a subcommittee of an overall quality control program) of professional staff whose responsibility shall be to manage the infection control program in the facility. One member of the committee shall be designated the infection control coordinator.

6.13.1.2 The infection control committee shall consist of members of the medical and nursing staffs, administration, dietetic department, pharmacy, housekeeping, maintenance, and therapy services.

6.13.1.3 The infection control committee shall establish written policies and procedures that describe the role and scope of each department/service in infection prevention and control activities.

6.13.1.4 The committee is responsible for the development and coordination of policies and procedures to accomplish the following:

6.13.1.4.1 Prevent the spread of infections and communicable diseases

6.13.1.4.2 Promote early detection of outbreaks of infection

6.13.1.4.3 Ensure a sanitary environment for residents, staff and visitors

6.13.1.4.4 Establish guidelines for the implementation of isolation/precautionary measures

6.13.1.4.5 Monitor the rate of nosocomial infection

6.13.1.5 The infection control coordinator shall maintain records of all nosocomial infections and corrective actions related to those infections to enable the committee to analyze clusters or significant increases in the rate of infection and to make recommendations for the prevention and control of additional cases.

6.13.1.6 The infection control committee shall establish the infection control training of staff and volunteers, and disseminate current information on health practices.

6.13.2 Infectious Waste

6.13.2.1 The facility shall establish and implement policies and procedures for the collection, storage, handling and disposition of all pathological and infectious wastes within the facility as well as for those to be removed from the facility including the following:

6.13.2.1.1 Needles, syringes and other solid, sharp, or rigid items shall be placed in a puncture resistant container prior to disposal by an infectious waste hauler approved by the Department of Natural Resources and Environmental Control (DNREC).

6.13.2.1.2 Non-rigid items, such as blood tubing and disposable equipment and supplies, shall be placed in double, heavy duty, impervious plastic bags prior to disposal by an infectious waste hauler approved by DNREC.

6.13.2.1.3 Fecal matter and biological liquid waste shall be flushed into the sewage system.

7.0 Plant, Equipment and Physical Environment

7.1 All new construction, extensive remodeling or conversions to a nursing facility shall comply with the standards and guidelines set forth under the "Nursing Facilities" section of the current edition of Guidelines for Design and Construction of Health Care Facilities, a publication of the American Institute of Architects Committee on Architecture for Health with assistance of the U.S. Department of Health and Human Services.

- 7.2 The facility shall be handicapped accessible and meet applicable American National Standards Institute (A.N.S.I.) standards.
- 7.3 Facility Systems Requirements
- 7.3.1 Water Supply and Sewage Disposal
- 7.3.1.1 The facility water supply and sewage disposal system shall comply with Division of Public Health and Department of Natural Resources and Environmental Control standards, respectively.
- 7.3.1.2 The water system shall supply hot and cold water under sufficient pressure to satisfy facility needs at peak demand.
- 7.3.1.3 Hot water accessible to residents shall not exceed 110° F.
- 7.3.2 Heating, Ventilation, Air Conditioning
- 7.3.2.1 The HVAC system for all areas used by residents shall be safe and easily controlled.
- 7.3.2.2 Ambient temperature in areas used by residents shall be maintained in a range from 71° F. to 81° F.
- 7.3.3 Facility lighting shall meet current standards of the Guidelines for Design and Construction of Health Care Facilities.
- 7.3.4 The facility shall be equipped with a resident call system which meets the current standards of the Guidelines for Design and Construction of Health Care Facilities. An intermediate care facility serving only developmentally disabled residents shall be exempt from this regulation.
- 7.4 Physical Environment Requirements
- 7.4.1 Safety Requirements
- 7.4.1.1 Stairs shall have stair treads and handrails.
- 7.4.1.2 Hallways shall have handrails on both sides of corridors. An intermediate care facility serving only developmentally disabled residents shall be exempt from this regulation.
- 7.4.1.3 Non-skid flooring materials shall be used and maintained in good condition.
- 7.4.2 Bedrooms
- 7.4.2.1 Each room shall be an outside above-grade room with at least one window opening to the outside.
- 7.4.2.2 Residents' rooms shall open directly into a corridor.
- 7.4.2.3 Each resident shall be provided with a reading light. At least one bedroom light shall be controlled by a switch at the bedroom entrance.
- 7.4.2.4 The facility shall provide at least one room with private toilet and hand washing sink for residents who require isolation.
- 7.4.2.5 The maximum capacity per room shall be four residents.
- 7.4.3 Bathrooms
- 7.4.3.1 Bathroom walls and floors shall be impervious to water. Bathrooms shall have at least one window or mechanical ventilation.
- 7.4.3.2 A minimum of one bathtub or shower shall be provided for every 20 residents not otherwise served by bathing facilities within residents' rooms. Each nursing unit shall have at least one bathtub.
- 7.4.3.3 Each tub or shower in a central bathing facility shall be in an individual room or enclosure with space for the private use of the tub or shower, for drying and dressing, and for a wheelchair and attendant. Showers shall be at least four feet square without curbs. Toilets in central bathing facilities shall have provisions for privacy.
- 7.4.3.4 Each resident's room shall have direct access to a hand washing sink and a toilet.
- 7.4.3.5 A wall-mounted hand grip shall be provided at each resident toilet, bath tub and shower.
- 7.4.3.6 Separate bathroom and hand washing sinks shall be provided for the staff.
- 7.4.4 Resident Common Areas

PROPOSED REGULATIONS

- 7.4.4.1 Areas for resident recreational and social activities shall provide at least 30 square feet per bed for the first 100 beds and 27 square feet per bed for beds in excess of 100.
- 7.4.4.2 The dining areas shall accommodate all residents.
- 7.4.4.3 Facilities for resident hair care and grooming shall be separate from resident rooms.
- 7.4.4.4 Equipment and materials for resident hair care and grooming shall comply with facility infection control policies and procedures.
- 7.5 Kitchen and Food Storage Areas
 - 7.5.1 Facilities shall comply with the Delaware Food Code.
- 7.6 Sanitation and Laundry
 - 7.6.1 The facility shall provide for the safe storage of cleaning materials, pesticides and other potentially toxic materials.
 - 7.6.2 Each facility shall have a janitor's closet containing a service sink.
 - 7.6.3 For on-site laundry processing, the facility shall:
 - 7.6.3.1 Provide a room under negative air pressure for receiving, sorting, and washing soiled linen. Washers must be supplied with hot water of 160° F.
 - 7.6.3.2 Provide a room under positive air pressure for drying and folding clean linen, equipped with a hand washing sink.
 - 7.6.4 For off-site laundry processing, the facility shall:
 - 7.6.4.1 Contract with a commercial laundry.
 - 7.6.4.2 Provide a soiled linen holding room (or a designated area in the soiled utility room) under negative air pressure for the storage of soiled linen.
 - 7.6.4.3 Provide a clean linen storage area.
 - 7.6.5 The facility shall have a soiled utility room under negative pressure for storage of infectious waste and sharps and for disposal of body fluids. The room shall have a work counter, hand washing sink, and clinical sink or other bed pan cleaning device.
- 7.7 Equipment and Supplies
 - 7.7.1 The facility shall supply sufficient equipment and supplies for nursing care to meet the needs of each resident. The facility shall obtain specific items when indicated for individual residents and approved by the attending physician or director of nursing.
 - 7.7.2 The facility shall provide each resident with:
 - 7.7.2.1 A hospital bed of appropriate size with a mattress covered with non-porous material. Modifications or attachments to the bed shall conform to manufacturer's specifications.
 - 7.7.2.2 A bedside stand with a drawer and storage space for a bedpan, urinal, emesis basin and washbasin.
 - 7.7.2.3 A minimum of two drawers in a dresser or chest of drawers.
 - 7.7.2.4 A closet or wardrobe.
 - 7.7.2.5 A chair suitable for resident relaxation.
 - 7.7.2.6 An over-bed table.
 - 7.7.3 The facility shall provide cubicle curtains around each bed in bedrooms occupied by more than one resident.
 - 7.7.4 The facility shall provide sufficient storage space on each nursing unit for nursing supplies and equipment.
 - 7.7.5 The facility shall provide safe storage for residents' valuables.
 - 7.7.6 The facility shall maintain a functioning scale, calibrated quarterly, capable of accurately weighing each resident.

8.0 Emergency Preparedness

- 8.1 Nursing facilities shall comply with the rules and regulations adopted and enforced by the State Fire Prevention Commission or the municipality with jurisdiction.
- 8.2 Regular fire drills shall be held at least quarterly on each shift. Written records shall be kept of attendance at such drills.
- 8.3 Each facility shall develop and maintain all-hazard emergency plans for evacuation and sheltering in place.
- 8.4 The staff on all shifts shall be trained on emergency and evacuation plans. Evacuation routes shall be posted in a conspicuous place at each nursing station.
- 8.5 In the event of a facility evacuation, the evacuation plan shall, at a minimum, provide for the transfer or availability of resident medications and records.
- 8.6 Each facility shall submit with their annual license renewal an updated Division of Public Health Residential Health Care Facilities Emergency Planning Checklist, electronically if possible.

9.0 **Quality Assessment and Assurance**

- 9.1 Each facility shall have a quality assessment and assurance committee which shall include the director of nursing, a physician and at least 3 other members of the facility's staff.
- 9.2 The facility's quality assessment and assurance committee shall:
 - 9.2.1 Meet at least quarterly to identify and discuss quality issues in the facility.
 - 9.2.2 Develop and implement appropriate plans of action to address identified quality issues in the facility.

10.0 **Records and Reports**

- 10.1 There shall be a separate clinical record maintained on each resident as a chronological history of the resident's stay in the nursing facility. Each resident's record shall contain current and accurate information including the following:
 - 10.1.1 Admission record which shall include the resident's name, birth date, home address prior to entering the facility, identification numbers (including Social Security), date of admission, physician's name, address and telephone number, admitting diagnoses, name, address and telephone number of resident's representative, the facility's medical record number, and advance directive(s) if applicable.
 - 10.1.2 History and physical examination prepared by a physician within 14 days of the resident's admission to the nursing facility. If the resident has been admitted to the facility from a hospital, the resident's summary and history prepared at the hospital and the resident's physical examination performed at the hospital, if performed within 14 days prior to admission to the facility, may be substituted. A record of subsequent annual medical evaluations performed by a physician must be contained in each resident's file.
 - 10.1.3 A record of post-admission diagnoses.
 - 10.1.4 Physician's orders which include a complete list of medications, dosages, frequency and route of administration, indication for usage, treatments, diets, restrictions on level of permitted activity if any, and use of restraints if applicable.
 - 10.1.5 Physician's progress notes.
 - 10.1.6 Nursing notes, which shall be recorded by each person providing professional nursing services to the resident, indicating date, time, scope of service provided and signature of the provider of the service. Nursing notes shall include care issues, nursing observations, resident change of status and other significant events.
 - 10.1.7 Medication administration record (MAR) including medications, dosages, frequency, route of administration, and initials of the nurse administering each dose. The record shall include the signature of each nurse whose initials appear on the MAR.
 - 10.1.8 Inventory of resident's personal effects upon admission.
 - 10.1.9 Results of laboratory tests, x-ray reports and results of other tests ordered by the physician.

PROPOSED REGULATIONS

- 10.1.10 Discharge record which includes date and time, discharge location, and condition of resident.
- 10.1.11 Special service notes, e.g., social services, activities, specialty consultations, physical therapy, dental, podiatry.
- 10.1.12 Interagency transfer form, if applicable.
- 10.1.13 Copies of power(s) of attorney and guardianship, if applicable.
- 10.1.14 Nutrition progress notes and record of resident weights.
- 10.1.15 CNA flow sheets.
- 10.2 Confidentiality of resident records shall be maintained in accordance with the federal Health Insurance Portability and Accountability Act (HIPAA) and 16 **Delaware Code**, §1121(6).
- 10.3 Records shall be retained for 6 years after discharge. For a minor, records shall be retained for three years after age of majority.
- 10.4 Electronic Record keeping
 - 10.4.1 Where facilities maintain residents' records in electronic format by computer or other devices, electronic signatures shall be acceptable.
 - 10.4.2 The facility shall have a written attestation policy.
 - 10.4.3 The computer network and all devices used to maintain resident medical records shall have safeguards to prevent unauthorized access and alteration of records.
 - 10.4.4 All data entry devices shall require user authentication to access the computer network.
 - 10.4.5 The computer program shall control each person's extent of access to residents' records based on that individual's personal identifier.
 - 10.4.6 The computer's internal clock shall record the date and time of each entry.
 - 10.4.7 An entry, once recorded, shall not be deleted. Alterations or corrections shall supplement the original record.
 - 10.4.8 All entries shall have the date and time of the entry and the individual's personal identifier logged in a file which is accessible to designated administrative staff only.
 - 10.4.9 The computer system shall back up all data to ensure record retention.
 - 10.4.10 The facility shall provide independent computer access to electronic records to satisfy the requirements of the survey and certification process.
- 10.5 Incident reports, with adequate documentation, shall be completed for each incident. Adequate documentation shall consist of the name of the resident(s) involved; the date, time and place of the incident; a description of the incident; a list of other parties involved, including witnesses; the nature of any injuries; resident outcome; and follow-up action, including notification of the resident's representative or family, attending physician and licensing or law enforcement authorities, when appropriate.
- 10.6 All incident reports whether or not required to be reported shall be retained in facility files for three years. Reportable incidents shall be communicated immediately, which shall be within eight hours of the occurrence of the incident, to the Division of Long Term Care Residents Protection. Telephone number: 1-877-453-0012; fax number: 1-877-264-8516.
- 10.7 Incident reports which shall be retained in facility files are as follows:
 - 10.7.1 All reportable incidents as detailed below.
 - 10.7.2 Falls without injury and falls with minor injuries that do not require transfer to an acute care facility or neurological reassessment of the resident.
 - 10.7.3 Errors or omissions in treatment or medication.
 - 10.7.4 Injuries of unknown source.
 - 10.7.5 Lost items which are not subject to financial exploitation.
 - 10.7.6 Skin tears.
 - 10.7.7 Bruises of unknown origin.
- 10.8 Reportable incidents are as follows:
 - 10.8.1 Abuse as defined in 16 **Delaware Code**, §1131.

- 10.8.1.1 Physical abuse with injury if resident to resident and physical abuse with or without injury if staff to resident or any other person to resident.
- 10.8.1.2 Any sexual act between staff and a resident and any non-consensual sexual act between residents or between a resident and any other person such as a visitor.
- 10.8.1.3 Emotional abuse whether staff to resident, resident to resident or any other person to resident.
- 10.8.2 Neglect, mistreatment or financial exploitation as defined in 16 **Delaware Code**, §1131.
- 10.8.3 Resident elopement under the following circumstances:
 - 10.8.3.1 A resident's whereabouts on or off the premises are unknown to staff and the resident suffers harm.
 - 10.8.3.2 A cognitively impaired resident's whereabouts are unknown to staff and the resident leaves the facility premises.
 - 10.8.3.3 A resident cannot be found inside or outside a facility and the police are summoned.
- 10.8.4 Significant injuries.
 - 10.8.4.1 Injury from an incident of unknown source in which the initial investigation or evaluation concludes that there is a reasonable suspicion that the injury was caused by abuse, neglect or mistreatment.
 - 10.8.4.2 Injury which results in transfer to an acute care facility for treatment or evaluation or which requires periodic neurological reassessment of the resident's clinical status by professional staff for up to 24 hours.
 - 10.8.4.3 Areas of contusions or bruises caused by staff to a dependent resident during ambulation, transport, transfer or bathing.
 - 10.8.4.4 Significant error or omission in medication/treatment, including drug diversion, which causes the resident discomfort, jeopardizes the resident's health and safety or requires periodic monitoring for up to 48 hours.
 - 10.8.4.5 A burn greater than first degree.
 - 10.8.4.6 Any serious unusual and/or life-threatening injury.
- 10.8.5 Entrapment which causes the resident injury or immobility of body or limb or which requires assistance from another person for the resident to secure release.
- 10.8.6 Suicide or attempted suicide.
- 10.8.7 Poisoning.
- 10.8.8 Fire within a facility.
- 10.8.9 Utility interruption lasting more than eight hours in one or more major service including electricity, water supply, plumbing, heating or air conditioning, fire alarm, sprinkler system or telephones.
- 10.8.10 Structural damage or unsafe structural conditions.
- 10.8.11 Water damage which impacts resident health, safety or comfort.
- 10.9 The facility shall maintain written policies and procedures, in accordance with 16 **Delaware Code** Chapter 25, regarding health care decisions including advance directives. The facility shall provide written information to all residents explaining such policies and procedures.

11.0 Facility Closure

- 11.1 In the event of the closing of a facility, the facility shall:
 - 11.1.1 Notify the Division of Long Term Care Residents Protection, the Ombudsman, the Division of Public Health and, if applicable, the Division of Medicaid and Medical Assistance and the Centers for Medicare and Medicaid Services at least 90 days before the planned closure.
 - 11.1.2 Notify each resident directly and his/her attending physician and, if applicable, his/her responsible party by telephone and in writing at least 90 days before the planned closure.

PROPOSED REGULATIONS

- 11.1.3 Give the resident or the resident's responsible person an opportunity to designate a preference for relocation to a specific facility or for other arrangements.
- 11.1.4 Arrange for relocation to other facilities in accordance with the resident's preference, if possible.
- 11.1.5 Ensure that all resident records, medications, and personal belongings are transferred with the resident and, if to another facility, accompanied by the interagency transfer form.
- 11.1.6 Provide an accounting of resident trust fund accounts which shall be transferred to each resident's possession or to the facility to which the resident relocates. A record of the accounting of the funds shall be maintained by the closing facility for audit purposes.
- 11.1.7 Advise any applicant for admission to a facility which has a planned closure date in writing of the planned closure date prior to admission.

12.0 Waivers and Severability

- 12.1 Waivers may be granted by the Division of Long Term Care Residents Protection for good cause.
- 12.2 Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 311; 19 Delaware Code, Section 2301E
(18 Del.C. §311; 19 Del.C. §2301E)

PUBLIC NOTICE

803 Workers' Compensation Data Collection

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 803 relating to WORKERS' COMPENSATION DATA COLLECTION. The docket number for the proposed regulation is 1006.

The purpose for proposing Regulation 803 is to identify and adopt a protocol and data elements for collection of workers' compensation medical cost data as required by Title 19, Section 2301E of the **Delaware Code**. The text of the proposed regulation is reproduced in the November 2008 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a hearing on this proposed regulation. Written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments are being solicited from any interested party. Written comments or other written materials concerning the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m., December 1, 2008, and should be addressed to Regulatory Specialist Mitchell G. Crane, Esquire, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

803 Workers' Compensation Data Collection

1.0 Authority

This regulation is adopted and promulgated in accordance with 18 Del.C. §311, Delaware Insurance Code; 19 Del.C. §2301E, Workmen's Compensation Code; and 29 Del.C. Ch. 101, Administrative Procedures Act.

2.0 Purpose

- 2.1 The purpose of this regulation is to implement §2301E of Title 19 regarding workers' compensation data collection. Section 2301E authorizes the Insurance Commissioner and a workers' compensation

advisory organization established pursuant to Chapter 26 of Title 18 to gather data enabling them to identify systemic cost drivers and provide objective information to evaluate Delaware's workers' compensation system.

- 2.2 Section 2301E also requires the Insurance Commissioner to appoint a committee to advise the Commissioner on adoption of a standardized data transmission protocol developed by a national workers' compensation organization to facilitate the collection of the data necessary to evaluate Delaware's workers' compensation system.
- 2.3 Section 2301E further requires the Commissioner to adopt rules establishing a standardized data collection protocol, the data elements to be mandated for collection, a schedule for mandatory implementation of the data elements, and sanctions for noncompliance.
- 2.4 This regulation is adopted in accordance with the requirements of §2301E.

3.0 Workers' Compensation Protocol/Data Elements and Implementation.

- 3.1 The Department adopts the National Council on Compensation Insurance's ("NCCI's") medical data collection protocol and data elements as the standard for collection of workers' compensation related medical data in Delaware. Information regarding the NCCI medical data elements and protocol can be found at www.ncci.com.
- 3.2 The process and infrastructure for the collection of medical data pursuant to this protocol shall be developed in consultation with the committee established pursuant to §2301E.
- 3.3 Beginning in the year 2010, carriers shall be required to provide the data elements identified by NCCI.

4.0 Additional Regulations.

- 4.1 The committee established pursuant to §2301E shall continue to advise the Commissioner on the adoption of regulations necessary for the implementation of the collection of data elements as the process of establishing the necessary policies and infrastructure proceeds.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 311 (18 Del.C. §311)
18 DE Admin. Code 1301

PUBLIC NOTICE

1301 Internal Review, Arbitration and Independent Utilization Review of Health Insurance Claims

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of proposed Department of Insurance Regulation 1301 relating to Internal Review, Arbitration and Independent Utilization Review of Health Insurance Claims. The docket number for this proposed regulation is 995.

The Department of Insurance proposes to amend Regulation 1301 by rescinding the current regulation and substituting in lieu thereof revised provisions relating to Internal Review, Arbitration and Independent Utilization Review of Health Insurance Claims. The Delaware Code authority for the change is 18 Del.C. §311. The text can also be viewed at the Delaware Insurance Commissioner's website as www.delawareinsurance.gov/departments/documents/ProposedRegs.shtml.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed change must be received by the Department of Insurance no later than 4:30 p.m. on December 1, 2008 by delivering said comments to Deputy Attorney General Julie M. Donoghue, Esquire, c/o Delaware Department of Insurance, 841 Silver Lake Blvd., Dover, DE 19904 or by fax to 302-739-6278 or e-mail to Julie.Donoghue@state.de.us.

1301 Internal Review, Arbitration and Independent Utilization Review of Health Insurance Claims

(Break in Continuity of Sections)

2.0 Definitions

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

“Adverse determination” means a decision by a carrier to deny (in whole or in part), reduce, limit or terminate health insurance benefits.

“Appeal” means a request for external review of a carrier’s final coverage decision through the Independent Health Care Appeals Program.

“Appropriateness of services” means an appeal classification for adverse determinations that are made based on identification of treatment as cosmetic, investigational, experimental or not an appropriate or preferred treatment method or setting for the condition for which treatment is sought.

“Authorized representative” means an individual who a covered person willingly acknowledges to represent his interests during the internal review process, arbitration and/or an appeal through the Independent Health Care Appeals Program, including but not limited to a provider to whom a covered person has assigned the right to collect sums due from a carrier for health care services rendered by the provider to the covered person. A carrier may require the covered person to submit written verification of his consent to be represented. If a covered person has been determined by a physician to be incapable of assigning the right of representation, the covered person may be represented by a family member or a legal representative.

“Carrier” means any entity that provides health insurance in this State. Carrier includes an insurance company, health service corporation, managed care organization and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation. Carrier also includes any third-party administrator or other entity that adjusts, administers or settles claims in connection with health insurance.

“Covered person” means an individual and/or family who has entered into a contractual arrangement, or on whose behalf a contractual arrangement has been entered into, with a carrier, pursuant to which the carrier provides health insurance for such person or persons.

“Department” means the Delaware Insurance Department.

“Duration of an Emergency Medical Condition” means a period of time that begins with an Emergency Medical Condition and ends when the Emergency Medical Condition is either treated or stabilized as such stabilization is evidenced by post stabilization care [as referenced in 18 Del.C. §§3349(c)(3) and 3565(c)(3)] in a hospital where such post stabilization care is not within the definition of emergency care services.

“Emergency care provider” means a provider of emergency care services.

~~“Emergency care services” means those services identified in 18 Del.C. §§3349(c) and 3565(c) including: a provider who also provides health care services that aren’t emergency care services.~~

A. Any **“Emergency care services”** means those services identified in 18 Del.C. §§3349(c) and 3565(c) performed at any time during the Duration of an Emergency Medical Condition, including any covered service providing for the transportation of a patient to a hospital emergency facility for an emergency medical condition including air and sea ambulances so long as medical necessity criteria are met; and

~~B. Facility and professional providers of emergency medical services in an approved emergency care facility.~~

“Emergency Medical Condition” shall have the meaning assigned to it by 18 Del.C. §§3349(d) and 3565(d).

“Final coverage decision” means the decision by a carrier at the conclusion of its internal review process upholding, modifying or reversing its adverse determination.

"Grievance" means a request by a covered person or his authorized representative that a carrier review an adverse determination by means of the carrier's internal review process.

"Health care services" means any services or supplies included in the furnishing to any individual of medical care, or hospitalization or incidental to the furnishing of such care or hospitalization, as well as the furnishing to any individual of any and all other services for the purpose of preventing, alleviating, curing or healing human illness, injury, disability or disease.

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

"Independent Health Care Appeals Program ("IHCAP")" means a program administered by the Department that provides for an external review by an Independent Utilization Review Organization of a carrier's final coverage decision based on medical necessity or appropriateness of services.

"Independent Utilization Review Organization ("IURO")" means an entity that conducts independent external reviews of a carrier's final coverage decisions resulting in a denial, termination, or other limitation of covered health care services based on medical necessity or appropriateness of services.

"Internal review process ("IRP")" means a procedure established by a carrier for internal review of an adverse determination.

"Medical necessity" means providing of health care services or products that a prudent physician would provide to a patient for the purpose of diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

- A. In accordance with generally accepted standards of medical practice;
- B. Consistent with the symptoms or treatment of the condition; and
- C. Not solely for anyone's convenience.

"Network carrier" is a carrier that has a written participation agreement with an emergency care a provider to pay for emergency care services in Delaware.

"Network eEmergency eCare pProvider" is an emergency care provider who has a written participation agreement with the carrier to provide emergency care services or governing payment of emergency care services in Delaware as of the date those services were provided. All other emergency care providers shall be considered non-network emergency care providers.

"Non-Network Emergency Care Provider" is a provider who is not a Network Emergency Care Provider.

"Provider" means an individual or entity, including without limitation, a licensed physician, a licensed nurse, a licensed physician assistant and a licensed nurse practitioner, a licensed diagnostic facility, a licensed clinical facility, and a licensed hospital, who or which provides health care services in this State.

(Break in Continuity of Sections)

5.0 Options for External Review of a Carrier's Final Coverage Decision

- 5.1 A covered person or his authorized representative may request review of a carrier's final coverage decision through the Department by filing either a Petition for Arbitration or filing an appeal through the Independent Health Care Appeals Program, depending on the basis for the carrier's final coverage decision as set forth herein.
- 5.2 Arbitration (sections 6.0 and 7.0 of this regulation). Except for claims exempt from arbitration by law or regulation, every carrier, provider, network emergency care provider and non-network emergency care provider as defined in this regulation shall submit the following to arbitration ~~the following~~:
 - 5.2.1 covered claims arising from the provision of emergency care services under 18 Del.C. §§3349 and 3565; and
 - 5.2.2 final coverage decisions denying claims based on grounds other than medical necessity or appropriateness of services.

PROPOSED REGULATIONS

- 5.3 Independent Health Care Appeals Program (sections 8.0 through 11.0 of this regulation). A carrier shall submit all requests for review of final coverage decisions denying claims based, in whole or in part, on medical necessity or appropriateness of services (“appeals”) to the Independent Health Care Appeals Program (“IHCAP”).
- 5.3.1 For cases in which a carrier’s final coverage decision should be reviewed through arbitration and through IHCAP, or where there is an ambiguity as to whether review should be through arbitration or through IHCAP, review shall be conducted through IHCAP.
- 5.4 Exemption from Arbitration. 18 **Del.C.** §§3349(b) and 3565(b) shall not apply to health insurance policies exempt from state regulation under federal law or regulation. On a quarterly basis, each carrier shall provide a list of ~~non~~-exempt plan numbers to the Department. The Department shall maintain a public register of ~~such non~~-exempt plan numbers. The placement of an ~~an~~ ~~non~~-exempt plan number on the register shall constitute a rebuttable presumption that ~~such non-exempt~~ the policy plan number is not subject to the provisions of this regulation. A carrier that clearly identifies whether a plan is either exempt or non-exempt on the face of an identification or membership card shall not be required to comply with the provisions of this ~~sub~~-section but only with respect to the plans for which such identification or membership cards display the group status. The failure of a carrier to either (1) provide the Department with a list of exempt plan numbers, or (2) clearly identify if a plan is exempt or non-exempt on the face of an identification or membership card shall constitute a rebuttable presumption that the plan is subject to the provisions of this regulation.
- 5.5 A carrier and a non-network emergency care provider can mutually agree in writing to submit to arbitration pursuant to Section 7.0 payment disputes relating to the delivery of emergency care services to patients covered by a plan otherwise exempt from arbitration, except that such agreement will only apply to the plan and the services stated therein.
- 5.56 The provisions of this regulation shall not apply to Medicaid or any other health insurance program where the review of coverage determinations is otherwise regulated by the provisions of other state or federal laws or regulations.

6.0 Arbitration Procedure to Review a Carrier’s Final Coverage Decision

- 6.1 Petition for Arbitration
- 6.1.1 A covered person or his authorized representative may request review of a carrier’s final coverage decision through arbitration by delivering a Petition for Arbitration to the Department so that it is received by the Department no later than 60 days after the covered person’s receipt of written notice of the carrier’s final coverage decision.
- 6.1.2 A covered person or his authorized representative must deliver to the Department an original and three copies of the Petition for Arbitration.
- 6.1.3 At the time of delivering the Petition for Arbitration to the Department, a covered person or his authorized representative must also:
- 6.1.3.1 send a copy of the Petition to the carrier by certified mail, return receipt requested;
- 6.1.3.2 deliver to the Department a Proof of Service confirming that a copy of the Petition has been sent to the carrier by certified mail, return receipt requested; and
- 6.1.3.3 deliver to the Department a non-refundable \$75.00 filing fee.
- 6.1.4 The Department may refuse to accept any Petition that is not timely filed or does not otherwise meet the criteria for arbitration. If the subject of the Petition is appropriate for review through IHCAP, the Department shall advise the covered person or his authorized representative of the procedure to obtain IHCAP review. If the subject of the Petition is appropriate for IHCAP review, the Petition for Arbitration will be treated as an IHCAP appeal for purposes of determining whether the IHCAP appeal is timely filed in accordance with section 8.1 of this regulation.
- 6.2 Response to Petition for Arbitration
- 6.2.1 Within 20 days of receipt of the Petition, the carrier must deliver to the Department an original and three copies of a Response with supporting documents or other evidence attached.
- 6.2.2 At the time of delivering the Response to the Department, the carrier must also:

- 6.2.2.1 send a copy of the Response and supporting documentation to the covered person or his authorized representative by first class U.S. mail, postage prepaid; and
- 6.2.2.2 deliver to the Department a Proof of Service confirming that a copy of the Response was mailed to the covered person or his authorized representative.
- 6.2.3 The Department may return any non-conforming Response to the carrier.
- 6.2.4 If the carrier fails to deliver a Response to the Department in a timely fashion, the Department, after verifying proper service, and with written notice to the parties, may assign the matter to the next scheduled Arbitrator for summary disposition.
 - 6.2.4.1 The Arbitrator may determine the matter in the nature of a default judgment after establishing that the Petition is properly supported and was properly served on the carrier.
 - 6.2.4.2 The Arbitrator may allow the re-opening of the matter to prevent a manifest injustice. A request for re-opening must be made no later than seven days after notice of the default judgment.
- 6.3 Summary Dismissal of Petition by the Department
 - 6.3.1 If the Department determines that the subject of the Petition is not appropriate for arbitration or IHCAP or is meritless on its face, the Department may summarily dismiss the Petition and provide notice of such dismissal to the parties.
- 6.4 Appointment of Arbitrator
 - 6.4.1 Upon receipt of a proper Response, the Department shall assign an Arbitrator who shall schedule the matter for a hearing so that the Arbitrator can render a written decision within 45 days of the delivery to the Department of the Petition for Arbitration.
 - 6.4.2 The Arbitrator shall be of suitable background and experience to decide the matter in dispute and shall not be affiliated with any of the parties or with the provider whose service is at issue in the dispute.
- 6.5 Arbitration Hearing
 - 6.5.1 The Arbitrator shall give notice of the arbitration hearing date to the parties at least 10 days prior to the hearing. The parties are not required to appear and may rely on the papers delivered to the Department.
 - 6.5.2 The arbitration hearing is to be limited, to the maximum extent possible, to each party being given the opportunity to explain their view of the previously submitted evidence and to answer questions by the Arbitrator.
 - 6.5.3 If the Arbitrator allows any brief testimony, the Arbitrator shall allow brief cross-examination or other response by the opposing party.
 - 6.5.4 The Delaware Uniform Rules of Evidence will be used for general guidance but will not be strictly applied.
 - 6.5.5 Because the testimony may involve evidence relating to personal health information that is confidential and protected by state or federal laws from public disclosure, the arbitration hearing shall be closed unless otherwise agreed by the parties.
 - 6.5.6 The Arbitrator may contact, with the parties' consent, individuals or entities identified in the papers by telephone in or outside of the parties' presence for information to resolve the matter.
 - 6.5.7 The Arbitrator is to consider the matter based on the submissions of the parties and information otherwise obtained by the Arbitrator in accordance with this regulation. The Arbitrator shall not consider any matter not contained in the original or supplemental submissions of the parties that has not been provided to the opposing party with at least five days notice, except claims of a continuing nature that are set out in the filed papers.
- 6.6 Arbitrator's Written Decision.
 - 6.6.1 The Arbitrator shall render his decision and mail a copy of the decision to the parties within 45 days of the filing of the Petition.
 - 6.6.2 The Arbitrator's decision is binding upon the carrier except as provided in 18 Del.C. §332(g).
- 6.7 Arbitration Costs.

PROPOSED REGULATIONS

- 6.7.1 In arbitrations commenced under 18 ~~Del.C.~~ §332 and this Section 6.0, the carrier shall pay the costs and fees of arbitration which exceed the non-refundable filing fee of \$75.00 required to commence arbitration.
- 6.7.2 In arbitrations commenced under 18 ~~Del.C.~~ §§3349 or 3565, the non-prevailing party(ies) shall pay the costs and fees of arbitration which exceed the non-refundable filing fee of \$75.00 required to commence arbitration.

7.0 Special Provisions Applicable to Arbitration Pursuant to 18 Del.C. §§3349 and 3565

- 7.1 In any arbitration pursuant to 18 ~~Del.C.~~ §§3349 or 3565, the Arbitrator shall, at a minimum, receive evidence relating to the following items:
- 7.1.1 The highest amount of money paid by the carrier to any emergency care provider for the particular service in a comparable medical facility where the service was provided during the preceding twelve months;
- 7.1.2 The lowest amount of money paid by the carrier to any emergency care provider for the particular service in a comparable medical facility where the service was provided during the preceding twelve months;
- 7.1.3 The highest amount of money received by the non-network emergency care provider from any carrier for the particular service in a comparable medical facility where the service was provided during the preceding twelve months;
- 7.1.4 The lowest amount of money received by the non-network emergency care provider from any carrier for the particular service in a comparable medical facility where the service was provided during the preceding twelve months;
- 7.1.5 The number of times during the preceding twelve months that the carrier experienced a dispute or disagreement with respect to the payment for the particular service in a comparable medical facility where the service was provided, and the outcome of such disputes or disagreements.
- 7.2 The information specified in section 7.1 of this regulation and provided to the Arbitrator shall presumptively be considered trade secret or confidential financial information under the Delaware Freedom of Information Act and shall not be disclosed to or available at any time to any person, firm or entity not involved in the arbitration.
- 7.3 The Arbitrator shall consider the following guidelines as a basis for determining the rate or charge for a disputed service unless the evidence adduced at arbitration requires a determination on a different basis:
- 7.3.1 *Payments for emergency services to a non-network emergency care provider who was a network emergency care provider at any time prior to the date the provider delivered the emergency care services which are the subject of the arbitration.* A carrier shall pay such non-network emergency care provider the higher of either (1) the highest contract rate for the services provided during the term of the provider's contract with the insurer, subject to such rate adjustments as may be published in bulletins by the Commissioner from time to time, or (2) the highest undisputed amount regularly paid by any network insurer to the non-network provider for performance of the same service. All payments pursuant to this section are subject to reduction based on the insured's obligations for co-payments or deductibles.
- 7.3.2 *Other payments for emergency care services with CPT codes.* A carrier shall pay non-network emergency care providers who were never network providers with the carrier an amount equal to the lesser of the non-network emergency care provider billed fee for such service or the highest negotiated rate between the carrier and any network provider for the service based on the appropriate CPT code until such time as the non-network provider becomes a network provider pursuant to a written participation agreement. Thereafter payments will be based on the new negotiated rates.
- 7.3.3 *Payments for emergency care services without CPT codes.* For emergency care services that do not have a CPT code or other identifiable code number, a carrier shall pay non-network emergency care providers the lesser of the non-network emergency care provider billed fee, or the highest negotiated network rate received by the non-network provider from any carrier for the

~~performance of the same service. When and if the non-network provider becomes a network provider, payments will be based on the negotiated rate.~~

- ~~7.3.4 Changes in the membership of a provider group will not affect the remaining group member(s) insofar as the application of this section to payments for emergency care services. In the absence of a contract provision to the contrary, a physician's existing network status and payment rights shall not be transferable to that physician's new group or practice.~~
- ~~7.4 *Duty to Arbitrate.* Every carrier and provider shall submit to arbitration pursuant to this Section 7.0 all fee disputes arising from the provision of emergency care services under 18 Del.C. §§3349 and 3565, except as provided in Section 5.4.~~
- 7.1 If a carrier and a non-network emergency care provider can not agree on payment to the provider for emergency care services, within 30 days after the carrier has received from the provider clean claims, as defined in Section 4.0 of Regulation 1310, for such services, either the carrier or the non-network emergency care provider (the "Petitioner") may petition for arbitration pursuant to this Section 7.0 and 18 Del. C. §§3349 or 3565 and the other party (the "Respondent") shall submit to such arbitration.
- 7.2 Prior to the Arbitration Hearing, the Arbitrator shall at a minimum receive the following written evidence from the parties:
- 7.2.1 The highest allowable charge for each emergency care service subject to arbitration allowed by the carrier for any other network or non-network emergency care provider during the full twelve month period immediately prior to the date the Petition for Arbitration was filed with the Department;
- 7.2.2 If Section 7.4.1 applies, the carrier's highest allowable charge for each emergency care service subject to arbitration pursuant to the non-network provider's most recent participation agreement with the carrier;
- 7.2.3 The highest allowable charge for each emergency care service subject to arbitration received by the non-network emergency care provider from any other carrier during a full twelve month period immediately prior to the date the Petition for Arbitration was filed with the Department; and
- 7.2.4 The highest allowable charge for each emergency care service subject to arbitration received by the non-network emergency care provider from any network carrier during a full twelve month period immediately prior to the date the Petition for Arbitration was filed with the Department.
- 7.2.5 Each party shall also submit in writing the allowable charge each party would accept for each emergency care service subject to arbitration and each party's history of the negotiations between the parties relating to each such emergency care service.
- 7.2.6 Each party shall also submit a written list of all emergency care services subject to arbitration and the date each service was delivered to the patient. The Arbitrator's decision shall apply to each such service from the date of each service and the date of all other emergency care service subject to arbitration through the date provided for in Section 7.12.2.
- 7.2.7 A copy of all information submitted to the Arbitrator by a party pursuant to this Section 7.0 will also be given to the other party except for information submitted by the provider pursuant to Sections 7.2.3 and 7.2.4. Section 7.2.3 and Section 7.2.4 information will be redacted by the Arbitrator and given to the carrier to insure that the carrier can not determine pricing information relating specifically to other carriers.
- 7.3 All information specified in Section 7.2 of this Regulation provided to the Arbitrator shall presumptively be considered trade secret or confidential financial information under the Delaware Freedom of Information Act and shall not be disclosed to or available at any time to any person, firm or entity not involved in the arbitration.
- 7.4 The Arbitrator shall follow the guidelines listed in this Section 7.4 as a basis for determining the carrier's payment to the non-network emergency care provider for each emergency care service subject to arbitration unless the evidence adduced at arbitration supports a different payment.
- 7.4.1 Payments for emergency care services to a non-network emergency care provider who was a network emergency care provider at any time prior to the date the provider delivered the emergency care services which are the subject of the arbitration. The Arbitrator shall direct the

PROPOSED REGULATIONS

carrier to pay the non-network emergency care provider based on an allowable charge for each emergency care service subject to arbitration within the following range: (1) the allowable charges submitted to the Arbitrator pursuant to Section 7.2.2, subject to COLA adjustments as may be published in bulletins by the Commissioners from time to time; and (2) the allowable charges submitted to the Arbitrator pursuant to Section 7.2.3. All payments pursuant to this section are subject to reduction based on the insured's obligations for co-payments or deductibles.

7.4.2 Payments for emergency care services to a provider who was never a network emergency care provider with the carrier. The Arbitrator shall direct the carrier to pay the non-network emergency care provider who was never a network emergency care provider based on an allowable charge for each emergency care service subject to arbitration within the following range: (1) the allowable charges submitted to the carrier pursuant to Section 7.2.1; and (2) the allowable charges submitted to the Arbitrator pursuant to Section 7.2.3. All payments pursuant to this section are subject to reduction based on the insured's obligations for co-payments or deductibles.

7.5 Changes in the membership of a provider group will not affect the remaining group member(s) insofar as the application of this Section 7.0. In the absence of a contract provision to the contrary, a physician's existing network status and payment rights shall not be transferable to that physician's new group or practice.

7.6 Carrier Payments Prior to Arbitration.

7.6.1 Prior to Arbitrator's decision pursuant to Section 7.12, the carrier will pay directly to the non-network emergency care provider the highest amount provided for in Section 7.2.1 for each emergency care service subject to arbitration.

7.6.2 All payments due the non-network provider pursuant to Section 7.6.1 will be paid within 30 days after the carrier has received from the provider a clean claim, as defined in Section 4.0 of Regulation 1310, for each emergency care service subject to arbitration.

7.6.3 The Arbitrator will direct the carrier and the provider to pay, in the case of the carrier, or refund in the case of the provider, the difference between payments made pursuant to this Section 7.6 and the payments determined by the Arbitrator pursuant to Section 7.4.

7.7 Procedures for Arbitration Pursuant to this Section 7.0.

7.7.1 Either the non-network emergency care provider or his authorized representative or the carrier, after the carrier pays the provider pursuant to Section 7.6.1, may request arbitration by delivering to the Department an original and three copies of the Petition for Arbitration, (with all applicable information required by Section 7.2 attached) so that the Petition is received by the Department no later than 60 days from the date the carrier was required to pay the provider pursuant to Section 7.6.1.

7.7.2 At the time of delivering the Petition for Arbitration to the Department, the Petitioner or his authorized representative must also:

7.7.2.1 send a copy of the Petition to the Respondent by certified mail, return receipt requested;

7.7.2.2 deliver to the Department a Proof of Service confirming that a copy of the Petition has been sent to the Respondent by certified mail, return receipt requested; and

7.7.2.3 deliver to the Department a \$75.00 filing fee.

7.8 Response to Petition for Arbitration

7.8.1 Within 20 days of receipt of the Petition, the Respondent or his authorized representative must deliver to the Department an original and three copies of a Response with all information required by Section 7.2 attached.

7.8.2 At the time of delivering the Response to the Department, the Respondent must also:

7.8.2.1 send a copy of the Response and supporting documentation to the Petitioner or his authorized representative by first class U.S. mail, postage prepaid; and

7.8.2.2 deliver to the Department a Proof of Service confirming that a copy of the Response was mailed to the Petitioner or his authorized representative.

7.8.3 The Department may return any non-conforming Response to Respondent.

7.8.4 If the Respondent fails to deliver a Response to the Department in a timely fashion, the Department, after verifying proper service, and with written notice to the parties, may assign the matter to the next scheduled Arbitrator for summary disposition.

7.8.4.1 The Arbitrator may determine the matter in the nature of a default judgment after establishing that the Petition is properly supported and was properly served on the Respondent.

7.8.4.2 The Arbitrator may allow the re-opening of the matter to prevent a manifest injustice. A request for re-opening must be made no later than seven days after notice of the default judgment.

7.9 Summary Dismissal of Petition by the Department

7.9.1 If the Department determines that the subject of the Petition is not appropriate for arbitration, the Department may summarily dismiss the Petition and provide notice of such dismissal to the parties.

7.10 Appointment of Arbitrator

7.10.1 Upon receipt of a proper Response, the Department shall assign an Arbitrator who shall schedule the matter for a hearing so that the Arbitrator can render a written decision within 45 days of the delivery to the Department of the Petition for Arbitration.

7.10.2 The Arbitrator shall be of suitable background and experience to decide the matter in dispute and shall not be affiliated with any of the parties.

7.11 Arbitration Hearing

7.11.1 The Arbitrator shall give notice of the arbitration hearing date to the parties at least 10 days prior to the hearing. The parties are not required to appear and may rely on the papers delivered to the Department.

7.11.2 The arbitration hearing is to be limited, to the maximum extent possible, to each party being given the opportunity to explain their view of the previously submitted evidence and to answer questions by the Arbitrator.

7.11.3 If the Arbitrator allows any brief testimony, the Arbitrator shall allow brief cross-examination or other response by the opposing party.

7.11.4 The Delaware Uniform Rules of Evidence will be used for general guidance but will not be strictly applied.

7.11.5 Because the testimony may involve evidence relating to personal health information that is confidential and protected by state or federal laws from public disclosure, the arbitration hearing shall be closed.

7.11.6 The Arbitrator may contact, with the parties' consent, individuals or entities identified in the papers by telephone in or outside of the parties' presence for information to resolve the matter.

7.11.7 The Arbitrator is to consider the matter based on the submissions of the parties and information otherwise obtained by the Arbitrator in accordance with this Section 7.0. The Arbitrator shall not consider any matter not contained in the original or supplemental submissions of the parties that has not been provided to the opposing party with at least five days notice, except claims of a continuing nature that are set out in the filed papers.

7.12 Arbitrator's Written Decision.

7.12.1 The Arbitrator shall render his decision and mail a copy of the decision to the parties within 45 days of the filing of the Petition.

7.12.2 The Arbitrator's decision is binding upon the parties with respect to allowable charges and payments for each emergency care service subject to arbitration for a period that will end on the 360th day after the date of the Arbitrator's decision.

7.13 Arbitration Costs.

7.13.1 In arbitrations commenced pursuant to 18 Del.C. §§3349 or 3565, the arbitrator shall allocate to each party a percentage of the costs of arbitration, including the filing fee of \$75.00 required to

PROPOSED REGULATIONS

commence arbitration, except that costs shall not include any professional fees, except the arbitrator's fee.

7.14 The provision of this Section 7 supersedes the provisions of Regulation 1313.

(Break in Continuity of Sections)

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

1301 Internal Review, Arbitration and Independent Utilization Review of Health Insurance Claims

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 1138

PUBLIC NOTICE

SAN # 2008-09

1. Title of the Regulations:

Amendment to Regulation 1138 Emission Standards for Hazardous Air Pollutants for Source Categories

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

Under Section 112(k) of the 1990 Clean Air Act Amendment, Congress mandated that the EPA identify 30 or more hazardous air pollutants (HAPs) that posed the greatest threat to public health in urban areas, to identify the small area sources that emit those pollutants and to develop regulations to reduce the emission of HAPs. In 1999, the EPA identified 33 HAPs that posed the greatest threat to public health and has, since that time, identified over 60 new area source categories for which regulations would be developed.

In December 2007, the EPA promulgated another area source standard affecting Delaware sources; the hospital ethylene oxide sterilizer standard under 40 CFR Part 63 Subpart WWWW.

The purpose of this proposed amendment to Regulation 1138 is to provide increased protection for Delaware citizens against a variety of adverse health effects, which includes problems in the proper functioning of the brain and nerves and the irritation to the eyes, skin, and mucous membranes as a result of exposure to ethylene oxide. In addition, ethylene oxide is classified as a probable human carcinogen based on cancer data, which shows increased incidences of leukemia, stomach cancer and cancers of the pancreas. The proposed amendment will provide greater consistency between Delaware's air toxics standards and the recently promulgated federal standard (Subpart WWWW) on which this proposed amendment is heavily based. In addition, this amendment proposes to include several more protective requirements that currently exist in either Delaware air permits or similar air toxic standards found in Regulation 1138.

3. Possible Terms of the Agency Action:

None

4. Statutory Basis or Legal Authority to Act:

7 Delaware Code, Chapter 60

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

None

6. Notice of Public Comment:

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Wednesday, December 3, 2008 beginning at 6:00 PM in the DNREC's Air Quality Management Office, 715 Grantham Lane, New Castle DE. Interested parties may submit comments in writing to: Jim Snead, DNREC Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720.

7. Prepared By:

James R. Snead (302) 323-4542 james.snead@state.de.us September 29, 2008

1138 Emission Standards for Hazardous Air Pollutants for Source Categories

(Break in Continuity of Sections)

9.0 ~~Reserved~~ Emission Standards for Hospital Ethylene Oxide Sterilizers

9.1 Applicability.

9.1.1 The provisions of 9.0 of this regulation apply to each ethylene oxide sterilization facility at a hospital that is an area source of hazardous air pollutant emissions.

9.1.2 The provisions of 9.0 of this regulation apply to each new or existing affected source. The affected source is each ethylene oxide sterilization facility.

9.1.2.1 An affected source is existing if the owner or operator commenced construction or reconstruction of the affected source before November 6, 2006.

9.1.2.2 An affected source is new if the owner or operator commenced construction or reconstruction of the affected source on or after November 6, 2006.

9.1.3 The owner or operator of an area source subject to 9.0 of this regulation is exempt from the obligation to obtain a Title V operating permit under 7 DE Admin. Code 1130 of State of Delaware "Regulations Governing the Control of Air Pollution", if the owner or operator is not required to obtain a Title V operating permit under 3.1 of 7 DE Admin. Code 1130 for a reason other than the owner or operator's status as an area source under 9.0. Notwithstanding the previous sentence, the owner or operator shall continue to comply with the provisions of 9.0.

9.2 Definitions.

Unless defined below, all terms in 9.0 of this regulation have the meaning given them in the Act or in 3.0 of this regulation.

"Aeration process" means any time when ethylene oxide is removed from the aeration unit through the aeration unit vent or from the combination sterilization unit through the sterilization unit vent, while aeration or off-gassing is occurring.

"Aeration unit" means any vessel that is used to facilitate off-gassing of ethylene oxide.

"Air pollution control device" means a catalytic oxidizer, acid-water scrubber, or any other air pollution control equipment that reduces the quantity of ethylene oxide in the effluent gas stream from sterilization and aeration processes.

"Combination sterilization unit" means any enclosed vessel in which both the sterilization process and the aeration process occur within the same vessel, i.e., the vessel is filled with ethylene oxide gas

PROPOSED REGULATIONS

or an ethylene oxide/inert gas mixture for the purpose of sterilizing and is followed by off-gassing of ethylene oxide.

“Common aeration time” means that items require the same length of time to off-gas ethylene oxide.

“Full load” means the maximum number of items that does not impede proper air removal, humidification of the load, or sterilant penetration and evacuation in the sterilization unit.

“Hospital” means a facility that provides medical care and treatment for patients who are acutely ill or chronically ill on an inpatient basis under supervision of licensed physicians and under nursing care offered 24 hours per day. Hospitals include diagnostic and major surgery facilities but exclude doctor’s offices, clinics, or other facilities whose primary purpose is to provide medical services to humans or animals on an outpatient basis.

“Hospital central services staff” means a healthcare professional, including manager and technician, who is either directly involved in or responsible for sterile processing at a hospital.

“Medically necessary circumstances” means circumstances that a hospital central services staff, a hospital administrator, or a physician concludes, based on generally accepted medical practices, necessitate sterilizing without a full load in order to protect human health.

“Sterilization facility” means the group of ethylene oxide sterilization units at a hospital using ethylene oxide gas or an ethylene oxide/inert gas mixture for the purpose of sterilizing.

“Sterilization process” means any time when ethylene oxide is removed from the sterilization unit or combination sterilization unit through the sterilization unit vent.

“Sterilization unit” means any enclosed vessel that is filled with ethylene oxide gas or an ethylene oxide/inert gas mixture for the purpose of sterilizing. As used in 9.0 of this regulation, the term includes combination sterilization units.

9.3 Compliance Dates.

9.3.1 The owner or operator of an existing affected source shall be in compliance with the applicable provisions of 9.0 of this regulation by no later than February 11, 2009.

9.3.2 The owner or operator of a new or reconstructed affected source that has an initial startup on or before December 28, 2007 shall be in compliance with the applicable provisions of 9.0 of this regulation by no later than February 11, 2009.

9.3.3 The owner or operator of a new or reconstructed affected source that has an initial startup after December 28, 2007 shall be in compliance with the applicable provisions of 9.0 of this regulation immediately upon startup or February 11, 2009, whichever is later.

9.4 Standards.

9.4.1 The owner or operator of an affected source subject to 9.0 of this regulation shall comply with either 9.4.1.1 or 9.4.1.2 of this regulation.

9.4.1.1 The owner or operator of an aeration unit or sterilization unit that is not equipped with an air pollution control device shall only sterilize full loads of items having a common aeration time, except under medically necessary circumstances, as that term is defined in 9.2 of this regulation.

9.4.1.2 The owner or operation of an aeration unit or sterilization unit that is equipped with an air pollution control device shall reduce the ethylene oxide emissions discharged to the atmosphere in accordance with the applicable requirements in 9.4.1.2.1 or 9.4.1.2.2 of this regulation.

9.4.1.2.1 The air pollution control device for a sterilization unit shall reduce the emissions of ethylene oxide to the atmosphere by 99 percent or greater.

9.4.1.2.2 The air pollution control device for an aeration unit shall reduce the emissions of ethylene oxide to the atmosphere by 95 percent or greater.

9.4.2 The owner or operator of an affected source complying with 9.4.1.1 of this regulation shall also provide a permanent, legible, conspicuous label summarizing the sterilization unit loading and operating requirements.

9.4.3 The owner or operator of an affected source subject to 9.0 of this regulation shall develop and implement a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the affected source during periods of startup, shutdown, and malfunction and a program of corrective actions for malfunctioning process, control devices, and monitoring equipment used to comply with 9.0. At a minimum, this plan shall include the following:

9.4.3.1 Operating instructions for the proper loading, processing, venting, unloading and aeration of the sterilization facility.

9.4.3.2 The routine maintenance schedule and procedures in accordance with the manufacturer's recommendations.

9.4.3.3 The operational plan that describes, in detail, a program of corrective actions to be taken when equipment or process malfunctions occur.

9.4.3.4 The proper storage of ethylene oxide.

9.5 Initial compliance demonstration.

9.5.1 For affected sources electing to comply with 9.4.1.1 of this regulation.

9.5.1.1 The owner or operator shall demonstrate initial compliance with 9.4 of this regulation by submitting an initial notification of compliance status certifying that the owner or operator is sterilizing full loads of items having a common aeration time, except under medically necessary circumstances, and is in compliance with all other applicable requirements in 9.4.

9.5.1.2 The owner or operator shall demonstrate initial compliance with 9.4 of this regulation immediately upon startup or no later than 120 calendar days after the compliance date of the affected source, whichever is later.

9.5.2 For affected sources electing to comply with 9.4.1.2 of this regulation.

The owner or operator shall conduct a performance test to demonstrate initial compliance with the applicable emission limitations in 9.4.1.2 of this regulation. The owner or operator shall conduct the performance testing in accordance with the requirements in 3.7 of this regulation and permit conditions established in 9.11.2 of this regulation.

9.5.3 [Reserved]

PROPOSED REGULATIONS

9.5.4 [Reserved]

9.6 Monitoring requirements.

9.6.1 For affected sources electing to comply with 9.4.1.1 of this regulation.

The owner or operator shall demonstrate ongoing compliance with the requirements of 9.4.1.1 of this regulation by recording the date and time of each sterilization cycle, whether each sterilization cycle contains a full load of items, and if not, a statement from a hospital central services staff, a hospital administrator, or a physician that it was medically necessary.

9.6.2 For affected sources electing to comply with 9.4.1.2 of this regulation.

The owner or operator shall demonstrate ongoing compliance with the requirements of 9.4.1.2 of this regulation by recording the date and time of each sterilization cycle and by conducting monitoring in accordance to the permit conditions established under 9.11.2 of this regulation.

9.6.3 On the first day of each month, the owner or operator of an affected source subject to 9.0 of this regulation shall calculate and record the previous month ethylene oxide consumption and the rolling 12-month total ethylene oxide consumption.

9.7 Notification requirements.

9.7.1 For affected sources electing to comply with 9.4.1.1 of this regulation.

9.7.1.1 The owner or operator shall submit an initial notification of compliance status, signed by a responsible official who shall certify its accuracy, providing the information required in 9.7.1.1.1 through 9.7.1.1.7 of this regulation.

9.7.1.1.1 The name and address of the owner or operator.

9.7.1.1.2 The address (i.e., physical location) of the affected source.

9.7.1.1.3 An identification of the standard and other applicable requirements in 9.0 of this regulation that serve as the basis of the notification and the source's compliance date.

9.7.1.1.4 A brief description of the sterilization facility, including the number of ethylene oxide sterilizers, the size (volume) of each, the number of aeration units, if any, the amount of annual ethylene oxide usage at the facility, the control technique used for each sterilizer, if any, and typical number of sterilization cycles per year.

9.7.1.1.5 A statement that the affected source is an area source.

9.7.1.1.6 A statement certifying that the owner or operator is sterilizing full loads of items having a common aeration time, except under medically necessary circumstances, and is in compliance with all other applicable requirements in 9.4 of this regulation.

9.7.1.1.7 A statement that all information contained in the notification is true and accurate.

9.7.1.2 The owner or operator shall submit the initial notification of compliance status to the Department no later than 120 calendar days after the compliance date of the affected source.

9.7.2 For affected sources electing to comply with 9.4.1.2 of this regulation.

9.7.2.1 The owner or operator shall submit an initial notification of compliance status no later than 60 calendar days following completion of the compliance demonstration required in 9.5.2 of this regulation in accordance with 3.9.8 of this regulation. The initial notification of compliance status shall be signed by the responsible official who shall certify its accuracy, attesting to whether the source is in compliance with applicable provisions of 9.4 of this regulation.

9.7.2.2 The owner or operator shall submit a notification of a performance test in accordance with 3.9.5 of this regulation.

9.7.3 In addition to submitting the initial notification of compliance status to the Department, the owner or operator of an affected source subject to 9.0 of this regulation shall submit the initial notification of compliance status to the EPA Regional Office specified in 3.13.1 of this regulation.

9.7.4 The owner or operator shall also submit a copy of the initial notification of compliance status to EPA's Office of Air Quality Planning and Standards. The owner or operator shall send this notification via either of the following:

9.7.4.1 Electronic-mail to CCG-ONG@EPA.GOV or

9.7.4.2 U.S. mail or other mail delivery service to U.S. EPA, Sector Policies and Programs Division, Coatings and Chemicals Group (E143-01), Attn: Hospital Sterilizers Project Leader, Research Triangle Park, NC 27711.

9.8 Recordkeeping requirements.

9.8.1 The owner or operator of an affected source subject to 9.0 of this regulation shall keep the records specified in 9.8.1.1 through 9.8.1.9 of this regulation.

9.8.1.1 A copy of the initial notification of compliance status that the owner or operator submitted to comply with 9.7 of this regulation.

9.8.1.2 Records required by 9.6.1 of this regulation, if applicable, for each sterilization unit not equipped with an air pollution control device.

9.8.1.3 Records required by 9.6.2 of this regulation, if applicable, for each sterilization unit equipped with an air pollution control device.

9.8.1.4 Records associated with the calculation and results of the rolling 12-month total ethylene oxide consumption determined on the first day of each month as specified in 9.6.3 of this regulation.

9.8.1.5 Records to document that the inspection and maintenance required by the startup, shutdown, and malfunction plan in 9.4.3 of this regulation have taken place. The record can take the form of a checklist and should identify the equipment inspected, the date of inspection, a brief description of the working condition, and any actions taken to correct deficiencies found during the inspection.

9.8.1.6 Records of all maintenance performed on the affected source.

9.8.1.7 Records of the occurrence, duration, and cause (if known) of each malfunction of the equipment.

PROPOSED REGULATIONS

9.8.1.8 Records of actions taken during periods of malfunction when such actions are inconsistent with the startup, shutdown, and malfunction plan.

9.8.1.9 Other records, which may take the form of checklists, necessary to demonstrate conformance with the provisions of the startup, shutdown, and malfunction plan in 9.4.3 of this regulation.

9.8.2 The owner or operator shall keep records in a form suitable and readily available for expeditious review.

9.8.3 The owner or operator shall keep each record for 5 years following the date of each record.

9.8.4 The owner or operator shall keep each record onsite for at least 2 years after the date of each record. The owner or operator may keep the records offsite for the remaining 3 years.

9.9 Reporting requirements.

9.9.1 The owner or operator of each affected source subject to 9.0 of this regulation shall fulfill all reporting requirements outlined in 3.0 and 9.9 of this regulation, according to the applicability of 3.0 of this regulation, as identified in Table 9-1 of this regulation. All reports shall be submitted to the Department and to the EPA Regional Office specified in 3.13.1 of this regulation.

9.9.2 At a minimum, the owner or operator of an affected source subject to 9.0 of this regulation shall submit in writing the following reports.

9.9.2.1 Startup, shutdown, and malfunction reports in accordance with 3.10.4.5 of this regulation.

9.9.2.2 No later than the first day of February of each year the consumption of ethylene oxide for the previous calendar year as determined in 9.6.3 of this regulation.

9.9.3 At a minimum, the owner or operator of an affected source, which elected to comply with 9.4.1.2 of this regulation, shall submit in writing the following reports.

9.9.3.1 The results of performance tests in accordance with 3.10.4.2 of this regulation.

9.9.3.2 The excess emissions and continuous monitoring system performance report and summary report in accordance with 3.10.5 of this regulation.

9.10 Applicability of general provisions.

The owner or operator of an affected sources subject to the provisions of 9.0 of this regulation shall also be in compliance with the provisions in 3.0 of this regulation, that are applicable to 9.0 as specified in Table 9-1 of this regulation.

9.11 Additional compliance requirements.

9.11.1 If the owner or operator of an affected source elects to comply with 9.4.1.2 of this regulation, the owner or operator shall:

9.11.1.1 Submit to the Department a startup, shutdown and malfunction plan consistent with the requirements of 9.4.3 of this regulation.

9.11.1.2 Submit to the Department recommended performance testing procedures and protocols necessary to demonstrate compliance with the requirements of 9.4.1.2 of this regulation.

9.11.1.3 Submit to the Department an application under 7 DE Admin. Code 1102 of State of Delaware “Regulations Governing the Control of Air Pollution” that proposes monitoring, recordkeeping and reporting requirements needed to demonstrate ongoing compliance with the provisions of 9.0 of this regulation.

9.11.2 The operation of the control technology shall be made federally enforceable in a permit issued pursuant to 7 DE Admin. Code 1102 or 1130 of State of Delaware “Regulations Governing the Control of Air Pollution.”

9.12 [Reserved]

Table 9-1 – Applicability of 3.0 to 9.0 of this Regulation

<u>General Provisions Reference</u>	<u>Applies to 9.0</u>	<u>Comments</u>
<u>3.1.1.1-3.1.1.4</u>	<u>Yes</u>	
<u>3.1.1.5</u>	<u>No</u>	
<u>3.1.1.6</u>	<u>Yes</u>	
<u>3.1.1.7-3.1.1.9</u>	<u>No</u>	
<u>3.1.1.10-3.1.1.12</u>	<u>Yes</u>	
<u>3.1.1.13-3.1.1.14</u>	<u>No</u>	
<u>3.1.2.1</u>	<u>Yes</u>	
<u>3.1.2.2</u>	<u>Yes</u>	
<u>3.1.2.3</u>	<u>Yes</u>	
<u>3.1.3.1-3.1.3.2</u>	<u>Yes</u>	<u>9.1.3 of this regulation exempts affected sources from the obligation to obtain Title V operating permits for purposes of being subject to this regulation.</u>
<u>3.1.3.3-3.1.3.4</u>	<u>No</u>	
<u>3.1.3.5</u>	<u>No</u>	
<u>3.1.4</u>	<u>No</u>	
<u>3.1.5</u>	<u>Yes</u>	
<u>3.2</u>	<u>Yes</u>	
<u>3.3</u>	<u>Yes</u>	
<u>3.4.1-3.4.1.2</u>	<u>Yes</u>	
<u>3.4.1.3-3.4.1.5</u>	<u>No</u>	
<u>3.4.2-3.4.2.2</u>	<u>Yes</u>	
<u>3.4.2.3</u>	<u>No</u>	
<u>3.4.3</u>	<u>Yes</u>	
<u>3.5.1-3.5.2.1</u>	<u>Yes</u>	
<u>3.5.2.2</u>	<u>No</u>	
<u>3.5.2.3-3.5.2.4</u>	<u>Yes</u>	
<u>3.5.2.5</u>	<u>No</u>	
<u>3.5.2.6</u>	<u>Yes</u>	
<u>3.5.3</u>	<u>No</u>	
<u>3.5.4.1-3.5.4.1.2.8</u>	<u>Yes</u>	
<u>3.5.4.1.2.9</u>	<u>No</u>	
<u>3.5.4.1.2.10-3.5.6.1.1</u>	<u>Yes</u>	

PROPOSED REGULATIONS

<u>3.5.6.1.2-3.5.6.1.4</u>	<u>No</u>	
<u>3.5.6.2</u>	<u>Yes</u>	
<u>3.6.1-3.6.2.5</u>	<u>Yes</u>	
<u>3.6.2.6</u>	<u>No</u>	
<u>3.6.2.7-3.6.3</u>	<u>Yes</u>	
<u>3.6.3.1</u>	<u>Yes</u>	<u>Except that 9.3.1 of this regulation provides the compliance date for existing sources.</u>
<u>3.6.3.2</u>	<u>Yes</u>	
<u>3.6.3.3-3.6.3.4</u>	<u>No</u>	
<u>3.6.3.5</u>	<u>Yes</u>	
<u>3.6.4</u>	<u>No</u>	
<u>3.6.5-3.6.5.1</u>	<u>Yes</u>	
<u>3.6.5.2</u>	<u>No</u>	
<u>3.6.5.3</u>	<u>Yes</u>	
<u>3.6.6</u>	<u>Yes</u>	<u>Except 3.6.6 that does not apply to affected sources which elected to comply with 9.4.1.1 of this regulation</u>
<u>3.6.7-3.6.8</u>	<u>No</u>	
<u>3.6.9-3.6.9.6.1.2.1</u>	<u>Yes</u>	
<u>3.6.9.6.1.2.2</u>	<u>No</u>	
<u>3.6.9.6.1.2.3-3.6.9.6.1.2.4</u>	<u>Yes</u>	
<u>3.6.9.6.1.3-3.6.9.6.1.4</u>	<u>No</u>	
<u>3.6.9.6.2-3.6.9.14</u>	<u>Yes</u>	
<u>3.6.9.15</u>	<u>No</u>	
<u>3.6.9.16-3.6.10</u>	<u>Yes</u>	
<u>3.7.1.1-3.7.1.2</u>	<u>Yes</u>	<u>Except 3.6.6 that does not apply to affected sources which elected to comply with 9.4.1.1 of this regulation</u>
<u>3.7.1.2.1-3.7.1.2.8</u>	<u>No</u>	
<u>3.7.1.3-3.7.5</u>	<u>Yes</u>	
<u>3.7.6</u>	<u>No</u>	
<u>3.7.7-3.7.7.1</u>	<u>Yes</u>	
<u>3.7.7.2</u>	<u>No</u>	
<u>3.7.7.3-3.7.8</u>	<u>Yes</u>	
<u>3.8.1.1-3.8.1.2</u>	<u>Yes</u>	
<u>3.8.1.3</u>	<u>No</u>	
<u>3.8.1.4-3.8.5</u>	<u>Yes</u>	
<u>3.8.6</u>	<u>No</u>	
<u>3.8.7</u>	<u>Yes</u>	
<u>3.9.1-3.9.1.3</u>	<u>Yes</u>	
<u>3.9.1.4.1</u>	<u>No</u>	
<u>3.9.1.4.2</u>	<u>Yes</u>	
<u>3.9.2-3.9.2.2.5</u>	<u>Yes</u>	
<u>3.9.2.3</u>	<u>No</u>	
<u>3.9.2.4-3.9.2.4.1</u>	<u>Yes</u>	

<u>3.9.2.4.2-3.9.2.4.4</u>	<u>No</u>	
<u>3.9.2.4.5-3.9.2.5</u>	<u>Yes</u>	
<u>3.9.3</u>	<u>Yes</u>	
<u>3.9.1.4.2</u>	<u>Yes</u>	
<u>3.9.2-3.9.2.2.5</u>	<u>Yes</u>	
<u>3.9.2.3</u>	<u>No</u>	
<u>3.9.2.4-3.9.2.4.1</u>	<u>Yes</u>	
<u>3.9.2.4.2-3.9.2.4.4</u>	<u>No</u>	
<u>3.9.2.4.5-3.9.2.5</u>	<u>Yes</u>	
<u>3.9.3</u>	<u>Yes</u>	
<u>3.9.4-3.9.5</u>	<u>Yes</u>	
<u>3.9.6</u>	<u>No</u>	
<u>3.9.7-3.9.8.3</u>	<u>Yes</u>	
<u>3.9.8.4</u>	<u>No</u>	
<u>3.9.8.5-3.9.10</u>	<u>Yes</u>	
<u>3.10.1-3.10.1.3</u>	<u>Yes</u>	
<u>3.10.1.4.1</u>	<u>No</u>	
<u>3.10.1.4.2</u>	<u>Yes</u>	
<u>3.10.1.5-3.10.1.7</u>	<u>Yes</u>	
<u>3.10.2.1</u>	<u>Yes</u>	
<u>3.10.2.2-3.10.3.1</u>	<u>Yes</u>	
<u>3.10.3.2-3.10.3.4</u>	<u>No</u>	
<u>3.10.3.5-3.10.3.8</u>	<u>Yes</u>	
<u>3.10.3.9</u>	<u>No</u>	
<u>3.10.3.10-3.10.5.3.1.2</u>	<u>Yes</u>	
<u>3.10.5.3.1.3</u>	<u>No</u>	
<u>3.10.5.3.2-3.10.6.6</u>	<u>Yes</u>	
<u>3.11</u>	<u>No</u>	<u>9.0 of this regulation does not require flares.</u>
<u>3.12-3.15</u>	<u>Yes</u>	

DEPARTMENT OF SAFETY AND HOMELAND SECURITY
DIVISION OF STATE POLICE
3400 BOARD OF EXAMINERS OF CONSTABLES
 Statutory Authority: 29 Delaware Code, Section 8203 (29 **Del.C.** §8203)

PUBLIC NOTICE

Notice is hereby given that the Board of Examiners of Constables, in accordance with **Del. Code** Title 10 Chapter 27 proposes to amend Rule 3.0 - Law Enforcement Exemption and Rule 4.0 - Employment. These amendments will add another acceptable psychological evaluation. If you wish to view this adoption, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by November 30, 2008, to Delaware State Police, Detective Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold their regular meeting in May 2009, at the Delaware State Police Headquarters Conference Room, 1441 North DuPont Highway in Dover, Delaware.

3400 Board of Examiners of Constables**1.0 Experience**

- 1.1 A constable must meet the minimum training standards as established by the Council on Police Training.

Adopted 09/10/86

Amended 05/16/00

2.0 Appeal

- 2.1 Any applicant who is rejected for a commission as a constable may, within 30 days of such notice of rejection, submit a written notice of appeal.
- 2.2 A hearing date, to be determined by the Board, will be convened to take relevant evidence on the appeal.
- 2.3 Such proceedings shall be conducted in accordance with the administrative procedures act (Title 29).
- 2.4 The Board decision, in writing, will be mailed to the applicant within ten working days after the hearing.

Adopted 09/10/86

3.0 Law Enforcement Exemption

- 3.1 Applicants, who were prior law enforcement officers in any jurisdiction and have been away from police work for not more than five (5) years, will be considered for commissions on a case-by-case basis.
- 3.2 Applicants, who have been law enforcement officers in the past but have been away from active law enforcement for more than five (5) years, will be required to take ~~an~~ either the MMPI (Minnesota Multiphasic Personality Inventory) or the PAI (Personal Assessment Inventory), under the conditions noted in Rule 4.0., and a comprehensive, multiple-choice examination, equivalent to the C.O.P.T. exam to identify weaknesses in their knowledge of law enforcement. Once those shortcomings have been identified, the individual officer will be required to take the requisite training where the deficiency was noted.

Adopted 10/16/96

Amended 05/16/00

4.0 Employment

- 4.1 All applicants must submit written testimony from five (5) reputable citizens attesting to good character, integrity, and competency.
- 4.2 All applicants must submit to ~~an~~ either the MMPI (Minnesota Multiphasic Personality Inventory) or the PAI (Personal Assessment Inventory) evaluation performed by a licensed psychologist who has knowledge of the requirements of the duties of the Constable position, that the applicant is psychologically fit to function as a competent Constable.
- 4.3 All applicants shall be required to submit an application and their fingerprints to the Director of Detective Licensing on the appropriate forms. The Director of the State Bureau of Identification shall set the processing fee.
- 4.4 No full-time police officer may apply for a commission as a constable.
- 4.5 All applicants seeking a new commission as a constable shall be required to submit a \$100.00 application fee.
- 4.6 A \$50.00 annual renewal fee shall be required to accompany the renewal application each year thereafter.

Adopted 05/16/00

5.0 Firearm's Policy

- 5.1 No person licensed under Title 24 Chapter 13 Sections 1315 & 1317 shall carry a firearm unless that person has first passed an approved firearms course given by a Board approved certified firearms instructor, which shall include a minimum 40 hour course of instruction. Individuals licensed to carry a

firearm must shoot a minimum of three (3) qualifying shoots per year, scheduled on at least two (2) separate days, with a recommended 90 days between scheduled shoots. Of these three (3), there will be one (1) mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot.

5.2 Firearms - approved type of weapons

5.2.1 9mm

5.2.2 .357

5.2.3 .38

5.2.4 .40

5.3 All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.

5.4 Under no circumstances will anyone be allowed to carry any type of shotgun or rifle or any type of weapon that is not described herein.

5.5 All individuals must qualify with the same type of weapon that he/she will carry.

5.6 All ammunition will be factory fresh (no re-loads).

5.7 The minimum passing score is 80%. All licenses are valid for a period of one (1) year.

Adopted 05/20/02

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
2000 BOARD OF OCCUPATIONAL THERAPY PRACTICE

Statutory Authority: 24 Delaware Code, Section 2006(a)(1) (24 **Del.C.** 20065(a)(1))
24 **DE Admin. Code** 2000

PUBLIC NOTICE

Pursuant to 24 **Del.C.** §2006(a)(1), the Board of Occupational Therapy Practice has proposed revisions to its rules and regulations.

A public hearing will be held on January 7, 2009 at 4:45 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Occupational Therapy Practice, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board proposes amendments to Rule 1.3, which addresses supervision of occupational therapy assistants. Rule 1.3.3 provides that: "An occupational therapist may supervise up to three (3) occupational therapy assistants but never more than two (2) occupational therapy assistants who are under direct supervision at the same time." The proposed amendments add new Rules 1.3.4 and 1.3.5, which will require occupational therapists to notify the Board when a supervisory relationship begins and when it ends. This notification requirement will enforce compliance with Rule 1.3.3, which is designed to ensure that occupational therapy assistants receive adequate supervision. Therefore, the proposed revisions will serve to protect the public from unsafe practices. In addition, the Board proposes a minor typographical revision to Rule 1.1.

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

2000 Board of Occupational Therapy Practice**1.0 Supervision/consultation Requirements for Occupational Therapy Assistants**

- 1.1 **“Occupational therapy assistant”** shall mean a person licensed to assist in the practice of occupational therapy under the supervision of an occupational therapist. 24 **Del.C.** §2002(4).~~(emphasis added)~~

“Under the supervision of an occupational therapist” means the interactive process between the licensed occupational therapist and the occupational therapy assistant. It shall be more than a paper review or co-signature. The supervising occupational therapist is responsible for insuring the extent, kind, and quality of the services rendered by the occupational therapy assistant.

The phrase, **“Under the supervision of an occupational therapist,”** as used in the definition of occupational therapist assistant includes, but is not limited to the following requirements:

- Communicating to the occupational therapy assistant the results of patient/client evaluation and discussing the goals and program plan for the patient/client;
- In accordance with supervision level and applicable health care, educational, professional and institutional regulations, reevaluating the patient/client, reviewing the documentation, modifying the program plan if necessary and co-signing the plan.
- Case management;
- Determining program termination;
- Providing information, instruction and assistance as needed;
- Observing the occupational therapy assistant periodically; and
- Preparing on a regular basis, but at least annually, a written appraisal of the occupational therapy assistant’s performance and discussion of that appraisal with the assistant.

The supervisor may assign to a competent occupational therapy assistant the administration of standardized tests, the performance of activities of daily living evaluations and other elements of patient/client evaluation and reevaluation that do not require the professional judgment and skill of an occupational therapist.

- 1.2 Supervision for Occupational Therapy Assistants is defined as follows:

- 1.2.1 Direct Supervision requires the supervising occupational therapist to be on the premises and immediately available to provide aid, direction, and instruction while treatment is performed in any setting including home care. Occupational therapy assistants with experience of less than one (1) full year are required to have direct supervision.
- 1.2.2 Routine Supervision requires direct contact at least every two (2) weeks at the site of work, with interim supervision occurring by other methods, such as telephonic or written communication.
- 1.2.3 General Supervision requires at least monthly direct contact, with supervision available as needed by other methods.

- 1.3 Minimum supervision requirements:

- 1.3.1 Occupational therapy assistants with experience of less than one (1) full year are required to have direct supervision.
- 1.3.2 Occupational therapy assistants with experience greater than one (1) full year must be supervised under either direct, routine or general supervision based upon skill and experience in the field as determined by the supervising OT.
- 1.3.3 Supervising occupational therapists must have at least one (1) year clinical experience after they have received permanent licensure.
- 1.3.4 An occupational therapist may supervise up to three (3) occupational therapy assistants but never more than two (2) occupational therapy assistants who are under direct supervision at the same time.

- 1.3.5 Effective July 1, 2009, the supervising occupational therapist shall submit to the Board a completed Verification of Occupational Therapy Assistant Supervision form upon the commencement of supervision.
- 1.3.6 Effective July 1, 2009, the supervising occupational therapist shall immediately advise the Board in writing when he or she is no longer supervising an occupational therapy assistant and shall provide the Board with an updated Verification of Occupational Therapy Assistant Supervision form.
- 1.3.57 Levels of supervision should be determined by the occupational therapist before the individuals enter into a supervisor/supervisee relationship. The chosen level of supervision should be reevaluated regularly for effectiveness.
- 1.3.68 The supervising occupational therapist, in collaboration with the occupational therapy assistant, shall maintain a written supervisory plan specifying the level of supervision and shall document the supervision of each occupational therapy assistant. Levels of supervision should be determined by the occupational therapist before the individuals enter into a supervisor/supervisee relationship. The chosen level of supervision should be reevaluated regularly for effectiveness. This plan shall be reviewed at least every six months or more frequently as demands of service changes.
- 1.3.79 A supervisor who is temporarily unable to provide supervision shall arrange for substitute supervision by an occupational therapist licensed by the Board with at least one (1) year of clinical experience, as defined above, to provide supervision as specified by Rule 1.0 of these rules and regulations.

2 DE Reg. 2040 (5/1/99)

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

[2000 Board of Occupational Therapy Practice](#)

**DIVISION OF PROFESSIONAL REGULATION
3100 BOARD OF FUNERAL SERVICES**

Statutory Authority: 24 Delaware Code, Section 3105(a)(1) (24 Del.C. 3105(a)(1))
24 DE Admin. Code 3100

PUBLIC NOTICE

Pursuant to 24 **Del.C.** §3105(a)(1), the Board of Funeral Services has proposed revisions to its rules and regulations.

A public hearing will be held on December 3, 2008 at 10:15 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Funeral Services, 861 Silver Lake Boulevard, Dover, Delaware 11904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board proposes amendments to Rule 9.0, which addresses continuing education requirements. Rule 9.2.1 is amended to specify that licensed funeral directors who are 65 or older are exempt from the continuing education requirements. This amendment serves to implement and clarify the language set forth at 24 **Del.C.** §3105(a)(10). Section 3105(a)(10) states that the Board has the authority to establish continuing education standards for practitioners under 65. (emphasis supplied).

Rule 9.3.1 is amended to include language to the effect that the Board has the power to waive continuing education requirements based on economic hardship. This provision is explicitly stated in 24 **Del.C.** §3105(a)(10). Rule 9.3.1 is further amended to clarify that any request for a waiver of the continuing education requirements must be made no later than 60 days prior to the license renewal date.

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

3100 Board of Funeral Services

(Break in Continuity of Sections)

9.0 Continuing Education Regulations

9.1 Board Authority

9.1.1 This rule is promulgated under the authority of 24 **Del.C.** §3105 which grants the Board of Funeral Services (hereinafter "the Board") authority to provide for rules for continuing funeral services education as a prerequisite for license renewal.

9.2 Requirements

9.2.1 Every licensed funeral director in active practice shall complete at least 10 hours/credits of approved continuing education (hereinafter "CE") during the two year licensure period prior to the time of license renewal. Licensed funeral directors who are 65 years of age or older are exempt from the CE requirements.

9.2.2 All CE credit hours must further the licensee's skills and understanding in the field of funeral services. Licensees who earn more than the required amount of CE credit hours during a given licensure period may carry over no more than 50% of the total CE credit hours required for the next licensure period.

9.2.3 When a Delaware licensee on inactive status files a written application to return to active practice with the Board, the licensee shall submit proof of having completed the required CE credit hours for the period just prior to the request to return to active practice.

9.3 Waiver of the CE Requirement

9.3.1 The Board has the power to waive any part of the entire CE requirement for good cause if the licensee files a written request with the Board. For example, exemptions to the CE requirement may be granted due to health, ~~or~~ military service or economic hardship. Application for exemption shall be made in writing to the Board by the applicant for renewal and must be received by the Board no later than 60 days prior to the license renewal date. The Board shall decide the merits of each individual case at a regularly scheduled meeting.

9.3.2 Newly licensed funeral directors, including those newly licensed by reciprocity, are exempt during the time from initial licensure until the commencement of the first full licensure period.

9.4 Continuing Education Program Approval

9.4.1 Each contact hour (at least fifty minutes) is equivalent to 1.0 CE credit hour. One college credit hour is equivalent to 5 CE credit hours.

9.4.2 Eligible program providers or sponsors include but are not limited to, educational institutions, government agencies, professional or trade associations and foundations and private firms.

9.4.3 Programs approved by the Academy of Funeral Service Practitioners (AFSP) or state boards that license funeral directors are automatically approved and need not be submitted to the Board.

9.4.4 Sources of CE credits include but are not limited to the following:

- Programs sponsored by national funeral service organizations.
- Programs sponsored by state associations.
- Program provided by local associations.
- Programs provided by suppliers.
- Independent study courses for which there is an assessment of knowledge.
- College courses.

9.4.5 The recommended areas include but are not limited to the following:

- Grief counseling
- Professional conduct, business ethics or legal aspects relating to practice in the profession.
- Technical aspects of the profession.

- Public relations.
- After care counseling.

9.4.6 Application for CE program approval shall include the following:

- 9.4.6.1 Date and location.
- 9.4.6.2 Description of program subject, material and content.
- 9.4.6.3 Program schedule to time segments in subject content areas for which approval of, and determination of credit is required.
- 9.4.6.4 Name of instructor(s), background, expertise.
- 9.4.6.5 Name and position of person making request for program approval.

9.4.7 Requests for CE program approval shall be submitted to the Board on the application provided by the Board. Application for approval may be made after the program; however, if the program is not approved, the applicant will be notified and no credit given.

9.4.8 The CE credits shall be valid for the biennial renewal cycle in which they are approved. Changes in any aspect of the approved program shall render the approval invalid and the presenter will be responsible for making reapplication to the Committee.

9.4.9 Upon request, the Board shall mail a current list of all previously approved programs.

9.5 Certification of Continuing Education - Verification and Reporting

9.5.1 The program provider/sponsor has sole responsibility for the accurate monitoring of program attendance. Certificates of attendance shall be supplied by the program provider/sponsor and be distributed only at the completion of the program.

9.5.2 Verification of completion of an independent study program will be made with a student transcript.

9.5.3 The funeral director licensee shall maintain all original certificates of attendance for CE programs for the entire licensure period. A licensee who carries over credits from a prior licensure period must also maintain original certificates of attendance for all CE programs for any period from which credits are carried over.

9.5.4 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 9.2.1.

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

9.5.4.2 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 9.3.5.3.

9.5. Random audits will be performed by the Board to ensure compliance with the CEU requirements.

9.5.5.1 The Board will notify licensees within sixty (60) days after August 31 that they have been selected for audit.

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

9.5.5.3 Verification shall include such information necessary for the Board to assess whether the course or other activity meets the CE requirements in Section 9.4, which may include, but is not limited to, the following information:

- Proof of attendance;
- Date of CE course;
- Instructor of CE course;
- Sponsor of CE course;
- Title of CE course; and
- Number of hours of CE course.

9.5.6 If a licensee fails to meet the CE requirement at the time of renewal, the Board may impose discipline as permitted under Section 3114. In its discretion, the Board may permit the licensee to obtain the CE credits within a time period prescribed by the Board while maintaining an active license.

5 DE Reg. 606 (09/01/01)

9 DE Reg. 262 (08/01/05)

10 DE Reg. 1154 (01/01/07)

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

[3100 Board of Funeral Services](#)

**DIVISION OF PROFESSIONAL REGULATION
3500 BOARD OF EXAMINERS OF PSYCHOLOGISTS**

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

PUBLIC NOTICE

The Delaware Board of Examiners of Psychologists, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §3506(a)(1), proposes amendments to its regulation section 7.2. Specifically, the proposed changes eliminate the limitation of qualifying experience to 60% direct service. This change would allow licensure of candidates who have spent more than 60% of their postdoctoral training in direct service to clients. Other minor grammatical, typographic, or stylistic changes are also included.

A public hearing is scheduled for Monday, January 5, 2009 at 9:00 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Nancy Fields at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Nancy Fields at the above address or by calling (302) 744-4500.

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

3500 Board of Examiners of Psychologists

(Break in Continuity of Sections)

7.0 Supervised Experience

The types of supervision pertinent to licensure as a psychologist or registration as a psychological assistant are comprised of three types of supervisory experiences:

- 7.1 Predoctoral internship supervision as required by doctoral programs in psychology. The predoctoral internship consists of a minimum of 1,500 hours of actual work experience completed in not less than 48 weeks, nor more than 104 weeks. At least 50% of the predoctoral supervised experience must be in clinical services such as treatment, consultation, assessment, and report writing, with at least 25% of that time devoted to face-to-face direct patient/client contact. No more than 25% of time shall be allocated for research.
- 7.2 Supervised Postdoctoral supervision experience is required for initial licensure as a psychologist. Postdoctoral experience must consist of 1,500 hours of actual work experience. This experience ~~is to~~ must be completed in not less than one calendar year and not more than three calendar years, save for those covered under 24 **Del.C.** §3519(e). For those individuals the accrual of 1,500 hours of supervised postdoctoral experience must take place within six calendar years from the time of hire. There ~~is to~~ must be one hour of face-to-face supervision for every ~~4 to~~ one to 10 hours of clinical work. At least 25% of ~~This experience shall consist of at least twenty five percent and not more than sixty percent of the time~~ be devoted weekly to direct service per week in the area of the applicant's

academic training. "Direct service" consists of any activity defined as the practice of psychology or the supervision of graduate students engaging in activities defined as the practice of psychology. Not more than 25% of this supervision can be done by other licensed mental health professionals besides psychologists.

The purpose of the postdoctoral supervision is to train psychologists to practice at an independent level. This experience should be an organized educational and training program with explicit goals and a clear plan to meet those goals. There should be regular written evaluations based on this program.

- 7.3 Supervision of psychological assistants is required at the frequency of one hour of face-to-face supervision for every 1-10 hours of clinical work by the psychological assistants, as required by Section 9 of the Rules and Regulations. An individual registered as a psychological assistant may or may not be receiving supervision in pursuit of independent licensure as a psychologist.
- 7.4 A psychologist providing either postdoctoral supervision or supervision of psychological assistants must have been in practice for two years post licensure in this or any other state without having been subject to any disciplinary actions. He/she must provide 24-hour availability to both the supervisee and the supervisee's clients, or ensure that adequate alternative coverage is provided in the supervisor's absence. The supervising psychologist shall have sufficient knowledge of all clients including face-to-face contact when necessary and must be employed or under contract in the setting where the clinical service takes place and the supervision must occur within that setting.

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

6 DE Reg. 1338 (4/1/03)

(Break in Continuity of Sections)

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

3500 Board of Examiners of Psychologists

DIVISION OF PROFESSIONAL REGULATION

8800 BOXING, SPARRING MATCHES AND EXHIBITIONS

Statutory Authority: 28 Delaware Code, Chapter 1 (28 Del.C. Ch. 1)

24 DE Admin. Code 8800

PUBLIC NOTICE

8800 Boxing , Sparring Matches and Exhibitions

Consistent with a recent statutory amendment, by passage of HB 501, which updated the authority of the Division of Professional Regulation, the Department of State, in accordance with 28 Del.C. Ch. 1, proposes to strike the existing regulations related to boxing, sparring matches and exhibitions in their entirety and establish new combative sports rules and regulations governing boxing and mixed martial arts.

A public meeting was held on August 13, 2008 to gather information for proposed rules. James L. Collins, Director of the Division of Professional Regulation, conducted the meeting. In addition to information gleaned in the preliminary meeting, the Director has also conducted a study of mixed martial arts (MMA) regulation across the nation. As a result of careful consideration of public comment and national research, the recommendation of the Director is to adopt conservative rules relating to amateur MMA. This approach will align Delaware's rules with most other jurisdictions that permit MMA and recognize that Delaware does not have an athletic or boxing commission; therefore regulation of events will be conducted by approved sanctioning organizations. Jurisdictions with more liberal rules strictly oversee events through a commission. It is the intent of the Director to have safe MMA events in Delaware that protect the participants and attendees.

PROPOSED REGULATIONS

A public hearing is scheduled for December 8, 2008 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover. The Director will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Office of Director, Division of Professional Regulation, Cannon Building, 861 Silver Lake Blvd. Suite 203, Dover, DE 19904. The final date to submit written or oral comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact the Office of the Director at the above address or by calling (302) 744-4502.

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

Please Note: The existing regulation **8800 Boxing, Sparring Matches and Exhibitions** is being repealed. Due to space limitations they are not being published here. A copy of the regulation is available at:

[8800 Boxing , Sparring Matches and Exhibitions](#)

8800 Boxing, ~~Sparring Matches and Exhibitions~~ and Combative Sports Entertainment Rules and Regulations

Part A Professional Boxing Rules and Regulations

1.0 Professional Boxing

- 1.1 All boxers, managers, seconds, officials and promoters shall follow the rules and regulations for the jurisdiction of the approved designated agent.
- 1.2 All boxers, managers, seconds, officials and promoters shall make application for licensure and permits to the approved designated agent.
- 1.3 Based on the requirements set forth in Title 28 §105 (a) (7), the following criteria for determining physical and mental fitness shall include but is not limited to: blood pressure, pulse, respiration, heart rhythm, heart murmurs, ears, nose, throat, extremities, medications taken, negative pregnancy test results, and mental assessment, which must meet acceptable standards as determined by the examining physician prior to the event.

Part B Amateur Boxing Rules and Regulations

1.0 Amateur Boxing

- 1.1 All amateur bouts must have the sanction of an amateur boxing association recognized by the Director before a permit will be granted by the Division.
- 1.1 The application for permit must be submitted to the Division at least fifteen full working days prior to the scheduled event.
- 1.3 All amateur boxing events will be conducted in accordance with USA Boxing Rules or other approved sanctioning body's rules.
- 1.4 All boxers, coaches, assistant coaches, officials, physicians, administrators and clerks/inspectors shall be registered members of the approved sanctioning organization.
- 1.5 A physician licensed to practice in Delaware must examine a contestant before they enter the ring and the physician must also be at the ringside during the progress of the contest.
- 1.6 All protective gear shall comply with USA Boxing Rules or other approved sanctioning body's rules.
- 1.7 A representative from the Division may be in attendance at amateur events to observe the sanctioning body's compliance to the USA Boxing Rules or other approved sanctioning body's rules.
- 1.8 The representative from the Division shall have the authority to halt any part of the event at any time in the interest of public safety.
- 1.9 Nothing in these rules shall be applicable to any bouts or events conducted as an extracurricular activity by any educational institution or public safety training program in the State.

- 1.10 Based on the requirements set forth in Title 18 §105 (b) (5), the following criteria for determining physical and mental fitness shall include but is not limited to: blood pressure, pulse, respiration, heart rhythm, heart murmurs, ears, nose, throat, extremities, medications taken, negative pregnancy test results, and mental assessment, which must meet acceptable standards as determined by the examining physician prior to the event.

Part C Professional Mixed Martial Arts

1.0 Weight Classes

1.1 Men's Division

- 1.1.1 Flyweight under 125.9 pounds;
- 1.1.2 Bantamweight 126 lbs. - 134.9 pounds;
- 1.1.3 Featherweight 135 lbs. - 144.9 pounds;
- 1.1.4 Lightweight 145 lbs. - 154.9 pounds;
- 1.1.5 Welterweight 155 lbs. - 169.9 pounds;
- 1.1.6 Middleweight 170 lbs. - 184.9 pounds;
- 1.1.7 Light Heavyweight 185 lbs. - 204.9 pounds;
- 1.1.8 Heavyweight 205 lbs. - 264.9 pounds; and
- 1.1.9 Super Heavyweight over 265 pounds.

1.2 Women's Division

- 1.2.1 Flyweight (104.9 lbs. and below)
- 1.2.2 Bantamweight (105-113.9 lbs.)
- 1.2.3 Featherweight (114-122.9 lbs.)
- 1.2.4 Lightweight (123-131.9 lbs.)
- 1.2.5 Welterweight (132-140.9 lbs.)
- 1.2.6 Middleweight (141-149.9 lbs.)
- 1.2.7 Light Heavyweight (150-158.9 lbs.)
- 1.2.8 Cruiserweight (159-167.9 lbs.)
- 1.2.9 Heavyweight (168 lbs. and above)

- 1.3 Should a fighter not make weight or be a no-show, that bout shall be canceled. In some instances, fighters that are cleared for the same event may be approved to fight another fighter on the card pending approval of the sanctioning body. Fighters may fight up one Weight Division; however, weight differences between opposing fighters cannot exceed seven pounds, except for the following:

- 1.3.1 Weight differences between men fighters 185 pounds and over shall be no more than 15 pounds.
- 1.3.2 Weight differences between women fighters weighing 168 pounds and over shall not be more than 15 pounds.

2.0 Fighting Area

- 2.1 The cage shall be no smaller than 18 feet by 18 feet and no larger than 32 feet by 32 feet. The fighting surface shall be covered with a minimum one inch layer of foam padding. Vinyl or other plastic rubberized covering shall be permitted.
- 2.2 The fighting surface shall not be more than four feet above the floor of the building and shall have suitable steps or ramp for use by the participants. Posts shall be made of metal not more than six inches in diameter, extending from the floor of the building to a minimum height of 58 inches above the fighting surface and shall be properly padded.
- 2.3 The fighting surface area shall be enclosed by a fence made of such material as will not allow a fighter to fall out or break through it onto the floor or spectators, including, but not limited to, vinyl coated chain link fencing. All metal parts shall be covered and padded and shall not be abrasive to the contestants.
- 2.4 The fence shall provide two separate entries onto the fighting surface.

3.0 Equipment and Clothing

- 3.1 Ring stool for each contestant. An appropriate number of stools or chairs shall be available for each contestant's seconds. They shall be located near each contestant's corner.
- 3.2 For each bout, the promoter is to provide a clean water bucket and clean plastic water bottle in each corner.
- 3.3 Contestants shall wear mma shorts, biking shorts, boxing shorts, Muay Thai shorts or kick-boxing shorts.
- 3.4 Gi's or shirts are prohibited during competition.
- 3.5 Females shall wear rash guards.
- 3.6 Shoes are not permitted.
- 3.7 No jewelry or clothing that is made of hard plastic or metallic surface is permitted.

4.0 Bandage Wraps

- 4.1 Bandages shall be restricted to soft gauze cloth not more than 13 yards in length and two inches in width, held in place by not more than 10 feet of surgeon's tape, one inch in width.
- 4.2 Surgeon's adhesive tape shall be placed directly on each hand for protection near the wrist. The tape may cross the back of the hand twice and extend to cover and protect the knuckles.
- 4.3 The bandages and tape shall be placed on the contestant's hands in the dressing room in the presence of the inspector and in the presence of the manager or chief second of his or her opponent. It shall be signed off by the inspector with his/her initials and the date.
- 4.4 Under no circumstances are gloves to be placed on the hands of the contestant without the approval of the inspector.

5.0 Mouth Pieces

- 5.1 All contestants are required to wear a mouthpiece during competition. The mouthpiece shall be subject to examination and approval by the attending physician.
- 5.2 The round cannot begin without the mouthpiece in place.
- 5.3 If the mouthpiece is involuntarily dislodged during competition, the referee shall call time, clean the mouthpiece and reinsert the mouthpiece at the first opportune moment, without interfering with the immediate action.

6.0 Protective Equipment

- 6.1 Male mixed martial artists shall wear a groin protector of their own selection.
- 6.2 Female mixed martial artists shall wear a chest protector during competition.

7.0 Gloves

- 7.1 The gloves shall be new for all bouts.
- 7.2 All contestants shall wear open finger minimum 4 ounce gloves and shall be supplied by the promoter. No contestant shall supply their own gloves.

8.0 Appearance/hygiene

- 8.1 Hair shall be trimmed or tied back in such a manner as not to interfere with the vision of either contestant or cover any part of a contestant's face.
- 8.2 Jewelry or piercing accessories are prohibited during competition.
- 8.3 There shall be no oil or grease on any part of the body. A light coating of petroleum jelly may be applied to the contestants face in the presence of an inspector.
- 8.4 Fingernails and toenails must be cut and trimmed.
- 8.5 The use of BenGay, IcyHot, and other such sports crèmes is prohibited.

9.0 Round Length

- 9.1 For non-championship bouts, the rounds will consist of three 5-minute rounds with one minute of rest in between rounds.
- 9.2 For championship bouts, the rounds may consist of five 5-minute rounds with one minute of rest in between rounds.

10.0 Stopping a Contest

The referee and ringside physician are the sole arbiters of a bout and are the only individuals authorized other than a representative from the Director's office to enter the fighting area at any time during competition and stop a contest. The contestant's chief second may signify to referee in an approved manner by the sanctioning body to stop the bout.

11.0 Judging and Scoring

- 11.1 All bouts will be evaluated and scored by three judges.
- 11.2 The 10-Point Must System will be the standard system of scoring. Under the 10 Point Must Scoring System, 10 points must be awarded to the winner of the round and nine points or less must be awarded to the loser, except for a rare even round, which is scored 10-10.
- 11.3 Judges shall evaluate MMA techniques, such as effective striking, effective grappling, control of the fighting area, effective aggressiveness and defense.
- 11.4 Evaluations shall be made in the order in which the techniques appear in 11.3 above, giving the most weight in scoring to effective striking, effective grappling, control of the fighting area and effective aggressiveness and defense.
- 11.5 Effective striking is judged by determining the total number of legal heavy strikes landed by a contestant.
- 11.6 Effective grappling is judged by considering the amount of successful executions of legal takedowns and reversals. Examples of factors to consider are take downs from standing position to mount position, passing the guard to mount position, and bottom position fighter using an active, threatening guard.
- 11.7 Control of fighting is judged by determining who is dictating the pace, location and position of the bout. Examples of factors to consider are countering a grappler's attempt at takedown by remaining standing and legally striking; taking down an opponent to force a ground fight; creating threatening submission attempts, passing the guard to achieve mount, and creating striking opportunities.
- 11.8 Effective aggressiveness means moving forward and landing a legal strike.
- 11.9 Effective defense means avoiding being struck, taken down or reversed while countering with offensive attacks.
- 11.10 The following objective scoring criteria shall be utilized by the judges when scoring a round:
- 11.11 A round is to be scored as a 10-10 Round when both contestants appear to be fighting evenly and neither contestant shows clear dominance in a round:
 - 11.11.1 A round is to be scored as a 10-9 Round when a contestant wins by a close margin, landing the greater number of effective legal strikes, grappling and other maneuvers;
 - 11.11.2 A round is to be scored as a 10-8 Round when a contestant overwhelmingly dominates by striking or grappling in a round.
 - 11.11.3 A round is to be scored as a 10-7 Round when a contestant totally dominates by striking or grappling in a round.
- 11.12 Judges shall use a sliding scale and recognize the length of time the fighters are either standing or on the ground, as follows:
 - 11.12.1 If the mixed martial artists spent a majority of a round on the canvas, then:
 - 11.12.1.1 Effective grappling is weighed first; and
 - 11.12.1.2 Effective striking is then weighed.

PROPOSED REGULATIONS

11.12.2 If the mixed martial artist spent a majority of a round standing, then:

11.12.2.1 Effective striking is weighed first; and

11.12.2.2 Effective grappling is then weighed.

11.12.3 If a round ends with a relatively even amount of standing and canvas fighting, striking and grappling are weighed equally.

12.0 Warnings

12.1 The referee shall issue a single warning for the following infractions. After the initial warning, if the prohibited conduct persists, a penalty will be issued. The penalty may result in a deduction of points or disqualification.

12.1.1 Holding or grabbing the fence;

12.1.2 Holding opponent's shorts or gloves; or

12.1.3 The presence of more than one second on the fighting area perimeter.

13.0 Fouls and Violations:

13.1 If a fighter flagrantly breaks any rule, the official ring referee shall immediately disqualify him; however, if the foul is not severe or intentional, the referee shall issue a warning or point deductions(s) from the offending fighter. The following are fouls and will result in penalties if committed:

13.1.1 Downward pointing elbow strikes;

13.1.2 Butting with the head;

13.1.3 Eye gouging of any kind;

13.1.4 Knuckle gouging;

13.1.5 Biting or spitting at an opponent;

13.1.6 Hair pulling;

13.1.7 Fish hooking;

13.1.8 Groin attacks of any kind;

13.1.9 Intentionally placing a finger in any opponent's orifice;

13.1.10 Small joint manipulation;

13.1.11 Small digit manipulation;

13.1.12 Strikes to the spine or back of the head or back of neck;

13.1.13 Heel kicks to the kidney;

13.1.14 Attacking an opponent on or during the break;

13.1.15 Kicks to the head of a grounded fighter;

13.1.16 Kneeing the head of a grounded fighter;

13.1.17 Stomping of a grounded fighter;

13.1.18 Throat strikes of any kind;

13.1.19 Clawing, pinching, twisting the flesh or grabbing the clavicle;

13.1.20 The use of abusive language in fighting area;

13.1.21 Any unsportsmanlike conduct that causes an injury to opponent;

13.1.22 Attacking an opponent who is under the referee's care at the time;

13.1.23 Timidity (avoiding contact, or consistent dropping of mouthpiece, or faking an injury);

13.1.24 Interference from a mixed martial artists seconds;

13.1.25 Throwing an opponent out of the fighting area;

13.1.26 Flagrant disregard of the referee's instructions;

13.1.27 Spiking/slamming an opponent to the fighting surface on his or her head or neck;

13.2 Disqualification occurs after any combination of three of the fouls listed in 13.1 above or after a referee determines that a foul was intentional and flagrant.

- 13.3 Fouls will result in a point being deducted by the official scorekeeper from the offending mixed martial artist's score.
- 13.4 Only a referee can assess a foul. If the referee does not call the foul, judges shall not make that assessment on their own and cannot factor such into their scoring calculations.
- 13.5 A fouled fighter has up to five minutes to recuperate.
- 13.6 If a foul is committed, the referee shall:
 - 13.6.1 Send the opponent to a neutral corner;
 - 13.6.2 Call time;
 - 13.6.3 Check the fouled mixed martial artist's condition and safety; and
 - 13.6.4 Assess the foul to the offending contestant, deduct points, and notify each corner's seconds, judges and the official scorekeeper.
- 13.7 If a bottom contestant commits a foul, unless the top contestant is injured, the fight shall continue, so as not to jeopardize the top contestant's superior positioning at the time.
 - 13.7.1 The referee shall verbally notify the bottom contestant of the foul.
 - 13.7.2 When the round is over, the referee shall assess the foul and notify both corners' seconds, the judges and the official scorekeeper.
 - 13.7.3 The referee may terminate a bout based on the severity of a foul. For such a flagrant foul, a contestant shall lose by disqualification.
- 13.8 Any point or points to be deducted for any foul must be deducted in the round in which the foul occurred.
- 13.9 Fighters cannot win by intentionally or accidentally fouling another fighter.

14.0 Legal Strikes

- 14.1 While Standing
 - 14.1.1 Closed hand strikes to the body and head.
 - 14.1.2 Kicking techniques to body.
 - 14.1.3 Knees to the body and legs.
 - 14.1.4 Takedowns, Throws and Sweeps.
 - 14.1.5 Chokes, Armbars and Shouldering.
 - 14.1.6 Standing Submissions.
- 14.2 While on the Ground
 - 14.2.1 Closed hand strikes to body and legs.
 - 14.2.2 Submissions (chokes, armbars, straight leg locks only).

15.0 Injuries

- 15.1 If an injury sustained during competition as a result of a legal maneuver is severe enough to terminate a bout, the injured contestant loses by technical knockout.
- 15.2 If an injury sustained during competition as a result of an intentional foul is severe enough to terminate a bout, the contestant causing the injury loses by disqualification.
- 15.3 If an injury is sustained during competition as a result of an intentional foul and the bout is allowed to continue, the referee shall notify the scorekeeper to automatically deduct two points from the contestant who committed the foul.
- 15.4 If an injury sustained during competition as a result of an intentional foul causes the injured contestant to be unable to continue at a subsequent point in the contest, the injured contestant shall win by technical decision, if he or she is ahead on the score cards. If the injured contestant is even or behind on the score cards at the time of stoppage, the outcome of the bout shall be declared a technical draw.

- 15.5 If a contestant injures himself or herself while attempting to foul his or her opponent, the referee shall not take any action in his or her favor, and the injury shall be treated in the same manner as an injury produced by a fair blow.
- 15.6 If an injury sustained during competition as a result of an accidental foul is severe enough for the referee to stop the bout immediately, the bout shall result in a no contest if stopped before two rounds have been completed in a three round bout or if stopped before three rounds have been completed in a five round bout.
- 15.7 If an injury sustained during competition as a result of an accidental foul is severe enough for the referee to stop the bout immediately, the bout shall result in a technical decision awarded to the contestant who is ahead on the score cards at the time the bout is stopped only when the bout is stopped after two rounds of a three round bout, or three rounds of a five round bout have been completed.
- 15.8 There will be no scoring of an incomplete round. However, if the referee penalizes either contestant, then the appropriate points shall be deducted when the scorekeeper calculates the final score.

16.0 Types Of Bout Results:

- 16.1 Submission by:
- 16.1.1 Tap Out: When a contestant physically uses his hand to indicate that he or she no longer wishes to continue; or
- 16.1.2 Verbal tap out: When a contestant verbally announces to the referee that he or she does not wish to continue;
- 16.2 Technical knockout by:
- 16.2.1 Referee or a representative of Division of Professional Regulation stops bout;
- 16.2.2 Ringside physician stops bout;
- 16.2.3 When an injury as a result of a legal maneuver is severe enough to terminate a bout;
- 16.2.4 If second concedes on behalf of the fighter.
- 16.3 Knockout by failure to rise from the fighting surface;
- 16.4 Decision via score cards:
- 16.4.1 Unanimous: When all three judges score the bout for the same contestant;
- 16.4.2 Split Decision: When two judges score the bout for one contestant and one judge scores for the opponent; or
- 16.4.3 Majority Decision: When two judges score the bout for the same contestant and one judge scores a draw;
- 16.5 Draws:
- 16.5.1 Unanimous - When all three judges score the bout a draw
- 16.5.2 Majority - When two judges score the bout a draw; or
- 16.5.3 Split - When all three judges score differently and the score total results in a draw;
- 16.6 Disqualification: When an injury sustained during competition as a result of an intentional foul is severe enough to terminate the contest;
- 16.7 Forfeit: When a contestant fails to begin competition or prematurely ends the contest for reasons other than injury or by indicating a tap out;
- 16.8 Technical Draw: When an injury sustained during competition as a result of an intentional foul causes the injured contestant to be unable to continue and the injured contestant is even or behind on the score cards at the time of stoppage;
- 16.9 Technical Decision: When the bout is prematurely stopped due to injury and a contestant is leading on the score cards; and
- 16.10 No Contest: When a contest is prematurely stopped due to accidental injury and a sufficient number of rounds have not been completed to render a decision via the score cards.

17.0 Matchmaking:

The matchmaking of the contestants is subject to the approval of the approved sanctioning body.

18.0 Physical Exams and Other Testing:

18.1 Contestants must complete and submit the following in writing to the sanctioning body:

- 18.1.1 A physical completed within six months of the event. HIV exam with negative results is required in order to compete in an event and test must be dated within six months of event.
- 18.1.2 Complete Hepatitis B Surface AG testing & Hepatitis C AB (must be tested within six months of event.)
- 18.1.3 Complete Blood Count (CBC) and Bleed & Coagulation (PT/PTT Pro Time)
- 18.1.4 Original EKG report, read by a physician (dated within six months of the event.)
- 18.1.5 Original CT/MRI Brain Scan report (without contrast), read by a physician (dated within three years of event.)
- 18.1.6 Original EYE examination by an ophthalmologist-ophthalmological dilation (dated within six months of the event.)
- 18.1.7 Serum Pregnancy test for female contestants (dated within 30 days of event and repeated within 30 days of each event.)
- 18.1.8 Annual Physical/clinical Gynecological and Breast Exam for female contestants.
- 18.1.9 If contestant's injuries result in broken bones or concussion, the contestant shall be suspended for the length of the recovery time according to physician's orders.
- 18.1.10 Based on the requirements set forth in Title 28 §105 (a) (7), the following criteria for determining physical and mental fitness shall include but is not limited to: blood pressure, pulse, respiration, heart rhythm, heart murmurs, ears, nose, throat, extremities, medications taken, negative pregnancy test results, and mental assessment, which must meet acceptable standards as determined by the examining physician prior to the event.

19.0 Requirements of the Sanctioning Body:

- 19.1 Require promoter to provide proof of sufficient liability insurance for the officials.
- 19.2 Require promoter to provide proof of sufficient medical insurance including Accidental Death and Dismemberment insurance for contestants per application requirements.
- 19.3 Require promoter to provide an ambulance and 2 EMT's to be present and on site at all times and have a Delaware licensed physician onsite and at ringside.
- 19.4 Verify the matchmaking done by the promoter by confirming the fight records.
- 19.5 Sanctioning body shall not have any direct or indirect interest of any kind in the fighters, the promoter or the event.
- 19.6 Oversee the weigh-ins, the hand wrapping and glove placement after inspecting the gloves.
- 19.7 Must inspect and approve the fighting area prior to the start of the contests.
- 19.8 Follow all Delaware laws and rules governing Professional Mixed Martial Arts Events.
- 19.9 Report results of each bout and suspensions to the Association of Boxing Commissions data base within seven days of the event.
- 19.10 Agree not to hold the event if the promoter has not obtained adequate security to maintain control over the event and provide safety to the public during and after the event.
- 19.11 Oversee drug testing to be performed on the day of the event on all contestants for illegal drugs, banned substances and performance enhancers.

20.0 Responsibilities of the Promoter:

- 20.1 Follow all Delaware rules and laws governing Professional Mixed Martial Arts Events.
- 20.2 Obtain approval from a sanctioning body approved by the Director before applying to the State of Delaware for the permit to hold a Mixed Martial Arts Event.

PROPOSED REGULATIONS

- 20.3 Submit an application to the State of Delaware at least thirty days in advance of the event for a permit to hold an MMA event along with the required fee.
- 20.4 Receive permit before holding the MMA event.
- 20.5 Coordinate matchmaking to be approved by the approved sanctioning body.
- 20.6 Cooperate fully with the approved Sanctioning Body:
 - 20.6.1 Fees
 - 20.6.2 Match Making approval of the sanctioning body.
 - 20.6.3 Engage services and provide evidence to the sanctioning body that an ambulance and at least 2 EMT's will be on-site during competition.
 - 20.6.4 Engage services and provide evidence to the sanctioning body that a Delaware licensed physician will be on site during and directly after the competition.
 - 20.6.5 Engage contract and provide to the sanctioning body proof that medical insurance and an accidental death insurance policy has been purchased per application requirement
 - 20.6.6 Engage contract and provide to the sanctioning body proof that liability insurance has been purchased per the amount required by the venue.
- 20.7 Agree not officiate at their own events. Cannot have interest of any kind in the sanctioning organization.
- 20.8 Cannot be involved or interfere in the oversight of the referee, judging, weighing-in, drug testing, post and pre-fight physicals, and glove inspections.
- 20.9 Provide the required gloves, gauze and adhesive tape for fighter wraps, disposable gloves for corner persons, water for all fighters and officials, stools for each contestant, and clean water bucket.
- 20.10 Provide the fight card that indicates the weight of the fighters and the weight division that the fighters will be in.
- 20.11 Ensure that there will be NO exhibition bouts.
- 20.12 Provide hand sanitizer to the fighters to be kept at the equipment table.
- 20.13 Sanitize all equipment before and after each fight.
- 20.14 Provide adequate security personnel to maintain order and provide safety during and after the event.
- 20.15 Obtain a Delaware business license.
- 20.16 Execute and file a surety bond with the State of Delaware for not less than \$10,000.
- 20.17 Pay for drug testing to be performed on day of event on all contestants for illegal drugs, banned substances and performance enhancers. The sanctioning body shall oversee the testing.

21.0 Requirements of Fighter:

- 21.1 Attend pre-fight meeting. Failure to attend will result in disqualification of the fighter.
- 21.2 Be 18 years or older to participate.
- 21.3 Pass drug testing completed the day of the event and the pre-fight physical.
- 21.4 Agree not to use any illegal drug, narcotic, stimulant, depressant, analgesic of any description, or alcohol substance either before or during a match.
- 21.5 Obtain National MMA ID number prior to the event.
- 21.6 Follow all Delaware laws, Rules and Regulations and requirements of the sanctioning body.
- 21.7 Obtain a pre-fight and post-fight physical by the physician assigned to the event.
- 21.8 If fighter should not make weight or be a no-show, that bout shall be canceled. Under no circumstances shall a fighter be permitted to cut more than two pounds to make weight.
- 21.9 Fighter shall not fight a minimum of tens days from last fight.

22.0 Requirements of Seconds/cornermen:

- 22.1 Each fighter may have two seconds, but only one second at a time is permitted in the cage and only when given permission by the referee.

- 22.2 Permitted to use such general anti-coagulants such as Thrombin, Adrenaline Hydrochloride and Aventine or any other first aid medicine approved by the sanctioning body to cuts.
- 22.3 Must dry the corner area before the next round continues.
- 22.4 Follow all Delaware laws, Rules and Regulations and requirements of the sanctioning body.

Part D Amateur Mixed Martial Arts

1.0 Weight Classes:

1.1 Men's Division

- 1.1.1 Flyweight (111.9 lbs. and below)
- 1.1.2 Bantamweight (112-117.9 lbs.)
- 1.1.3 Super Bantamweight (118-121.9 lbs.)
- 1.1.4 Featherweight (122-125.9 lbs.)
- 1.1.5 Super Featherweight (126-129.9 lbs.)
- 1.1.6 Lightweight (130-134.9 lbs.)
- 1.1.7 Super Lightweight (135-139.9 lbs.)
- 1.1.8 Welterweight (140-146.9 lbs.)
- 1.1.9 Super Welterweight (147-153.9 lbs.)
- 1.1.10 Middleweight (154-159.9 lbs.)
- 1.1.11 Super Middleweight (160-166.9 lbs.)
- 1.1.12 Light Heavyweight (167-174.9 lbs.)
- 1.1.13 Super Lt. Heavyweight (175-182.9 lbs.)
- 1.1.14 Cruiserweight (183-189.9 lbs.)
- 1.1.15 Super Cruiserweight (190-194.9 lbs.)
- 1.1.16 Heavyweight (195-209.9 lbs.)
- 1.1.17 Super Heavyweight (210 lbs. & above)

1.2 Women's Division

- 1.2.1 Flyweight (104.9 lbs. and below)
- 1.2.2 Bantamweight (105-113.9 lbs.)
- 1.2.3 Featherweight (114-122.9 lbs.)
- 1.2.4 Lightweight (123-131.9 lbs.)
- 1.2.5 Welterweight (132-140.9 lbs.)
- 1.2.6 Middleweight (141-149.9 lbs.)
- 1.2.7 Light Heavyweight (150-158.9 lbs.)
- 1.2.8 Cruiserweight (159-167.9 lbs.)
- 1.2.9 Heavyweight (168 lbs. and above)

- 1.3 Should a fighter not make weight or be a no-show, that bout shall be canceled. In some instances, fighters that are cleared for the same event may be approved to fight another fighter on the card pending approval of the sanctioning body. Fighters may fight up one Weight Division; however, weight differences between opposing fighters cannot exceed seven pounds, except for the following:

- 1.3.1 Weight differences between men fighters 210 pounds and over shall be no more than 15 pounds.
- 1.3.2 Weight differences between women fighters weighing 168 pounds and over shall not be more than 15 pounds.

PROPOSED REGULATIONS

2.0 Fighting Area:

- 2.1 The cage shall be no smaller than 18 feet by 18 feet and no larger than 32 feet by 32 feet. The fighting surface shall be covered with a minimum one inch layer of foam padding. Vinyl or other plastic rubberized covering shall be permitted.
- 2.2 The fighting surface shall not be more than four feet above the floor of the building and shall have suitable steps or ramp for use by the participants. Posts shall be made of metal not more than six inches in diameter, extending from the floor of the building to a minimum height of 58 inches above the fighting surface and shall be properly padded.
- 2.3 The fighting surface area shall be enclosed by a fence made of such material as will not allow a fighter to fall out or break through it onto the floor or spectators, including, but not limited to, vinyl coated chain link fencing. All metal parts shall be covered and padded and shall not be abrasive to the contestants.
- 2.4 The fence shall provide two separate entries onto the fighting surface.

3.0 Equipment and Clothing:

- 3.1 Ring stool for each contestant. An appropriate number of stools or chairs shall be available for each contestant's seconds. They shall be located near each contestant's corner.
- 3.2 For each bout, the promoter is to provide a clean water bucket and clean plastic water bottle in each corner.
- 3.3 Contestants shall wear mma shorts, biking shorts, boxing shorts, Muay Thai shorts or kick-boxing shorts.
- 3.4 Gi's or shirts are prohibited during competition.
- 3.5 Females shall wear rash guards.
- 3.6 Shoes are not permitted.
- 3.7 No jewelry or clothing that is made of hard plastic or metallic surface is permitted.

4.0 Bandage Wraps:

- 4.1 Bandages shall be restricted to soft gauze cloth not more than 13 yards in length and two inches in width, held in place by not more than 10 feet of surgeon's tape, one inch in width.
- 4.2 Surgeon's adhesive tape shall be placed directly on each hand for protection near the wrist. The tape may cross the back of the hand twice and extend to cover and protect the knuckles.
- 4.3 The bandages and tape shall be placed on the contestant's hands in the dressing room in the presence of the inspector and in the presence of the manager or chief second of his or her opponent. It shall be signed off by the inspector with his/her initials and the date.
- 4.4 Under no circumstances are gloves to be placed on the hands of the contestant without the approval of the inspector.

5.0 Mouth Pieces:

- 5.1 All contestants are required to wear a mouthpiece during competition. The mouthpiece shall be subject to examination and approval by the attending physician.
- 5.2 The round cannot begin without the mouthpiece in place.
- 5.3 If the mouthpiece is involuntarily dislodged during competition, the referee shall call time, clean the mouthpiece and reinsert the mouthpiece at the first opportune moment, without interfering with the immediate action.

6.0 Protective Equipment:

- 6.1 Male mixed martial artists shall wear a groin protector of their own selection.
- 6.2 Shin/instep protectors are required.
- 6.3 Female mixed martial artists shall wear a chest protector during competition.

7.0 Gloves:

- 7.1 The gloves shall be new for all bouts.
- 7.2 All contestants shall wear open finger minimum 7 ounce gloves and shall be supplied by the promoter. No contestant shall supply their own gloves.

8.0 Appearance/hygiene:

- 8.1 Hair shall be trimmed or tied back in such a manner as not to interfere with the vision of either contestant or cover any part of a contestant's face.
- 8.2 Jewelry or piercing accessories are prohibited during competition.
- 8.3 There shall be no oil or grease on any part of the body. A light coating of petroleum jelly may be applied to the contestants face in the presence of an inspector.
- 8.4 Fingernails and toenails must be cut and trimmed.
- 8.5 The use of BenGay, IcyHot, and other such sports crèmes is prohibited.

9.0 Round Length:

- 9.1 For non-championship bouts, the rounds will consist of three 3-minute rounds with one minute of rest in between rounds.
- 9.2 For championship bouts, the rounds may consist of five 3-minute rounds with one minute of rest in between rounds.

10.0 Stopping A Contest:

The referee and ringside physician are the sole arbiters of a bout and are the only individuals authorized other than a representative from the Director's office to enter the fighting area at any time during competition and stop a contest. The contestant's chief second may signify to referee in an approved manner by the sanctioning body to stop the bout.

11.0 Judging And Scoring:

- 11.1 All bouts will be evaluated and scored by three judges.
- 11.2 The 10-Point Must System will be the standard system of scoring. Under the 10-Point Must Scoring System, 10 points must be awarded to the winner of the round and nine points or less must be awarded to the loser, except for a rare even round, which is scored 10-10.
- 11.3 Judges shall evaluate MMA techniques, such as effective striking, effective grappling, control of the fighting area, effective aggressiveness and defense.
- 11.4 Evaluations shall be made in the order in which the techniques appear in 11.3 above, giving the most weight in scoring to effective striking, effective grappling, control of the fighting area and effective aggressiveness and defense.
- 11.5 Effective striking is judged by determining the total number of legal heavy strikes landed by a contestant.
- 11.6 Effective grappling is judged by considering the amount of successful executions of legal takedowns and reversals. Examples of factors to consider are take downs from standing position to mount position, passing the guard to mount position, and bottom position fighter using an active, threatening guard.
- 11.7 Control of fighting is judged by determining who is dictating the pace, location and position of the bout. Examples of factors to consider are countering a grappler's attempt at takedown by remaining standing and legally striking; taking down an opponent to force a ground fight; creating threatening submission attempts, passing the guard to achieve mount, and creating striking opportunities.
- 11.8 Effective aggressiveness means moving forward and landing a legal strike.
- 11.9 Effective defense means avoiding being struck, taken down or reversed while countering with offensive attacks.

PROPOSED REGULATIONS

11.10 The following objective scoring criteria shall be utilized by the judges when scoring a round:

11.10.1 A round is to be scored as a 10-10 Round when both contestants appear to be fighting evenly and neither contestant shows clear dominance in a round:

11.10.2 A round is to be scored as a 10-9 Round when a contestant wins by a close margin, landing the greater number of effective legal strikes, grappling and other maneuvers:

11.10.3 A round is to be scored as a 10-8 Round when a contestant overwhelmingly dominates by striking or grappling in a round.

11.10.4 A round is to be scored as a 10-7 Round when a contestant totally dominates by striking or grappling in a round.

11.11 Judges shall use a sliding scale and recognize the length of time the fighters are either standing or on the ground, as follows:

11.11.1 If the mixed martial artists spent a majority of a round on the canvas, then:

11.11.1.1 Effective grappling is weighed first; and

11.11.1.2 Effective striking is then weighed.

11.11.2 If the mixed martial artist spent a majority of a round standing, then:

11.11.2.1 Effective striking is weighed first; and

11.11.2.2 Effective grappling is then weighed.

11.11.3 If a round ends with a relatively even amount of standing and canvas fighting, striking and grappling are weighed equally.

12.0 Warnings:

12.1 The referee shall issue a single warning for the following infractions. After the initial warning, if the prohibited conduct persists, a penalty will be issued. The penalty may result in a deduction of points or disqualification.

12.1.1 Holding or grabbing the fence;

12.1.2 Holding opponent's shorts or gloves; or

12.1.3 The presence of more than one second on the fighting area perimeter.

13.0 Fouls And Violations:

13.1 If a fighter flagrantly breaks any rule, the official ring referee shall immediately disqualify him; however, if the foul is not severe or intentional, the referee shall issue a warning or point deductions(s) from the offending fighter. The following are fouls and will result in penalties if committed:

13.1.1 No elbows of any kind;

13.1.2 Butting with the head;

13.1.3 Eye gouging of any kind;

13.1.4 Knuckle gouging;

13.1.5 Biting or spitting at an opponent;

13.1.6 Hair pulling;

13.1.7 Fish hooking;

13.1.8 Heel hooks;

13.1.9 Finger locks;

13.1.10 Toe locks;

13.1.11 Spine locks;

13.1.12 Hammer locks to grounded opponent;

13.1.13 Smothering of grounded opponent (hand over mouth);

13.1.14 Groin attacks of any kind;

13.1.15 Intentionally placing a finger in any opponent's orifice;

13.1.16 Small joint manipulation;

- 13.1.17 Small digit manipulation;
- 13.1.18 Strikes to the spine or back of the head or back of neck;
- 13.1.19 Any striking to head of grounded opponent;
- 13.1.20 Heel kicks to the kidney;
- 13.1.21 Throat strikes of any kind;
- 13.1.22 One or two-handed chokes applied directly to the throat/windpipe;
- 13.1.23 Clawing, pinching, twisting the flesh or grabbing the clavicle;
- 13.1.24 Kicking the head of a grounded fighter;
- 13.1.25 Kicks to the head of a standing fighter;
- 13.1.26 Knees to head of standing opponent;
- 13.1.27 Kneeing the head of a grounded fighter;
- 13.1.28 Stomping of a grounded fighter;
- 13.1.29 The use of abusive language in fighting area;
- 13.1.30 Any unsportsmanlike conduct that causes an injury to opponent;
- 13.1.31 Attacking an opponent on or during the break;
- 13.1.32 Attacking an opponent who is under the referee's care at the time;
- 13.1.33 Timidity (avoiding contact, or consistent dropping of mouthpiece, or faking an injury);
- 13.1.34 Interference from a mixed martial artists seconds;
- 13.1.35 Throwing an opponent out of the fighting area;
- 13.1.36 Flagrant disregard of the referee's instructions;
- 13.1.37 Spiking/slamming an opponent to the fighting surface on his or her head or neck;
- 13.1.38 Neck cranks;
- 13.2 Disqualification occurs after any combination of three of the fouls listed in 13.1 above or after a referee determines that a foul was intentional and flagrant.
- 13.3 Fouls will result in a point being deducted by the official scorekeeper from the offending mixed martial artist's score.
- 13.4 Only a referee can assess a foul. If the referee does not call the foul, judges shall not make that assessment on their own and cannot factor such into their scoring calculations.
- 13.5 A fouled fighter has up to five minutes to recuperate.
- 13.6 If a foul is committed, the referee shall:
 - 13.6.1 Send the opponent to a neutral corner;
 - 13.6.2 Call time;
 - 13.6.3 Check the fouled mixed martial artist's condition and safety; and
 - 13.6.4 Assess the foul to the offending contestant, deduct points, and notify each corner's seconds, judges and the official scorekeeper.
- 13.7 If a bottom contestant commits a foul, unless the top contestant is injured, the fight shall continue, so as not to jeopardize the top contestant's superior positioning at the time.
 - 13.7.1 The referee shall verbally notify the bottom contestant of the foul.
 - 13.7.2 When the round is over, the referee shall assess the foul and notify both corners' seconds, the judges and the official scorekeeper.
 - 13.7.3 The referee may terminate a bout based on the severity of a foul. For such a flagrant foul, a contestant shall lose by disqualification.
- 13.8 Any point or points to be deducted for any foul must be deducted in the round in which the foul occurred.
- 13.9 Fighters cannot win by intentionally or accidentally fouling another fighter.

PROPOSED REGULATIONS

14.0 Legal Strikes:

14.1 While Standing

14.1.1 Closed hand strikes to the body and head.

14.1.2 Kicking techniques to body.

14.1.3 Knees to the body and legs.

14.1.4 Takedowns, Throws and Sweeps.

14.1.5 Chokes, Armbars and Shouldering.

14.1.6 Standing Submissions.

14.2 While on the Ground

14.2.1 Closed hand strikes to body and legs.

14.2.2 Submissions (chokes, armbars, straight leg locks only).

15.0 Injuries:

15.1 If an injury sustained during competition as a result of a legal maneuver is severe enough to terminate a bout, the injured contestant loses by technical knockout.

15.2 If an injury sustained during competition as a result of an intentional foul is severe enough to terminate a bout, the contestant causing the injury loses by disqualification.

15.3 If an injury is sustained during competition as a result of an intentional foul and the bout is allowed to continue, the referee shall notify the scorekeeper to automatically deduct two points from the contestant who committed the foul.

15.4 If an injury sustained during competition as a result of an intentional foul causes the injured contestant to be unable to continue at a subsequent point in the contest, the injured contestant shall win by technical decision, if he or she is ahead on the score cards. If the injured contestant is even or behind on the score cards at the time of stoppage, the outcome of the bout shall be declared a technical draw.

15.5 If a contestant injures himself or herself while attempting to foul his or her opponent, the referee shall not take any action in his or her favor, and the injury shall be treated in the same manner as an injury produced by a fair blow.

15.6 If an injury sustained during competition as a result of an accidental foul is severe enough for the referee to stop the bout immediately, the bout shall result in a no contest if stopped before two rounds have been completed in a three round bout or if stopped before three rounds have been completed in a five round bout.

15.7 If an injury sustained during competition as a result of an accidental foul is severe enough for the referee to stop the bout immediately, the bout shall result in a technical decision awarded to the contestant who is ahead on the score cards at the time the bout is stopped only when the bout is stopped after two rounds of a three round bout, or three rounds of a five round bout have been completed.

15.8 There will be no scoring of an incomplete round. However, if the referee penalizes either contestant, then the appropriate points shall be deducted when the scorekeeper calculates the final score.

16.0 Types of Bout Results:

16.1 Submission by:

16.1.1 Tap Out: When a contestant physically uses his hand to indicate that he or she no longer wishes to continue; or

16.1.2 Verbal tap out: When a contestant verbally announces to the referee that he or she does not wish to continue;

16.2 Technical knockout by:

16.2.1 Referee or a representative of Division of Professional Regulation stops bout;

16.2.2 Ringside physician stops bout;

16.2.3 When an injury as a result of a legal maneuver is severe enough to terminate a bout;

16.2.4 If second concedes on behalf of the fighter.

16.3 Knockout by failure to rise from the fighting surface;

16.4 Decision via score cards:

16.4.1 Unanimous: When all three judges score the bout for the same contestant;

16.4.2 Split Decision: When two judges score the bout for one contestant and one judge scores for the opponent; or

16.4.3 Majority Decision: When two judges score the bout for the same contestant and one judge scores a draw;

16.5 Draws:

16.5.1 Unanimous - When all three judges score the bout a draw

16.5.2 Majority - When two judges score the bout a draw; or

16.5.3 Split - When all three judges score differently and the score total results in a draw;

16.6 Disqualification: When an injury sustained during competition as a result of an intentional foul is severe enough to terminate the contest;

16.7 Forfeit: When a contestant fails to begin competition or prematurely ends the contest for reasons other than injury or by indicating a tap out;

16.8 Technical Draw: When an injury sustained during competition as a result of an intentional foul causes the injured contestant to be unable to continue and the injured contestant is even or behind on the score cards at the time of stoppage;

16.9 Technical Decision: When the bout is prematurely stopped due to injury and a contestant is leading on the score cards; and

16.10 No Contest: When a contest is prematurely stopped due to accidental injury and a sufficient number of rounds have not been completed to render a decision via the score cards.

17.0 Matchmaking:

The matchmaking of the contestants is subject to the approval of the approved sanctioning body.

18.0 Physical Exams and other Testing

18.1 All Contestants must complete a physical within 90 days of the event and a submit completed physical form to the sanctioning body including negative blood results from a lab that has consulted with a physician for HIV, Hep B and C tests. The results shall be faxed from the lab to the sanctioning body.

18.2 All contestants are subject to pre-fight and post-fight physicals. Failure to have a Pre-Fight physical will result in disqualification. Failure to have a Post-Fight Medical will result in a minimum 90 day suspension of contestant.

18.3 If contestant's injuries result in broken bones or concussion, the contestant shall be suspended for the length of the recovery time according to physician's orders.

18.4 All female contestants must complete a pregnancy test the day of the event and the results must be negative.

18.5 Based on the requirements set forth in Title 28 §105 (b) (5), the following criteria for determining physical and mental fitness shall include but is not limited to: blood pressure, pulse, respiration, heart rhythm, heart murmurs, ears, nose, throat, extremities, medications taken, negative pregnancy test results, and mental assessment, which must meet acceptable standards as determined by the examining physician prior to the event.

19.0 Requirements Of The Sanctioning Body:

19.1 Require promoter to provide proof of sufficient liability insurance for the officials.

19.2 Require promoter to provide proof of sufficient medical insurance including Accidental Death and Dismemberment insurance for contestants per application requirements.

PROPOSED REGULATIONS

- 19.3 Require promoter to provide an ambulance and 2 EMT's to be present and on site at all times and have a Delaware licensed physician onsite and at ringside.
- 19.4 Verify the matchmaking done by the promoter by confirming the fight records.
- 19.5 Sanctioning body shall not have any direct or indirect interest of any kind in the fighters, the promoter or the event.
- 19.6 Oversee the weigh-ins, the hand wrapping and glove placement after inspecting the gloves.
- 19.7 Must inspect and approve the fighting area prior to the start of the contests.
- 19.8 Follow all Delaware laws and rules governing Amateur Mixed Martial Arts Events.
- 19.9 Report results of each bout and suspensions to the Association of Boxing Commissions data base within seven days of the event.
- 19.10 Agree not to hold the event if the promoter has not obtained adequate security to maintain control over the event and provide safety to the public during and after the event.
- 19.11 Oversee drug testing to be performed on the day of the event on all contestants for illegal drugs, banned substances and performance enhancers.

20.0 Responsibilities of the Promoter:

- 20.1 Follow all Delaware rules and laws governing Amateur Mixed Martial Arts Events.
- 20.2 Obtain approval from a sanctioning body approved by the Director before applying to the State of Delaware for the permit to hold a Mixed Martial Arts Event.
- 20.3 Submit an application to the State of Delaware at least thirty days in advance of the event for a permit to hold an MMA event along with the required fee.
- 20.4 Receive permit before holding the MMA event.
- 20.5 Coordinate matchmaking to be approved by the approved sanctioning body.
- 20.6 Cooperate fully with the approved Sanctioning Body:
 - 20.6.1 Fees
 - 20.6.2 Match Making approval of the sanctioning body.
 - 20.6.3 Engage services and provide evidence to the sanctioning body that an ambulance and at least 2 EMT's will be on-site during competition.
 - 20.6.4 Engage services and provide evidence to the sanctioning body that a Delaware licensed physician will be on site during and directly after the competition.
 - 20.6.5 Engage contract and provide to the sanctioning body proof that medical insurance and an accidental death insurance policy has been purchased per application requirement
 - 20.6.6 Engage contract and provide to the sanctioning body proof that liability insurance has been purchased per the amount required by the venue.
- 20.7 Agree not officiate at their own events. Cannot have interest of any kind in the sanctioning organization.
- 20.8 Cannot be involved or interfere in the oversight of the referee, judging, weighing-in, drug testing, post and pre-fight physicals, and glove inspections.
- 20.9 Provide the required gloves, shin/instep guards, grey/silver duct tape, gauze and adhesive tape for fighter wraps, disposable gloves for corner persons, water for all fighters and officials, stools for each contestant, and clean water bucket.
- 20.10 Provide the fight card that indicates the weight of the fighters and the weight division that the fighters will be in.
- 20.11 Agree that there will be NO exhibition bouts.
- 20.12 Provide hand sanitizer to the fighters to be kept at the equipment table.
- 20.13 Sanitize all equipment before and after each fight.
- 20.14 Provide adequate security personnel to maintain order and provide safety during and after the event.
- 20.15 Obtain a Delaware business license.

-
- 20.16 Execute and file a surety bond with the State of Delaware for not less than \$10,000.
 - 20.17 Pay for drug testing to be performed on day of event on all contestants for illegal drugs, banned substances and performance enhancers. The sanctioning body shall oversee the testing.

21.0 Requirements of Fighter

- 21.1 Attend pre-fight meeting. Failure to attend will result in disqualification of the fighter.
- 21.2 Be 18 years or older to participate.
- 21.3 Pass drug testing completed the day of the event and the pre-fight physical.
- 21.4 Agree not to use any illegal drug, narcotic, stimulant, depressant, analgesic of any description, or alcohol substance either before or during a match.
- 21.5 Obtain National MMA ID number prior to the event.
- 21.6 Follow all Delaware laws, Rules and Regulations and requirements of the sanctioning body.
- 21.7 Contestants must provide a signed statement to the sanctioning body that they have never engaged in a professional style MMA event or any other professional martial arts sports and have never accepted payment for their participation in any combative sports event or fighting art. The contestant's trainer must attest in writing to the contestant's skill.
- 21.8 Obtain a pre-fight and post-fight physical by the physician assigned to the event.
- 21.9 If fighter should not make weight or be a no-show, that bout shall be canceled. Under no circumstances shall a fighter be permitted to cut more than two pounds to make weight.
- 21.10 Fighter shall not fight a minimum of tens days from last fight.

22.0 Requirements of Seconds/cornermen

- 22.1 Each fighter may have two seconds, but only one second at a time is permitted in the cage and only when given permission by the referee.
- 22.2 Permitted to use such general anti-coagulants such as Thrombin, Adrenaline Hydrochloride and Aventine or any other first aid medicine approved by the sanctioning body to cuts.
- 22.3 Must dry the corner area before the next round continues.
- 22.4 Follow all Delaware laws, Rules and Regulations and requirements of the sanctioning body.

PUBLIC SERVICE COMMISSION

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

ORDER

IN THE MATTER OF THE ADOPTION OF RULES
TO ESTABLISH AN INTRASTATE GAS PIPELINE
SAFETY COMPLIANCE PROGRAM PURSUANT TO
26 DEL.C. CH. 8, SUBCHAPTER II
OPENED OCTOBER 7, 2008

PSC REGULATION DOCKET NO. 61

ORDER NO. 7458

AND NOW, this 7th day of October, 2008, the Commission having considered the proposed regulations governing gas pipeline safety prepared by the Staff;

IT IS ORDERED THAT:

1. That, pursuant to 76 **Delaware Laws** Ch. 393, 26 **Del.C.** §209(a), and 29 **Del.C.** §§10111 et seq., the Commission promulgates proposed Regulations Governing Safety of Gas Transmission and Distribution

Systems ("Regulations").

2. That the Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the Delaware Register the notice and the proposed Regulations attached hereto as Exhibits "A" and "B" respectively.

3. That the Secretary of the Commission shall cause the notice attached hereto as Exhibit "A" to be published in *The News Journal* and *Delaware State News* newspapers on or before Thursday, October 16, 2008.

4. That the Secretary shall cause the notice attached hereto as Exhibit "A" to be sent by U.S. mail to all utilities which own and/or operate any gas transmission or distribution system in Delaware and all persons who have made timely written requests for advance notice of the Commission's regulation-making proceedings.

5. That Francis J. Murphy, Esquire, is designated Staff Counsel for this matter.

6. That the public utilities regulated by the Commission are notified that they may be charged for the cost of this proceeding under 26 **Del.C.** §114.

7. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair

Joann T. Conaway, Commissioner

Jaymes B. Lester, Commissioner

Dallas Winslow, Commissioner

Jeffrey J. Clark, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

Notice of Comment Period on Proposed Regulations Concerning Gas Pipeline Safety and Gas Transmission and Distribution Systems, Including the Commission's Jurisdiction to make and Enforce Rules Required by the Federal Gas Pipeline Safety Act Of 1968, As Amended

The Delaware General Assembly has enacted legislation granting the Delaware Public Service Commission ("Commission") the authority to make and enforce rules required by the federal Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. Chapter 601), to qualify for federal certification of a state pipeline safety compliance program relating to the regulation of intrastate gas pipeline transportation. The new legislation is found at 76 Delaware Laws Ch. 393.

In order to comply with the new legislation, the Commission is promulgating regulations, containing twelve sections, intended to govern the safety of the gas transmission and distribution systems, which are subject to the Commission's jurisdiction. The first section contains definitions of terms used in the regulations, for example, the classification of gas leaks. The second section incorporates by reference the pertinent provisions of Title 49 of the Code of Federal Regulations which contain the minimum federal standards related to matters such as: (1) the design, fabrication, inspection, reporting, and testing of gas transmission and distribution systems; and (2) the drug testing inspection of natural gas pipeline utilities.

Two sections of the new regulations contain requirements for performing gas leak surveys, maintaining gas leak progression maps, and notifying the Commission and the local fire department in the event of gas leaks. One new section addresses Liquefied Natural Gas (LNG) installations, including the adoption of the pertinent standards of Title 49 of the Code of Federal Regulations related to their design, construction, operation, maintenance, protection, and security.

Five sections pertain to Commission procedures which apply to the operators of gas transmission and distribution systems. The five sections include provisions addressing: (1) the delegation of authority to the Commission Staff to carry out the day-to-day oversight of the systems; (2) the informal disposition of probable violations of the regulations; (3) the manner of giving formal notice of probable violations; (4) the response options of operators of the systems when notified of a probable violation; and (5) actions that might be taken by the Commission in the event a violation comes before the Commission for formal resolution.

One of the new sections sets forth the Commission's authority in the event a pipeline facility presents a hazard to life or property. The final provision addresses the Commission's authority to grant waivers from

compliance with the federal Gas Pipeline Safety Regulations and the procedures to be followed by the Commission in ruling upon an application by an operator for a waiver.

The Commission has authority to promulgate the regulations pursuant to 26 **Del.C.** § 209(a), 29 **Del.C.** §10111 et seq., and 76 **Delaware Laws** Ch. 393 (2008)(26 **Del.C.** Ch. 8).

The Commission hereby solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning the proposed regulations. Ten (10) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware, 19904. **All such materials shall be filed with the Commission on or before November 7, 2008.** Persons who wish to participate in the proceedings but who do not wish to file written materials are asked to send a letter informing the Commission of their intention to participate on or before October 30, 2008.

The regulations and the materials submitted in connection therewith will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page. The regulations may also be reviewed, by appointment, at the office of the Division of the Public Advocate located at the Carvel State Office Building, 4th Floor, 820 North French Street, Wilmington, Delaware 19801 and will also be available for review on the Commission's website: www.state.de.us/delpsc.

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, by telephone, or otherwise. The Commission's toll-free telephone number (in Delaware) is (800) 282-8574. Any person with questions may also contact the Commission Staff at (302) 736-7500 or by Text Telephone at (302) 739-4333. Inquiries can also be sent by Internet e-mail to karen.nickerson@state.de.us.

8001 Rules to Establish an Intrastate Gas Pipeline Safety Compliance Program (Opened October 7, 2008)

1.0 Definitions

1.1 As used in this Chapter, the following words and phrases shall have the following meanings:

"Business Area" means an area where the entire expanse of street and sidewalk from building wall to building wall is paved.

"Class A Leak" means a leak where a small amount of gas is detected, presenting no apparent hazard.

"Class B Leak" means a leak where a greater amount of gas is detected, presenting a limited potential hazard.

"Class C Leak" means a leak where either a large amount of gas is detected, or a small leak is detected immediately adjacent to a building wall, or a leak of any size is detected that is considered to create a hazardous or potentially hazardous condition which could involve loss of life, injury, or property damage.

"Commercial Building" means a building devoted primarily to providing the general public with goods or services, or a multi-apartment building containing four or more apartments.

"Leak Progression Map" means a map of the transmission and distribution system of the utility, drawn to a suitable scale, upon which there is indicated in a suitable code the leaks found to exist in the system.

"Leakage Survey" means a survey of gas facilities employing, singly or in combination, a survey by mobile flame ionization unit, a survey employing a combustible gas detector to test the atmosphere in available openings and bar holes, or some other effective procedure for locating leaks in gas systems that has been approved by a duly authorized Federal or State agency for said purpose.

"Patrol Type Leakage Survey" means a leakage survey by mobile flame ionization unit conducted at a speed in the range of 600 to 1,500 feet per minute (5-15 miles per hour) such that leaks of major proportions will be detected.

"Public Building" means a building devoted primarily to the conduct of federal, state, county, district, or municipal government business including but not limited to a city hall, post office, public school, or fire station.

2.0 Code

- 2.1 The minimum standards governing the design, fabrication, installation, inspection, reporting, testing, and the safety aspects of operation and maintenance of gas transmission and distribution systems, including gas pipelines, gas compressor stations, gas metering and regulating stations, gas mains, and service lines up to the outlet of the customer's meter set assembly, shall be the provisions of Parts 191 and 192 of Title 49 of the Code of Federal Regulations, including all amendments and revisions thereto.
- 2.2 The minimum standards governing the drug testing inspection of natural gas pipeline utilities shall be the provisions of Title 49 of the Code of Federal Regulations, Part 199, which incorporates Part 40 of Title 49 by reference. Part 199 shall apply only to the natural gas pipeline utilities within the State of Delaware subject to inspection by the Delaware Public Service Commission.

3.0 Surveys

- 3.1 All Gas utilities subject to the safety jurisdiction of the Public Service Commission under 26 Delaware Code, Ch. 8 shall conduct an annual leakage survey of:
- 3.1.1 All transmission and distribution mains;
- 3.1.2 All services in business areas and services to public buildings, schools, churches, hospitals, and nursing homes;
- 3.1.3 All public and commercial buildings having a gas service pipe or having an active gas main in an adjacent street; and
- 3.1.4 Any other location designated by the Commission Staff.
- 3.2 All gas utilities shall conduct a leakage survey, at least once every five years, of all gas services connected to its system not covered in paragraph A above.
- 3.3 In addition to the above, all gas utilities serving natural gas shall conduct a patrol type leakage survey of all cast-iron mains twice annually:
- 3.3.1 In mid-winter; and
- 3.3.2 Following frost-out in spring.
- 3.4 Each gas utility shall notify the Public Service Commission of the results of each survey required in this section, within 30 days of the completion of such survey.

4.0 Miscellaneous Provisions

- 4.1 Each gas utility shall institute and maintain on a continuing basis leak progression maps of its service area.
- 4.2 Cast-iron pipe in sizes 4-inch and smaller shall not be installed in gas distribution systems in Delaware.
- 4.3 Each gas utility shall immediately notify the Commission and the fire department of the community involved of each Class B or Class C leak found to exist in its pipeline system.

5.0 Liquefied Natural Gas (LNG) Installations

- 5.1 Each gas utility having or proposing to have installations for liquefying, storing, or regasifying LNG shall file with the Public Service Commission for its approval a plan for detection of gas leaks in these installations.
- 5.2 Odorization - All gas that is returned to the gaseous state from LNG shall have odorant added prior to its introduction into the distribution system such that the overall level of odorizations in the distribution system shall not be diminished by the addition of regasified LNG.

5.3 The minimum standards governing the design, construction, operation, maintenance, protection, and security of LNG facilities in Delaware shall be the provisions of Part 193 of Title 49 of the Code of Federal Regulations, including all revisions and amendments thereto.

6.0 Delegation of Authority

The Commission delegates to the Commission Staff the authority to investigate all methods and practices of pipeline utilities; to require the maintenance and filing of reports, records and other information; to enter upon and to inspect the property, buildings, plants and offices of pipeline utilities; and to inspect books, records, papers and documents relevant to the enforcement of the safety standards.

7.0 Informal Disposition of Probable Violation

When an evaluation of an operator's records or facilities indicates that the operator is apparently violating these regulations, the Commission Staff will informally discuss the probable violation with the operator before concluding the inspection. Any documentation or physical evidence necessary to support a future allegation of non-compliance may be obtained during the inspection. On-site corrective action may be taken by the operator of the facilities where the probable violation exists, thus correcting the violation without further action.

8.0 Written Formal Notice of Probable Violation

After evidence of a probable violation is collected and the violation report written, notice and opportunity to respond will be afforded the operator by a letter from the Commission Staff notifying the operator of the results of the on-site evaluation and specifically citing the provision of the applicable regulation(s) the operator is apparently violating. A written response from the operator must be filed with the Commission within 10 days of the date the operator receives the violation notice.

9.0 Response Options Open to Operator

9.1 The operator, in responding to the violation notice, may:

9.1.1 Submit a written plan specifying actions that the operator will take to correct the violation, a schedule for completion of each action step, and a final date of compliance. If the Commission Staff accepts the corrective plan submitted by the operator, the violation is resolved.

9.1.2 Request an informal conference with the Commission Staff. Upon request for an informal conference, the Executive Director of the Commission, or the Executive Director's designee, will establish a date, time, and location for the conference. During the conference, Staff will review the violation report with the operator to identify corrective actions and reach a mutually acceptable resolution of the violation. If this effort fails, the Executive Director of the Commission may refer the violation to the Commission for formal action.

10.0 Commission Action

10.1 If the Executive Director of the Commission refers the violation to the Commission for formal resolution, the Commission may take such action as it deems appropriate, including the following:

10.1.1 The Commission may seek injunctive relief in the Delaware Court of Chancery;

10.1.2 The Commission may issue an Order and schedule a hearing requiring the operator to show cause why the operator should not be subject to the penalties provided by law for the violation; and

10.1.3 The Commission may, after investigation and a public hearing, order an operator to take corrective action.

11.0 Hazardous Facility Orders

11.1 If the Commission finds a pipeline facility is hazardous to life or property, the Commission may issue an Order requiring the operator to take immediate corrective action, which may include:

PROPOSED REGULATIONS

- 11.1.1 Suspended or restricted use of the facility;
 - 11.1.2 Physical inspection;
 - 11.1.3 Testing;
 - 11.1.4 Repair;
 - 11.1.5 Replacement; or
 - 11.1.6 Other action.
- 11.2 The Commission shall give the operator written notice and an opportunity for a hearing before issuance of a hazardous facility Order unless the Commission or its Staff determines there is a serious and imminent threat to life or property, in which case, the Commission or its designated hearing examiner, may issue an emergency Order. If the Order is issued without a prior hearing, the Commission shall give the operator written notice and an opportunity for a hearing before the Commission or its designated hearing examiner as soon after the emergency Order is issued as possible.
- 11.3 The operator may take exceptions from the decision of the hearing examiner as provided by Delaware law. After receipt of the exceptions, the Commission may investigate further and hold a public hearing on the matter within a reasonable time.

12.0 Granting of Federal Regulation Waivers

- 12.1 Upon application by an operator, the Commission may grant a waiver from compliance with the federal Gas Pipeline Safety Regulations for intrastate pipeline transportation, subject to review by the Office of Pipeline Safety Regulation of the United States Department of Transportation.
- 12.2 Waivers may be granted for particular circumstances where it is inappropriate for an operator to follow a regulation of general applicability.
- 12.3 Before granting a waiver, the Commission must give notice and opportunity for written comments and hearing, unless the Commission finds that notice is impracticable, unnecessary, or not in the public interest.
- 12.4 If the Commission finds a requested waiver is consistent with gas pipeline safety and is otherwise justified, the waiver must be issued under appropriate terms and conditions with a statement of reasons for granting the waiver.
- 12.5 If the Commission finds a requested waiver is inconsistent with gas pipeline safety or is otherwise unjustified, the request must be denied, and the applicant notified of the reasons for denial.
- 12.6 The Commission must give the Office of Pipeline Safety Regulation of the United States Department of Transportation written notice of each waiver at least 60 days before it becomes effective. Each notice of waiver must provide the following information:
- 12.6.1 The name, address, and telephone number of the applicant;
 - 12.6.2 The safety standards involved;
 - 12.6.3 A description of the pipeline facilities involved; and
 - 12.6.4 The justification for the waiver, including the reasons why the standards are not appropriate and why the waiver is consistent with gas pipeline safety.
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EXECUTIVE DEPARTMENT DELAWARE ECONOMIC DEVELOPMENT OFFICE

Statutory Authority: 29 Delaware Code Sections 5005(11) and 5053(k)
(29 Del.C. §§5005(11) and 5053(k))

PUBLIC NOTICE

Procedures Governing Delaware Tourism Grant Program

In accordance with procedures set forth in 29 Del.C. Ch. 11, Subch. III and 29 Del.C., Ch. 101, the Director of the Delaware Economic Development Office is proposing to adopt a regulation for the administration and operation of the Delaware Tourism Grant Program. The proposed regulation sets forth the procedures governing the requirements, approval process and issuance of funds appropriated to the Delaware Economic Development Office to administer the Delaware Tourism Grant Program.

The Director of the Delaware Economic Development Office or an employee of the Delaware Economic Development Office designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed regulation on December 3, 2008 at 9:00 A.M. to 10:30 A.M. at Delaware Economic Development Office, 99 Kings Highway, Dover, DE 19901. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Kate Kreppien, Administrative Specialist, Delaware Economic Development Office, 99 Kings Highway, Dover, DE, 19901-7305. Written comments must be received on or before December 1, 2008. Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing Kate Kreppien at the Dover, Delaware, address of the Delaware Economic Development Office set forth above, or by calling her at (302) 672-6842

454 Procedures Governing Delaware Tourism Grant Program

1.0 Definitions

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

“Application” means an application submitted to DTO on such form or forms, together with all relevant attachments, that DTO may in its sole discretion, require in connection with administration of the Grant.

“Applicant” means any person, including individuals, firms, partnerships, associations, societies, trusts, public or private corporations, not for profit corporations or other legal entities, including public or governmental bodies as well as natural persons for which a Project is undertaken or proposed to be undertaken.

“Advertising” means, including but not limited to, any and all advertisements in brochures, newspapers, magazines and television commercials.

“Branded Annual Campaign” means the plan designated by DTO as its current marketing campaign.

“DEDO” means the Delaware Economic Development Office.

“Direct Grant” shall have the meaning ascribed to such term in 9.0 hereof.

“Director” means the Director of DEDO.

“DTO” means the Delaware Tourism Office, a division of DEDO.

“Final Approval” means the final approval of an Application by the Director or the Tourism Director in accordance with 29 Del.C. §5005(10).

“Grant” means a Direct or Matching Grant.

“GRC” means the Grant Review Committee consisting of representatives from DTO, the TAB, the Governor’s Tourism Advisory Board and/or the Tourism House Committee of the General Assembly of the State.

“Matching Grant” shall have the meaning ascribed to such term in 10.0 hereof.

“PAT” means Public Accommodation Tax pursuant to Chapter 61 of Title 30 of the Delaware Code.

PROPOSED REGULATIONS

“Project or Projects” means any activity which is designed to enhance or promote the State as a destination for tourists and other travelers.

“Promotional Material” means, including but not limited to, any and all maps, brochures, travel guides, websites or online marketing created (both printed and electronic) for the Project.

“State” means the State of Delaware.

“TAB” means the Tourism Advisory Board created by 29 Del.C. §5008.

“Tourism Director” means the director of DTO.

2.0 Enabling Legislation

- 2.1 Pursuant to 29 Del.C. §5003, DEDO was established. Pursuant to 29 Del.C. §5008 the TAB was established. DEDO has authority to make regulations pursuant to 29 Del.C. §5005(11).

3.0 Purpose

- 3.1 The purpose of this Regulation is to establish criteria for the administration of the Direct and Matching Grants. The Regulations contain procedures governing the process for applying to DTO for economic assistance under the Direct and Matching Grants, pre-closing and post-closing procedures and criteria for the approval or disapproval of an Application.

4.0 Grant Terms

- 4.1 Length of Term. Funded Grant Projects shall have a maturity of no more than two (2) years.
- 4.2 Payments. The Direct and Matching Grant programs are reimbursement programs. The initial payment will be made based on the awarded amount and length of Grant term. Further payments will be paid upon timely receipt of required reports, proof of completion of the Project to date and submission of invoices supporting the expenditure of the funds appropriated. To receive final payment the Project must be completed.
- 4.3 Reporting. Final and quarterly reports, as required by DTO, must be submitted to DTO starting immediately after the effective date of signed Grant agreement. These reports will be required until the Project is completed. Reports will be submitted along with copies of invoices, copies of checks for payment to invoices along with copies of checks for such invoices.
- 4.4 Repayment. Clawback Provision - DTO shall determine, in its sole discretion, appropriate clawback provisions for each Applicant under which the Applicant may be required to repay some or all of the Grant funds.

5.0 Non-Use Of Funds

- 5.1 Based on the Project, other restrictions on the use of the funds may be added at the time of the award.
- 5.2 Funds may not be used for general operating expenses, including staff salaries, overhead or personnel expenses.
- 5.3 Funds may not be used for administrative expenses, including any commissions, fees or other expenses for administration of the Project.
- 5.4 Funds may not be used for food and beverages.
- 5.5 Funds may not be used for equipment purchase or rental unless it is specifically related to the project.
- 5.6 Funds may not be used for business directories.
- 5.7 Funds may not be used for postage, shipping and office supplies.
- 5.8 Funds may not be used for meeting expenses.
- 5.9 Funds may not be used for website domain registration or hosting.
- 5.10 Funds may not be used for any purpose in violation of Federal, State or local law.

6.0 Application Procedure

- 6.1 Before submitting an Application, it is recommended that the Applicant consult with DTO to determine if the Project is eligible for consideration.
- 6.2 Applicants forms may obtained by downloading it from our website <http://dedo.delaware.gov> or by contacting the Delaware Tourism Office, 99 Kings Highway, Dover, DE 19901. Phone (302) 739-4271.
- 6.3 Direct or Matching applications must be delivered or mailed to the Delaware Tourism Office, 99 Kings Highway, Dover, DE 19901. Faxed or emailed applications will not be accepted.

7.0 Application Requirements

- 7.1 All Grant Applications must be completed on the required forms together with all relevant attachments, that DTO may in its sole discretion require. Incomplete Applications will not be considered.
- 7.2 Submit four (4) complete copies of each Grant.
- 7.3 Additional Application requirements for Direct and Matching Performance Grants are listed in 9.0 and 10.0 hereof.
- 7.4 Applications must include a completed marketing plan and budget for the Project.
- 7.5 Applications must include an out of state distribution plan for the Project.

8.0 Award Process

- 8.1 When an Application is complete to the satisfaction of DTO, DTO will evaluate the Project.
- 8.2 After completing the evaluation, a determination shall be made by the GRC regarding the merits of the request.
- 8.3 The GRC shall use its reasonable best efforts to complete the award process based on the schedule set up by DTO.
- 8.4 Criteria
 - 8.4.1 The Applicant must demonstrate their Project supports the Branded Annual Campaign. Awards will be based on the Applicant's ability to communicate a plan that the GRC believes is possible and has the potential to increase the value of tourism within the State.
 - 8.4.2 The Project must be directed toward attracting new or retaining out-of-state visitors and overnight business. A tracking mechanism must be in place to measure the return on investment for visitation or overnight stays.
- 8.5 At the sole discretion of the DTO, it may be necessary for the grant applicants to make an oral presentation to the GRC.
- 8.6 Upon recommendation by the GRC, the Application shall be submitted for Final Approval or disapproval.
- 8.7 Final Approval shall constitute official action on the part of DTO demonstrating its intent to authorize the issuance of the requested financial assistance. Final Approval will be binding on DTO provided, however, that DTO may withdraw Final Approval at any time prior to disbursement of financial assistance, if it determines that (1) the Applicant's circumstances have changed adversely since the date of Final Approval or since completion of the Application, if such adverse change did not come to DTO's attention prior to Final Approval or (2) the Application contained a statement that was materially false or failed to include information necessary to prevent the Application from being materially false.
- 8.8 Final Approval will be effective for a period not to exceed two (2) year, and all funds committed for a Project must be completely dispersed by the DTO within that time. DTO, in its sole discretion, may make limitations or grant extensions with respect to this three-year period.
- 8.9 The Applicant shall be issued a commitment letter outlining the terms and conditions of the Final Approval. When the commitment letter has been accepted by the Applicant and returned to DTO, and all required documentation is prepared in form and content satisfactory to DTO, a closing is scheduled and financial assistance is made available to the Applicant.

9.0 Direct Grant Program**9.1 Program Description**

9.1.1 The purpose of this Grant is to attract visitors to the State and to bring in overnight business which contributes to PAT. The goal of the program is to increase the value and visibility of the State's tourism product. All Projects must support the Branded Annual Campaign.

9.2 Eligibility Standards

9.2.1 To be eligible, Applicants must have a marketing plan and budget plan including the incorporation of the Branded Annual Campaign.

9.2.2 Only Applicant's licensed to do business in the State may apply. Out of state entries are eligible, however the Direct Grant recipient must be a tourism entity located within the State.

9.2.3 The same Applicant may apply for more than one Direct Grant however, not for the same Project or while there is an awarded Grant for the same Project still active.

9.2.4 The same Applicant may not apply for a Direct and Matching Grant for the same Project at the same time.

9.2.5 Applicants may not apply for a Direct Grant if Grant requirements were not met in the previous fiscal years.

9.3 Application Categories:

9.3.1 Promotional Materials or Advertising.

9.3.2 Photography and Video Production, including but not limited to, CD's, DVD's or television commercials.

9.4 Direct Grant Requirements

9.4.1 The Project must be directed toward attracting new out-of state visitors and overnight business. A tracking mechanism must be in place to measure the return on investment for visitation or overnight stays.

9.4.2 "Funded in part by the Delaware Tourism Office", DTO's web site address, phone number and logo must appear on all Promotional Materials and Advertising.

9.4.3 The Project must target one of the niche markets that have been identified in the Branded Annual Campaign.

10.0 Matching Grant Program**10.1 Program Description**

10.1.1 The purpose of this program is to attract visitors to the State and to bring in overnight business which contributes to PAT. The goal of the program is to increase the value and visibility of the State's tourism product. All Projects must include at least one lodging taxpaying property in order to promote overnight business to the State. All Projects must support the Branded Annual Campaign.

10.2 Eligibility Standards

10.2.1 To be eligible, Applicants must have a marketing plan and budget plan including the incorporation of the Branded Annual Campaign.

10.2.2 Only Applicant's licensed to do business in the State may apply. Out of state entries are eligible, however the Matching Grant recipient must a tourism entity located within the State.

10.2.3 The same Applicant may apply for more than one Matching Grant however, not for the same Project or while there is an awarded Grant for the same Project still active.

10.2.4 The same Applicant may not apply for a Matching and Direct Grant for the same Project at the same time.

10.2.5 Applicants may not apply for a Matching Grant if Grant requirements were not met in the previous fiscal years.

10.2.6 Grant recipients may not receive Grant funds for the same Project more than twice or while there is a "current" Grant is for the same Project.

10.3 Application Categories

10.3.1 Promotional Materials or Advertising.

10.2.2 Collaboration of tourism partners to enhance individual product offerings by bundling.

10.3.3 Agreement between two or more organizations in which each agrees to furnish financial or in-kind support for a Project.

10.3.4 Tourism infrastructure, including but not limited to, signage, welcome centers, transportation services and seasonal guest transportation.

10.3.5 Tourism product development, including but not limited to, sports/special event development, new tourism businesses and enhancing existing tourism product offerings.

10.4 Matching Grant Requirements

10.4.1 The Project must be directed toward attracting new out-of state visitors and overnight business.

10.4.2 Matching funds are required.

10.4.3 The Applicant's matching fund commitment is part of the Application and commitment figures must be listed on the Application.

10.4.4 The Applicant's matching fund commitment must be met for full payment of the Grant.

10.4.5 No other State Grant funds may be used for the Applicant's match.

10.4.6 A tracking mechanism must be in place to measure the return on investment for visitation or overnight stays.

10.4.7 "Funded in part by the Delaware Tourism Office", DTO's web site address, phone number and logo must appear on all Promotional Materials and Advertising.

10.4.8 The Project must target one of the niche markets that have been identified in the Branded Annual Campaign.

11.0 Capability Standard: Adherence to Law

In determining whether the Project will attract visitors to the State, bring in overnight business to the State and increase the value and visibility of the State's tourism product., the Applicant shall demonstrate to DTO that the Applicant has the capability to operate and maintain such Project efficiently and that the Applicant has not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant's Application. In this regard, DTO may, in its sole discretion, rely on a sworn affidavit of the Applicant or an officer of the Applicant or an opinion of counsel of the Applicant to such effect. If an Applicant has been convicted of such a violation, DTO, in its sole discretion, may decline to consider the Application. If requested by DTO, similar proof shall be obtained from any operator or principal user of the Project.

Symbol Key

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

Final Regulations

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

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

**DEPARTMENT OF AGRICULTURE
HARNESS RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 1005 (3 **Del.C.** §10005)
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 September 9, 2008, the Commission makes the following findings and conclusions:

Summary of the Evidence

1. The Commission posted public notice of the proposed amendments to DHRC Rules 6 and 8.4.3.5.7 in the June 1, 2008 and August 1, 2008 *Register of Regulations* in Volume 11, Issue 12 and Volume 13, Issue 2, and for two consecutive weeks in June and August in The News Journal and Delaware State News. The Commission proposed to update Rule 6 (claiming rule) and delete the entire Rule 8.4.3.5.7.

2. The Commission received no written comments. The Commission held a public hearing on September 9, 2008 in which no public comments were made.

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. After considering the rule changes as proposed, the Commission hereby adopts the rule changes as proposed. The Commission believes that these rule changes will allow the Delaware Harness Racing Commission rules to more accurately reflect current policy and procedures.

5. The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on November 1, 2008.

IT IS SO ORDERED this 14th day of October, 2008.

Beverly H. (Beth) Steele, Chairman

Robert (Breezy) Brown, Commissioner

George P. Staats, Commissioner

Mary Ann Lambertson, Commissioner

Kenneth Williamson, Commissioner

***Please note that no changes were made to the regulation as originally proposed and published in the August 2008 issue of the *Register* at page 95 (12 DE Reg. 95). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[501 Harness Racing Rules and Regulations](#)

THOROUGHBRED RACING COMMISSION

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

ORDER

1001 Thoroughbred Racing Rules and Regulations

Pursuant to 29 **Del.C.** §10108(c) and 3 **Del.C.** §10103, the Delaware Thoroughbred Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on October 21, 2008, the Commission makes the following findings and conclusions:

Summary Of The Evidence

1. The Commission posted public notice of the proposed amendments in the October 1, 2008 *Register of Regulations* and for two consecutive weeks in *The News Journal* and *Delaware State News*. The Commission proposed to amend Section 11 of the rules and regulations to address Entries, Subscriptions, Delegations by amending existing Rules 11.4.2 and 11.4.3.

2. 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.

Findings Of Fact And Conclusions

1. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing. No comments were received.

2. The Commission concludes that the proposal to amend Section 11 of the rules and regulations to address Entries, Subscriptions, Delegations by amending existing Rules 11.4.2 and 11.4.3 should be adopted.

3. The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on November 1, 2008.

IT IS SO ORDERED this 21st day of October 2008.

Bernard J. Daney, Chairman

W. Duncan Patterson, Secretary/Commissioner

Debbie Killeen, Commissioner

Edward Stegemeier, Commissioner

Henry James Decker, Commissioner

***Please note that no changes were made to the regulation as originally proposed and published in the October 2008 issue of the *Register* at page 394 (12 DE Reg. 394). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[1001 Thoroughbred Racing Rules and Regulations](#)

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)
(14 Del.C. §122(b) and §154(e))
14 DE Admin. Code 255

REGULATORY IMPLEMENTING ORDER

255 Definitions of Public School, Private School and Nonpublic School

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to reauthorize 14 DE Admin. Code 255 Definitions of Public School, Private School and Nonpublic School with no changes.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Tuesday, August 5, 2008, in the form hereto attached as *Exhibit "A"*. The Department received comments from both the Governor's Advisory Council for Exceptional Citizens and State Council for Persons with Disabilities concerning the regulation's impact on Childfind responsibilities and regarding the services provided to students with disabilities in homeschools. Federal and state law extend Childfind duties to homeschooled children. As such, the Department has informed school districts of their duty to identify, locate, and evaluate students with disabilities who are homeschooled. The IDEA requires the State to ensure that: "all children with disabilities residing in the State...who are in need of special education and related services, are identified, located, and evaluated". 34 C.F.R. § 300.111(a)(1). The U.S. Department of Education, in its regulations, has extended this requirement to school districts. See, 34 C.F.R. § 300.201. The U.S. Department of Education further confirmed Childfind applies to homeschooled children when it noted if a State:

"does not recognize home schools as private schools, children with disabilities who are home-schooled are still covered by the child find obligations of SEAs and LEAs, and these agencies must insure that home-schooled children with disabilities are located, identified and evaluated, and that FAPE is available if their parents choose to enroll them in public schools."

In addition to Childfind, federal law permits school districts to use a proportionate share of funds to provide designated special education services to parentally placed private school children with disabilities. 34 C.F.R. §§

300.132-133. Such services are, however, limited to the proportionate share of funds available and are determined through a consultation process involving private school officials and representatives of parentally placed private school children with disabilities. 34 C.F.R. § 300.134. Neither federal nor state law extend these provisions to homeschooled children. Rather, if a homeschooled child is evaluated and identified as a child with a disability, the child is entitled to a free, appropriate public education upon entering the public school system.

In sum, Regulation 255 does not change the Childfind duty to identify, locate, and evaluate homeschooled children with disabilities.

II. Findings of Facts

The Secretary finds that it is appropriate to reauthorize 14 **DE Admin. Code** 255 Definitions of Public School, Private School and Nonpublic School with no changes.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to reauthorize 14 **DE Admin. Code** 255 Definitions of Public School, Private School and Nonpublic School. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 255 Definitions of Public School, Private School and Nonpublic School attached hereto as *Exhibit "B"* is hereby reauthorized. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 255 Definitions of Public School, Private School and Nonpublic School hereby reauthorized shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 255 Definitions of Public School, Private School and Nonpublic School hereby reauthorized shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 255 Definitions of Public School, Private School and Nonpublic School in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on October 8, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 8th day of September 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

255 Definitions of Public School, Private School and Nonpublic School

1.0 Public School

A public school shall mean a school or Charter School having any or all of grades kindergarten through twelve, supported primarily from public funds and under the supervision of public school administrators. It also shall include the agencies of states and cities which administer the public funds.

2.0 Private School

A private school shall mean a school having any or all of grades kindergarten through twelve, operating under a board of trustees and maintaining a faculty and plant which are properly supervised and shall be interpreted further to include an accredited or approved college or university.

4 DE Reg. 1251 (2/1/01)

3.0 Nonpublic School

A nonpublic school shall mean a private school as that term is defined in paragraph 2.0 of this regulation or any homeschool defined in 14 **Del.C.** §2703A.

7 DE Reg. 618 (11/1/03)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 154(e)
(14 **Del.C.** §122(b) and §154(e))
14 **DE Admin. Code** 540

REGULATORY IMPLEMENTING ORDER**540 Driver Education****I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 540 Driver Education in order to clarify that Delaware nonpublic school (private and homeschool) students are entitled to tuition-based driver education at rates approved by the co-chairs of the Joint Finance Committee, Delaware General Assembly.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Thursday, September 4, 2008, in the form hereto attached as *Exhibit "A"*. The Department received 63 written comments with 61 opposing the change and 2 supporting the change. The comments in opposition cited: discrimination against children in nonpublic schools; financial burden to single parents; taxes are paid by nonpublic school student parents/guardians; whether this is a violation of the Equal Protection Clause of the 14th Amendment of the U.S. Constitution; ability of students to receive their license before age 18 without driver education; and whether this action negates the benefits from the graduated license. Suggestions were made to establish a fee based system for all students whether public or nonpublic.

The proposed regulatory changes are being made by the Secretary with the consent of the State Board of Education to conform with the legislative action of the 144th General Assembly, Senate Bill 300 as follows:

"402. Section 1 of this Act provides \$500.0 ASF to the Department of Education, Driver Training (95-03-30) to develop and implement a fee structure for the provision of driver's education services to non-public school students beginning in Fiscal Year 2009.

Upon approval of the co-chairs of the Joint Finance Committee, the Department shall be authorized to promulgate rules and regulations associated with this fee structure. The fee shall not be greater than the amount charged to out-of-state non-public students attending Delaware schools.

Additionally, the Department is authorized to transfer GF FTEs in 95-03-30 to appropriated special funds throughout the fiscal year as revenue becomes available."

For clarification, 14 **Del.C.**, § 2703A *Homeschools defined* and 14 **DE Admin. Code** 255 *Definition of Public School, Private School and Nonpublic School* govern the definition of a "nonpublic school".

The Secretary and State Board of Education are bound by the legislative action of the General Assembly and as such are acting to align the current regulation with this legislation.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 540 Driver Education in order to conform with the legislative action of the 144th General Assembly, Senate Bill 300.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 540 Driver Education. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 540 Driver Education attached hereto as *Exhibit "B"* is hereby amended and shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 540 Driver Education amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 540 Driver Education in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on October 23, 2008. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 23rd day of October 2008.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 23rd day of October 2008

STATE BOARD OF EDUCATION

Jean W. Allen, President

G. Patrick Heffernan

Barbara Rutt

Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President

Jorge L. Melendez

Dennis J. Savage

540 Driver Education

1.0 Eligibility for Driver Education

- 1.1 Delaware public school residents are entitled to free driver education one time only. Delaware nonpublic school (private and homeschool) students are entitled to tuition-based driver education at rates approved by co-chairs of the Joint Finance Committee, Delaware General Assembly. Students who are not successful in their initial driver education course may register in any of the adult driver education programs for a fee.
- 1.2 The Individualized Education Program Team, in consultation with the Driver Education teacher, may make accommodations to the Driver Education program and offer specialized instruction for special education students through the student's Individual Education Program (I.E.P.).
- 1.3 Nothing in this regulation shall alter a school's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a school from providing driver education to such students.
- 1.4 Delaware residents ~~[attending school out of state as 10th graders, students attending public schools who are]~~ in excess of the September 30th unit allotment, ~~students attending private and parochial academies in state with 10th grade enrollments of less than twenty five, home schooled students~~ and any student approved by the Secretary as an exceptional case are entitled to attend summer driver education without charge. Students attending private schools in state with 10th grade enrollments of less than twenty five, [and] homeschooled students[, and eligible Delaware residents attending schools out of state] shall be entitled to attend tuition-based summer driver education at rates approved by the co-chairs of the Joint Finance Committee, Delaware General Assembly. Districts shall notify all nonpublic and public high schools in their district by May 1st annually as to the location of the nearest summer driver education program. Summer Driver Education shall be offered between June 10 and August 31 and each request for free tuition must be approved by the Secretary of Education through the ~~Office of the Education Associate, Safety and Driver Education Office of the Director of Career & Technical Education and School Climate.~~
- 1.5 Adult Driver Education programs, when offered, shall follow the same regulations established for the high school and the summer programs. The adult programs are available to any individual for a fee through a local school district in each county. The cost per student for adult driver education will be determined by the Department of Education.

2.0 Requirements for Class Time

- 2.1 The driver education course shall include a minimum of forty four (44) class hours of instruction consisting of thirty (30) class hours of classroom instruction, seven (7) class hours of in the car behind the wheel laboratory instruction and seven (7) hours of actual observation in the car. The class hours must not be less than forty five (45) minutes each. For those schools with varying class schedules the minimum classroom instruction must be no less than one thousand three hundred fifty (1350) minutes and behind the wheel laboratory instruction no less than three hundred fifteen (315) minutes.
- 2.2 Driving simulators may be substituted for the required hours of behind the wheel laboratory instruction but only up to three (3) hours of time at the ratio of four (4) hours of driving simulation to one (1) hour of actual behind the wheel laboratory instruction.
- 2.3 Off the street driving ranges or multiple driving ranges that are off the street may be substituted for actual behind the wheel laboratory instruction up to three (3) hours time at the ratio of two (2) hours of range instruction time to one (1) hour of actual behind the wheel laboratory instruction time.
- 2.4 Driving simulation and off the street driving range time shall not be taken from or cause a reduction of classroom instruction time.
- 2.5 Driving simulation and off the street driving range time shall not be substituted for more than one half (1/2) of the total required seven (7) hours of actual behind the wheel laboratory instruction and only at the ratios defined in 2.0. This includes individually or in any combination.

3.0 Curriculum

- 3.1 The Driver Education teachers shall use the statewide curriculum for driver education developed by the Department of Education for classroom instruction and behind the wheel laboratory instruction time. Teachers should include student activities requiring reading, writing and research as part of the Driver Education curriculum.

4.0 Final Grades

- 4.1 Final grades for the forty four hour driver education course shall be either pass or fail. Schools may grant one fourth (1/4) credit for successful completion of the minimum hours in both the classroom and the behind the wheel laboratory experience. The one fourth of a credit for driver education may be included as part of the elective credits counted toward graduation.
- 4.2 Pass or Fail grades must be received by the Department of Education no later than June 30th for Regular Driver Education Programs and August 31st for Summer Driver Education Programs. Final grades will be maintained by the Department for a seven year period.

5.0 Use of Driver Education Cars

- 5.1 Automobiles purchased, leased from Fleet Services or leased directly from a dealership using state funds allocated for driver education shall be used solely for the instruction of students enrolled in Driver Education; except that a school district or charter school may permit a driver education teacher to drive such automobile to and from the teacher's place of residence when the school district or charter school determines that it would be unsafe to store the automobile overnight at the school; ~~and further provided that in the case of a private school driver education teacher, the Education Associate, Safety and Driver Education at the Department of Education may permit that teacher to drive the automobile to and from school from the teacher's place of residence~~ The Director of Career & Technical Education and School Climate shall assign private school driver education teachers a state parking location to store the vehicle overnight when it appears that it would be unsafe to store the automobile overnight at the school.

6.0 Scheduling of Driver.

- 6.1 All public and nonpublic high schools with twenty five or more enrolled 10th grade students shall offer Driver Education as part of the curriculum.

1 DE Reg. 964 (1/1/98)

6 DE Reg. 773 (12/1/02)

10 DE Reg. 1587 (04/01/07)

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL****DIVISION OF AIR AND WASTE MANAGEMENT**

Statutory Authority: 7 Delaware Code, Section 6010, (7 Del.C. §6010)
7 DE Admin. Code 1147

Secretary's Order No.: 2008-A-0055

1147 CO₂ Budget Trading Program**Regional Greenhouse Gas Initiative (RGGI) to Address
Carbon Dioxide (CO₂) from Electric Generating Units (EGUs)**

Date of Issuance: October 15, 2008

Effective Date of the Amendment: November 11, 2008

I. Background:

A public hearing was held on Monday, September 22, 2008, in the Richardson and Robbins Auditorium of DNREC, 89 Kings Highway, Dover, Delaware, to receive public comment on Delaware's proposed new air regulation, Regulation No. 1147: CO₂ Budget Trading Program - Regional Greenhouse Gas Initiative (RGGI), to address Carbon Dioxide (CO₂) emissions from Electric Generating Units (EGUs) - hereinafter referred to as the "RGGI". This new regulation will create Delaware's portion of a multi-state CO₂ cap-and-trade program. The cap-and-trade program was developed by the RGGI, which is a cooperative effort among ten Northeastern and Mid-Atlantic States, to wit: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. The purpose of RGGI is to reduce the emissions of CO₂ from EGUs. CO₂ is a principal human-caused greenhouse gas which contributes to global warming.

Beginning in 2009 through 2015, the emissions of CO₂ from any EGU with a maximum rated heat input capacity of equal to or greater than 25 megawatts that is located in a RGGI state would be capped at current levels (emissions from Delaware affected facilities account for approximately 7.5 million tons). After 2015, the cap would be reduced incrementally to achieve a 10 percent reduction by 2019. Under the cap-and-trade program, one allowance is equivalent to one ton of CO₂ emissions allowed by the cap. Each subject EGU will be required to have enough allowances to cover its reported emissions during the three year compliance periods. The EGUs may buy or sell allowances, but individual EGU emissions shall not exceed the amount of allowances it possesses. The total amount of the allowances will be equal to the emissions cap for the RGGI states.

The Department has the authority to promulgate this regulation under 7 Del.C., Chapter 60. From the very beginning of this promulgation process (beginning in April of 2007 with the signing of Start Action Notice 2007-04), the Department has been extremely diligent with regard to posting all available information (including, but certainly not limited to, the draft regulatory language) concerning RGGI on DNREC's website for public review, and underwent an intense stakeholder process, including holding no less than five stakeholder workgroup meetings since February 2008, so that the public would be able to provide meaningful input concerning this regulatory matter. During this time, the Department shared pre-proposal drafts of the proposed regulations with the regulated community, and received thoughtful comment in return. The proposed regulations are also based on a model rule developed by all RGGI states, which itself was subject to development in an open and transparent process with multiple stakeholder meetings, including many stakeholders from the regulated community in Delaware.

As noted above, public comment was received by the Department, both prior to and subsequent to the public hearing on September 22, 2008. Additional comments were received from the regulated community, as well as from individual citizens, during the post-hearing phase of this matter, all of which became part of the record in this case as well. Following the close of the record for public comment, the Air Quality Management Section of the Department prepared a detailed and extensive Response Document, dated October 8, 2008, which thoroughly addressed all comments received during the pre-hearing, hearing, and post-hearing phases of this process.

Thereafter, the Hearing Officer completed her report, dated October 14, 2008, and incorporated the aforementioned Department's Response Document of October 8, 2008 into the same. Accordingly, that Hearing Officer's report, including all attachments, is expressly incorporated hereinto this Order at this time. Proper notice of this hearing was provided, as required by law.

II. Findings:

The Department has provided a reasoned analysis and a sound conclusion with regard to the responses given to each public comment, as reflected in the Hearing Officer's Report of October 14, 2008, which, again, is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department considered all timely and relevant public comments in making its determination;
5. The Department has reviewed this proposed regulation in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
6. Formal promulgation of proposed Regulation No. 1147 will create Delaware's portion of a multi-state carbon dioxide cap-and-trade program, as developed by the RGGI, which is a cooperative effort among ten Northeastern and Mid-Atlantic States to reduce the emissions of CO₂ from EGUs;
7. Upon implementation of this initiative, beginning in 2009 through 2015, the total emissions of CO₂ from all EGUs with a maximum rated heat input capacity of equal to or greater than 25 megawatts that is located in a RGGI state would be stabilized at levels roughly equivalent to average annual emissions during 2000-2002;
8. After 2015, the carbon dioxide emissions would be reduced incrementally to achieve a 10 percent reduction by 2019;
9. Under the RGGI cap-and-trade program, one allowance will be issued for each ton of CO₂ emissions allowed by the cap. Each subject EGU will be required to have enough allowances to cover its reported emissions for the 3-year control period. The EGUs may buy or sell allowances, but individual EGU emissions shall not exceed the amount of allowances it possesses. The total amount of the allowances will be equal to the emissions cap for the RGGI states;
10. Through RGGI, Delaware will accomplish a reduction of CO₂ emissions, support a green economy, promote energy independence, and provide a model for a national program to reduce CO₂ emissions;
11. RGGI's phased approach, with initially modest emission reductions, will provide clear market signals and regulatory certainty without resulting in dramatic electricity price impacts;
12. The RGGI program, once implemented, will produce numerous environmental and economic benefits for Delaware, including, but not limited to, emission reductions, cost efficiency with the use of auction allowances, overall auction design, and serving as a model for other major carbon markets under consideration in other regions, both nationally and internationally;
13. The formal Response Document, as drafted by the Air Quality Management Section of the Department's Division of Air and Waste, dated October 8, 2008 and attached to the Hearing Officer's report as Attachment "C", provides a thorough, accurate and balanced summary of the public comment received by the Department throughout all phases of the record during this regulatory promulgation. Moreover, the conclusions with respect to each issue and comment are well-reasoned and based upon the record. As such, they are sufficient to serve as specific findings for that purpose;
14. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
15. The Department's proposed regulation, as published in the September 1, 2008 Delaware *Register of Regulations* and as set forth within Attachment "A" in the Hearing Officer's report, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be

approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the Delaware *Register of Regulations*;

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

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Report dated October 14, 2008, and expressly incorporated herein, it is hereby ordered that the new regulation, Regulation No. 1147: CO₂ Budget Trading Program - Regional Greenhouse Gas Initiative (RGGI) to Address Carbon Dioxide (CO₂) from Electric Generating Units (EGUs), be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of new Regulation No. 1147 will establish the Regional Greenhouse Gas Initiative, i.e., RGGI, which is the first mandatory cap-and-trade program in the United States for carbon dioxide (CO₂), the principal human-caused greenhouse gas. It will be the culmination of a ten-state cooperative effort to reduce greenhouse gas emissions from electric power generation. Through RGGI, Delaware will accomplish a reduction of CO₂ emissions, support a green economy, promote energy independence, and provide a model for a national program to reduce CO₂ emissions.

RGGI's phased approach, with initially modest emission reductions, will provide clear market signals and regulatory certainty without resulting in dramatic electricity price impacts. The RGGI program, once implemented, will produce numerous environmental and economic benefits for Delaware, including, but not limited to, emission reductions, cost efficiency with the use of auction allowances, and overall auction design. It will also serve as a model for other major carbon markets under consideration in other regions, both nationally and internationally.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del. C.** Ch. 60.

John A. Hughes, Secretary

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

[1147 CO2 Budget Trading Program](#)

DIVISION OF WATER RESOURCES

Statutory Authority: 7 Delaware Code, Chapters 40, 60, 66, 70 and 72 (7 **Del.C.**, Chs. 40, 60, 66 & 72)

7 DE Admin. Code 7403

Secretary's Order No. 2008-W-0054

7403 Regulations Governing the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds

Date of Issuance: October 15, 2008

Effective Date: November 11, 2008

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 **Del.C.** §§8001 et seq., 29 **Del.C.** §§10111 et seq. and 7 **Del.C.** §6010(a), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers proposed regulations entitled "Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds" ("PCS"). The PCS seeks to reduce the discharge of harmful pollutants that impair the water quality of Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay and their tributaries, which are waters collectively named the 'Inland Bays'.¹ The water quality experts within the Department's Division of Water Resources ("DWR"), Watershed Assessment Section² ("WAS") drafted the proposed regulations based upon their vast knowledge of the Inland Bays water quality, their knowledge of scientific literature, and their experience working on many of the Department's underlying regulatory actions to improve the Inland Bays' water quality, all of which form the foundation for the PCS and are described in detail below.

The first regulatory foundation for the PCS is the federal and state statutory regulatory authority. The federal authority is under the Clean Water Act ("CWA"), 33 U.S.C. §1251 et seq. as amended, which the Department administers as a result of delegations from the United States Environmental Protection Agency ("EPA"). In addition, the Department has state statutory authority to protect Delaware's waters from pollution by the issuance of permits and the promulgation of regulations 7 **Del.C.** Chap. 60.

The second regulatory action that supports the PCS was the Department's exercise of its federal authority under Section 303(b) of the CWA to study Delaware's waters, to classify each of them into their appropriate uses, and to establish "Surface Water Quality Standards" based upon each classification. The Department classified the Inland Bays as waters of "exceptional recreational or ecological significance,"³ which recognizes how important these waters are to Delaware's environment and economy. This classification requires the Department to accord the Inland Bays "a level of protection in excess of that provided most other waters of the State" because they "are

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1. For ease of reference the waters and the watershed shall be referred to as the Inland Bays.
 2. While WAS is the primary author of the PCS, other Department programs assisted in its provisions, particularly the Division of Soil and Water Conservation for its expertise in stormwater regulation and the Division of Water Resources' sections such as the Wetlands and Subaqueous Land Section for its expertise in regulating wetlands, the Surface Water Discharge Section for its expertise in regulating point source discharges and the Groundwater Discharge Section for its expertise in regulating onsite wastewater treatment systems.
 3. The designation was for Rehoboth Bay, Indian River Bay, Little Assawoman Bay, and the marine portions of Indian River and Iron Branch.

recognized as special natural assets of the State, and must be protected and enhanced for the benefit of present and future generations of Delawareans."

The third regulatory building block for the PCS was the Department's comprehensive study of the State's existing water quality in a Watershed Assessment Report prepared pursuant to Section 305(b) of the CWA, and subsequent identification of all Delaware waters that failed to meet their applicable classification, as designated by the "Surface Water Quality Standards," in the list of impaired waters developed pursuant to Section 303(d) of the CWA. The Department's study determined that the Inland Bays' water quality did not meet the standard for 'exceptional waters' and were 'impaired,' which is a finding that triggers the need for the Department to take such regulatory actions as necessary to improve the Inland Bays' water quality so that it is no longer impaired.

The Department found that the Inland Bays' impairment was caused by excessive levels of the nutrients nitrogen and phosphorus, and low dissolved oxygen, which has caused excessive growth of macroalgae and phytoplankton and killed fish and other aquatic life that need adequate oxygen levels in water to survive. The overall impact of too much nitrogen and phosphorus, particularly on a fragile ecological system such as the Inland Bays with its limited tidal flows and circulation, is that all aquatic life will be threatened. If the aquatic life dies in the Inland Bays, then this region will no longer be an attraction and valuable natural resource for residents to live near its waters or for visitors to enjoy.

The Department identified the following sources of nitrogen and phosphorus pollution entering the Inland Bays: 1) discharges directly into the surface waters pursuant to a Department issued permit ("point source"), such as from wastewater treatment plants, 2) nonpoint sources such as onsite wastewater treatment and disposal systems or other land applications of these chemicals in fertilizer or wastewater which enter the Inland Bays via stormwater runoff and groundwater, and 3) the discharges from air emissions falling on the surface waters. The PCS primarily addresses the nonpoint sources of nitrogen and phosphorus pollution.

The fourth foundation for the PCS was the Department's issuance of regulations, "Total Maximum Daily Loads" (TMDLs), that determined how much nitrogen and phosphorus pollution the Inland Bays may receive and still attain their 'exceptional waters' classification. In effect, TMDLs are similar to limits the Department includes in air pollution control and water pollution control permits, but the important difference is that TMDLs not only apply to any individual source of offending pollutants, but to all properties in a watershed. The TMDLs impose a duty on the Department to implement regulatory actions to reduce the amount of nitrogen and phosphorus within the watershed, which is what the PCS does.

The Department's regulatory actions to improve Delaware's water quality faced a legal challenge, but surprisingly not from polluters but from environmental groups who claimed the Department was not achieving clean water goals fast enough. In 1997, the Department worked with EPA to resolve this litigation in a settlement approved by federal court in *American Littoral Society & Sierra Club v. EPA*. ("Consent Decree"), which established a time schedule for the Department's TMDLs as needed actions to improve water quality to meet the standards. This litigation highlights the prospect that, if the Department does not take action voluntarily to comply with the CWA, then the Department may face another legal challenge to implement the PCS and actually achieve the needed reductions in nitrogen and phosphorus from the Inland Bays' nonpoint sources.

In 1998, the Department promulgated TMDL regulations for the Inland Bays⁴ that established how much nitrogen and phosphorus must be reduced from all sources within the Inland Bays watershed in order that the waters may attain their 'exceptional' water quality standard. For point sources, the Inland Bays TMDLs required zero discharges of nitrogen and phosphorus and the systematic elimination of existing surface water discharges of nitrogen and phosphorus into the Inland Bays. The Department is implementing this regulatory action in the federal and state permits issued to regulate these point source discharges into the surface waters, and this will reduce 537 pounds per day of nitrogen and 68 pounds per day of phosphorus from being discharged into the Inland Bays.

The Inland Bays' TMDLs also estimated that 4,447 pounds per day of nitrogen and 163 pounds per day of phosphorus entered the Inland Bays from nonpoint sources. In order for the Inland Bays to attain its 'exceptional' classification and no longer be impaired, the TMDLs require that all nonpoint sources in the Inland Bays watersheds reduce nitrogen discharges by at least 40% and up to 85% and reduce phosphorus discharges by at

4. The Department issued regulations for the Little Assawoman Bay and the tributaries within the entire basin in 2005.

least 40% and up to 65%. Most of these nonpoint sources of pollutants are not easily regulated by any permit because there is no practical way to monitor these pollutants in groundwater and from stormwater runoff. However, some sources, such as onsite wastewater treatment and disposal systems, as well as stormwater, have some regulatory requirements in their design and operation and the PCS will make this existing regulation more stringent to achieve the TMDLs' needed reductions of the nitrogen and phosphorous pollution of the Inland Bays. However, until this regulation, the Department has not required nutrient reduction standards for stormwater, and only applied nitrogen standards to some large community onsite wastewater treatment and disposal systems to protect drinking water from nitrogen pollution, which regulatory requirements are not based upon the TMDLs and consequently are not intended to achieve reductions needed to end the pollution of the Inland Bays.

The Department's experts determined, after careful consideration of how the nitrogen and phosphorous reduction could be regulated, that a watershed wide regulation was needed to reduce the levels of nitrogen and phosphorous entering the Inland Bays consistent with the Inland Bays' TMDLs from each onsite wastewater treatment disposal system and from the lands adjoining the waters if the natural vegetation is disturbed. The experts developed a PCS for the Inland Bays watershed, which contains three main components: 1) a requirement for performance standards for new or replacement onsite wastewater treatment and disposal systems that reflect improvements in the treatment technology and a requirement for improved maintenance of all systems, 2) inclusion of criteria in sediment and stormwater plans to reduce nutrients in stormwater runoff, and 3) a requirement that any new major land development include a riparian buffer area to reduce the nitrogen and phosphorous pollution from stormwater runoff and groundwater flows into certain designated Inland Bays' waters within the watershed. This buffer area is to be maintained to allow the land to act as a natural filter and absorb the nitrogen and phosphorous pollution before they enter the waters and pollute the Inland Bays.

The PCS' onsite wastewater treatment and disposal system, stormwater, and buffer requirements have many necessary details, but also allow considerable flexibility to accommodate certain specific needs. The details and flexibility are from almost a decade of development of the PCS. The Department's regulatory development process for the PCS was extraordinary in its efforts to reach all concerned citizens and business owners. The Department worked with many individuals and organizations to identify all concerns with the PCS, and to educate the public on the need to reduce the amount of nitrogen and phosphorous that is polluting the Inland Bays. The common goal of all concerned was that the Inland Bays' water quality needed to be improved to meet the 'exceptional' water quality standard.

The Department conducted a series of meetings and public workshops before it first published its proposed PCS regulation in 2007, which was the subject of a 2007 public hearing. This PCS version addressed the pollution from onsite wastewater treatment and disposal systems and stormwater, but deferred addressing pollution from the destruction of riparian buffers until a later date. Many of the public comments at the 2007 public hearing stressed the need for the Department to address the entire nonpoint source water pollution problem at the same time and include buffer provisions. Based upon the public comments, the Department again met with individuals and organizations in order to resolve concerns with the proposed regulation. The Department eventually withdrew the prior PCS version and published a revised version as a proposed regulation in the June 1, 2008 issue of the ***Delaware Register of Regulations***. This PCS addressed the three components, onsite wastewater treatment and disposal systems, a buffer area and stormwater.

The PCS was the subject of a June 23, 2008 public hearing before the Department's Senior Hearing Officer, Robert P. Haynes, at the Cheer Center in Georgetown, Sussex County. An estimated 400 persons attended the public hearing, and expressed comments both in favor and in opposition to the PCS. Mr. Haynes further developed the Department's administrative record by seeking advice from the Department's technical experts, who prepared a response and suggested minor changes to the PCS. Mr. Haynes prepared a report of recommendations ("Report"), dated October 14, 2008, a copy of which is attached hereto and incorporated herein. The Report recommends that the Department adopt the proposed regulations, as revised to include non-substantive changes, as final regulations.

Discussion and Reasons

The above litany of regulatory actions as building blocks for the PCS and the considerable time and effort in the PCS' regulatory process highlights the Department's difficulty to reduce nitrogen and phosphorous pollution

from nonpoint sources. The difficulty is partly due to the fact that the nitrogen and phosphorus that enters the Inland Bays comes from any deposit of such pollutants within the entire watershed because any amount of deposit of these nutrients at the far outer reaches of the watershed will flow to the Inland Bays and adversely impact its water quality, which already has too much nitrogen and phosphorous pollution to attain the required 'exceptional' water quality standard required by the CWA and its regulations, and state law and the Department's regulations.

The PCS is the method the Department's experts recommend as an appropriate regulatory action to require nonpoint sources in the Inland Bays watershed to reduce the pollution from nitrogen and phosphorous to levels consistent with the Inland Bays TMDLs. Based upon the entire record, and relying upon the knowledge of the Department's staff, I find that there is considerable science to support the need to take regulatory action now to reduce nonpoint source pollution. I hereby adopt the proposed regulations attached to the Report as the Department's final regulations and I further adopt the Report to the extent it is consistent with this Order. The reason for this decision is simple and straightforward. The Department's failure to take regulatory action now will jeopardize the continued viability of the Inland Bays as bodies of water classified as 'exceptional waters.' Moreover, not approving this PCS could cause more litigation based upon a failure to comply with the CWA. Consequently, I approve of the PCS as a reasonable method to reduce nitrogen and phosphorous entering the Inland Bays from nonpoint sources.

All empirical evidence supports that action is needed now to improve the Inland Bays water quality in order that these waters may attain their 'exceptional' water quality standard. The PCS is based upon sound science and well-supported by the technical judgment of water quality experts, including those outside of the Department. The reasonableness of the PCS is based in part upon the hard work of many, including those who continue to oppose the regulation of nonpoint sources of pollution. The Department is grateful for the time and interest spent by all concerned. Nevertheless, the lack of a complete consensus does not provide an excuse for inaction. The PCS will allow the Department to satisfy state and federal laws and regulations, which impose upon the Department a duty to take regulatory action to reduce nitrogen and phosphorous discharges into the Inland Bays.

The PCS will reduce the amount of harmful pollutants that will enter the Inland Bays, but the improvements will occur over time as new developments include buffer areas and improved stormwater management and as new onsite wastewater treatment and disposal systems with better treatment technology are installed. The time to make these improvement also supports adopting the PCS now because the Inland Bays' water quality cannot afford any more delays while more nitrogen and phosphorous enters the water from nonpoint sources. Any delay in reducing the pollution from nonpoint sources will only delay the time when the Inland Bays achieves its 'exceptional' water standard, as required by the CWA and the Department's regulations. While the costs of individual technologies may decrease, the overall costs associated with reducing nonpoint sources of pollution will continue to increase; hence, taking action now will enhance the cost-effectiveness of the necessary controls. The need for regulatory action now also is prompted by growth of the population that resides in the Inland Bays watershed and its popularity with tourists. Each resident and visitor, while welcome, places a strain on the Inland Bays water quality because onsite wastewater discharges will increase and more of the riparian buffer areas will be lost to new development. Consequently, this PCS is needed now to start reducing prospectively the nitrogen and phosphorous pollution caused by onsite wastewater treatment and disposal systems and by the destruction of natural riparian buffers that absorb the nitrogen and phosphorous to reduce it from entering the waters.

The PCS establishes a requirement that any new "major" land development, as defined by local zoning authorities, include a buffer area adjoining Inland Bays waters that have been mapped by the Department after consultation and public input during the lengthy regulatory development process. This buffer area requirement was challenged as unreasonable and outside the Department's authority. The buffer area requirement also was viewed as interfering with local authority over land use regulation. The Department does not agree that the buffer areas requirement is unreasonable, outside of its federal and state authority or in conflict with local land use regulation. The buffer areas are required to protect the water quality of the Inland Bays, which is one of the Department's central purposes, as delegated from the General Assembly. The regulation to ensure water quality requires property owners to change the way they may use their property, but this exercise of regulation is similar to authority to prevent the discharge of pollution from a pipe into a stream, or by requiring property owners to install stormwater management facilities, or to ban buildings near wells or septic systems and to require a safe separation distance between a well and septic system. Environmental regulation means exercising control over sources of pollution, and property owners have no right to unfettered pollution.

The buffer areas are needed to protect the Inland Bays from adverse water quality consequences of more nitrogen and phosphorous pollution entering these already 'impaired' and, hence, polluted waters. The regulatory concept protects and improves water quality in two ways: 1) it protects already vegetated riparian corridors from transitioning from an ecological mechanism that naturally filters out these pollutants, and 2) it protects water quality in cases where no riparian buffer zone exists by creating an area that will improve and protect water quality. Because of the natural ability of buffers to protect streams from these harmful pollutants, the PCS' establishment of buffer zones may seem unusual since the owner of the buffer zone's land may not have any nitrogen or phosphorous (either as fertilizer or wastewater from a septic system) anywhere on the property. Nevertheless, the buffer area is needed under the watershed concept of regulation in which every property owner is subject to regulation to reduce nitrogen and phosphorous from entering the Inland Bays. This is because the regulation is designed to reduce nutrient loads from all nonpoint sources, and nitrogen-rich ground-waters are, in many cases, intercepted and treated by soils and vegetation growing within a buffer. Owners of the buffer zone land play an essential role because they are adjacent to designated waters that are needed in this watershed-wide regulatory effort. If the remaining buffer areas are destroyed, then buffers as a natural method of pollution control will be removed forever and the pollution of the Inland Bays will continue and water quality will decline. The buffer areas are needed to absorb the nitrogen and phosphorous before it enters the waters and the PCS properly requires that the remaining buffer areas be preserved.

The Department submits that the PCS' buffer zone requirement does not conflict with local laws and ordinances. The Department's purpose is to regulate for water quality purposes. The Department is not aware of any conflict between the buffer area and the county land use ordinances. Should a building be built in a PCS buffer area, then there would be a violation of the PCS, which could allow the Department to undertake such enforcement action as appropriate to end the pollution. This type of environmental regulation is no different than the requirement that owners in their building plans set aside land for stormwater management facilities in order to satisfy environmental regulations. The Department's PCS also is taken under its joint federal and state authority to administer the CWA, which may also allow federal regulation to trump any state or local law that prevents reducing the pollution entering the Inland Bays. Thus, any conflict between the Department's regulation and local land use regulation hopefully will not occur, but this Order shall direct the Department's permits to be issued consistent with the PCS in order to reduce any possible conflict with current or future local land use control. With the PCS, the Department is fulfilling its CWA and state law duties to improve the water quality of the Inland Bays so that it attains its 'exceptional' water quality standard. The protection of the existing riparian buffer areas is necessary to protecting the Inland Bays.

The PCS' onsite wastewater treatment and disposal system performance standards also were challenged as unreasonable, especially those applicable to individual onsite septic systems. The PCS recognizes that new technology is available for septic system installations that will reduce the amount of nitrogen and phosphorous discharged into the groundwater and then to surface waters. This change is consistent with the Department's recognition and adoption of regulations that require the best available technology be used to prevent pollution.

Admittedly, the Inland Bays will not change overnight as a result of this Order. Instead, the deterioration of water quality is occurring gradually, but relentlessly due to increased destruction of the natural buffer areas along the waters and the installation of each onsite wastewater treatment and disposal systems that discharge more nitrogen and phosphorous than discharged by the types required by the PCS, which have been commercially available for many years. Despite the great controversy over the PCS, there is one point of agreement, namely, everyone wants the Inland Bays to have the cleanest possible water and the most abundant aquatic life.

The dispute arises over what regulatory action the Department should implement to achieve the 'exceptional' water standard. The only alternative from opponents of the PCS is to do nothing or very little, which is not a viable option in light of the federal mandate to take regulatory action. The PCS is a reasonable method of regulation, which will require that new systems installed in particularly sensitive areas employ improved treatment technology to reduce the discharge of nitrogen and phosphorous. Similarly, the PCS is reasonable in its regulation to require any new land development to preserve and maintain buffer areas to protect the water quality from receiving excessive amounts of nitrogen and phosphorous. The PCS provides flexibility in the size of the buffer based on a development's use of other ways to reduce nutrients in the development. Further, the PCS is fair and equitable in that it addresses all major sources of nonpoint source pollution and distributes the costs of improving water quality over a broad base of watershed users.

The Department understands that every regulatory action it takes controls the use of property. Indeed, the very essence of environmental regulation is to regulate the use of property in a way to reduce pollution. The same principle applies to creating a buffer area that requires a wastewater treatment facility to eliminate its surface water discharge into the Inland Bays, or for the Department to regulate property owners to install any pollution control equipment to meet certain established standards designed to protect the environment and public health. The Department requires pollution control equipment for solid waste facilities, air emission, and water discharges and the only difference is the regulation of a watershed, but that is the appropriate action to take to improve the Inland Bays' water quality that is being polluted by nonpoint sources throughout the watershed.

The Department's ability to regulate the Inland Bays' water quality is supported by considerable federal and state regulatory authority. In contrast, the right of property owners to pollute is subject to environmental regulation. There is no constitutional right to pollute when laws and regulations prohibit such pollution, and the Inland Bays TMDLs established that the Inland Bays are being polluted from nonpoint sources that allow too much nitrogen and phosphorous to enter the waters. The nonpoint sources contribute most of this pollution and the PCS is the reasonable, fair and equitable solution to reduce the pollution from nonpoint sources.

The Department is aware of the higher cost of the improved onsite wastewater treatment and disposal systems and the burden imposed by not allowing a land owner to develop every inch of waterfront property. The Department has carefully considered the financial impacts, and concluded that, on balance, the PCS is needed and reasonable even with the potentially adverse economic impact to individual property owners. Additionally, the flexibility provided within the regulation minimizes adverse financial impacts to individual property owners. The right of a citizen to pollute does not depend on their income or whether they live in a modest home with a septic system or own waterfront property in the hopes of a significant windfall from future land development. The Department regulates for the purpose of replacing the onsite wastewater treatment and disposal systems that add to the Inland Bays pollution the most to be replaced with commercially available pollution-reducing technologies, and will assist those who cannot afford the cost within its authority to provide such assistance. Moreover, the PCS includes flexibility for specific financial hardship considerations that may provide certain property owners more time to comply. The plight of the waterfront owner is the same as others who are faced by any change in environmental regulation or law. It is the same risk as other changes that may occur to the property, such as the location of a highway or a solid waste disposal facility. The Department's analysis indicates that the buffer area will offer aesthetic amenities and will be beneficial in the long-term to the value of property, particularly since buffers will ultimately reduce pollutant loads and eliminate nuisance algal accumulations and fish kills.

In sum, the PCS is a reasonable, albeit not a perfect effort, to confront the difficult regulatory task to reduce the amount of nitrogen and phosphorous that enters the Inland Bays from nonpoint sources, which are reductions that the TMDLs and the CWA require. The buffer area, stormwater requirements, and performance standards for onsite wastewater treatment and disposal systems will only go into effect prospectively for new land development and new or replacement onsite wastewater treatment and disposal systems. Owners of onsite wastewater treatment and disposal systems will be required to employ pollution-reducing technologies in the future, beginning with the properties within 1,000 feet of the tidal portions of the Inland Bays and ending by 2015 when it applies to all properties in the Inland Bays watershed. These components of the PCS will achieve the needed reduction to allow the Inland Bays to attain the duly promulgated water quality standards along with the other regulatory actions the Department is undertaking.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary, adopts the proposed regulation as final regulations, as set forth in the Appendix to the Report, under 29 **Del.C.** §6010(a);
2. The issuance of the proposed regulations as final regulations will protect and improve the water quality of the Inland Bays and allow, together with other Department regulatory actions, the Inland Bays to attain their duly promulgated water quality standards;
3. The PCS approved by this Order is a reasonable, fair and equitable method of regulation to reduce the discharge of nitrogen and phosphorous from onsite wastewater treatment and disposal systems and from properties adjoining the Inland Bays' waters, and is supported by sound technical analysis, ample scientific literature and facts;

4. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations, held a public hearing in a manner required by the law and regulations, and considered all timely and relevant public comments in making its determination;

5. The Department's proposed regulations, as set forth in the Appendix to the Report, are not arbitrary or capricious, and are consistent with the applicable laws and regulations; and that;

6. The Department shall provide written notice to the persons affected by the Order, as determined by those who participated in this rulemaking at the June 23, 2008 public hearing, including participation through the submission of written comments.

John A. Hughes, Secretary

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

[7403 Regulations Governing the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds](#)

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Commission for Adult Entertainment Establishments	Mr. John R. Henry, Jr.	02/28/2010
Council on Housing	Ms. Roseann H. Harkins	09/24/2011
	Mr. Hugh D. Leahy, Jr.	09/24/2011
	Ms. Constance C. McCarthy	09/24/2011
	Mr. Ralph W. Peters, Jr.	09/24/2011
	Ms. Ruth S. Sokolowski	09/24/2011
Council on Transportation	Ms. Norma H. Zumsteg	09/24/2011
	The Honorable J. Benjamin Ewing Mr. Ted C. Williams	08/25/2011 08/19/2011
Delaware Board of Nursing	Ms. Jessica Freeman	08/01/2011
Delaware Nursing Home Residents Quality Assurance Commission	Ms. Patricia C. Engelhardt	09/04/2011
	Ms. Karen E. Gallagher	09/04/2011
	Ms. Elisabeth A. Furber	09/04/2011
	Ms. Vicki Lee Givens	09/04/2011
	Ms. Holly L. Rolt	09/04/2011
Governor's Commission on Community and Volunteer Service	Mr. John R. Danzeisen	09/24/2011
	Ms. Margarita Rodriguez-Duffy	09/24/2011
	Ms. Sally J. Wojcieszyn	09/24/2011
Leadership for Education Achievement in Delaware Committee	Ms. Diane T. Donohue	At the Pleasure of the Governor
Southern Regional Education Board	Patrick E. Savini, Ed.D.	06/30/2012
Sussex County Vocational-Technical School Board of Education	Ms. Annelle L. O'Neal	09/26/2015

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)

Secretary's Order No. 2008-A-0050

Date of Issuance: September 25, 2008

Effective Date: September 25, 2008

Delaware Visibility State Implementation Plan

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 Del.C. §§8001 *et seq.* and 7 Del.C. §6010(c), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced matter.

This Order considers the proposed 'Delaware Visibility State Implementation Plan ("Proposed SIP"), which the Department's experts in the Division of Air and Waste Management, Air Quality Management Section prepared to comply with the United States Environmental Protection Agency's ("EPA") Regional Haze Rule. The EPA delegated to the Department the authority to administer certain responsibilities in Delaware under the federal Clean Air Act, as amended, 42 U.S.C. §§7401 *et seq.* ("CAA"), including the Regional Haze Rule that seeks to protect visibility, especially in the 156 national parks and wilderness areas denoted as Federal Class I areas. The nearest Class I area to Delaware is located in New Jersey. The Regional Haze Rule requires state, tribal and federal agencies to work together to improve visibility, and for each state to develop a series of state implementation plans ("SIPs") that set forth the plan to reduce visibility impairment to meet a 2064 deadline requiring that the visibility in all Class I areas will be returned to natural conditions.

The Department's technical experts within the Division of Air and Waste Management, Air Quality Management Section, after the required consultation with the Mid-Atlantic/Northeast Visibility Union ("MANE-VU") Regional Planning Organization ("RPO") members, Federal Land Managers ("FLMs") responsible for the Class I areas, and the EPA, prepared the extensively researched one hundred and ten page Proposed SIP. The Proposed SIP considers and demonstrates Delaware's efforts to satisfy the following Regional Haze Rule requirements: 1) monitoring strategies for evaluating visibility impacts, 2) baselines and trends, 3) long-term strategies, 4) how Delaware meets its fair share of the "reasonable progress goals" towards reducing visibility impairment in Class I areas, and 5) Best Available Retrofit Technology ("BART"). The Proposed SIP also demonstrates that Delaware has met its Regional Haze Rule obligations for the Regional Haze Rule's 2018 visibility impairment standard.

On August 17, 2008 and on September 1, 2008, the Department provided public notice of the Proposed SIP, and held a September 23, 2008 public hearing as required by EPA regulations in order to provide the public an opportunity to comment on the Proposed SIP. No one from the public attended the hearing and the Department received one written comment, which indicated general agreement with the Proposed SIP. Jack Sipple of the Department's Division of Air and Waste Management, Air Quality Management Section developed the record at the hearing with hearing exhibit, including voluminous supporting documents. At the hearing, Mr. Sipple recommended several minor technical and grammatical corrections to the Proposed Plan.

The Department's presiding hearing officer, Robert P. Haynes, reviewed the record and orally recommended that the Department approve the Proposed SIP, as revised at the hearing, as a final plan. I agree with the hearing officer's recommendation and hereby approve the Proposed SIP, as revised at the hearing, as the Department's final plan to be submitted to the EPA to comply with the CAA and EPA's CAA regulations.

In conclusion, the following findings and conclusions are entered:

The Department, acting through this Order of the Secretary hereby approves "Delaware Visibility State Implementation Plan" as a final plan, as attached hereto;

GENERAL NOTICES

The Department shall have this Order published in the *Delaware Register of Regulations* and in newspapers in the same manner as the notice of the Proposed SIP.

John A. Hughes,
Secretary

***Please Note: Due to the size of the document, it is not being published here. A pdf version of the document is available at:**

[Delaware Visibility State Implementation Plan](#)

Appendix 1-1	Contributions to Regional Haze in the Northeast and Mid-Atlantic United States (NESCAUM, August 2006) [aka <i>Contribution Assessment</i>]
Appendix 3-1	MANE-VU's Final Interim Principles for Regional Planning
Appendix 4-1	Federal Land Manager comments and State/Tribe responses
Appendix 7-1	Technical support documentation for the MANE-VU -VU 2002 Base Year Inventory
Appendix 7-2	MANE-VU -VU 2002 Base Year Inventory Tables
Appendix 7-3	Documentation of 2018 Emissions from Electric Generation Units in the Eastern U.S. for MANE-VU's Regional Haze Modeling (Alpine Geophysics, March 2008)
Appendix 7-4	Development of Emissions Projections for 2009, 2012, and 2018 for Non-EGU Point, Area, and Non-road Sources in the MANE-VU Region (MACTEC, February 2007)
Appendix 7-5	2009, 2012, and 2018 Projection Year tables (SMOKE inputs) for EGU, Non-EGU Point, Area, and Non-road Sources in Delaware
Appendix 7-6	Delaware VOC Regulations
Appendix 8-1	Letters to Delaware BART-subject facilities
Appendix 8-2	Delaware BART Sources, Unit Descriptions and Facility's BART Analysis (5-Factor Engineering Analysis); with Addendums
Appendix 8-3	Delaware Title V Regulation
Appendix 8-4	Delaware Regulation 1102
Appendix 8-5	Copy of Evraz-Claymont Steel Title V Permit
Appendix 8-6	Technical Support Document for Regulation 1146
Appendix 9-1	Baseline and Natural Background Visibility Conditions—Considerations and Proposed Approach to the Calculation of Baseline and Natural Background Visibility Conditions at MANE-VU Class I Areas (NESCAUM, December 2006)
Appendix 9-2	The Nature of the Fine Particle and Regional Haze Air Quality Problems in the MANE-VU Region: A Conceptual Description (NESCAUM, November 2006)
Appendix 9-3	Assessment of Reasonable Progress for Regional Haze in MANE-VU Class I Areas (MACTEC, July 2007)(called the Reasonable Progress Report)
Appendix 9-4	Five-Factor Analysis of BART-Eligible Sources: Survey of Options for Conducting BART Determinations (June, 2007)

GENERAL NOTICES

687

Appendix 9-5	Assessment of Control Technology Options for BART-Eligible Sources: Steam Electric Boilers, Industrial Boilers, Cement Plants and Paper and Pulp Facilities (NESCAUM, March 2005)
Appendix 9-6	MANE-VU Modeling for Reasonable Progress Goals: Model Performance Evaluation, Pollution Apportionment, and Control Measure Benefits (NESCAUM, February 2008)
Appendix 9-7	2018 Visibility Projections (NESCAUM, March 2008)
Appendix 9-8	Non-EGU Source Shutdowns in the MANE-VU Region
Appendix 9-9	Top 167 EGUs in Eastern U.S. Developed by MANE-VU
Appendix 9-10	Technical Support Document on Measures to Mitigate the Visibility Impacts of Construction Activities in the MANE-VU Region”
Appendix 9-11	<i>Analysis of Speciation Trends Network Data Measured at the State of Delaware</i> , Philip K. Hopke and Eugene Kim, Center for Air Resources Engineering and Science Clarkson University. January 20, 2005
Appendix 9-12	Inter-RPO State/Tribal and FLM Consultation Framework
Appendix 10-1	Inter-RPO Consultation Reasonable Progress)

Please Note: To view the Appendix documents click on the document name.

DELAWARE HEALTH CARE COMMISSION**PUBLIC NOTICE**

The Delaware Health Care Commission (Commission), in accordance with 16 **Del.C.** §9925(a) and 29 **Del.C.** §10115, hereby gives notice that it shall hold a public hearing on proposed regulation of the Delaware Health Information Network (DHIN). The hearing will be held at 10:00 a.m. on Tuesday, November 25, 2008, at Delaware Technical and Community College, Corporate Training Center, Room 400B.

The intent of the proposed regulation is to streamline and reduce the legal documentation necessary to participate in the DHIN, to introduce new regulation to address provisions of dispute resolution, patient access, and to authorize the use of DHIN by participating laboratories.

The Commission will receive oral or written input at the hearing and/or written public comment through December 1, 2008. Send written comments to Leah Jones, Delaware Health Care Commission, Margaret O'Neill Building, 410 Federal Street, Suite 7, Dover, Delaware 19901.

For a copy of the proposed regulation, visit <http://regulations.delaware.gov/register/november2008/proposed/index.shtml> or, call the Commission office at (302) 739-2730.

DELAWARE VIOLENT CRIMES COMPENSATION BOARD**ADMINISTRATIVE OFFICE OF THE COURTS****PUBLIC NOTICE**

The Delaware Violent Crimes Compensation Board, in accordance with 11 **Del.C.** Ch. 11 proposes amendments to its regulations. The proposed changes further define pecuniary loss, permanent and total disability, and include a definition for secondary victims. The proposed regulations include time frames for submitting requested documentation to the Board to support a claim. The regulations also address collateral sources of compensation.

Two public hearings are scheduled. The first public hearing will be December 2 in room 113, Tatnall Bldg., 150 William Penn Street in Dover from 1:30 - 4:00pm. The second public hearing will be held on December 9 at the Carvel State Office Bldg auditorium, 820 N French Street, Wilmington from 3:30 pm - 6:30 pm.

The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Violent Crimes Compensation Board, attn Barbara Brown, Executive Director at 240 N. James Street, Suite 203, Wilmington, De. 19804. The final date to submit written comments will be December 9 at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearings should contact Barbara Brown at the above address or by calling 302 995-8383. The Board will consider promulgating the proposed regulations following the public hearings.

DEPARTMENT OF AGRICULTURE**HARNESS RACING COMMISSION****PUBLIC NOTICE**

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rules 7 and 10. The Commission will hold a public hearing on the proposed rule changes on December 9, 2008. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on November 1, 2008.

The proposed changes are for the purpose of updating Rules 7 and 10 to reflect current policies, practices and procedures. Copies are published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml A copy is also available for inspection at the Racing Commission office.

DEPARTMENT OF EDUCATION

PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, November 20, 2008 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

PUBLIC NOTICE

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection, has prepared draft regulations pertaining to skilled and intermediate care nursing facilities. These proposed regulations are intended to collapse into one set of regulations and replace in their entirety both the current regulations for skilled care nursing facilities and the current regulations for intermediate care nursing facilities. The proposed regulations specify required services in skilled and intermediate nursing facilities including requirements for licensing, personnel, resident services, physical plant requirements, emergency preparedness, as well as recordkeeping and reporting.

Invitation for Public Comment

Public hearings will be held as follows:

Tuesday, December 2, 2008, 10:00 AM

Division of Developmental Disability Services, Fox Run Office
2540 Wrangle Hill Road, Bear

Thursday, December 4, 2008, 10:00 AM

Department of Natural Resources & Environmental Control Auditorium
89 Kings Highway, Dover

For clarification or directions, please call Gina Loughery at 302-577-6661.

Written comments are also invited on these proposed regulations and should be sent to the following address:

Division of Long Term Care Residents Protection

3 Mill Road, Suite 308

Wilmington, DE 19806

The last time to submit written comments will be at the conclusion of the public hearing on December 4, 2008.

DEPARTMENT OF INSURANCE**NOTICE OF PUBLIC COMMENT PERIOD**

COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 803 relating to WORKERS' COMPENSATION DATA COLLECTION. The docket number for the proposed regulation is 1006.

The purpose for proposing Regulation 803 is to identify and adopt a protocol and data elements for collection of workers' compensation medical cost data as required by Title 19, Section 2301E of the **Delaware Code**. The text of the proposed regulation is reproduced in the November 2008 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a hearing on this proposed regulation. Written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments are being solicited from any interested party. Written comments or other written materials concerning the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m., December 1, 2008, and should be addressed to Regulatory Specialist Mitchell G. Crane, Esquire, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

DEPARTMENT OF INSURANCE**NOTICE OF PUBLIC COMMENT PERIOD**

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of proposed Department of Insurance Regulation 1301 relating to Internal Review, Arbitration and Independent Utilization Review of Health Insurance Claims. The docket number for this proposed regulation is 995.

The Department of Insurance proposes to amend Regulation 1301 by rescinding the current regulation and substituting in lieu thereof revised provisions relating to Internal Review, Arbitration and Independent Utilization Review of Health Insurance Claims. The Delaware Code authority for the change is 18 **Del.C.** §311. The text can also be viewed at the Delaware Insurance Commissioner's website as www.delawareinsurance.gov/departments/documents/ProposedRegs.shtml.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed change must be received by the Department of Insurance no later than 4:30 p.m. on December 1, 2008 by delivering said comments to Deputy Attorney General Julie M. Donoghue, Esquire, c/o Delaware Department of Insurance, 841 Silver Lake Blvd., Dover, DE 19904 or by fax to 302-739-6278 or e-mail to Julie.Donoghue@state.de.us.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

PUBLIC NOTICE

SAN # 2008-09

Title of the Regulations:

Amendment to Regulation 1138 Emission Standards for Hazardous Air Pollutants for Source Categories

Brief Synopsis of the Subject, Substance and Issues:

Under Section 112(k) of the 1990 Clean Air Act Amendment, Congress mandated that the EPA identify 30 or more hazardous air pollutants (HAPs) that posed the greatest threat to public health in urban areas, to identify the small area sources that emit those pollutants and to develop regulations to reduce the emission of HAPs. In 1999, the EPA identified 33 HAPs that posed the greatest threat to public health and has, since that time, identified over 60 new area source categories for which regulations would be developed.

In December 2007, the EPA promulgated another area source standard affecting Delaware sources; the hospital ethylene oxide sterilizer standard under 40 CFR Part 63 Subpart WWWW.

The purpose of this proposed amendment to Regulation 1138 is to provide increased protection for Delaware citizens against a variety of adverse health effects, which includes problems in the proper functioning of the brain and nerves and the irritation to the eyes, skin, and mucous membranes as a result of exposure to ethylene oxide. In addition, ethylene oxide is classified as a probable human carcinogen based on cancer data, which shows increased incidences of leukemia, stomach cancer and cancers of the pancreas. The proposed amendment will provide greater consistency between Delaware's air toxics standards and the recently promulgated federal standard (Subpart WWWW) on which this proposed amendment is heavily based. In addition, this amendment proposes to include several more protective requirements that currently exist in either Delaware air permits or similar air toxic standards found in Regulation 1138.

Notice of Public Comment:

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Wednesday, December 3, 2008 beginning at 6:00 PM in the DNREC's Air Quality Management Office, 715 Grantham Lane, New Castle DE. Interested parties may submit comments in writing to: Jim Snead, DNREC Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720.

Prepared By:

James R. Snead (302) 323-4542

james.snead@state.de.us

September 29, 2008

DIVISION OF FISH AND WILDLIFE

NOTICE OF PUBLIC HEARING AND COMMENT PERIOD

3203 Seasons and Area Closed to Taking Horseshoe Crabs, and 3214 Horseshoe Crab Annual Harvest Limit

The Department adopted regulations (Order Number 2007-F-0044) effective November 11, 2007 to implement the horseshoe crab mandatory harvest provisions in Addendum IV of the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for the Horseshoe Crab. As a follow-up to this Order, the Department is proposing regulations designed to be in compliance with the provisions of the Atlantic States

Marine Fisheries Commission Addendum V to the Interstate Fishery Management Plan for Horseshoe Crab. These regulations would extend for another year the prohibition on the harvest and landing of all horseshoe crabs in Delaware waters from January 1 through June 7, and prohibit the harvest and landing of female horseshoe crabs for the remainder of the year as well. During the period June 8 through December 31, up to 100,000 male horseshoe crabs may be harvested from approved harvest areas in Delaware. These harvest limits may be extended for a second year according to the provisions of Addendum V provided the Atlantic States Marine Fisheries Commission elects to do so. In addition it is proposed that where beach collecting is presently legal, that beach collecting of horseshoe crabs to be allowed to continue until July 31 of each year. Since no harvesting is allowed prior to June 8, and most of the migratory shorebirds that feed on horseshoe crab eggs will have departed from Delaware Bay by then, there should be no additional impacts to shorebirds from allowing harvesting to extend beyond the last day of June until the end of July. By harvesting only male horseshoe crabs, females would be further protected and will be available to participate in the annual spawn without being subject to harvest at any point during the year. No other changes to reporting requirements or other horseshoe crab regulations are proposed.

This regulation may be extended for an additional year beyond 2009 pending approval by the Atlantic States Marine Fisheries Commission.

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, (302) 739-9914. A public hearing on these proposed regulations will be held in the Department of Natural Resources and Environmental Control Auditorium, at 89 Kings Highway, Dover, DE at 7:00 PM on November 3, 2008. Individuals may present their opinion and evidence either at the hearing or in writing to Lisa Vest, Hearing Officer, Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, DE 19901 or via e-mail to Lisa.Vest@state.de.us. The hearing record will remain open for written or e-mail comments until 4:30 PM November 3, 2008.

Prepared By:

Roy W. Miller

302-739-9914

September 15, 2008

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

DIVISION OF STATE POLICE

BOARD OF EXAMINERS OF CONSTABLES

PUBLIC NOTICE

Notice is hereby given that the Board of Examiners of Constables, in accordance with **Del. Code** Title 10 Chapter 27 proposes to amend Rule 3.0 - Law Enforcement Exemption and Rule 4.0 - Employment. These amendments will add another acceptable psychological evaluation. If you wish to view this adoption, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by November 30, 2008, to Delaware State Police, Detective Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold their regular meeting in May 2009, at the Delaware State Police Headquarters Conference Room, 1441 North DuPont Highway in Dover, Delaware.

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

2000 BOARD OF OCCUPATIONAL THERAPY PRACTICE

PUBLIC NOTICE

Pursuant to 24 **Del.C.** §2006(a)(1), the Board of Occupational Therapy Practice has proposed revisions to its rules and regulations.

A public hearing will be held on January 7, 2009 at 4:45 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments.

Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Occupational Therapy Practice, 861 Silver Lake Boulevard, Dover, Delaware 11904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board proposes amendments to Rule 1.3, which addresses supervision of occupational therapy assistants. Rule 1.3.3 provides that: "An occupational therapist may supervise up to three (3) occupational therapy assistants but never more than two (2) occupational therapy assistants who are under direct supervision at the same time." The proposed amendments add new Rules 1.3.4 and 1.3.5, which will require occupational therapists to notify the Board when a supervisory relationship begins and when it ends. This notification requirement will enforce compliance with Rule 1.3.3, which is designed to ensure that occupational therapy assistants receive adequate supervision. Therefore, the proposed revisions will serve to protect the public from unsafe practices.

In addition, the Board proposes a minor typographical revision to Rule 1.1.

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

DIVISION OF PROFESSIONAL REGULATION
3100 BOARD OF FUNERAL SERVICES
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §3105(a)(1), the Board of Funeral Services has proposed revisions to its rules and regulations.

A public hearing will be held on December 3, 2008 at 10:15 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Board of Funeral Services, 861 Silver Lake Boulevard, Dover, Delaware 11904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board proposes amendments to Rule 9.0, which addresses continuing education requirements. Rule 9.2.1 is amended to specify that licensed funeral directors who are 65 or older are exempt from the continuing education requirements. This amendment serves to implement and clarify the language set forth at 24 **Del.C.** §3105(a)(10). Section 3105(a)(10) states that the Board has the authority to establish continuing education standards for practitioners under 65. (emphasis supplied).

Rule 9.3.1 is amended to include language to the effect that the Board has the power to waive continuing education requirements based on economic hardship. This provision is explicitly stated in 24 **Del.C.** §3105(a)(10). Rule 9.3.1 is further amended to clarify that any request for a waiver of the continuing education requirements must be made no later than 60 days prior to the license renewal date.

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

DIVISION OF PROFESSIONAL REGULATION
3500 BOARD OF EXAMINERS OF PSYCHOLOGISTS
PUBLIC NOTICE

The Delaware Board of Examiners of Psychologists, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §3506(a)(1), proposes amendments to its regulation section 7.2. Specifically, the proposed changes eliminate the limitation of qualifying experience to 60% direct service. This change would allow licensure of candidates who have

spent more than 60% of their postdoctoral training in direct service to clients. Other minor grammatical, typographic, or stylistic changes are also included.

A public hearing is scheduled for Monday, January 5, 2009 at 9:00 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Nancy Fields at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Nancy Fields at the above address or by calling (302) 744-4500.

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

DIVISION OF PROFESSIONAL REGULATION
8800 BOXING, SPARRING MATCHES AND EXHIBITIONS
PUBLIC NOTICE

Boxing and Combative Sports Entertainment

Consistent with a recent statutory amendment, by passage of HB 501, which updated the authority of the Division of Professional Regulation, the Department of State, in accordance with 28 **Del.C.** Ch. 1, proposes to strike the existing regulations related to boxing, sparring matches and exhibitions in their entirety and establish new combative sports rules and regulations governing boxing and mixed martial arts.

A public meeting was held on August 13, 2008 to gather information for proposed rules. James L. Collins, Director of the Division of Professional Regulation, conducted the meeting. In addition to information gleaned in the preliminary meeting, the Director has also conducted a study of mixed martial arts (MMA) regulation across the nation. As a result of careful consideration of public comment and national research, the recommendation of the Director is to adopt conservative rules relating to amateur MMA. This approach will align Delaware's rules with most other jurisdictions that permit MMA and recognize that Delaware does not have an athletic or boxing commission; therefore regulation of events will be conducted by approved sanctioning organizations. Jurisdictions with more liberal rules strictly oversee events through a commission. It is the intent of the Director to have safe MMA events in Delaware that protect the participants and attendees.

A public hearing is scheduled for December 8, 2008 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover. The Director will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Office of Director, Division of Professional Regulation, Cannon Building, 861 Silver Lake Blvd. Suite 203, Dover, DE 19904. The final date to submit written or oral comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact the Office of the Director at the above address or by calling (302) 744-4502.

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

DIVISION OF PROFESSIONAL REGULATION
Controlled Substance Committee
NOTICE OF PUBLIC HEARING

Uniform Controlled Substances Act Regulations

Consistent with a recent statutory amendment which relocated the Office of Controlled Substances to the Division of Professional Regulation, Department of State, the Secretary of State, in accordance with 29 **Del.C.**

Chapter 101 and 16 **Del.C.** §4731, proposes establishment of a Controlled Substance Committee and to amend previously issued controlled substance regulations.

A public hearing was held on March 11, 2008. James L. Collins, Director of the Division of Professional Regulation, conducted the hearing as the designee of the Secretary of State. As a result of the public comment and upon the recommendation of the Director, the Secretary has determined to make both substantive and non-substantive revisions to the proposed amendments originally published in the Delaware Register of Regulations on February 1, 2008 at 11 **DE Reg.** 1082

A second public hearing originally scheduled for October 20, 2008 at 10:00 a.m. has been rescheduled to November 24, 2008 at 9:00 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover. The Secretary will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Secretary care of the Office of Controlled Substances, Division of Professional Regulation, Cannon Building, 861 Silver Lake Blvd. Suite 203, Dover, DE 19904. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Office of Controlled Substances at the above address or by calling (302) 744-4500.

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

PUBLIC SERVICE COMMISSION

Notice of Comment Period on Proposed Regulations Concerning Gas Pipeline Safety and Gas Transmission and Distribution Systems, Including the Commission's Jurisdiction to make and Enforce Rules Required by the Federal Gas Pipeline Safety Act Of 1968, As Amended

The Delaware General Assembly has enacted legislation granting the Delaware Public Service Commission ("Commission") the authority to make and enforce rules required by the federal Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. Chapter 601), to qualify for federal certification of a state pipeline safety compliance program relating to the regulation of intrastate gas pipeline transportation. The new legislation is found at 76 Delaware Laws Ch. 393.

In order to comply with the new legislation, the Commission is promulgating regulations, containing twelve sections, intended to govern the safety of the gas transmission and distribution systems, which are subject to the Commission's jurisdiction. The first section contains definitions of terms used in the regulations, for example, the classification of gas leaks. The second section incorporates by reference the pertinent provisions of Title 49 of the Code of Federal Regulations which contain the minimum federal standards related to matters such as: (1) the design, fabrication, inspection, reporting, and testing of gas transmission and distribution systems; and (2) the drug testing inspection of natural gas pipeline utilities.

Two sections of the new regulations contain requirements for performing gas leak surveys, maintaining gas leak progression maps, and notifying the Commission and the local fire department in the event of gas leaks. One new section addresses Liquefied Natural Gas (LNG) installations, including the adoption of the pertinent standards of Title 49 of the Code of Federal Regulations related to their design, construction, operation, maintenance, protection, and security.

Five sections pertain to Commission procedures which apply to the operators of gas transmission and distribution systems. The five sections include provisions addressing: (1) the delegation of authority to the Commission Staff to carry out the day-to-day oversight of the systems; (2) the informal disposition of probable violations of the regulations; (3) the manner of giving formal notice of probable violations; (4) the response options of operators of the systems when notified of a probable violation; and (5) actions that might be taken by the Commission in the event a violation comes before the Commission for formal resolution.

One of the new sections sets forth the Commission's authority in the event a pipeline facility presents a hazard to life or property. The final provision addresses the Commission's authority to grant waivers from compliance with the federal Gas Pipeline Safety Regulations and the procedures to be followed by the Commission in ruling upon an application by an operator for a waiver.

The Commission has authority to promulgate the regulations pursuant to 26 **Del.C.** § 209(a), 29 **Del.C.** §10111 et seq., and 76 **Delaware Laws** Ch. 393 (2008)(26 **Del.C.** Ch. 8).

The Commission hereby solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning the proposed regulations. Ten (10) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware, 19904. **All such materials shall be filed with the Commission on or before November 7, 2008.** Persons who wish to participate in the proceedings but who do not wish to file written materials are asked to send a letter informing the Commission of their intention to participate on or before October 30, 2008.

The regulations and the materials submitted in connection therewith will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page. The regulations may also be reviewed, by appointment, at the office of the Division of the Public Advocate located at the Carvel State Office Building, 4th Floor, 820 North French Street, Wilmington, Delaware 19801 and will also be available for review on the Commission's website: www.state.de.us/delpsc.

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, by telephone, or otherwise. The Commission's toll-free telephone number (in Delaware) is (800) 282-8574. Any person with questions may also contact the Commission Staff at (302) 736-7500 or by Text Telephone at (302) 739-4333. Inquiries can also be sent by Internet e-mail to karen.nickerson@state.de.us.

EXECUTIVE DEPARTMENT
DELAWARE ECONOMIC DEVELOPMENT OFFICE
PUBLIC NOTICE

Procedures Governing Delaware Tourism Grant Program

In accordance with procedures set forth in 29 **Del.C.** Ch. 11, Subch. III and 29 **Del.C.**, Ch. 101, the Director of the Delaware Economic Development Office is proposing to adopt a regulation for the administration and operation of the Delaware Tourism Grant Program. The proposed regulation sets forth the procedures governing the requirements, approval process and issuance of funds appropriated to the Delaware Economic Development Office to administer the Delaware Tourism Grant Program.

The Director of the Delaware Economic Development Office or an employee of the Delaware Economic Development Office designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed regulation on December 3, 2008 at 9:00 A.M. to 10:30 A.M. at Delaware Economic Development Office, 99 Kings Highway, Dover, DE 19901. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Kate Kreppein, Administrative Specialist, Delaware Economic Development Office, 99 Kings Highway, Dover, DE, 19901-7305. Written comments must be received on or before December 1, 2008. Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing Kate Kreppein at the Dover, Delaware, address of the Delaware Economic Development Office set forth above, or by calling her at (302) 672-6842.
