
Delaware Register of Regulations

Issue Date: September 1, 2010

Volume 14 - Issue 3, Pages 126 - 203



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Proposed
Final

Governor:
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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 August 16, 2010.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to § 1134 of this title.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

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
October 1	September 15	4:30 p.m.
November 1	October 15	4:30 p.m.
December 1	November 15	4:30 p.m.
January 1	December 15	4:30 p.m.
February 1	January 17	4:30 p.m.

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Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

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

PUBLIC NOTICE

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rule 7.6.6.7.7. The Commission will hold a public hearing on the proposed rule changes on **October 12, 2010. (Please note this date has been changed from the previous posting of August 10, 2010.)**

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 September 1, 2010.

The proposed changes are for the purpose of updating the Rules and to more accurately 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)

7.0 Rules of the Race

(Break in Continuity within Sections)

7.6 Racing Rules

(Break in Continuity within Sections)

7.6.6 Recall Rules

- 7.6.6.1 In case of a recall, a light plainly visible to the drivers shall be flashed and a recall sounded, but the starting gate shall proceed out of the path of the horses. In the case of a recall, whenever possible, the starter shall leave the wings of the gate extended and gradually slow the speed of the gate to assist in stopping the field of horses. In an emergency, however, the starter shall use his discretion to close the wings of the gate.
- 7.6.6.2 There shall be no recall after the word "go" has been given unless there is a mechanical failure of the starting gate.
- 7.6.6.3 The starter shall attempt to dispatch all horses away in position and on gait but there shall be no recall for a breaking horse.
- 7.6.6.4 In the event a horse causes two recalls, it may be scratched by the judges.
- 7.6.6.5 The starter may sound a recall for the following reasons:
 - 7.6.6.5.1 A horse scores ahead of the gate;
 - 7.6.6.5.2 There is interference;
 - 7.6.6.5.3 A horse has broken equipment;
 - 7.6.6.5.4 A horse falls before the word "go" is given; or
 - 7.6.6.5.5 A mechanical failure of the starting gate;
 - 7.6.6.5.6 A horse comes to the gate out of position.
- 7.6.6.6 A fine and/or suspension may be applied to any driver for:
 - 7.6.6.6.1 Delaying the start;
 - 7.6.6.6.2 Failure to obey the starter's instructions;
 - 7.6.6.6.3 Rushing ahead of the inside or outside wing of the gate;
 - 7.6.6.6.4 Coming to the starting gate out of position;
 - 7.6.6.6.5 Crossing over before reaching the starting point;
 - 7.6.6.6.6 Interference with another driver during the start; or
 - 7.6.6.6.7 Failure to come up into position and stay in position behind the starting gate until the word "go" is given.

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

501 Harness Racing Rules and Regulations

DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 405

405 Minor Capital Improvement Programs

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

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 **DE Admin. Code** 405 Minor Capital Improvement Programs. This regulation was reviewed and amended as part of the 5 year cycle. The amendments are generally for clarification purposes.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 4, 2010 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is related to minor capital improvement and not directly related to student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation is related to minor capital improvement and does not directly affect ensuring all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation is related to minor capital improvements and should support the health and safety of all students through improved flexibility and a better defined process.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation is related to minor capital improvements and should support the health and safety of all students through improved flexibility and a better defined process.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation preserves the necessary authority and improves flexibility of decision making at the local board and school level through a better defined minor capital improvement regulation.

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 regulations will decrease reporting and administrative requirements through improved flexibility and a better defined Minor Capital Improvement regulation.

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

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 supports improved implementation through a better defined Minor Capital Improvement regulation.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of this regulation. The amended should decrease reporting and administrative burden.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The amended regulation will not have added costs to the State or local school board for compliance. The amendments should decrease the burden to districts.

405 Minor Capital Improvement Programs

1.0 Minor Capital Improvement Program

- 1.1 The Minor Capital Improvement Program (MCI) is a program to provide for the planned and programmed maintenance and repair of the school plant. The program's primary purpose is to keep physical property assets in their original condition of completeness and efficiency on a scheduled basis. It is not for increasing the plant inventory or changing its composition. Minor Capital Improvement Projects are projects that cost less than \$500,000 unless the project is for roof repair. The MCI

program is ~~shall be~~ reviewed annually by the school district and should be comprised of work necessary for good maintenance practice.

- 1.2 Minor Capital Improvement Project purchase orders shall be submitted to the State Division of Accounting prior to any work being done. A separate purchase order must be submitted for each project. (One copy of the approved purchase order will be returned to the district for their information and record.)
- 1.3 Use of Funds: The following areas are authorized for the expenditure of Minor Capital Improvement Program funds: maintenance, repairs, modernization, inspections, testing, maintenance agreements and service contracts related to: roofs, heating systems, ventilation & air conditioning systems, plumbing & water systems, electrical systems, windows, doors, floors, ceilings, masonry, structural built in equipment, painting, fire suppression systems, life safety systems, maintenance of site security systems installation and maintenance, school grounds, athletic facilities and play grounds, of ice equipment used for instructional purposes only and renovations, alterations and modernizations that do not require major structural changes.
- 1.4 Exclusions: Funds allocated for a specific project shall be used only for that project. Program funds may not be used for the following: movable equipment other than office equipment used for instructional purposes that is transported from one location to another, routine janitorial supplies, new construction that increases the area of a building or extends any of its component systems, site improvements that add to or extend the existing roadways or side walks, surfacing a non surfaced area for parking, completing major construction projects or specific items omitted or deleted from major construction projects or floor space allocated according to formula and used otherwise.
- 1.5 Invoices: Invoices ~~may~~ shall be sent directly to the Division of Accounting for processing. Payments may be made as the project progresses or after work has been completed and accepted, as warranted by the nature and scope of the individual project(s).

2.0 Career Technical Program Equipment Replacement Requests

- 2.1 ~~Requests for the r~~ Replacement of Career Technical Program equipment may be made under the accomplished using ~~Minor Capital Improvement Program Requests shall be made when the equipment is within three years of its estimated life so districts can accumulate the necessary dollars to purchase the item. Districts desiring to participate in the Career Technical Program equipment replacement program shall submit a request in writing to the Office of School Plant Planning at the time of the Minor Capital Improvement Program submission. Districts should not include Career Technical Program replacements with regular Major Capital Improvement Projects, Vocational Education Replacement funds.~~
- 2.2 Career Technical Program Equipment is defined as either a movable or fixed unit but not a built in unit. In addition, the equipment shall retain its original shape and appearance with use, be nonexpendable, and represent an investment which makes it feasible and advisable to capitalize and not lose its identity through incorporation into a different or more complex unit. Computers and computer peripheral equipment may be purchased using Minor Capital Improvement Vocational Education Equipment Replacement Funds provided such equipment purchased with such funds is used in a vocational education setting for the service life of said equipment.
- 2.2.1 In order to replace Career Technical Program equipment, the equipment must have ~~a minimum 10 year life expectancy,~~ have a unit cost of \$500 or more, be obsolete or more than five (5) years old, and be purchased with state, state and local or local funds.
- 2.3 Funds: Funds shall be allocated based on the percentage of a district's Vocational Division II Units to the total of such units of all participating districts. This percentage is applied to the total funds available in a given year for capital equipment. Career Technical Schools are 100% State funded.

3.0 Purchase Orders

Funds may be expended anytime during the life of the Act which appropriated the funds, usually, a three year period. Appropriations may be accumulated over those three years and expended for a major replacement when a sufficient balance is attained. ~~However, should funds prove insufficient after~~

~~three years of appropriations, the district must supplement the program from their own or other resources. Funds unexpended when the appropriating Act expires shall revert to the State unless properly and duly continued in accordance with Office of Management and Budget requirements. Purchase orders shall include the reference ID system, sub-system, component and deficiency code from the correction on the facility assessment website database.~~

4.0 Cost Limitations

The maximum cost of a Minor Capital Improvement Project is \$50,000 except roof repairs and replacements which are not cost limited. Non roof projects exceeding the ceiling shall be requested in the Major Capital Improvement Program.

5.0 Temporary Employees

Workers may be hired under the Minor Capital Improvement Program provided they are temporary hires and directly involved in the planning, constructing, or record maintenance of the construction project.

6.0 Reporting

~~At the end of each fiscal year, School districts shall submit a list of completed projects accomplished under the Minor Capital Improvement Program account for Minor Capital Improvement summary and detailed projects in the accounting system as required by the Delaware Department of Education in order to accomplish proper control and reporting of said projects.~~

2 DE Reg. 1382 (2/1/99)

6 DE Reg. 1672 (6/1/03)

9 DE Reg. 970 (12/01/05)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 727

727 Credit for Experience for Educators and for Secretarial Staff

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

A. Type of Regulatory Action Required

Reauthorization of Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to readopt 14 DE Admin. Code 727 Credit for Experience for Educators and for Secretarial Staff. This regulation was reviewed as part of the 5 year review cycle.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 4, 2010 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation addresses credit for experience as it relates to salaries for educators and secretarial staff.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation addresses credit for experience as it relates to salaries for educators and secretarial staff.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation addresses credit for experience as it relates to salaries for educators and secretarial staff.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation addresses credit for experience as it relates to salaries for educators and secretarial staff.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? There are no proposed changes to the regulation.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? There are no proposed changes to the regulation.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? There are no proposed changes to the regulation.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? There are no proposed changes to the regulation.
9. Is there a less burdensome method for addressing the purpose of the regulation? There are no proposed changes to the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no proposed changes to the regulation.

727 Credit for Experience for Educators and for Secretarial Staff

1.0 Educators Graduating from a 5 Year or 4 Year Preservice Program

1.1 Definitions

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

"Eligible Employee" includes, but is not limited to, teachers, nurses, librarians, psychologists, therapists, and counselors paid in accordance with 14 Del.C. §1305 that were hired into their first professional position after June 30, 2001 and zero years of experience. The exception to the zero years of experience would be an employee who qualified for military experience credit under 14 Del.C. §1312(a) and 14 DE Admin. Code 706.

"Five Year Pre service Program" means a regionally accredited college or university five year planned degree program which includes an extensive clinical component or internship in the fifth year.

"Four Year Pre service Program" means a regionally accredited college or university four year preservice undergraduate bachelor degree program.

"Grade Point Average (GPA)" means the grade point average (GPA) stated on the official transcript of the regionally accredited college or university granting the bachelor's degree in the Four Year Preservice Program.

1.2 Pursuant to 14 Del.C. §1312(a), a graduate of a five year preservice program, or a graduate of a four year preservice program who graduates with a GPA of 3.75 or higher on a 4.0 scale or the equivalent, shall be granted one year of experience on the applicable state salary schedule.

1.3 An employee eligible for one year of credited experience shall meet the definition of Eligible Employee in 1.1 and meet the requirements of 1.2.

9 DE Reg. 396 (9/1/05)

2.0 Administrators

No credit for experience shall be given for part time employment in administrative or supervisory positions.

3.0 Teachers

- 3.1 Days taught as a substitute or as a paraeducator may not be used toward credit for experience; however, employment as a teacher on a regular part-time basis may be used toward credit for experience.
- 3.1.1 A "regular part-time" employee is one who is employed in a position which requires at least 50 hours per month for at least 9 months during any 12 consecutive month period.

4.0 Secretarial Staff

Secretaries may be granted one (1) year's experience for each creditable year of experience as a secretary in private business, public or private school, or other governmental agency.

5.0 Creditable Experience

Creditable experience includes experience obtained while working outside of Delaware.

6.0 Applicability

This regulation applies to the determination of creditable experience for salary purposes only, and does not apply to the determination of creditable experience for pension purposes which is specified in 29 **Del.C.** Ch. 55. Laws on employment and salary for administrators, teachers, and secretaries are found in 14 **Del.C.** Ch. 13.

3 DE Reg. 1542 (5/1/00)

8 DE Reg. 1607 (5/1/05)

9 DE Reg. 396 (9/1/05)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 940

940 Early Admission to Kindergarten for Gifted Students

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

A. Type of Regulatory Action Required

Repeal

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to repeal 14 **DE Admin. Code** 940 Early Admission to Kindergarten for Gifted Students. This regulation was reviewed under the five year cycle, and a proposed amendment was published in the May 2010 *Register of Regulations*. The Department received comments from the Governor's Advisory Council and thereafter reviewed the regulation and proposed amendment again. Upon this further review and consideration of the comments received, the Department determined that the identification by professionally qualified persons under 14 **Del.C.** §3101(4) and the local district's assessment of the best interest of the child under 14 **Del.C.** §2702(b) is the better mechanism to determine early admission to Kindergarten for Gifted Students. That mechanism will allow students with all statutorily listed areas of abilities, singularly or in combination, to be assessed with the same criteria. Accordingly, the Department has determined that continued regulation in this area is unnecessary at this time.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 4, 2010 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education,

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

C. Impact Criteria

1. Will the repealed regulation help improve student achievement as measured against state achievement standards? The repealing of the regulation is consistent with the provisions in Delaware Code related to exceptions to entry into school.
2. Will the amended regulation help ensure that all students receive an equitable education? The repealing of the regulation is consistent with the provisions in Delaware Code related to exceptions to entry into school.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The repeal of this regulation is not intended to affect the health and safety of students.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The repealing of the regulation is consistent with the provisions in Delaware Code related to exceptions to entry into school.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The repealing of the regulation is consistent with the provisions in Delaware Code related to exceptions to entry into school, especially as it related to authority and flexibility of local board and school levels.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The repealing of the regulation is consistent with the provisions in Delaware Code related to exceptions to entry into school and is not intended to place unnecessary reporting, administrative requirements or mandates upon decision makers at the local board or school level.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The repealing of the regulation is consistent with the provisions in Delaware Code related to exceptions to entry into school.
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 repealing of the regulation is consistent with the provisions in Delaware Code related to exceptions to entry into school and not inconsistent with other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? The repealing of the regulation is consistent with the provisions in Delaware Code related to exceptions to entry into school.
10. What is the cost to the State and to the local school boards of compliance with the regulation? The Department does not contemplate additional costs to the state or local school boards with the repeal of this regulation.

940 Early Admission to Kindergarten for Gifted Students**4.0 Requirements for Early Admission to Kindergarten**

~~When providing early enrollment into kindergarten of children who are gifted pursuant to the provisions of 14 Del.C. §3101(3)(a) or (b), local school districts and charter schools shall comply with the following requirements:~~

- 4.1 ~~At the request of any parent, legal guardian or person acting as a caregiver pursuant to 14 Del.C. §202(f), the district or charter school shall conduct an evaluation of any such potentially gifted child by a school psychologist or other professionally qualified person, in conjunction with other appropriate personnel, to determine if the child possesses outstanding mental and cognitive abilities and to determine if the child can demonstrate the social, emotional, and physical maturity, normally expected for successful participation in kindergarten. A discussion shall be held to determine the parent, guardian or Relative Caregiver's reason for requesting the child's early admission to kindergarten prior to the legal age.~~
 - 4.1.1 ~~The evaluation shall be conducted at no cost to the parent, guardian or Relative Caregiver.~~

- 1.2 ~~In order to qualify for early enrollment, the child must achieve a measured score at least 1.5 standard deviations above the mean score for the assessment instrument used to determine the child's mental and cognitive abilities. In addition, the evaluation must indicate that the child possesses the social, emotional and physical maturity to successfully participate in kindergarten.~~
- 1.3 ~~Following the completion of the evaluation, a representative of the school district or charter school who is knowledgeable of the evaluation process and any assessments used during the evaluation shall talk with the parent, guardian or Relative Caregiver to discuss the evaluation results.~~

8-DE-Reg-1479 (4/1/05)

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

School-Based Wellness Center Clinic Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) with 42 CFR §447.205, 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 amending the Title XIX Medicaid State Plan to update the reimbursement methodology for *School-Based Wellness Center Clinic Services*.

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) 255-4454 by September 30, 2010.

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

SUMMARY OF PROPOSAL

The purpose of this proposal is to amend the Title XIX Medicaid State Plan to update the reimbursement methodology for *School-Based Wellness Center Clinic Services*.

Statutory Authority

- 42 CFR 440.205, *Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates*;
- 42 CFR §440.90, *Clinic Services*; and,
- State Medicaid Manual, Section 4320, *Clinic Services*.

Summary of Proposed Amendment

School-Based Wellness Center Clinic (SBWCCs), operated by the Division of Public Health in Delaware schools, provide primary prevention and early intervention services, including physical examinations, treatment of acute medical problems, community referrals, counseling and other supportive services to children in school or educational settings.

The Title XIX Medicaid State Plan is being revised to update the reimbursement methodology for School-Based Wellness Center Clinic Services, as the current rate methodology expires on September 30, 2010.

Effective for dates of service on October 1, 2010 and after, claims for School Based Wellness Center Clinic Services will no longer be reimbursed at a single encounter rate per child per year but will be paid based on billed procedure codes for individual services delivered by SBWCCs at the Delaware Medicaid Physician Fee Schedule rates.

No change will be made to the services provided under the school-based wellness center clinic services benefit.

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

Fiscal Impact Statement

The proposal imposes no increase in cost on the General Fund.

DMMA PROPOSED REGULATION #10-37

REVISION:

ATTACHMENT 4.19-B

Page 2

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

School-Based Wellness Center Clinic Services, operated by the Division of Public Health in Delaware schools, are reimbursed a single rate once each benefit year for any client served in one of the school-based clinics. ~~This rate methodology will sunset on September 30, 2010~~ using the DMAP physician fee schedule effective for dates of service on or after October 1, 2010. Except as otherwise noted in the plan, State-developed fee schedule rates are the same for both governmental and private providers of this service and the DMAP physician fee schedule is available on the DMAP website. (<http://www.dmap.state.de.us/downloads/hcpcs.html>)

Payments for clinic services will not exceed the upper payment limits set forth in 42 CFR 447.321; ~~(1) For services covered by Medicare, payments are not to exceed the Medicare rates or the Medicare aggregate payment amount for those services; and (2) For services not covered by Medicare, aggregate payments are not to exceed an amount that could reasonably be estimated would have been paid under Medicare payment principles. Since the School-Based Wellness Centers will be paid at the DMAP physician fee schedule rates, which is paid as a percentage of the Medicare physician fee schedule, not to exceed 100%, the payments will not exceed what Medicare would have paid.~~

Payments to School-Based Wellness Centers shall be considered "preventive pediatric services" as per 42 CFR 433.139(b)(3)(i) for the purpose of applying third party billing requirements.

PROPOSED REGULATIONS

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 311; 314; 29 Delaware Code, Section 10112
(18 Del.C. §§311; 314 & 29 Del.C. §10112)

PUBLIC NOTICE

908 Procedures for Responding to Freedom of Information Requests

INSURANCE COMMISSIONER KAREN WELDIN STEWART, CIR-ML hereby gives notice of intent to adopt Department of Insurance Regulation 908 relating to requests from the public for information under the *Freedom of Information Act*. The docket number for this proposed amendment is 1379.

The purpose of the proposed Regulation 908 is to establish procedures for providing information requested by the public and guaranteeing that information that is provided can be provided and, if so, is provided in a timely fashion. The text of the proposed regulation is reproduced in the September 2010 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:00 p.m., Monday October 4, 2010, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

908 Procedures for Responding to Freedom of Information Requests

1.0 Definitions

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

"Commissioner" means the Commissioner of the Delaware Insurance Department.

"Department" means the Delaware Department of Insurance.

"FOIA" means The Freedom of Information Act as established pursuant to Chapter 100 of Title 29 of the Delaware Code Annotated.

"FOIA Coordinator" is defined as an individual designated by a public body to accept and process requests for public records under the act. The Commissioner shall designate the individual who shall be the FOIA Coordinator. The FOI Coordinator may appoint Assistant FOIA Coordinators to accept and process FOIA requests.

"Public record" is information of any kind, owned, made, used, retained received, produced, composed, drafted or otherwise compiled or collected by the Department relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored, recorded or reproduced and not protected from disclosure by law.

"Writing" is defined as "handwriting, typewriting, printing, photo stating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

"Written request" is defined as "a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means."

2.0 Purpose

The purpose of this Regulation is to set forth the policy and procedures for responding to requests from the public for information as set forth in 29 **Del.C.** Chapter 100.

3.0 Records Request, Response Procedures and Access

- 3.1 All FOIA Requests shall be made in writing to the Department, addressed to: FOIA Coordinator, Department of Insurance, 841 Silver Lake Blvd., Dover, DE 19904. All FOIA Requests shall specifically identify in writing the records sought for review in sufficient detail to enable the Department to locate the records with reasonable effort. The Department shall provide reasonable assistance to the public in identifying and locating records to which they are entitled access.
- 3.2 The Department shall respond, in writing, within ten working days of the receipt of a FOIA Request. Such response shall specify the name and telephone number of a contact person with respect to the FOIA Request and shall state whether:
 - 3.2.1 the Department will permit inspection of the public records;
 - 3.2.2 the Department requires additional time beyond the 10 business days for circumstances to include but not limited to, the request is for voluminous records, requires legal advice, for the public record is in storage or archived. In the event the Department is unable to make the requested public records available for inspection with the 10 business day period, the Department shall provide an expected time at which they will be made available; or
 - 3.2.3 if it does not permit such inspection, the reason or reasons for such refusal.
- 3.3 Prior to disclosure, records will be reviewed to ensure that those records or portions of records deemed non-public pursuant to 29 **Del.C.** §10002(g) are removed. In reviewing the records, all documents shall be considered public records unless subject to one of the exceptions set forth in 29 **Del.C.** §10002(g).
- 3.4 After receiving the response of the Department to a FOIA Request, the requesting party shall contact the person specified in the written response thereto to schedule a mutually convenient date, time and place for the inspection of the public records.
- 3.5 All FOIA Requests shall be coordinated by the FOIA Coordinator.
- 3.6 The Department shall provide reasonable access for reviewing public records during regular business hours. The Department shall make the requested public records available unless the records or portions of the records are determined to be excluded from the definition of a "public record" pursuant to 29 **Del.C.** §10002(g).

4.0 Fees

4.1 Administrative Fees

- 4.1.1 Charges for administrative fees include:
 - 4.1.1.1 Staff time associated with processing FOIA Requests will include:
 - 4.1.1.1.1 Locating and reviewing files;
 - 4.1.1.1.2 Monitoring file reviews;
 - 4.1.1.1.3 Generating computer records (electronic or print-outs);
 - 4.1.1.1.4 Review of request by legal counsel
 - 4.1.1.1.5 Other work items as necessary per request.
- 4.1.2 Calculation of Administrative Charges:
 - 4.1.2.1 Administrative charges will be billed to the requestor per quarter hour. These charges will be billed at the current, hourly pay grade rate, plus benefits (pro-rated for quarter hours increments) of the personnel performing the service. Administrative charges will be in addition to any copying charges.
 - 4.1.2.1 Appointment Rescheduling/Cancellation – Requestors who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the administrative charges incurred by the Department in preparing the

PROPOSED REGULATIONS

requested records. The Department shall prepare an itemized invoice of these charges and mail to the requestor for payment.

4.2 Photocopying Fees – The following charges for photocopies of public records made by Department personnel:

4.2.1 Standard Sized, Black and White Copies.

4.2.1.1 The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white public records for copies over and above 20 shall be \$0.25 per copied sheet. This charge applies to copies on the following standard paper sizes:

4.2.1.1.1 8.5" x 11"

4.2.1.1.2 8.5" x 14" and

4.2.1.1.3 11" x 17"

4.2.2 Oversized Copies/Printouts.

4.2.2.1 The charge for copying oversized public records shall be as follows:

4.2.2.1.1 18" x 22" \$2.00 each

4.2.2.1.2 24" x 36" \$3.00 each

4.2.3 Color Copies/Printouts

4.2.3.1 The charge for standard sized, color copies or color printouts shall be \$1.00 per sheet. This charge applies to copies on the following standard paper sizes:

4.2.3.1.1 8.5" x 11"

4.2.3.1.2 8.5" x 14 and

4.2.3.1.3 11" x 17"

4.2.4 Microfilm and /or Microfiche Printouts.

4.2.4.1 Microfilm and/or microfiche printouts, made by Department personnel on standard sized paper, will be calculated at \$0.50 per printed page.

4.3 Electronically Generated Records.

4.3.1 Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including, but not limited to: magnetic tape, diskette, or compact disc costs) and administrative costs.

4.3.2 In the event that requests for records maintained in an electronic format can be electronically mailed to the requestor, only the administrative charges in preparing the electronic records will be charged.

4.4 Payment

4.4.1 Payment for copies and/or administrative charges will be due at the time copies are released to the requestor.

4.4.2 The Department may require pre-payment of copying and administrative charges prior to mailing copies of requested records.

5.0 Effective Date of this Regulation.

This Regulation will become effective 10 days after being published as a final regulation. Any and all FOIA Requests currently in process at the time of adoption will be subject to this Regulation.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C., Ch. 60)
7 DE Admin. Code 1138

1138 Emission Standards for Hazardous Air Pollutants for Source Categories

PUBLIC NOTICE

SAN # 2010-17

1. Title of the Regulations:

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

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

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

On December 2, 2009, the EPA promulgated another of these area source category standards that will affect existing and future Delaware sources, the area source standard for asphalt processing and asphalt roofing products manufacturing operations under 40 CFR Part 63 Subpart AAAAAAA.

Delaware is proposing to amend Regulation 1138 by adding a new Section 16 that covers asphalt processing and asphalt roofing products manufacturing operations. The purpose of this proposed amendment is to provide increased protection for Delaware citizens against a variety of potential adverse health effects linked to a long term exposure to polycyclic aromatic hydrocarbons, PAHs. Lung cancer is the primary concern. Seven of the PAHs have been classified as Group B2, probable human carcinogens by EPA. The proposed amendment will provide greater consistency between Delaware's air toxics standards for these types of operations and the recently promulgated federal standard (40 CFR Part 63 Subpart AAAAAAA) on which this proposed amendment is heavily based. In addition, this amendment proposes to include a more health protective requirement that currently exists in similar area source air toxics standards found in Regulation 1138 and other Delaware air regulations.

3. Possible Terms of the Agency Action:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60

5. Other Regulations That May Be Affected By The Proposal:

None

6. Notice of Public Comment:

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Wednesday, September 22, 2010 beginning at 6:00 PM in the DNREC's Grantham Lane Conference Room, 715 Grantham Lane, New Castle, DE. Interested parties may submit comments in writing to: Jim Snead, DNREC Division of Air Quality, 715 Grantham Lane, New Castle, DE 19720.

7. Prepared By:

James R. Snead (302) 323-4542 james.snead@state.de.us August 3, 2010

1138 Emission Standards for Hazardous Air Pollutants for Source Categories

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

1138 Emission Standards for Hazardous Air Pollutants for Source Categories

DEPARTMENT OF STATE**DIVISION OF HISTORICAL AND CULTURAL AFFAIRS**

Statutory Authority: 30 Delaware Code, Section 1815(b) (30 **Del.C.** §1815(b))

100 Historic Preservation Tax Credit Program**PUBLIC NOTICE****Title:**

Amendments to the Regulations Governing the Historic Preservation Tax Credit

Brief Synopsis:

The Historic Preservation Tax Credit Act (30 **Del.C.** Ch. 18, Subch. II) was first enacted by the General Assembly in 2001 and was amended in 2002, 2003, 2004, and 2005. Program regulations were adopted on July 11, 2002 (6 **DE Reg.** 108 published 07/01/02), and were amended on July 11, 2004 (8 **DE Reg.** 194 published on 07/01/04) and on January 11, 2005 (8 **DE Reg.** 1031 published 01/01/05). The 2010 amendments to the legislation provide for a ten-year extension to the Historic Preservation Tax Credit Act, sets aside a portion of the annual cap for projects which will receive a credit award under \$300,000 and provides for the Delaware Department of State to report annually to the Governor and the Legislature. The purpose of the following proposed regulatory amendments is to implement the code changes of 2010 and to clarify various sections of the regulations. The proposed amendments address the changes to the way in which credits are awarded under this program in section 7.6, and address the new reporting requirements in §10.0. As to the clarification of the regulations, the proposed amendments modify 31 sections of the regulations (1.0, 3.0, 4.1, 4.2, 4.3, 4.4, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 5.10, 5.11, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 7.0, 7.1, 7.2, 8.2, 8.3, 9.1, 9.3, 9.4), and create nine new sections of the regulations (4.5, 5.4, 5.9, and 7.1- 7.6). The Historic Preservation Tax Credit Act is designed to promote community revitalization and redevelopment through the rehabilitation of historic property by providing tax credits for expenditures made to rehabilitate any certified historic property.

Statutory Basis or Legal Authority to Act:

30 **Del.C.** Ch.18, Subch. II, §1815(b)

Other Regulations that may be Effected by the Proposal:

The State Bank Commissioner and the Division of Revenue may adopt regulations or issue guidelines for tax elements of the Historic Preservation Tax Credit Act.

Notice of Public Comment:

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.**, Ch. 101, the Division of Historical and Cultural Affairs proposes to amend rules and regulations pursuant to its authority under 30 **Del.C.** §1815(b). The Division will receive and consider all written comments on the proposed rules and regulations related to implementation of amendments to the Historic Preservation Tax Credit Act. Submit comments to the Division in care of Timothy A. Slavin, Director, Division of Historical and Cultural Affairs, 21 The Green, Dover, DE 19901. The final date to submit comments is September 30, 2010. Anyone wishing to obtain a copy of the proposed amendments to the rules and

regulations should notify Timothy A. Slavin at the above address or call 302-736-7400. This notice will be published in two newspapers of general circulation.

Prepared by:

Timothy A. Slavin, Director
302-736-7400
September 15, 2010

100 Historic Preservation Tax Credit Program

1.0 Scope

~~With permission of the property owner, a~~ A person or business entity ~~that owns and who~~ rehabilitates a certified historic property may ~~receive~~ apply for a credit against personal Delaware State income tax or bank franchise tax liabilities according to procedures and criteria established in these regulations and those that may be promulgated by the Division of Revenue or the State Bank Commissioner. Any person eligible for ~~the~~ tax credits under this Chapter, except a person engaged in a resident curator relationship, may transfer, sell or assign any or all unused credits.

6 DE Reg. 108 (7/1/02)

8 DE Reg. 1031 (1/1/05)

2.0 Statutory Authority

These regulations are created pursuant to 30 **Del.C.** Ch. 18, Subch. II, which authorizes the Division of Historical and Cultural Affairs to promulgate regulations for implementation of the provisions of this subchapter (except tax-related procedures) including, but not limited to, setting of fees and development of standards for the rehabilitation of eligible historic properties. The subchapter further authorizes the Division of Historical and Cultural Affairs to promulgate the application and forms governing participation in the certification program.

3.0 Definitions

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

“**Act**” shall mean the 30 **Del.C.** Ch. 18, Subch. II.

“**Application**” shall mean the Delaware Historic Preservation Tax Credit application that shall consist of four parts, as follows: the Request for Certification of Historic Property (Part 1); the Request for Certification of Rehabilitation (Part 2); the Request for ~~Certification~~ Certificate of Completion (Part 3), and the Request for Credit Award.

“**Certified historic property**” ~~or “qualified property”~~ shall mean a property located within the State of Delaware that is:

- individually listed in the National Register of Historic Places; or
- located in a historic district listed in the National Register of Historic Places and certified by the United States Secretary of the Interior as contributing to the historic significance of that district; or
- individually designated as a historic property by local ordinance and certified by the Delaware State ~~Historic Preservation~~ Office as meeting the criteria for inclusion in the National Register of Historic Places; or
- located in a historic district set apart or registered by a local government, which historic district is certified by the Delaware State Historic Preservation Office contributing as meeting the criteria for inclusion in the National Register and which property contributes to the historic significance of such area, and certified by the Delaware State Historic Preservation Office as meeting the criteria for inclusion in the National Register historic district.

"Certification of Completion", or **"Certificate of Completion"** shall mean the certificate issued by the Delaware State Historic Preservation Officer attesting that the certified rehabilitation, or, if applicable, phase thereof, has been completed, and that the documentation of qualified expenditures and project plans that would be required in order to qualify for tax credits under Section 47 of the Internal Revenue Code (26 USC 47) (whether or not such project would be eligible for such federal tax credit) has been obtained.

"Certified rehabilitation" shall mean rehabilitation of a certified historic property, or portion thereof, that has been certified by the Delaware State Historic Preservation Officer as a substantial rehabilitation, and is in conformance with the Secretary of the Interior's Standards for Rehabilitation (36 CFR, part 67) or such other standards as the Delaware State Historic Preservation Office shall from time to time adopt.

"Credit award" shall mean the amount of qualified expenditures as determined by the State Office as part of the Part 2 approval multiplied by the appropriate percentage as determined in 30 Del.C. §1813.

"Delaware State Historic Preservation Officer" shall mean the person designated and appointed in accordance with National Historic Preservation Act of 1966, as amended (16 USC §470a(b)(1)(A)). The Delaware State Historic Preservation Officer is an appointed position held by the Director, Division of Historical and Cultural Affairs.

"Federal tax credit" shall mean the Federal Rehabilitation Tax Credit as defined in the United States Tax Code, Title 26, Subtitle A, Chapter 1, Subchapter A, Part IV, Subpart E, Section 47 (26 USC 47).

"Fiscal Year" shall mean the State of Delaware's fiscal year.

"National Register of Historic Places" or **"National Register"** shall mean the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture that the United States Secretary of the Interior is authorized to expand and maintain pursuant to Section 101(a)(1) of the National Historic Preservation Act of 1966, as amended (16 USC §470(a)(1)(A)).

"Office" or **"State Office"** shall mean the Delaware State Historic Preservation Office, which is a part of the Division of Historical and Cultural Affairs.

"Owner-occupied historic property" shall mean any certified historic property, or any portion thereof, which is owned by a taxpayer and is being used, or within a reasonable period will be used, by such taxpayer as an applicant as the applicant's taxpayer's principal residence. Such property may consist of part of a multiple dwelling or multiple purpose building or series of buildings, including a cooperative or condominium. If only a portion of a building is used as the principal residence, only those qualified expenditures that are properly allocable to such portion shall be eligible under this subchapter to apply for tax credits calculated at the percentage available to owner-occupants.

"Person" or **"applicant"** shall mean any individual; any form of company or corporation which is lawful within the State of Delaware (including limited liability companies and S corporations) whether or not for profit; any form of partnership which is lawful within the State of Delaware (including limited liability partnerships) whether or not for profit; any trust or estate; and any lawful joint venture. "Person" or "applicant" shall also mean any governmental entity; or any pass-through entity or person under a lease contract for five years or longer.

"Phased rehabilitation" shall mean any certified rehabilitation of a certified historic property reasonably expected to be completed in two or more distinct stages of development as more fully described in Treasury Regulation 1-48-12(b)(v) or any successor provision.

"Property" shall mean real estate and shall include any building or structure, including multiple-unit structures.

"Qualified expenditure" shall mean any amount properly expended by a person for the certified rehabilitation of a certified historic property, but shall not include:

- acquisition of real property or acquiring an interest in real property, or any costs associated with the acquisition of the property;
- any addition to an existing structure except where the combined square footage of all additions is 20% or less than the total square footage of the historic portion of the property and

each such addition is approved by the Delaware State Historic Preservation Officer, pursuant to federal guidelines, as:

- preserving the character-defining features of the certified historic property,
- adequately differentiating the new construction from the existing structure, and
- complying with requirements regarding safety and accessibility in a manner reasonably designed to minimize any adverse impact on the certified historic property;
- sitework, paving or landscaping costs ~~which exceed~~ in excess of 10% of the total qualified expenditures;
- sales and marketing costs; or
- an expenditures not properly charged to a capital account, including, in the case of owner-occupied property, an expenditures that would not properly be charged to a capital account where the ~~owner~~ person using such property is in a trade or business.

“**Reasonable per iod**” shall means that an owner must occupy the rehabilit ated property as their principal residence within six months of the issuance of the Certificate of Completion. The State Office, in its sole discretion, may offer one extension, not to exceed three months, for cause.

“**Resident Cur ator**” shall means a per son who has entered into a contractual agreement with the owner of a qualified certified property in which the person agrees to pay for full restoration of the owner’s qualifying property in ex change for a life te nancy in the pr operty without remunerative compensation to the owner for the life tenancy.

“**Substantial re habilitation**” or “**full re storation**” shall means rehabilit ation of a certified historic property for which the qualified expenditures, during the 24-month period, or the 60-month period for a phased rehabilitation, selected by the ~~taxpayer and ending with or within the taxable year~~ applicant exceeds:

- for income-producing property, ~~and non income producing property other than owner occupied historic property~~, the current standard required by Section 47(c)(1)(C) of the Internal Revenue Code (26 USC 47(c)(1)(C)); and
- for owner-occupied historic property, non-income producing property, or property under contract with a resident curator, \$5,000.

“**Taxpayer**” shall means any person, as defined in this section, and shall in clude any in dividual or corporation taxable under Title 5, or taxable under either 30 **Del.C.** Ch. 11, or 30 **Del.C.** Ch. 19.

6 DE Reg. 108 (7/1/02)

8 DE Reg. 194 (7/1/04)

8 DE Reg. 1031 (1/1/05)

4.0 Procedures for Certification of Historic Property

- 4.1 ~~A taxpayer~~ With pe rmission on the pr operty owne r, an ap plicant may re-quest submit a Part 1 application to the S tate Office requesting th at the State Histor ic Pr eservation Of ficer certify that a property in a National Register listed or locally designated historic district be certified by the Delaware State Historic Preservation Officer as is a certified historic property by filing the Part 1 application with the State Office as de fined in Section 3.0 of this re gulation. The ap plicant sh all file tThe Par t 1 application ~~shall be filed~~ on standard forms ~~available from~~ developed by the State Office.
- 4.2 The State Office shall not process an incomplete Pa rt 1 application ~~w ill not be processed~~ until all required application information ~~has been~~ is received. Where adequate documentation is not provided, the S tate Office ~~will~~ shall notify t he ~~taxpayer ap plicant~~ of the ad ditional information ne eded to undertake or complete the review.
- 4.3 The Delaware State Historic Preservation Officer shall determine whether the property for which a complete Part 1 application is received meets the definition of certified historic property and ~~will~~ shall notify the ~~taxpayer~~ applicant of the decision.
- 4.4 If a property is in dividually listed in the National Register, submission of a Pa rt 1 ap plication is not required. ~~The name of the historic property and its date of listin g in the Na tional Register must be provided in the Part 2 application.~~

4.5 ~~The Delaware State Historic Preservation Officer may certify a s historic any property for which a n applicant has obtained a Part 1 cer tification from the fed eral go vernment pursuant to 36 CFR 6 7. Under this provision, an applicant shall file only the cover page of the Delaware Part 1 application.~~

6 DE Reg. 108 (7/1/02)

8 DE Reg. 1031 (1/1/05)

5.0 Procedures for Certification of Rehabilitation

~~5.1 An applicant taxpayer may request a determination by the Delaware State Historic Preservation Officer that sub mit a Part 2 app lication to the S tate Of fice re questing th at th e Delawar e S tate Histo ric Preservation Officer determine if a proposed rehabilitation plan meets the criteria for certification by filing a Part 2 application with the State Office as a certified rehabilitation as defined in Section 3.0 of this regulation. The applicant shall file t~~The Part 2 application shall be filed on standard forms available from ~~developed by~~ the State Office.

~~5.2 An applicant taxpayer must shall~~ submit Part 1 of the application prior to, or with, Part 2. ~~The State Office shall not process the~~ Part 2 application ~~will not be processed~~ until an adequately documented and approved Part 1 application, where required as outlined in Section ~~4.0~~ 4.4 of these regulations, is on file.

~~5.3 The State Office shall not process an incomplete Part 2 app lication will not be processed~~ until all required application information is ~~has been~~ received. Where adequate documentation is not provided, the S tate Office ~~will~~ shall notify t he t ~~axpayer ap plicant~~ of the ad ditional information ne eded to undertake or complete review.

~~5.4 Applicants may submit subsequent Part 2 applications for the same property as long as the following criteria are met:~~

- ~~:~~ For certified properties held for income (depreciable properties, as often as the project work qualifies for income tax credits under Section 47(c)(1)(C) of the Internal Revenue Code (26 USC 47(c)(1)(C))
- ~~:~~ For all other certified properties, no sooner than 24 months from the date of the prior Part 2 approval as long as other program requirements have been met.

~~5.4~~ 5.5 ~~An applicant taxpayer requesting approval of a phased rehabilitation plan shall provide the State Office with a description of the phases and their completion dates when submitting the Part 2 application. The Delaware S tate Histo ric Preservation Of ficer shall~~ will no tify the ~~ap plicant taxpayer~~ if the p hased rehabilitation plan is approved. The final completion date for a phased rehabilitation is binding unless the ~~ap plicant taxpayer~~ reques ts a c hange in writing. For a p hased rehabilitation, the ~~applicant is~~ allowed up to taxpayer has 60 months to meet the substantial rehabilitation test.

~~5.5~~ 6 The Delaware State Historic Preservation Officer shall determine whether the proposed rehabilitation for which a complete application is received under Section 5.1 of this regulation meets the definition of a certified rehabilitation and shall send the ~~taxpayer applicant~~ notice of the determination. The State Office may require modifications to the plan in order to meet the definition of a certified rehabilitation.

~~5.6 A Request for Credit Award application must be submitted with the Part 2 application. A taxpayer must also provide cost estimates of qualified expenditures prepared by a licensed architect, engineer, or contractor or a certified construction cost estimator.~~

~~5.7 The amount of tax credit applied against the qualified expenditures in accordance with 30 Del.C. §1813 shall represent the credit award. The cost esti mate supplied by the taxpayer in acco rdance with Section 5.6 will used to determine the credit award for approved Part 2 applications.~~

~~5.8 Credits will be awarded in chronological order based upon the date and time on which each application receives Part 2 approval from the State Office. The State Historic Preservation Officer shall notify the taxpayer of the amount of the credit award.~~

~~5.9~~ 7 ~~In the alternative, T~~he Delaware State Historic Preservation Officer may issue a Part 2 approval to any ~~applicant taxpayer~~ who has obtained a Part 2 certification from the federal government pursuant to 36 CFR 67. Under this provision, an ~~applicant taxpayer~~ shall ~~must~~ file only the cover page of the State of

Delaware Part 2 application cover form as well as the information required under Section 5.6 of these regulations.

- 5.408 All Applicants taxpayers must begin construction on the approved certified rehabilitation plan within one year of receiving the Part 2 approval. If construction on the rehabilitation plan is not substantially commenced and diligently pursued within this time period, the applicant taxpayer will shall forfeit any assigned credit award. the awarded credits and the Any forfeited tax credits may awarded to such taxpayer will become available for award to other applicants taxpayers. Substantially commenced and diligently pursued shall means that the applicant can demonstrate that at a minimum, 25% of the estimated rehabilitation costs was must have been expended within the first year after the tax credits are assigned. The State Office reserves the right to obtain documentation from the applicant supporting the expenditure.
- 5.419 The project may be inspected by the Delaware State Historic Preservation Officer, or his/her designated representative, may inspect the property to determine if the work is consistent with the approved certified rehabilitation plan, and if the project has substantially commenced and is being diligently pursued.
- 5.10 The applicant may request that the State Office review changes to the project plan after the Part 2 application is approved. The Delaware State Historic Preservation Officer shall determine whether the proposed change meets the definition of a certified rehabilitation and shall send the applicant notice of the determination.

6 DE Reg. 108 (7/1/02)

8 DE Reg. 1031 (1/1/05)

6.0 Procedures for Certification of Completion

- 6.1 Upon completion of a certified the rehabilitation work outlined in the Part 2 application, or an approved project phase thereof, the taxpayer applicant must submit to the State Office a Part 3 application with required documentation supporting any conditions in the Part 2 application approval, the form(s) required in the Division of Revenue's regulations indicating the name of the taxpayer who will claim the tax credit, and a final accounting of qualified expenditures, to the Delaware State Historic Preservation Office.
- 6.2 The State Office shall not process aAn incomplete Part 3 application will not be processed until all required application information is has been received. Where adequate documentation is not provided, the State Office will shall notify the taxpayer applicant of the additional information needed to undertake or complete the review. The State Office may inspect the completed project may be inspected by the Delaware State Historic Preservation Officer, or his/her designated representative, to determine if the work meets the definition of a certified rehabilitation.
- 6.3 Upon approval by the State Office that the completed rehabilitation, or an approved phase thereof, meets the definition of a certified rehabilitation, the State Office shall submit the documentation of qualified expenditures to the Division of Revenue and request a determination of the value of the tax credit for the completed project or an approved phase thereof, meets the definition of a certified rehabilitation, the Delaware State Historic Preservation Officer shall issue a Certificate of Completion for the project, or phase thereof. For approved phased rehabilitations, each phase must receive a Certificate of Completion in order for the overall project to be considered a certified rehabilitation.
- 6.4 Upon receipt from the Division of Revenue of the certification of the value of the tax credit for the project, or an approved phase thereof, the Delaware State Historic Preservation Officer shall issue a Certificate of Completion to the taxpayer. For approved phased rehabilitations, each phase must receive a Certificate of Completion indicating that each phase is a certified rehabilitation in order for the overall project to be considered to be a certified rehabilitation. After a project, or phase thereof, receives its Certificate of Completion, the State Office shall submit the documentation outlined in 6.3 of these regulations to the Division of Revenue, and request a determination of the value of the tax credit for the completed project or an approved phase. For all projects in which the tax credits are to be applied against franchise taxes, and at other times as requested by the Division of Revenue, the forms and documentation will also be submitted to the State Bank Commissioner's Office.

- 6.5 The Division of Revenue will return the forms certifying the value of the tax credit for the project, or an approved phase thereof, to the State Officer which shall transmit the Certificate of Completion and the Revenue form(s) to the taxpayer who will claim the tax credits.
- 6.5~~6~~ In the case of approved phased projects, a single rehabilitation project may receive more than one Certificate of Completion. ~~may be awarded to a single rehabilitation project.~~ Credits issued to the initial assignee, or in the case of a tax-exempt assignee, to the first taxable transferee after the associated phase completion, shall be ~~be~~ subject to revocation and repayment to the Delaware Division of Revenue or the Office of the State Bank Commissioner if, under regulations issued by the State Office, a phased rehabilitation is not completed by the agreed upon completion date indicating that the applicant for the credit award is unable or unwilling to complete it; or in the event that the project does not meet the certification requirements previously agreed to with the State Office.
- 6.6 In no event shall the credit claimed by a taxpayer exceed the approved Part 2 credit award.

6 DE Reg. 108 (7/1/02)

7.0 Procedures for Requesting a Credit Award

- 7.1 An applicant shall request a credit award by filing a Request for Credit Award application with the State Office. The Request for Credit Award application may be submitted at the same time or subsequent to the submission of the Part 2 application, but no later than simultaneously with the Part 3 application.
- 7.2 The applicant shall support the amount of qualified expenditures indicated on the Request for Credit Award by submitting a cost estimate prepared by a licensed architect or engineer; an accountant; a contractor or a certified construction cost estimator. Where the rehabilitation work is complete, documentation of costs may be prepared by a licensed architect or engineer; an accountant; a contractor or a certified construction cost estimator; or may be documented by paid invoices or cancelled checks for contractual work; and store invoices for material purchases. The State Office may prescribe the format in which the documentation of qualified expenditures is submitted. The cost estimate is verified by and may be adjusted by the State Office if documentation is inadequate or costs are disallowed.
- 7.3 The State Office will not process an incomplete Request for Credit Award application until all documentation as required in Section 7.3 of the regulations is received. Where adequate documentation is not provided, the State Office shall notify the applicant of the additional information needed to undertake or complete the review.
- 7.4 The credit award is calculated as a percentage of the qualified expenditures and will be rounded down to the nearest whole dollar. The criteria for applying the percentages to establish the credit award are:
 - For depreciable (income-producing) certified properties, 20% of qualified expenditures;
 - For depreciable certified properties where the whole or a part, receives low income housing credits, 30% to be applied to that portion of the square footage;
 - For all other certified properties, 30% except where an owner would meet HUD established low income criteria, then 40%.
- 7.5 The State Historic Preservation Officer shall notify the applicant of the amount of the credit award. The Delaware State Historic Preservation Officer will consider increasing the credit award where there has been an increase in qualified costs of greater than 5% of the total.
- 7.6 Each fiscal year, \$2 million of the \$5 million assigned to make credit awards under these regulations is reserved for projects receiving a credit award of not more than \$300,000. After April 1, any unassigned portion of the \$2 million is released to be available for credit awards to any eligible project.

~~7.0~~ 8.0 Fees for Processing Rehabilitation Certification Request

- ~~7.8~~ 8.1 The fee for review of rehabilitation work for projects where the qualified expenditures are over \$100,000 is \$250 for each separate application. ~~The fee from a single taxpayer for multiple projects submitted at the same time shall not exceed \$2,500.~~ Final action will not be taken on any application until the appropriate remittance is received. No fee will be charged for rehabilitation projects where the qualified expenditures are under less than \$100,000.

~~78.2~~ The applicant shall submit the fee, where applicable, ~~must be submitted~~ with the Part 3 application. For phased projects, the applicant shall submit the fee ~~must be submitted~~ with the first Part 3 submitted. All checks shall be made payable to the State of Delaware.

6 DE Reg. 108 (7/1/02)

8 DE Reg. 1031 (1/1/05)

~~8-9~~ **9.0 Requirements for Resident Curator Program Properties**

~~89.1~~ Curatorship property is subject to periodic inspection by the State Office during the tax years in which the credit is applicable.

~~89.2~~ Improvements to curatorship property ~~must~~ shall be completed within five years from the date of execution of the contract between the owner and the resident curator.

~~89.3~~ Curatorship property ~~may~~ shall not be used for commercial purposes.

8 DE Reg. 194 (7/1/04)

~~9-9~~ **10.0 Administrative Review**

~~910.1~~ A taxpayer whose application ~~has been~~ is disapproved by the Delaware State Historic Preservation Officer under these regulations may file a written request for review with the Secretary of State or the Secretary's designee within 60 days after the notice of disapproval is sent.

~~910.2~~ The Secretary of State or the Secretary's designee shall review the request within 60 days after receipt of the request. If the Secretary of State or the Secretary's designee determines that the application filed meets the standards set forth in these regulations the application shall be considered approved. If the Secretary of State or Secretary's designee determines that the application filed does not meet the standards set forth in these regulations, the application shall be disapproved. The Secretary of State or Secretary's designee shall promptly notify the taxpayer of the Secretary's determination.

~~910.3~~ A taxpayer whose application ~~has been~~ is disapproved by the Secretary of State may appeal that action in accordance with the Administrative Procedures Act, 29 **Del.C.** §10101 et. seq.

~~910.4~~ An appellant who ~~has exhausted~~ exhausts all administrative remedies ~~shall be~~ is entitled to judicial review in accordance with 29 **Del.C.** Ch. 101, Subch. V of the Administrative Procedures Act.

6 DE Reg. 108 (7/1/02)

11.0 Reporting Requirements

11.1 Annually, on or before January 31st, the Delaware State Historic Preservation Officer shall issue an annual report on the restoration and rehabilitation status of all tax credit projects approved in the previous calendar year.

11.2 The annual report shall include a list of all tax credit projects issued in previous years for which the tax credits have not been claimed.

11.3 The annual report will be distributed to the Governor and the General Assembly.

PROPOSED REGULATIONS

DIVISION OF PROFESSIONAL REGULATION GAMING CONTROL BOARD

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

101 Regulations Governing Bingo

PUBLIC NOTICE

A. Type of Regulatory Action Required

Amendment to Existing Regulations

B. Synopsis of Subject Matter of the Regulation

The Delaware Gaming Board will seek public comments on the issue of whether its current Rule 1.0 in 10 DE Admin. Code 101 should be amended. The rule relates to the definition of "cookie jar bingo" and to the manner of playing cookie jar bingo games. The Board proposes to change the definition of "Cookie Jar Bingo" as it appears therein, to make it clear that the fee to enter to play a cookie jar bingo game must be separately collected and may not be included in any other fees.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 1 to : Delaware Gaming Control Board, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904. A copy of these regulations is available from the above address or may be viewed at the Division of Professional Regulation business office at the same address.

C. Summary of Proposal

Currently, the definition of "cookie jar bingo" involves a chance for a player to pay a fee into a jar or container to obtain a chance to win the funds contained therein. The Board wishes to clarify and make it clear that this fee must be a separately collected fee.

101 Regulations Governing Bingo

1.0 Definitions

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

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

"Board" The Delaware Gaming Control Board.

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

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

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

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

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

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

"Game" The game of bingo.

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

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

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

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

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

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

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

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

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

13 DE Reg. 1355 (04/01/10)

2.0 Applications For Bingo License

2.1 Original applications shall be filed upon:

2.1.1 the first application of an organization for a license;

2.1.2 after the first application and upon a subsequent change in the organization's charter or bylaws; or

2.1.3 in the event of a subsequent application after a prior refusal, suspension, or revocation by the Board.

2.2 Supplemental applications for bingo licenses shall be filed in all instances except those covered by the original application. All promotional give-away events, as defined under 28 **Del.C.** §1139(h)(2), must be listed on an applicant's application for licensure, giving the dates of the promotional give-away events. If the event is not listed on the application, no promotional give-away event can be conducted.

- 2.3 All original and supplemental applications shall be filed with the Secretary of the Board at least six (6) weeks prior to the date of the occasion.
- 2.3.1 An application must be submitted in advance of the proposed date of the function as to allow the Board to consider the application at two consecutive board meetings before deciding to approve or deny the application.
- 2.4 No applications (original or supplemental) shall be accepted unless the applicant, at the time of the filing, attaches a check or money order for the full amount of the fees payable by law for each occasion requested. In the event an application is refused by the Board, the application fees shall be refunded in full to the applicant. There shall be a license fee of \$15 for each occasion on which bingo is conducted under a license.
- 2.5 No application shall be received by the Commission unless it clearly shows that the applicant is located in and seeks to conduct the game in a district which has approved the licensing of bingo by referendum, and on premises owned or regularly leased by the applicant. If the applicant desires to conduct games on premises specially leased for the occasion, a separate written request therefor (together with supporting reasons) shall accompany the application. The Board reserves the right to accept or reject any application for the conduct of games on specially leased premises. Organization conducting a Function shall prepare and have available on the premises a list of all persons taking part in the management or operation of the Function. Such list shall be maintained as part of the licensee's records of the Function and shall be made available to any member or agent of the Board or law enforcement officer.

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

8 DE Reg. 531 (10/01/04)

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

3.0 Bingo Licenses

- 3.1 Upon receiving an application, the Board shall make an investigation of the merits of the application. The Board shall consider the impact of the approval of any license application on existing licensees within the applicant's geographical location prior to granting any new license. The Board may deny an application if it concludes that approval of the application would be detrimental to existing licensees.
- 3.2 The Board may issue a license only after it determines that:
- 3.2.1 The applicant is duly qualified to conduct games under the State Constitution, statutes, and regulations.
- 3.2.2 The members of the applicant who intend to conduct the bingo games are bona fide active members of the applicant and are persons of good moral character and have never been convicted of a crime involving moral turpitude.
- 3.2.3 The bingo games are to be conducted in accordance with the provisions of the State Constitution, statutes, and regulations.
- 3.2.4 The proceeds are to be disposed of as provided in the State Constitution and statutes.
- 3.2.5 No salary, compensation or reward whatever will be paid or given to any member under whom the game is conducted. If the findings and determinations of the Board are to the effect that the application is approved, the Secretary shall execute a license for the applicant.
- 3.3 The license shall be issued. The original thereof shall be transmitted to the applicant.
- 3.4 If the findings and determinations of the Commission are to the effect that the application is denied, the Secretary shall so notify the applicant by certified mail of the reasons for denial, and shall refund any application fees submitted.
- 3.5 In the event of a request for an amendment of a license, the request shall be promptly submitted to the Commission in writing, and shall contain the name of the licensee, license number, and a concise statement of the reasons for requested amendment. The Commission may grant or deny the request, in its discretion, and may require supporting proof from the licensee before making any determination. The Commission may require the payment of an additional license fee before granting the request.

The licensee shall be notified of the Commission's action by appropriate communication, so that the licensee will not be unduly inconvenienced.

- 3.6 No license shall be effective for a period of more than one year from the date it was issued.
- 3.7 No license shall be effective after the organization to which it was granted has become ineligible to conduct bingo under any provision of Article II, §17A of the Delaware Constitution.
- 3.8 No license shall be effective after the voters in any District designated in Article II, §17A of the Constitution have decided against bingo in a referendum held pursuant to that section and subchapter II of the Bingo Statute.
- 3.9 No bingo licensee licensed prior to July 14, 1998, shall conduct more than ten (10) bingo events in any calendar month and no bingo licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998) shall conduct more than one (1) bingo event per week. A bingo licensee who was licensed prior to July 14, 1998 whose license lapses for six (6) months or more due to non-renewal 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).
- 3.10 The license application shall contain a full and fair description of the prize and the appraised value of the prize. In lieu of submitting an appraisal, the applicant or licensee may submit the full retail value of the prize. In cases where the applicant or licensee purchases the prize from a third party, the Board may require that the applicant or licensee arrange for an independent appraisal of the value of the prize from a person licensed to render such appraisals, or if there is no person licensed to render such appraisals, from a person qualified to render such appraisals.
- 3.11 When bingo is conducted in conjunction with a carnival, festival, or similar event scheduled for more than one day, the game may be played up to every night of the event and shall be considered a single event for purposes of the rule allowing one event per week for those licensed after July 10, 1998 or ten events per month for those licensed before July 10, 1998.

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

3 DE Reg. 1692 (6/1/00)

4 DE Reg. 334 (8/1/00)

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

13 DE Reg. (01/01/10)

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 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.
- 4.2 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. 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. However, a licensee may offer inducements, including but not limited to cookie-jar bingo games that do not exceed \$1,000 per game per night, 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 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.
- 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 28 **Del.C.** §1132(b), 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 28 **Del.C.** §1132(6), 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.

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

2 DE Reg. 1761 (4/1/99)

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

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

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

13 DE Reg. 1355 (04/01/10)

5.0 Reports After the Function

- 5.1 When no game is held on a date a licensee is authorized to hold such game, a report to that effect shall be filed with the Board.
- 5.2 Within 5 days of the last day of the function, the member-in-charge shall submit a report to the Board that includes all information required by 28 **Del.C.** §1140(a).

5.3 If a licensee fails to timely file a report or if a report is not properly verified, or not fully, accurately, and truthfully completed, no further license shall be issued to the licensee and any existing license shall be suspended until such time as the deficiency has been corrected.

11 DE Reg. 516 (10/01/07)

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

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

6.0 Suspension and Revocation of Licenses

6.1 Proceedings to suspend or to revoke a license shall be brought by notifying the licensee of the ground thereof and the date set forth for a hearing thereon. The Commission may stop the operation of a game pending hearing, in which case the hearing must be held within five (5) days after such action.

6.2 When suspension or revocation proceedings are begun before the Commission, it shall hear the matter and make written findings in support of its decision. The licensee shall be informed of the decision and of the effective date of the suspension or revocation.

6.3 When a license is suspended or revoked, the licensee shall surrender up the license to the Board on or before that effective date set forth in the notice of decision. In no case shall any license be valid beyond the effective date of suspension or revocation, whether surrendered or not.

6.4 Upon finding of the violation of these rules and regulations or the Bingo Statute, such as would warrant the suspension or revocation of a license, the Board may in addition to any other penalties which may be imposed, declare the violator ineligible to conduct a game of bingo and to apply for a license under said law for a period not exceeding thirty (30) months thereafter. Such declaration of the ineligibility may be extended to include, in addition to the violator, any of its subsidiary organizations, its parent organization and any other organization having a common parent organization or otherwise affiliated with the violator, when in the opinion of the Board, the circumstances of the violation warrant such action.

7.0 Severability

If any provision of these Regulations or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of these Regulations and the applicability of such provisions to other persons or circumstances shall not be affected thereby.

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

PUBLIC SERVICE COMMISSION

Statutory Authority: 29 Delaware Code, Sections 1133 and 10115(a)
(29 Del.C., §§1133 & 10115(a))

IN THE MATTER OF THE ADOPTION OF RULES
AND REGULATIONS GOVERNING THE
PROCEDURE FOR INSPECTION AND COPYING
OF PUBLIC RECORDS UNDER THE FREEDOM
OF INFORMATION ACT, 29 DEL.C. §§10001-10006
(OPENED AUGUST 17, 2010)

PSC REGULATION DOCKET NO. 62

ORDER NO. 7820

AND NOW, this 17th day of August, 2010.

WHEREAS, from time to time, the Delaware Public Service Commission (the "Commission") receives requests

for documents pursuant to the Freedom of Information Act, 29 **Del.C.** §§10001-10006 (“FOIA”); and

WHEREAS, section 10003 of FOIA states that it is the responsibility of public bodies to establish rules and procedures regarding access to public records as well as fees charged for copying such records; and

WHEREAS, the Commission opens this docket to propose rules and regulations applicable to FOIA requests made to the Commission for public records in the possession of the Commission (the “Proposed FOIA Rules”); and

WHEREAS, a copy of the Commission’s Proposed FOIA Rules is attached hereto as **Exhibit A**; and

WHEREAS, the Commission believes that the Proposed FOIA Rules should be published in the *Delaware Register of Regulations* to provide public notice of the rulemaking to develop final rules and regulations;

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

1. That, for the reasons set forth in the body of this Order, and pursuant to 29 **Del.C.** §10003(b) and 29 **Del.C.** §10115, the Commission proposes rules and regulations applicable to requests made to the Commission, pursuant to the Freedom of Information Act, 29 **Del.C.** §§10001-10006 (“FOIA”), for public records in the possession of the Commission (the “Proposed FOIA Rules”, a copy of which is attached hereto as **Exhibit A**).

2. That, pursuant to 29 **Del.C.** §§1133 and 10115(a), the Secretary shall transmit to the Registrar of Regulations for publication in the *Delaware Register of Regulations* a copy of this Order, along with a copy of Proposed FOIA Rules (**Exhibit A**).

3. That the Secretary shall cause the Notice of Proposed Rule-Making (the “Notice”, a copy of which is attached hereto as **Exhibit B**) to be published in *The News Journal* and the *Delaware State News* newspapers on or before September 1, 2010. The Secretary shall include proof of such publication in the docket file before the public hearing in this matter.

4. That, pursuant to 29 **Del.C.** §§ 10115(a) and 10116, persons or entities may file written comments, suggestions, compilations of data, briefs, or other written materials, on or before September 30, 2010.

5. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

If you wish to obtain written copies of the Order and the Proposed FOIA Rules, please contact the PSC at (302) 736-7500. Copies are \$0.25 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you retrieve them in person). You may also download a copy of the Proposed FOIA Rules from the September 2010 issue of the *Register of Regulations* (see <http://regulations.delaware.gov/>).

The PSC now solicits comments, suggestions, compilations of data, briefs, or other written materials about the Proposed FOIA Rules. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before September 30, 2010. You should file such materials with the PSC at the following address:

Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware, 19904
Attn: Proposed FOIA Rules

If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be filed on a copy-capable CD-Rom disk or sent as an attachment to an Internet e-mail addressed to joseph.handlon@state.de.us.

If no comments or objections are timely received, the Commission may approve the Proposed FOIA Rules as final without further proceedings.

Any individual with a disability desiring to participate in these proceedings or to review the filings should contact the Commission to discuss any auxiliary aids or services needed. The SAC’s toll-free telephone number within Delaware is 1-800-282-8574. The PSC may be reached at (302) 736-7500 (including text telephone communications).

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair
Jeffrey J. Clark, Commissioner
Joann T. Conaway, Commissioner
Jaymes B. Lester, Commissioner
Dallas Winslow, Commissioner

ATTEST:

Alisa Carrow Bentley, Secretary

1008 Regulations Governing Requests made pursuant to the Freedom of Information Act

1.0 Definitions

Capitalized terms not otherwise defined in these regulations shall have the meanings given those terms in FOIA and the Commission's Rules of Practice and Procedure (see 26 **DE Admin. Code** §1001), as applicable.

"Affected Party" means any party who has submitted Third Party Confidential Records.

"FOIA" shall mean the Freedom of Information Act, 29 **Del.C.**, Ch. 100, as may be amended from time to time.

"Third Party Confidential Records" are records submitted to the Commission by a third party under a claim of confidentiality pursuant to the Commission's Rules of Practice and Procedure. Records will not be considered Third Party Confidential Records for purpose of these regulations if the records were not identified and submitted as confidential in accordance with the Commission's Rules of Practice and Procedure.

2.0 General

- 2.1 The Commission promulgates these regulations, pursuant to 29 **Del.C.** §10 003(b), to establish procedures regarding requests made to the Commission pursuant to FOIA for public records in the possession of the Commission. The Commission is under no obligation under FOIA to answer written questions, analyze data, create documents not already in its possession or compile information in a record. FOIA requests shall be made for the purposes of obtaining existing documents in the Commission's possession.
- 2.2 Consistent with FOIA, it is the Commission's desire that the public have access to the Commission's public records under reasonable terms and conditions. These regulations establish reasonable fees for compiling and photo-copying public records and provide instructions regarding how to make FOIA requests with the Commission and how such requests will be processed.
- 2.3 Commission staff may perform the duties of the Commission under these regulations.

3.0 Requests

- 3.1 Persons requesting requests for records pursuant to FOIA shall submit an original and one copy of a written letter request indicating that the request is being made pursuant to FOIA. The written request shall be addressed to:
- Delaware Public Service Commission
Attn.: Commission Secretary
861 Silver Lake Boulevard
Cannon Building, Suite 100

Dover, Delaware 19904

Requests by electronic mail will not be entertained.

3.2 Requests shall indicate clearly where records are to be sent.

3.3 Requests for records shall describe the records sought in sufficient detail to enable their location with reasonable effort.

3.4 Records may not be produced to any person who has an outstanding balance with the Commission relating to a prior FOIA request.

3.5 Requests that do not comply with these regulations may be denied in whole or in part.

4.0 Responses

4.1 The Commission shall respond to a request made under these regulations within ten (10) days of receipt of the request. Such response may include the requested records, deny the request in whole or in part, or indicate when the requested records will be produced and under what, if any, conditions. A response to a request for Third Party Confidential Records shall be made pursuant to the procedures and the timeframe set forth in Rule 6 below.

4.2 To the extent a FOIA request seeks documents that the Commission, in its sole discretion, may consider voluminous, the Commission may require that the party requesting the records inspect and copy the records at the Commission's office during its regular business hours. Alternatively, the Commission may, in its sole discretion, employ the assistance of an outside vendor to copy the requested records, in which case the requester will be required to pay the copy charges assessed by such vendor.

5.0 Fees for Photocopying Performed by Commission and Administrative Fees.

5.1 Administrative Fees. The Commission may assess administrative fees incurred in responding to a FOIA request as set forth herein. Such fees include:

5.1.1 Staff time associated with processing FOIA requests, including, but not limited to, time spent locating and reviewing files, monitoring file reviews, and generating computer records.

5.1.2 Administrative fees will be billed per quarter hour and will be billed at the current, hourly pay grade rate of the personnel performing the service. Administrative charges will be in addition to any copying charges.

5.2 Photocopy Charges

5.2.1 Standard Size Copies. The charge for copying standard size black and white public records shall be \$0.50 per printed page (i.e., single-sided copies are \$0.50 and double-sided copies are \$1.00). The charge for color copies or printouts shall be \$2.00 per page. This charge applies to copies on the following standard paper sizes: 8.5 x 11; 8.5 x 14; and 11 x 17.

5.2.2 Oversized Copies/Printouts. The charge for copying oversized public records (including but not limited to blueprints, engineering drawings, GIS printouts and maps) shall be as follows: 24 x 26: \$2.00 each; 24 x 36: \$3.00 each; 30 x 42: \$5.00 each; and all larger documents: \$1.00 per square foot. An additional charge of \$1.50 per page will be assessed to color copies.

5.2.3 Microfilm/Microfiche Printouts. Microfilm and/or microfiche printouts made by Commission personnel and printed on standard sized paper will be \$1.00 per page.

5.2.4 Electronically-Generated Records. Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies, including but not limited to magnetic tape, diskette or compact disc costs and third-party costs.

5.3 Payment for copies and/or administrative charges are due at the time the records are released.

6.0 Requests Seeking Non-Public and Third Party Confidential Records.

6.1 Records identified as non-public pursuant to 29 Del.C. §10002(g) shall not be produced in response to a FOIA request. In addition, the following procedures shall apply to requests seeking records that the Commission believes are non-public because they are Third Party Confidential Records:

PROPOSED REGULATIONS

- 6.1.1 Upon receipt of a request seeking Third Party Confidential Records, the Commission will notify the Affected Party in writing of the request, identifying the party making the request and the Third Party Confidential Records sought.
- 6.1.2 Within ten (10) days of receipt of the notice required by Rule 6.1, the Affected Party shall advise the Commission in writing whether it opposes the disclosure of the Third Party Confidential Records. If the Commission is not so notified, it will produce the Third Party Confidential Records.
- 6.1.3 If the Affected Party timely objects to the production of the Third Party Confidential Records, the Affected Party shall, at the time of notifying the Commission of its objection, provide in writing information sufficient to justify a claim of confidentiality under FOIA. Such information shall include, but not be limited to, the following:
- 6.1.3.1 Any measures taken by the Affected Party to guard against disclosure of the Third Party Confidential Records;
- 6.1.3.2 Whether the Third Party Confidential Records have been intentionally or inadvertently disclosed since their submission to the Commission and any actions or precautions taken in connection with such disclosure; and
- 6.1.3.3 Whether the disclosure of the Third Party Confidential Records would result in substantial or harmful effects on the Affected Party's commercial or financial interests, and if so: (a) what those harmful effects would be; (b) why the effects should be viewed as substantial; and (c) how the disclosure would cause such harmful effects.
- 6.1.4 The Affected Party bears the burden of establishing confidentiality under FOIA. A unilateral assertion that records are confidential or otherwise not subject to a FOIA request is insufficient to support a finding that requested information is in fact non-public.
- 6.1.5 Within a reasonable time after receiving the Affected Party's response filed pursuant to Rule 5.1.2, the Commission shall determine whether the Third Party Confidential Documents should be produced pursuant to FOIA despite the Affected Party's claim of confidentiality. Written notice of the Commission's decision shall be provided to the party making the FOIA request and the Affected Party.

7.0 Appeals of Commission's Decision.

As authorized by 29 Del.C. §10005, any person denied access to requested records may (i) bring suit in a court of competent jurisdiction within sixty (60) days of such denial or (ii) petition the Attorney General to determine whether a violation of FOIA has occurred. The procedures applicable to such petition are provided in 29 Del.C. §10005.

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 501

REGULATORY IMPLEMENTING ORDER**501 State Content Standards****I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 501 State Content Standards to reflect the State's adoption of the Common Core Standards in English language arts and mathematics. The Common Core Standards were developed in partnership with the National Governors Association (NGA) and the Council of Chief State School Officers (CCSSO). State stakeholders participated in the review of the standards.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on July 6, 2010 in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities endorsing the amendments.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 501 State Content Standards in order to reflect the State's adoption of the Common Core Standards in English language arts and mathematics.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 501

State Content Standards. Therefore, pursuant to 14 Del.C. § 122, 14 DE Admin. Code 501 State Content Standards attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 501 State Content Standards hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 DE Admin. Code 501 State Content Standards amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 501 State Content Standards in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del.C. §122 on August 19, 2010. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 19th day of August 2010.

DEPARTMENT OF EDUCATION

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

Approved this 19th day of August 2010.

STATE BOARD OF EDUCATION

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory Coverdale

Terry M. Whittaker, Ed.D.

James L. Wilson, Ed.D.

501 State Content Standards

1.0 Instructional Programs

1.1 Instructional programs offered in the public schools of Delaware shall be in alignment with the appropriate content standards documents. These documents are: English Language Arts Curriculum Framework, Mathematics Curriculum Framework, Science Curriculum Framework, Social Studies Curriculum Framework, Health Education Curriculum Framework and Assessment, Physical Education Content Standards, Visual and Performing Arts Content Standards, Agriscience Curriculum Framework Content Standards, Business Finance and Marketing Education Curriculum Framework Content Standards, World Language Curriculum Framework Content Standards, Technology Education Curriculum Framework Content Standards, Skilled and Technical Sciences Content Standards and the Family and Consumer Sciences Content Standards.

1.1.1 The content standards documents may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.1.1.1 Effective with the 2010-2011 school year, Delaware Content Standards in English language arts and mathematics shall be comprised of the Common Core Standards developed in partnership with the National Governors Association and the Council of Chief State School Officers.

1.1.2 Integration of the content standards shall be provided for within and across the curricula.

1.1.3 Instructional materials and curricula content shall be kept current and consistent with provisions of 14 DE Admin. Code 502 Alignment of Local School District Curricula to the State Content Standards and 14 DE Admin. Code 503 Instructional Program Requirements.

1 DE Reg. 153 (8/1/97)
1 DE Reg. 729 (12/1/97)
4 DE Reg. 343 (8/1/00)
4 DE Reg. 850 (10/1/00)
4 DE Reg. 853 (11/1/00)
5 DE Reg. 865 (10/1/01)
8 DE Reg. 445 (9/1/04)
13 DE Reg. 256 (8/1/09)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 16 Delaware Code, Section 3003A; 29 Delaware Code, Section 7971 (14)
(16 **Del.C.**, §3003A; 29 **Del.C.**, §7971(14))
16 **DE Admin. Code** 3220

ORDER

3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants

NATURE OF THE PROCEEDINGS

Delaware Health and Social Services ("Department"), Division of Long Term Care Residents Protection, initiated proceedings to amend the regulations regarding the Training and Certification of Certified Nursing Assistants. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code**, Section 10114, with authority prescribed by 29 **Delaware Code**, Section 7971.

The Department published its notice of proposed regulatory change pursuant to 29 **Delaware Code** Section 10115 in the May 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2010 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGE

The proposal amends existing Regulation 3220 – Training and Certification of Certified Nursing Assistants. The proposed change will amend the regulation relative to the assessment of fees for reciprocal certification of a nursing assistant from another state, add a requirement for continuing education, modify training program requirements and delete the Senior CNA Training Program Instructor component.

Statutory Authority

- 16 **Del.C.** §3002A, "Training and Qualification for Nursing Assistants and Certified Nursing Assistants."
- 29 **Del.C.** §7971, (14) "Regulate the Certification of Nursing Assistants."

Summary of Changes

The Beebe Medical Center School of Nursing, POLYTECH Adult Education Program, New Castle County Vo-Tech School District, Delaware Technical and Community College, Genesis Healthcare Corporation, Courtyard Manor Inc, the Delaware Healthcare Association and the Alzheimer's Association offered the comments and recommendations summarized below. DLTCRP has considered each comment and respond as follows:

1) Clarification is requested on whether the term general supervision requires that a person be personally present at all times.

Response: The term General Supervision is now defined at 1.0 and does not require actual observation of students at all times.

"General Supervision" is providing necessary guidance for the program and maintaining ultimate responsibility.

2) The requirement of an RN having long term care experience limits who can teach a nursing assistant

course.

Response: The regulation has been modified to more closely match the federal regulation. Instructors do not have to have one year of long term care experience if the program is under the general supervision of at least one Registered Nurse who has the requisite long term care experience.

3.1.5 All instructors (classroom and clinical) must have completed a course in teaching adults or have experience teaching adults or in the case of high school programs, be a state licensed high school teacher. Instructors do not have to have one year of long term care experience if the school has identified a RN supervisor as described in 3.1.4. The RN supervisor shall be available to all instructors, shall assist in developing lesson plans based on experience in taking care of nursing home residents, shall periodically ensure and document that instructors are operating effectively and that the program is operating in accordance with all state and federal regulations. Classroom ratios of student to instructor shall not exceed 24:1.

3) The requirement at 2.3 of testing within 30 days of course completion, or 90 days in the event of a failure is unreasonable in the current market.

Response: This regulation has been modified. The individual has 24 months from the date of course completion to pass the competency test. The 90 days only applies if facilities wish to include the nursing assistant in staffing calculations.

4) The continuing education requirement at 2.4 may be cost prohibitive to many certified nursing assistants.

Response: The Division will be offering courses statewide at little or no cost to nursing assistants.

5) Section 2.6 permits persons currently enrolled in nursing programs to take the CNA competency test after having satisfactorily completed a Fundamentals/Basic Nursing course, will the instructors of those hospital-based courses be deemed to have met the CNA Instructor requirements?

Response: No, to clarify the importance of the long term care experience, 2.6 has been modified to add 75 hours of clinical training in a long term care setting. 3.1.4 also includes the long term care requirement.

6) At Section 2.8 the regulation permits an individual to take the CNA competency test after satisfactorily completing a military nursing assistant training course or a hospital based nursing assistant training course. Would the faculty in the hospital based nursing program be considered to meet the CNA Training Program instructor requirements?

Response: No. Please note that 2.8 has been deleted.

7) Hospital-based CNA training programs may not be able to meet the requirement at 3.1.2 that 75 hours of clinical instruction be performed in a long term care setting.

Response: This change brings the Delaware regulations into compliance with 42 CFR 483.152 which requires that the clinical portion of the training be performed in a facility or laboratory setting similar to the setting in which the individual functions as a nurse aide such as a nursing or skilled nursing facility. This construction of the regulatory requirement has recently been confirmed with CMS.

8) High school and community college teachers may not be able to meet the teaching experience requirement at 3.1.4.

Response: Please refer to the new 3.1.5. The adult education training requirement is a federal regulation. The high school exception is set forth in the regulation and at 6.2.2.

9) Appropriately licensed or certified personnel are excluded from being adjunct instructors in their areas of expertise.

Response: No, this concern is cured by a new section 3.1.8.

3.1.8 Other personnel from the health profession may supplement the instructor, including but not limited to, registered nurses, licensed practical/vocational nurses, pharmacists, dieticians, social workers, sanitarians, fire safety experts, nursing home administrators, gerontologists, psychologists, physical and occupational therapists, activity specialist, speech/language/hearing therapists and resident rights experts. Supplemental personnel must have at least 1 year of experience in their respective fields.

10) The 60 day notice requirement at 3.1.9, for changes to program personnel is problematic.

Response: The requirement was modified to 21 days and a provision for a waiver has been added.

3.1.9 Programs must notify the Division in writing (which may be faxed) at least 21 days prior to implementing permanent and/or substantial changes to the program or the program's personnel. Examples of substantial changes include, but are not limited to, instructor(s), clinical or classroom site, major revision of course structure, change in textbook. The 21 day time period may be waived by the Division for good cause shown.

11) The curriculum competencies related to the psychosocial needs of the resident needed to be revised to reflect current practices.

Response: Competencies 3.3.3.1.5 and 3.3.3.1.9 were revised.

12) High school and community college teachers may not be able to meet the requirement at 6.0 to have formal educational preparation or experience with skills of adult learning.

Response: As to the community college teachers, they teach adults, so the requirement must be met. High school programs meet the requirement with licensed teachers. See 6.2.2.

FINDINGS OF FACT

The Department finds that the proposed changes set forth in the May 2010 Register of Regulations should be adopted, subject to the modification set forth above which is not substantive.

THEREFORE, IT IS ORDERED, that the proposed changes to Regulation 3220 -Training and Certification of Certified Nursing Assistants, with the modification indicated herein, is adopted and shall be final effective September 1, 2010.

Rita Landgraf, Secretary, DHSS

3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants (~~Formerly Regulation No. 69~~)

1.0 Definitions

“Advanced Practice Nurse” shall mean an individual whose education and licensure meet the criteria outlined in 24 **Del.C.** Ch. 19 and who is certified in at least one of the following specialty areas: (1) Adult nurse practitioner; (2) Gerontological clinical nurse specialist; (3) Gerontological nurse practitioner; (4) Psychiatric/mental health clinical nurse specialist; (5) Family nurse practitioner.

“Assisted Living Facility” Asisted living facility is a residential arrangement for fee licensed pursuant to 16 **Del.C.** Ch. 11.

“Certified Nursing Assistant (CNA)” a duly certified individual under the supervision of a licensed nurse, who provides care which does not require the judgment and skills of a licensed nurse. The care may include, but is not limited to, the following: bathing, dressing, grooming, toileting, ambulating, transferring and feeding, observing and reporting the general well-being of the person(s) to whom they are providing care.

“Department” the Department of Health and Social Services.

“Direct Supervision” means actually observing students performing tasks.

“Division” the Division of Long Term Care Residents Protection.

“General Supervision” is providing necessary guidance for the program and maintaining ultimate responsibility.

“Intermediate Care Facility” Facility licensed pursuant to 16 **Del.C.** Ch. 11 with a license designated for intermediate care beds.

“Licensed Nurse” shall mean a licensed practical nurse, registered nurse and/or advanced practice nurse whose education and licensure meet the criteria in 24 **Del.C.** Ch. 19.

“Licensed Nursing Facility” is a residential institution, as defined in 16 **Del.C.**, §1104(4), which provides services to residents which include resident beds, continuous nursing services, and health and treatment services for individuals who do not currently require continuous hospital care. Care is given in accordance with physician's orders and requires the competences of a registered nurse (RN).

“Licensed Practical Nurse (LPN)” a nurse who is licensed as a practical nurse in Delaware or whose license is recognized to practice in the State of Delaware, and who may supervise LPN's, CNA's, NA's and other unlicensed personnel.

“Nursing Assistant (NA)” an individual who has completed the requisite training to become a Certified Nursing Assistant but is awaiting certification.

“Nursing Related Services” those health related services that include supervision of, and direct assistance to, individuals in their activities of daily living and/or those physical and psychosocial basic skills encompassed in the certified nursing assistant curriculum.

“Nursing Services Direct Caregivers” those individuals, as defined in 16 Del.C., §1161(e), assigned to the direct care of nursing facility residents.

“Physician” a physician licensed to practice in the State of Delaware.

“Registered Nurse (RN)” a nurse who is a graduate of an approved school of professional nursing and who is licensed in Delaware or whose license is recognized to practice in the State of Delaware.

“Rehabilitation” the restoration or maintenance of an ill or injured person to self-sufficiency at his or her highest attainable level.

“Resident” a person admitted to a nursing facility or similar facility licensed pursuant to 16 Del.C. Ch 11.

“Restraint” **“Physical Restraints”** are defined as any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident’s body that the individual cannot remove easily which restricts freedom of movement or normal access to one’s body. **“Chemical Restraints”** are defined as a psychopharmacologic drug that is used for discipline or convenience and not required to treat medical symptoms.

“Senior Certified Nursing Assistant” a Certified Nursing Assistant who has met the requirements and training specified in Section 4 of these regulations.

“Skilled Care Facility” Facility licensed pursuant to 16 Del.C. Ch. 11 with a license designated for skilled care beds.

“Student” a person enrolled in a course offering certification as a CNA.

~~["Supervision" direct oversight and inspection of the act of accomplishing a function or activity.]~~

6 DE Reg. 1505 (5/1/03)

2.0 General Training Requirements And Competency Test

Each Nursing Assistant/Certified Nursing Assistant employed by any nursing facility either as contract/ agency or facility staff shall be required to meet the following:

- 2.1 An individual shall complete a nursing assistant training course approved by the Department on the recommendation of the CNA Training Curriculum Committee. The Committee shall consist of individuals with experience in the knowledge and skills required of CNAs.
- 2.2 Nursing Assistants are required to pass a competency test provided by the Department or by a contractor approved by the Department.

- 2.3 ~~[Nursing Assistants shall take the competency test within 30 days of completion of an approved program or when the nearest testing location is available to the nursing assistant, whichever is later. Nursing assistants who fail to obtain a passing score may repeat the test two additional times, but must obtain certification within 90 days of program completion. Nursing assistants who fail to obtain a passing score after testing three times must repeat the CNA training program before retaking the test, or they cannot continue to work as a nursing assistant.]~~

Nursing Assistants shall take the competency test within 30 days of completion of an approved program. Nursing assistants who fail to obtain a passing score may repeat the test two additional times. Nursing assistants who fail to obtain a passing score after testing three times must repeat the CNA training program before retaking the test. The certificate of completion of an approved program, a prerequisite to testing, must be dated within 24 months of the available testing date. Nursing assistants who are trained in a facility and are counted for staffing purposes pursuant to 16 Del.C. §1162 (f) must pass the test within 90 days of completion of the facility program to continue to be counted in staffing calculations.]

- 2.4 ~~A Certified Nursing Assistant must~~ In order to qualify for recertification, a CNA must, during each 24 month certification period: 1) complete 24 hours of approved continuing education, and 2) perform at

least 64 hours of nursing related services for pay under the supervision of a licensed nurse or physician during each 24-month certification period in order to qualify for recertification. A certified nursing assistant ~~CNA~~ who does not perform at least 64 hours of nursing related services in a certification period or fails to complete the required continuing education must ~~complete and pass a new training course and the competency test again, or competency test.~~ Nursing assistants who fail to obtain a passing score after testing three times must repeat the CNA training program before additional testing will be permitted.

- 2.5 ~~[A Certified Nursing Assistant An individual A Certified Nursing Assistant]~~ trained and certified outside the State of Delaware in a program that equals or exceeds the federal nurse aide training program requirements in the Code of Federal Regulations §483.152 cannot work in Delaware without a Delaware certificate. Delaware certification is required prior to being employed as a CNA. The Department will grant reciprocity if the following conditions are met:
- 2.5.1 ~~[The CNA The individual The CNA]~~ must have a current certificate from the jurisdiction where he or she currently practices, except that candidates from the State of Maryland must hold a current Geriatric Nursing Assistant certificate.
 - 2.5.2 ~~[The CNA The individual The CNA]~~ must have 3 months of full-time experience as a CNA performing nursing related services for pay under the supervision of a licensed nurse or physician, or have completed a training and competency evaluation program with the number of hours at least equal to that required by the State of Delaware.
 - 2.5.3 ~~[The CNA The individual The CNA]~~ must be in good standing in the jurisdiction where he/she is currently certified.
 - 2.5.4 ~~The [Nursing Assistant CNA]~~ submits \$30 to the Department to cover the costs associated with granting the reciprocity.
- 2.6 ~~[Employees hired as]~~ Nursing ~~[Assistants/Certified Nursing Assistants students]~~ who are currently enrolled in a nursing program and have satisfactorily completed a Fundamentals/Basic Nursing course with a 75 hour clinical component in a long term care setting will be deemed to meet the training requirements. These individuals will be approved to take the competency test upon submission of a letter from their school of nursing attesting to current enrollment status and satisfactory course completion as described.
- 2.7 ~~[Individuals Nursing students]~~ who have graduated from an RN or LPN program within 24 months prior to application for certification are deemed qualified to meet the Department's nurse aide training and competency evaluation program requirements and are eligible for certification upon submission of a sealed copy of their diploma. Individuals who have graduated from an RN or LPN program more than 24 months prior to application for certification are deemed qualified to meet the Department's nurse aide training program requirements and are eligible to take the competency test upon submission of a sealed copy of their diploma.
- 2.8 ~~[An individual who has satisfactorily completed a military nursing assistant training course or hospital based nursing assistant training course of at least 150 hours with a which is substantially similar to Delaware's nurse aide training program curriculum comparable to the curriculum content of Section 69.303 of these regulations and who has performed nursing related services within 24 months prior to application for certification is deemed qualified to meet the Department's nurse aide training program requirements and is eligible to take the competency test upon submission of documentation of course completion.~~
- ~~2-9~~ For the purpose of calculating minimum staffing levels, any individual who has completed all of the classroom training and half of the clinical training in a facility sponsored training program may be considered as a member of such facility's staff while undergoing the last 37.5 hours of clinical training at such facility.
- 2.~~[409]~~ A nursing assistant who is employed by, or who has received an offer of employment from, a federally certified nursing facility on the date on which the aide begins a nurse aide training and competency evaluation program may not be charged for any portion of the program including tuition, any tests taken and fees for textbooks or other required course materials.

- 2.[140] If a Certified Nursing Assistant who is not employed, or does not have an offer to be employed as a nurse aide becomes employed by, or receives an offer of employment from, a federally certified nursing facility not later than 12 months after completing a nurse aide training and competency evaluation program, the federally certified nursing facility shall reimburse all documented personally incurred costs in completing the program. Facilities shall accept as documentation canceled checks, paid receipts, written verification from a training program or other written evidence which reasonably establishes the CNA's personally incurred costs. Such costs include tuition, tests taken and fees for textbooks or other required course materials. Such costs shall be reimbursed in equal quarterly payments with full reimbursement to coincide with the CNA's completion of one year of employment including the orientation period.
- 2.[121] Any nursing facility which reimburses a Certified Nursing Assistant for documented personally incurred costs of a nurse aide training and competency evaluation program shall notify the Division of Long Term Care Residents Protection of such reimbursement. Notice of such reimbursement shall be entered in the CNA Registry database and information regarding such reimbursement shall be available to facilities upon request.

6 DE Reg. 1505 (5/1/03)

8 DE Reg. 1014 (1/1/05)

3.0 CNA Training Program Requirements

- 3.1 General. Program approval must be obtained from the Division prior to operating a CNA program. To obtain approval, the curriculum content for the Certified Nursing Assistant training programs shall meet each of the following requirements:

- 3.1.1 The curriculum shall include material that will provide a basic level of both knowledge and demonstrable skills for each individual completing the program.
- 3.1.2 The program shall be a minimum of 150 hours in length, ~~divided equally between clinical skills training and classroom instruction~~ consisting of: 1) classroom instruction including laboratory time of 75 hours, and 2) clinical skills training of 75 hours in a long term care setting. Additional hours may be added in either of these areas or both.
- 3.1.3 Classroom instruction and demonstrated proficiency in each skill shall be completed prior to students' performing direct resident care. Programs shall maintain documentation of required skills that each student has successfully demonstrated to the RN instructor.
- 3.1.4 Classroom ratios of student to RN instructor shall not exceed 24:1. Clinical and laboratory ratios of student to instructor shall not exceed 8:1. ~~[All instructors must have completed a course in teaching adults. Or in the case of High School Programs be a state licensed high school teacher.]~~

The training of nursing assistant must be done by or under the general supervision of a RN who possesses a minimum of two years of nursing experience, at least 1 year of which must be in the provision of long term care facility services. The required one year of full-time (35-hours per week) long term care experience can be met by work experience in, or supervision or teaching of students in a certified skilled nursing facility or nursing facility defined in 42 CFR § 483.5(a).]

- 3.1.5 ~~[All classroom instruction must be done by a Registered Nurse. The Registered Nurse must possess a minimum of 2 years of full time (35 hours per week) nursing experience in the past 5 years, at least 1 year of which must be in the provision of long term care at a certified Skilled Nursing Facility or nursing facility as defined in 42 CFR § 483.5(a). Classroom ratios of student to RN instructor shall not exceed 24:1.~~

All instructors (classroom and clinical) must have completed a course in teaching adults or have experience teaching adults or in the case of high school programs, be a state licensed high school teacher. Instructors do not have to have one year of long term care experience if the school has identified a RN supervisor as described in 3.1.4. The RN supervisor shall be available to all instructors, shall assist in developing lesson plans based on experience in taking care of nursing home residents, shall periodically ensure and document that

instructors are operating effectively and that the program is operating in accordance with all state and federal regulations. Classroom ratios of student to instructor shall not exceed 24:1]

3.1.6 ~~[Laboratory and clinical instruction may be provided by a qualified Registered Nurse or Licensed Practical Nurse. The Licensed Practical Nurse must have a minimum of three (3) years experience under the supervision of a Registered Nurse and must have the equivalent of 1 year full time (35 hours per week) experience in a licensed skilled or intermediate care nursing facility or hospital within the past 5 years. Clinical and laboratory ratios of student to Registered Nurse or Licensed Practical Nurse instructor shall not exceed 8:1.~~

LPN instructors must have at least three years of nursing experience and must work under the general supervision of a RN.]

3.1.67 ~~[The RN instructor shall directly supervise provide general supervision to students at all times during clinical instruction. A Registered Nurse or Licensed Practical Nurse shall provide direct supervision to students. Students shall remain in visual contact with a licensed nurse in the clinical setting while performing any skills in which proficiency has not been both demonstrated and documented.~~

Clinical instructors shall provide general supervision of students at all times during clinical instruction. Clinical instructors shall provide direct supervision to students in the clinical setting while the student is learning a competency until proficiency has been both demonstrated and documented. Clinical and laboratory ratios of student to Registered Nurse or Licensed Practical Nurse instructor shall not exceed 8:1.

3.1.8 Other personnel from the health profession may supplement the instructor, including but not limited to , registered nurses, licensed practical/vocational nurses, pharmacists, dieticians, social workers, sanitarians, fire safety experts, nursing home administrators, gerontologists, psychologists, physical and occupational therapists, activity specialist, speech/language/hearing therapists and resident rights experts. Supplemental personnel must have at least 1 year of experience in their respective fields.]

3.1.6[89] Programs must notify the Division in writing (which may be faxed) when at least 21 days prior to implementing permanent and/or substantial changes to the program or the program's personnel are made. Examples of substantial changes include, but are not limited to, instructor(s), clinical or classroom site, major revision of course structure, change in textbook. The 21 day time period may be waived by the Division for good cause shown.

3.2 Equipment

All programs shall have available at a minimum the following equipment:

- 3.2.1 Audio/Visual (Overhead projector and/or TV with VCR)
- 3.2.2 Teaching Mannequin, Adult, for catheter and perineal care
- 3.2.3 Hospital Bed
- 3.2.4 Bedpan/Urinal
- 3.2.5 Bedside commode
- 3.2.6 Wheelchair
- 3.2.7 Scale
- 3.2.8 Overbed Table
- 3.2.9 Sphygmomanometer
- 3.2.10 Stethoscope
- 3.2.11 Resident Gowns
- 3.2.12 Thermometers, Glass and Electronic
- 3.2.13 Crutches
- 3.2.14 Canes (Variety)
- 3.2.15 Walker

- 3.2.16 Miscellaneous Supplies: i.e., Band ages, Compresses, Heating Pad, Heating Aid, Dentures, Toothbrushes, Razors.
- 3.2.17 Foley Catheter Drainage Bag
- 3.2.18 Hydraulic Lift
- 3.2.19 Adaptive eating utensils/equipment

3.3 Curriculum Content

The following material identifies the minimum competencies that the curriculum content shall develop. Nursing assistants being prepared to work in skilled, intermediate, or assisted living facilities either as direct or contract staff shall master each competency. All demonstrable competencies for each student must be documented as mastered by the RN instructor in order for a student to qualify as successfully having completed that section of programming.

3.3.1 The Nursing Assistant Role And Function

Introduces the characteristics of an effective nursing assistant: personal attributes, on-the-job conduct, appearance, grooming, health and ethical behavior. Also presented are the responsibilities of the nursing assistant as a member of the resident care team. Legal aspects of resident care and resident rights are presented. Relevant Federal and State statutes are also reviewed.

Competencies:

3.3.1.1 Function as a nursing assistant within the standards described below:

- 3.3.1.1.1 Define the role and functions of the nursing assistant and provide awareness of the legal limitations of being a nursing assistant.
- 3.3.1.1.2 Recognize the responsibilities of the nursing assistant as a member of the health care team. Understand the relevant State and Federal regulations for long term care and legalities of reporting and documenting incidents and accidents.
- 3.3.1.1.3 Understand the role of Long Term Care advocates, investigators and surveyors.
- 3.3.1.1.4 Identify the "chain of command" in the organizational structure of the health care agency.
- 3.3.1.1.5 Maintain personal hygiene and exhibit dress practices which meet professional standards.
- 3.3.1.1.6 Recognize the importance of punctuality and commitment to the job.
- 3.3.1.1.7 Differentiate between ethical and unethical behavior on the job.
- 3.3.1.1.8 **[Understand Recognize Understand]** the role, responsibility and functional limitations of the nursing assistant.

3.3.1.2 Demonstrate behavior that maintains resident's rights.

- 3.3.1.2.1 Provide privacy and maintenance of confidentiality.
- 3.3.1.2.2 Promote the resident's right to make personal choices to accommodate individual needs.
- 3.3.1.2.3 Give assistance in resolving grievances.
- 3.3.1.2.4 Provide needed assistance in going to and participating in resident and family groups and other activities.
- 3.3.1.2.5 Maintain care and security of resident's personal possessions as per the resident's desires.
- 3.3.1.2.6 Provide care which ensures that the residents are free from abuse, mistreatment, neglect or financial exploitation and report any instances of such poor care to the Division of Long Term Care Residents Protection. Discuss the psychological impact of abuse, neglect, mistreatment, misappropriation of property of residents and/or financial exploitation.
- 3.3.1.2.7 Maintain the resident's environment and care through appropriate nursing assistant behavior so as to keep the resident free from physical and chemical restraints.

3.3.1.2.8 Discuss the potential negative outcomes of physical restraints, including side rails.

3.3.2 Environmental Needs Of The Resident

Key Concepts: Introduces the nursing assistant to the need to keep residents safe from injury and infection in the long-term care setting. The nursing assistant is taught why and how to use infection control and isolation techniques. Safety through prevention of fires and accidents, and emergency procedures for fire and other disasters are presented.

Competencies:

3.3.2.1 Apply the basic principles of infection control.

3.3.2.1.1 Identify how diseases are transmitted and understand concepts of infection prevention.

3.3.2.1.2 Demonstrate proper hand washing technique.

3.3.2.1.3 Demonstrate appropriate aseptic techniques in the performance of normal duties and understand the role of basic cleaning, disinfecting, and sterilization tasks.

3.3.2.1.4 Demonstrate proper isolation and safety techniques in the care of the infectious resident and proper handling and disposal of contaminated materials.

3.3.2.2 Assist with basic emergency procedures.

3.3.2.2.1 Follow safety and emergency procedures.

3.3.2.2.2 Identify safety measures that prevent accidents to residents.

3.3.2.2.3 Recognize signs when a resident is choking or may have an obstructed airway.

3.3.2.2.4 Assist with clearing obstructed airway.

3.3.2.2.5 Call for help when encountering convulsive disorders, loss of consciousness, shock, hemorrhage, and assist the resident until professional help arrives.

3.3.2.2.6 Follow disaster procedures.

3.3.2.2.7 Report emergencies accurately and immediately.

3.3.2.2.8 Identify potential fire hazards.

3.3.2.3 Provide a safe, clean environment.

3.3.2.3.1 Identify the resident's need for a clean and comfortable environment. Describe types of common accidents in the nursing home and their preventive measures. Be aware of the impact of environmental factors on the resident in all areas including but not limited to light and noise levels.

3.3.2.3.2 Report unsafe conditions to appropriate supervisor. Use the nurse call system effectively.

3.3.2.3.3 Report evidence of pests to appropriate supervisory personnel.

3.3.2.3.4 Report nonfunctioning equipment to appropriate supervisory/charge personnel.

3.3.2.3.5 Prepare soiled linen for laundry.

3.3.2.3.6 Make arrangement of furniture and equipment for the resident's convenience and to keep environment safe.

3.3.3 Psychosocial Needs Of The Resident

Key Concepts: Focus is placed on the diverse social, emotional, recreational and spiritual needs of residents in a long term care setting. The curriculum shall describe some of the physical, mental, and emotional changes associated with aging and institutionalization, and present ways in which the nursing assistant may effectively communicate with residents and their families.

Competencies:

3.3.3.1 Demonstrate basic skills by identifying the psychosocial characteristics of the populations being served in the nursing facility including persons with mental retardation, mental illness and persons with dementia, Alzheimer's disease, developmental disabilities and other related disorders.

3.3.3.1.1 Indicate the ways to meet the resident's basic human needs for life and mental well being.

- 3.3.3.1.2 Modify his/her own behavior in response to resident's behavior. Respect the resident's beliefs recognizing cultural differences in holidays, spirituality, clothing, foods and medical treatments.
- 3.3.3.1.3 Identify methods to ensure that the resident may fulfill his /her maximum potential within the normal aging process.
- 3.3.3.1.4 Provide training in, and the opportunity for, self-care according to the resident's capabilities.
- 3.3.3.1.5 Demonstrate principles of behavior management by reinforcing appropriate behavior and reducing or eliminating inappropriate behavior. **[For persons with dementia, recognize that cognitive functions are impaired, determine what the resident is trying to communicate and respond appropriately.]**
- 3.3.3.1.6 Demonstrate skills which allow the resident to make personal choices and promote the resident's dignity.
- 3.3.3.1.7 Utilize resident's family as a source of emotional support and recognize the family's need for emotional support.
- 3.3.3.1.8 Recognize how age, illness and disability affect memory, sexuality, mood and behavior, including wandering.
- 3.3.3.1.9 ~~[Describe aggressive and wandering behavior; recognize responsibility of staff related to wanderers and aggressive residents.]~~ **Recognize aggressive behavior and learn management techniques. Recognize that certain behaviors, such as wandering, are a form of communication. Learn to apply strategies to promote safe behaviors.]**

(Break in Continuity Within Section)

*Please note that no additional changes were made to the regulation as originally proposed and published in the May 2010 issue of the *Register* at page 1386 (13 DE Reg. 1386). Therefore, the entire final regulation is not being republished. A copy of the final regulation is available at:

3220 Training and Qualifications for Nursing Assistants and Certified Nursing Assistants

DIVISION OF SOCIAL SERVICES

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

ORDER

Child Care Subsidy Program

NATURE OF THE PROCEEDINGS

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to the Child Care Subsidy Program regarding *Income and Making Income Determinations*. The Department's proceedings 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 public comment pursuant to 29 **Delaware Code** Section 10115 in the July 20 10 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2010 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGES

The proposed change described below amends Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) regarding *Income and Making Income Determinations*.

Statutory Authority

45 CFR §98.11(b)(2), *Administration under contracts and agreements*

Summary of Proposed Changes

1) **DSSM 11003.9.1, *Income***: The purpose of this rule change is to clarify the rules regarding determining countable income and to remove procedures. This amendment clarifies how to decide what income to count to determine eligibility for subsidized child care.

2) **DSSM 11003.9.5, *Making Income Determinations***: The purpose of this rule change is to clarify the rules regarding determining financial eligibility and to remove procedures. The revised rule clarifies how to count income to arrive at a monthly amount.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The Governor's Advisory Council for Exceptional Citizens (GAC EC) and the State Council for Persons with Disabilities (SC PD) offered the following observation and recommendation summarized below. DSS has considered each comment and responds as follows.

First, §11003.9.1A refers to "social security pensions". Section 11003.9.1 refers to (capitalized) "Social Security pensions". DSS may wish to substitute "Social Security income" in both contexts similar to its reference to "Supplemental Security Income" in the latter section. Otherwise, the reference would appear to cover Social Security retirement benefits but not Title II SSDI benefits.

Agency Response: Thank you for your observation. The policy has been changed to read as follows:

Countable Income. All sources of income, earned (such as wages) and unearned (such as child support, Social Security income, etc.) are countable income when determining a family's monthly gross income.

...

Second, §11003.9.1 lists "disregarded income which includes the following subpart:

7. The value of USDA donated foods and Food Stamp Act of 1964 as amended;

This provision remains unchanged from the current regulation. However, the reference to the Food Stamp Act literally makes no sense (e.g. the value of the Food Stamp Act of 1964 is disregarded). We suspect some words are missing.

Agency Response: Thank you for picking up on this error. The policy has been changed as follows:

7. the value of USDA donated foods;

FINDINGS OF FACT

The Department finds that the proposed changes as set forth in the July 2010 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Child Care Subsidy Program policies regarding *Income and Making Income Determinations* is adopted and shall be final effective September 10, 2010.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATIONS #10-36

REVISIONS:

11003.9.1 Income

45 CFR 98.11(b)(2)

A. Countable Income. All sources of income, earned (such as wages) and unearned (such as child support, ~~[social security pensions~~ **Social Security income**], etc.) are countable income when determining a family's monthly gross income. Monthly gross income typically includes the following:

1. ~~Money from wages or salary, such as total money earnings~~ Money earned from work performed as an employee, including wages, salary, Armed Forces pay, commissions, tips, piece rate payments and cash bonuses. Count the amount earned before deductions are made for taxes, bonds, pensions, union dues, etc. This is gross income. Wages need to be equal to the federal minimum wage or an equivalent.

~~Gross income from farm or non-farm self-employment is determined by subtracting the self-employment standard deduction for producing income as described below. The individual's personal expenses (lunch, transportation, income tax, etc.) are not deducted as business expenses but are deducted by using the TANF standard allowance for work-connected expenses. In the case of unusual situations (such as parent/caretaker just beginning business), refer to DSSM 9056 and 9074.~~

Earnings from self-employment are counted after applying a standard deduction for self-employment expenses. To get the self-employment deduction, self-employed households must verify at least one business cost to produce income.

Self-Employment Standard Deduction for Producing Income

The cost for producing income is a standard deduction of the gross income. This standard deduction is a percentage of the gross income determined annually and listed in the Cost-of-Living Adjustment (COLA) notice each October. The standard deduction is considered the cost to produce income.

~~The standard deduction is considered the cost to produce income. The gross income test is applied after the standard deduction. The earned income deductions are then applied to the net self-employment income and any other earned income in the household.~~

~~The standard deduction applies to all self-employed households with costs to produce income. To receive the standard deduction, the self-employed household must provide and verify they have business costs to produce income. The verifications can include, but are not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The self-employed household does not have to verify all its business costs to receive the standard deduction.~~

~~Self-employed households not claiming or verifying any costs to produce income will not receive the standard deduction.~~

2. Social Security pensions, Supplemental Security Income, Veteran's benefits, public assistance payments, net rental income, unemployment compensation, workers compensation, pensions, annuities, alimony, adoption assistance, disability benefits, military allotments, Rail Road Retirement, and child support.

B. Disregarded Income

Monies received from the following sources are not counted:

1. per capita payments to or funds held in trust for any individual in satisfaction of a judgment of Indian Claims Commission or the Court of Claims;
2. payments made pursuant to the Alaska Native Claims Settlement Act to the extent such payments are exempt from taxation under ESM 21(a) of the Act;
3. money received from the sale of property such as stocks, bonds, a house or a car (unless the person was engaged in the business of selling such property, in which case the net proceeds are counted as income from self-employment);
4. withdrawal of bank deposits;
5. money borrowed or given as gifts;
6. capital gains;
7. the value of USDA donated foods ~~[and Food Stamp Act of 1964 as amended]~~;
8. the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act, as amended;
9. any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
10. loans or grants such as scholarships obtained and used under conditions that preclude their use for current living costs;
11. any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education under the Higher Education Act;
12. home produce ~~utilized~~ used for household consumption;
13. all of the earned income of a ~~minor or minor parent (under 18) who is a full-time student or a part-time~~ child under age 18 who is a student who is working but is not a full-time employee (such as high school students who are employed full-time during summer);
14. all payments derived from participation in projects under the Food Stamp Benefit Employment & Training (~~FS~~ FB E&T) program or other job training programs;
15. all Vista income; and
16. all income derived as a Census taker.

Resources (such as cars, homes, savings accounts, life insurance, etc.) are not considered when determining financial eligibility or the parent fee.

(Break In Continuity of Sections)

11003.9.5 Making Income Determinations

45 CFR 98.11(b)(2)

~~DSS programmed the DCIS II Child Care Sub-system to automatically make financial eligibility decisions. As long as the appropriate income for the appropriate persons is entered into the system, and as long as the correct family size is entered, the DCIS II Child Care Sub-system will calculate income and determine eligibility.~~

~~In the event of system failure, use 4 1/3 weeks per month to compute a person's monthly gross income. If there is a variance in wages, use the average of the last month's wages or the average of the last three month's wages, whichever is less.~~

~~The following are examples for converting various pay schedules to monthly income.~~

~~A. Client A is paid \$200.00 per week — $\$200 \times 4.33 = \$866/\text{month}$.~~

~~B. Client A is paid \$200 per week, but has a varying work schedule. Week one — \$200; week two \$100; week three — \$176; week four — \$200. $\$200 + \$100 + \$176 + \$200 = \$676$ divided by 4 = \$169/week average. $\$169 \times 4.33 = \$731.77/\text{month}$.~~

~~C. Client B is paid \$400 every other week. $\$400 \times 2.16 = \864 .~~

~~D. Client C is paid \$950 twice a month. $\$950 \times 2 = \$1900/\text{month}$.~~

~~E. Other sources of income, such as child support, are added to wages either as the actual amount received or as an average of the amount received in the past three months.~~

~~Staff will use gross monthly income in all cases except for self-employment income. Gross income is income before any deductions. See 11003.9.1 for disregarded income.~~

~~Determine the monthly amount of income using the conversion method below. This applies to earned and unearned income.~~

~~A. Weekly gross income is multiplied by 4.33 to calculate the monthly income.~~

~~B. Bi-weekly gross income is multiplied by 2.16 to calculate the monthly income. Bi-weekly income is income that is received every other week.~~

~~C. Semi-monthly gross income is multiplied by 2 to calculate the monthly income. Semi-monthly income is income that is received twice each month.~~

~~If the income is different from pay to pay, use the income from the previous month or the average of the last three months income, whichever is less. This applies for earned and unearned income.~~

DIVISION OF SOCIAL SERVICES

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

ORDER

Child Care Subsidy Program

NATURE OF THE PROCEEDINGS

Delaware Health and Social Services ("Department")/ Division of Social Services initiated proceedings to provide information of public interest with respect to the Child Care Subsidy Program regarding *Interviews and Authorizing Service*. The Department's proceedings 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 public comment pursuant to 29 **Delaware Code** Section 10115 in the July 20 10 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2010 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGES

The proposed change described below amends Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) regarding *Interviews and Authorizing Service*.

Statutory Authority

45 CFR §98.11, *Administration under contracts and agreements*

Summary of Proposed Changes

1) **DSSM 11004.2, Interviews**: The purpose of this rule change is to clarify current policy regarding interviews and to remove procedures. The original text is also reformatted to further clarify interview requirements for child care services. The intent of the proposed amendment is to simplify language and improve readability.

2) **DSSM 11004.9, ~~Authorizing Service~~ Authorizing Child Care Services**: The purpose of this rule change is to add program guidelines for authorizing services and to remove procedures. The amended policy states that Purchase of Care (POC) funds cannot be paid for parents/caretakers to provide direct care to their own children in a home or any other child care facility.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The Governor's Advisory Council for Exceptional Citizens (GAC EC) and the State Council for Persons with Disabilities (SC PD) offered the following observation and recommendation summarized below. DSS has considered each comment and responds as follows.

Overall, the proposed regulation is more condensed than the current version and omits illustrations. It also clarifies that parents cannot obtain the subsidy if they are caring for their own children in their own home or facility if the parent provides direct care to the child in that setting. The proposed regulation was published as 14 **DE Reg.** 11 in the July 1, 2010 issue of the *Register of Regulations*. The Councils have the following observations and recommendations.

First, §11004.2.4 authorizes consideration of a "special need" conveyed through "correspondence submitted by a physician or medical professional". The current regulation is more expansive in defining the scope of persons who can submit documentation of a special need. Section 11004.2.B.4.c authorizes the DSS worker to rely on "written documentation from a recognized professional (such as a doctor, social worker, nurse, school counselor, etc) of the special needs". This is superior to the proposed regulation which requires an actual letter (in contrast to "written documentation") and is limited to medical professionals. There are many circumstances in which a non-medical professional (e.g. DVR worker; social worker; psychologist) could logically provide the confirmation of a special need.

Agency Response: DSS would like to thank you for comment. The special needs program was revised through the *Administrative Procedures Act* in July 2009 to include the statement "documentation that may be provided on the Special Needs Form or any other written correspondence submitted by a physician or medical professional with the authority to do so." The purpose of this revision was to correct the oversight made in 2009 when this section should have been updated to be consistent with other sections of the manual.

Second, in §11004.2.4, DSS may wish to consider amending the first line to read "any other information...such as documentation of travel time or a special need." Travel time would be relevant to the need for child care in both the employment and school contexts. Merely referencing a "work schedule" or "class schedule" will understate the extent of need which should include travel time.

Agency Response: DSS would like to thank you for your response however the statement will remain as is. Travel time relates to the *amount* of child care needed and is only considered *after* staff has determined there is a need for child care.

Third, §11004.2.4. limits DSS workers to consideration of a “protective need” only if based on a DFS referral: “For a protective need, a referral from Division of Family Services must be submitted.” This may be unduly narrow. We recognize that related regulations [§§11003.7.6 and 11003.7.8] limit consideration of children with protective child care needs to those referred by DFS. The relevant federal regulation [45 CFR 98.20] refers to “an appropriate protective services worker” but does not define the term. As a practical matter, the DSCYF often provides primary case management and other services through contractors (e.g. Child, Inc.; Delaware Guidance). Moreover, there are many victim protection organizations. For example, many police departments have victim advocates. We recommend expanding the scope of persons who can document a “protective need”. Consider the following substitute standard:

A protective need must be based on a referral from the Division of Family Services (“DFS”), authorized DFS contract agency, or victim services personnel employed by law enforcement or non-profit organization.

Agency Response: DSS understands your desire to increase the sources of a protective need referral. However, the Division is not in a position to expand this group of eligibles at this time.

Fourth, §11004.9 includes the following recital: “These children may be able to get another type of child care”. This is somewhat cryptic. If DSS is aware of some other sources of child care assistance in this context, it would be preferable to provide some guidance to workers through a cross reference or note. The Department of Education periodically includes non-regulatory notes in its regulations with cross references to other regulations or resources.

Agency Response: Thank you for your suggestion that we give some guidance to workers through a cross reference or note to the other types of child care available. This statement serves as a reminder that those parents who cannot get child care assistance because they are providing direct care to their own children are not prohibited from receiving child care assistance if their children are placed in another child care setting. DSS has revised the policy as follows:

All child care services must be authorized before parents/caretakers can receive subsidized child care. Parents/caretakers can choose any provider who is either licensed, licensed exempt or self arranged. No parent/caretaker can receive POC funds to provide child care services to their own children in a home or any other child care facility where the parent/caretaker provides direct care to that child. These children may be able to get child care assistance if their children are placed in another child care setting.

FINDINGS OF FACT

The Department finds that the proposed changes as set forth in the July 2010 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Child Care Subsidy Program policies regarding *Interviews and Authorizing Service* is adopted and shall be final effective September 10, 2010.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATIONS #10-39 REVISIONS:

11004.2 Interviews and Necessary Documentation

45 CFR 98.11

~~Complete an interview either over the phone or in person.~~

~~When scheduling an applicant for an interview do so in the following manner.~~

~~A As soon as reasonably possible after the parent/caretaker makes an informal contact set a specific day and time for an interview. Consider the parent/caretaker's schedule and attempt to schedule appointments at parent/caretaker convenience.~~

~~B. Advise the parents/caretakers of the information they will need to bring to the interview. At a minimum, parent/caretakers should bring:~~

- ~~1. if employed, current pay stubs covering the 30 days immediately before the date of application or a letter or employer statement (on company letter head) noting the employer's name, the parent/caretaker's work schedule, earnings, frequency of pay, and start date;~~
- ~~2. if in training and/or school, a statement from the school/training program with starting and completion dates and days and hours required to attend or a copy of a registration form and class schedule;~~
- ~~3. any other income information;~~
- ~~4. any other information which may have a bearing on establishing need, such as:
 - ~~a. in cases of a special need for either a child or an adult, parents/caretakers must complete the Special Needs Form;~~
 - ~~b. for a protective need, a completed Division of Family Services Referral; or~~
 - ~~c. written documentation from a recognized professional (such as doctor, social worker, nurse, school counselor, etc.) of the special needs.~~~~

~~C. Along with appointment information, send and/or give parents/caretakers a child care certificate package and a list of approximately five available contracted providers. Instruct parents/caretakers to select a provider prior to the formal interview. Even though parents/caretakers may ultimately select providers under contract with DSS, provide them with enough information to make an informed choice. Therefore, in all instances, send and/or give parents/caretakers a certificate package and Guide to Quality Child Care booklet. Inform clients that if they fail to provide the DSS Case Manager with a provider within 60 days of eligibility confirmation and noticing, their case will close.~~

~~D. For parents/caretakers who come into the office without a scheduled appointment, conduct the formal interview process that same day if possible. However, the parents/caretakers need to select a child care provider before care can be authorized.~~

~~E. Though verification of the appropriate information to establish need is important, the system will authorize Presumptive Child Care service can be authorized for a approximately one month while certain information verification is pending. In this case, the system will, give notice of needed information, authorize child care for approximately one month (depending on the date of application) and end date the authorization. If the system does not authorize Presumptive Child Care, parents/caretakers will be given ten days from the date of the initial application to secure and provide the necessary documentation. If the parents/caretakers receive Presumptive Child Care and the initial application date occurs between the first and the ninth of the month, the authorization for care will extend to the end of the current month. If the initial application occurs from the tenth of the month or after, authorization for care will extend to the end of the following month. (For more information on Presumptive Child Care see section 11004.8)~~

~~EXAMPLE 1: A parent comes into the office on January 6 and needs care to start work beginning January 7. The parent meets eligibility criteria. The system will authorize Presumptive Child Care until January 31 and give the parent until January 16 to provide proof of employment. If by January 16 the parent provides proof, enter the information and verification into the system and run SFU/EDBC. The system will generate a new authorization with the end date of June 30th. If by January 17 the parent fails to provide proof, a DCIS II Child Care Sub system notice is mailed informing the parent that child care services will end as of January 31.~~

~~EXAMPLE 2: A parent comes into the office on January 12 and needs to start work beginning January 13. The parent meets eligibility requirements. The system will authorize care until February 28 and give the parent until January 22 to provide proof. If by January 22 the parent provides proof, enter the information and verification into the system and run SFU/EDBC. The system will generate a new authorization with an end date of June 30th. If by January 22 the parent fails to provide proof, a DCIS II Child Care Sub system notice is mailed informing the parent that child care will end as of February 28.~~

Complete an interview either over the phone or in person. Conduct the interview the same day if possible. Parents will need to supply the following verifications:

1. if employed:

- a. pay stubs for the 30 days before the date of application, or
- b. a letter or employer statement (on company letter head) noting the employer's name, telephone number, the parent's/caretaker's work schedule, earnings, frequency of pay, and start date.
2. any unearned income, such as child support, Social Security, and unemployment compensation
3. if in training and/or school:
 - a. a statement from the school/training program with starting and completion dates and days and hours required to attend, or
 - b. a copy of a registration form and class schedule;
4. any other information which will help in determining the need for service, such as documentation of a special need. Documentation of the special need may be provided on the Special Needs Form or any other written correspondence submitted by a physician or medical professional with the authority to do so. For a protective need, a referral from Division of Family Services must be submitted.

Parents must be given any information that will help them to make an informed decision regarding their child care services. Provide parents/caretakers with a list of providers and a child care certificate packet as needed. Although verifications are needed, Presumptive Child Care may be opened pending information. Presumptive Care can be authorized for approximately one month, depending on the date of application. (For more information on Presumptive Child Care see DSSM 11004.8).

(Break In Continuity of Sections)

11004.9 Authorizing Service Authorizing Child Care Services

45 CFR 98.11

~~Once a case is created, service must be authorized before parents/caretakers can receive subsidized child care. Authorization is both the name for the form (618d) and the process to grant parents/caretakers child care services (see Section 11002.9 for definition).~~

~~Complete a separate authorization for each child who is eligible to receive child care services. Therefore, if there is more than one child in a family who needs service, complete separate authorizations for each child. Complete an authorization by creating one in the DCIS II Child Care Sub system. Again, as when entering a case, in DCIS II authorization data screens have required data fields which are highlighted. Complete these data fields before proceeding. Follow the rules below in creating authorizations.~~

~~A. Obtain provider information before completing an authorization. This means that if parents/caretakers wish to select a provider by using a child care certificate, they must have the certificate returned before an authorization can be issued.~~

~~B. Parents/caretakers can only choose providers who are either self-arranged, licensed exempt or who can be matched to existing information in the Site Referral function of the DCIS II Child Care Sub system. If the provider selected has a contract with DSS, this provider will be listed in the DCIS II under the Site Referral section. Access these providers through their site ID# or site search. Finally, if parent/caretakers parents/caretakers use a certificate and they select a contracted provider, consider this as contracted care even though the parent/caretaker used a certificate.~~

~~C. When parents/caretakers wish to self-arrange child care, ensure the parent submits the information on the Self-Arranged Provider Agreement and Registration Form. When parents/caretakers wish to arrange certificate child care, ensure the parent submits the information on the Child Care Certificate Provider Agreement and Registration Form. Send the appropriate form to the Child Care Monitor for CCMIS processing. The monitor will notify the Case Manager when the information is data entered.~~

~~D. When the monitor notifies the Case Manager that data has been entered in CCMIS, enter effective and expiration dates on the authorization. Effective dates will always start when service is due to begin. In most cases, service will begin either the same day the authorization is completed or on a date in the near future. However, there may be occasions when service will begin prior to the actual date of the child care interview.~~

~~EXAMPLE 1: The TANF parent who self-initiates a Food Stamp Employment & Training (FS E& T) training or~~

~~education component. In this case, make the authorization effective as of the date the parent started the component activity if the parent needed child care for the activity and was financially eligible.~~

~~EXAMPLE 2: When a Child Care Case Manager receives a protective referral from Family Services after child care services have already started.~~

~~The ending date for the authorization period means the last day for which Case Managers can authorize care. The authorization period can not exceed the recertification date. This is for all categories of care.~~

~~As noted above, the ending date will always be the last day of the month of the authorization period.~~

~~E. Ensure that service is authorized only for the days and hours that parent/caretakers parents/caretakers actually need care. Therefore, only enter the following on the DCIS II Child Care Authorization Detail screens.~~

~~1. the appropriate number of days per week that parent/caretakers parents/caretakers will need care, for example 1, 2, 3, 4, or 5 days;~~

~~2. the appropriate type of care needed, half day (P), full day (X), day and a half (T), or two full days (D) (supervisory approval is necessary for T and D care);~~

~~3. whether absent days are paid (absent days correspond to the number of authorized days, however, when care is self arranged, DSS pays only for the days the child attends care). If a client is authorized for 7 days s/ he does not receive paid absent days;~~

~~4. whether extended care is authorized; and~~

~~5. whether school care is authorized.~~

~~F. The remaining fields (Category, Waive Fee Reason, Family Size, and Family Income) of the authorization screen are system completed, depending upon the information previously entered. Press the appropriate key to post the authorization in the system. Click the 'save' button. Complete separate authorizations if there are more children who need care.~~

All child care services must be authorized before parents/caretakers can receive subsidized child care. Parents/caretakers can choose any provider who is either licensed, licensed exempt or self arranged. No parent/caretaker can receive POC funds to provide child care services to their own children in a home or any other child care facility where the parent/caretaker provides direct care to that child. These parents may be able to get **[another type of child care [assistance if their children are placed in another child care setting].**

Authorizations always start after service has been approved. The exact date is selected by the parent/caretaker. An authorization ends on the last day of the month of the authorization period. At no time can the authorization period exceed the review date. Child care may be authorized only for the days and hours that parents/caretakers need care. The types of care that can be authorized are part time (P), full day (X), day and a half (T) and double time (D) which is two days. All licensed and licensed exempt child care providers can receive up to five (5) absent days, depending on the number of days the child is authorized to attend. Children in self arranged care and children authorized for seven (7) days do not receive absent days.

DIVISION OF SOCIAL SERVICES

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

ORDER

Child Care Subsidy Program

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to the Child Care Subsidy Program regarding *Overpayments*. The Department's proceedings 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 public comment pursuant to 29 **Delaware Code** Section 10115 in the July 20 10 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2010 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGES

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

Statutory Authority

45 CFR §98.11, *Administration under contracts and agreements*

Summary of Proposed Changes

DSSM 11005.4, 11005.4.1, 11005.4.2 and 11005.4.3 [Reserved], *Child Care Overpayments*: The purpose of this rule change is to clarify current policy guidelines regarding overpayments and to remove the examples. The original text is also reformatted to simplify language and improve readability.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The Governor's Advisory Council for Exceptional Citizens (GAC EC) and the State Council for Persons with Disabilities (SCPD) offered the following observation and recommendation summarized below. DSS has considered each comment and responds as follows.

First, the introduction, last sentence, reads as follows: "Each in the adult child care household is liable for repayment of the overpayment." There is ostensibly a word missing from the sentence. Alternatively, perhaps the sentence was intended to read as follows: "Each adult in the child care household is liable for overpayment." Apart from the wording, we have multiple substantive concerns with the concept embodied in the sentence.

Agency Response: DSS thanks you for your recommendation and will revise the sentence to read as follows: "*Each adult in the child care household is liable for the overpayment.*"

A. There is no definition of "child care household". There are references to "a family" [§§ 11003.6, 11003.7.2, and 11003.9]. In particular, §11003.9.3 recites as follows:

The people whose needs and income are considered together comprise the definition of family size. Family size is the basis upon which DSS looks at income to determine a family's financial eligibility and the child care parent fee.

Imposing liability on everyone in an undefined "household" will predictably result in confusion and fair hearings.

Agency Response: The Division thanks you for your response however, the definition of "family size and child care household," are synonymous. The same people in the "family," and the child care household, are defined as the people whose needs and income comprise the definition of family size. Therefore, these same people along with their income make up the "child care household."

B. Section 11003.9.4 identifies minor parents as separate eligibility units under the program "even if they live with their legal guardian or parents". There is some "tension" between the regulatory establishment of a separate eligibility unit for minor parents and the recital that "each in the ...household is liable for overpayment. The co-habiting legal guardian or grandparent of children served in the program should not be liable for overpayments. Moreover, the legal basis for imposing liability of other non-applicant co-habiting persons is also questionable.

Agency Response: DSS thanks you for your response. DSS does not permit dependent minors to apply for benefits on their own. The responsible adult(s) in the home must sign any application. As such, they take responsibility for any overpayments that occur subsequent to that application.

C. There is a lack of due process if everyone in a "household" is liable for an overpayment while notice

and opportunity for hearing is only offered to the parent/caretaker under §11005.4.2.

Agency Response: The household issue is addressed in the responses above. In the case of a responsible adult signing the application for a minor parent the notice and opportunity for hearing is sent to that adult. The notifications are not sent to the minor.

Second, in the last paragraph in the regulation, the term “over payments” should be “overpayments”.

Agency Response: DSS has reviewed your comments and agrees with your recommendation. The term, “over payments,” will be changed to “overpayments.”

Third, DSS is eliminating all examples from the regulation. We encourage the Division to reconsider the value of retaining the examples. Much of the State workforce is aging and retiring. New DSS employees would benefit from the examples which provide easily-understood guidance reflecting long-term practice.

Agency Response: The examples were removed from the policy because with the policy rewritten for clarification, there is no need for them. Over time the examples become inaccurate and misleading. The DSS has plans to provide a compilation of examples for staff use outside of the policy manual.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the July 2010 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Child Care Subsidy Program policies regarding *Child Care Overpayments* is adopted and shall be final effective September 10, 2010.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATION #10-38 REVISIONS:

11005.4 Child Care Overpayments

45 CFR 98.11

~~A child care overpayment occurs when DSS pays providers for more child care service than parents/caretakers are eligible to receive. The overpayment may result because of agency or parent/caretaker error.~~

~~EXAMPLE 1: A Case Manager incorrectly enters parent income information resulting in a lower parent fee. After several months, the Case Manager realizes the mistake. Because DSS has already made payment to the provider, the Case Manager must process this change as an overpayment.~~

~~EXAMPLE 2: A parent reports income of \$500.00 for a family size of three. However, after several months, the Case Manager discovers income actually was \$750.00. The lower income resulted in the parent paying a smaller fee than the parent should have paid. Because DSS has already made payment to the provider, the Case Manager must process this change as an overpayment.~~

~~The CCMIS will not process changes to an authorization for a prior period of time through the Correct Transactions function when the result is negative. A negative change means parents/caretakers receive less service because of a change in circumstances; for example, the change results in the parent paying a higher fee. In these situations, process an overpayment, using the child care overpayment notice and complete a Change Authorization to correct the error for future authorizations.~~

~~DSS is to attempt recovery in all cases of suspected fraud, in all cases involving current recipients, and in all cases where the overpayment amount would equal or exceed the costs of recovery.~~

41005.4.1 Determine the Overpayment Amount

Determine the amount of the overpayment by:

- A. subtracting the difference between what DSS paid the provider versus what DSS should have paid, or
- B. subtracting the difference between the fee the parent paid and the fee the parent should have paid.

EXAMPLE: A child over age two in a center is paid \$13.00/day or \$299.00 (\$13.00 x 23 days) for a full month of child care. The parent paid no fee; DSS paid the full fee. However, the parent should have paid a fee amounting to \$1.00/day. DSS should have paid \$12.00/day if the parent paid \$1.00/day fee, or \$276.00 monthly.

\$299.00 DSS paid
 276.00 DSS should have paid
 23.00 Overpayment

If this overpayment continued for six months, the total overpayment is \$138.00. The Case Manager must complete an overpayment notice, noting the amount of the overpayment and the child care category under which the child received service.

DCIS provides case managers with access to the Claims Management function of the CCMIS to assist in determining the overpayment amount. Access is limited to child transactions and is inquiry only. The Claims Management function provides access to the actual provider payment.

41005.4.2 Overpayment Notices

Once the overpayment amount is determined, complete an overpayment notice in detail. Submit the notice to the supervisor who will check it for accuracy.

Send the original notice to the parent/caretaker and, after waiting 10 days, send a copy to the Audit and Recovery Unit. Audit and Recovery are responsible for establishing repayment agreements with parents/caretakers and for collecting and tracking payments on overpayment debts.

To provide parent/caretakers who disagree with the overpayment amount the opportunity to request a fair hearing, wait 10 days before sending the copy of the overpayment notice to Audit and Recovery. This allows parents/caretakers with an opportunity to contact case managers to possibly resolve the matter before intervention by Audit and Recovery.

41005.4.3 Role of Audit and Recovery

Collection of the overpayment by Audit and Recovery follows current policy as noted in DSSM 7000. Note that DSS can only recoup child care payments from child care benefits. Any attempt to recover child care overpayments from AFDC benefits can only occur if there is a voluntary request from the recipient family. The recipient family can only make such a voluntary request if the child care they were receiving was Food Stamp Employment & Training (FS E&T) AFDC Child Care, At Risk, or Transitional Child Care.

In addition to establishing repayment agreements and overseeing the collection of overpayments, Audit and Recovery also investigate overpayments for suspicion of fraud. Case managers will not make fraud determinations, but in cases where they suspect fraud, they should notify Audit and Recovery of their suspicions.

The Provider Administrator, along with Child Care Monitors, will continue to assume responsibility for situations involving provider overpayments.

A child care overpayment occurs when DSS pays for more child care service than parents/caretakers are eligible to

receive. Overpayments may be the result of an agency, provider or parent/caretaker action.

DHSS will attempt recovery in all cases of suspected fraud, in all cases involving current recipients, and in all cases where the overpayment amount would equal or exceed the costs of recovery. Each [adult] in the [adult] child care household is liable for repayment of the overpayment. [In instances where a legal guardian or parent is required to sign the child care application, the legal guardian(s) or the parent(s) in the home is responsible for the overpayment even though the parent(s) or guardian(s) is not technically part of the child care household.]

11005.4.1 Determining the Overpayment Amount

To determine the amount of the overpayment subtract the amount that the parent should have paid the provider from the DSS calculated parent fee. The difference is the overpayment amount.

11005.4.2 Overpayment Notices

Notify parents/caretakers in writing of any overpayment. The overpayment notice will contain:

1. a statement of the client's right to a fair hearing as provided in DSSM 5300
2. the method by which s/he may request a fair hearing
3. what to do to continue receiving your benefits after requesting a fair hearing
4. a statement that s/he may represent him/herself or that s/he may be represented by counsel or by another person
5. the reason for the overpayment
6. the amount of the overpayment
7. the overpayment time period
8. the name of the child/ren associated with the overpayment.

DSS can only recoup child care ~~over payments~~ overpayments] from child care benefits. Any attempt to recover child care overpayments from TANF benefits can only occur if there is a voluntary request from the recipient family. Audit and Recovery Management Services (ARMS) is the agency responsible for establishing repayment agreements and the collection of overpayments.

11005.4.3 RESERVED

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 903(e)(1)(c); 903(f)

(7 Del.C. §§903(e)(1)(c); §903(f))

7 DE Admin. Code 3541

Secretary's Order No.: 2010-F-0025

7 DE Admin. Code 3541 Atlantic Sharks

Date of Issuance: August 16, 2010

Effective Date of the Amendment: September 11, 2010

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers proposed regulations to amend 7 DE Admin. Code 3541, *Atlantic Sharks*. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2010-15. The Department published its initial proposed regulation Amendments in the May 1, 2010 *Delaware Register of Regulations*, and held a public hearing on June 21, 2010. The public hearing record remained open at that time for public comment through June 30, 2010. It should be noted that no members of the public were in attendance at the hearing held on June 21, 2010, nor was any public comment received by the Department at any time concerning this proposed promulgation.

The Department is proposing to amend Tidal Finfish Regulation 3541 concerning Atlantic Sharks in order to bring Delaware into compliance with the Atlantic States Marine Fisheries Commission's ("ASMFC") Interstate Fishery Management Plan ("IFMP") for Atlantic Coastal Sharks. The IFMP for Atlantic Coastal Sharks specifies which gears that fishermen are authorized to use in state waters on the Atlantic Coast. The gears that are authorized by ASMFC are hook and line, gill net, trawl net, short-line, pound net and weir. Presently, Delaware allows the use of hook and line, troll line, dip net, lift net, push net, cast net, spear or harpoon, haul seine, bag net, hoop net, fyke net, fish pot, and gill net for use in state waters to harvest food-fish, which includes sharks. To meet the requirements of the IFMP, Delaware must restrict the commercial gears that may be used for the harvesting of Atlantic coastal sharks to hook and line, and gill net. Recreational fishermen are restricted to the use of rod and reel and hand line. Fishermen with a federal shark permit who are fishing outside of state waters are not restricted to these gear types and may land sharks using any gear that is in accordance with the rules and regulations established by NOAA Fisheries.

Additionally, the IFMP for Atlantic Coastal Sharks specifies that a federal Commercial Shark Dealer Permit is required to buy and sell any shark caught in state waters. At the present time, the State of Delaware does not require seafood dealers to have this permit to buy and sell shark caught in state waters. Again, these modifications to the existing shark regulations would bring Delaware into full compliance with the IFMP for Atlantic Coastal Sharks.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated August 6, 2010 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these Amendments. With the adoption of this Order, Delaware will (1) allow Delaware to remain in compliance with the ASMFC Plan for Coastal Sharks, as well as the latest addendum to the IFMP for Coastal Shark; and (2) prevent total closure of these fisheries in Delaware by order of the Secretary of Commerce due to lack of compliance with federal regulations concerning this species.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at the public hearing held on June 21, 2010;
- 3.) The Department held a public hearing on June 21, 2010 in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) remain in compliance with the aforementioned Fishery Management Plan for this species, as implemented by the ASMFC; (2) prevent total closure of these fisheries in Delaware by order of the Secretary of Commerce due to lack of compliance with federal regulations concerning this species; and, lastly,

because (3) the amendments are well supported by documents in the record;

6.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

3541 Atlantic Sharks

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

1.0 Definitions:

"Fillet" shall mean to remove slices of fish flesh, of irregular size and shape, from the carcass by cuts made parallel to the backbone.

"Land or Landing" shall mean to put or cause to go on shore from a vessel.

"Management Unit" shall mean any of the non-sandbar large coastal species, small coastal species, pelagic species and prohibited species of sharks or parts thereof defined in this regulation. Smooth dogfish (*Mustelus canus*), although they are a species of shark, are not presently part of the management unit as defined above, and are not subject to minimum size or daily harvest restrictions. They are subject to the provisions of Regulation 3541, Sections 3.0 and 4.0.

"Non-Sandbar Large Coastal Species" shall mean any of the following species of sharks or parts thereof:

Great hammerhead, *Sphyrna mokarran*
Scalloped hammerhead, *Sphyrna lewini*
Smooth hammerhead, *Sphyrna zygaena*
Nurse shark, *Ginglymostoma cirratum*
Blacktip shark, *Carcharhinus limbatus*
Bull shark, *Carcharhinus leucas*
Lemon shark, *Neqapriion brevirostris*
Silky shark, *Carcharhinus falciformis*
Spinner shark, *Carcharhinus brevipinna*
Tiger shark, *Galeocerdo cuvieri*

"Pelagic Species" shall mean any of the following species of sharks or parts thereof:

Porbeagle shark, *Lamna nasus*
Shortfin mako, *Isurus oxyrinchus*
Blue shark, *Prionace glauca*
Oceanic whitetip shark, *Carcharhinus longimanus*
Thresher shark, *Alopias vulpinus*

"Prohibited Species" shall mean any of the following species of sharks or parts thereof:

Basking shark, *Cetorhinidae maximus*
White shark, *Carcharodon carcharias*
Bigeye sand tiger, *Odontaspis noronhai*
Sand tiger, *Odontaspis taurus*
Whale shark, *Rhincodon typus*
Bignose shark, *Carcharhinus altimus*
Caribbean reef shark, *Carcharhinus perezi*
Dusky shark, *Carcharhinus obscurus*
Galapagos shark, *Carcharhinus galapagensis*
Narrowtooth shark, *Carcharhinus brachyurus*
Night shark, *Carcharhinus signatus*

Atlantic angel shark, *Squatina dumerili*
 Caribbean sharpnose shark, *Rhizoprionodon porosus*
 Smalltail shark, *Carcharhinus porosus*
 Bigeye sixgill shark, *Hexanchus vitulus*
 Sevengill shark, *Heptranchias perlo*
 Sixgill shark, *Hexanchus griseus*
 Longfin mako, *Isurus paucus*
 Bigeye thresher, *Alopias superciliosus*

"**Sandbar shark**" shall mean *Carcharhinus plumbeus*

"**Shore fishing**" shall mean any fishing that does not take place on board a vessel. The terms "shore fishing" and "shore angler" are synonymous.

"**Small Coastal Species**" shall mean any of the following species of sharks or parts thereof:

Bonnethead, *Sphyrna tiburo*
 Atlantic sharpnose shark, *Rhizoprionodon terraenovae*
 Blacknose shark, *Carcharhinus acronotus*
 Finetooth shark, *Carcharhinus isodon*

3 DE Reg. 1088 (02/01/00)

12 DE Reg. 1517 (06/01/09)

2.0 It shall be unlawful for any person to land, purchase, trade, barter, or possess or attempt to land, purchase, trade, barter, or possess a prohibited species.

3.0 It shall be unlawful for any person to possess the fins from any shark in the management unit prior to landing said shark unless said fins are naturally attached to the body of said shark.

4.0 It shall be unlawful for any person to fish for any shark while in state waters with any fishing equipment or by any method, except: (1) Hook and Line; (2) Gill Net.

4.0 It shall be unlawful for any person to fillet a shark in the management unit prior to landing said shark. A shark may be eviscerated prior to landing said shark, but the head, tail, and fins must remain naturally attached to the carcass, except that commercial fishermen may eviscerate and remove the head of any shark reduced to possession, but the tail and fins must remain attached to the carcass.

12 DE Reg. 1517 (06/01/09)

56.0 It shall be unlawful to release any shark in the management unit in a manner that will not ensure said sharks maximum probability of survival.

67.0 It shall be unlawful for the operator of any vessel without a commercial food fishing license to have on board said vessel more than one non-prohibited shark per trip from among those species in the management unit, regardless of the number of people on board the vessel. In addition each recreational angler fishing from a vessel may harvest and possess one bonnethead, and one Atlantic sharpnose shark per trip.

7.1 It shall be unlawful for any shark caught in state waters to be bought and sold without a federal Commercial Shark Dealer Permit.

1 DE Reg. 345 (10/1/97)

3 DE Reg. 1088 (2/1/00)

8 DE Reg. 1718 (6/1/05)

12 DE Reg. 1517 (06/01/09)

78.0 It shall be unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any non-prohibited shark from among those species in the management unit during the remainder of any period after the effective date a commercial quota for that group of sharks has been reached in said period or is projected to be reached in said period by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration and the U.S. Department of Commerce. Further, it shall be unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any non-sandbar large coastal sharks, small coastal sharks, or pelagic sharks in excess of current federal daily harvest limits administered by the National Marine Fisheries Service.

12 DE Reg. 1517 (06/01/09)

89.0 It shall be unlawful for any person to engage in a directed commercial fishery for a prohibited species.

910.0 It shall be unlawful for the operator of any vessel without a commercial foodfishing license to have on board said vessel any non-prohibited shark from among those species in the management unit that measures less than 54 inches, fork length (tip of snout to indentation between dorsal and ventral tail lobes), with the exception of Atlantic sharpnose, blacknose, finetooth, bonnethead, and smooth dogfish sharks, for which no minimum size limit applies.

3 DE Reg. 1088 (2/1/00)

1 DE Reg. 850 (1/1/98)

1 DE Reg. 1005 (2/1/98)

12 DE Reg. 1517 (06/01/09)

4011.0 It shall be unlawful for any shore angler without a commercial foodfishing license to take and reduce to possession any non-prohibited shark from among those species in the management unit less than 54 inches, with the exception of Atlantic sharpnose, blacknose, finetooth, bonnethead, and smooth dogfish sharks, for which no size limit applies.

12 DE Reg. 1517 (06/01/09)

4412.0 It shall be unlawful for any shore angler without a commercial foodfishing license to take and reduce to possession more than one non-prohibited shark from among those species in the management unit per day (a day being 24 hours). Recreational shore anglers may also harvest one additional bonnethead, and one additional Atlantic sharpnose shark per day.

8 DE Reg. 1718 (6/1/05)

12 DE Reg. 1517 (06/01/09)

4213.0 It shall be unlawful for any recreational or commercial fisherman to possess silky, tiger, blacktip, spinner, bull, lemon, nurse, scalloped hammerhead, great hammerhead, and smooth hammerhead sharks from May 15 through July 15, regardless of where the shark was caught. Fishermen who catch any of these species in federal waters may not transport them through Delaware state waters during the aforementioned closed season.

12 DE Reg. 1517 (06/01/09)

4314.0 It shall be unlawful for any recreational or commercial fisherman to land or possess any sandbar sharks, except for a commercial fisherman in possession of a valid sandbar shark research permit issued by the National Marine Fisheries Service. There must be a qualified observer aboard any vessel that lands and possesses sandbar sharks fishing under the auspices of a valid federal research permit.

12 DE Reg. 1517 (06/01/09)

4415.0 It shall be unlawful for any Delaware recreational or commercial fisherman to land or possess any species of shark in state waters that is illegal to catch or land or possess in federal waters. Presently it is unlawful for recreational fishermen to take and possess silky sharks in federal waters at any time of the year.

12 DE Reg. 1517 (06/01/09)

4516.0 The Department may grant anyone permission to take and possess sharks that would otherwise be illegal to take and possess when used for display and/or research purposes. Applicants will need a current State of Delaware scientific collecting permit. Applicants must annually report the number, weight, species, location caught, and gear used for each shark collected for research or display purposes, and the annual disposition of said sharks throughout the life of each shark so taken. The Division reserves the right to place limits on or deny any request to take prohibited species of sharks under the auspices of a scientific collecting permit.

8 DE Reg. 1718 (06/01/05)

12 DE Reg. 1517 (06/01/09)

DEPARTMENT OF TRANSPORTATION

DIVISION OF PLANNING

Statutory Authority: 17 Delaware Code, Sections 132, 137 and 149; 29 Delaware Code, Section 8404 (17 Del.C. §§132, 137 & 149 29 Del.C. §8404)
2 DE Admin. Code 2311

ORDER

2311 Long-Term Lease Policies and Practices

Background

The Delaware Department of Transportation (DelDOT), through its Division of Planning, proposed to adopt regulations to manage its real estate leasing practices and policies.

On occasion, circumstances involving parcels of land under DelDOT's control may present an appropriate opportunity for leasing, as a means of managing the Department's property assets until they are either needed for implementation of the State's transportation program, or are determined to be no longer necessary for such purposes, and made available for disposition under the provisions of 17 Del.C. Section 137.

Public Comment Period

The Department took written comments on the proposed changes to its regulations regarding leasing policies and practices from July 1, 2010 through July 31, 2010. The proposed regulations were published in the *Delaware Register* in the July 2010 issue, Volume 14, on page 21.

Summary of the Evidence and Information Submitted

Four comments were received, for which the comments and the Department's responses are set forth below:

1. When someone leases DelDOT property and is going to develop it, it should be a part of the lease, that the Lessee be the responsible party for any and all maintenance of storm water structures that may be required. It would appear DelDOT could be further burden to provide yearly maintenance inspections, review site plans, and general responsibility should the Lessee default on the lease.

Response: It generally would only be under a long term lease that anyone would develop our property to the point a storm water management pond would be required. In the future we would not lease the property to anyone who would be using our land solely for the placement of a storm water pond on our property rather than their own, or allow any structures to be placed on our leased land that could result in DelDOT becoming responsible for the maintenance and repair of such structure.

2. When the new Policy mentions using a licensed appraiser, can a DelDOT staff member be that licensed appraiser?

Response: No. While DeIDOT has qualified staff members who could determine the rental values, it was felt that an independent valuation would be the best way to go.

3. When there is a potential economic development opportunity, how will the reduced value rent be determined?

Response: The Leasee would advise DeIDOT and DEDO of the rental they would be willing to pay and DEDO will determine the merit of the rent reduction based on the factors it determines warrants a rental reduction.

4. The Department cannot accept less than 85% of the approved market value rent and all bids shall begin at that rent. The FHWA has responded that this would be contrary to federal law that states if lands acquired using title 23 funds, DeIDOT must receive market value for the property.

Response: The 85% rental acceptance should be removed in favor of developing a fair market value rental range. On matters pertaining to social, environmental or economic rent reduction DeIDOT must clearly show that an exemption is in the overall public interest for social, environmental or economic purposes; nonproprietary governmental use or uses under 23 U.S.C.142 (f) Public Transportation. Our Real estate manual will reflect the criteria for evaluating leasing at less than fair market value. The Department also suggests changing the text of the proposed regulation to note that the FHWA will accept a fair market lease range. In addition, if the Department receives a bid for less than fair market value for a property originally obtained with Federal aid, then it will request permission from the FHWA to lease the property at less than fair market value.

Findings of Fact

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

1. The proposed amendments to the Department's regulations, to provide for rules regarding its property leasing policies and procedures, are useful and proper, and should be adopted as originally proposed during the comment period process required under the Administrative Procedures Act, except as described in the response to comment 4 above, and as shown in bold text in the adopted regulation text below.

2. The adoption of these proposed regulations 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 Leasing Policies and Practices regulations, as set forth in the version attached hereto, to be effective on September 21, 2010.

IT IS SO ORDERED this 18th day of August, 2010.

Carolann Wicks, Secretary, Delaware Department of Transportation

2311 Long-Term Lease Policies and Practices

1.0 Long-Term Leases

Any future lease of [DeIDOT Department]-owned property for a term of five (5) years or more inclusive of any renewal option shall be deemed a "long-term lease", and DeIDOT shall follow the regulation below to determine the value of the leasehold interest. This regulation shall not apply to any leaseback transactions; i.e. any lease by and between DeIDOT and the owner /tenant in legal occupancy on the date the property was originally acquired by DeIDOT.

2.0 Competitive Sealed Bid Process

Unless DeIDOT seeks to proceed under 3.0 below, DeIDOT will provide an opportunity for parties to publicly bid on the lease of the property through a competitive sealed bid process. DeIDOT shall retain the right to reject all bids. Notice of the proposed leasing will be advertised at least twenty (20) days prior to bid opening in a newspaper of general circulation in the county in which the parcel is located. Conspicuous notice shall also be displayed on the property in question at least 20 days prior to bid opening. The second notice will be published approximately ten (10) days prior to bid opening in a newspaper of general circulation in the county in which the parcel is located. [DeIDOT Department]

shall offer the property for lease [beginning] at not less than [85 percent of] the [lowest] approved market value [rent range] established by a licensed [fee] appraiser.

3.0 Economic and Civic/Benevolent Purpose Consideration.

- 3.1 In the event DeIDOT should be asked by a party or otherwise consider entering into a long-term lease for economic development consideration or civic/benevolent purposes, DeIDOT will first determine market value erent through a licensed ap praiser. For pu rposes of this r egulation, an economic development or civic/benevolent purpose proposal is defined as changes to material conditions under the lease that result in less direct monetary value to DeIDOT in exchange for the development of jobs, economic growth and/or the furtherance of a ci vic/benevolent purpose. The purpose of this value determination is to allow for a fair, thorough and transparent consideration of the proposed incentive or grant being considered.
- 3.2 In cases where the request involves a potential economic development opportunity, DeIDOT, after making the value determination referenced above, shall refer the matter to the Delaware Economic Development Office ("DEDO") for its determination of whether the economic development benefits justify the value of the reduced lease. To the extent DEDO recommends moving forward with the lease transaction, DEDO and DeIDOT shall first present such proposal to the Council on Development Finance ("CDF") for CDF review and approval, following the required notice provisions for CDF proceedings. In addition, DeIDOT shall provide conspicuous notice on the property in question at least 20 day prior to the CDF meeting where the proposal is considered. If approved by the CDF, DeIDOT may enter into the lease agreement on the condition that the nature of the lease, terms of rent and other material conditions are consistent with the recommendations of DEDO and approval of CDF. DeIDOT will continue to manage the properties during the lease term.
- 3.3 In the cases where the request involves a potential civic or other benevolent purpose, DeIDOT shall hold a public meeting in the general vicinity of property in question. The notice shall clearly state the proposed lessee, the proposed lease term, the estimated value of the reduced lease terms and such notice will be advertised at least twenty (20) days prior to the hearing in a newspaper of general circulation in the county in which the parcel is located. Conspicuous notice shall also be displayed on the property in question at least 20 days prior to bid opening. A second notice will be published approximately ten (10) days prior to bid opening in a newspaper of general circulation in the county in which the parcel is located. In addition, DeIDOT shall notify in writing and seek input from the elected State Representative and Senator of the district where the property is located. Upon conclusion of the hearing and a period of 10 days for additional written comments, the Secretary will determine whether or not DeIDOT will lease the property as proposed.

4.0 General Policies Governing Long-Term Leases of DeIDOT Owned Property

- 4.1 Form leases shall be prepared by in-house legal counsel.
- 4.2 All long-term leases or modifications thereof shall require the review of in-house legal counsel and the signature of the Secretary or the Secretary's designee.
- [4.3 If Federal aid was used to acquire the property suggested for lease, DeIDOT will request permission from the FHWA to lease the property at less than fair market rental value, if no bids are received in any higher amount.]**

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

**EXECUTIVE ORDER
NUMBER TWENTY**

RE: IN OBSERVANCE OF WAR HERO AND DELAWARE FARMER ROBERT 'BOB' MINNER, JR.

WHEREAS, Bob Minner has remained dedicated to Delaware agriculture since he started farming near Houston, Delaware with his father in the 1950s until the advent of the Vietnam War; and

WHEREAS, following the Vietnam War, Bob Minner chose to return to his Delaware roots and to the present day, Bob Minner continuously farmed more than 400 acres where he produced First Rate From the First State; and

WHEREAS, because quality farmland is essential to the productivity and sustainability of Delaware agriculture, Bob Minner and his family are actively engaged in permanently preserving their farmland as a legacy for future generations; and

WHEREAS, in 1970, Bob Minner entered into a more than 40-year direct store delivery relationship with Acme Markets in the region through which he helped establish a clear connection between the agriculture community of Delaware and the food Delawareans put on their tables by providing a large volume of produce from his own fields, such as watermelons, cantaloupes, squash, pumpkins and gourds, to the markets; and

WHEREAS, over the course of these 40 years, Bob Minner helped his fellow Delaware farmers by purchasing produce from them, \$75,000-80,000 annually, for direct store delivery to Acme Markets; and

WHEREAS, the success of the great heritage of Delaware agriculture through the years depended on men and women with Bob Minner's knowledge and education.

Now, Therefore, We, Jack A. Markell, Governor, and Matthew Denn, Lieutenant Governor, do hereby declare August 12, 2010 Bob Minner Day in the State of Delaware and urge all Delawareans to follow his example of courage, dedication and hard work.

**Jack A. Markell,
Governor**

CALENDAR OF EVENTS/HEARING NOTICES

DELAWARE RIVER BASIN COMMISSION

PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing and business meeting on Wednesday, September 15, 2010 beginning at 10:30 a.m. The meeting will be held at the West Trenton Volunteer Fire Company, West Upper Ferry Road, West Trenton, NJ. For more information, visit the DRBC web site at www.drbc.net or contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609 883-9500 extension 203.

DEPARTMENT OF AGRICULTURE

HARNESS RACING COMMISSION

501 Harness Racing Rules and Regulations

PUBLIC NOTICE

The Delaware Harness Racing Commission, pursuant to 3 Del.C. §10 005, proposes to change its Rule 7.6.6.7.7. The Commission will hold a public hearing on the proposed rule changes on **October 12, 2010. Please note this date has been changed from the previous posting of August 10, 2010.**

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 September 1, 2010.

The proposed changes are for the purpose of updating the Rules and to more accurately 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, August 20, 2010 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

School-Based Wellness Center Clinic Services

PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) with 42 CFR §447.205, 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 amending the Title XIX Medicaid State Plan to update the reimbursement methodology for *School-Based Wellness Center Clinic Services*.

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) 255-4454 by September 30, 2010.

DEPARTMENT OF INSURANCE**908 Freedom of Information Requests
PUBLIC NOTICE**

INSURANCE COMMISSIONER KAREN WELD IN STEWART, CIR-ML hereby gives notice of intent to adopt Department of Insurance Regulation 908 relating to requests from the public for information under the *Freedom of Information Act*. The docket number for this proposed amendment is 1379.

The purpose of the proposed Regulation 908 is to establish procedures for providing information requested by the public and guaranteeing that information that is provided can be provided and, if so, is provided in a timely fashion. The text of the proposed regulation is reproduced in the September 2010 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:00 p.m., Monday October 4, 2010, and should be addressed to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL****DIVISION OF AIR AND WASTE MANAGEMENT****1138 Emission Standards for Hazardous Air Pollutants for Source Categories
REGISTER NOTICE**

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

On December 2, 2009, the EPA promulgated another of these area source category standards that will affect existing and future Delaware sources, the area source standard for asphalt processing and asphalt roofing products manufacturing operations under 40 CFR Part 63 Subpart AAAAAAA.

Delaware is proposing to amend Regulation 1138 by adding a new Section 16 that covers asphalt processing and asphalt roofing products manufacturing operations. The purpose of this proposed amendment is to provide increased protection for Delaware citizens against a variety of potential adverse health effects linked to a long term exposure to polycyclic aromatic hydrocarbons, PAHs. Lung cancer is the primary concern. Seven of the PAHs have been classified as Group B2, probable human carcinogens by EPA. The proposed amendment will provide greater consistency between Delaware's air toxics standards for the set types of operations and the recently promulgated federal standard (40 CFR Part 63 Subpart AAAAAAA) on which this proposed amendment is heavily based. In addition, this amendment proposes to include a more health protective requirement that currently exists in similar area source air toxics standards found in Regulation 1138 and other Delaware air regulations.

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Wednesday, September 22, 2010 beginning at 6:00 PM in the DNREC's Grantham Lane Conference Room, 715 Grantham Lane, New Castle, DE. Interested parties may submit comments in writing to: Jim Sneed, DNREC Division of Air Quality, 715 Grantham Lane, New Castle, DE 19720.

DEPARTMENT OF STATE
DIVISION OF HISTORICAL AND CULTURAL AFFAIRS
100 Historic Preservation Tax Credit Program
PUBLIC NOTICE

The Historic Preservation Tax Credit Act (30 **Del.C.** Ch. 18, Subch. II) was first enacted by the General Assembly in 2001 and was amended in 2002, 2003, 2004, and 2005. Program regulations were adopted on July 11, 2002 (6 **DE Reg.** 108 published 07/01/02), and were amended on July 11, 2004 (8 **DE Reg.** 194 published on 07/01/04) and on January 11, 2005 (8 **DE Reg.** 1031 published 01/01/05). The 2010 amendments to the legislation provide for a ten-year extension to the Historic Preservation Tax Credit Act, sets aside a portion of the annual cap for projects which will receive a credit award under \$300,000 and provides for the Delaware Department of State to report annually to the Governor and the Legislature. The purpose of the following proposed regulatory amendments is to implement the code changes of 2010 and to clarify various sections of the regulations. The proposed amendments address the changes to the way in which credits are awarded under this program in section 7.6, and address the new reporting requirements in §10.0. As to the clarification of the regulations, the proposed amendments modify 31 sections of the regulations (1.0, 3.0, 4.1, 4.2, 4.3, 4.4, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 5.10, 5.11, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 7.0, 7.1, 7.2, 8.2, 8.3, 9.1, 9.3, 9.4), and create nine new sections of the regulations (4.5, 5.4, 5.9, and 7.1- 7.6). The Historic Preservation Tax Credit Act is designed to promote community revitalization and redevelopment through the rehabilitation of historic property by providing tax credits for expenditures made to rehabilitate any certified historic property.

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.**, Ch. 101, the Division of Historical and Cultural Affairs proposes to amend rules and regulations pursuant to its authority under 30 **Del.C.** §1815(b). The Division will receive and consider all written comments on the proposed rules and regulations related to implementation of amendments to the Historic Preservation Tax Credit Act. Submit comments to the Division in care of Timothy A. Slavin, Director, Division of Historical and Cultural Affairs, 21 The Green, Dover, DE 19901. The final date to submit comments is September 30, 2010. Anyone wishing to obtain a copy of the proposed amendments to the rules and regulations should notify Timothy A. Slavin at the above address or call 302-736-7400. This notice will be published in two newspapers of general circulation.

DIVISION OF PROFESSIONAL REGULATION
Gaming Control Board
101 Regulations Governing Bingo
PUBLIC NOTICE

The Delaware Gaming Board will seek public comments on the issue of whether its current Rule 1.0 in 24 **DE Admin. Code** 101 should be amended. The rule relates to the definition of "cookie jar bingo" and to the manner of playing cookie jar bingo games. The Board proposes to change the definition of "Cookie Jar Bingo" as it appears therein, to make it clear that the fee to enter to play a cookie jar bingo game must be separately collected and may not be included in any other fees.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 1 to: Delaware Gaming Control Board, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904. A copy of these regulations is available from the above address or may be viewed at the Division of Professional Regulation business office at the same address.

PUBLIC SERVICE COMMISSION
1008 Regulations Governing Requests Made Pursuant to the Freedom of Information Act
PUBLIC NOTICE

From time to time, the Delaware Public Service Commission (the "Commission") receives requests for documents pursuant to the Freedom of Information Act, 29 **Del.C.** §§10001-10006 ("FOIA"). Section 10003 of FOIA states that it is the responsibility of public bodies to establish rules and procedures regarding access to public

records as well as fees charged for copying such records

The Commission proposes rules and regulations applicable to requests made to the Commission, pursuant to the Freedom of Information Act, 29 **Del.C.** §§10001-10006 ("FOIA"), for public records in the possession of the Commission.

If you wish to obtain written copies of the Order and the Proposed FOIA Rules, please contact the PSC at (302) 736-7500. Copies are \$0.25 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you retrieve them in person). You may also download a copy of the Proposed FOIA Rules from the September 2010 issue of the *Register of Regulations* (see <http://regulations.delaware.gov/>).

The PSC now solicits comments, suggestions, compilations of data, briefs, or other written materials about the Proposed FOIA Rules. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before September 30, 2010. You should file such materials with the PSC at the following address:

Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware, 19904
Attn: Proposed FOIA Rules

If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be filed on a copy-capable CD-Rom disk or sent as an attachment to an Internet e-mail addressed to joseph.handlon@state.de.us.

If no comments or objections are timely received, the Commission may approve the Proposed FOIA Rules as final without further proceedings.

Any individual with a disability desiring to participate in these proceedings or to review the filings should contact the Commission to discuss any auxiliary aids or services needed. The PSC's toll-free telephone number within Delaware is 1-800-282-8574. The PSC may be reached at (302) 736-7500 (including text telephone communications).