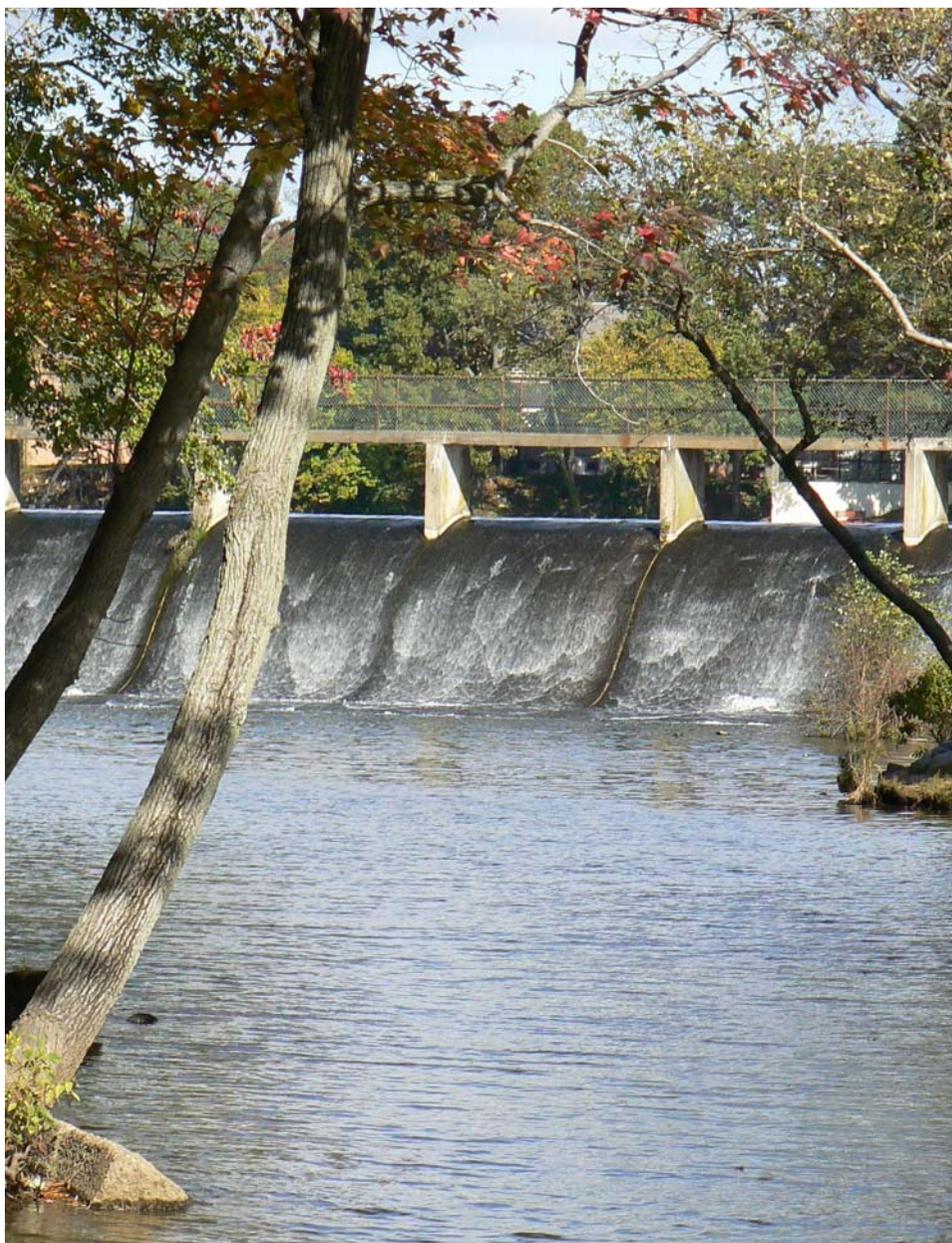

Delaware Register of Regulations

Issue Date: November 1, 2012

Volume 16 - Issue 5, Pages 466 - 553

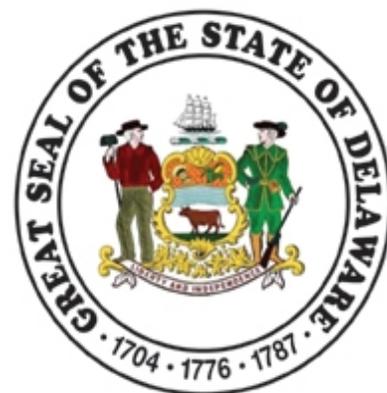


IN THIS ISSUE:

Regulations:
Proposed
Final

Governor:
Appointments

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, 2012.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

467

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

15 **DE Reg.** 1728 - 1759 (06/01/12)

Refers to Volume 15, pages 1728 - 1759 of the *Delaware Register* issued on June 1, 2012.

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

DIVISION OF RESEARCH STAFF

Lori Christiansen, Director; **Judi Abbott**, Administrative Specialist I; **Jeffrey W. Hague**, Registrar of Regulations; **Robert Lupo**, Printer; **Deborah J. Messina**, Print Shop Supervisor; **Kathleen Morris**, Administrative Specialist I; **Georgia Roman**, Unit Operations Support Specialist; **Victoria Schultes**, Administrative Specialist II; **Don Sellers**, Printer; **Sarah Wootten**, Joint Sunset Analyst; **Rochelle Yerkes**, Administrative Specialist II. Legislative Librarian; **Sara Zimmerman**.

TABLE OF CONTENTS

469

Cumulative Tables.....	471
------------------------	-----

PROPOSED

DEPARTMENT OF AGRICULTURE

Harness Racing Commission

501 Harness Racing Rules and Regulations, Section 6.0, Types of Races.....	475
--	-----

DEPARTMENT OF EDUCATION

Professional Standards Board

1520 Early Childhood Teacher.....	478
1521 Elementary Teacher.....	480
1522 Elementary School Counselor.....	481
1539 Middle Level / Secondary Health Education Teacher.....	484
1545 Secondary School Counselor.....	485
1571 Exceptional Children Special Education Teacher.....	488
1573 Teacher of Students With Autism or Severe Disabilities.....	489
1581 School Reading Specialist.....	493
1592 School Leader I.....	499
1593 School Leader II.....	502
1594 Special Education Director.....	506

DEPARTMENT OF ELECTIONS

Office of the Commissioner of Elections for the State of Delaware

Campaign Finance Regulations.....	510
-----------------------------------	-----

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Medicaid and Medical Assistance

Title XIX Medicaid State Plan, Reimbursement Methodology for ICF/MR Facilities.....	517
---	-----

DEPARTMENT OF STATE

Division of Professional Regulation

Gaming Control Board

101 Regulations Governing Bingo.....	520
--------------------------------------	-----

Office of the State Banking Commissioner

905 Loan Limitations: Credit Exposure to Derivative Transactions.....	523
---	-----

FINAL

DEPARTMENT OF FINANCE

Division of Unclaimed Property

Regulation on Practices and Procedures for Records Examinations by the State Escheator.....	530
---	-----

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Medicaid and Medical Assistance

DSSM: 20775 Program of All-Inclusive Care for the Elderly (PACE).....	532
---	-----

Division of Public Health

4459 Lead Based Paints Hazards.....	537
-------------------------------------	-----

DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL

Division of Watershed Stewardship

7431 Total Maximum Daily Load (TMDL) for the Lums Pond Sub-Watershed, Delaware.....	538
---	-----

TABLE OF CONTENTS

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Division of State Police

2300 Pawn Brokers, Secondhand Dealers and Scrap Metal Processors..... 540

DEPARTMENT OF STATE

Division of Professional Regulation

2700 Board of Registration for Professional Land Surveyors..... 543

DEPARTMENT OF TRANSPORTATION

Division of Transportation Solutions

2404 Traffic Calming Manual..... 544

GOVERNOR’S OFFICE

Appointments..... 547

CALENDAR OF EVENTS/HEARING NOTICES

Dept. of Agriculture, Harness Racing Commission, Notice of Public Hearing..... 551
Dept. of Education, Notice of Monthly Meeting..... 551
Dept. of Elections, Commissioner of Elections for the State of Delaware, Notice of Public Comment Period 551
Dept. of Health and Social Services, Div. of Medicaid and Medical Asst., Notice of Public Comment Periods 552
Dept. of Natural Resources and Environmental Control, Division of Water; Notice of Public Hearing..... 552
Dept. of State, Div. of Professional Regulation, Office of the State Banking Commissioner; Notices of Public Hearings..... 552 - 553

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 STATE FIRE PREVENTION COMMISSION

701 Administration and Enforcement.....	16 DE Reg.	16 (Prop.)
702 Fire Protection in Building Construction.....	16 DE Reg.	16 (Prop.)
703 Installation, Operation, Maintenance, Testing and Sales of Signaling Systems, Fire Protection Systems and Fire Extinguishers.....	16 DE Reg.	16 (Prop.)
704 Hazardous Processes and Operations.....	16 DE Reg.	16 (Prop.)
705 General Fire Safety.....	16 DE Reg.	16 (Prop.)
706 Specific Occupancy Requirements.....	16 DE Reg.	16 (Prop.)

DEPARTMENT OF AGRICULTURE

Food Products Inspection Section

301 Food Products Inspection.....	16 DE Reg.	196 (Final)
-----------------------------------	------------	-------------

Harness Racing Commission

501 Harness Racing Rules and Regulations, Rule 3.5.1.....	16 DE Reg.	65 (Final)
501 Harness Racing Rules and Regulations, Rules 6.2.2.1.10, 6.2.2.2 & 8.2.2.4.....	16 DE Reg.	17 (Prop.)
	16 DE Reg.	282 (Final)

Plant Industries

801 Regulations for Noxious Weed Control.....	16 DE Reg.	66 (Final)
---	------------	------------

DEPARTMENT OF EDUCATION

Office of the Secretary

275 Charter Schools.....	16 DE Reg.	197 (Final)
294 Data Governance.....	16 DE Reg.	67 (Final)
624 School District/Charter School Policy Prohibiting Cyberbullying.....	16 DE Reg.	351 (Prop.)
804 Immunizations.....	16 DE Reg.	157 (Prop.)
	16 DE Reg.	411 (Final)
815 Health Examinations and Screening.....	16 DE Reg.	20 (Prop.)
	16 DE Reg.	283 (Final)
930 Supportive Instruction (Homebound).....	16 DE Reg.	160 (Prop.)
	16 DE Reg.	412 (Final)
1101 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998.....	16 DE Reg.	162 (Prop.)
	16 DE Reg.	415 (Final)
1102 Standards for School Bus Chassis and Bodies Placed in Production on or After March 1, 2002 and on or After March 1, 2003 with Specific Changes for Buses Placed in Production After January 1, 2004.....	16 DE Reg.	164 (Prop.)
	16 DE Reg.	416 (Final)
1103 Standards for School Bus Chassis and Bodies For Buses Placed in Production on or After January 1, 2007.....	16 DE Reg.	65 (Prop.)
	16 DE Reg.	418 (Final)

Professional Standards Board

1501 Knowledge, Skills and Responsibility Based Supplements for Educators.....	16 DE Reg.	353 (Prop.)
1508 Special Institute for Teacher Licensure and Certification.....	16 DE Reg.	354 (Prop.)
1509 Meritorious New Teacher Candidate Designation.....	16 DE Reg.	355 (Prop.)
1543 Secondary Science Teacher.....	16 DE Reg.	356 (Prop.)
1553 Driver Education and Traffic Safety Education Teacher.....	16 DE Reg.	359 (Prop.)
1570 Early Childhood Special Education Teacher.....	16 DE Reg.	286 (Final)

1591 School Principal and Assistant Principal.....	16 DE Reg. 362 (Prop.)
1595 Certification Programs For Leaders in Education.....	16 DE Reg. 365 (Prop.)
1597 Delaware Professional Teaching Standards.....	16 DE Reg. 70 (Final)

DEPARTMENT OF FINANCE**Division of Unclaimed Property**

Regulation on Practices and Procedures for Records Examinations by the State Escheator.....	16 DE Reg. 22 (Prop.)
---	-----------------------

Office of the State Lottery

204 Sports Lottery Rules and Regulations.....	16 DE Reg. 24 (Prop.)
	16 DE Reg. 155 (Emer)
	16 DE Reg. 291 (Final)

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

3102 Long Term Care Transfer, Discharge and Readmission Procedures.....	16 DE Reg. 24 (Prop.)
	16 DE Reg. 296 (Final)
3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants.....	16 DE Reg. 371 (Prop.)
3230 Rest (Residential) Home Regulations.....	16 DE Reg. 34 (Prop.)

Division of Medicaid and Medical Assistance

DSSM: 20320.7B & 20320.7E Medicaid Long-Term Care Services-Home Equity.....	16 DE Reg. 377 (Prop.)
20500 Estate Recovery and Civil Unions and Medicare Cost Sharing	16 DE Reg. 166 (Prop.)
	16 DE Reg. 423 (Final)
20775 Program of All-Inclusive Care for the Elderly (PACE).....	16 DE Reg. 170 (Prop.)
Fair Hearing Practice and Procedures - Expedited Fair Hearings.....	16 DE Reg. 6 (Emer.)
	16 DE Reg. 30 (Prop.)
	16 DE Reg. 419 (Final)

Title XIX Medicaid State Plan:

Medicaid Eligibility Conditions and Requirements.....	16 DE Reg. 72 (Final)
Nursing Facility Quality Assessment.....	16 DE Reg. 38 (Prop.)
	16 DE Reg. 309 (Final)
General Program Administration, Survey & Certification Process, Long-Term Care Ombudsman.....	16 DE Reg. 42 (Prop.)
	16 DE Reg. 312 (Final)
Telemedicine Services.....	16 DE Reg. 44 (Prop.)
	16 DE Reg. 314 (Final)

Division of Public Health

4459 Lead Based Paints Hazards.....	16 DE Reg. 238 (Prop.)
4462 Public Drinking Water Systems.....	16 DE Reg. 73 (Final)

Division of Social Services

DSSM: 3034 General Assistance Time Limits.....	16 DE Reg. 378 (Prop.)
6001 Legal Base; 6002 Eligibility; 6003 Vendor Payments; 6004 Payment Limitation: Time Restriction; 6005 Scope of Coverage; 6006 Classification of Emergency Assistance Services-Content of Services; 6007 Accountability Reports.....	16 DE Reg. 173 (Prop.)
	16 DE Reg. 426 (Final)
6100 through 6111- Transitional Resources to Relative Caregivers.....	16 DE Reg. 211 (Final)
11002.9 Definitions and Explanation of Terms.....	16 DE Reg. 78 (Final)
11003 Eligibility Requirements.....	16 DE Reg. 47 (Prop.)
	16 DE Reg. 213 (Final)
	16 DE Reg. 314 (Final)
11003.2.1 TANF and Transitional Work Program Sanctions.....	16 DE Reg. 379 (Prop.)

DEPARTMENT OF INSURANCE

700 Policies and Procedures Regarding FOIA Requests..... 16 DE Reg. 87 (Final)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Office of the Secretary

104 Regulations for the Green Energy Program..... 16 DE Reg. 381 (Prop.)

Division of Air Quality

1120 New Source Platform Standards..... 16 DE Reg. 181 (Prop.)

1125 Requirements for Preconstruction Review..... 16 DE Reg. 214 (Final)

Sections 1.9 and 2.0..... 16 DE Reg. 239 (Prop.)

1138 Emission Standards for Hazardous Air Pollutants for Source Categories 16 DE Reg. 182 (Prop.)

Division of Fish and Wildlife

Non-Tidal Finfish Regulations 3301, 3303, 3304, 3305, 3306, 3307, 3308, 3309 and 3310..... 16 DE Reg. 245 (Prop.)

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas..... 16 DE Reg. 184 (Prop.)

16 DE Reg. 431 (Final)

3521 Weakfish Size Limits; Possession Limits, Seasons..... 16 DE Reg. 382 (Prop.)

3531 Tautog; Size Limits, Creel Limits and Seasons..... 16 DE Reg. 216 (Final)

3552 Spanish Mackerel Size Limit and Creel Limit..... 16 DE Reg. 94 (Final)

Division of Waste and Hazardous Substances

1302 Regs. Governing Hazardous Waste, Parts 261, 262, 265, 266 & 268..... 16 DE Reg. 383 (Prop.)

1353 Boiler Safety..... 16 DE Reg. 251 (Prop.)

1375 Delaware Regulations Governing Hazardous Substance Cleanup..... 16 DE Reg. 218 (Final)

Division of Water

7101 Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems..... 16 DE Reg. 395 (Prop.)

7201 Regulations Governing the Control of Water Pollution..... 16 DE Reg. 14 (Emer.)

16 DE Reg. 50 (Prop.)

16 DE Reg. 322 (Final)

Division of Watershed Stewardship

7431 Total Maximum Daily Load (TMDL) for the Lums Pond Sub-Watershed.. 16 DE Reg. 186 (Prop.)

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Alcoholic Beverage Control Commission

Regulations Governing Wholesale and Supply Operation, The "At Rest" Requirement..... 16 DE Reg. 252 (Prop.)

Division of State Police

2300 Pawn Brokers, Secondhand Dealers and Scrap Metal Processors..... 16 DE Reg. 255 (Prop.)

DEPARTMENT OF STATE

Division of Professional Regulation

Gaming Control Board

101 Regulations Governing Bingo; 102 Regulations Governing Raffles; 103 Regulations Governing Charitable Gambling Other Than Raffles; 104 Regulations Governing Texas Hold'em Poker..... 16 DE Reg. 219 (Final)

200 Board of Landscape Architecture..... 16 DE Reg. 324 (Final)

700 Board of Chiropractic..... 16 DE Reg. 96 (Final)

1100 Board of Dentistry & Dental Hygiene, Section 7.0 Anesthesia Regulations 16 DE Reg. 257 (Prop.)

16 DE Reg. 328 (Final)

1400 Board of Electrical Examiners..... 16 DE Reg. 188 (Prop.)

1700 Board of Medical Licensure and Discipline, Section 31.0, Use of

Controlled Substances for the Treatment of Pain: Purpose..... 16 DE Reg. 260 (Prop.)

16 DE Reg. 330 (Final)

1770 Respiratory Care Practice Advisory Council..... 16 DE Reg. 97 (Final)

1790 Acupuncture Advisory Council..... 16 DE Reg. 434 (Final)

CUMULATIVE TABLES

2700 Board of Registration for Professional Land Surveyors.....	16 DE Reg. 436 (Final)
2900 Real Estate Commission.....	16 DE Reg. 99 (Final)
2925 Real Estate Commission Education Committee.....	16 DE Reg. 104 (Final)
2930 Board of Real Estate Appraisers.....	16 DE Reg. 221 (Final)
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals.....	16 DE Reg. 105 (Final)
3100 Board of Funeral Services.....	16 DE Reg. 106 (Final)
3600 Board of Registration of Geologists.....	16 DE Reg. 264 (Prop.) 16 DE Reg. 51 (Prop.)
3900 Board of Clinical Social Work Examiners.....	16 DE Reg. 437 (Final)
5200 Board of Examiners of Nursing Home Administrators.....	16 DE Reg. 108 (Final)
5300 Board of Massage and Bodywork.....	16 DE Reg. 397 (Prop.)
Uniform Controlled Substances Act Regulations.....	16 DE Reg. 222 (Final)
Office of the State Banking Commissioner	16 DE Reg. 267 (Prop.)
2210 Short-Term Consumer Loans.....	16 DE Reg. 398 (Prop.)
Public Service Commission	
3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard.....	16 DE Reg. 402 (Prop.)
DEPARTMENT OF TRANSPORTATION	
Division of Motor Vehicles	
2222 School Bus Driver Qualifications and Endorsements.....	16 DE Reg. 405 (Prop.)
Division of Planning and Policy	
2309 Standards and Regulations for Subdivision Streets and State Highway Access	16 DE Reg. 192 (Prop.)
Division of Technology and Support Services	
2501 External Equal Employment Opportunity Complaint Procedure.....	16 DE Reg. 270 (Prop.)
Division of Transportation Solutions	
2402 Delaware Manual on Uniform Traffic Control Devices.....	16 DE Reg. 274 (Prop.)
2404 Traffic Calming Manual.....	16 DE Reg. 194 (Prop.)
EXECUTIVE DEPARTMENT	
Delaware Economic Development Office	
402 Procedures Governing The Delaware Strategic Fund; 451 Matching Grants Program; 452 Direct Grants Program; 453 Co-Op Advertising Program; 454 Procedures Governing Delaware Tourism Grant Program.....	16 DE Reg. 194 (Prop.)

Symbol Key

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

Proposed Regulations

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

**DEPARTMENT OF AGRICULTURE
HARNESS RACING COMMISSION**

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

PUBLIC NOTICE**501 Harness Racing Rules and Regulations**

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rule 6.6.6.3, 6.6.6.4, 6.6.6.9, 6.6.6.11, 6.6.6.12.1, 6.6.6.12.2, 6.6.6.12.3 & 6.6.6.12.4. The Commission will hold a public hearing on the proposed rule changes on December 11, 2012. 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, 2012.

The proposed changes are for the purpose of updating Rule 3 and 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 Harness Racing Commission office.

**501 Harness Racing Rules and Regulations
(Break in Continuity of Sections)****6.0 Types of Races****(Break in Continuity Within Section)****6.6 Delaware Owned or Bred Races**

- 6.6.1 Persons licensed to conduct harness horse racing meets under title 3, chapter 100, may offer non-stakes races limited to horses wholly owned by Delaware residents or sired by Delaware stallions.

PROPOSED REGULATIONS

- 6.6.2 For purposes of this rule, a Delaware bred horse shall be defined as one sired by a Delaware stallion who stood in Delaware during the entire breeding season in which he covered a book of mares or a horse whose dam was a wholly-owned Delaware brood mare at the time of breeding as shown on the horse's United State Trotting Association registration or electronic eligibility papers. The breeding season means that period of time beginning February 1 and ending August 1 of each year.
- 6.6.3 All horses to be entered in Delaware owned or bred races must first be registered and approved by the Commission or its designee. The Commission may establish a date upon which a horse must be wholly-owned by a Delaware resident(s) to be eligible to be nominated, entered, or raced as Delaware-owned. In the case of a corporation seeking to enter a horse in a Delaware-owned or bred event as a Delaware-owned entry, all owners, officers, shareholders, and directors must meet the requirements for a Delaware resident specified below. In the case of an Association or other entity seeking to enter a horse in a Delaware owned or bred event as a Delaware-owned entry, all owners must meet the requirements for a Delaware resident specified below. Leased horses are ineligible as Delaware owned entries unless both the lessor and the lessee are Delaware residents as set forth in this Rule and 3 Del.C. §10032.
- 6.6.4 The following actions shall be prohibited for Delaware-owned races and such horses shall be deemed ineligible to be nominated, entered, or raced as Delaware-owned horses:
- 6.6.4.1 Payment of the purchase price over time beyond the date of registration;
 - 6.6.4.2 Payment of the purchase price through earnings beyond the date of registration;
 - 6.6.4.3 Payment of the purchase price with a loan, other than from a commercial lender regulated in Delaware and balance due beyond the date of registration;
 - 6.6.4.4 Any management fees, agent fees, consulting fees, or any other form of compensation to non-residents of Delaware, except industry standard training and driving fees; or
 - 6.6.4.5 Leasing a horse to a non-resident of Delaware.
- 6.6.5 The Commission or its designee shall determine all questions about a person's eligibility to participate in Delaware-owned races. In determining whether a person is a Delaware Resident, the term "resident" shall mean the place where an individual has his or her permanent home, at which that person remains when not called elsewhere for labor or other special or temporary purposes, and to which that person returns in seasons of repose. The term "residence" shall mean a place a person voluntarily fixed as a permanent habitation with an intent to remain in such place for the indefinite future.
- 6.6.6 The Commission or its designee may review and subpoena any information which is deemed relevant to determine a person's residence, including but not limited to, the following:
- 6.6.6.1 Where the person lives and has been living;
 - 6.6.6.2 The location of the person's sources of income;
 - 6.6.6.3 The address used by the person for payment of taxes, including federal, all state and property taxes and Delaware Resident tax filings;
 - 6.6.6.4 The state in which the person's personal automobiles and all racing related vehicles are registered;
 - 6.6.6.5 The state issuing the person's driver's license;
 - 6.6.6.6 The state in which the person is registered to vote;
 - 6.6.6.7 Ownership of property in Delaware or outside of Delaware;
 - 6.6.6.8 The residence used for U.S.T.A. membership and U.S.T.A. registration of a horse, whichever is applicable;
 - 6.6.6.9 The residence claimed by a person on a loan application or other similar financial documents;
 - 6.6.6.10 Membership in civic, community, and other organizations in Delaware and elsewhere.
 - 6.6.6.11 None of these factors when considered alone shall be dispositive, except that a person must have resided in the State of Delaware in the preceding calendar year for a minimum

of one hundred and eighty three (183) days. Consideration of all of these factors together, as well as a person's expressed intention, shall be considered in arriving at a determination. The burden shall be on the applicant to prove Delaware residency and eligibility for Delaware-owned or bred races. The Commission may promulgate by regulation any other relevant requirements necessary to ensure that the licensee is a Delaware resident. In the event of disputes about a person's eligibility to enter a Delaware-owned or bred race, the Commission shall resolve all disputes and that decision shall be final.

6.6.6.12 Any and all utility, power, telephone (cellular and landline), cable or satellite bills for all properties regardless of state

6.6.6.12.1 Any person who owns or leases property outside the State of Delaware shall be required to provide the Commission with a list of days the person resided inside and outside the State of Delaware during the preceding year.

6.6.6.12.2 Any person approved for the Delaware owned program shall be required to notify the Commission of any changes that would impact their eligibility for the program.

6.6.6.12.3 Any person claiming a Homestead exception in another state shall be deemed ineligible to participate in a Delaware owned program.

6.6.6.12.4 Any person approved in any other State owned program shall be deemed ineligible for the Delaware Owned program.

6.6.7 Each owner and trainer, or the authorized agent of an owner or trainer, or the nominator (collectively, the "entrant"), is required to disclose the true and entire ownership of each horse with the Commission or its designee, and to disclose any changes in the owners of the registered horse to the Commission or its designee. All licensees and racing officials shall immediately report any questions concerning the ownership status of a horse to the Commission racing officials, and the Commission racing officials may place such a horse on the steward's or judge's list. A horse placed on the steward's or judge's list shall be ineligible to start in a race until questions concerning the ownership status of the horse are answered to the satisfaction of the Commission or the Commission's designee, and the horse is removed from the steward or judge's list.

6.6.8 If the Commission, or the Commission's designee, finds a lack of sufficient evidence of ownership status, residency, or other information required for eligibility, prior to a race, the Commission or the Commission's designee, may order the entrant's horse scratched from the race or ineligible to participate.

6.6.9 After a race, the Commission or the Commission's designee, may upon reasonable suspicion, withhold purse money pending an inquiry into ownership status, residency, or other information required to determine eligibility. If the purse money is ultimately forfeited because of a ruling by the Commission or the Commission's designee, the purse money shall be redistributed per order of the Commission or the Commission's designee.

6.6.10 If purse money has been paid prior to reasonable suspicion, the Commission or the Commission's designee may conduct an inquiry and make a determination as to eligibility. If the Commission or the Commission's designee determines there has been a violation of ownership status, residency, or other information required for eligibility, it shall order the purse money returned and redistributed per order of the Commission or the Commission's designee.

6.6.11 Anyone who willfully provides incorrect or untruthful information to the Commission or its designee pertaining to the ownership of a Delaware-owned or bred horse, or who attempts to enter a horse restricted to Delaware-owned entry who is determined not to be a Delaware resident, or who commits any other fraudulent act in connection with the entry or registration of a Delaware-owned or bred horse, in addition to other penalties imposed by law, shall be subject to mandatory revocation of licensing privileges in the State of Delaware for a period to be determined by the Commission in its discretion except that absent extraordinary circumstances, the Commission shall impose a minimum revocation period of two years and a minimum fine of \$5,000 from the date of the violation of these rules or the decision of the Commission, whichever occurs later.

PROPOSED REGULATIONS

- 6.6.12 Any person whose license is suspended or revoked under subsection (k) of this rule shall be required to apply for reinstatement of licensure and the burden shall be on the applicant to demonstrate that his or he licensure will not reflect adversely on the honesty and integrity of harness racing or interfere with the orderly conduct of a race meeting. Any person whose license is reinstated under this subsection shall be subject to a two year probationary period, and may no participate in any Delaware-owned or bred race during this probationary period. Any further violations of this section by the licensee during the period of probationary licensure shall, absent extraordinary circumstances, result in the Commission imposing revocation of all licensure privileges for a five year period along with any other penalty the Commission deems reasonable and just.
- 6.6.13 Any suspension imposed by the Commission under this rule shall not be subject to the stay provisions in 29 **Del.C.** §10144.

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

501 Harness Racing Rules and Regulations

DEPARTMENT OF EDUCATION PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1520

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

1520 Early Childhood 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** 1520 Early Childhood Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It was necessary to review and amend this regulation in order to provide current formatting and to eliminate unnecessary language. This regulation sets forth the requirements for an Early Childhood Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday, December 3, 2012 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses 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.

1520 Early Childhood 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 Early Childhood Teacher. This certification is valid for birth to grade two (2); however, certification as an Elementary Teacher may also be used in K to grade 2.
- 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.

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as an Early Childhood Teacher to an educator who has met the following:
 - 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
 - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto; and,
 - ~~3.1.3 Has satisfied the additional requirements in this regulation.~~

4.0 Additional Requirements

~~If an examination of content knowledge such as Praxis II is not applicable and available, in the area the Standard Certificate is requested, an educator must also meet the following:~~

- 4.1 ~~If the educator is applying for their second Standard Certificate pursuant to 14 DE Admin. Code 1505 Standard Certificate 3.1.5, the satisfactory completion of fifteen (15) credits or their equivalent in professional development related to Early Childhood Education, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department.~~

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 1521

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

1521 Elementary 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 1521 Elementary Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to review this regulation in order to comply with the 5 year regulation review process. A small amendment for clarification has been deemed necessary. This regulation sets forth the requirements for an Elementary Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday December 3, 2012 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses 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.

1521 Elementary 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 Elementary Teacher. This certification is required for grades K to 6. Notwithstanding the above, the Early Childhood Teacher certification may be used for K to grade 2 in lieu of this certification.
- 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

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

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as an Elementary Teacher to an educator who has met the following:
 - 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Standard or Professional Status 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, including any subsequent amendment or revision thereto.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1522

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

1522 Elementary School Counselor

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** 1522 Elementary School Counselor. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It was necessary to review and amend this regulation in order to provide current grade levels, formatting and to consider the current course count. This regulation sets forth the requirements for an Elementary

School Counselor.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday, December 3, 2012 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses 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.

1522 Elementary School Counselor

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Elementary School Counselor. This certification is required for grades 4 ~~K~~ to ~~6~~ five (5), and is valid in grades ~~5~~ six (6) to eight (8) in a Middle Level school. A Middle Level School Counselor must ~~have hold~~ either an Elementary School Counselor Standard Certificate or a Secondary School Counselor Standard eCertificate.

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.

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as an Elementary School Counselor to an educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a ~~Limited Standard, Standard~~ ~~or~~ Professional Status Certificate issued by the Department prior to August 31, 2003; and,
- 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505, Standard Certificate including any subsequent amendment or revision thereto: and
- 3.1.3 Has satisfied the additional requirements in this regulation.

4.0 Additional Requirements

An educator must also ~~meet~~ have met the following:

- 4.1 Has satisfied at least one of the following additional education requirements:
- 4.1.1 Graduated from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a Masters degree in Elementary School Counseling; or
- 4.1.2 Graduated from a regionally accredited college or university with a Masters degree in any content area and satisfactorily completed ~~27 semester hours~~ thirty (30) credits of graduate course work or the equivalent in professional development as approved by the Department in the areas of:
- 4.1.2.1 Principles and Practices of the School Counseling Program (3 credits);
- 4.1.2.2 Individual Counseling Skills (3 credits);
- 4.1.2.3 Group Counseling Skills (3 credits);
- 4.1.2.4 Human Development (3 credits);
- 4.1.2.5 Developmental Group Guidance (3 credits);
- 4.1.2.6 Individual and Group Testing for Counselors (3 credits);
- 4.1.2.7 Supervised Practicum in Elementary Counseling (3 credits);
- 4.1.2.8 Counseling Theory (3 credits); and
- 4.1.2.9 Consultation; and (3 credits).
- 4.1.2.10 Ethical Issues in School Counseling (3 credits).
- 4.2 Has met at least one of the following experience requirements:
- 4.2.1 A minimum of three years professional experience in an elementary school setting; or,
- 4.2.2 A minimum of three years of equivalent experience as approved by the Department of Education; or,
- 4.2.3 A supervised school counseling internship of one (1) full year in an elementary school setting which is part of a graduate degree program in Elementary School Counseling or arranged by the Department of Education. The internship may be completed over a two (2) year period on a half-time basis.
-

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1539

Educational Impact Analysis Pursuant To 14 Del.C. Section 122(d)**1539 Middle Level / Secondary Health 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** 1539 Middle Level / Secondary Health Education Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It was necessary to review and amend this regulation in order to provide current formatting and to eliminate unnecessary language. This regulation sets forth the requirements for a Middle Level / Secondary Health Education Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday, December 3, 2012 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses 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.

1539 ~~Middle Level / Secondary~~ Health Education 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 ~~Middle Level / Secondary~~ Health Education Teacher. This certification is required for ~~grades 9 to 12 and for grades 5 to 8 in a Middle Level school~~ all Health Education Teachers in Delaware public schools.
- 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

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

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a ~~Middle Level / Secondary~~ Health Education Teacher to an educator who has met the following:
 - 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a ~~Limited Standard~~, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
 - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto; ~~and,~~
 - ~~3.1.3 Has satisfied the additional requirements in this regulation.~~

4.0 Additional Requirements

~~If an examination of content knowledge such as Praxis II is not applicable and available, in the area the Standard Certificate is requested, an educator must also meet the following:~~

- ~~4.1 If the educator is applying for their second Standard Certificate pursuant to 14 **DE Admin. Code** 1505 Standard Certificate 3.1.5, the satisfactory completion of fifteen (15) credits or their equivalent in professional development related to Health Education, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department.~~

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1545

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

1545 Secondary School Counselor

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** 1545 Secondary School Counselor. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It was necessary to review and amend this regulation in order to provide current grade levels, formatting and to consider the current course count. This regulation sets forth the requirements for an Secondary School Counselor.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday, December 3, 2012 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses 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.

1545 Secondary School Counselor

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Secondary School Counselor. This certification is required for grades nine (9) to twelve (12) and is valid in grades ~~5~~ six (6) to eight (8) in a Middle Level school. A Middle Level School Counselor must

~~have hold~~ either an Elementary School Counselor Standard Certificate or a Secondary School Counselor Standard eCertificate.

- 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

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

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Secondary School Counselor to an educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
 - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto; and,
 - 3.1.3 Has satisfied the additional requirements in this regulation.

4.0 Additional Requirements

An educator must also ~~meet~~ have met the following:

- 4.1 Has satisfied at least one of the following additional education requirements:
- 4.1.1 Graduated from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a Masters degree in Secondary School Counseling; or
 - 4.1.2 Graduated from a regionally accredited college or university with a Masters degree in any content area and satisfactorily completed ~~27 semester hours~~ 30 credits of graduate course work or the equivalent in professional development as approved by the Department in the areas of:
 - 4.1.2.1 Principles and Practices of the School Counseling Program (3 credits);
 - 4.1.2.2 Individual Counseling Skills (3 credits);
 - 4.1.2.3 Group Counseling Skills (3 credits);
 - 4.1.2.4 Human Development (3 credits);
 - 4.1.2.5 Career Development (3 credits);
 - 4.1.2.6 Individual and Group Testing for Counselors (3 credits);
 - 4.1.2.7 Supervised Practicum in Secondary Counseling (3 credits);
 - 4.1.2.8 Counseling Theory (3 credits);
 - 4.1.2.9 Consultation (3 credits); and
 - 4.1.2.10 Ethical Issues in School Counseling (3 credits).
- 4.2 Has met at least one of the following experience requirements:
- 4.2.1 A minimum of three years professional experience in a secondary school setting; or,
 - 4.2.2 A minimum of three years of equivalent experience as approved by the Department of Education; or,
 - 4.2.3 A supervised school counseling internship of one (1) full year in a secondary school setting which is part of a graduate degree program in Secondary School Counseling or arranged by the Department of Education. The internship may be completed over a two (2) year period on a half-

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1571

Educational Impact Analysis Pursuant To 14 Del.C. Section 122(d)**1571 Exceptional Children Special 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** 1571 Exceptional Children Special Education Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to review this regulation in order to comply with the 5 year regulation review process. A small amendment for clarification has been deemed necessary. This regulation sets forth the requirements for an Exceptional Children Special Education Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday December 3, 2012 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses 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.

1571 Exceptional Children Special Education 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 Exceptional Children Special Education Teacher. This certification is required for grades K to 12. Notwithstanding the above, the Early Childhood Exceptional Children Special Education Teacher certification may be used for K to grade 2 in lieu of this certification.
- 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

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

3.0 Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as an Exceptional Children Special Education Teacher to an educator who has met the following:
 - 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,
 - 3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1573

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

1573 Teacher of Students With Autism or Severe Disabilities

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** 1573 Teacher of Students with Autism or Severe Disabilities. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation to provide additional opportunities for educators to acquire the skills and knowledge necessary to work with these students and to update the current required coursework/professional development. This regulation sets forth the requirements for a Teacher of Students with Autism or Students with Severe Intellectual Disabilities.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday, December 3, 2012 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from

the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses 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.

~~1573 Teacher of Students with Autism or Severe Disabilities~~

~~1.0 Content~~

~~This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for a Teacher of Students with Autism or Severe Disabilities (Valid Grades K to 12).~~

~~2.0 Definitions~~

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

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

3-0 Standard Certificate

In accordance with ~~14 Del.C. §1220(a)~~, the Department shall issue a Standard Certificate as a Teacher of Students with Autism or Severe Disabilities 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 A bachelor's or a master's degree from an NCATE specialty organization recognized educator preparation program offered by a regionally accredited college or university, with a major in special education with a concentration in autism or severe disabilities; or
- 3-2 A bachelor's or a master's degree from a state approved educator preparation program offered by a regionally accredited college or university, with a major in special education with a concentration in autism or severe disabilities, where the state approval body employed the appropriate NASDTEG standards or NCATE specialty organization standards; or
- 3-3 A bachelor's or master's degree from a regionally accredited college or university with a major in special education; and
 - 3-3.1 A minimum of fifteen (15) graduate credits in the areas of autism or severe disabilities from a regionally accredited college or university, as more specifically set forth in 3-3.1.1 through 3-3.1.5. With approval of a Committee comprised of the candidate's principal or other designated school administrator, the State Director of Autism Programs, a higher education representative who teaches one of the approved courses, and a DOE representative, other verifiable professional experiences may be substituted for no more than nine (9) of the required credits.
 - 3-3.1.1 Introduction and Survey of Autism and Severe Developmental Disabilities;
 - 3-3.1.2 Methods of Instruction and Functional Curriculum for Students with Autism or Severe Disabilities;
 - 3-3.1.3 Functional Communication Training;
 - 3-3.1.4 Advanced Practicum in Behaviorally Based Teaching Techniques; and
 - 3-3.1.5 One elective chosen from among the following. To be considered as an elective for certification, a course must specifically reference students with autism or severe disabilities in the title, catalog description, or syllabus and address an area known to be of critical importance to students with autism or severe disabilities:
 - 3-3.1.5.1 Medical Aspects of Severe and Profound Disabilities;
 - 3-3.1.5.2 Consultation and Collaboration;
 - 3-3.1.5.3 Assistive Technology;
 - 3-3.1.5.4 Augmentative Communication;
 - 3-3.1.5.5 Evaluation and Assessment for Students with Significant Needs;
 - 3-3.1.5.6 Seminar in Families and Autism;
 - 3-3.1.5.7 Transition from Secondary Special Education;
 - 3-3.1.5.8 Adaptive Recreation; or
 - 3-3.1.5.9 Career Technical Training and Assessment: Severe Disabilities; or
 - 3-3.1.5.10 Education of Students with Severe Disabilities or Sensory Impairments.

4-0 Present Teachers of Students with Autism or Severe Disabilities Protected

- 4-1 The Department shall recognize a Standard Teacher of the Autistic Child Standard or Professional Status Certificate issued by the Department between January 1, 1982 and August 31, 2005, if otherwise valid. A teacher holding a Standard Teacher of the Autistic Child Standard or Professional Status Certificate issued between January 1, 1982 and August 31, 2005 shall be considered certified to teach classes for children with autism or severe disabilities.

1573 Teacher of Students with Autism or Students with Severe Intellectual Disabilities**1.0 Content**

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for a Teacher of Students with Autism or Students with Severe Intellectual Disabilities. Eighteen (18) months from the effective date of this regulation, this certification shall be required for all educators within the Delaware public school system whose primary assignment is teaching children with autism or children with severe intellectual disabilities and for educators teaching in an Approved Program.
- 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:
- “Approved Program” means a program encompassing or within a public school designated by the Department and the State Board as a component of the Delaware Autism Program.
- “Autism” means a disability as defined in 14 DE Admin. Code 922 Children with Disabilities Subpart A and 925 Children with Disabilities Subpart D.
- “Intellectual Disability” means a disability as defined in 14 DE Admin. Code 922 Children with Disabilities Subpart A and 925 Children with Disabilities Subpart D.
- “Severe Intellectual Disability” means a disability as defined in 14 DE Admin. Code 922 Children with Disabilities Subpart A and 925 Children with Disabilities Subpart D.

3.0 Standard Certificate

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Teacher of Students with Autism or Students with Severe Intellectual Disabilities to an educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Standard or Professional Status 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, including any subsequent amendment or revision thereto; and,
- 3.1.3 Has satisfied the additional requirements in this regulation.

4.0 Additional Requirements

- 4.1 An educator shall also have satisfied at least one (1) of the following additional education requirements:
- 4.1.1 Graduating with a bachelor’s or a master’s degree, with a major in special education and with a concentration in autism and severe intellectual disabilities, from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, offered by a regionally accredited college or university. The state approval body shall employ the appropriate NASDTEC or NCATE specialty organization standard; or
- 4.1.2 Graduating with a bachelor’s or master’s degree from a regionally accredited college or university with a major in special education; and
- 4.1.2.1 Completion of a minimum of fifteen (15) credits from a regionally accredited college or university or their equivalent in professional development as approved by the Department, with a focus in autism and severe intellectual disabilities in the following content areas:
- 4.1.2.1.1 Introduction to Autism and Severe Intellectual Disabilities (three credits);

- 4.1.2.1.2 Methods of Instruction in Academic Standards and Functional Skills (three credits);
- 4.1.2.1.3 Functional Communication Training (three credits);
- 4.1.2.1.4 Applied Behavior Analysis for Educators (three credits); and
- 4.1.2.1.5 Competency-Based Practicum in Behaviorally Based Teaching Techniques (three credits)

5.0 Past Certification Recognized

- 5.1 The Department shall recognize a Standard Teacher of the Autistic Child or Professional Status Certificate issued by the Department between January 1, 1982 and August 31, 2005, if otherwise valid. A teacher holding a Standard Teacher of the Autistic Child or a Professional Status Certificate issued between January 1, 1982 and August 31, 2005 shall be considered certified to teach classes for children with autism or severe intellectual disabilities.
- 5.2 The Department shall recognize a Standard Certificate Teacher of Students with Autism or Severe Disabilities issued by the Department between September 1, 2005 and the effective date of this regulation. A teacher holding a Standard Certificate Teacher of Students with Autism or Severe Disabilities issued between October 1, 2005 and the effective date of this regulation shall be considered certified to teach classes for children with autism or severe intellectual disabilities.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 1581

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

1581 School Reading Specialist

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** 1581 School Reading Specialist. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It was necessary to review and amend this regulation in order to provide a current definition, formatting and to consider the current course count. This regulation sets forth the requirements for a School Reading Specialist.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday, December 3, 2012 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses 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.

1581 School Reading Specialist

4.0 Content

~~This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Reading Specialist.~~

~~7-DE-Reg-775 (12/1/03)~~

2.0 Definitions

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

~~“**Certification**” means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.~~

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

~~“**Educator**” means a person licensed and certified by the State under 14 **Del.C.** §1202 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board. The term ‘educator’ does not include substitute teachers.~~

~~“**Examination of Content Knowledge**” means a standardized test which measures knowledge in a specific content area, such as PRAXIS™ II.~~

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

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

~~“Major or Its Equivalent” means a minimum of thirty (30) semester hours of course work in a particular content area.~~

~~“NASDTEC” means The National Association of State Directors of Teacher Education and Certification. The organization represents professional standards boards, commissions and departments of education in all 50 states, the District of Columbia, the Department of Defense Dependent Schools, the U.S. Territories, New Zealand, and British Columbia, which are responsible for the preparation, licensure, and discipline of educational personnel.~~

~~“NCATE” means The National Council for Accreditation of Teacher Education, a national accrediting body for schools, colleges, and departments of education authorized by the U.S. Department of Education.~~

~~“Reading Specialist” means an educator who provides one on one or small group, diagnostic, prescriptive teaching of reading, and includes, but is not limited to, Title I reading teachers, reading resource teachers, reading teachers as specified in SB 320, Epilogue §358, and educators who work with teachers in reading and communication skills, including, but not limited to literacy coaches and coordinators, and individuals employed as building or district coordinators of reading or in Reading Cadre positions.~~

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

~~“Standards Board” means the Professional Standards Board established pursuant to 14 Del.C. §1201.~~

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

~~“Valid and Current License or Certificate from Another State” means a current full or permanent certificate or license issued by another state. It does not include temporary, emergency or expired certificates or licenses issued from another state.~~

~~8-DE Reg. 886 (12/1/04)~~

~~40-DE Reg. 400 (7/1/06)~~

3.0 Standard Certificate

~~In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Reading Specialist to an applicant who has a minimum of three (3) years of successful teaching experience with at least two years in the K to 12 classroom, and who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, who has met the following requirements:~~

- ~~3.1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:
 - ~~3.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or~~
 - ~~3.1.2 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a Master's degree or its equivalent in Reading; or~~
 - ~~3.1.3 Holding a Bachelor's degree plus 30 graduate credits from a regionally accredited college or university or a Master's degree from a regionally accredited college or university in any content area and a minimum of 24 semester hour credits in graduate level reading covering the following content areas as specified below:
 - ~~3.1.3.1 Language Development (3 semester hours);~~
 - ~~3.1.3.2 Methods in Process Writing or Language Arts (3 semester hours);~~
 - ~~3.1.3.3 Assessment and Correction of Reading Difficulties (6 semester hours);~~
 - ~~3.1.3.4 Reading in the Content Areas (3 semester hours);~~
 - ~~3.1.3.5 Children's or Adolescent Literature Across the Curriculum (3 semester hours);~~~~~~

~~3.1.3.6 Practicum in Reading to include application of assessment and correction strategies, parent involvement strategies, and experience in working as a reading resource person with staff (6 semester hours); and~~

~~3.1.3.7 A minimum of three graduate semester hours from among the following:~~

~~3.1.3.7.1 Seminar in Reading Research;~~

~~3.1.3.7.2 Emergent Literacy;~~

~~3.1.3.7.3 Teaching English as a Second Language; or~~

~~3.1.3.7.4 Children's or Adolescent Literature; and~~

~~3.2 For applicants applying after December 31, 2005, where a Praxis™ II examination in the area of the Standard Certificate requested is applicable and available, achieving a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination; or~~

~~3.3 Meeting the requirements for licensure and holding a valid and current license or certificate from another state as a Reading Specialist;~~

~~3.3.1 The Department shall not act on an application for certification if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution; or~~

~~3.4 Meeting the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C. §1203.~~

~~8 DE Reg. 886 (12/1/04)~~

~~10 DE Reg. 100 (7/1/06)~~

4.0 Multiple Certificates

Educators may hold certificates in more than one area.

~~7 DE Reg. 775 (12/01/03)~~

~~8 DE Reg. 899 (12/01/04)~~

~~10 DE Reg. 100 (7/1/06)~~

5.0 Application Requirements

An applicant for a Standard Certificate shall submit:

~~5.1 Official transcripts; and~~

~~5.2 Official scores on the Praxis II examination if applicable and available; or~~

~~5.3 Evidence of passage of the National Board for Professional Teaching Standards Certificate, if applicable; or~~

~~5.4 An official copy of the out of state license or certification, if applicable.~~

~~5.5 If applied for simultaneously with application for an Initial License, the applicant shall provide all required documentation for that application in addition to the documentation cited above.~~

~~10 DE Reg. 100 (7/1/06)~~

6.0 Application Procedures for License Holders

If an applicant holds a valid Initial, Continuing, or Advanced Delaware License; or a Limited Standard, Standard or Professional Status Certificate issued prior to August 31, 2003 and is requesting additional Standard Certificates, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill or education required for the additional Standard Certificate requested is required.

~~10 DE Reg. 100 (7/1/06)~~

7.0 Effect of Regulation

~~This regulation shall apply to all requests for issuance of a Standard Certificate, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate issued on or before August 31, 2003 shall be issued a Continuing License upon the expiration of their current Professional Status Certificate or Standard Certificate. The Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate shall be listed on the Continuing License or the Advanced License. The Department shall also recognize a Limited Standard Certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the prescription letter received with the Limited Standard Certificate. Requirements must be completed by the expiration date of the Limited Standard Certificate, but in no case later than December 31, 2008. Reading Specialists, as defined in 2.0, hired prior to July 1, 2006, who do not meet the requirements set forth herein, but who hold an Initial, Continuing or Advanced License; or a Standard or Professional Status Certificate issued prior to August 31, 2003, may be issued a Standard Certificate as a Reading Specialist contingent on their completion of the requirements set forth herein within three (3) years of the effective date of this regulation or their date of employment in the position of Reading Specialist, whichever is later.~~

~~40 DE Reg. 100 (7/1/06)~~

8.0 Validity of a Standard Certificate

~~A Standard Certificate is valid regardless of the assignment or employment status of the holder of a certificate or certificates, and is not subject to renewal. It shall be revoked in the event the educator's Initial, Continuing, or Advanced License or Limited Standard, Standard, or Professional Status Certificate is revoked in accordance with 14 DE Admin. Code 1514. An educator whose license or certificate is revoked is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.~~

~~40 DE Reg. 100 (7/1/06)~~

9.0 Secretary of Education Review

~~The Secretary of Education may, upon the written request of the superintendent of a local school district or charter school administrator or other employing authority, review credentials submitted in application for a Standard Certificate on an individual basis and grant a Standard Certificate to an applicant who otherwise does not meet the requirements for a Standard Certificate, but whose effectiveness is documented by the local school district or charter school administrator or other employing authority.~~

1.0 Content

- 1.1 This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for School Reading Specialist. This certification is required for all School Reading Specialists in Delaware public schools.
- 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:
"Reading Specialist" means an educator whose responsibility is to improve reading achievement in their assigned school or district position. A Reading Specialist provides one-on-one or small group, diagnostic teaching of reading. Responsibilities may include coaching and leading school reading

programs. Reading Specialists' assignments may include Title I reading teachers, reading resource teachers and educators who work with teachers in reading and communication skills, including, but not limited to literacy coaches and coordinators, and individuals employed as building or district coordinators of reading or in Reading Cadre positions. Reading Specialists may also serve as a resource in reading and writing for educational support personnel, administrators, teachers, and the community, provide professional development based on historical and current literature and research, work collaboratively with other professionals to build and implement reading programs for individuals and groups of students, and serve as advocates for students who struggle with reading.

3.0 Standard Certificate

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a School Reading Specialist to an educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Professional Status 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, including any subsequent amendment or revision thereto; and,
 - 3.1.3 Has satisfied the additional requirements in this regulation.

4.0 Additional Requirements

An educator must also have met the following additional requirements:

4.1 Education requirements:

- 4.1.1 An educator shall also have satisfied at least one (1) of the following additional education requirements:
 - 4.1.1.1 A Master's degree or its equivalent from a regionally accredited college or university in Reading offered by an NCATE specialty organization recognized educator preparation program or state approved educator preparation program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards; or
 - 4.1.1.2 Completion of either a Bachelor's degree plus (30) graduate level credit hours or a Master's degree, from a regionally accredited college or university in any content area; and
 - 4.1.1.2.1 The successful completion of twenty-four (24) graduate level credit hours in the following content areas:
 - 4.1.1.2.1.1 Assessment and Instruction in Writing (3 credits);
 - 4.1.1.2.1.2 Assessment and Instruction in Reading (6 credits);
 - 4.1.1.2.1.3 Practicum in Reading to include application of strategies in assessment, instruction and parent involvement (6 credits);
 - 4.1.1.2.1.4 Literacy in the Content Areas (3 credits);
 - 4.1.1.2.1.5 Teaching English as a Second Language (3 credits); and either
 - 4.1.1.2.1.6 Literacy Acquisition (3 credits); or
 - 4.1.1.2.1.7 Coaching Adult Learners (3 credits).

4.2 Experience requirements:

- 4.2.1 An educator must have a minimum of three (3) years of teaching experience.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 1592

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

1592 School Leader I

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 1592 School Leader I. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation in order to upgrade the requirement's rigor and to build upon the amended pathways to certification for school building leaders in 14 DE Admin. Code 1592 School Principal. This regulation sets forth the requirements for Certified Central Office Personnel.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday, December 3, 2012 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses 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.

~~1592 School Leader I~~

4.0 Content

- 1.1 The following shall apply to the issuance of a Standard Certificate for Directors, Supervisors, Administrative Assistants, Coordinators, and Managers in instructional areas, except Directors of Special Education (See 14 DE Admin. Code 1594), pursuant to 14 Del.C. §1220.

2.0 Definitions

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

~~“Standards Board”~~ means the Professional Standards Board established pursuant to 14 Del.C. §1201.

~~“Standard Certificate”~~ means a credential issued to verify 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.

~~“State Board”~~ means the State Board of Education of the State of Delaware established pursuant to 14 Del.C. §104.

~~“Teaching Experience”~~ means meeting students on a regularly scheduled basis, planning and delivering instruction, developing or preparing instructional materials, and evaluating student performance in any PK to 12 setting.

3.0 Standard Certificate

The following shall be required for the Standard Certificate for Directors, Supervisors, Administrative Assistants, Coordinators, and Managers in instructional areas.

3.1 Educational requirements

- 3.1.1 A master's degree in educational leadership from an NCATE or state approved program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards from a regionally accredited college or university, or
- 3.1.2 A master's degree in education offered by an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program where the state approval body employed the appropriate NCATE specialty organization standards from a regionally accredited college or university and a current and valid equivalent central office administrative certificate from another state, or
- 3.1.3 A master's degree in any field from a regionally accredited college or university and successful completion of a Delaware approved alternative routes to certification program for school leaders. Until approval and implementation of an alternatives routes to certification program occurs, candidates completing the Standard Certificate in accordance with 3.1.3.1 of this regulation shall fulfill the following requirements;
- 3.1.3.1 A minimum of twenty four semester hours of graduate level course work, completed either as part of the master's degree or in addition to it, in administration, to include at least one course in each of the following areas:
- 3.1.3.1.1 Curriculum Development,
 - 3.1.3.1.2 Supervision and Evaluation of Staff,
 - 3.1.3.1.3 Human Relations, and
 - 3.1.3.1.4 School Law or Legal Issues and

~~3.1.3.1.5 In the area(s) to be supervised (may include courses in curriculum, instruction, and methods), and~~

3.2 Experience requirements

3.2.1 A minimum of three (3) years of teaching experience at the pK to 12 level.

1592 Certified Central Office Personnel

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Certified Central Office Personnel.

1.1.1 This Standard Certificate is for Directors, Supervisors, Administrative Assistants, Coordinators, and Managers in instructional areas, except for Directors of Special Education (See 14 DE Admin. Code 1594).

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:

“Certification Program for Leaders in Education” means a program comprised of education components as defined and approved by the Standards Board and the State Board pursuant to 14 DE Admin. Code 1595 Certification Programs for Leaders in Education.

3.0 Standard Certificate

3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as Certified Central Office Personnel to an educator who has met the following:

3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and

3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and

3.1.3 Has satisfied the additional requirements in this regulation.

4.0 Additional Requirements

An educator must also have met the following additional requirements:

4.1 Education requirements.

4.1.1 An educator shall also have satisfied at least one (1) of the following additional education requirements:

4.1.1.1 A master’s or doctoral degree from a regionally accredited college or university in educational leadership offered by an NCATE specialty organization recognized educator preparation program or state approved educator preparation program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards; or

4.1.1.2 A masters degree from a regionally accredited college or university in any field and one of the following:

4.1.1.2.1 The successful completion of an approved Program pursuant to 14 DE Admin. Code 1595 Certification Programs for Leaders in Education; or

PROPOSED REGULATIONS

4.1.1.2.2 Holding a Standard Certificate School Principal; and

4.1.1.2.3 Successful completion of an additional nine (9) graduate level credit hours from a regionally accredited college or university in educational leadership or the equivalent in professional development approved by the Department.

4.2 Experience requirements.

4.2.1 An educator must have a minimum of five (5) years of teaching experience.

5.0 Validity

5.1 This regulation shall be effective no less than ten (10) days from the date the Order amending the regulation has been published in its final form in the Delaware Register of Regulations.

5.1.1 Educators currently enrolled in a certified central office personnel course of study prior to the effective date of this regulation will have eighteen (18) months subsequent to the effective date to apply for the previous School Leader I Standard Certificate. Educators are responsible for providing to the Department evidence of enrollment via submission of appropriate transcripts.

5.2 An Emergency Certificate for Certified Central Office Personnel is not available.

5.3 The Department shall also recognize a Standard Certificate for School Leader I issued by the Department prior to the effective date of this regulation.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 1593

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

1593 School Leader II

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 1593 School Leader II. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation in order to upgrade the requirement's rigor and to build upon the amended pathways to certification for school building leaders in 14 DE Admin. Code 1592 School Principal, and district level leaders in 14 DE Admin. Code 1592 Certified Central Office Personnel. This regulation sets forth the requirements for Superintendent.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday, December 3, 2012 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses 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.

1593 School Leader II

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate for School District Superintendents and Assistant Superintendents, pursuant to ~~14 Del.C. §1220.~~

~~7 DE Reg. 190 (8/1/03)~~

~~7 DE Reg. 1744 (6/1/04)~~

2.0 Definitions

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

~~“Full Time School Leadership” means full time experience as a principal or assistant principal or as a district level administrator.~~

~~“Standards Board” means the Professional Standards Board established pursuant to 14 Del.C. §1201.~~

~~“Standard Certificate” means a credential issued to verify 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.~~

~~“State Board” means the State Board of Education of the State of Delaware established pursuant to 14 Del.C. §104.~~

~~“Teaching Experience” means meeting students on a regularly scheduled basis, planning and delivering instruction, developing or preparing instructional materials, and evaluating student performance in any PK to 12 setting.~~

~~7 DE Reg. 1744 (6/1/04)~~

~~3.0 Standard Certificate~~

~~The following shall be required for the Standard Certificate for School District Superintendents and Assistant Superintendents:~~

~~3.1 Educational requirements:~~

- ~~3.1.1 A doctoral degree in educational leadership from an NCATE or state approved program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards offered by an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards from a regionally accredited college or university, or~~
- ~~3.1.2 A master's or doctoral degree in education from a regionally accredited college and a current Superintendent or Assistant Superintendent certificate from another state, or~~
- ~~3.1.3 A master's or doctoral degree in any field from a regionally accredited college and successful completion of a Delaware approved alternative routes to certification program for school leaders and superintendents. Until approval and implementation of an alternative routes to certification program occurs, candidates completing the Standard Certificate in accordance with 3.1.3 of this regulation shall provide evidence of graduate course work in the following areas, either as part of the master's or doctoral degree program or in addition to it.~~
 - ~~3.1.3.1 Personnel Administration~~
 - ~~3.1.3.2 Supervision and Evaluation of Staff~~
 - ~~3.1.3.3 Curriculum Development and Instruction~~
 - ~~3.1.3.4 School Business Management~~
 - ~~3.1.3.5 School Law or Legal Issues in Education~~
 - ~~3.1.3.6 Human Relations~~
 - ~~3.1.3.7 Organizational Management~~
 - ~~3.1.3.8 Child or Adolescent Development, if not taken at the undergraduate level.~~

~~3.2 Experience requirements~~

- ~~3.2.1 A minimum of five (5) years of teaching experience at the pK to 12 level; or~~
- ~~3.2.2 A minimum of five (5) years of full time pK to 12 leadership experience; or~~
- ~~3.2.3 Any combination of these types of experience which totals a minimum of five (5) years.~~
- ~~3.2.4 The required experience may be acquired at either the building or district level.~~

1593 Superintendent or Assistant Superintendent

1.0 Content

- 1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Superintendent or Assistant Superintendent.
- 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:
“Certified Central Office Experience” means being certified and employed as a Director, Supervisor, Administrative Assistant, Coordinator or Manager in an instructional area in an employing authority's central office.

“Education Experience” means working with students under a State credential in any PreK to 12 public school setting or the equivalent as approved by the Department.

3.0 Standard Certificate

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Superintendent or Assistant Superintendent to an educator who has met the following:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and
 - 3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and
 - 3.1.3 Has satisfied the additional requirements in this regulation.

4.0 Additional Requirements

An educator must also have met the following additional requirements:

4.1 Education requirements.

- 4.1.1 An educator shall also have satisfied at least one (1) of the following additional education requirements:
 - 4.1.1.1 A doctoral degree from a regionally accredited college or university in educational leadership offered by an NCATE specialty organization recognized educator preparation program or state approved educator preparation program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards; or
 - 4.1.1.2 A masters or doctoral degree from a regionally accredited college or university in any field and one of the following:
 - 4.1.1.2.1 The successful completion of an approved Superintendent Program pursuant to 14 DE Admin. Code 1595 Certification Programs for Leaders in Education; or
 - 4.1.1.2.2 Holding a Standard Certificate Certified Central Office Personnel or a Standard Certificate Special Education Director; and
 - 4.1.1.2.3 Successful completion of an additional nine (9) graduate level credit hours from a regionally accredited college or university in educational leadership or the equivalent in professional development approved by the Department.

4.2 Experience requirements.

- 4.2.1 An educator must have a minimum of seven (7) years of education experience consisting of the following:
 - 4.2.1.1 A minimum of five (5) years of teaching experience; and
 - 4.2.1.2 A minimum of two (2) years of full time leadership experience working in any of the following areas:
 - 4.2.1.2.1 A School Principal or an Assistant School Principal; or
 - 4.2.1.2.2 A Certified Central Office Personnel educator; or
 - 4.2.1.2.3 A Special Education Director; or
 - 4.2.1.2.4 Other leadership position.

5.0 Validity

- 5.1 This regulation shall be effective no less than ten (10) days from the date the Order amending the regulation has been published in its final form in the Delaware Register of Regulations.
 - 5.1.1 Educators currently enrolled in a School Leader II course of study will have eighteen (18) months subsequent to the effective date to apply for the previous School Leader II Standard Certificate. Educators are responsible for providing the Department evidence of enrollment via submission of appropriate transcripts.
- 5.2 An Emergency Certificate for Superintendent or Assistant Superintendent is not available.

- 5.3 The Department shall also recognize a Standards Certificate for Superintendent or Assistant Superintendent issued by the Department prior to the effective date of this regulation.
-

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 1594

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

1594 Special Education Director

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** 1594 Special Education Director. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation in order to upgrade the requirements' rigor and to build upon the other amended administrator regulations. This regulation sets forth the requirements for Special Education Director.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday, December 3, 2012 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses 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.

1594 Special Education Director

4.0 Content

- 4.1 This regulation shall apply to the issuance of a Standard Certificate for Director of Special Education, pursuant to 14 **Del.C.** §1220(a).

2.0 Definitions

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

“Administrative Experience” means experience in a pK to 12 setting as an assistant principal, principal, School Leader I, or School Leader II.

“Standard Certificate” means a credential issued to verify 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.

“Teaching Experience” means meeting students on a regularly scheduled basis, planning and delivering instruction, developing or preparing instructional materials, and evaluating student performance in any pK to 12 setting.

3.0 Standard Certificate

The following shall be required for the Standard Certificate for a Director of Special Education.

- 3.1 Educational requirements.

- 3.1.1 A master's degree in special education from a regionally accredited college or university where the program is NCATE approved or state approved, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards; and

- 3.1.1.1 Successful completion of a Delaware approved alternative routes to certification program for school leaders. Until approval and implementation of an alternative routes to certification program occurs, candidates shall fulfill the following requirements;

- 3.1.1.1.1 A minimum of twenty four (24) semesters hours of graduate level course work in administration, completed either as part of the master's degree or in addition to it, to include at least one course in each of the following areas, unless otherwise indicated:

3.1.1.1.1.1 Supervision and Evaluation of Staff;

3.1.1.1.1.2 Curriculum Development;

3.1.1.1.1.3 School Law and Legal Issues in Education;

3.1.1.1.1.4 Human Relations; and

3.1.1.1.1.5 Special Education (12 credits) (may include courses in curriculum, instruction, methods, and administration); or

- 3.1.2 A master's degree in school administration; and 30 graduate level semester hours in Special Education taken either as part of a degree program or in addition to it; or

- 3.1.3 A master's degree in any field from a regionally accredited college or university; and

- 3.1.3.1 30 graduate level semester hours in Special Education taken either as part of a degree program or in addition to it; and

PROPOSED REGULATIONS

~~3.1.3.2 Successful completion of a Delaware approved alternative routes to certification program for school leaders. Until approval and implementation of an alternative routes to certification program occurs, candidates shall fulfill the following requirements:~~

~~3.1.3.2.1 Supervision and Evaluation of Staff;~~

~~3.1.3.2.2 Curriculum Development;~~

~~3.1.3.2.3 School Law or Legal Issues in Education;~~

~~3.1.3.2.4 Human Relations; and~~

~~3.1.3.2.5 Special Education (12 credits) (may include courses in curriculum, instruction, methods, and administration taken either as part of a degree program or as part of the requirement for graduate level semester hours in Special Education set forth in 3.1.2.1 and 3.1.3.1, above); or~~

~~3.1.4 A current and valid special education administrative certificate from another state or the District of Columbia.~~

~~3.2 Experience requirements.~~

~~3.2.1 A minimum of three (3) years of teaching experience with children with disabilities at the pK to 12 level; or~~

~~3.2.2 A minimum of three (3) years of professional experience with children with disabilities at the pK to 12 level, in any setting, in a position requiring certification or licensing by the appropriate regulatory body, including, but not limited to a school psychologist, speech pathologist, or audiologist, regardless of whether the applicant's position meets the definition of "teaching experience"; or~~

~~3.2.3 A minimum of three (3) years administrative experience with children with disabilities at the pK to 12 level; or~~

~~3.2.4 Any combination of these types of experiences which totals a minimum of three (3) years.~~

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate for Director of Special Education, pursuant to 14 Del.C. §1220(a).

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:

"Certification Program for Leaders in Education" means a program comprised of education components as defined and approved by the Standards Board and the State Board pursuant to 14 DE Admin. Code 1595 Certification Programs for Leaders in Education.

3.0 Standard Certificate

3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Special Education Director to an educator who has met the following:

3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Professional Status 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, including any subsequent amendment or revision thereto; and

3.1.3 Has satisfied the additional requirements in this regulation.

4.0 **Additional Requirements**

An educator must also have met the following additional requirements.

4.1 Education requirements.

4.1.1 An educator shall also have satisfied at least one (1) of the following additional education requirements:

4.1.1.1 A master's or doctoral degree from a regionally accredited college or university in educational leadership offered by an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards; and

4.1.1.1.1 Thirty (30) graduate level semester hours from a regionally accredited college or university in Special Education taken either as part of a degree program or in addition to it, or the equivalent in professional development pre-approved by the Department; or

4.1.1.2 A master's or doctoral degree from a regionally accredited college or university in Special Education offered by an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program where the state approval body employed the appropriate NCATE specialty organization standards; and

4.1.1.2.1 The successful completion of any approved Program pursuant to 14 DE Admin. Code 1595 Certification Programs for Leaders in Education; or

4.1.1.3 A master's or doctoral degree from a regionally accredited college or university in any field; and

4.1.1.3.1 The successful completion of an approved Special Education Director Program pursuant to 14 DE Admin. Code 1595 Certification Programs for Leaders in Education.

4.2 Experience requirements.

4.2.1 An educator shall also have satisfied at least one (1) of the following additional education requirements:

4.2.1.1 A minimum of five (5) years of teaching experience with exceptional children special education students at the PreK to 12 public school level or the equivalent as approved by the Department; or

4.2.1.2 A minimum of five (5) years professional experience under a Delaware Standard Certificate or other Delaware professional license working with exceptional children special education students at the PreK to 12 level or the equivalent as approved by the Department; or

4.2.1.3 Any combination of the types of experiences prescribed in subsections 4.2.1.1 and 4.2.1.2 which totals a minimum of five (5) years.

5.0 **Validity**

5.1 This regulation shall be effective no less than ten (10) days from the date the Order amending the regulation has been published in its final form in the Delaware Register of Regulations.

5.1.1 Educators currently enrolled in a Special Education Director course of study prior to the effective date of this regulation will have until eighteen (18) months subsequent to the effective date to apply for the previous Special Education Director Standard Certificate. Educators are responsible for providing to the Department evidence of enrollment via submission of appropriate transcripts.

5.2 An Emergency Certificate for Special Education Director is not available.

5.3 The Department shall also recognize a Standard Certificate for Special Education Director issued by the Department prior to the effective date of this regulation.

PROPOSED REGULATIONS

DEPARTMENT OF ELECTIONS OFFICE OF THE COMMISSIONER OF ELECTIONS FOR THE STATE OF DELAWARE

Statutory Authority: 15 Delaware Code, Section 8021(c), 8041(1)
(15 Del.C. §§8021(c), 8041(1))

PUBLIC NOTICE

Background

The Delaware Elections Disclosure Act (the "Act") was signed into law on August 15, 2012. In connection therewith, the Act requires the Commissioner of Elections (the "Commissioner") to adopt regulations no later than December 31, 2012:

- a) exempting, to the extent possible, persons from reporting duplicative information in campaign finance reports;
- b) promulgating standards with respect to the size, layout and timing of the disclaimer statements required with respect to certain campaign advertisements;
- c) adopting any amendments or modifications to, or exemptions from, such disclaimer statements; and
- d) adopting procedures for the electronic filing of reports and the posting of said reports to the Commissioner of Elections' web site.

See 15 Del.C. §8041(1).

The Commissioner first adopted campaign finance regulations in 1992. Those regulations are shown below in normal text. The proposed regulations to be adopted in connection with the Act are shown below in underline or ~~strikethrough~~.

Public Comment Period

The Commissioner of Elections will take written comments on the proposed Regulations from November 1, 2012 through November 30, 2012.

Any requests for copies of the proposed Regulations, or any questions or comments regarding this document should be directed to:

Elaine Manlove, State Elections Commissioner
905 S. Governors Avenue, Suite 170
Dover, DE 19904
Phone: (302) 739-4277
Fax: (302) 739-6794
Email: Elaine.Manlove.state.de.us

Campaign Finance Regulations

1.0 Authority Scope and purpose

~~The State Election Commissioner has authority under 15 Del. C. § 8041(1) to enact rules and regulations not inconsistent with law "as are necessary to implement and enforce the Campaign Financing Act." These regulations should be read in conjunction with Chapter 80 of Title 15 and have the force and effect of law. The State Election Commissioner has authority under 15 Del. C. Sec. 8041(1) to enact rules and regulations to implement and enforce the Campaign Financing Act of 1990 and the 2012 Delaware Elections Disclosure Act. The purpose of these regulations is to mandate disclosure of sources of campaign money to give voters information to make informed choices of candidates and to educate and to regulate candidates and political committees, including persons~~

making independent expenditures through third party advertisements. The regulations should be read in conjunction with Chapter 80 of Title 15 and have the force and effect of law.

2.0. Definitions

- 2.1 “Campaign advertisement” has the meaning set forth in 15 Del.C. §8021(a) or any successor provision, as the same shall be amended from time to time.
- 2.2 “Electioneering communication” has the meaning set forth in 15 Del.C. §8002(11) or any successor provision, as the same shall be amended from time to time.
- 2.3 “Electronic format” means a communication posted or displayed electronically, and includes but is not limited to communications in electronic messages, electronic message attachments, text messages, or communications and advertisements appearing on Internet web pages, blogs, mobile devices, or other electronic communication systems.
- 2.4 “Independent expenditure” has the meaning set forth in 15 Del.C. §8002(13) or any successor provision, as the same shall be amended from time to time.
- 2.5 “Printed communication” means any communication distributed via mail, sign, the Internet, newspaper or other periodical.
- 2.6 “Third-party campaign advertisement” has the meaning set forth in 15 Del.C. §8002(27) or any successor provision, as the same shall be amended from time to time.

3.0 Contributions

- 3.1 Amount of contributions
 - 3.1.1 A contribution as defined by 15 Del.C. §8002(6) may not exceed the maximum allowed for any election period regardless of whether that contribution is designated by the donor to retire a previous campaign debt or for a present campaign.
 - 3.1.2 Regardless of how it is characterized, the total amount given by any contributor to any candidate for any election period may not exceed the limits permitted for contributions under Subchapter II of Chapter 80.
 - 3.1.3 Incumbents not seeking reelection or other elective office may accept contributions to repay debt after the close of the election. However, the total contributions by any person given to any office holder in this circumstance may not exceed the amount permitted to be received by such office holder in the last election in which such office holder stood for election.
- 3.2 Receipt of contribution
 - 3.2.1 Cash or reportable in-kind services. The date of receipt of a contribution in cash or in kind services required to be reported under 15 Del.C. Ch. 80 is the date that it is physically received by the candidate, treasurer or other representative of the committee which is registered with the State Election Commissioner Office. This date of receipt and not the date of deposit or otherwise shall be the date for reporting purposes.
 - 3.2.2 Checks. The date of receipt of a contribution paid by check is the date the candidate, treasurer or other representative of the committee physically receives it. If the check is received by mail, the date of receipt and date for reporting purposes is the date it is received by the candidate, treasurer or representative of the registered committee. The person first receiving the check on behalf of the candidate or committee shall note on its face the date of physical receipt of the check. The person marking the date of receipt shall also accurately and legibly initial the notation of the date of actual receipt of the check.
- 3.3 Committee structure.
 - 3.3.1 An office holder intending to seek a different office must establish a campaign committee for the new campaign ~~within seven days after first receiving a contribution to, or making expenditure for, the new campaign.~~ no later than 24 hours after it receives any contribution or makes any expenditure that causes the aggregate amount of contributions by or expenditures to such committee to exceed \$500 during an election period.

PROPOSED REGULATIONS

- 3.3.2 If such candidate has not closed out the candidate's existing campaign committee, the existing committee shall become a subcommittee of the new campaign committee. No candidate may have more than one committee, although a committee may have subcommittees however they are designated. The new committee must be established as outlined above even if established for exploratory purposes only. For example, if a candidate is currently in office, is maintaining a candidate committee to settle past debt and is seeking a different office, there shall be one committee and a subcommittee.
- 3.3.3 A single report shall be filed with the Commissioner on behalf of the committee showing the required information for both the committee and subcommittee(s). A candidate and treasurer are jointly responsible for filing reports on behalf of a candidate committee. The designation by a candidate of a treasurer does not relieve the candidate of the requirement to file reports.
- 3.3.4 A candidate committee may accept contributions for the new campaign or to pay off debts of the subcommittee. However, the total contributed by any person to any candidate may not exceed the limits permitted under Subchapter II of Chapter 80 for the "election period" whether such contributions are for the new campaign or for its subcommittees to pay off prior debts.

4.0 School boards and offices paying under \$1,000

- 4.1 No candidate for election to any school board or to any other public office that pays less than \$1,000 per year shall be required to form a candidate committee if the candidate files a Certificate of Intention Form prepared by the Commissioner within 7 days of filing as a candidate and certifying (under penalty of perjury) the intention not to receive nor to spend more than \$2,000 in campaign funds.
- 4.2 A candidate who has filed a Certificate of Intention Form shall not be required to file any further reports with the Commissioner. However, if the candidate subsequently receives more than \$2,000 in contributions or spends more than \$2,000 before the end of the year in which the election for such office is held, the candidate or committee must, within 7 days of such receipt or expenditure, notify the Commissioner and file all reports that would otherwise have been required had no Certificate of Intention been made.
- 4.4 Reimbursement for personal expenses in connection with performance of duties of the office is not salary for purposes of calculating the \$1,000 limit on salaries for offices not required to report.

5.0 ~~Duties of a political committee~~ Statements of Organization

- 5.1 ~~A political committee must file, on forms prescribed by the Commissioner, the documents and reports required by 15 Del. C. Sec. 8005. In the case of a political committee, all~~ Each political committee shall file, under penalty of perjury, ~~officers of the committee are responsible for filing the a~~ Statement of Organization with the Commissioner no later than 24 hours after the committee receives any contribution or makes any expenditure that causes the aggregate amount of contributions by or expenditures to such committee to exceed \$500 during an election period, and Statement of Purposes and Goals with the Commissioner within 7 days after the committee first receives any contribution or makes any expenditure, or within 7 days of any change of officers. In accordance with 15 Del. C. Sec. 8030 the treasurer of a committee is responsible for timely filing of the report required by that section.
- 5.2 ~~The Statement of Organization of a candidate committee, or any amendment thereto, shall be signed under penalty of perjury by either the candidate or the treasurer. Notwithstanding the foregoing, in the case of a candidate committee, the candidate and treasurer are shall be jointly responsible for timely filing of all documents and reports required by 15 Del. C. § § 8005 and 8030. such documents. All Statements of Purposes and Goals must state the political office(s) and/or election for which the committee is being formed. The Statement of Organization of a candidate committee must be signed by the candidate and committee treasurer personally.~~
- 5.3 ~~Any officer of a political committee may submit a resignation to the Commissioner and be removed from the list of committee officers, except that no committee shall be without a treasurer. In the event a committee treasurer resigns without the appointment by the committee of a new treasurer, the following people shall automatically become treasurer: (1) In the case of a candidate committee, in the absence of a treasurer the candidate becomes the treasurer and is responsible for carrying out the~~

~~duties of the treasurer as required by law, (2) In the case of a political committee the highest remaining officer becomes the treasurer and is responsible for the duties of the treasurer until a new treasurer is designated. In the case of any political committee other than a candidate committee, the Statement of Organization and any amendments thereto shall be signed under penalty by the treasurer, who shall be responsible for the timely filing thereof.~~

6.0 Authorized campaign expenditures

6.1 Reporting of Expenses

6.1.1 Vehicles. Payments made toward the purchase or lease of vehicles are not travel expenses and must be listed on reporting forms as equipment purchases. Such vehicles must be titled or leased in the name of the political committee. If, at the end of the election, the vehicle is transferred to personal use, the person to whom the vehicle is transferred must reimburse the political committee for the fair market value of the vehicle at the time of the transfer. Fair market retail value for a motor vehicle shall be that listed by the National Automobile Dealers Association ("NADA Bluebook").

6.1.2 Equipment

6.1.2.1 No committee may close out its business with equipment remaining. Equipment possessed by the political committee at the end of the election must be sold to satisfy debts, obligations or loans of the committee; or be given to a successor committee, or donated to any religious, charitable, educational or scientific organization exempt from Delaware income tax under 30 **Del.C.** §1902(b)(2), political parties, or to any volunteer fire company and to no other person, treating such equipment the same as left over funds pursuant to 15 **Del.C.** §8022.

6.1.2.2 In the event equipment is transferred by sale or other lawful means under these regulations to personal use, the person receiving the equipment shall pay the committee the fair market value of the equipment at the time of the transfer. Fair market value shall be that price that would be paid by disinterested parties on the open market for equipment of like age and condition.

6.1.2.3 When equipment is sold or transferred from the committee to the person receiving such equipment for personal use, the person receiving such equipment bears the burden of showing the payment of fair market value to the committee of such item of equipment transferred for personal use. Any such transfer shall be reported on the disclosure reports required by Chapter 80 and such report shall be accompanied by a sworn affidavit from the person receiving such equipment attesting that the person receiving such equipment in good faith believes the value paid to the committee for the transfer of the equipment to personal use equals the fair market value of the equipment at the time of the transfer. The Commissioner may require such a person receiving such equipment to substantiate such value by acceptable appraisal or other estimate of value of the equipment from a person in the business of appraising or selling such equipment, or other evidence of a like piece being sold for a comparable price. Whenever this Section requires a person to submit an affidavit or other documentation relating to the transfer of equipment, it is the political committee's obligation to obtain and attach such documentation or affidavit to its report regardless of whether the person receiving the equipment is a candidate or a person under the control of the committee.

6.2 Self Dealing

6.2.1 When a committee has a commercial dealing with a person associated with the committee in that person's personal capacity, the committee has the burden of showing an arm's length, actual legitimate business transaction. For example, leases of personal property to one's political committee at higher than the fair market value will result in the excess above the fair market value being considered as an illegal expenditure of campaign funds not authorized under 15 **Del.C.** §8020. Likewise, any party or person other than the candidate who leases equipment to the political committee at a cost less than the fair market value will result in the difference between the

PROPOSED REGULATIONS

lease cost and the fair market value of such lease being considered a campaign contribution by the lessor.

- 6.2.2 Also, all no or low interest loans made to the political committee by other than the candidate which are below the market rate of interest charged for similar loans in an arm's length commercial transaction will be considered contributions to the extent below the market interest rate and subject to the limitations of Chapter 80. Likewise, any reportable in kind services provided will be considered a contribution.
- 6.2.3 The committee has the obligation of attaching to its reports any documentation necessary by affidavit, appraisal or otherwise, that the dealings between the political committee and the person associated with the political committee were arms length transactions.
- 6.3 Payments to candidates and their Spouses as compensation for services, regardless of how denominated, shall be considered wages or salary and, as such, are prohibited under 15 **Del.C.** §8020.

7.0 General content requirements.

- 7.1 All campaign advertisements having a fair market value of \$500 or more, except printed items with a surface of less than 9 square inches, shall include prominently the statement: "Paid for by [name of political committee or other person paying for such advertisement]."
- 7.2 All third-party advertisements having a fair market value of \$500 or more, except printed items with a surface of less than 9 square inches, shall include prominently the statement: "Paid for by [name of political committee or other person paying for such third-party advertisement]. Learn more about [political committee or other person paying for such third-party advertisement] at elections.delaware.gov."
- 7.3 Statement specifications, general. All statements required pursuant to Section 2 hereunder must be presented in a clear and conspicuous manner, to give the reader, observer, or listener adequate notice of (a) the identity of the political committee or person that paid for the communication; and (b) if applicable, the address of the Commissioner of Elections' web site. A disclaimer is not clear and conspicuous if it is difficult to read or hear, or if the placement is easily overlooked.
- 7.4 Statement specifications, printed communications. In addition to the general requirements of Section 6.2 hereunder, all statements required pursuant to 15 **Del.C.** §8021 that appear on any printed communication must also comply with the following specifications:
- 7.4.1 The statement must be of sufficient type size to be clearly readable by the recipient of the communication. Statements printed in the following font sizes shall be presumed to satisfy the foregoing type size requirement:
- 7.4.1.1 For printed communications smaller than 8½" x 11", a font size of eight (8) points or larger;
- 7.4.1.2 For printed communications from 8½" x 11" to 24" x 36", a font size of twelve (12) points or larger;
- 7.4.1.3 For printed communications that are larger than 24" x 36", a font size equal to least five percent (5%) of the height of such communication.
- 7.4.2 The statement must be contained in a printed box set apart from the other contents of the communication.
- 7.4.3 The statement must be printed with a reasonable degree of color contrast between the background and the printed statement. A statement satisfies the color contrast requirement of this section if it is printed in black text on a white background
- 7.4.4 If a printed communication appearing in electronic format lacks sufficient space to include the required statement in accordance with the foregoing specifications, such communication may meet disclosure requirements if, by clicking on the printed communication appearing in electronic format, the viewer is taken to a landing page or a home page that displays the statement in a conspicuous manner in accordance with the foregoing specifications.

- 7.5 Statement specifications, television communications. In addition to the general requirements of Section 7.2 hereunder, all statements required pursuant to 15 Del.C. §8021 that appear in any television communication must also comply with the following specifications:
- 7.5.1 The statement shall be both written and spoken either at the beginning or at the end of the communication, except that if the statement is written for at least five seconds of a broadcast of thirty seconds or less or ten seconds of a sixty second broadcast, a spoken disclosure statement is not required.
 - 7.5.2 The written disclosure statement shall appear with a reasonable degree of color contrast between the background and text of the statement, must be of sufficient size to be readily legible to an average viewer and shall air for at least four (4) seconds.
- 7.6 Statement specifications, radio communications. In addition to the general requirements of Section 7.2 hereunder, all statements required pursuant to 15 Del.C. §8021 that appear in any radio communication must also comply with the following specifications:
- 7.6.1 The statement shall be spoken in a clearly audible and intelligible manner at the beginning or end of the communication.
 - 7.6.2 The statement shall have a duration of at least three (3) seconds.
- 7.7 Statement specifications, telephone communications. In addition to the general requirements of Section 7.2 hereunder, all statements required pursuant to 15 Del.C. §8021 that appear in any telephone communication must also comply with the following specifications:
- 7.7.1 The statement shall be spoken in a clearly audible and intelligible manner at the beginning or end of the communication.
 - 7.7.3 The statement shall have a duration of at least three (3) seconds.

8.0 Reports of political committees**(a) Forms**

~~Reports of political committees required by 15 Del. C. Sec. 8030 shall be on forms prescribed or approved by the Commissioner. Such reports shall provide all information required on such forms and shall be printed legibly or typed in blue or black ink. Forms shall be available in the Office of the Commissioner.~~

(b) Filing

~~Both the candidate and treasurer bear personal responsibility to file the reports required. Such reports must be received in the Office of the Commissioner by 4:30 p.m., on the second day after the end of the reporting period that is not a State holiday under 1 Del. C. Chapter 5; or mailed to the Commissioner and postmarked by the end of the due date. Reports may be transmitted by facsimile, provided, however, that they are received in the Office of the Commissioner by 4:30 p.m. on the day due. In such event, the original must be mailed to the Office of the Commissioner postmarked no later than the due date.~~

(c) Signing

~~All reports must be signed personally by the candidate or committee treasurer and the signature of the treasurer does not relieve the candidate of responsibility for filing the necessary reports of a candidate committee.~~

- 8.1** Forms. Reports of political committees and third party advertisers required by 15 Del.C. §§8030, 8031 shall be filed electronically on forms prescribed by the Commissioner. The Commissioner shall issue to each person subject to 15 Del.C. §§8030, 8031 an electronic password upon the approval and processing of each such person's Statement of Organization.
- 8.2** Filing. Reports must be filed electronically by the deadline on the date they are due.
- 8.3** Signing. The electronic password issued to a person subject to 15 Del.C. §§8030, 8031 shall constitute that person's signature. The electronic password issued to third party advertisers shall constitute that person's signature upon reports filed pursuant to 15 Del.C. §§8030, 8031. The electronic password shall also constitute the signature under penalty of perjury of a third party advertiser filing pursuant to 15 Del.C. §8031.

9.0 ~~Reports of independent expenditures~~ Special reports of third party advertisements

Pursuant to 15 *Del. C. Sec. 8031* any person who makes an independent expenditure that causes the aggregate amount of independent expenditures made by such person to exceed \$100 in an election period, must file a report with the Commissioner on forms prescribed by the Commissioner. That report must be filed at the times required by 15 *Del. C. Sec. 8030* and contain the information required by 15 *Del. C. Sec. 8031*.

9.1 The initial report filed by a person pursuant to 15 **Del.C. §8031** during an election period shall contain all of the information required by Section 8031. Each subsequent report filed within the same election period shall contain the following information:

9.1.1 Any information required by Section 8005, if such information has changed since the last report filed with the Election Commissioner pursuant to Section 8031.

9.1.2 The full name and mailing address of each person to whom any expenditure has been made by the reporting person since the date of the last period under Section 8030 or Section 8031 in an aggregate amount in excess of \$100; the total aggregate amount of expenditures during the election period; the amount, date and purpose of each such expenditure; and the name of, and office sought by, each candidate on whose behalf such expenditure was made;

9.1.3 The full name and mailing address of each person who has made a contribution to the reporting person since the date of the last report filed pursuant to Section 8030 or Section 8031 in an aggregate amount or value in excess of \$100; the total of all contributions from such person since the date of the last report filed pursuant to Section 8030 or Section 8031; and the amount and date of all contributions from such person since the date of the last report filed pursuant to Section 8030 or Section 8031.

9.1.4 If a person listed under section (3) above is not an individual, the full name and mailing address of:

9.1.4.1 Any person who, directly or otherwise, owns a legal or equitable interest of 50 percent or greater in such entity; and

9.1.4.2 One responsible party, if the aggregate amount of contributions made by such entity during the election period exceeds \$1,200.

9.1.5 If an expenditure subject to Section 8031 is made more than 30 days before a primary or special election or 60 days before a general election, the report required under Section 8031 shall be filed within 48 hours after such expenditure is made. If the expenditure subject to Section 8031 is made 30 days or less before a primary or special election or 60 days or less before an election, such report shall be filed with the Commissioner within 24 hours after such expenditure is made. For purposes of this section, an expenditure shall be deemed to be made on the date it is paid or obligated, whichever is earlier.

10.0 ~~Failure to file reports~~ Late Reports

9.1 ~~False or No Report~~

9.1.1 Any candidate or treasurer who knowingly files any report required by Sec. 8023 or Subchapter 4 (of Chapter so of Title 15) that is false in any material respect, or who fails to file any such report, shall be guilty of a Class A misdemeanor under 15 *Del. C. § 8043(e)*.

9.2 ~~Late Reports. Pursuant to 15 Del. C. Sec. 8044 any candidate, political committee, or other person that fails to file a report required may be fined by the Commissioner \$50 per month, or fraction thereof, that such report is tardy in delivery to the Commissioner. Any person so fined shall have the opportunity within 30 days of the assessment of the fine to show cause to the Commissioner why the tardiness was due to reasonable cause and not willful neglect. Such fines are a debt owed to the State and recoverable against the committee, its treasurer or, in the case of a candidate committee, the candidate, or in the case of an independent expenditure, the person making such expenditure. The assessment of a fine by the Commissioner does not preclude the Commissioner from referring cases of failure to file to the Attorney General for possible criminal prosecution.~~

10.1 Any reporting party who fails to file or deliver to the Commissioner any report required under this chapter shall be assessed a fine by the Commissioner of \$50 for each day that such report is tardy. In

the event any report required under this chapter shall be incomplete, such report shall be deemed tardy for purposes of this section. Notwithstanding the foregoing, a reporting party shall be entitled to an automatic, 1-time 24-hour extension hereunder, provided such party notifies the Commissioner in writing thereof no later than the filing deadline for such report.

10.2 In the event a report is incomplete or otherwise tardy, the Commissioner shall immediately notify the reporting party thereof in writing. Such notice shall state that a fine is being assessed for each late day, and to the extent applicable, shall also specify why such report is incomplete. Upon receipt of such notice, the reporting party shall have 30 days to appeal such fine in writing to the Commissioner. In the event of an appeal, the reporting party shall have the opportunity to show the Commissioner that such tardiness is due to reasonable cause and not willful neglect. If the Commissioner determines that such tardiness is not due to reasonable cause, or the reporting party fails to timely file an appeal, such fine shall constitute a debt due and owing the State, assessable by the Commissioner and recoverable against the reporting party.

10.3 If a tardy report is not filed or corrected within 30 days following: (a) a determination by the Commissioner that such tardiness is not due to reasonable cause; or (b) the expiration of the appeal period set forth in 9.2, then the Commissioner shall notify the Office of the Attorney General that the reporting party has failed to file such report.

11.0 **Advisory opinions**

Any person may apply to the Commissioner for a ruling that applies 15 **Del.C.** Ch. 80 to a particular set of facts specified by the person. Such requests must be in writing and signed by the requestor. The Commissioner will issue such ruling in writing with copies available to the public, except that the identity of that person that requested the ruling will not be disclosed without the person's consent. Copies of such rulings will be distributed in accordance with 15 **Del.C.** §8041.

12.0 **Public disclosure**

All reports made to the Commissioner and all rulings made by the Commissioner shall be public and open for inspection and copying at reasonable cost by the public,—except that the identity of the candidate or committee requesting a ruling pursuant to Section 8041(2) shall not be disclosed without the candidate's or committee's consent.

13.0 **Regulations supplemental to statute**

These regulations are in addition to and interpretive of the requirements of 15 **Del.C.** Ch. 80, and do not excuse any person from the obligation to comply with the provisions of that statute.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

PUBLIC NOTICE

Reimbursement Methodology for ICF/MR Facilities

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding the *Reimbursement Methodology for ICF/MR Facilities*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New

Castle, Delaware 19720-0906 or by fax to 302-255-4425 by November 30, 2012.

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

SUMMARY OF PROPOSAL

The Division of Medicaid and Medical Assistance (DMMA) has submitted a State Plan Amendment (SPA) to the Centers for Medicare and Medicaid Services (CMS) to eliminate the rate freeze for Intermediate Care Facilities for Individuals with Mental Retardation (ICF/MR) facilities that has been in effect since 2009.

Statutory Authority

- Social Security Act §1902(a)(13)(A), *Public process for determination of rates of payment*;
- 42 CFR §440, Subpart A, *Definitions*;
- 42 CFR Part 447, *Payment for Services*;
- 42 CFR §447.205, *Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates*

Background

Intermediate Care Facilities for Individuals with Mental Retardation (ICF/MR)

Intermediate Care Facilities for Individuals with Mental Retardation (ICF/MR) is an optional Medicaid benefit that enables States to provide comprehensive and individualized health care and rehabilitation services to individuals to promote their functional status and independence. Although it is an optional benefit, all States offer it, if only as an alternative to home and community-based services waivers for individuals at the ICF/MR level of care.

IMPORTANT NOTE: Federal law and regulations use the term “intermediate care facilities for the mentally retarded”. The Division of Medicaid and Medical Assistance (DMMA) prefer to use the accepted term “individuals with intellectual disability” (ID) instead of “mental retardation.” However, as ICF/MR is the abbreviation currently used in all Federal requirements, that acronym will be used here.

State Variation

Need for ICF/MR is specifically defined by states, all of whom have established ICF/MR level of care criteria. State level of care requirements must provide access to individuals who meet the coverage criteria defined in Federal law and regulation.

Summary of Proposal

In response to and based upon the Legislative Budget, the Medicaid State Plan will be amended to remove the current rate freeze for the State’s ICF/MRs for State Fiscal Year 2013. Effective August 1, 2012, the rate methodology will go back to the methodology that was previously approved in the State Plan that uses reported facility costs to establish per diem rates for each level of care.

In compliance with 42 CFR §447.205, Public Notice was published before the proposed effective date of the change on July 29, 2012 in the *News Journal* and on July 30, 2012 in the *Delaware State News*.

The provisions of this state plan amendment are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

Fiscal Impact Statement

DMMA projects that Medicaid payments to the affected ICF/MR facilities will total an estimated \$1,063,702.00 in State Fiscal Year (SFY) 2013 for which the State share of payments is estimated to be \$335,538.00. In SFY 2014, estimated Medicaid payments will total \$1,257,902.00 for which the State share of payments is estimated to be \$387,261.00.

DMMA PROPOSED REGULATION #12-50
REVISION:

ATTACHMENT 4.19-D
Page 1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: **DELAWARE**
METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES
PROSPECTIVE REIMBURSEMENT SYSTEM
FOR LONG TERM CARE FACILITIES

~~Payment Methodology for Rate Periods Beginning January 1, 2009:~~

- A. (1) Notwithstanding any other provision of this section, the following adjustments will apply to reimbursement rates for all long term care facilities, ~~except for state owned and operated facilities.~~
- B. (2) Effective for dates of service on or after April 1, 2009, per diem rates for long term care facilities with the exception of state owned and operated facilities, will be adjusted to the rates that were in effect on December 31, 2008. ~~However, if Delaware has in effect a nursing facility quality assessment fee applicable to assessment periods beginning on June 1, 2012 and thereafter, the per diem rates for long term care facilities computed for the period ending December 31, 2008 shall be increased by a Quality Assessment Rate Adjustment Amount as follows:~~
- (3) With specific regard to non-public facilities reimbursed under the payment methodologies in Section III.3 (ICF/MR facilities) of this Attachment, effective for dates of service on or after August 1, 2012, per diem rates shall not be subject to the provision of paragraph A.(2) of this section and shall be computed as described in Section III of this Attachment.
- (4) With specific regard to nursing facilities reimbursed under the payment methodologies in Sections II and IX of this Attachment, if Delaware has in effect a nursing facility quality assessment fee applicable to assessment periods beginning on June 1, 2012 and thereafter, the per diem rates computed in accordance with paragraph A.(2) of this section shall be increased by a Quality Assessment Rate Adjustment Amount as described in paragraph B of this section.
- B. Except as excluded in section B.(c) below, each nursing facility's rates shall be increased for dates of service beginning on or after June 1, 2012 by a per day dollar amount equal to the sum of:
- (a) a per day dollar amount equal to the per day dollar amount of the Nursing Facility Quality Assessment Fee that will be owed for the upcoming rate year by each facility as specified in Delaware Code Title 30, Chapter 65 section 6502 (b) and (d), plus
- (b) a per day dollar amount computed as follows:
- Step 1. Obtain the total annual Medicaid patient days for all participating nursing facilities from the Delaware Medicaid nursing facility cost reports for the fiscal year ending June 30 of the previous year for each facility, excluding government-operated and pediatric nursing facilities. Sum the Medicaid patient days for each facility to compute the total aggregate statewide Medicaid patient days.
- Step 2. For each facility identified in Step #1, multiply the per day dollar amount of the Nursing Facility Quality Assessment Fee that will be owed per paragraph B. (a) above by each facility times the number of Medicaid patient days for each facility from Step #1. Sum the dollar amounts for all facilities to compute the aggregate statewide total annual assessment amount to be paid to the facilities.
- Step 3. Obtain the Total annual patient days and non-Medicare patient days for the fiscal year specified in Step 1 from each of the facilities that will be subjected to the quality assessment specified in paragraph (a) above for the upcoming State fiscal year for both Medicaid and non-Medicaid nursing facilities licensed to operate in Delaware.

PROPOSED REGULATIONS

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Gaming Control Board

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

PUBLIC NOTICE

101 Regulations Governing Bingo

A. Type of Regulatory Action Required

Amendment to Existing Regulations

B. Synopsis of Subject Matter of the Regulation

The Delaware Board of Charitable Gaming will seek public comments on the issue of whether certain amendments to its current rules should be adopted.

The proposed amendment is to Rule 4.6 in 10 DE Admin. Code 101. The amendment would add language explaining that when the rule states that promotional giveaways are permitted to be offered on state-recognized holidays, the actual gaming events do not have to be played on the holiday itself, but may be played within the seven days before the holiday, or on the holiday itself.

Persons wishing to present their views regarding this matter may do so by appearing at a public hearing on Thursday, December 6, 2012 at the meeting of the Delaware Board of Charitable Gaming, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904. Persons may also submit written comments by the close of business on or before December 21, 2012 at the same address. A copy of these regulations is available from the above address or may be viewed at the Division of Professional Regulation business office at the same address.

C. Summary of Proposal

The amendment would explain in detail that the rule's provision that promotional giveaways are permitted to be offered on state recognized holidays does not mean that the gaming event must actually take place on the holiday. Rather, an application may seek to hold the event at any time during the seven days preceding the actual holiday or on the holiday itself.

101 Regulations Governing Bingo

(Break in Continuity of Sections)

4.0 Conduct of Bingo

- 4.1 The officers of a licensee shall designate a bona fide, active member to be in charge of and primarily responsible for the conduct of the game of chance on each occasion. The member in charge shall supervise all activities on the occasions for which he or she is in charge and shall be responsible for the making of the required report thereof. The member in charge shall be familiar with the provisions of the Bingo Statute, and these rules and regulations.
 - 4.1.1 Neither the member in charge of conducting the event, nor any other member of the sponsoring organization who is assisting in conducting the event or otherwise working at the event shall be permitted to play the bingo games.
- 4.2 The room where any game is being held, operated, or conducted, or where it is intended that any game shall be held, operated, or conducted, or where it is intended that any equipment be used, shall at all times be open to inspection by the appropriate law enforcement officers and agents of the District in which the premises are situated, and to the Board and its agents and employees. Bingo games shall not be commenced prior to 1:30 p.m. and the operation of a function shall be limited to six hours. Instant bingo is permitted during any event sponsored by the organization that is licensed to conduct it, regardless of the day or time.

- 4.3 No person under the age of eighteen (18) may participate in any bingo game. No person under the age of 18 shall be permitted to participate in any instant bingo game. Persons between the ages of 16 through 18 may conduct or assist in conducting the bingo game and persons over the age of fourteen (14) may act as waiters and waitresses in the handling of food or drinks at an occasion on which a licensee conducts bingo.
- 4.4 No organization licensed prior to enactment of 71 **Del. Law** 444 (July 14, 1998), may hold, operate, or conduct bingo more often than ten (10) days in any calendar month. No bingo licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998) shall conduct more than one bingo event per week. A bingo licensee licensed prior to the enactment of 71 **Del. Laws** 444 (July 14, 1998), whose license lapses for six (6) months or more due to nonrenewal or suspension or any other reason shall, upon licensing thereafter, be considered a licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998).
- 4.5 The Board and its duly authorized agents and employees may examine the books and records of any licensee, so far as those books and records relate to any transaction connected with the holding, operating, and conducting of the game of bingo, and may examine any manager, officer, director, agent, member, employee, or assistant of the licensee under oath in relation to the conduct of the game of bingo.
- 4.6 No prize in an amount or value greater than \$250 shall be offered or given in any single game and the aggregate amount or value of all prizes offered or given in all games played on a single occasion shall not exceed \$1,250. The amount of the prize in each bingo game shall be announced at the start of the game. At the end of each game, there will be an announcement of the total number of winners and the amount paid to each. All winners shall be determined and all prizes shall be awarded in any game played on any occasion within the same calendar day as that upon which the game is played. The value of any promotional giveaways, which shall be no more than \$500 per annum to be distributed at an organizational anniversary date and no more than three (3) holiday dates per year, shall not be counted towards the dollar amounts described in this section. Holiday dates means those holiday dates officially recognized by the State of Delaware as holidays. The event itself must take place within the period of seven days before the holiday or on the holiday itself. However, a licensee may offer inducements, free refreshments, and free transportation of players to and from bingo events, to attract bingo players to the bingo event, provided that the fair market value of inducements is limited to 15% of the total amount of all other prizes offered or given during the bingo event.
- 4.7 Two or more organizations may not hold games of bingo at the same place on the same day. Unless a bingo licensee has been licensed prior to the enactment of 71 **Del. Laws** 444 (July 14, 1998), only one licensed organization may hold bingo games in a licensed organization's building during any given week.
- 4.8 No alcoholic beverages shall be permitted in the room from the time the bingo hall opens until the conclusion of the last bingo game of the occasion.
- 4.9 All games shall be conducted with equipment that is owned absolutely by the licensee or that is leased for fees not in excess of those allowable under the Schedule of Rental for leasing of equipment on file with the Board. Equipment shall include playing cards. If the licensee uses cards that are for more than one session of playing bingo, these cards should be identified as the property of the licensee.
- 4.10 All winners shall be determined and all prizes shall be awarded in any game played on any occasion within the same calendar day as that upon which the game is played.
- 4.11 When more than one player is found to be the winner on the call of the same number in the same game, the designated prize shall be divided as equally as possible; and when division is not possible, substitute prizes, whose aggregate value shall not exceed that of the designated prize, shall be awarded; but such substitute prizes shall be of equal value to each other.
- 4.12 The equipment used in the playing of bingo and the method of play shall be such that each card shall have an equal opportunity to be a winner. The objects drawn shall be essentially equal as to size, shape, weight, and balance, and as to all other characteristics that may control their selection, and all shall be present in the receptacle before each game is begun. All numbers shall be announced so as to be visible or audible to all players present.

PROPOSED REGULATIONS

- 4.13 The particular arrangement of numbers required to be covered in order to win the game shall be clearly described and announced to the players immediately before each game is begun.
- 4.14 No arrangement of numbers shall be required to be covered in order to win the game other than the following:
- 4.14.1 one unspecified horizontal row;
 - 4.14.2 one unspecified vertical row;
 - 4.14.3 one unspecified full diagonal row;
 - 4.14.4 one unspecified row (horizontal, vertical, or diagonal);
 - 4.14.5 Two or more of the foregoing, forming a specified arrangement;
 - 4.14.6 The entire card;
 - 4.14.7 Four corners;
 - 4.14.8 Eight spaces surrounding the free space.
 - 4.14.9 Any other configuration or shape on the card established by an organization, provided the players are informed of the shape needed to win before play commences.
- 4.15 Within the limits contained in Title 28 of the **Delaware Code**, alternate prizes may be offered depending upon the number of calls within which bingo is reached, provided the application for the bingo license and the license so specify.
- 4.16 Any player shall be entitled to call for a verification of all numbers drawn at the time a winner is determined, and for a verification of the objects remaining in the receptacle and not yet drawn. The verification shall be made in the immediate presence of the member designated to be in charge on the occasion, but if such member is also the announcer, then in the immediate presence of an officer of the licensee.
- 4.17 No licensee shall conduct more than forty (40) games on a single occasion.
- 4.18 In the playing of bingo, no person who is not physically present in the room where the game is actually conducted shall be allowed to participate as a player in the game.
- 4.19 Within the limits contained in Title 28 of the **Delaware Code**, the prizes offered may be varied depending upon the number of people who attend the occasion, provided the application for bingo license and license so specify. If a licensee avails itself of the provisions of this rule, it must announce at the beginning of each game the number of people present and the prizes to be awarded.
- 4.20 The entire proceeds of the games of bingo must be used solely for the promotion or achievement of the purposes of the licensee.
- 4.21 Any local rules adopted by the licensee that affect the conduct of the players or the awarding of prizes shall be prominently posted in at least four locations within the area where the bingo games are conducted.
- 4.22 The licensee shall be permitted to reserve seats within the area where the bingo games are conducted to provide for the special needs of handicapped persons, and the licensee shall ensure that the remaining seats are made available to the players on an equal basis.
- 4.23 A licensee may charge an admission fee to a game event in any room or area in which a game is to be conducted. The admission fee shall entitle the game player (a) to a card enabling the player to participate without additional charge in all regular games to be played under the license at the event, or (b) to free refreshments. The licensee may charge an additional fee to a game player for a single opportunity to participate in a special game to be played under license at the event.
- 4.24 No person shall conduct or assist in conducting any game except an active member of the organization to which the license is issued.
- 4.25 No item of expense shall be incurred or paid in connection with the conduct of the game except shall be incurred or paid in connection with the conduct of the game except such as are bona fide items of a reasonable amount for merchandise furnished or services rendered which are reasonably necessary for the conduct of the game.

*Please note that no additional changes were made to the regulation, therefore the proposed regulation is not being published here in its entirety. A copy of the proposed regulation is available at:

[101 Regulations Governing Bingo](#)

OFFICE OF THE STATE BANKING COMMISSIONER

Statutory Authority: 5 Delaware Code, Sections 121(b) and 977 (5 Del.C. §121(b) & 977)

PUBLIC NOTICE

905 Loan Limitations: Credit Exposure to Derivative Transactions

Summary

The State Bank Commissioner proposes to adopt new Regulation 905, "Loan Limitations: Credit Exposure to Derivative Transactions". This proposed new Regulation sets forth the rules for calculating the credit exposure arising from a derivative transaction entered into by a bank for purposes of determining the bank's loan limitations pursuant to Section 909 of Title 5 of the Delaware Code.

Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (Dodd-Frank Act), requires state law lending limits to take into consideration credit exposure to derivative transactions in order for FDIC-insured state banks to be permitted to engage in derivative transactions. Dodd-Frank Act Section 610 imposed a similar requirement on national banks, and the United States Office of the Comptroller of the Currency (OCC) complied by issuing an interim final rule in June, 2012. Proposed Regulation 905 is based on the OCC's rule so that the requirements for state banks will be the same as those for national banks.

The State Bank Commissioner would adopt the proposed new Regulation 905 on or after December 3, 2012. Other regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing this regulation in accordance with Title 5 of the Delaware Code.

Comments

A copy of the proposed new regulation is published in the Delaware Register of Regulations. A copy is also on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 and is available for inspection during regular office hours. Copies are available upon request.

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether this proposed new regulation should be adopted, rejected or modified. Written materials submitted will be available for inspection at the above address. Comments must be received at or before the public hearing scheduled for 10:00 a.m. December 3, 2012.

Public Hearing

A public hearing on the proposed new Regulation will be held in the offices of the State Bank Commissioner, 555 E. Loockerman Street; Dover, Delaware, 19901 on Monday, December 3, 2012, commencing at 10:00 a.m. This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the Delaware Code.

905 Loan Limitations: Credit Exposure to Derivative Transactions

1.0 Purpose

This regulation sets forth the rules for calculating the credit exposure arising from a derivative transaction entered into by a bank for purposes of determining the bank's loan limitations pursuant to Section 909 of Title 5 of the Delaware Code.

2.0 Definitions

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

“Borrower” means a person who is named as a borrower or debtor in a loan or extension of credit, including a person to whom a bank has credit exposure arising from a derivative transaction.

“Contractual commitment to advance funds”:

a. Includes a bank’s obligation to:

1. Make payment (directly or indirectly) to a third person contingent upon default by a customer of the bank in performing an obligation and to make such payment in keeping with the agreed upon terms of the customer’s contract with the third person, or to make payments upon some other stated condition;
2. Guarantee or act as surety for the benefit of a person;
3. Advance funds under a qualifying commitment to lend, as defined for a national bank in 12 C.F.R. 32.2(t); and
4. Advance funds under a standby letter of credit as defined in 12 C.F.R. 32.2(dd), a put, or other similar arrangement.

b. The term does not include commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw on the issuer, that do not guarantee payment, and that do not provide for payment in the event of a default by a third party.

“Credit derivative” means a financial contract executed under standard industry credit derivative documentation that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure) to another party (the protection provider).

“Derivative transaction” includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

“Effective margining arrangement” means a master legal agreement governing derivative transactions between a bank and a counterparty that requires the counterparty to post, on a daily basis, variation margin to fully collateralize that amount of the bank’s net credit exposure to the counterparty that exceeds \$1 million created by the derivative transactions covered by the agreement.

“Eligible credit derivative” means a single-name credit derivative or a standard, non-tranched index credit derivative provided that:

- a. The derivative contract meets the requirements of an eligible guarantee, as defined in this regulation, and has been confirmed by the protection purchaser and the protection provider;
- b. Any assignment of the derivative contract has been confirmed by all relevant parties;
- c. If the credit derivative is a credit default swap, the derivative contract includes the following credit events:
 1. Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and
 2. Bankruptcy, insolvency, or inability of the obligor on the reference exposure to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due and similar events;
- d. The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract;
- e. If the derivative contract allows for cash settlement, the contract incorporates a robust valuation process to estimate loss with respect to the derivative reliably and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;

- f. If the derivative contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract provides that any required consent to transfer may not be unreasonably withheld; and
- g. If the credit derivative is a credit default swap, the derivative contract clearly identifies the parties responsible for determining whether a credit event has occurred, specifies that this determination is not the sole responsibility of the protection provider, and gives the protection purchaser the right to notify the protection provider of the occurrence of a credit event.

“Eligible guarantee” means a guarantee that:

- a. Is written and unconditional
- b. Covers all or a pro rata portion of all contractual payments of the obligor on the reference exposure;
- c. Gives the beneficiary a direct claim against the protection provider;
- d. Is not unilaterally cancelable by the protection provider for reasons other than the breach of the contract by the beneficiary;
- e. Is legally enforceable against the protection provider in a jurisdiction where the protection provider has sufficient assets against which a judgment may be attached and enforced;
- f. Requires the protection provider to make payment to the beneficiary on the occurrence of a default (as defined in the guarantee) of the obligor on the reference exposure in a timely manner without the beneficiary first having to take legal actions to pursue the obligor for payment;
- g. Does not increase the beneficiary’s cost of credit protection on the guarantee in response to deterioration in the credit quality of the reference exposure; and
- h. Is not provided by an affiliate of the bank, unless the affiliate is an insured depository institution, bank, securities broker or dealer, or insurance company that:
 - 1. Does not control the bank; and
 - 2. Is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies (as the case may be).

“Eligible protection provider” means:

- a. A sovereign entity (a central government, including the U.S. government; an agency; department; ministry; or central bank);
- b. The Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, or a multilateral development bank;
- c. A Federal Home Loan Bank;
- d. The Federal Agricultural Mortgage Corporation;
- e. A depository institution, as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c);
- f. A bank holding company, as defined in section 2 of the Bank Holding Company Act, as amended, 12 U.S.C. 1841;
- g. A savings and loan holding company, as defined in section 10 of the Home Owners’ Loan Act, 12 U.S.C. 1467a;
- h. A securities broker or dealer registered with the SEC under the Securities Exchange Act of 1934, 15 U.S.C. 78o et seq.;
- i. An insurance company that is subject to the supervision of a State insurance regulator;
- j. A foreign banking organization;
- k. A non-U.S.-based securities firm or a non-U.S.-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies; and
- l. A qualifying central counterparty.

PROPOSED REGULATIONS

“Loans and extensions of credit”

- a. Loans or extensions of credit, for purposes of Section 909 of Title 5 of the Delaware Code include any credit exposure, as determined pursuant to Section 3.0 of this regulation, arising from a derivative transaction, and also include a contractual commitment to advance funds.
- b. The following items do not constitute loans or extensions of credit for purposes of Section 909 of Title 5 of the Delaware Code and this regulation:
 1. Additional funds advanced for the benefit of a borrower by a bank for payment of taxes, insurance, utilities, security, and maintenance and operating expenses necessary to preserve the value of real property securing the loan, consistent with safe and sound banking practices, but only if the advance is for the protection of the bank's interest in the collateral, and provided that such amounts must be treated as an extension of credit if a new loan or extension of credit is made to the borrower;
 2. Accrued and discounted interest on an existing loan or extension of credit, including interest that has been capitalized from prior notes and interest that has been advanced under terms and conditions of a loan agreement;
 3. Financed sales of a bank's own assets, including Other Real Estate Owned, if the financing does not put the bank in a worse position than when the bank held title to the assets;
 4. A renewal or restructuring of a loan as a new “loan or extension of credit,” following the exercise by a bank of reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limit, unless new funds are advanced by the bank to the borrower (except as permitted for national banks by 12 C.F.R. § 32.3(b)(5)), or a new borrower replaces the original borrower, or unless the Commissioner or the appropriate Federal banking agency determine that a renewal or restructuring was undertaken as a means to evade the bank's lending limit;
 5. Amounts paid against uncollected funds in the normal process of collection; and
 6. A. That portion of a loan or extension of credit sold as a participation by a bank on a nonrecourse basis, provided that the participation results in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be deemed to exist only if the agreement also provides that, in the event of a default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event.
B. When an originating bank funds the entire loan, it must receive funding from the participants before the close of business of its next business day. If the participating portions are not received within that period, then the portions funded will be treated as a loan by the originating bank to the borrower. If the portions so attributed to the borrower exceed the originating bank's lending limit, the loan may be treated as nonconforming subject to Section 5.0 of this regulation, rather than a violation, if:
 - i. The originating bank had a valid and unconditional participation agreement with a participant or participants that was sufficient to reduce the loan to within the originating bank's lending limit;
 - ii. The participant reconfirmed its participation and the originating bank had no knowledge of any information that would permit the participant to withhold its participation; and
 - iii. The participation was to be funded by close of business of the originating bank's next business day.

“Qualifying master netting agreement” means any written, legally enforceable bilateral agreement, provided that:

- a. The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default, including bankruptcy, insolvency, or similar proceeding, of the counterparty;
- b. The agreement provides the bank the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set off collateral promptly upon an event of default, including upon an event of bankruptcy, insolvency, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions;
- c. The bank has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that:
 - 1. The agreement meets the requirements of paragraph (b) of this definition; and
 - 2. In the event of a legal challenge (including one resulting from default or from bankruptcy, insolvency, or similar proceeding) the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions;
- d. The bank establishes and maintains procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of this definition; and
- e. The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it would make otherwise under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement).

3.0 Credit Exposure to Derivative Transactions.

- 3.1 Derivative transactions. For purposes of Section 909 of Title 5 of the **Delaware Code**, derivative transactions entered into by a bank shall be included for purposes of determining the bank's loan limitations.
- 3.2 Non-credit derivatives. Subject to Subsections 3.3 and 3.4 of this section, a bank shall calculate the credit exposure to a counterparty arising from a derivative transaction by one of the following methods. Subject to Subsection 3.4 of this section, a bank shall use the same method for calculating counterparty credit exposure arising from all of its derivative transactions.
 - 3.2.1 Internal Model Method.
 - 3.2.1.1 Credit exposure. The credit exposure of a derivative transaction under the Internal Model Method shall equal the sum of the current credit exposure of the derivative transaction and the potential future credit exposure of the derivative transaction.
 - 3.2.1.2 Calculation of current credit exposure. A bank shall determine its current credit exposure by the mark-to-market value of the derivative contract. If the mark-to-market value is positive, then the current credit exposure equals that mark-to-market value. If the mark to market value is zero or negative, than the current credit exposure is zero.
 - 3.2.1.3 Calculation of potential future credit exposure. A bank shall calculate its potential future credit exposure by using an internal model that has been approved by the Commissioner and the appropriate Federal banking agency for purposes of Section 909 of Title 5 of the Delaware Code, or any other appropriate model approved by the Commissioner and the appropriate Federal banking agency.
 - 3.2.1.4 Net credit exposure. A bank that calculates its credit exposure by using the Internal Model Method pursuant to this paragraph may net credit exposures of derivative transactions arising under the same qualifying master netting agreement.
 - 3.2.2 Conversion Factor Matrix Method. The credit exposure arising from a derivative transaction under the Conversion Factor Matrix Method shall equal and remain fixed at the potential future credit

PROPOSED REGULATIONS

exposure of the derivative transaction as determined at the execution of the transaction by reference to Table 1 below.

Table 1—Conversion Factor Matrix for Calculating Potential Future Credit Exposure.¹

<u>Original maturity</u> ²	<u>Interest Rate</u>	<u>Foreign exchange rate and gold</u>	<u>Equity</u>	<u>Other</u> ³ (includes commodities and precious metals except gold)
1 year or less	0.015	0.015	0.20	0.06
Over 1 to 3 years	0.03	0.03	0.20	0.18
Over 3 to 5 years	0.06	0.06	0.20	0.30
Over 5 to 10 years	0.12	0.12	0.20	0.60
Over 10 years	0.30	0.30	0.20	1.00

- ¹ For an OTC derivative contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the derivative contract.
- ² For an OTC derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the market value of the contract is zero, the remaining maturity equals the time until the next reset date. For an interest rate derivative contract with a remaining maturity of greater than one year that meets these criteria, the minimum conversion factor is 0.005.
- ³ Transactions not explicitly covered by any other column in the Table are to be treated as “Other.”

3.2.3 Remaining Maturity Method. The credit exposure arising from a derivative transaction under the Remaining Maturity Method shall equal the greater of zero or the sum of the current mark-to-market value of the derivative transaction added to the product of the notional amount of the transaction, the remaining maturity in years of the transaction, and a fixed multiplicative factor determined by reference to Table 2, below.

Table 2—Remaining Maturity Factor for Calculating Credit Exposure

	<u>Interest Rate</u>	<u>Foreign exchange rate and gold</u>	<u>Equity</u>	<u>Other</u> ⁴ (includes commodities and precious metals except gold)
Multiplicative Factor	1.5%	1.5%	6%	6%

- ⁴ Transactions not explicitly covered by any other column in the Table are to be treated as “Other.”

3.3 Credit Derivatives.

3.3.1 Notwithstanding Subsection 3.2 of this section, a bank that uses the Conversion Factor Matrix Method or Remaining Maturity Method, or that uses the Internal Model Method without entering an effective margining arrangement, as defined in Section 2.0 of this regulation, shall calculate the counterparty credit exposure arising from credit derivatives entered by the bank by adding the net notional value of all protection purchased from the counterparty on each reference entity.

3.3.2 A bank shall calculate the credit exposure to a reference entity arising from credit derivatives entered by the bank by adding the notional value of all protection sold on the reference entity. However, the bank may reduce its exposure to a reference entity by the amount of any eligible credit derivative purchased on that reference entity from an eligible protection provider.

- 3.4** **Mandatory use of a certain method.** The Commissioner or the appropriate Federal banking agency may require a bank to use the Internal Model Method set forth in Subsection 3.2.1, the Conversion Factor Matrix Method set forth in Subsection 3.2.2, or the Remaining Maturity Method set forth in Subsection 3.2.3 to calculate the credit exposure of derivative transactions, upon finding that such method is necessary to promote the safety and soundness of the bank.

4.0 Intraday credit exposures

Intraday credit exposures arising from a derivative transaction are not subject to the lending limits of Section 909 of Title 5 of the Delaware Code or this regulation.

5.0 Nonconforming Loans and Extensions of Credit

A loan or extension of credit, within the bank's legal lending limit when made, will not be deemed a violation, but will be treated as nonconforming, if the loan or extension of credit is no longer in conformity with the bank's lending limit because, in the case of a credit exposure arising from a derivative transaction identified in Section 3.0 of this regulation and measured by the Internal Model Method specified in Section 3.2.1 of this regulation, the credit exposure, subject to the lending limits of Section 909 of Title 5 of the **Delaware Code** or this regulation, increases after execution of the transaction. A bank must use reasonable efforts to bring a loan or extension of credit that is nonconforming as a result of this section into conformity with the bank's lending limit unless to do so would be inconsistent with safe and sound banking practices.

Symbol Key

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

Final Regulations

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

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

**DEPARTMENT OF FINANCE
DIVISION OF UNCLAIMED PROPERTY****Escheator of the State of Delaware**

Statutory Authority, 12 Delaware Code, Section 1155 (12 **Del.C.** §1155)

ORDER**Regulation on Practices and Procedures for Records Examinations by the State Escheator****NATURE OF PROCEEDINGS**

Delaware Department of Finance ("Department"), Division of Unclaimed Property, Escheator of the State of Delaware (the "State Escheator"), initiated proceedings to adopt a regulation on practices and procedures for records examinations by the State Escheator as described in 12 **Del.C.** § 1155. The Department's proceedings to adopt its regulations were initiated pursuant to 29 **Del.C.** §10115, with authority prescribed by 12 **Del.C.** § 1208.

The Department published its notice of proposed regulation pursuant to 29 **Del.C.** §10115 in the July 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulation to be produced by July 31, 2012 at which time the Department would receive information, factual evidence and public comment to the proposed regulation.

SUMMARY OF PROPOSAL

The proposal creates a regulation on practices and procedures for records examinations by the State Escheator as described in 12 **Del.C.** §1155. The regulation sets forth the rules governing the historical periods for which the State Escheator will examine historical records to determine whether the person whose records are being examined has complied with any provision of 12 **Del.C.** Ch. 11.

STATUTORY BASIS AND LEGAL AUTHORITY TO ACT

- 12 Delaware Code, § 1154, State Escheator to make regulations.
- 12 Delaware Code, § 1155, Examination of records.
- 12 Delaware Code, § 1208, Rules and regulations.

SUMMARY OF COMMENTS RECEIVED AND RESPONSE AND EXPLANATION OF CHANGE

Morris, Nichols, Arsht & Tunnell LLP ("MNAT"), Council on State Taxation ("COST"), and Reed Smith LLP ("Reed Smith") offered the following observations. The State Escheator has considered each of the comments and responds as follows.

Reed Smith requests the regulation include a provision requiring the Department to provide a "Remediation Impact Statement" at the request of a holder in order to allow the holder to decide whether to terminate remediation efforts in order to complete its records examination by June 30, 2015. COST requests that the Department be required to provide a reasonable and accurate statement of the holder's potential liability no less than ninety (90) days prior to June 30, 2015.

Response: Holders may already request a preliminary Report of Examination that provides data sufficient to allow examinees to make informed decisions whether to terminate remediation efforts.

MNAT, COST, and Reed Smith concede that Section 2.1 is literally true, but they contend that it may create confusion because of other statutory provisions that limit, for example, the period during which the State Escheator must provide notice of a proposed deficiency in payment under 12 **Del.C.** § 1158.

Response: The regulation by its terms governs only the historical period for which the State Escheator may conduct examinations under 12 **Del.C.** § 1155.

MNAT, COST, and Reed Smith contend that the completion of an examination is largely not within the control of the holder. Reed Smith and MNAT note that examinations are sometimes bifurcated by category of property, so that an examination may be completed for some types of property before completion of the examination of other types of property.

Response: Appropriate language has been added.

COST proposes addition of a provision abating interest and penalties for all examinations that qualify for the shortened look-back period.

Response: There are a number of examinations that may qualify for the shortened look-back period for which abatement of interest and penalties are not warranted. A blanket abatement would reward those holders for no good reason.

FINDINGS OF FACT

The Department, acting through the State Escheator, finds that the proposed regulation set forth in the July 2012 Register of Regulations should be adopted, subject to the modification described above which is not substantive.

THEREFORE IT IS ORDERED, that the proposed Regulation on Practice and Procedure for Records Examinations by the State Escheator, with the modification indicated herein, is adopted and shall be final effective December 1, 2012.

Mark Udinski, State Escheator
Department of Finance

Regulation on Practices and Procedures for Records Examinations by the State Escheator

1.0 Construction of Rules of Practice and Procedure

- 1.1 Unless otherwise provided, these Rules of Practice govern examinations of records of any person or business association or organization to determine whether the person has complied with any provision of 12 **Del.C.** Ch. 11.

- 1.2 For purposes of these rules: (1) any term in the singular includes the plural, and any term in the plural includes the singular, if such use would be appropriate; and (2) any use of a masculine, feminine, or neuter gender encompasses such other genders as would be appropriate.

2.0 Length of Examination Periods.

- 2.1 There is no provision of Delaware law that now limits the historical period for which the State Escheator may examine records under 12 **Del.C.** §1155 to determine whether the person under examination has complied with any provision of 12 **Del.C.** Ch. 11.
- 2.2 As a matter of policy, in previous examinations the State Escheator has not examined records created before January 1, 1981 to determine whether the person under examination has complied with any provision of 12 **Del.C.** Ch. 11.
- 2.3 As a part of a larger revenue stabilization initiative, the State Escheator has determined that in order to encourage compliance with 12 **Del.C.** Ch. 11, the following starting periods for examinations will be observed:
- 2.3.1 For all persons who are now the subject of a records examination under 12 **Del.C.** §1155, or who become the subject of an examination before the effective date of this regulation, no records created before January 1, 1986 will be included in the determination of compliance with the provisions of 12 **Del.C.** Ch. 11, provided that the examination is completed by June 30, 2015.
- 2.3.2 For all persons who become the subject of examinations on or after the effective date of this regulation, and for all other persons whose examinations are not completed by the close of business on June 30, 2015, the State Escheator will continue his existing policy of examining records created on or after January 1, 1981 to determine whether the person under examination has complied with any provision of 12 **Del.C.** Ch. 11.
- [2.3.3 For purposes of this regulation only, an examination is deemed to be complete for any category of property as of the date on which the Audit Manager mails the statement of findings and request for payment as described in 12 Del. C. § 1156(a) for that category of property.]**

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

DSSM 20775: Program of All Inclusive Care for the Elderly (PACE)

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to update the Division of Social Services Manual (DSSM) to add policy regarding the eligibility requirements for participation in the *Program of All Inclusive Care for the Elderly (PACE)*. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the August 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2012 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The proposed amends the Division of Social Services Manual (DSSM) to set out new rules governing the Medicaid eligibility requirements for Program of All-Inclusive Care for the Elderly (PACE) enrollees.

Statutory Authority

42 CFR Part 460, *Program of All Inclusive Care for the Elderly*

Background

Program of All-Inclusive Care for the Elderly (PACE) is a federal program administered by the Centers for Medicare and Medicaid Services (CMS). PACE, a managed care program, enables elderly individuals who are certified to need nursing facility care to live as independently as possible.

PACE participants receive a comprehensive service package which permits them to live at home while receiving services. This prevents institutionalization. The PACE organization must provide all Medicaid covered services, in addition to other services determined necessary by PACE for the individual beneficiary. The PACE program becomes the sole source of services for Medicaid and/or Medicaid/Medicare eligible enrollees.

The PACE program is a fully capitated managed care benefit. The PACE organization assumes full financial risk for participants' care without limits on amount, duration, or scope of services. CMS establishes and pays the Medicare capitation and each State establishes and pays the Medicaid capitation. When the enrollee receives Medicaid and Medicare, the PACE organization receives a Medicaid capitation payment and a Medicare capitation payment.

The State of Delaware has received approval from the CMS to amend the Medicaid State Plan to include PACE as an optional State plan service.

Summary of Proposal

This rule sets forth methods used to determine participant eligibility for the Program for All-Inclusive Care for the Elderly (PACE). Effective October 1, 2012, new policy is added to the Division of Social Services Manual (DSSM) at DSSM 20775 to provide PACE Program enrollment requirements.

Fiscal Impact Statement

Program of All-Inclusive Care for the Elderly (PACE) is a capitated benefit authorized by the Balanced Budget Act of 1997 (BBA) that features a comprehensive service delivery system and integrated Medicare and Medicaid financing. Capitated financing allows providers to deliver all services participants need rather than be limited to those reimbursable under the Medicare and Medicaid fee-for-service systems.

PACE providers receive prospective monthly Medicare and Medicaid capitation payments for each eligible enrollee. In order to comply with the upper payment limit requirement at 42 CFR §460.182(b), the PACE capitation rates are established as a fixed percentage, of less than 100 percent, of the respective PACE UPL (Upper Payment Limit) per member per month amounts. PACE providers assume full financial risk for participants' care without limits on amount, duration, or scope of services. Therefore, PACE expenditures will be no more than what they would have been under the former fee for service payment structure.

The proposed regulation imposes no increase in cost on the General Fund as the PACE program will be budget-neutral.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The Governor's Advisory Council for Exceptional Citizens (GACEC), the State Council for Persons with Disabilities (SCPD) and Saint Francis Healthcare offered the following observations and recommendations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

GACEC and SCPD

First, the key eligibility standards are compiled in §5. There is some "tension" between §5 and §9 in the context of nursing home residency. The CMS document indicates that 7% of PACE enrollees live in nursing homes. Section 9 recites as follows:

9. Nursing facility services are part of the PACE benefit package.

The PACE Organization must notify the Division of Medicaid and Medical Assistance (DMMA) eligibility worker of the individual's placement in a nursing facility.

The PACE individual is not required to contribute to the cost of their care while in a nursing facility.

Thus, the CMS guidance and §9.0 suggest that residents of nursing homes may be eligible for the program. However, §5 requires, as a matter of eligibility for enrollment, that the applicant "(b)e living in the community." GACEC and SCPD infer that an individual must be in the community upon initial enrollment but that "continued eligibility" is not affected by post-enrollment nursing home residency. It would be helpful if DMMA clarified this aspect of eligibility.

Agency Response: *The Councils' inference that an individual must be in the community upon initial eligibility for PACE is correct. It has been clarified in the regulations that admission to a nursing facility that happens post-PACE enrollment will not have a negative impact on the individual's continued eligibility, as follows:*

5. To be **[initially]** eligible for enrollment in PACE the individual must:

- Be at least 55 years old;
- Meet the State's eligibility criteria for nursing home level of care;
- Reside in the PACE approved service area;
- Be living in the community;
- Be able to be maintained safely in the community based setting at the time of enrollment with the assistance of the PACE;
- Not be enrolled in a Medicaid/Medicare managed care program; and
- Voluntarily agree to enroll in PACE and receive services exclusively through the PACE organization and their subcontractors.

9. Nursing facility services are part of the PACE benefit package.

[Nursing facility admission that occur post-PACE enrollment will not have a negative impact on the individual's continued eligibility.]

The PACE Organization must notify the Division of Medicaid and Medical Assistance (DMMA) eligibility worker of the individual's placement in the nursing facility.

The PACE individual is not required to contribute to the cost of their care while in a nursing facility.

Second, §10 b. contains the following justification for involuntary termination from the program:

Has decision making capacity and is consistently non-compliant with the individual plan of care and enrollment agreement, which may impact the participant's health and welfare in the community;...

This section would literally authorize termination for recurrent "minor/inconsequential" non-compliance with "minor/inconsequential" impact on health and welfare. Providers have a financial incentive to terminate eligibility of "expensive" individuals and it would be preferable to deter involuntary termination in the absence of significant non-compliance. There is also no requirement that the non-compliance be "willful" rather than inadvertent. For example, an elderly individual's plan may contemplate self-administration of medications. Due to memory deficits, the individual may periodically forget to take medications which affect the individual's welfare. Under a literal reading of the regulatory standard, the individual could be terminated from the program based on consistent non-compliance impacting health. Consider the following substitute:

Has decision making capacity and is willfully and consistently non-compliant with material components of the individual's plan of care and enrollment agreement which may significantly impact the participant's health and welfare in the community;...

Agency Response: *DMMA thanks the Councils for their comment. The reasons listed for involuntary enrollment are in accordance with federal regulations (42 CFR §460.164). There is no change to the regulation as a result of this comment.*

Third, §10.b. contains the following additional justification for involuntary termination from the program:

Engages in disruptive, threatening or non-compliant behavior which jeopardizes his or her safety or the safety of others;...

Individuals with Alzheimer's, dementia, Tourette's or TBI may exhibit such behavior as a symptom of disability. Terminating their eligibility for symptoms of disability would violate §504 and the ADA. CMS requires programs to provide accommodations to participants with disabilities, not "dump" them. Cf. attached CMS Medicaid Director Guidance (July 29, 1998) and CMS Medicaid Director Guidance (May 10, 2010). See also attached October 11, 1985 HHS OCR LOF to Delaware DHSS which held the following regulation violated §504:

57.809 Mental Illness

A. Patients who are, or become, mentally ill and who may be harmful to themselves or others, shall not be admitted or retained in a nursing home.

OCR commented as follows:

Conditions such as Alzheimer's Disease may be considered a mental impairment under the definition of handicapping condition; however the presence of this condition and its manifestations may in no way render one ineligible for the receipt of services normally provided....It is our preliminary determination, based on the preceding discussion, that Section 57.809 as written violates Section 504 of the Rehabilitation Act and its implementing regulation 45 CFR Section 84.4 and Section 84.52(a)(1).

Rather than authorizing termination from the program, enrollees manifesting such behavior due to disability should be considered for specialized treatment. See, e.g., 16 DE Admin Code 3225, §§5.5, 5.12 and 7.0; and 16 DE Admin Code 3201, §5.6. Consider the following substitute:

Has decision making capacity and willfully engages in disruptive, threatening or non-compliant behavior which is not symptomatic of disability and which jeopardizes his or her safety or the safety of others;...

Agency Response: *DMMA thanks the Councils for their comment. The reasons listed for involuntary enrollment are in accordance with federal regulations (42 CFR §460.164). There is no change to the regulation as a result of this comment.*

Fourth, it is unclear if "assisted living" services are part of the PACE benefit package. Compare §9.0. This could be clarified. Assisted living settings are required to be "homelike" (16 DE Reg. 3225, §3.0 (definition of "homelike") and may be less restrictive settings than nursing facilities.

Agency Response: *DMMA thanks the Councils for their comment. Assisted living services may be provided by the PACE organization as part of the individual's Care Plan as determined by the Interdisciplinary Team. There is no change to the regulation as a result of this comment.*

Fifth, the CMS document recites as follows: "If you disagree with the interdisciplinary team about your care plan, you have the right to file an appeal." The DMMA regulation omits any reference to the right to a hearing to contest denial of program eligibility (§5.0); involuntary termination from the program (§10.0); and disagreements about the plan of care. It would be preferable to clarify that 16 DE Admin Code 5000 applies.

Agency Response: *The following clarification will be added:*

[12. Medicaid appeal requirements apply to PACE cases. See DSSM 5000]

Saint Francis Healthcare

We are concerned that the proposed PACE enrollment eligibility standards, those governing Medicaid eligibility for PACE enrollees, set out in DSSM 20775, are proposing a stipulation that will not be budget neutral to the State and will add significant burden to the State, the PACE enrollees, their families and PACE providers. The stipulation of concern, #9 (nine), third line states "PACE individuals are not required to contribute to the cost of their care while in a nursing facility."

The State and PACE enrollees will incur added processing burdens for Medicaid eligibility with some frequency if this stipulation remains in the proposed regulation. PACE enrollees living in a skilled facility with no requirement to contribute to the cost of their care will accumulate funds from their monthly social security and other resources that will potentially increase resources over the allowable \$2,000.00 and will disqualify the enrollee from Medicaid. The PACE enrollee permanently living in a nursing facility will be required to spend down as a private pay nursing facility resident and then reapply for Medicaid when resources are reduced to become Medicaid eligible. This cycle will repeat itself, requiring the State as well as the enrollee, to continuously be denied and reenroll, increasing the burden to the frail elderly and the Delaware Medicaid Offices.

This is the result of the recent adoption of the 1115 Waiver, replacing the 1915c Waiver for Home and Community Based Services for the nursing facility eligible population. The 1115 Waiver does not have an accommodation for post eligibility treatment of income, as the 1915c Waiver did and on which the PACE Medicaid State Plan Amendment (SPA) was based. It is our understanding that individuals covered for community based services under the 1115 Waiver by non-PACE providers will convert to the Nursing Home Medicaid Program when long term placement in a nursing home as necessary. The Nursing Home Medicaid program regulation requires individuals to contribute to the cost of nursing facility care, less the personal needs allowance, when permanently placed in a nursing home. However, this does not apply to PACE enrollees under the separate regulations; though no adjustment in the PACE Medicaid SPA has been addressed to date to our knowledge.

We respectfully request consideration of the following issue. PACE enrollees residing permanently in a nursing facility (permanently as defined by Medicaid State rules) have the same requirement as all other individuals receiving Medicaid state funds as basis for care, to contribute to that care. Therefore we request removal of #9 (nine) third line, "PACE individuals are not required to contribute to the cost of their care while in a nursing facility." as stated above from the proposed regulation.

Saint Francis Healthcare is committed to serving the nursing home eligible population in Delaware who wish to remain safely in the community with the support of PACE services. We anticipate a portion of the individuals served by PACE will age in place for a period of time and ultimately require nursing home placement. It is our goal to work cooperatively with the State of Delaware to provide care as seamlessly as possible for all the individuals we serve in the PACE program.

Agency Response: DMMA appreciates Saint Francis Healthcare's comment. Post eligibility treatment of income is set forth according to the federal regulations (42 CFR §460.164). There is no change to the regulation as a result of this comment.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the August 2012 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to update the Division of Social Services Manual (DSSM) to add policy regarding the eligibility requirements for participation in the *Program of All Inclusive Care for the Elderly (PACE)* is adopted and shall be final effective November 10, 2012.

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #12-49

NEW:

LTC POL-20775 PROGRAM OF ALL- INCLUSIVE CARE FOR THE ELDERLY (PACE)

Program of All-Inclusive Care for the Elderly (PACE) is a benefit that features a comprehensive service delivery system and integrated Medicare and Medicaid financing. The PACE model was developed to address the needs of long-term care clients, providers, and payers. For most participants, the comprehensive service package permits them to continue living at home, while receiving services rather than be institutionalized. Through PACE, organizations are able to deliver all services covered by PACE which participants need rather than only those services reimbursable under the Medicare and Medicaid fee-for-service systems.

This policy applies to all individuals that elect to receive their long-term care services through the PACE and request Medicaid payment for these services.

1. Participation in PACE is voluntary.
2. A PACE participant's eligibility will be determined under rules applying to institutional groups.
See DSSM 20000
3. Spousal Impoverishment rules apply if individual is married and spouse continues to reside in the community and does not receive long-term care Medicaid.
See DSSM 20900
4. Post eligibility treatment of income does not apply to PACE participants.
Participants will not be required to contribute to the cost of their care received from the PACE Organization.
5. To be [initially] eligible for enrollment in PACE the individual must:
 - Be at least 55 years old;
 - Meet the State's eligibility criteria for nursing home level of care;
 - Reside in the PACE approved service area;
 - Be living in the community;
 - Be able to be maintained safely in the community based setting at the time of enrollment with the assistance of the PACE;
 - Not be enrolled in a Medicaid/Medicare managed care program; and
 - Voluntarily agree to enroll in PACE and receive services exclusively through the PACE organization and their subcontractors.
6. The Pre-Admission Screening process will be followed when determining medical eligibility.

See DSSM 20102

7. An individual's enrollment effective date is the first day of the month following the month the PACE Organization receives the signed enrollment form.

8. There is no retroactive coverage for PACE.

9. Nursing facility services are part of the PACE benefit package.

[Nursing facility admission that occurs post-PACE enrollment will not have a negative impact on the individual's continued eligibility.]

The PACE Organization must notify the Division of Medicaid and Medical Assistance (DMMA) eligibility worker of the individual's placement in the nursing facility.

The PACE individual is not required to contribute to the cost of their care while in a nursing facility.

10. An individual's enrollment continues until the enrollee's death unless either of the following actions occurs:

a. The enrollee voluntarily disenrolls for any reason.

b. The enrollee is involuntarily disenrolled for any of the following reasons:

- No longer meets the nursing facility level of care requirement and there is no indication that the participant is expected to need nursing facility level of care within the next 6 months;
- Moves out of the PACE service delivery area;
- Has decision making capacity and is consistently non-compliant with the individual plan of care and enrollment agreement, which may impact the participant's health and welfare in the community;
- Engages in disruptive, threatening or non-compliant behavior which jeopardizes his or her safety or the safety of others;
- Is out of the service area for more than 30 consecutive days (unless arrangements have been made in advance with the PACE Organization); or
- Is enrolled in a PACE Organization that cannot provide the required services due to loss of licensure or contracts with outside providers, and/or the PACE program agreement is not renewed.

11. An individual may be administratively disenrolled if the participant is admitted to a hospital prior to the effective date of PACE enrollment.

[12. Medicaid appeal requirements apply to PACE cases. See DSSM 5000]

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, §122(3)t (16 Del.C., §122(3)t)
16 DE Admin. Code 4459

4459 Lead Based Paints Hazards

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Lead Based Paints Hazards. The DHSS proceedings to adopt the regulation were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Delaware Code**, Section 122(3)t.

On September 1, 2012 (Volume 16, Issue 3), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulation, pursuant to 29 **Delaware Code** Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulation be delivered to DHSS by October 1, 2012, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulation.

No oral comments or written comments were received during the public comment period. Therefore, no evaluation or summarization of comments is presented in the accompanying "Summary of Evidence."

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social

Services (DHSS) Regulations Governing Lead Based Paints Hazards were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*. No oral or written comments were received on the proposed regulation during the public comment period (September 1, 2012 through October 1, 2012).

Only minor corrections were made to the proposed regulation. Improvements were made to the Division of Public Health's Web site and for this reason, the Web address provided as a resource in the proposed regulation needed to be modified in the following three sections of the regulation: 3.3.13.2.6, 3.3.14.3 and 5.5.4.6.

The public comment period was open from September 1- October 1, 2012.

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

FINDINGS OF FACT:

There were no public comments received and only minor non-substantive changes were made to the proposed regulation. The Department finds that the proposed regulation, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Lead Based Paints Hazards are adopted and shall become effective November 10, 2012, after publication of the final regulation in the *Delaware Register of Regulations*.

Rita M. Landgraf, Secretary

4459 Lead Based Paints Hazards

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

4459 Lead Based Paints Hazards

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATERSHED STEWARDSHIP

Surface Water Discharges Section

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

Secretary's Order No.: 2012-WS-0037

7431 Total Maximum Daily Load (TMDL) for the Lums Pond Sub-Watershed, Delaware

Date of Issuance: October 4, 2012

Effective Date: November 11, 2012

This Order of the Secretary of the Department of Natural Resources and Environmental Control (Department) approves proposed regulation **7431 Total Maximum Daily Load (TMDL) for Lums Pond Sub-Watershed, Delaware**, as a final regulation. The Department's Division of Watershed Stewardship, Watershed Assessment and Management Section drafted the proposed regulation, which was published in the *August 1, 2012 Delaware Register of Regulations*. The Department held a public hearing on August 21, 2012, and did not receive any public comments at the public hearing or by September 14, 2012, the deadline for written comments. The Department's presiding hearing officer prepared the attached Report, which recommends approval of the proposed regulation as a final regulation. The Report hereby is adopted to the extent it is consistent with this Order.

Based on the record, as reviewed in the Report, the Department finds that the proposed regulation is reasonable and well supported, and should be adopted to protect the water quality in the Lums Pond watershed. The watershed is particularly important to protect from water pollution because the Department's Lums Pond State Park represents 65% of the watershed's area. The TMDL will require reductions in the pollutants discharged within the watershed, including discharges by the Department's Lums Pond State Park wastewater treatment plant. The 40% reduction in total nitrogen and total phosphorous as required by the TMDL should improve the watershed's

water quality so that it will meet the Department's water quality standards. The Department's approval of the TMDL confirms the commitment to reducing discharges of pollutants from point and non-point sources in order to improve the water quality of the watershed.

In conclusion, the following findings and conclusions are entered:

1. The record supports approval of the proposed regulation as a final regulation that will direct regulatory action to improve the water quality within the Lums Ponds watershed so that the water quality will meet the Department's water quality standards;
2. The TMDL approved by this Order was developed by the Department's experts in WAMS based upon scientific methods, data collection, use of an approved computer model and analysis;
3. The Department provided public notice of the proceeding and the public hearing as required by the law and its regulations;
4. The Department held a public hearing in a manner required by the law and regulations, and there were no public comments to consider in making its determination;
5. The Department's proposed regulation is reasonable, adequately supported, and consistent with the applicable law and regulations;
6. The final regulation approved by this Order shall go into effect ten days after its publication in the *Delaware Register of Regulations*;
7. The Department shall publish this Order on its web site and the Department shall provide notice as required by the law and regulations.

Collin P. O'Mara, Secretary

7431 Total Maximum Daily Load (TMDL) for the Lums Pond Sub-Watershed, Delaware

1.0 Introduction and Background

- 1.1 Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that, within the Lums Pond Sub-Watershed, a small tributary southeast of Lums Pond that connects the Pond to a marina on the C&D Canal (Summit Marina) is impaired because of low dissolved oxygen. This small tributary receives pollutants from nonpoint sources, Lums Pond overflow, and the Lums Pond State Park Wastewater Treatment Plant discharge. A reduction of oxygen consuming pollutants and nutrients from point and nonpoint sources within the sub-watershed is necessary to improve water quality in this tributary and attain applicable water quality standards.
- 1.2 Section 303(d) of the Federal Clean Water Act requires states to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. A TMDL has three components including a Waste Load Allocation (WLA) for point source discharges, a Load Allocation (LA) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties and future growth.
- 1.3 DNREC has listed the Lums Pond Sub-Watershed on Delaware's 303(d) Lists and proposes the following Total Maximum Daily Load Regulation for nitrogen, phosphorus, and 5-day Carbonaceous Biochemical Oxygen Demand (CBOD₅) material.

2.0 Total Maximum Daily Load (TMDL) Regulation for the Lums Pond Sub-Watershed, Delaware

- 2.1 The total nitrogen waste load allocation from the Lums Pond State Park Wastewater Treatment Plant shall be limited to 9 pounds per day.
- 2.2 The total phosphorus waste load allocation from the Lums Pond State Park Wastewater Treatment Plant shall be limited to 2 pounds per day.
- 2.3 The 5-day Carbonaceous Biochemical Oxygen Demand (CBOD₅) waste load allocation from the Lums Pond State Park Wastewater Treatment Plant shall be limited to 13 pounds per day.
- 2.4 The nonpoint source nitrogen load in the sub-watershed shall be reduced by 40 percent from the 2009-2011 baseline level. This shall result in an average of 30 pounds per day of nitrogen load.

- 2.5 The nonpoint source phosphorus load in the sub-watershed shall be reduced by 40 percent from the 2009-2011 baseline level. This shall result in an average of 1 pound per day of phosphorus load.
- 2.6 The nonpoint source CBOD₅ in the sub-watershed shall be reduced by 40 percent from the 2009-2011 baseline level. This shall result in an average of 88 pounds per day of CBOD₅ load.
- 2.7 Based upon water quality model runs and assuming implementation of reductions identified by subsections 2.1 1 through 2.6 above, DNREC has determined that water quality standards will be met in the Lums Pond Sub-Watershed with an adequate margin of safety.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY
DIVISION OF STATE POLICE

Statutory Authority: 24 Delaware Code, Section 2311 (24 Del.C. §2311)
24 DE Admin. Code 2300

ORDER

2300 Pawn Brokers, Secondhand Dealers and Scrap Metal Processors

Pursuant to the Guidelines in 29 Del.C. Section 10118(a)(1)-(7), the Secretary of Safety and Homeland Security ("Secretary") hereby issues this Order. Following public notice on the proposed adoption of amendments to rule 1.0 – Licensing and the adoption of rule 4.0 – Electronic Reporting, the Secretary makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Secretary did not receive written evidence or information pertaining to the proposed adoption.
2. The Secretary expressed his intent to adopt the amendment to make the licensing and renewal procedures more efficient and clarifies the electronic reporting requirements.

Findings of Fact

3. The public was given notice and the opportunity to provide the Secretary with comments, in writing, on the proposed amendments. The written comments received are described in paragraph 1.
4. The Secretary finds that the adoption of these rules will make the licensing and renewal procedures more efficient and clarifies the electronic reporting requirements.
5. The Secretary finds that the adoptions will have no adverse impact on the public.
6. The Secretary finds that the amendments are well written and describes its intent to adopt the rules to make the licensing and renewal procedures more efficient and clarifies the electronic reporting requirements.

Conclusion

7. The proposed rule adoptions were promulgated by the Secretary in accord with the statutory duties and authority as set forth in 24 Del.C. Chapter 23 et seq. and, in particular, 24 Del.C. Section 2311.
8. The Secretary deems these adoptions necessary and expedient to the full and official performance of his duties under 24 Del.C. Chapter 23 et. seq.
9. The Secretary concludes that the adoptions of these rules will be in the best interests of the citizens of the State of Delaware.
10. The Secretary therefore adopts the amendments pursuant to 24 Del.C. Section 2311 and guidelines of 29 Del.C. Section 10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).
11. The adopted rules replace in its entirety any former rule or regulation heretofore promulgated by the Secretary.

12. The effective date of this Order shall be November 1, 2012.
13. Attached hereto and incorporated herein this order are the amended rules marked as exhibit A and executed simultaneously on the 5th day of October 2012.

Secretary Lewis D. Schiliro
October 5, 2012

2300 Pawnbrokers, Secondhand Dealers and Scrap Metal Processors

1.0 Licensing

- 1.1 Any individual applying for a pawnbroker, secondhand dealer or scrap metal processor license under 24 **Del.C.** Ch. 23 must meet and maintain the following qualifications:
- 1.1.1 Must not be convicted of any felony within 5 years of application date; and
 - 1.1.2 Must not have been convicted of any misdemeanor involving theft or fraud within 5 years of application date; and
 - 1.1.3 Must not have been convicted of any misdemeanor involving drugs within 3 years of application date.
- 1.2 A license for a pawnbroker, secondhand dealer or scrap metal processor will not be issued if there is a pending charge as listed in Section 1.1.1, 1.1.2, or 1.1.3.
- 1.3 The individual applying for a pawnbroker, secondhand dealer or scrap metal processor under 24 **Del.C.** Ch. 23 must also meet the following qualifications:
- 1.3.1 Must be at least 18 years of age; and
 - 1.3.2 Must ~~have~~ submit a current valid Delaware Business License issued by the Delaware Division of Revenue; and
 - 1.3.3 Physical location of business must be in the State of Delaware; and
 - 1.3.4 Appropriate taxes must be filed to the State of Delaware and the United States of America; and
 - 1.3.5 License must be prominently displayed ~~within the business~~ at the location listed on the license along with the Delaware Business License issued by the Delaware Division of Revenue.
- 1.4 The individual applying for licensure under Title 24 Chapter 23 must complete the following for approval:
- 1.4.1 Applicant must appear in person at the Delaware State Police ~~Criminal Investigative Unit (CIU) at Troop 2, Troop 3 or Troop 4 in their respective county~~ Professional Licensing Section, by appointment only, to submit the initial application. Licenses will be renewed annually. ~~Renewal applications may be submitted via mail~~; and
 - 1.4.2 ~~Any and all applications required by the Delaware State Police CIU~~ Compliance with 24 Del.C. §2302 and §2312 for reporting forms; and
 - 1.4.3 Submit fingerprints, if requested to confirm the status or existence of a Delaware (CHRI) criminal history. The Director of the State Bureau of Identification (SBI) determines the fee for this process.
- 1.5 Renewal applications may be submitted via mail to the Professional Licensing Section no later than March 15th of each year for renewal, otherwise submission must be made in person.
- 1.56 Notification of a change of address, phone number, e-mail address, or contact person for the business during the license year must be made to the Delaware State Police ~~CIU at Troop 2, Troop 3 or Troop 4~~ Professional Licensing Section.

2.0 Notification of Arrest

- 2.1 Anyone licensed under 24 **Del.C.** Ch. 23 shall notify the Delaware State Police CIU within five (5) days of being arrested for a misdemeanor or felony crime. Failure to do so may result in the suspension or revocation of any pawnbroker, secondhand dealer, or scrap metal processor license.

3.0 Revocations and Emergency Suspensions

- 3.1 The Director of State Bureau of Identification (SBI) shall have the authority to suspend any individual licensed under 24 **Del.C.** Ch. 23 of the **Delaware Code** on an emergency basis if the Director has good cause to believe that the individual:
- 3.1.1 Has engaged in any conduct that is an imminent threat to public safety;
 - 3.1.2 Has been arrested for a felony crime; or
 - 3.1.3 Has been arrested for a misdemeanor crime involving theft, receiving stolen property, fraud, or any crime involving drugs.
- 3.2 Any individual whose license is suspended on an emergency basis by the Director shall be entitled to a hearing before the Superintendent of State Police or his designee within thirty (30) days if the individual requests a hearing in writing within ten (10) calendar days of the date of the notice of the emergency suspension. At the hearing, the individual will have the right to counsel, the right to present evidence and to examine and cross examine witnesses. The hearing will not be subject to the case decision requirements of the Administrative Procedures Act. After the hearing, the Superintendent or his designee may either lift the emergency suspension, or continue the suspension until the resolution of the criminal charge(s) and will notify the individual in writing of the decision.
- 3.3 If the individual whose license is suspended on an emergency basis is not convicted of the crime because the charge is nolle prossed or otherwise dismissed by the court, or if the individual no longer poses an imminent threat to public safety, then the individual may apply in writing to the Director to lift the suspension administratively. The individual has the burden to prove that the basis for the emergency suspension no longer exists.
- 3.4 If the individual whose license is suspended on an emergency basis is convicted of the crime, or continues to pose imminent threat to public safety, then the Director may issue a notice of intent to revoke the license. If the individual makes a written request for a hearing within ten (10) days of the date of the notice, the matter will be heard before the Superintendent or his designee. At the hearing, the individual will have the right to counsel, to present evidence, and to examine and cross-examine witnesses. The hearing will not be governed by the case decision requirements of the Administrative Procedures Act.
- 3.5 If the hearing officer determines that there is good cause to revoke the license, then he/she shall so notify the individual in writing. There shall be no further appeal within the Department of Safety and Homeland Security.
- 3.6 Any individual whose license has been revoked cannot be reinstated. Revocation may be a ground for denying the individual's application for a new license, depending upon the reason for the revocation and the lapse of time.

4.0 Electronic Reporting

- 4.1 Pawnbrokers, Secondhand Dealers and Scrap Metal Processors will electronically report their required transactions as outlined by 24 **Del.C.** Ch. 23 via a method acceptable to the Delaware State Police.
- 4.2 All costs and fees associated with this reporting shall be incurred by the business. These fees will be in addition to those required to obtain licensure.

***Please Note: As the rest of the sections were not amended since the proposal in the September 2012 issue of the *Register*, they are not being published here. A complete copy of the final regulation is available at:**

2300 Pawnbrokers, Secondhand Dealers and Scrap Metal Processors

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 2706(a) (24 Del.C. §2706(a))
24 DE Admin. Code 2700

2700 Board of Registration for Professional Land Surveyors

ORDER

Pursuant to 29 Del.C. §10113(b)(2) and 24 Del.C. §2706(a)(1), the Delaware Board of Professional Land Surveyors issues this Order adopting the below amendment to the Board's Rules. Specifically, pursuant to 29 Del.C. §10113(b)(2), regulation 6.2 of the Board of Professional Land Surveyors' Rules must be changed without prior publication as it removes the review procedure for the drainage examination and Delaware law examination as these examinations are provided, proctored, and scored by Professional Credential Services and any review procedures are not within the control of the Division of Professional Regulation and therefore, this regulation is inconsistent with current practice and policy.

SUMMARY OF THE EVIDENCE

1. Rule 6.0 now states, *in toto*:

6.0 Designation of the Drainage Examination/Delaware Law Examination

6.1 For the required drainage examination/Delaware law examination the Board adopts the bank of questions developed for this purpose and/or approved for this purpose by a recognized psychometrician or other authority whose services are acquired and approved by the Division of Professional Regulation of the Delaware Department of State. Section 2706(a)(4).

6.2 Exam review procedures.

- 6.2.1 An applicant may review only the questions answered incorrectly.
- 6.2.2 No other materials will be allowed into the room when reviewing the exam.
- 6.2.3 There will be a 30-minute time limit supervised by the Division of Professional Regulation.
- 6.2.4 The fee will be determined by the Division of Professional Regulation.
- 6.2.5 An applicant cannot review the exam within 90 days prior to the next exam date.
- 6.2.6 An exam review will be limited to only one review.

2. The Board proposed the following change to its regulations (additions are underlined, removals are stricken through):

6.0 Designation of the Drainage Examination/Delaware Law Examination

6.1 For the required drainage examination/Delaware law examination the Board adopts the bank of questions developed for this purpose and/or approved for this purpose by a recognized psychometrician or other authority whose services are acquired and approved by the Division of Professional Regulation of the Delaware Department of State. Section 2706(a)(4).

~~6.2 Exam review procedures.~~

- ~~6.2.1 An applicant may review only the questions answered incorrectly.~~
- ~~6.2.2 No other materials will be allowed into the room when reviewing the exam.~~
- ~~6.2.3 There will be a 30 minute time limit supervised by the Division of Professional Regulation.~~
- ~~6.2.4 The fee will be determined by the Division of Professional Regulation.~~
- ~~6.2.5 An applicant cannot review the exam within 90 days prior to the next exam date.~~
- ~~6.2.6 An exam review will be limited to only one review.~~

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, 2012.

IT IS SO ORDERED this 20th day of September, 2012.

James Bielicki, Jr.

Thomas Plummer

Mary Chvostal

Mark Rosenthal

Laurence R. McBride

Michael T. Szymanski

Kenneth Monroe

2700 Board of Registration for Professional Land Surveyors

(Break in Continuity of Sections)

6.0 Designation of the Drainage Examination/Delaware Law Examination

6.1 For the required drainage examination/Delaware law examination the Board adopts the bank of questions developed for this purpose and/or approved for this purpose by a recognized psychometrician or other authority whose services are acquired and approved by the Division of Professional Regulation of the Delaware Department of State. Section 2706(a)(4).

6.2 ~~Exam review procedures.~~

~~6.2.1 An applicant may review only the questions answered incorrectly.~~

~~6.2.2 No other materials will be allowed into the room when reviewing the exam.~~

~~6.2.3 There will be a 30 minute time limit supervised by the Division of Professional Regulation.~~

~~6.2.4 The fee will be determined by the Division of Professional Regulation.~~

~~6.2.5 An applicant cannot review the exam within 90 days prior to the next exam date.~~

~~6.2.6 An exam review will be limited to only one review.~~

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

2700 Board of Registration for Professional Land Surveyors

DEPARTMENT OF TRANSPORTATION

DIVISION OF TRANSPORTATION SOLUTIONS

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

ORDER

2404 Traffic Calming Manual

Under Title 17 of the **Delaware Code**, Sections 134 and 141, as well as 21 **Delaware Code** Chapter 41, the Delaware Department of Transportation (DelDOT) sought to adopt a revised version of the Delaware Department of Transportation's Traffic Calming Design Manual as originally adopted in 2000. This revision of the Traffic Calming Design Manual will supersede any previous versions. The Department accepted written comments on the draft changes to the Traffic Calming Design Manual from August 1, 2012 through August 31, 2012 (16 **DE Reg.** 194 (08/01/12)). Copies of the Draft Traffic Calming Design Manual were obtained by reviewing or downloading a PDF copy at the following web address: <http://regulations.delaware.gov/register/august2012/proposed/DETCM.pdf>

Summary of the Evidence and Information Submitted

There were no comments received during the comment period. However, the Department staff determined that certain other changes, non-substantive in nature, should also be made to the Draft.

The table accompanying this Order summarizes the changes made to the draft version of the Traffic Calming Design Manual published in the August 2012 edition of the Delaware Register. Each change is listed in the table below, along with its justification.

Findings of Fact

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

1. The proposed amendments to the Traffic Calming Design Manual are useful and proper, as amended pursuant to the comment period process required under the Administrative Procedures Act.
2. The adoption of these proposed changes to the Traffic Calming Design Manual is in the best interests of the State of Delaware.

Decision and Effective Date

Based on the provisions of Delaware law and the record in this docket, I hereby adopt the revised Traffic Calming Design Manual, as set forth in the version attached hereto, to be effective on November 10, 2012.

IT IS SO ORDERED this 16th day of October, 2012.

Shailen P. Bhatt, Secretary
 Delaware Department of Transportation

Page	Sec/Fig	Para.	DeIDOT Comment / Proposed Change	Modification
-	Title	-	Title of the previous edition is "Traffic Calming Design Manual"	<i>Title changed to "Traffic Calming Design Manual"</i> Justification: Typographical error. Text modified for consistency purposes.
-	Table of Contents	-	Section 3B.3 – Title does not match the title in the document	<i>Table of Contents modified to "Prefabricated Speed Cushions" to reflect the title in the document.</i> Justification: Ease of reference for users of the manual.
	1B.2	2	Delete the last two sentences	<i>The sentences: "The project appears to have produced the desired reduction in speed for the through traffic. Follow up studies are scheduled" have been deleted.</i> Justification: No studies are currently scheduled at this location.
	2A.5	5	Delete the sentence "Maintenance of brick and other decorative Materials may also be turned over to such associations or individuals"	<i>Text deleted</i> Justification: The Department will be responsible for the constructed portions of traffic calming measures in the right-of-way.
	2B	2	Modify last sentence to include "potentially to be replaced by permanent installations."	<i>Text modified</i> Justification: Text modified to reflect DeIDOT's current practices.
	2B.2		Modify the last sentence to "To discourage casual requests, the petitioners themselves will be responsible for securing funding for modification or removal when the Department finds that such modification or removal is not justified."	<i>Text modified</i> Justification: Clarification of statement.

2C.1	5	Modify the second sentence to "For example, projects must be reviewed for need, viability and potential conflict or overlap with nearby projects and their corresponding goals"	<i>Text modified</i> Justification: Clarification of statement.
2D	1	Modify the first sentence to "Following initial construction, it is important that traffic calming installations, like any other street improvement, receive proper maintenance in order to function safely, as designed and aesthetically pleasing."	<i>Text modified</i> Justification: Clarification of statement.
3C.7		Change the last sentence under Design Vehicles to "Typically, no portion of the neighborhood traffic circle is raised; therefore, turns by any size vehicle can be accommodated to the same degree as the existing non-circular roundabouts."	<i>Text modified</i> Justification: Clarification of statement.
3C.7		Design Considerations: Add a bullet to address pedestrian issues	<i>Text has been added – "If provided, crosswalks at mini-roundabouts and neighborhood traffic circles should be in constructed in accordance with the guidance provided in the DE MUTCD for roundabouts with the appropriate setback from the yield line."</i> Justification: Text added to address pedestrians near a mini-roundabout.
4A		Delete the phrase 'in upper case letters' from the third bullet	<i>Text has been deleted.</i> Justification: Text edited to reflect the latest DE MUTCD standards
4B.2	4	Add a reference to table 2C-4 from the DE MUTCD	<i>Reference has been added to the text.</i> Justification: Ease of reference for users of the Manual.
4B.3	3	Include language to clarify the different types of roundabouts where the signs may be used	<i>Text has been amended</i> Justification: Clarification of statement

***Please Note: A copy of the regulation is available at:**

<http://regulations.delaware.gov/register/november2012/final/DETCM.pdf>

GOVERNOR'S APPOINTMENTS

547

Name	Board Name	Appointment Date	Reappointment Date
The Honorable Patricia M. Blevins	Animal Welfare Task Force	08/08/2012	
Hetti A. Brown		08/08/2012	
Patrick J. Carroll		08/08/2012	
Ann Cavanaugh		08/16/2012	
F. Morgan Dawkins, D.V.M.		08/13/2012	
Ms. Kristin A. Dwyer		08/08/2012	
Kathleen M. Gallagher		08/08/2012	
Harold F. Godwin		08/08/2012	
Anny Gryczon		08/16/2012	
Caroline C. Hughes, VMD		08/08/2012	
The Honorable Earl G. Jaques, Jr.		08/08/2012	
The Honorable Walter E. Kee, Jr.		08/09/2012	
Mr. Andrew H. Lippstone		08/08/2012	
Dr. Michael Moyer		08/16/2012	
The Honorable Karen E. Peterson		08/08/2012	
Michael Petit de Mange		08/16/2012	
Jane Pierantozzi		08/16/2012	
Mr. R. John Rago		08/10/2012	
Ms. Jennifer Ranji		08/08/2012	
Verne Smith		08/16/2012	
Kevin Usilton		08/16/2012	
The Honorable Lincoln D. Willis		08/08/2012	
Barry L. Bakst, D.O.	Board of Medical Licensure and Discipline	09/18/2012	
Ms. Cheryl Calicott-Trawick	Child Placement Review Board - New Castle	09/05/2012	
The Honorable Debra J. Heffernan	Civil Mental Health Law Study Group	09/24/2012	
Ms. Elizabeth C. Baxter	Council on Libraries	10/13/2008	08/24/2012
Mr. Zachery C. Carter		10/13/2008	08/24/2012
Ms. Carol Fitzgerald		08/24/2012	
Ms. Susan Menson		08/24/2012	

GOVERNOR'S APPOINTMENTS

Name	Board Name	Appointment Date	Reappointment Date
Mr. Harlan R. Scott	Council on Libraries	10/13/2008	08/24/2012
Donald E. Dunnigan, Sr., D.Min	Criminal Justice Council	08/27/2012	
Mr. Robert P. Corsa	Delaware Commission of Veterans' Affairs	11/08/2007	08/22/2012
Mr. Maurice G. Evans		11/08/2007	08/22/2012
CMSGT William C. McMullen		08/22/2012	
The Honorable Barry B. Newstadt		08/05/2003	08/22/2012
Lieutenant Colonel Angela Showell		09/04/2012	
Mr. A. Richard Heffron	Delaware Health Care Commission	08/09/2012	
The Honorable Edward S. Osienski	Delaware Health Fund Advisory Committee	09/21/2012	
The Honorable Michael A. Barbieri	Delaware Health Fund Working Group	09/10/2012	
The Honorable Patricia M. Blevins		08/08/2012	
The Honorable Brian J. Bushweller		08/08/2012	
The Honorable John L. Mitchell, Jr.		09/10/2012	
Mr. David W. Baker	Delaware Nutrient Management Commission		08/06/2012
Mr. Tony Keen			08/06/2012
Mr. William W. Vanderwende		08/06/2012	03/19/2009
Mr. Edward J. Capodanno	Delaware School Construction Working Group	08/20/2012	
Mr. John J. Casey, Jr.		08/20/2012	
Mr. Edward A. Decker		08/24/2012	
The Honorable Edward S. Osienski		08/20/2012	
The Honorable Michael J. Ramone		08/20/2012	
Ms. Karen F. Rogers		08/20/2012	
Mr. Bryan B. Sullivan		08/20/2012	
Mr. Scott G. Wilcox, Esq.		08/24/2012	
Ms. Teri Q. Gray, PhD.	Delaware STEM Education Council	09/07/2012	
Ms. Heidi L. Beck	Early Childhood Council	09/13/2012	
Ms. Paula S. Holloway		09/13/2012	
Ms. Mary K. Mouser		09/13/2012	
Ms. Michelle A. Taylor		09/13/2010	09/13/2012

GOVERNOR'S APPOINTMENTS

549

Name	Board Name	Appointment Date	Reappointment Date
Rebecca Taber	Education Commission of the States	09/11/2012	
Ms. Debora G. Hansen	Gifted and Talented Student Task Force	09/12/2012	
Barbara B. Rutt		09/12/2012	
Nathan Badell	HJR 18 Analysis & Recommendation Group	08/15/2012	
The Honorable Michael A. Barbieri		08/03/2012	
Amanda L. Brennan		08/03/2012	
Mr. Rodney Brittingham		08/03/2012	
Paul F. Calistro, Jr.		08/03/2012	
The Honorable William L. Chapman		08/03/2012	
The Honorable Barbara D. Crowell		08/03/2012	
Eric C. Lloyd		08/03/2012	
Ms. Mary Kate McLaughlin		08/03/2012	
Julia A. O'Hanlon		08/03/2012	
Demetrius D. Pinder		08/03/2012	
Christella A. St. Juste		08/03/2012	
Ethan A. Sylvester		08/03/2012	
Mrs. Yvonne J. Scott	Kent County Vocational-Technical Board of Education	09/05/2012	
Ms. Cathleen A. Allen	Provider Advisory Board	09/10/2012	
Ms. Janet B. Chandler		09/10/2012	
Mr. Christopher J. Couch		09/10/2012	
Ms. Pamela E. Harper		09/10/2012	
Ms. Sherry L. Ivory		09/10/2012	
Ms. Constance M. Merlet		09/10/2012	
Ms. Sharon M Williams		09/10/2012	
Timothy G. Harriger	State Board of Home Inspectors	08/09/2012	
Victoria Jones	State Employee's Charitable Campaign Steering Committee	09/25/2012	
Teresa D. Mischler		09/25/2012	
Ms. Deidre Y. Ottley		09/26/2012	
Mr. Charles W. Frampton, Jr.	State Fire Prevention Commission	09/14/2012	

GOVERNOR'S APPOINTMENTS

Name	Board Name	Appointment Date	Reappointment Date
Ms. Marie-Anne E. Aghazadian	State Transition Task Force for Emerging Adults w/ Disabilities & Special	09/05/2012	
Ms. Sarah A. Celestin		09/05/2012	
Ms. Margaret E. Comeau		09/05/2012	
Mr. Brian H. Freedman		09/07/2012	
Mr. Gerard Gallucci		09/05/2012	
The Honorable Bethany Hall-Long, Ph.D.		09/05/2012	
Mr. Kyle L. Hodges		09/05/2012	
Mr. Steven R. Tull		09/07/2012	
Ms. Bhavana P. Viswanathan		09/05/2012	
Mrs. Jennifer Zerby	Tourism Advisory Board	09/09/2012	

DEPARTMENT OF AGRICULTURE**HARNESS RACING COMMISSION****PUBLIC NOTICE****501 Harness Racing Rules and Regulations**

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rule 6.6.6.3, 6.6.6.4, 6.6.6.9, 6.6.6.11, 6.6.6.12.1, 6.6.6.12.2, 6.6.6.12.3 & 6.6.6.12.4. The Commission will hold a public hearing on the proposed rule changes on December 11, 2012. 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, 2012.

The proposed changes are for the purpose of updating Rule 3 and 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 Harness Racing Commission office.

DEPARTMENT OF EDUCATION**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, November 15, 2012 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF ELECTIONS**OFFICE OF THE COMMISSIONER OF ELECTIONS FOR THE STATE OF DELAWARE****PUBLIC NOTICE****Background**

The Delaware Elections Disclosure Act (the "Act") was signed into law on August 15, 2012. In connection therewith, the Act requires the Commissioner of Elections (the "Commissioner") to adopt regulations no later than December 31, 2012:

- a) exempting, to the extent possible, persons from reporting duplicative information in campaign finance reports;
- b) promulgating standards with respect to the size, layout and timing of the disclaimer statements required with respect to certain campaign advertisements;
- c) adopting any amendments or modifications to, or exemptions from, such disclaimer statements; and;
- d) adopting procedures for the electronic filing of reports and the posting of said reports to the Commissioner of Elections' web site.

Public Comment Period

The Commissioner of Elections will take written comments on the proposed Regulations from November 1, 2012 through November 30, 2012.

Any requests for copies of the proposed Regulations, or any questions or comments regarding this document should be directed to:

Elaine Manlove, State Elections Commissioner
905 S. Governors Avenue, Suite 170
Dover, DE 19904
Phone: (302) 739-4277
Fax: (302) 739-6794
Email: Elaine.Manlove.state.de.us

CALENDAR OF EVENTS/HEARING NOTICES

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Reimbursement Methodology for ICF/MR Facilities**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Title XIX Medicaid State Plan regarding the *Reimbursement Methodology for ICF/MR Facilities*.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by November 30, 2012.

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF WATER****Surface Water Discharges Section****Public Hearing**

The Delaware Department of Natural Resources and Environmental Control's Ground Water Discharges Section (GWDS) will be holding a public hearing regarding proposed amendments to the Regulations Governing the Design, Installation, and Operation of On-Site Wastewater Treatment and Disposal Systems (Regulations).

The Start Action Notice to amend the Regulations was signed by then Secretary Hughes on December 18, 2008. Subsequent to the public hearing held on May 3, 2012, DNREC made additional revisions to the Regulations, in order to thoroughly address the comments and concerns received to date in this matter. Accordingly, DNREC re-opened the record in this matter, beginning on Monday, October 1, 2012, in order to vet these revisions to the public, and to enable DNREC to receive additional public comment. As a result of comments and requests the Department has decided to conduct a second public hearing.

The focus of this second public hearing will be on the changes which have occurred as a result of the first public hearing.

These changes will be open for your feedback during the hearing. You are invited to send written comments before the public hearing and/or at any time throughout the hearing. Comments will be accepted through the night of the public hearing as well as a minimum of 15 additional days after the conclusion of the public hearing.

The hearing will be held in the DNREC Auditorium, 89 Kings Highway, Dover, DE, 19901 at 6:30 pm, Thursday, November 15, 2012.

Pre-registration is not required.

For more information or directions, please contact:

Jennifer Owens, Ground Water Discharges, 89 Kings Highway, Dover, DE 19901, (302) 739-9948

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION**PUBLIC NOTICE****101 Regulations Governing Bingo**

The Delaware Board of Charitable Gaming will seek public comments on the issue of whether certain amendments to its current rules should be adopted.

The proposed amendment is to Rule 4.6 in 10 **DE Admin. Code** 101. The amendment would add language explaining that when the rule states that promotional giveaways are permitted to be offered on state-recognized

holidays, the actual gaming events do not have to be played on the holiday itself, but may be played within the seven days before the holiday, or on the holiday itself.

Persons wishing to present their views regarding this matter may do so by appearing at a public hearing on Thursday, December 6, 2012 at the meeting of the Delaware Board of Charitable Gaming, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904. Persons may also submit written comments by the close of business on or before December 21, 2012 at the same address. A copy of these regulations is available from the above address or may be viewed at the Division of Professional Regulation business office at the same address.

OFFICE OF THE STATE BANKING COMMISSIONER

PUBLIC NOTICE

905 Loan Limitations: Credit Exposure to Derivative Transactions

The State Bank Commissioner proposes to adopt new Regulation 905, "Loan Limitations: Credit Exposure to Derivative Transactions". This proposed new Regulation sets forth the rules for calculating the credit exposure arising from a derivative transaction entered into by a bank for purposes of determining the bank's loan limitations pursuant to Section 909 of Title 5 of the Delaware Code.

Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (Dodd-Frank Act), requires state law lending limits to take into consideration credit exposure to derivative transactions in order for FDIC-insured state banks to be permitted to engage in derivative transactions. Dodd-Frank Act Section 610 imposed a similar requirement on national banks, and the United States Office of the Comptroller of the Currency (OCC) complied by issuing an interim final rule in June, 2012. Proposed Regulation 905 is based on the OCC's rule so that the requirements for state banks will be the same as those for national banks.

The State Bank Commissioner would adopt the proposed new Regulation 905 on or after December 3, 2012. Other regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing this regulation in accordance with Title 5 of the Delaware Code.

A copy of the proposed new regulation is published in the Delaware Register of Regulations. A copy is also on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 and is available for inspection during regular office hours. Copies are available upon request.

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether this proposed new regulation should be adopted, rejected or modified. Written materials submitted will be available for inspection at the above address. Comments must be received at or before the public hearing scheduled for 10:00 a.m. December 3, 2012.

A public hearing on the proposed new Regulation will be held in the offices of the State Bank Commissioner, 555 E. Loockerman Street; Dover, Delaware, 19901 on Monday, December 3, 2012, commencing at 10:00 a.m. This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the Delaware Code.