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# Delaware Register of Regulations

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Issue Date: September 1, 2007

Volume 11 - Issue 3, Pages 241 - 365

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Bombay Hook National Wildlife Refuge, Smyrna, Delaware

## IN THIS ISSUE:

Regulations:  
Proposed  
Final

Governor:  
Appointments  
General Notices  
Calendar of Events &  
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before August 15, 2007.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

- Governor's Executive Orders
  - Governor's Appointments
  - Agency Hearing and Meeting Notices
  - Other documents considered to be in the public interest.
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## CITATION TO THE DELAWARE REGISTER

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

10 **DE Reg.** 1690 - 1698 (05/01/07)

Refers to Volume 10, pages 1690 - 1698 of the *Delaware Register of Regulations* issued on May 1, 2007.

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

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

ISSUE DATE	CLOSING DATE	CLOSING TIME
October 1	September 17	4:30 p.m.
November 1	October 15	4:30 p.m.
December 1	November 15	4:30 p.m.
January 1	December 17	4:30 p.m.
February 1	January 15	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 EDUCATION

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 385

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

### 385 Permits Substitute Teachers

#### A. Type of Regulatory Action Requested

Repeal

#### B. Synopsis of Subject Matter of Regulation

The Department of Education seeks to repeal Regulation 14 **DE Admin.Code** §385 Permits Substitute Teachers because House Bill No. 250 of the 144<sup>th</sup> General Assembly Epilogue section 345 amends 14 **Del.C.** Chapter 12 by deleting the subchapter related to substitute teachers.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on October 5, 2007 to Dr. Susan Haberstroh, Regulation Review, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Delaware Department of Education.

#### C. Impact Criteria

1. Will the repeal of the regulations help improve student achievement as measured against state achievement standards? The repealed regulation concern certifications for educators, not student achievement.
2. Will the repeal of the regulations help ensure that all students receive an equitable education? The repealed regulation concern certification regulations for educators, not equitable education for students.
3. Will the repeal of the regulations help to ensure that all students' health and safety are adequately protected? The repealed regulation concern certification of educators, not students' health and safety.
4. Will the repeal of the regulations help to ensure that all students' legal rights are respected? The repealed regulation address educator certification, not students' legal rights.

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the regulation remains at in same entity as practice.

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

9. Is there a less burdensome method for addressing the purpose of the repeal of regulations? The repeal of regulation is designed to reduce the burden placed on school districts.

10. What is the cost to the state and to the local school boards of compliance with the repeal of the regulations? There will be no cost to the state or to local school boards resulting from the repeal of the regulation.

~~385 Permits Substitute Teachers~~

~~Effective July 1, 1993~~

~~**1.0 Permits shall be issued according to the following four categories**~~

~~1.1 Class A, A Class A certificate may be issued to an applicant who holds or is eligible to hold a valid Standard Delaware teacher's certificate or such a certificate that has expired. In the case of a certificate that has expired, the applicant for the substitute certificate shall not be required to present refresher courses for issuance of the substitute's certificate.~~

~~1.2 Class B, A Class B certificate may be issued to an applicant with or without a Bachelor's degree who meets at least the requirements for a temporary emergency certificate as set forth in Types of Certificates, Section IV.~~

~~1.3 Class C, A Class C certificate may be issued to an applicant who is not eligible for either Class A or Class B certification but who is recommended to the Secretary of Education by the local district superintendent of a Delaware public school district.~~

~~1.3.1 A student currently enrolled in a four year degree granting institution who desires to serve as a substitute teacher may be employed as a Class C substitute without the formality of submitting a transcript or health certificate. (State Board of Education, November 12, 1970)~~

~~1.4 Class D, A Class D certificate may be issued to an applicant who is eligible for or holds a Class A, B, or C certificate, but who prefers on a given date to perform substitute teaching assignments as a volunteer worker, or at a wage rate to be determined by the Board of Education of the employing school district.~~

~~NOTE: Your attention is called to the fact that there must be local board action to implement this classification. (Class D Substitute, Approved by the State Board of Education, December 16, 1971 in compliance with 14 Del.C. §1230).~~

**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 804

**Educational Impact Analysis Pursuant to 14 Del.C. Section 122(d)****804 Immunizations****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

**B. Synopsis of Subject Matter of the Regulation**

The Secretary of Education seeks to amend 14 DE Admin. Code 804 Immunizations in order to correct an error with the effective date for the requirement of two doses of the varicella vaccine for new school enterers. The current date in the regulation "Beginning in the 2007-2008 school year" does not give districts and schools adequate notice to parents. The amendment reflects the change of the effective date to the 2008-2009 school year.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 5, 2007 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 does not address effect student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? This regulation does not address students receiving an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation does address student health and this regulation continues to ensure students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation does not address student legal rights

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation does not effect the authority or flexibility of decision making at the local board or school level.

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? This regulation addresses immunizations and the authority and accountability is not affected.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? No, there is not a less burdensome method of addressing immunizations of students and this amendment does not change this.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are not costs to the State or local school board for compliance to this regulation.

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**804 Immunizations****1.0 Definition**

"**School Enterer**" means any child between birth and twenty (20) years inclusive entering or being admitted to a Delaware school district for the first time, including but not limited to, foreign exchange students, immigrants, students from other states and territories and children entering from nonpublic schools.

**10 DE Reg. 1807 (06/01/07)**

**2.0 Minimum Immunizations Required for All School Enterers**

2.1 All School Enterers shall have immunizations given up to four days prior to the minimum interval or age and shall include:

2.1.1 Four or more doses of diphtheria, tetanus, pertussis (DTaP, DTP, or other approved vaccine) or a combination of these vaccines. A booster dose of Td or Tdap (adult) is recommended by the Division of Public Health for all students at age 11 or five years after the last DTaP, DTP or DT dose was administered whichever is later. Notwithstanding this requirement:

2.1.1.1 A child who received a fourth dose prior to his or her fourth birthday shall have a fifth dose;

2.1.1.2 A child who received the first dose of Td (adult) at or after age seven may meet this requirement with only three doses of Td or Tdap (adult).

2.1.2 Three or more doses of inactivated polio virus (IPV), oral polio vaccine (OPV), or a combination of these vaccines with the following exception: a child who received a third dose prior to the fourth birthday shall have a fourth dose.

2.1.3 Two doses of measles, mumps and rubella (MMR) vaccine. The first dose should be administered on or after the age of 12 months. The second dose should be administered after the fourth birthday. Individual combination vaccines of measles, mumps, rubella (MMR) may be used to meet this requirement.

2.1.3.1 Disease histories for measles, rubella and mumps shall not be accepted unless serologically confirmed.

2.1.4 Three doses of Hepatitis B vaccine.

2.1.4.1 For children 11 to 15 years old age, two doses of a vaccine approved by the Center for Disease Control (CDC) may be used.

2.1.4.2 Titers are not acceptable in lieu of completing the vaccine series and a disease history for Hepatitis B shall not be accepted unless serologically confirmed.

2.1.5 Varicella vaccine is required beginning in the 2003-2004 school year with kindergarten. One grade shall be added each year thereafter so that by the 2015-2016 school year all children in grades kindergarten through 12 shall have received the vaccination. Beginning in the ~~2007-2008~~ 2008-2009 school year new enterers into the affected grades shall be required to have two doses of the Varicella vaccine. The first dose shall be administered on or after the age of twelve (12) months and the second at kindergarten entry into a Delaware public school. A written disease history, provided by the health care provider, parent, legal guardian, Relative Caregiver or School Enterer who has reached the statutory age of majority (18), 14 **Del.C.** §131(a)(9), will be accepted in lieu of the Varicella vaccination. Beginning in the 2008-2009 school year, a disease history for the Varicella vaccination must be verified by a health care provider to be exempted from the vaccination.

2.2 Children who enter school prior to age four (4) shall follow current Delaware Division of Public Health recommendations.

**10 DE Reg. 1807 (06/01/07)**

**3.0 Certification of Immunization**

3.1 The parent, legal guardian, Relative Caregiver or a School Enterer who has reached the statutory age of majority (18), 14 **Del.C.** §131(a)(9), shall present a certificate specifying the month, day, and year that the immunizations were administered by a licensed health care practitioner.

3.2 According to 14 **Del.C.** §131, a principal or person in charge of a school shall not permit a child to enter into school without acceptable evidence of immunization. The parent, legal guardian, Relative Caregiver or a School Enterer who has reached the statutory age of majority (18), 14 **Del.C.** §131(a)(9), shall be notified of this requirement in writing. Within 14 calendar days after notification, evidence must be presented to the school that the basic series of immunizations has been initiated or has been completed.

3.3 A school enterer may be conditionally admitted to a Delaware school district by presenting a statement from a licensed health care practitioner who specifies that the School Enterer has received at least:

- 3.3.1 One dose of DTaP, or DTP, or DT; and
- 3.3.2 One dose of IPV or OPV; and
- 3.3.3 One dose of measles, mumps and rubella (MMR) vaccine; and
- 3.3.4 The first dose of the Hepatitis B series; and
- 3.3.5 One dose of Varicella vaccine as per 2.5.

3.4 14 **DE Admin. Code** 901 Education of Homeless Children and Youth 6.0 states that "School districts shall ensure that policies concerning immunization, guardianship and birth certificates do not create barriers to the school enrollment of homeless children and youth". To that end, school districts shall as stated in 14 **DE Admin. Code** "assist homeless children and youth in meeting the immunization requirements".

3.5 If the school enterer fails to complete the series of required immunizations the parent, legal guardian, Relative Caregiver or a school enterer who has reached the statutory age of majority (18), 14 **Del.C.** §131(a)(9), shall be notified that the School Enterer will be excluded according to 14 **Del.C.** §131.

**10 DE Reg. 1807 (06/01/07)**

#### **4.0 Lost or Destroyed Immunization Record**

When a student's immunization record has been lost or destroyed by the medical provider who administered the vaccine, the parent, legal guardian, Relative Caregiver or a school enterer who has reached the statutory age of majority (18), 14 **Del.C.** §131(a)(9), shall sign a written statement to this effect and must obtain at least one dose of each of the immunizations as identified in 3.3. Evidence that the vaccines were administered shall be presented to the superintendent or his or her designee.

**10 DE Reg. 18707 (06/01/07)**

#### **5.0 Exemption from Immunization**

5.1 Exemption from this requirement may be granted in accordance with 14 **Del.C.** §131 which permits approved medical and notarized religious exemptions.

5.2 Alternative dosages or immunization schedules may be accepted with the written approval of the Delaware Division of Public Health.

**10 DE Reg. 1807 (06/01/07)**

#### **6.0 Verification of School Records**

The Delaware Division of Public Health shall have the right to audit and verify school immunization records to determine compliance with the law.

**1 DE Reg. 1808 (05/01/98)**

**4 DE Reg. 1515 (03/01/01)**

**5 DE Reg. 2295 (06/01/02)**

**10 DE Reg. 1807 (06/01/07)**

#### **7.0 Documentation**

7.1 School nurses shall record and maintain documentation of each student's immunization status.

7.2 Each student's immunization record shall be included in the Delaware Immunization Registry.

**1 DE Reg. 1808 (05/01/98)**

**4 DE Reg. 1515 (03/01/01)**

**5 DE Reg. 2295 (06/01/02)**

**10 DE Reg. 1807 (06/01/07)**

## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))  
14 DE Admin. Code 340

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

#### 340 Certification Theater Teacher

#### A. Type of Regulatory Action Requested

Amendment to Existing Regulation

#### B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 340 Certification Theater Teacher. This regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation in order to update and broaden the certification area, and to bring it under the auspices of the Professional Standards Board as required in 14 Del.C. The amended regulation title will read 1558 Theater or Dance Teacher. This amended regulation sets forth the requirements for a Theater or Dance Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday, October 1, 2007 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, the Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

#### C. Impact Criteria

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

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

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

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

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

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

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

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

state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14

**Del.C.** requires that we promulgate this regulation.

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

### **340 Certification Theater Teacher**

Effective July 1, 1993

#### **1.0 Standard License**

The Following Shall be Required for the Standard License in Grades 9 to 12 and is Valid in Grades 5 to 8 in a Middle Level School.

1.1 Bachelor's degree from an accredited college and;

1.2 Completion of an approved teacher education program in Theater.

#### **2.0 The following shall be required for the Standard Endorsement (for teachers with 3 or fewer classes of theater)**

2.1 Standard Delaware License in a secondary content area and;

2.2 A minimum of 15 semester hours from the following areas of Theater: History of the Theater, Play Direction, Acting, Stagecraft, Play Production, Voice and Speech, Stage Management, Make-up and Costuming, Stage Lighting, and/or Methods of Teaching Theater and Drama.

#### **3.0 Licenses that may be issued for this position include Standard, Standard Endorsement and Limited Standard**

3.1 The Limited Standard license may be issued upon request of a Delaware public school district for a teacher employed for this position who meets the standards set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.

### **1558 Theater or Dance Teacher**

#### **1.0 Content**

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Theater Teacher or Dance Teacher. This certification is required for grades 9 to 12, and is valid in grades 5 to 8 in a Middle Level school.

1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

#### **2.0 Definitions**

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

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

“Approved Accrediting Agency” means a National, Regional, or Specialized Accrediting agency or association that appears on the list of recognized accrediting agencies published by the United States Secretary of Education or any other accrediting agency the Delaware Secretary of Education, deems within his or her discretion, to be reliable or be equivalent to those on the published list.

“Accredited institution” means an institution that has received accreditation from an approved accrediting agency.

#### **3.0 Standard Certificate**

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

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

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

3.1.3 Has satisfied the additional requirements in this regulation.

## **4.0 Additional Requirements**

An educator must also meet the following:

4.1 If the educator is applying for their Standard Certificate as a Theater Teacher pursuant to 14 DE Admin. Code 1505 Standard Certificate 3.1.5, the educator must also have obtained from an accredited institution certification in Theater; or

4.2 If the educator is applying for their Standard Certificate as a Dance Teacher pursuant to 14 DE Admin. Code 1505 Standard Certificate 3.1.5, the educator must also have obtained from an accredited institution certification in Dance.

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## **PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))  
14 DE Admin. Code 1520

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

### **1520 Early Childhood Teacher**

#### **A. Type of Regulatory Action Requested**

Amendment to Existing Regulation

#### **B. Synopsis of Subject Matter of Regulation**

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1520 Early Childhood Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation given that the existing regulation reverted to 14 DE Admin. Code 1505 Standard Certificate in June of 2006. This regulation sets forth the requirements for an Early Childhood Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday, October 1, 2007 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

#### **C. Impact Criteria**

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

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

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

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at

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

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

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

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

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

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

## ~~1520 Early Childhood Teacher~~

### ~~1.0 Content~~

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Early Childhood Teacher (Birth to Grade 2).

### ~~2.0 Definitions~~

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

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

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

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

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

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

### ~~3.0 Issuance of Certificate~~

In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as an Early Childhood Teacher to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 A bachelor’s degree from an NCATE specialty organization recognized educator preparation program offered by a regionally accredited college or university, with a major in Early Childhood Education; or

3.2 A bachelor’s degree from a state approved educator preparation program offered by a regionally accredited college or university, with a major in Early Childhood Education, where the state approval body employed the appropriate NCATE specialty organization standards for early childhood teacher education; or

3.3 Passage of the appropriate PRAXIS™ II test approved by the Standards Board and the State Board; or

~~3.4 A bachelor's degree from an NCATE or state approved program, where the state approval body employed the appropriate NASDTEC standards or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major in Primary or Elementary Education; and~~

~~3.4.1 At least eighteen (18) semester hours of course work, specific to the birth to age five (5) child, taken either as part of the degree program or in addition to it, as follows:~~

~~3.4.1.1 Children's Growth, Development and Learning (Birth to age five (5)) (3 credits);~~

~~3.4.1.2 Early Childhood Curriculum Development, Assessment, Content, and Implementation (6 credits);~~

~~3.4.1.3 Language Development and Early Literacy in Young Children (3 credits);~~

~~3.4.1.4 Family Development and Service Systems for Children and Families (3 credits); and~~

~~3.4.1.5 Development and Programming for Young Children with Special Needs (3 credits); or~~

~~3.5 A bachelor's degree from a regionally accredited college or university in any field, and~~

~~3.5.1 A minimum of forty five (45) semester hours of general content course work, taken either as part of the degree program or in addition to it, as follows:~~

~~3.5.1.1 English, including an upper level composition course and a literature course (9 semester hours);~~

~~3.5.1.2 A total of twelve (12) semester hours of science, including one course each in Life and Environmental, Earth and Space and Physical Sciences;~~

~~3.5.1.3 Social sciences, including world history, American history, political science, economics and geography (9 semester hours);~~

~~3.5.1.4 Mathematics (9 semester hours); and~~

~~3.5.1.5 Fine Arts or Humanities (6 semester hours); and~~

~~3.5.2 A minimum of thirty nine (39) semester hours of course work, taken either as part of the degree program or in addition to it, as follows:~~

~~3.5.2.1 Children's Growth, Development, and Learning (Birth to age 8) (6 semester hours);~~

~~3.5.2.2 Identifying and Teaching Children with Exceptional Needs (6 semester hours);~~

~~3.5.2.3 Early Childhood Curriculum Development, Assessment, Content, and Implementation, including a practicum of no less than 50 hours (Birth to age 8) (9 semester hours);~~

~~3.5.2.4 Professional Issues in Early Childhood Education (3 semester hours);~~

~~3.5.2.5 Language Development, Early Literacy and Reading in Young Children (9 semester hours);~~

~~3.5.2.6 Parent, Family, Community Interactions (3 semester hours); and~~

~~3.5.2.7 Family Development and Service Systems for Children and Families (3 semester hours).~~

#### **4.0 Applicability**

~~This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as an Early Childhood Teacher after that date must comply with the requirements set forth in 14 DE Admin. Code 1505.~~

~~8-DE-Reg. 1612 (5/1/05)~~

~~Renumbered effective 6/1/07—see Conversion Table~~

### 1520 Early Childhood Teacher

#### **1.0 Content**

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Early Childhood Teacher. This certification is valid for birth to grade 2.

1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

## **2.0 Definitions**

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

## **3.0 Standard Certificate**

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

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

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

3.1.3 Has satisfied the additional requirements in this regulation.

## **4.0 Additional Requirements**

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

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

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## **PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))  
14 DE Admin. Code 1530

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

### **1530 Middle Level Teacher**

#### **A. Type of Regulatory Action Requested**

Amendment to Existing Regulation

#### **B. Synopsis of Subject Matter of Regulation**

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1530 Middle Level Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation given that the existing regulation reverted to DE Admin. Code 1505 Standard Certificate in June of 2006. This regulation sets forth the requirements for a Middle Level Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday October 1, 2007 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

#### **C. Impact Criteria**

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

2. Will the amended regulation help ensure that all students receive an equitable education? The

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

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

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

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

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

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

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

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

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

### **1530 Middle Level Teacher**

#### **1-0 Content**

~~1.1 This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Middle Level Teacher (Grades 6 to 8).~~

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

~~7-DE Reg. 1749 (6/1/04)~~

#### **2-0 Definitions**

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

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

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

~~“**Major or Its Equivalent**” means a minimum of thirty (30) credits in the content area to be taught.~~

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

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

~~7-DE Reg. 1749 (6/1/04)~~

#### **3-0 Standard Certificate**

~~In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Middle Level Teacher to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following~~

requirements:

3.1 Degree Requirement

~~3.1.1 Bachelor's degree from a regionally accredited college or university with a major or its equivalent in the content area to be taught; and~~

~~3.1.1.1 Appropriate pedagogical content courses consistent with the NASDTEC or NCATE specialty organization standards for middle school or the content specialization to be taught; or~~

~~3.1.2 Bachelor's degree from a regionally accredited college or university in an NCATE specialty organization or state approved program, where the state employed the appropriate NASDTEC or NCATE specialty organization standards in Elementary or Middle School Education.~~

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

~~7-DE Reg. 1749 (6/1/04)~~

#### 4.0 Effective Date

~~This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a middle level teacher after that date must comply with the requirements set forth in 14 DE Admin. Code 1505.~~

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

~~7-DE Reg. 1749 (6/1/04)~~

~~Renumbered effective 6/1/07 see Conversion Table~~

#### 1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Middle Level Teacher. This certification is required for grades 6 to 8, and is valid in grade 5 in a Middle Level school. This regulation applies to Middle Level Teachers of English/Language Arts, Social Studies, Mathematics, and Science. Teachers who hold Standard Certificates as secondary teachers in any of the content areas listed may also be employed as Middle Level Teachers.

1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

#### 2.0 Definitions

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

#### 3.0 Standard Certificate

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

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

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

3.1.3 Has satisfied the additional requirements in this regulation.

#### 4.0 Additional Requirements

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

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

## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))  
14 DE Admin. Code 1531

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

#### 1531 Middle Level English Language Arts Teacher

##### A. Type of Regulatory Action Requested

New Regulation

##### B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to adopt regulation 14 **DE Admin. Code** 1531 Middle Level English Language Arts Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to adopt this regulation in order to complete the compilation of certification regulations of the middle level core curricular areas. This regulation sets forth the requirements for a Middle Level English Language Arts Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday October 1, 2007 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

##### C. Impact Criteria

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

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

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

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

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

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

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

8. Will the adopted 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 adopted regulation will be consistent with, and not an impediment to, the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science,

language arts and social studies.

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

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

### 1531 Middle Level English Language Arts Teacher

#### **1.0 Content**

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Middle Level English Language Arts Teacher. This certification is required for grades 7 and 8, and is valid in grades 5 and 6 in a Middle Level school.

1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

#### **2.0 Definitions**

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

#### **3.0 Standard Certificate**

3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Middle Level English Language Arts Teacher to an educator who has met the following:

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

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

### **PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))  
14 **DE Admin. Code** 1534

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

### **1534 Middle Level Social Studies Teacher**

#### **A. Type of Regulatory Action Requested**

New Regulation

#### **B. Synopsis of Subject Matter of Regulation**

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to adopt regulation 14 **DE Admin. Code** 1534 Middle Level Social Studies Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to adopt this regulation in order to complete the compilation of certification regulations of the middle level core curricular areas. This regulation sets forth the requirements for a Middle Level Social Studies Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday October 1, 2007 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

**C. Impact Criteria**

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

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

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

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

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

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

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

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

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

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

**1534 Middle Level Social Studies Teacher****1.0 Content**

1.1 This regulation shall apply to the issuance of a Standard Certificate pursuant to 14 **Del.C.** §1220(a), for Middle Level Social Studies Teacher. This certification is required for grades 7 and 8, and is valid in grades 5 and 6 in a Middle Level school.

1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

**2.0 Definitions**

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

**3.0 Standard Certificate**

3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Middle Level Social Studies Teacher to an educator who has met the following:

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

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

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**PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))  
14 DE Admin. Code 1541

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

**1541 Secondary Health Education Teacher**

**A. Type of Regulatory Action Requested**

Amendment to Existing Regulation

**B. Synopsis of Subject Matter of Regulation**

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1541 Secondary Health Education Teacher. The amended regulation will be titled Middle Level / Secondary Health Education Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation given that the existing regulation reverted to DE Admin. Code 1505 Standard Certificate in June of 2006. This regulation sets forth the requirements for a Middle Level / Secondary Health Education Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday October 1, 2007 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

**C. Impact Criteria**

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

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

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

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

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

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

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

the consent of the State Board of Education.

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

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

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

### ~~1541 Secondary Health Education Teacher~~

#### **1-0 Content**

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Health Education Teacher (required in grades 9 to 12 and valid in grades 5 to 8 in a middle level school).

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

#### **2-0 Definitions**

~~2-1 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:~~

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

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

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

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

#### **3-0 Standard Certificate**

~~In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Health Education Teacher to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:~~

~~3-1 Bachelor's degree from an regionally accredited college or university and,~~

~~3-2 Professional Education~~

~~3.2.1 Completion of an approved teacher preparation program in the area of Health Education~~

~~or,~~

~~3.2.2 Minimum of 24 semester hours to include Methods of Teaching Health, Human Development, Clinical or Field Experience including Effective Teaching Strategies, Identifying and Treatment of Exceptionalities, Multicultural Education, and,~~

~~3-3 Specific Teaching Field~~

~~3.3.1 Major in Health Education or,~~

~~3.3.2 Completion of program in teacher education in the area of Health Education or,~~

~~3.3.3 Minimum of 30 semester hours in health education including a course in each of the~~

~~following areas: Current Health Issues (minimum of six semester hours), Public and Community Health Resources, Developmental Behavior and Attitudes, Materials and Strategies of Teaching Health Education including training in skills in facilitation.~~

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

#### **4-0 Effective Date**

~~This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a Health Education Teacher after that date must comply with the requirements set forth in 14 **DE**~~

# PROPOSED REGULATIONS

~~Admin. Code 1505.~~

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

~~Renumbered effective 6/1/07—see Conversion Table~~

## 1539 Middle Level / Secondary Health Education Teacher

### **1.0 Content**

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Middle Level / Secondary Health Education Teacher. This certification is required for grades 9 to 12 and for grades 5 to 8 in a Middle Level school.

1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

### **2.0 Definitions**

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

### **3.0 Standard Certificate**

3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Middle Level / Secondary Health Education Teacher to an educator who has met the following:

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

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

3.1.3 Has satisfied the additional requirements in this regulation.

### **4.0 Additional Requirements**

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

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

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## **PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))  
14 DE Admin. Code 1571

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

**1571 Secondary Exceptional Children Special Education Teacher**

#### **A. Type of Regulatory Action Requested**

Amendment to Existing Regulation

#### **B. Synopsis of Subject Matter of Regulation**

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend 14 DE Admin. Code 1571 Secondary Exceptional Children Special Education Teacher. It will be renamed 1571 Exceptional Children Special Education Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation to align it with changes in statute. The grade configuration of the

certificate is being changed from 7 to 12 to K to 12 to align it with the required PRAXIS II test. This regulation sets forth the requirements for an Exceptional Children Special Education Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday October 1, 2007 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

### **C. Impact Criteria**

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

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

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

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

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

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

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

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

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

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

## **~~1571 Secondary Exceptional Children Special Education Teacher~~**

### **~~1-0 Content~~**

~~This regulation shall apply to the requirements for a standard certificate, pursuant to 14 **Del.C.** §1220(a), for Teacher Exceptional Children Special Education Secondary (Grades 7 to 12).~~

### **~~2-0 Definitions~~**

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

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

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

is used.

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

### ~~3.0 Standard Certificate~~

~~In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Teacher Exceptional Children Special Education Secondary to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional status certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:~~

~~3.1 A Bachelor's degree from a regionally accredited college or university and,~~

~~3.2 Professional Education~~

~~3.2.1 Completion of a teacher education program in the area of the standard certificate~~

~~sought or,~~

~~3.2.2 A minimum of 42 semester hours as follows:~~

~~3.2.2.1 Twenty four semester hours required core courses for all Exceptional~~

~~Teaching Licenses~~

~~3.2.2.1.1 Methods in Reading~~

~~3.2.2.1.2 Methods in Mathematics~~

~~3.2.2.1.3 Classroom Management~~

~~3.2.2.1.4 Introduction to Education of Exceptional Children~~

~~3.2.2.1.5 Adolescent Psychology and Development~~

~~3.2.2.1.6 Applied Behavior Analysis~~

~~3.2.2.2 Eighteen semester hours for Mildly and Moderately Disabled and~~

~~Physically Impaired (PI):~~

~~3.2.2.2.1 Issues in Secondary Transition and Vocational Education~~

~~3.2.2.2.2 Methods and Curriculum in area(s) of endorsement (secondary~~

~~based)~~

~~3.2.2.2.3 Diagnosis, Assessment, and IEP Development for~~

~~Exceptionalities~~

~~3.2.2.2.4 Assistive Technology (Mildly and Moderately Disabled) Assistive~~

~~Technology for Physically Impaired (PI)~~

~~3.2.2.2.5 Six semester hours from the following: Consultation, Social Skills~~

~~Training, Diagnosis and Correction of Reading Disabilities, Counseling Techniques, Research and Theories of Exceptional Children, Current Issues in Special Education and Multicultural Issues in Education.~~

~~3.2.2.3 Eighteen semester hours for Visually Impaired~~

~~3.2.2.3.1 Anatomy and Physiology of the Eye~~

~~3.2.2.3.2 Braille and Nemeth Code (preferably including instruction in~~

~~Braille)~~

~~3.2.2.3.3 Orientation and Mobility for the Teacher of the Visually Impaired~~

~~3.2.2.3.4 Education for the Visually Impaired (Adapting Materials/Methods)~~

~~3.2.2.3.5 Assistive Technology~~

~~3.2.2.3.6 Diagnosis, Assessment, and IEP Development~~

### ~~4.0 Effective Date~~

~~This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a teacher exceptional children special education secondary after that date must comply with the requirements set forth in 14 DE Admin. Code 1505.~~

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

~~Renumbered effective 6/1/07 see Conversion Table~~

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## 1571 Exceptional Children Special Education Teacher

### **1.0 Content**

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Exceptional Children Special Education Teacher. This certification is required for grades K to 12.

1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

### **2.0 Definitions**

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

### **3.0 Standard Certificate**

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

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

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

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))  
14 DE Admin. Code 1576

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

#### 1576 Elementary Exceptional Children Special Education Teacher

#### A. Type of Regulatory Action Requested

Repeal

#### B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the approval of the State Board of Education to repeal 14 DE Admin. Code 1576 Elementary Exceptional Children Special Education Teacher. It is necessary to repeal this regulation as it is being subsumed into amended regulation 14 DE Admin. Code 1571 Exceptional Children Special Education Teacher and 14 DE Admin. Code 1575 Teacher of Students With Visual Impairments

#### ~~1576 Elementary Exceptional Children Special Education Teacher~~

### **4.0 Content**

~~This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Teacher Exceptional Children Special Education Elementary (Grades 1 to 8).~~

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

### **2.0 Definitions**

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

~~"Department" means the Delaware Department of Education.~~

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

# PROPOSED REGULATIONS

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

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

## ~~3.0 Standard Certificate~~

~~In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Teacher Exceptional Children Special Education Elementary to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:~~

~~3.1 A Bachelor's degree from a regionally accredited college or university and,~~

~~3.2 Professional Education~~

~~3.2.1 Completion of a teacher education program in the area of Standard Certificate sought or,~~

~~3.2.2 A minimum of 42 semester hours as follows:~~

~~3.2.2.1 Twenty four semester hours required core courses for all Exceptional~~

~~Teaching Licenses~~

~~3.2.2.1.1 Methods in Elementary Reading~~

~~3.2.2.1.2 Methods in Elementary Mathematics~~

~~3.2.2.1.3 Classroom Management~~

~~3.2.2.1.4 Introduction to Education of Exceptional Children~~

~~3.2.2.1.5 Child Growth and Development~~

~~3.2.2.1.6 Applied Behavior Analysis~~

~~3.2.2.1.7 Student Teaching with Exceptional Children Grades 1 to 8 (6~~

~~semester hours) and,~~

~~3.2.2.2 Eighteen semester hours for Mildly and Moderately Disabled and~~

~~Physically Impaired (PI):~~

~~3.2.2.2.1 Language Development~~

~~3.2.2.2.2 Methods and Curriculum in area(s) of endorsement (elementary~~

~~based)~~

~~3.2.2.2.3 Diagnosis, Assessment and IEP Development for~~

~~Exceptionalities~~

~~3.2.2.2.4 Assistive Technology (Mildly and Moderately Disabled) Assistive~~

~~Technology for Physically Impaired (PI)~~

~~3.2.2.2.5 Diagnosis and Correction of Reading Disabilities~~

~~3.2.2.2.6 One three semester hour elective from the following:~~

~~Consultation, Social Skills Training, Counseling Techniques, Research Theories of Exceptional Children, Current Issues in Special Education and Multicultural Issues Education.~~

~~3.2.2.3 Eighteen semester hours for Visually Impaired~~

~~3.2.2.3.1 Anatomy and Physiology of the Eye~~

~~3.2.2.3.2 Braille and Nemeth Code (preferably including instruction in~~

~~Braille)~~

~~3.2.2.3.3 Orientation and Mobility for the Teacher of the Visually Impaired~~

~~3.2.2.3.4 Education for the Visually Impaired (Adapting Materials and~~

~~Methods)~~

~~3.2.2.3.5 Assistive Technology~~

~~3.2.2.3.6 Diagnosis, Assessment and IEP Development~~

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

## ~~4.0 Effective Date~~

~~This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a Teacher Exceptional Children Special Education Elementary after that date must comply with the requirements set forth in 14 Del.C. §1505.~~

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

~~Renumbered effective 6/1/07 see Conversion Table~~

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## DEPARTMENT OF FINANCE DIVISION OF REVENUE

Statutory Authority: 30 Delaware Code, Sections 563 and 1151 (30 Del.C. §§563 and 1151)

### Regulation 1151-1 Personal Income Tax Withholding Exemption Certificates

#### Title of Regulation

Regulation 1151-1 Personal Income Tax Withholding Exemption Certificates

#### Nature of Proceedings; Synopsis of the Subject and Substance of the Proposed Regulation

In accordance with procedures set forth in 29 Del.C. Ch. 11, Subch. III and 29 Del.C. Ch. 101, the Director of Revenue of the Division of Revenue in the Department of Finance is proposing to adopt an amendment to the existing regulation pertaining to the treatment by employers of employees' claims for exemptions from withholding of Delaware personal income tax. The existing regulation, "Personal Income Tax Withholding Exemption Certificates," is set forth in the Division of Revenue's Tax Ruling 83-3 (February 9, 1983), which modified Tax Ruling 80-4 (December 15, 1980). Tax Ruling 83-3 provides generally that employers must submit copies of withholding exemption certificates (currently submitted to employers by employees on Internal Revenue Service Form W-4 or an approved substitute form) that either (i) claim more than 14 withholding exemptions for purposes of the Delaware personal income tax, or (ii) claim exemption from withholding of Delaware personal income tax where the employer reasonably expects that the employee's wages will exceed \$100 per week. In such circumstances, pending receipt of a notice from the Division of Revenue with respect to a copy of any withholding exemption certificate, the employer must withhold on the basis of the number of exemptions claimed in the certificate. If the Division of Revenue finds that the certificate submitted contains materially incorrect statements, or, after seeking verification from the employee, determines that it lacks sufficient information to find that the withholding exemption certificate is correct, and if the Division notifies the employer of these findings, the employer must thereafter withhold from the employee's wages as if the employee were a single person claiming no withholding exemptions. The employer is required to notify the employee of the action taken by the Division of Revenue and request that the employee file another withholding exemption certificate. The Director of Revenue proposes to supersede Tax Ruling 83-3 and Tax Ruling 80-4 on and after the effective date of the regulation being proposed here.

The new regulation conforms the administrative practice of the Division of Revenue with respect to withholding exemption certificates to the current administrative practice of the Internal Revenue Service, as set forth in Temporary Treasury Regulation §31.3402(f)(2)-1T, 26 CFR §31.3402(f)(2)-1T. The new regulation relieves employers of the burden of automatically having to submit for review by the Division of Revenue copies of an employee's withholding exemption certificate, if an employee (i) claims more than 14 withholding exemptions, or (ii) claims exemption from withholding of Delaware personal income tax where the employer reasonably expects that the employee's wages will exceed \$100 per week. Instead, under the new regulation, an employer must submit copies of the employee's withholding exemption certificate only when directed to do so in a written notice from the Division of Revenue or as directed in general published guidance issued by the Division of Revenue.

The new regulation also enables the Division of Revenue to notify the employer in writing that an employee is not entitled to claim either (i) a complete exemption from withholding, or (ii) more than the maximum number of withholding exemptions specified in the notice to the employer. The Division of Revenue may issue such a notice to an employer even if the employer has not previously submitted to the Division of Revenue a copy of the withholding exemption certificate of the employee in question. After receipt of this notice and after the effective date of the notice, the employer must generally withhold from the employee's wages based on the number of withholding exemptions specified in the notice. The new regulation provides that the Division of Revenue may issue a notice to an employer only if it has determined that (i) the employee's current withholding exemption certificate contains a materially incorrect statement or (ii) after requesting the employee to verify the statements on the withholding exemption certificate, the Division of Revenue lacks sufficient information to determine if the certificate is correct. The new regulation also sets forth actions that the employer and the Division of Revenue must take to notify the employee of the proposed action and actions that the employee may take to avoid the effect of the notice.

## Statutory Basis and Legal Authority to Act

30 Delaware Code, §§ 563 & 1151

## Other Regulations Affected

None.

## How to Comment on the Proposed Regulation

Members of the public may receive a copy of the proposed amendments to the regulation at no charge by United States Mail by writing or calling Carol Thomas, Delaware Division of Revenue, C900 Carvel State Office Building, 820 N. French St., Wilmington, DE 19801, phone (302) 577-8688. Members of the public may present written comments on the proposed regulation by submitting such written comments to John S. McDaniel, Esquire, at the address of the Division of Revenue set forth above. Written comments must be received on or before 4:30 p.m. on October 1, 2007.

## 1151-1 Personal Income Tax Withholding Exemption Certificates

DIVISION OF REVENUE  
TAX RULING 83-3

February 9, 1983

Personal Income Tax  
Withholding Exemption Certificates

~~Tax Ruling 80-4, regarding the withholding exemption certificates (W-4) and the notification requirements by employers to the Division of Revenue in instances when employees file 'exempt' status or claim in excess of 9 allowances on their W-4, is hereby modified to provide for notification to the Division of Revenue when the total number of allowances claimed by the employee exceeds 14, which is also a requirement of the Internal Revenue Service. Tax Ruling 80-4, as modified by this ruling, is printed below.~~

\*\*\*\*\*

~~For purposes of withholding Delaware income tax, employers, in general, are authorized to withhold Delaware income tax on the basis of the number of exemptions claimed in the Federal W-4 filed by the employee. Effective with respect to withholding exemption certificates received from employees after December 31, 1982, every employer shall submit to the Division of Revenue a copy of any withholding exemption certificate which is received from an employee during the withholding reporting period if:~~

- ~~(1) the total number of exemptions claimed for Delaware personal income tax purposes on the certificate exceeds 14, or~~
- ~~(2) the certificate indicates the employee claims to be exempt from withholding of Delaware income tax and the employer reasonably expects that the employee's wages will exceed \$100 per week.~~

~~Copies of certificates required to be submitted under this ruling shall be submitted to the Division of Revenue at the time for filing the employers monthly or quarterly withholding return.~~

~~Pending receipt of notice from the Division of Revenue with respect to a copy of any certificate submitted, the employer shall withhold on the basis of the statements in the certificate. If the Division of Revenue finds that the certificate submitted contains materially incorrect statements, or, after seeking verification from the employee, determines that it lacks sufficient information to find that the certificate is correct, and so notifies the employer, the employer shall consider the certificate defective and shall withhold amounts from the employee as if the employee were a single person claiming no withholding exemptions. The employer shall notify the employee of the action taken by the Division of Revenue, and request the employee to file another withholding exemption certificate.~~

a) This Regulation sets forth requirements of the Division of Revenue (the "Division") promulgated pursuant to the authority granted to the Division by 30 Del.C. §§563 and 1151 to ensure that employers withhold the proper amount of Delaware personal income tax from their employees' wages.

- i) Submission of certain withholding exemption certificates.

A) An employer must submit to the Division a copy of any currently effective withholding exemption certificate as directed in a written notice to the employer from the Division or as directed in published guidance. A notice to the employer may relate either to one or more named employees, to one or more reasonably segregable units of the employer, or to withholding exemption certificates under certain specified criteria. The notice will designate the Division office where the copies of the withholding exemption certificates must be submitted. Employers may also be required to submit copies of withholding exemption certificates under certain specified criteria when directed to do so by the Division in published guidance. Alternatively, upon notice from the Division, the employer must make withholding exemption certificates received from one or more named employees, from one or more reasonably segregable units of the employer, or from employees who have furnished withholding exemption certificates under certain specified criteria, available for inspection by a Division employee (e.g., a compliance check).

B) After a copy of a withholding exemption certificate has been submitted to the Division under this subsection (a), the employer must withhold tax on the basis of the withholding exemption certificate, unless that certificate must be disregarded based on a notice of the maximum number of withholding exemptions permitted under the provisions of subsection (b) of this section.

b) Notice of maximum number of withholding exemptions permitted.

i) The Division may notify the employer in writing that the employee is not entitled to claim a complete exemption from withholding and the employee is not entitled to claim a total number of withholding exemptions more than the maximum number of withholding exemptions specified by the Division in the written notice. The notice will specify the Division office to be contacted for further information. The notice of maximum number of withholding exemptions permitted may be issued if –

A.) The Division determines that a copy of a withholding exemption certificate submitted under subsection (a) of this section contains a materially incorrect statement or determines, after a request to the employee for verification of the statements on the certificate, that the Division lacks sufficient information to determine if the certificate is correct; or

B.) The Division otherwise determines that the employee is not entitled to claim a complete exemption from withholding and is not entitled to claim more than a specified number of withholding exemptions.

ii) If the Division provides a written notice to the employer under this subsection (b), the Division will also provide the employer with a written notice for the employee (“employee notice”) that identifies the maximum number of withholding exemptions permitted and the process by which the employee can provide additional information to the Division for purposes of determining the appropriate number of withholding exemptions. The Division will also mail a similar written notice to the employee’s last known address.

iii) If the employee is still employed by the employer, the employer must furnish the employee notice to the employee within 10 business days of receipt. If the employee is no longer employed by the employer, the employer is not required to furnish the employee notice to the employee but the employer must send a written response to the Division office designated in the notice indicating that the employee is no longer employed by the employer.

iv) Except as provided in paragraphs (v) and (vi) of this subsection, the employer must withhold tax on the basis of the maximum number of withholding exemptions specified in the written notice received from the Division. The employer must withhold tax in accordance with the notice as of the date specified in the notice, which shall be no earlier than 45 calendar days after the date of the notice.

v) If a withholding exemption certificate is in effect with respect to the employee before the employer receives a notice from the Division of the maximum number of withholding exemptions permitted under this subsection (b), the employer must continue to withhold tax in accordance with the existing withholding exemption certificate rather than on the basis of the notice, if the existing withholding exemption certificate does not claim complete exemption from withholding and claims a number of withholding exemptions less than the maximum number specified by the Division in the written notice to the employer.

vi) If the employee furnishes a new withholding exemption certificate after the employer receives a notice from the Division of the maximum number of withholding exemptions permitted under this subsection (b), the employer must withhold tax on the basis of that new certificate as currently effective only if the new certificate does not claim complete exemption from withholding and claims a number of withholding exemptions less than the number specified by the Division in the notice to the employer. If any new certificate claims complete exemption from withholding or claims a number of withholding exemptions more than the

# PROPOSED REGULATIONS

maximum number specified by the Division in the notice, then the employer must disregard the new certificate and must continue to withhold tax on the basis of the maximum number specified in the notice received from the Division unless the Division by subsequent written notice advises the employer to withhold tax on the basis of that new certificate. If the employee wants to put a new certificate into effect to claim complete exemption from withholding or to claim a number of withholding exemptions more than the maximum number specified by the Division in the notice to the employer, the employee must submit to the Division office designated in the employee notice earlier furnished to the employee under this subsection (b) that new certificate and a written statement to support the claims made by the employee on the new certificate.

c) Definition of employer

i) For purposes of this Regulation, the term "employer" includes any person authorized by the employer to receive withholding exemption certificates, to make withholding computations, or to make payroll distributions.

d) Effective date. This regulation shall become effective ten days after publication of the final regulation in the Register of Regulations.

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## 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

#### Long Term Care Medicaid 20330.4.1 Annuities

**NOTE: THE JUNE 2007 ISSUE OF THE REGISTER INADVERTENTLY REFLECTED AN OMISSION IN THE TEXT OF THE PUBLIC NOTICE REGARDING THE STREAM OF INCOME FROM AN ANNUITY. THE REPROPOSED VERSION IS PUBLISHED BELOW AND REFLECTS THE POLICY AS THE DIVISION OF MEDICAID AND MEDICAL ASSISTANCE INTENDED AND THE MOST RECENT CMS POLICY CLARIFICATION.**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend existing rules in the Division of Social Services Manual (DSSM) regarding the treatment of annuities provisions.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 (new fax number) by September 30, 2007. A copy of the CMS program clarification memorandum is available upon request by contacting Sharon L. Summers at 302-255-9576.

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

#### Statutory Authority

Deficit Reduction Act of 2005 (Public Law 109-171), enacted on February 8, 2006

## Background

On February 8, 2006, the Deficit Reduction Act (DRA) of 2005 was signed into law. The DRA made changes to certain Medicaid eligibility provisions in Section 1917 of Social Security Act affecting Long Term Care services and supports.

## Summary of ReProposal

On June 1, 2007, the Division of Medicaid and Medical Assistance (DMMA) published for public comment a proposal to amend its annuity regulation (see 10 DE Reg. 1781). This regulatory action incorporated additional guidance received from the Centers for Medicare & Medicaid Services (CMS) regarding the DRA as it applies to the treatment of annuities. Due to the following substantive policy omission in the June 2007 issue of the Register this notice is being published again, as intended: DMMA will no longer require that an attempt be made to sell the stream of income from an annuity.

Also, on July 23, 2007, CMS provided clarification of the July 27, 2006 State Medicaid Directors (SMD) Letter Enclosure concerning treatment of annuities under the DRA. This clarification deals specifically with the new section 1917(c)(1)(G) of the Act, added by section 6012(c) of the DRA, and discussed beginning on page 6 of the section 6012 "Changes in Medicaid Annuities Rules" enclosure to the July 27 SMD letter. The discussion beginning on page 6 states that the purchase of an annuity by or on behalf of an annuitant who has applied for medical assistance with respect to nursing facility services or other long-term care services shall be treated as a transfer of assets for less than fair market value unless the annuity meets certain criteria, which are described in detail on page 7 of the enclosure. CMS clarifies that this provision does not apply to annuities that are revocable and/or assignable.

And, finally, in response to 10 DE Reg. 1781 request, comments were submitted that resulted in additional changes being made to the original proposal, primarily to substantially revise, renumber, reorganize and reword some policy items for greater clarity and ease of reading. DMMA intends to simplify the policy format and remove the above-referenced eligibility criteria.

Because of the substantive nature of these additional changes, DMMA is now republishing the proposal for public comment pursuant to 29 Del.C. §§10115 and 10118. This revision is derived from (i) comments made by the general public during the public comment period on the original proposal; from (ii) clarifications and other improvements noted by DMMA staff during subsequent review and analysis; and, from (iii) further policy clarification noted by the above-referenced CMS memorandum.

## SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

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

The only proposed change is to amend one sentence as follows: "DMMA will require that the fair market value of the annuity income stream be sold at Fair Market Value counted as a resource." Although, not a paragon of clarity, it appears that there would no longer be a requirement that annuities be sold. Rather, the fair market value of the annuity income stream would be counted as a resource. **We endorse the concept** of the regulation.

**Agency Response:** DMMA thanks the Councils for their endorsement. In response to your comments, we are re-proposing this regulation in an effort to achieve greater clarity and ease of reading. We look forward to your comments.

## DMMA RePROPOSED REGULATION #07-38

### REVISIONS:

#### ~~20330-4.1 Annuities~~

~~An annuity is a financial device between an individual and a commercial company that conveys a right to receive periodic payments for life or a fixed number of months or years.~~

#### ~~20330-4.1.A~~

**A. Treatment of annuities purchased prior to February 8, 2006:**

While the annuity itself may or may not be an available resource, the stream of income generated by the annuity is a countable income. The applicant must demonstrate to DMMA that a market to purchase the annuity stream of income does not exist. If a market exists, DMMA will consider the annuity to be an available resource. See 20 CFR 416.1201 (a).

DMMA will require that the fair market value of the annuity income stream be sold at Fair Market Value counted as a resource. See DSSM 20350.1.7 Fair Market Value (FMV).

DMMA will not count the value of an annuity purchased by a third party, e.g., the applicant's employer, as a retirement benefit to the applicant. However, DMMA will count the value of the income generated from a third party annuity.

An annuity that is revocable is always a countable resource. Revocable annuities are able to be converted to cash.

Spouses that claim the income allowance is inadequate to meet the needs of the Community Spouse may request additional resources be set aside to bring their income up to the minimum maintenance needs allowance. These requests **MUST** go through the fair hearing process in order to retain excess resources for their protected income share. See DSSM 20970 and 42 USC 1396r 5(c). In these cases, at the death of the annuity's owner, the beneficiary of the annuity must be the estate of the Medicaid recipient.

**20330.4.1.B****B. Treatment of Annuities purchased on or After February 8, 2006:**

As a condition of eligibility, an applicant or his/her representative shall disclose to DMMA any interest in any revocable or irrevocable annuity that the Medicaid applicant or his/her spouse has in an annuity or similar financial instrument as defined by the Secretary of Health and Human Services. Failure to report an annuity to DMMA may result in possible civil and criminal charges, and potential recovery of benefits that were incorrectly paid. The fair market value of the annuity minus any income received to date will be counted as a resource.

**20330.4.1.B.1**

The State of Delaware must be named as the beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the institutionalized spouse, unless there is a community spouse, minor child or disabled child who resides in the applicant's home. In such a case, the State must be named as a beneficiary in the correct position or the purchase of the annuity shall be considered a transfer for less than fair market value.

**20330.4.1.B.2**

The State of Delaware shall notify the issuer of the annuity of its interest and beneficiary status. This notice shall require the issuer to notify the State of any changes in the amount of income, principal or beneficiary to the annuity. Any transactions that occur on or after 2/8/06, subject the annuity to Deficit Reduction Act rules, even if the annuity was originally purchased prior to 2/8/06. Transactions may include such things as addition of principal, elective withdrawals, requests to change the beneficiary, and elections to annuitize the contract.

**20330.4.1.B.3**

Annuities purchased where the community spouse is the annuitant will be considered as part of the community spouse resource and /or income allocation. The fair market value of the annuity shall be the value counted in the spousal resource calculation.

**20330.4.1.B.4**

The purchase of an annuity by or on behalf of an applicant for medical assistance for Long Term Care services shall be treated as a transfer of assets without fair consideration unless:

1. The annuity is
  - a. irrevocable and nonassignable; and
  - b. is actuarially sound according to the life expectancy table developed by the Social Security Administration at <http://www.ssa.gov/OACT/STATS/table4c6.html>; and,
  - c. Provides for payments in equal amounts during the term of the annuity with no deferral or balloon payments; and
2. The annuity is an Individual Retirement Annuity (IRA) as described in Section 408(b) of the Internal Revenue Code of 1986; or
3. The annuity is part of a deemed IRA under a qualified employer plan as described in Section 408(q) of the Internal Revenue Code of 1986; or
4. The annuity was purchased with proceeds from:
  - a. An IRA account as described in Section 408(a), 408(c), 408(p), 408(k) or 408A of the Revenue Code of 1986.

## **20330.10 Annuities**

### **20330.10.A Defining Annuity**

For Medicaid purposes, an annuity is a financial device between an individual and a commercial company that conveys a right to receive periodic payments for life or a fixed number of months or years.

### **20330.10.B Disclosure of Interest in an Annuity**

1. Any interest an applicant or community spouse has in a revocable or irrevocable annuity must be disclosed at the time of application.
2. Failure to disclose interest in an annuity may result in denial of payment for long term care services or denial of Medicaid eligibility.

### **20330.10.C Determining If Annuity Is Income And Or a Resource**

1. The equity value of a revocable annuity is a countable resource.
2. An assignable annuity (the owner or payee may be changed) is a countable resource. The resource value is the amount the assignable annuity can be sold for on the secondary market.
3. An annuity purchased by a third party, e.g. applicant's employer, as a retirement benefit to the applicant will not be counted as an available resource. (DSSM 20330.4)
4. The stream of income generated by an annuity, whether a countable resource or not, is countable income.

### **20330.10.D State's Rights as a Preferred Remainder Beneficiary**

1. The issuer of any annuity will be notified of the State's rights as a preferred remainder beneficiary. This notice will require the issuer to notify the State of any changes in the amount of income, principal or beneficiary to the annuity.
2. Certain transactions that occur on or after February 8, 2006 will subject an annuity purchased prior to this date to the DRA provisions. (DSSM 20330.10.E., DSSM 20330.10.F.)  
These transactions include such things as an addition to the principal, elective withdrawal, requests to change beneficiary, or elections to annuitize the contract.

### **20330.10.E State Named Remainder Beneficiary in All Annuities Purchased On Or After February 8, 2006**

1. The State of Delaware must be named as a beneficiary in the correct position.  
The State must be named beneficiary in the first position for the total amount of medical assistance paid on behalf of the institutionalized spouse, unless there is a community spouse, minor child, or disabled child who resides in the applicant's home.  
In such a case, the State must be named in a secondary or remainder position.
2. If the State is not named as a remainder beneficiary the purchase of the annuity will be considered

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a transfer for less than fair market value.

3. The full purchase value of the annuity will be considered the amount transferred.

## **20330.10.F Purchase of an Annuity Is Considered a Transfer of Assets**

1. The transfer of assets provisions should be applied to all annuities purchased on or after February 8, 2006 unless:

- A. The annuity is considered either:
- An individual retirement annuity (according to Sec. 408 (b) of the Internal Revenue Code of 1986); or
  - A deemed Individual Retirement Account under a qualified employer plan (according to Sec. 408 (q) of the Internal Revenue Code of 1986).
- OR
- B. The annuity is purchased with proceeds from one of the following:
- A traditional IRA (IRC Sec. 408a); or
  - Certain accounts or trusts which are treated as traditional IRAs (IRC Sec. 408 §(c));  
or
  - A simplified retirement account (IRC Sec. 408 §(p)); or
  - A simplified employee pension (IRC Sec. 408 §(k)); or
  - A Roth IRA (IRC Sec. 408A).
- OR
- C. The annuity meets all of the following requirements:
- The annuity is irrevocable and non-assignable; and
  - The annuity is actuarially sound; and
  - The annuity provides payments in approximately equal amounts, with no deferred or balloon payments.

## DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 133 (16 Del.C. §133)  
16 DE Admin. Code 4203

### PUBLIC NOTICE

#### 4203 Cancer Treatment Program

The Department Health and Social Services is proposing revisions to the State of Delaware Regulations Governing the Cancer Treatment Program. Originally adopted on July 10, 2004, these regulations establish medical insurance coverage for Delawareans for treatment of cancer. The proposed revisions extend treatment coverage from 12 months to 24 months after the date that cancer treatment is initiated for each primary cancer diagnosis.

### NOTICE OF PUBLIC HEARING

Health Promotion and Disease Prevention Section, under the Division of Public Health, Department of Health and Social Services (DHSS), will hold a public hearing to discuss the proposed revisions to the State of Delaware Regulations Governing the Cancer Treatment Program. The public hearing will be held on September 26, 2007 at 10:00 a.m. in the Health Promotion and Disease Prevention Conference Room, Second Floor, located in the Thomas Collins Bldg, 540 S. Dupont Highway, Dover, Delaware.

Copies of the proposed regulations are available for review by calling the Health Promotion and Disease Prevention Section at (302) 744-1040.

Anyone wishing to present his or her oral comments at this hearing should contact Mr. David Walton at (302) 744-4700 by September 25, 2007. Anyone wishing to submit written comments as a supplement to or in lieu

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of oral testimony should submit such comments by October 1, 2007 to:

David Walton, Hearing Officer  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Fax 302-739-6659

## Summary of Changes to Regulations Governing the Cancer Treatment Program

- Extends treatment coverage from 12 months to 24 months after the date that cancer treatment is initiated for each primary cancer diagnosis.
- Clarifies that eligibility of treatment for individuals who has a recurrence of cancer is made by the treating physician.
- Clarifies the period of eligibility for enrollees receiving treatment for cancer.

### 4203 Cancer Treatment Program

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

#### 10.0 Termination Of Eligibility

10.1 Eligibility terminates:

10.1.1 When the enrollee attains other medical insurance, including Medicare, Medicaid, and the Medicaid Breast and Cervical Cancer treatment program.

10.1.2 When the enrollee is no longer receiving treatment for cancer as defined in 4.1.1.

10.1.3 When the enrollee no longer meets the technical or financial eligibility requirements.

10.1.4 ~~42~~ Twenty-four months after the date that cancer treatment is initiated for each primary cancer diagnosis.

10.2 If eligibility is terminated, it may only be renewed for an individual who is diagnosed with ~~another cancer for which coverage has not been previously provided~~ a new primary cancer. An individual who has a recurrence of cancer for which coverage has been previously provided is not eligible for additional coverage. The determination of a new primary cancer or recurring cancer is made by the treating physician.

#### 11.0 Coverage And Benefits

11.1 Coverage is limited to the treatment of cancer as defined by DHSS.

11.2 There is no managed care enrollment.

11.3 Benefits will be paid at rates equivalent to Medicaid under a fee for service basis. If a Medicaid rate does not exist for the service provided, the CTP will determine a fair rate.

11.4 Benefits will only be paid when the provider of the cancer treatment services is a Delaware Medicaid Assistance Provider.

11.5 Benefits for patients enrolled prior to September 1, 2004 (or whatever date is established by DHSS as having an operational benefits management information system), may not be paid until after that date.

11.6 The CTP is the payer of last resort and will only provide benefits to the extent that they are not otherwise covered by another insurance plan.

11.7 Eligibility may be retroactive to the day that cancer treatment was initiated provided that the application is filed within one year of that day. In such circumstances, covered services will only be provided for the time period that the applicant is determined to have been eligible for the CTP.

11.8 In no case will eligibility be retroactive to a time period prior to July 1, 2004, except if the enrollee was receiving benefits for the treatment of colorectal cancer through the Division of Public Health's Screening for Life program on June 30, 2004. If this exception occurs, eligibility will be retroactive only to the date the enrollee was receiving benefits for colorectal cancer treatment through the Screening for Life program.

11.9 Enrollees receiving treatment for cancer as defined in 4.1.1 as of July 1, 2007, are able to extend their initial 12 month coverage to a maximum of 24 months after the date cancer treatment is initiated for each primary cancer diagnosis, provided that the enrollee continues to meet the technical and financial eligibility

requirements.

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

<http://regulations.delaware.gov/register/september2007/proposed/11 DE Reg 278 09-01-07.htm>

An authenticated PDF version of the regulation is available at:

<http://regulations.delaware.gov/register/september2007/proposed/11 DE Reg 278 09-01-07.pdf>

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### **DIVISION OF PUBLIC HEALTH**

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

### **PUBLIC NOTICE**

#### **4459 Lead Based Paint Hazards**

The Department Health and Social Services is proposing revisions to the State of Delaware Regulations Governing Lead Based Paint Hazards. These regulations establish standards for regulation of lead-based paint hazard control activities. Proposed revisions make changes to include expanded definitions, application and renewal requirements, and work practice standards.

### **NOTICE OF PUBLIC HEARING**

Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services (DHSS), will hold a public hearing to discuss the proposed revisions to the State of Delaware Regulations Governing Lead Based Paint Hazards. The public hearing will be held on October 4, 2007 at 2:00 p.m. in the Third Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review by calling the Health Systems Protection Section at (302) 744-4546.

Anyone wishing to present his or her oral comments at this hearing should contact Mr. David Walton at (302) 744-4700 by October 3, 2007. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by October 4, 2007 to:

David Walton, Hearing Officer  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Fax 302-739-6659

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

<http://regulations.delaware.gov/register/september2007/proposed/11 DE Reg 280 09-01-07.htm>

An authenticated PDF version of the regulation is available at:

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR AND WASTE MANAGEMENT

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

#### REGISTER NOTICE SAN #2007-16

**1. Title of the Regulations:**

Proposal to amend Regulation 32, Transportation Conformity, of the State of Delaware, "Regulations Governing the Control of Air Pollution."

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

The proposed amendments to Regulation 32 will simplify Delaware's transportation conformity regulations, and will bring the Salisbury/Wicomico Metropolitan Planning Organization (MPO) into the Interagency Transportation Conformity Consultation Workgroup.

Federal Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) legislation that took effect on August 10, 2005 streamlined the federal transportation conformity requirements on States. The legislation allows states to forgo the burden of having to adopt and maintain a full transportation conformity rule, and to only adopt provisions concerning the consultation process and commitments relative to transportation control measures. States and MPOs are still bound by federal transportation conformity rules so this streamlining would not change the overall implementation and practice of transportation conformity. DNREC is proposing to take advantage of this streamlining by revising Reg. 32, Transportation Conformity, to address only the mandatory provisions.

The Salisbury/Wicomico MPO will be added as a new member of the Delaware Interagency Transportation Conformity Consultation Workgroup. DNREC is proposing this change because the Town of Delmar, Delaware is now part of the Salisbury/Wicomico MPO. The change will require that any conformity determination performed for Sussex County must be in consultation with the Salisbury/Wicomico MPO.

In addition to the above revisions, Reg. 32 has been renumbered and reformatted in accordance with the Code of Delaware Regulations style manual.

**3. Possible Terms of the Agency Action:**

None.

**4. Statutory Basis or Legal Authority to Act:**

7 Del.C., Chapter 60, Environmental Control

**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 Monday, September 24, 2007, beginning at 6 PM in the Priscilla Building, 156 S. State Street, Dover, Delaware. Interested parties may submit comments in writing to: Philip Wheeler, DNREC Air Quality Management Section, 156 South State Street, Dover, Delaware 19901.

**7. Prepared By:**

Philip Wheeler, Planner IV, 739-9402,

[philip.wheeler@state.de.us](mailto:philip.wheeler@state.de.us)

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

<http://regulations.delaware.gov/register/september2007/proposed/11 DE Reg 281 09-01-07.htm>

An authenticated PDF version of the regulation is available at:

<http://regulations.delaware.gov/register/september2007/proposed/11 DE Reg 281 09-01-07.pdf>

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# PROPOSED REGULATIONS

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## DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 103, 1902, 2701, 2703 and Chapter 15  
(7 Del.C. §§103, 1902, 2701, 2703 and Ch. 15)  
7 DE Admin. Code 3203, 3207, 3210, 3211 and 3214

### REGISTER NOTICE SAN# 2007-15

**1. Title of the Regulations:**

Horseshoe Crab Regulations: 3203 Seasons and Area Closed to Taking Horseshoe Crabs.  
3207 Horseshoe Crab Dredging Restrictions.  
3210 Horseshoe Crab Reporting Requirements.  
3211 Horseshoe Crab Commercial Collecting Permit Eligibility and  
Renewal Requirements.  
3214 Horseshoe Crab Annual Harvest Limit.

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

The Department adopted emergency regulations (Order Number 2007-F-0020) on June 11, 2007 to implement the horseshoe crab mandatory harvest provisions in Addendum IV of the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for the Horseshoe Crab. As a follow-up to this Order, the Department is proposing regulations of a more lasting nature which would meet the intent of the emergency regulations adopted on June 11, 2007. These regulations would prohibit the harvest and landing of all horseshoe crabs in Delaware waters from January 1 through June 7 for two years, and prohibit the harvest and landing of female horseshoe crabs for the remainder of the year as well. During the period June 8 through December 31, up to 100,000 male horseshoe crabs may be harvested from approved harvest areas in Delaware. Commercial collectors of horseshoe crabs will have to report their landings daily during the open season in order to facilitate quota monitoring. Instead of just allowing harvesting during certain days of the week, it is proposed that beach collecting be permitted Monday through Friday between June 8 and June 30 from Port Mahon Road and private beaches where collecting is presently legal. This proposed measure will allow beach collectors to harvest male horseshoe crabs under the proposed quota system more efficiently during the period when harvesting is permitted. Since no harvesting is allowed prior to June 8, there should be no additional impacts to shorebirds from allowing harvesting five days per week. Permit renewal requirements will be aligned with other shellfish licenses. Specifically, horseshoe crab commercial beach collecting permits must be renewed annually by December 31 of each calendar year or the person holding the collecting permit forfeits their eligibility to obtain a horseshoe crab commercial collecting permit in subsequent years. This option permits harvest to resume after the period of time that the shorebirds normally have migrated north of Delaware that depend on horseshoe crab eggs as a food source, and after a significant portion of the horseshoe crab spawning has occurred in a normal year. By harvesting only male horseshoe crabs, females would be further protected and will be available to participate in the annual spawn without being subject to harvest at any point during the year.

**3. Possible Terms of the Agency Action:**

This regulation will be re-considered in light of horseshoe crab population trends and further action by the Atlantic States Marine Fisheries Commission beginning in 2009.

**4. Statutory Basis or Legal Authority to Act:**

§103, §1902, §2701 and §2703 of 7 Delaware Code and Chapter 15 of 7 Delaware Code.

**5. Other Regulations That May Be Affected by the Proposal:**

N/A

**6. Notice of Public Comment:**

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, (302) 739-3441. A public hearing on these proposed regulations will be held in the Department of Natural Resources and

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Environmental Control Auditorium, at 89 Kings Highway, Dover, DE at 7:00 PM on September 24, 2007. Individuals may present their opinion and evidence either at the hearing or in writing to Lisa Vest, Hearing Officer, Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, DE 19901 or via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us). The hearing record will remain open for written or e-mail comments until 4:30 PM September 30, 2007.

7. **Prepared By:**  
Roy W. Miller                      302-739-9914                      August 7, 2007

**3200 Horseshoe Crabs**

**3201 Definitions (Formerly S-50 & HC-1)**  
~~(Suspended effective January 1, 2007, See 3215 Horseshoe Crab Harvest Moratorium)~~  
(Penalty Section 7 Del.C. §1912)

1.0 The following definitions shall apply to terms in 7 Del.C. Ch. 27 relative to horseshoe crabs.

1.1 **“Bait Saving Device”** shall mean any device that when so deployed in or on a pot reduces either the rate at which bait, meaning horseshoe crabs or parts thereof, must be replenished or reduces the number or quantity of horseshoe crabs used as bait.

1.2 **“Collect”** shall mean to take live horseshoe crabs by any means other than by dredge.

1.3 **“Dispose of said Crabs Properly”** shall mean bury on the beach, incorporate into soil as fertilizer or any other method approved by the Department.

1.4 **“Dredge”** shall mean to use any device to gather, scrape, scoop, fish for or otherwise take bottom dwelling horseshoe crabs.

1.5 **“Personal, Non-Commercial Use”** shall mean to be used as food, fertilizer or bait or otherwise properly disposed without trading, bartering, or selling by one individual to another, or without transporting, shipping, or causing to be transported or shipped, out of state.

**7 DE Reg. 220 (8/1/03)**

**10 DE Reg. 1029 (12/01/06)**

**3202 Horseshoe Crabs As Bait In Pots; Conch Pots (Formerly HC- 2)**  
(Penalty Section 7 Del.C. §1912)

1.0 It shall be unlawful for any person to place more than one-half of a female horseshoe crab or one male horseshoe crab as bait in any type of pot on any one day in the waters of this State.

2.0 It shall be unlawful for any person to fish with a conch pot that is not equipped with a bait saving device, provided that a horseshoe crab or parts thereof are used as bait.

**7 DE Reg. 220 (8/1/03)**

**3203 Seasons And Area Closed To Taking Horseshoe Crabs (Formerly S-51 & HC-3)**  
~~(Suspended effective January 1, 2007, See 3215 Horseshoe Crab Harvest Moratorium)~~  
(Penalty Section 7 Del.C. §1912)

1.0 It shall be unlawful for any person to dredge or attempt to collect by means of a dredge horseshoe crabs or parts thereof from any state or federal land owned in fee simple or the tidal waters of this state during a period beginning at 12:01 am on ~~May 4~~ January 1 and continuing through midnight, June 30, next ensuing. After June 30 in any given calendar year, it shall be unlawful to dredge or attempt to collect by means of a dredge female horseshoe crabs.

2.0 It shall be lawful for persons with valid horseshoe crab collecting permits and eel licensees and their alternates to collect adult male horseshoe crabs on ~~Tuesday and Thursday~~ Monday through Friday from state owned lands to the east of state road No. 89 (Port Mahon Road) from 12:01 a.m. on June 8 and continuing through midnight on June 30.

3.0 It shall be unlawful for any person to collect or attempt to collect, any horseshoe crabs or parts thereof from any land not owned by the state or federal government during the period beginning at 12:01 a.m. on ~~May 4~~ January 1 and continuing through midnight, June 7, next ensuing. It shall be lawful, during a period

beginning at 12:01 a.m. on June 8 and continuing through midnight on June 30, for persons with valid horseshoe crab collecting permits and eel licensees and their alternates to collect male horseshoe crab adults on ~~Mondays, Wednesdays and Fridays~~ Monday through Friday from such private lands.

4.0 It shall be unlawful for any person to collect or attempt to collect any horseshoe crabs from any land not owned by the State or federal government unless said person has on his or her person written permission, signed by the owner of said land with the owner's address and phone number, indicating the individual to whom permission to collect horseshoe crabs is granted.

~~5.0 It shall be unlawful for any person to collect or dredge or to attempt to collect or dredge horseshoe crabs at any time prior to May 1 in any given year after the date the Department determines 35% of the annual quota of horseshoe crabs, approved for Delaware by the Atlantic States Marine Fisheries Commission, is landed.~~

**1 DE Reg 1412 (4/1/98)**

**7 DE Reg. 220 (8/1/03)**

**10 DE Reg. 1029 (12/01/06)**

### **3204 Requirement For Collecting Horseshoe Crabs For Persons Under 16 (Formerly S-52 & HC-4)**

~~(Suspended effective January 1, 2007, See 3215 Horseshoe Crab Harvest Moratorium)~~

(Penalty Section 7 Del.C. §1912)

1.0 It shall be unlawful for any person with a valid horseshoe crab collecting permit to collect any horseshoe crabs as an alternate to a person with a valid commercial eel fishing license.

2.0 It shall be unlawful for any person under the age of sixteen (16) years to possess any horseshoe crabs unless accompanied by a person who has been issued a valid horseshoe crab scientific collecting, commercial collecting or dredge permit.

**3 DE Reg 1092 (2/1/00)**

**7 DE Reg. 220 (8/1/03)**

**10 DE Reg. 1029 (12/01/06)**

### **3205 Number Of Persons Accompanying A Person With A Valid Horseshoe Crab Collecting Permit (Formerly S-53 & HC-5)**

~~(Suspended effective January 1, 2007, See 3215 Horseshoe Crab Harvest Moratorium)~~

(Penalty Section 7 Del.C. §1912)

1.0 It shall be unlawful for any person with a valid horseshoe crab commercial collecting permit when collecting horseshoe crabs to be assisted by more than three (3) persons under the age of 16 who are not required to have valid horseshoe crab commercial collecting permits.

2.0 It shall be unlawful for any person 16 years of age or older who does not have a valid commercial horseshoe crab collecting permit, to assist any person with a valid commercial horseshoe crab collecting permit in the handling, loading or driving a vehicle used to transport horseshoe crabs collected by said horseshoe crab collecting permittee while within 300 feet of the shoreline of the water from which said horseshoe crabs are collected or the point on shore where said horseshoe crabs are landed from a vessel.

**3 DE Reg 1092 (2/1/00)**

**7 DE Reg. 220 (8/1/03)**

**10 DE Reg. 1029 (12/01/06)**

### **3206 Possession Limit Of Horseshoe Crabs, Exceptions (Formerly S-54 & HC-6)**

~~(Suspended effective January 1, 2007, See 3215 Horseshoe Crab Harvest Moratorium)~~

(Penalty Section 7 Del.C. §1912)

1.0 Unless otherwise authorized, it shall be unlawful for any person to possess a horseshoe crab, except a person with a validated receipt from a person with a valid horseshoe crab commercial collecting or dredge permit for the number of horseshoe crabs in said person's possession. A receipt shall contain the name, address and signature of the supplier, the date and the number of horseshoe crabs obtained.

2.0 Any person who has been issued a valid commercial eel fishing license by the Department or said person's alternate while in the presence of the licensee, is exempt from the prohibition on the possession of

horseshoe crabs, provided said commercial eel fishing licensee has submitted all required reports of his/her and his/her alternate's previous week's harvest of horseshoe crabs with the Department in accordance with Regulation 3210. Any person who has been issued a commercial eel fishing license and said person's alternate while in the presence of the licensee, may collect horseshoe crabs by hand without a horseshoe crab commercial collecting permit provided all horseshoe crabs taken are for personal, non-commercial use, as bait for the licensee's eel pots fished in this state.

**1 DE Reg 1412 (4/1/98)**

**3 DE Reg 1567 (5/1/00)**

3.0 It shall be unlawful for any person with a valid commercial eel fishing license to be assisted in collecting horseshoe crabs by any person who is not listed on his commercial eel fishing license as the alternate.

4.0 Any person with both a valid commercial eel fishing license and a valid commercial horseshoe crab collecting permit shall be considered as a commercial horseshoe crab collecting permittee for purposes of enforcing the provisions of 7 **Del.C.** Ch. 27 and/or shellfish regulations pertaining to horseshoe crabs.

5.0 It shall be unlawful for any person with a valid commercial eel fishing license to commingle any horseshoe crabs collected either by said commercial eel fishing licensee or by his or her alternate with horseshoe crabs either collected by a person with a valid horseshoe crab dredge permit or by a person with a valid commercial horseshoe crab collecting permit.

6.0 It shall be unlawful for any person with a valid horseshoe crab dredge permit or with a valid commercial horseshoe crab collecting permit to commingle any horseshoe crab dredged or collected by said horseshoe crab dredge permittee or horseshoe crab collecting permittee with horseshoe crabs collected by any person with a valid commercial eel fishing license.

7.0 It shall be unlawful for any person to possess more than 300 cubic feet of horseshoe crabs except in a stationary cold storage or freezer facility.

8.0 It shall be unlawful for any person to collect or attempt to collect more than 300 cubic feet of horseshoe crabs during any 24 hour period beginning at 12:01 AM and continuing through midnight next ensuing.

**3 DE Reg 1092 (2/1/00)**

**3 DE Reg 1567 (5/1/00)**

**7 DE Reg. 220 (8/1/03)**

**10 DE Reg. 1029 (12/01/06)**

**3207 Horseshoe Crab Dredging Restrictions (Formerly S-55 & HC-7)**

~~(Suspended effective January 1, 2007, See 3215 Horseshoe Crab Harvest Moratorium)~~

(Penalty Section 7 **Del.C.** §1912)

1.0 It shall be unlawful for any person to dredge horseshoe crabs in the area in Delaware Bay designated as leased ~~S~~shellfish grounds except on one's own leased shellfish grounds or with permission from the owner of leased shellfish grounds. The area in Delaware Bay designated as leased shellfish grounds is within the boundaries that delineate leasable shellfish grounds and is described as follows: Starting at a point on the "East Line" in Delaware at Loran-C coordinates 27314.50/42894.25 and continuing due east to a point at Loran-C coordinates 27294.08/42895.60 and then 27270.80/42852.83 and then continuing southwest to a point at Loran-C coordinates 27281.31/42803.48 and then continuing west to a point at Loran-C coordinates 27280.75/42795.50 and then in a northerly direction on a line 1000' offshore, coterminous with the existing shoreline to the point of beginning on the "East Line."

2.0 It shall be unlawful for any person, who operates a vessel and has on board said vessel a dredge of any kind, to have on board or to land more than 1500 horseshoe crabs during any 24 hour period beginning at 12:01 a.m. and continuing through midnight next ensuing.

**1 DE Reg 354 (10/1/97)**

**3 DE Reg 1567 (5/1/00)**

3.0 It shall be unlawful for any person, who operates a vessel and has on board said vessel a dredge of any kind, to have or possess on board said vessel any horseshoe crabs at any time during the period beginning 12:01 a.m. on ~~May~~ January 1 and continuing through midnight, June 30, next ensuing.

**1 DE Reg 1412 (4/1/98)**

4.0 It shall be unlawful for any person to land horseshoe crabs taken from the Exclusive Economic Zone unless said person has a valid horseshoe crab dredge permit."

3 DE Reg 1567 (5/1/00)  
 7 DE Reg. 220 (8/1/03)  
 10 DE Reg. 1029 (12/01/06)

**3208 Horseshoe Crab Dredge Permit Lottery (Formerly S-55A & HC-8)**  
~~(Suspended effective January 1, 2007, See 3215 Horseshoe Crab Harvest Moratorium)~~  
 (Penalty Section 7 Del.C. §1912)

1.0 The Department of Natural Resources and Environmental Control shall hold an annual lottery to select eligible individuals for the five horseshoe crab dredge permits authorized to be issued each year if more than five applications are received by the Department. Applications for an annual commercial horseshoe crab permit shall be accepted by the Department until 4:30 PM December 31 or 4:30 PM on the Friday preceding if December 31 is a Saturday or Sunday. If an annual lottery is necessary it shall be conducted at 1:00 PM on January 1, or the first work day thereafter, in the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware."

3 DE Reg. 652 (11/1/99)

2.0 To be eligible an applicant for a horseshoe crab dredge permit shall be the current holder of an oyster harvesting license issued by the Department."

2 DE Reg 1055 (1/1/99)

5 DE Reg. 1128 (11/1/01)

7 DE Reg. 220 (8/1/03)

10 DE Reg. 1029 (12/01/06)

**3209 Horseshoe Crab Sanctuaries (Formerly S-56 & HC-9)**  
~~(Suspended effective January 1, 2007, See 3215 Horseshoe Crab Harvest Moratorium)~~  
 (Penalty Section 7 Del.C. §1912)

1.0 All state and federal lands owned in fee simple are horseshoe crab sanctuaries during the period beginning 12:01 a.m. on May 1 through midnight June 30.

2.0 Any land owner(s) may register their land with the Department to be designated as a horseshoe crab sanctuary for a period to be specified by the land owner(s).

3.0 It shall be unlawful to collect any horseshoe crabs at any time from a horseshoe crab sanctuary except as provided in Regulation 3203 section 2.0.

1 DE Reg 354 (10/1/97)

1 DE Reg 1412 (4/1/98)

7 DE Reg. 220 (8/1/03)

10 DE Reg. 1029 (12/01/06)

**3210 Horseshoe Crab Reporting Requirements (Formerly S-57 & HC-10)**  
~~(Suspended effective January 1, 2007, See 3215 Horseshoe Crab Harvest Moratorium)~~  
 (Penalty Section 7 Del.C. §1912)

1.0 It shall be unlawful for any person who has been issued a horseshoe crab dredge permit, a horseshoe crab commercial collecting permit or a commercial eel pot license to not report his/her harvest of horseshoe crabs to the Department on a ~~weekly~~ daily basis. Said ~~weekly~~ daily reports shall not be required to be submitted to the Department during any month said person indicates previously in writing to the Department that he/she will not be harvesting horseshoe crabs. Any person required to submit a ~~weekly~~ daily report on his/her harvest of horseshoe crabs to the Department shall ~~submit said report on or before 4:30PM on the Monday following the week covered by said report. If Monday is a legal State holiday, said report shall be submitted on or before 4:30PM on Tuesday, next ensuing~~ phone in said report within 24 hours of said harvesting. For purposes of this section, a week shall commence at 12:01AM on Monday and conclude at midnight on Sunday, next ensuing. Said report shall include but not be limited to said person's unique identification number assigned by the Department, the dates and location horseshoe crabs were harvested, the number ~~and sex~~ of horseshoe crabs harvested and the method of harvest of horseshoe crabs. Said report shall be submitted to the Department by

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telephone by calling a phone number, dedicated by the Department for the reporting of harvested horseshoe crabs, and entering the required data by code or voice as indicated.

2.0 Any person who fails to submit a ~~weekly~~ daily report on his/her harvest of horseshoe crabs to the Department on time shall have his/her permit to dredge or his/her permit or authority to collect horseshoe crabs suspended until all delinquent reports on harvested horseshoe crabs are received by the Department.

3.0 In addition to the requirement to phone in ~~weekly~~ daily catch reports, horseshoe crab collectors and harvesters and commercial eel fishermen are required to compile and file monthly log sheets detailing daily landings of horseshoe crabs on forms supplied by the Department. These forms must be submitted by the 10th day of the month next ensuing. Failure to submit these monthly reports on a timely basis may be cause for horseshoe crab collecting or horseshoe crab dredge permit revocation or non-renewal of said permit the following year; or in the case of a commercial eel licensee, forfeiture of permission to possess or use horseshoe crabs as bait for the remainder of the year.

**1 DE Reg 1413 (4/1/98)**

**3 DE Reg 1567 (5/1/00)**

**7 DE Reg. 220 (8/1/03)**

**10 DE Reg. 1029 (12/01/06)**

**3211 Horseshoe Crab Commercial Collecting Permit Eligibility And Renewal Requirements (Formerly S-59 & HC-11)**

~~(Suspended effective January 1, 2007, See 3215 Horseshoe Crab Harvest Moratorium)~~

(Penalty Section 7 Del.C. §1912)

1.0 The Department may only issue a horseshoe crab commercial collecting permit to a person who makes application for such a permit in calendar year 1998, and who, prior to July 1, 1997, had applied for and secured from the Department at least 2 valid horseshoe crab commercial collecting permits. Any person holding a horseshoe crab commercial collecting permit in 1998 may apply for renewal of their horseshoe crab commercial collecting permit by ~~April 1~~ December 31 each year. If any person holding a horseshoe crab commercial collecting permit from the previous year fails to apply for renewal of their horseshoe crab commercial collecting permit by ~~April 1~~ December 31 in any given calendar year, they forfeit their eligibility to obtain a horseshoe crab commercial collecting permit in the future subsequent years.

**1 DE Reg 1413 (4/1/98)**

**7 DE Reg. 220 (8/1/03)**

**10 DE Reg. 1029 (12/01/06)**

**3212 Prohibitions; Sale Of Horseshoe Crabs (Formerly S-60 & HC-12)**

~~(Suspended effective January 1, 2007, See 3215 Horseshoe Crab Harvest Moratorium)~~

(Penalty Section 7 Del.C. §1912)

1.0 It shall be unlawful for any person who collects or dredges horseshoe crabs, except a person with a valid horseshoe crab commercial collecting permit or a person with a valid horseshoe crab dredge permit, to sell, trade and/or barter or to attempt to sell, trade and/or barter any horseshoe crab."

**1 DE Reg 1413 (4/1/98)**

**7 DE Reg. 220 (8/1/03)**

**10 DE Reg. 1029 (12/01/06)**

**3213 Collecting Horseshoe Crabs At Night, Prohibited (Formerly S-61 & HC-13)**

~~(Suspended effective January 1, 2007, See 3215 Horseshoe Crab Harvest Moratorium)~~

(Penalty Section 7 Del.C. §1912)

1.0 It shall be unlawful for any person with a valid commercial eel fishing license to collect horseshoe crabs between sunset and sunrise."

**3 DE Reg 1092 (2/1/00)**

**7 DE Reg. 220 (8/1/03)**

**10 DE Reg. 1029 (12/01/06)**

# PROPOSED REGULATIONS

**3214 Horseshoe Crab Annual Harvest Limit (Formerly S-62 & HC-14)**  
~~(Suspended effective January 1, 2007, See 3215 Horseshoe Crab Harvest Moratorium)~~  
 (Penalty Section 7 Del.C. §1912)

1.0 The annual harvest limit for horseshoe crabs taken and/or landed in the State shall be ~~150,000~~ 100,000 male horseshoe crabs for a period of two years beginning January 1, 2007 or whatever the Atlantic States Marine Fisheries Commission has approved as Delaware's current annual quota, whichever number is less. No female horseshoe crabs may be taken/landed at any time.

2.0 When the Department has determined that the annual horseshoe crab quota has been met, the Department shall order the horseshoe crab fishery closed and no further horseshoe crabs may be taken during the remainder of the calendar year.

**7 DE Reg. 220 (8/1/03)**

**10 DE Reg. 1029 (12/01/06)**

**3215 Horseshoe Crab Harvest Moratorium**

~~1.0 Under the Department's authority granted in §2701(a) of 7 Del.C. to administer a program for the conservation and management of horseshoe crabs, it shall be unlawful for anyone, except as specified in §2702 and §2704(b) of 7 Del.C., to collect by means of a dredge or to collect or attempt to collect by any means any horseshoe crab or parts thereof from Delaware lands or waters for a period of two consecutive years beginning January 1, 2007. It shall further be unlawful to land from a vessel in Delaware any horseshoe crabs taken from outside of Delaware's jurisdiction for a period of two years beginning January 1, 2007. For the two-year term of this harvest moratorium, all other horseshoe crab regulations are suspended, except for Horseshoe Crab Regulation 3202. Those persons holding horseshoe crab collecting permits in 2006 shall retain their eligibility to apply for a commercial horseshoe crab collecting permit once the fishery is re-opened and must do so by December 31 of each year once the fishery is re-opened, or forfeit their eligibility to obtain a horseshoe crab commercial collecting permit in subsequent years.~~

**10 DE Reg. 1029 (12/01/06)**

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## DEPARTMENT OF SAFETY AND HOMELAND SECURITY DIVISION OF STATE POLICE

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

### PUBLIC NOTICE

#### 2300 Pawn Brokers and Junk Dealers

Notice is hereby given that the Department of Safety and Homeland Security, Division of State Police, in accordance with 24 Del.C. Section 2311 proposes to adopt Rules and Regulations. This adoption will allow the regulation of Pawnbrokers, Secondhand Dealers, and Scrap Metal Processors. If you wish to view the complete set of Rules and Regulations, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by September 30, 2007, to Delaware State Police, Detective Licensing, P.O. Box 430, Dover, DE, 19903.

These Rules and Regulations are promulgated pursuant to 24 Del.C. Section 2311 and the Secretary of Safety and Homeland Security delegates his regulatory authority granted by Chapter 23 to the Division of State Police.

#### 2300 Pawn Brokers and Junk Dealers

#### 1.0 Licensing

1.1 Any individual applying for a pawnbroker, secondhand dealer or scrap metal processor license

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under Title 24 Chapter 23 must meet and maintain the following qualifications:

1.1.1 Must not be convicted of any felony within 5 years of application date; and

1.1.2 Must not have been convicted of any misdemeanor involving theft or fraud within 5 years of application date; and

1.1.3 Must not have been convicted of any misdemeanor involving drugs within 3 years of application date.

1.2 A license for a pawnbroker, secondhand dealer or scrap metal processor will not be issued if there is a pending charge as listed in Section 1.1.1, 1.1.2, or 1.1.3.

1.3 The individual applying for a pawnbroker, secondhand dealer or scrap metal processor under Title 24 Chapter 23 must also meet the following qualifications:

1.3.1 Must be at least 18 years of age; and

1.3.2 Must have a valid Delaware Business License; and

1.3.3 Physical location of business must be in the State of Delaware; and

1.3.4 Appropriate taxes must be filed to the State of Delaware and the United States of America;

and

1.3.5 License must be prominently displayed within the business along with the Delaware Business License.

1.4 The individual applying for licensure under Title 24 Chapter 23 must complete the following for approval:

1.4.1 Applicant must appear in person at the Delaware State Police Criminal Investigative Unit (CIU) at Troop 2, Troop 3 or Troop 4 in their respective county, to submit the initial application. Licenses will be renewed annually. Renewal applications may be submitted via mail; and

1.4.2 Any and all applications required by the Delaware State Police CIU; and

1.4.3 Submit fingerprints, if requested to confirm the status or existence of a Delaware (CHRI) criminal history. The Director of the State Bureau of Identification (SBI) determines the fee for this process.

1.5 Notification of a change of address for the business during the license year must be made to the Delaware State Police CIU at Troop 2, Troop 3 or Troop 4.

## **2.0 Notification of Arrest**

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

## **3.0 Revocations and Emergency Suspensions**

3.1 The Director of State Bureau of Identification (SBI) shall have the power to issue the revocation or emergency suspension of any individual licensed under Title 24 Chapter 23 that violates the Chapter or the promulgated Rules & Regulations.

3.2 The Director of SBI shall issue an emergency suspension due to:

3.2.1 Any conduct of the applicant deemed to be a threat to public safety; and/or

3.2.2 Any felony arrest; and/or

3.2.3 Any arrest of a misdemeanor involving the crime of theft, receiving stolen property, fraud related charges, or any crime involving drugs.

3.3 The Director of SBI shall issue the revocation of any applicant due to:

3.3.1 Any conduct of the applicant deemed to be a threat to public safety; and/or

3.3.2 Any felony conviction; and/or

3.3.3 Any conviction of a misdemeanor involving the crime of theft, receiving stolen property, fraud related charges, or any crime involving drugs.

3.4 The Director of SBI must give written notice to the applicant stating the intent of revocation or an emergency suspension and the grounds therefore.

3.4.1 Any applicant that has been revoked or suspended is entitled to a hearing before the Pawnbrokers hearing Committee.

3.4.1.1 The Pawnbrokers Hearing Committee will be comprised of a DSP Executive Staff Member and the DSP CIU Troop Commander or Designee in respective county. The Director of SBI and a representative of the Attorney General's Office may attend but not vote.

3.4.2 Anyone requesting a hearing shall notify the Director of SBI, in writing, within 30 days from the revocation or emergency suspension and the hearing shall be scheduled within 30 days of the filing of the request.

3.5 Anyone whose license has been revoked cannot be reinstated. The applicant must follow the standard licensing application process to apply for a new license.

Adopted 00/00/00

## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

### 2000 Board of Occupational Therapy

Statutory Authority: 24 Delaware Code, Section 2006(a)(1) (24 Del.C. §2006(a)(1))

The Delaware Board of Occupational Therapy, in accordance with 24 Del.C. §2006(a)(1), has proposed changes to its Regulations 2.0 and 3.0 to change the audit process for license renewal so that continuing education attestations will be audited after the license renewal period is over, rather than before the expiration date. The changes will also extend the period of time during each biennial licensure period during which licensees may obtain required CE credits from May 31<sup>st</sup> of each renewal year to July 31<sup>st</sup> of each renewal year, to correspond with the license renewal period.

The Board held a public hearing on this issue on May 2, 2007. The Board made substantive changes to the proposed rules and regulations as a result of comments received at that hearing. A public hearing on the revised rules and regulations will be held on October 3, 2007 at 4:45 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Occupational Therapy, 861 Silver Lake Blvd., Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

### 2000 Board of Occupational Therapy

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

#### 2.0 Licensure Procedures:

2.1 To apply for an initial license, including relicensure after expiration, an applicant shall submit to the Board:

2.1.1 A completed notarized application on the form approved by the Board;

2.1.2 Verification of a passing score on the NBCOT standardized exam submitted by the exam service or NBCOT;

2.1.2.1 If the date of application for licensure is more than three years following the successful completion of the NBCOT exam, the applicant shall submit proof of twenty (20) hours of continuing education in the two years preceding the application in accordance with Rule 5.0 of these rules and regulations.

2.1.3 Official transcript and proof of successful completion of field work submitted by the school directly to the Board office;

2.1.4 Fee payable to the State of Delaware.

2.2 To apply for a reciprocal license, in addition to the requirements listed in 24 Del.C. §2011, an applicant shall submit the following to the Board:

2.2.1 A completed notarized application on the form approved by the Board;

2.2.2 Verification of a passing score on the NBCOT standardized exam submitted by the exam service or NBCOT;

2.2.3 Letter of verification from any state in which the applicant has been licensed (the applicant is responsible for forwarding the blank verification form to all states where they are now or ever have been licensed);

2.2.4 Fee payable to the State of Delaware.

2.3 To apply for renewal, an applicant shall submit:

2.3.1 A completed renewal application on the form approved by the Board. Beginning in 2006, license renewal may be accomplished online at [www.dpr.delaware.gov](http://www.dpr.delaware.gov);

2.3.2 ~~Proof of meeting continuing education requirements as designated by the Board in Rule 3.0;~~

~~2.3.3~~ Renewal fee payable to the State of Delaware.

2.4 To apply for inactive status:

A licensee may, upon written request to the Board, have his/her license placed on inactive status if he/she is not actively engaged in the practice of occupational therapy in the State.

2.5 To apply for reactivation of an inactive license, a licensee shall submit:

2.5.1 A letter requesting reactivation;

2.5.2 A completed application for renewal

2.5.3 Proof of continuing education attained within the past two years (20 contact hours). The twenty (20) hours must be in accordance with Rule 5.0 of these rules and regulations;

2.5.4 Fee payable to the State of Delaware.

2.6 To apply for reinstatement of an expired license, an applicant shall submit (within three (3) years of the expiration date):

2.6.1 A completed application for renewal;

2.6.2 Proof of continuing education attained within the past two years (20 contact hours). The twenty (20) hours must be in accordance with Rule 3.0 of these rules and regulations;

2.6.3 Licensure and late fee payable to the State of Delaware.

**6 DE Reg. 1331 (4/1/03)**

**9 DE Reg. 1768 (5/1/06)**

## 3.0 Continuing Education

3.1 Continuing Education Content Hours

3.1.1 Continuing education (CE) is required for license renewal and shall be completed by ~~May~~ July 31st of each renewal year. ~~A licensee who completes continuing education that is not approved by the Board will be notified so that he or she may obtain additional CE to substitute before the license expiration date of July 31.~~

3.1.1.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 3.0;

3.1.1.2 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion can be submitted;

3.1.1.3 Licensees selected for random audit are required to supplement the attestation with attendance verification as provided in 3.1.2.

3.1.2 ~~A log of CE on a form approved by the Board shall be maintained during the licensure period to be submitted if the renewal application is selected for CE audit. Random audits will be performed by the Board to ensure compliance with the CE requirement. Licensees selected for the random audit shall submit the log and attendance verification.~~

3.1.2.1 The Board will notify licensees within sixty (60) days after July 31 of each biennial renewal period that they have been selected for audit.

3.1.2.2 Licensees selected for random audit shall be required to submit verification within ten (10) business days of receipt of notification of selection for audit.

3.1.2.3 Verification shall include such information necessary for the Board to assess whether the course or other activity meets the CE requirements in Section 3.0, which may include, but is not limited to, the information noted for each type of CE as set forth in Rule 3.3.

3.1.3 Contact hours shall be prorated for new licensees in accordance with the following schedule:

# PROPOSED REGULATIONS

- 3.1.3.1 \*21 months up to and including 24 months remaining in the licensing cycle requires 20 hours
- 3.1.3.2 \*16 months up to an including 20 months remaining in the licensing cycle requires 15 hours
- 3.1.3.3 \*11 months up to and including 15 months remaining in the licensing cycle requires 10 hours
- 3.1.3.4 \*10 months or less remaining in the licensing cycle - exempt
- 3.2 Definition of Acceptable Continuing Education Credits:
- 3.2.1 Activities must be earned in two (2) or more of the six (6) categories for continuing education beginning in section ~~5-5~~ 3.3.
- 3.3 Continuing Education Content:
- 3.3.1 Activities must be in a field of health and social services related to occupational therapy, must be related to a licensee's current or anticipated roles and responsibilities in occupational therapy, and must directly or indirectly serve to protect the public by enhancing the licensee's continuing competence.
- 3.3.2 Approval will be at the discretion of the Board. A licensee or continuing education provider may request prior approval by the Board by submitting an outline of the activity at least six weeks before it is scheduled. The Board pre-approves continuing education activities sponsored or approved by AOTA or offered by AOTA-approved providers as long as the content is not within the exclusion in Rule 5.5.1 for courses covering documentation for reimbursement or other business matters.
- 3.3.3 CE earned in excess of the required credits for the two (2) year period may not be carried over to the next biennial period.
- 3.4 Definition of Contact Hours:
- 3.4.1 "**Contact Hour**" means a unit of measure for a continuing education activity. One contact hour equals 60 minutes in a learning activity, excluding meals and breaks."
- 3.4.2 One (1) academic semester hour shall be equal to fifteen (15) contact hours.
- 3.4.3 One (1) academic quarter hour shall be equal to ten (10) contact hours.
- 3.4.4. The preparing of original lectures, seminars, or workshops in occupational therapy or health care subjects shall be granted one (1) contact hour for preparation fro each contact hour of presentation. Credit for preparation shall be give for the first presentation only.
- 3.5 Continuing Education Activities:
- 3.5.1 Courses: The maximum credit for course work shall not exceed nineteen (19) hours. Course work involving alternative therapies shall be limited to five (5) hours. Course work by home study/correspondence shall be limited to ten (10) hours. Extension courses, refresher courses, workshops, seminars, lectures, conferences, and non patient-specific in-service training qualify under this provision as long as they are presented in a structured educational experience beyond entry-level academic degree level and satisfy the criteria in ~~5-3-4~~ 3.3.1.
- 3.5.1.1 Excluded are any job related duties in the workplace such a fire safety, OSHA or CPR. Also excluded are courses covering documentation for reimbursement or other business matters.
- 3.5.1.2 ~~Course work involving alternative therapies shall be limited to five(5) hours,~~ Documentation for continuing education courses shall include a certificate of completion or similar documentation including name of course, date, author/instructor, sponsoring organization, location, and number of hours attended and amount of continuing education credit earned.
- 3.5.1.3 Documentation for academic coursework shall include an original official transcript indicating successful completion of the course, date, and a description of the course from the school catalogue or course syllabus.
- 3.5.1.4 Documentation for other courses in this category shall include information sufficient for the Board to determine whether the course is appropriate for CE credit and the number of hours of the course. This may include, but is not limited to, the forms of documentation cited above.
- 3.5.1.2 ~~Course work by homestudy/correspondence shall be limited to ten (10) hours,~~
- 3.5.2 Professional Meetings & Activities: The maximum number of credit hours shall not exceed ten (10) hours. Approved credit includes attendance at: DOTA business meetings, AOTA business meetings, AOTA Representative Assembly meetings. NBCOT meetings, OT Licensure Board meetings and AOTA National Round Table discussions. Credit will be given for participation as an elected or appointed member/officer on a

board, committee or council in the field of health and social service related to occupational therapy. Seminars or other training related to management or administration are considered professional activities.

3.5.2.1 Excluded are any job related meetings such as department meetings, supervision of students and business meetings within the work setting.

3.5.2.2 Documentation includes name of committee or board, name of agency or organization, purpose of services, and description of licensee's role. Participation must be validated by an officer or representative of the organization or committee.

3.5.3 Publications: The maximum number of credit hours shall not exceed fifteen (15) hours. These include writing chapters, books, abstracts, book reviews accepted for publication and media/ video for professional development in any venue.

3.5.3.1 Documentation shall include the full reference for publication including title, author, editor and date of publication; or a copy of acceptance letter if not yet published.

3.5.4 Presentations: The maximum number of credit hours shall not exceed fifteen (15) hours. This includes workshops and community service organizations presentations that the licensee presents. ~~Credit will not be given for the presentation of information that the licensee has already been given credit for under another category. Excluded are presentations that are part of a licensee's job duties.~~ The preparation of original lectures, seminars, or workshops in occupational therapy or health care subjects shall be granted one (1) hour for preparation for each contact hour of presentation. Credit for preparation shall be given for the first presentation only.

3.5.4.1 Credit will not be given for the presentation of information that the licensee has already been given credit for under another category.

3.5.4.2 Excluded are presentations that are part of a licensee's job duties.

3.5.4.3 Documentation includes a copy of the official program/schedule/syllabus including presentation title, date, hours of presentation, and type of audience or verification of such signed by sponsor.

3.5.5 Research/Grants: Credit may be awarded one time for contact hours per study/topic regardless of length of project, not to exceed ten (10) hours. Contact hours accumulated under this category may not be used under the publication category. ~~Licensees must submit documentation of authorship or letters from authorizing entity to receive continuing education credit.~~

3.5.5.1 Documentation for research includes verification from the primary investigator indicating the name of the research project, dates of participation, major hypotheses or objectives of the project, and licensee's role in the project.

3.5.5.2 Documentation for grants includes the name of the grant proposal, name of the grant source, purpose and objectives of the project, and verification from the grant author regarding the licensee's role in the development of the grant if not the grant author.

3.5.6 Specialty Certification: Approval for credit hours for specialty certification, requiring successful completion of courses and exams attained during the current licensure period will be at the discretion of the Board. Examples include Certified Hand Therapist (CHT) and Occupational Therapist, Board Certified in Pediatrics (BCP).

3.5.6.1 Documentation includes a certificate of completion or other documentation from the recognized certifying body that identifies satisfactory completion of requirements for obtaining board certification of specialty certification.

3.5.7 Fieldwork Supervision: The maximum number of credit hours shall not exceed ten (10) hours. One CE hour may be awarded for each week of participation as the primary clinical fieldwork educator for Level II OT or OTA fieldwork students.

3.5.7.1 Documentation shall include verification provided by the school to the fieldwork educator with the name of student, school, and dates of fieldwork or the signature page of the completed student evaluation form. Evaluation scores and comments should be deleted or blocked out.

3.6 The Board may waive or postpone all or part of the continuing education activity requirements of these regulations if an occupational therapist or occupational therapy assistant submits written request for a waiver and provides evidence to the satisfaction of the Board of an illness, injury, financial hardship, family hardship, or other similar extenuating circumstance which precluded the individual's completion of the requirements.

**6 DE Reg. 1331 (4/1/03)**

**9 DE Reg. 1768 (5/1/06)**

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

<http://regulations.delaware.gov/register/september2007/proposed/11 DE Reg 290 09-01-07.htm>

An authenticated PDF version of the regulation is available at:

<http://regulations.delaware.gov/register/september2007/proposed/11 DE Reg 290 09-01-07.pdf>

## DIVISION OF PROFESSIONAL REGULATION

**3700 Board of Examiners of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers**

Statutory Authority: 24 Del.C. §3706(a)(1)

24 DE Admin. Code 3700

### PUBLIC NOTICE

The Delaware Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers, in accordance with 29 Del.C. Chapter 101 and 24 Del.C. §3706(a)(1), proposes amendments to its regulations in sections 1.0, 3.0, 7.0, and 8.0. Specifically, the proposed amendments to **1.0 Division of Professional Regulation** are primarily technical: renaming the section, improving the language, and updating a web address. The proposed amendments to **3.0 Licensure Requirements for Hearing Aid Dispensers** modify the process for licensure as a hearing aid dispenser. Candidates will be required to obtain temporary licensure while completing a six-month training period under the direct supervision of a licensed dispenser. The extent of direct supervision is delineated. The proposed amendments to **7.0 Electronic equipment** clarify the required frequency for calibration of electronic equipment used to assess hearing and allow for attestation of such calibration during the license renewal process. Finally, the proposed amendments to **8.0 Continuing Education For All Licensees** also provide for attestation of electronic equipment calibration and improve the language of the section. Other grammatical, typographic, or stylistic changes are also included to improve clarity and consistency.

A public hearing is scheduled for Wednesday, November 14, 2007, at 2:00 p.m. in the second floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Sandra Wagner at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Sandra Wagner at the above address or by calling (302) 744-4532.

The Board will consider promulgating the proposed regulations immediately following the public hearing.

### **3700 Board of Examiners of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers**

#### **1.0 Division of Professional Regulation General**

##### **1.4 Responsibilities**

1.4.1 All applications and other forms may be obtained from, and must be returned after completion, to the Division of Professional Regulation, (Division). Please address correspondence to the Board: ATTN: SLP-AUD-HAD, at and mail to 861 Silver Lake Blvd., Ste. 203, Dover, DE 19904-2467 by mail or in person during regular business hours. Information and forms are also available at on the Division's web site [dpr.delaware.gov](http://dpr.delaware.gov) at <http://www.professionallicensing.state.de.us>

1.4.2 Fees required under the by statute are to shall be made payable to: the "State of Delaware" and remitted to the Division of Professional Regulation. No license shall be issued until all required fees are paid.

1.4.3 The Administrative Assistant Specialist assigned to the Board by the Division of Professional Regulation performs support functions for the Board and serves as the contact person for the Board to receive inquires.

6 DE Reg. 1340 (4/1/03)

*(Break in Continuity of Sections)*

## 3.0 Licensure Requirements for Hearing Aid Dispensers

### 3.1 ~~Education~~ Original Licensure

~~3.1.1~~ Education: To be eligible for a license as a Hearing Aid Dispenser, the applicants must submit verification of have earned a high school diploma or its equivalent.

~~3.1.2~~ Training [Note: Licensed audiologists are exempt from this requirement as indicated in the synopsis of SB 183 as passed by the 143<sup>rd</sup> General Assembly and signed into law by the Governor on July 6, 2006. Licensed audiologists need only request permission to take the exam from the Board in writing.]

~~3.1.2.1~~ Applicants shall complete six (6) months of training. The Board will not authorize applicants to take the exam until the training is complete.

~~3.1.2.2~~ Training shall be completed under the direct supervision of a Delaware-licensed Hearing Aid Dispenser. "Direct supervision" means direct, on-site observations of the applicant by the supervisor. Applicants shall be under direct supervision for 100% of the time during the first two (2) months, 50% of the time during the subsequent two (2) months, and 25% of the time during the final two (2) months of the training period.

~~3.1.2.3~~ Applicants shall hold a valid, active temporary license during the training period; training conducted while the applicant is without a valid, active temporary license will not count toward fulfillment of the six-month training requirement.

### ~~3.2.1.3~~ National Examination

~~3.2.1.3.1~~ Applicants for full Hearing Aid Dispensing applicants licensure must have completed and passed the national examination approved by the Division of Professional Regulation, in accordance with scores as recommended by the national testing service, National Institute for Hearing Instruments Studies (NIHIS), or its successor. Upon confirmation from the testing service that an applicant has passed the exam, the Board will issue a full Hearing Aid Dispensing license to the applicant.

~~3.2.1.3.2~~ Anyone Applicants who fails two (2) examinations may not be reexamined for a period of one (1) year following the second failure. Prior to reexamination after a second failure, an applicant must submit proof of course work and/or supervised experience. After a second exam failure, an applicant must complete an additional training period pursuant to regulation 3.1.2 et seq before the Board will grant authorization to retake the exam.

### 3.3 ~~Application Process~~ Temporary Licensure

~~3.1.2.3.1~~ As To obtain a temporary license, applicants must complete the Board-approved licensure application and submit for temporary licensure. Items which must be provided to the Division of Professional Regulation include:

~~3.1.2.3.1.1~~ verification of a high school diploma or its equivalent,

~~3.1.2.3.1.2~~ payment of the appropriate fees, and

~~3.1.2.3.1.3~~ a plan for completing the six (6) month training period,

which shall include the notarized signature of a Delaware-licensed sponsor stating a willingness to provide direct supervision and training. Direct supervision is defined as a minimum of 25% direct on-site observations during the temporary licensure period.

~~3.1.2.3.2~~ A temporary license is valid for one (1) year from the date of issuance and may be renewed once for an additional one-year period in extenuating circumstances upon application to approval by the Board. Requests for Board consideration of a renewal shall be made in writing and sent to the Division at least of Professional Regulation 60 days prior to expiration.

### 3.42 ~~Application Process~~ Permanent Reciprocal Licensure

~~3.4.1~~ All Hearing Aid Dispensing applicants must complete an application on a form approved by the Board and submit it with the appropriate fee to the Division of Professional Regulation.

~~3.4.22.1~~ A Hearing Aid Dispensing Applicants who is currently licensed in another state, the District of Columbia, or territory of the United States, a jurisdiction whose standards for licensure are substantially similar to those of this state shall, must comply with 3.4.1 and submit verification of licensure in good standing from all jurisdictions where they are he or she is or and has been licensed. Applicants for reciprocal licensure from states not substantially similar to this state shall provide proof of practice for a minimum of five years after licensure in addition to meeting the other qualifications in 24 ~~Del.C.~~ 3710. Verification of practice should be by notarized letter from the employer(s).

~~3.2.2~~ Applicants currently licensed in another jurisdiction, but not in a jurisdiction whose standards for licensure are substantially similar to those of this state, shall provide proof of practice in their current

licensing jurisdiction for at least five (5) years after licensure. Proof of practice shall be by notarized letter from employers. Applicants under this subsection shall also submit verification of licensure in good standing from all jurisdictions where they are and have been licensed.

~~3.2.4.3 Licensees holding~~ Upon completion of the training period, temporary Hearing Aid Dispensing licensees must submit verification of completion of the training period on a Board-approved form, which shall include the notarized signature of the Delaware-licensed sponsor stating that the training was completed under their direct supervision in accordance with regulation 3.1. Upon receipt and approval of training verification, the Board will authorize the applicant to take the exam. ~~a passing score on the national examination described in 3.2.1 and the required fee to the Division of Professional Regulation to obtain a permanent license.~~

*(Break in Continuity of Sections)*

## 7.0 Electronic ~~e~~Equipment Calibration

### 7.4 Standards

7.1-4 Audiologists and Hearing Aid Dispensers shall ensure the annual Calibration of the electronic equipment they used to assess hearing. Calibration shall be performed by a certified professional consistent with the standards set by the American National Standards Institute (ANSI).

7.4-2 Every licensed Audiologists and Hearing Aid Dispensers shall indicate by attestation in the course of license renewal whether they have complied with regulation 7.1 annually submit proof of calibration to the Board. Any Audiologists who does not have such equipment may shall attest to that fact during the course of renewal file an affidavit so stating on a form approved by the Board.

## 8.0 Continuing Education ~~F~~for All Licensees

### 8.1 Philosophy

8.1.1 Continuing education is required by the Board to maintain professional licensure in the fields of Speech/Language Pathology, Audiology and Hearing Aid Dispensing. Continuing education requirements arise from an awareness that these fields are in a continual state of transition due to the introduction of new philosophies and the refinement of already existing knowledge. Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers should continually strive to update their clinical skills in an effort to deliver high quality services.

8.1.2 The Board is keenly aware of existing educational opportunities in Delaware and neighboring states and has established regulations which will provide continuing education credit as effortlessly as possible while assuring quality instruction. Credit will be given for participation in a variety of activities that increase knowledge and enhance professional growth.

8.1.3 These regulations recognize the financial and time limitations of Delaware's professionals while assuring continued appropriate services to those individuals who require them.

### 8.2 Continuing Education Criteria

8.2.1 One continuing education contact hour (CE) is defined as 60 minutes of attendance/participation in an approved continuing education activity unless otherwise stated. (Therefore, credits and CEU's issued by various organizations must be translated. e.g., 1.0 ASHA CEU = 10 CE's)

8.2.2 CE Time Frame: CE requirements must be completed in each license renewal period. Licensees have until the renewal deadline, July 31st in odd-numbered years, to complete the required CEs.

8.2.3 The required number of CEs varies with certification and/or professional status as outlined below:

8.2.3.1 New License: There is no CE requirement for a license issued for less than one year. If a license would cover more than one year, but less than 2 years, the licensee is required to obtain 10 CE's or one-half of the required total hours.

8.2.3.2 Single License: Individuals with a license in only one (1) area of specialty must obtain a minimum of 20 CE's each two-year license renewal period.

8.2.3.3 Dual License: Individuals with licenses in two (2) areas of specialty must obtain a minimum of 20 CE's during each two-year license renewal period, with 10 CE's obtained in each specialty area. One course may be split between specialty areas to fulfill multiple CE requirements. Content must be shown to be relevant to those areas.

8.2.3.4 Triple License: Individuals with licenses in three (3) areas of specialty must obtain a minimum of 30 CE's during each two-year license renewal period, with 10 CE's obtained in each specialty area. One course may be split between specialty areas to fulfill multiple CE requirements. Content must be shown to be relevant to those areas.

8.2.3.5 Temporary License: All CE requirements will be waived for temporary licensees; however, individuals are encouraged to participate in continuing education activities during their CFY period.

8.2.3.6 Extenuating Circumstances: The Board may consider a waiver of CE requirements or acceptance of partial fulfillment based on the Board's review of a written request with supporting documentation. Extenuating circumstances may include, but are not limited to, disability, illness, extended absence from the jurisdiction, and exceptional family responsibilities.

8.2.4 CE courses must focus on the enhancement of clinical skills and professional growth as defined below.

8.2.4.1 Clinical Skills: conferences, workshops, courses, etc., that expand a licensee's scope of practice by enhancing skills in the areas of prevention, assessment, diagnosis, and treatment of the client (minimum of 14 CE's per licensure renewal period).

8.2.4.2 Professional Growth: conferences, workshops, courses, etc., that may not directly impact on clinical services to the population being served but are of interest to the licensee and will allow the licensee the opportunity to stay abreast of current trends in the profession or related fields of interest (maximum of 6 CE's per licensure renewal period).

8.2.5 Verification of attendance may be required. Therefore, all licensees should retain documentation of their attendance at all CE activities.

8.2.6 All CE activities must be approved by the Board. A licensee or CE course sponsor may request advance approval from the Board by submitting a completed Board Approval form. Approval may be requested after the conclusion of a course, but there is no guarantee the course will be approved.

8.2.7 The Board will monitor CE compliance with a random, post-renewal audit system. Licensees will be selected randomly for audit and notified by mail after the renewal deadline.

### 8.3 CE Courses/Activities

8.3.1 CE activities sponsored by accredited professional organizations, provided the topics are relevant to the improvement of the licensee's clinical skills or professional growth as defined in Rule 8.2.4. Agenda of sessions is required for approval of convention activities.

8.3.2 A licensee may receive up to three (3) CE's for training obtained from a colleague who, after attending a professional conference, gives a formal presentation of the information from the conference after developing an agenda and outline.

8.3.3 University/College coursework for academic credit in the field of Speech/ Language Pathology, Audiology, or Hearing Aid Dispensing. A course description must be submitted to the Board for approval. (1 undergraduate credit = minimum of 3 CE's; 1 graduate credit = minimum of 5 CE's)

8.3.4 Professional presentations. A presentation summary must be submitted to the Board for approval. Credit may be given for a presentation only once during a licensure period. (1 hour of presentation = 3 CE's)

8.3.5 Professional publication in related specialty journals. A reprint of the publication must be submitted to the Board for approval.

8.3.6 Other continuing education may be approved by the Board with documentation of content.

8.3.7 Excluded are any job related duties in the workplace such as staff meetings, CPR, etc.

### 8.4 Licensee Responsibilities

8.4.1 All licensees shall:

8.4.1.1 Complete the required CE by July 31<sup>st</sup> of each renewal period.

8.4.1.2 Prove completion of the CE requirement. Proof of CE requirement completion is satisfied with an attestation of completion by the licensee during the renewal process. Attestation may be completed electronically if the renewal is accomplished online at [www.dpr.delaware.gov](http://www.dpr.delaware.gov). A paper renewal that contains the attestation of completion is also acceptable.

8.4.1.3 Provide documentation of having attended approved CE activities as required. A licensee who is audited shall submit documents that evidence satisfactory completion of their CE

requirements for the ~~previous two (2) years~~ prior licensure period. Licensees who are not audited shall retain their documentation for three (3) years after renewal.

8.4.2 Licensees who renew their license under the late renewal provision shall be audited for CE completion (and equipment calibration, if applicable). These licensees shall submit documents that evidence satisfactory completion of their CE requirements (and annual equipment calibration pursuant to regulation 7.1, if applicable) for the prior licensure period.

**6 DE Reg. 1340 (4/1/03)**

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

[http://regulations.delaware.gov/register/september2007/proposed/11 DE Reg 294 09-01-07.htm](http://regulations.delaware.gov/register/september2007/proposed/11%20DE%20Reg%20294%2009-01-07.htm)

**An authenticated PDF version of the regulation is available at:**

[http://regulations.delaware.gov/register/september2007/proposed/11 DE Reg 294 09-01-07.pdf](http://regulations.delaware.gov/register/september2007/proposed/11%20DE%20Reg%20294%2009-01-07.pdf)

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### **OFFICE OF THE STATE BANK COMMISSIONER**

Statutory Authority: 5 Delaware Code, Section 121(b) (5 **Del.C.** §121(b))  
5 **DE Admin. Code** §2108/2209; §2302 and §3402

### **PUBLIC NOTICE**

#### **Summary**

The State Bank Commissioner proposes to adopt new Regulations 2108/2209 (“Statement on Subprime Mortgage Lending”), new Regulation 2302 (“Exemptions”), and new Regulation 3402 (“Surety Bond or Irrevocable Letter of Credit”).

Proposed new Regulation 2108/2209 parallels a Statement jointly issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and the National Credit Union Administration, and is being adopted to provide regulatory consistency between mortgage brokers and mortgage lenders regulated under Chapters 21 and 22 respectively of Title 5 of the **Delaware Code** that are not affiliated with a bank holding company or an insured financial institution, and the financial institutions that are subject to that federal Statement.

Proposed new Regulation 2302 implements §2304(c) of Title 5 of the **Delaware Code** by establishing criteria and procedures relating to exemptions from Chapter 23 of Title 5.

Proposed New Regulation 3402 implements §3411 of Title 5 of the **Delaware Code** by establishing criteria for determining the amount of surety bonds or irrevocable letters of credit required by §3411.

The State Bank Commissioner would adopt the proposed new regulations on or after October 2, 2007. Other regulations issued by the State Bank Commissioner are not affected by these proposals. The State Bank Commissioner is issuing these regulations in accordance with Title 5 of the **Delaware Code**.

#### **Comments**

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

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether these proposed new regulations should be adopted, rejected or modified. Written materials submitted will be available for inspection at the above address. Comments must be received at or before the public hearing scheduled for 10:00 a.m. October 2, 2007.

#### **Public Hearing**

A public hearing on the proposed regulation will be held in the Office of the State Bank Commissioner, 555

E. Loockerman Street, Suite 210, Dover, DE 19901 on Tuesday, October 2, 2007, commencing at 10:00 a.m. This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the Delaware Code.

## **2108/2209 Statement on Subprime Mortgage Lending 5 Del.C. §2110(a), §2210(a)**

Effective Date [Proposed]

### **1.0 Introduction and Background**

1.1 On June 29, 2007, the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) (collectively, the Agencies) publicly released the Statement on Subprime Mortgage Lending (Subprime Statement).

1.1.1 The Agencies developed the Subprime Statement to address emerging risks associated with certain subprime mortgage products and lending practices. In particular, the Agencies are concerned about the growing use of adjustable rate mortgage (ARM) products<sup>1</sup> that provide low initial payments based on a fixed introductory rate that expires after a short period, and then adjusts to a variable rate plus a margin for the remaining term of the loan. These products could result in payment shock to the borrower. The Agencies are concerned that these products, typically offered to subprime borrowers, present heightened risks to lenders and borrowers. Often, these products have additional characteristics that increase risk. These include qualifying borrowers based on limited or no documentation of income or imposing substantial prepayment penalties or prepayment penalty periods that extend beyond the initial fixed interest rate period. In addition, borrowers may not be adequately informed of product features and risks, including their responsibility to pay taxes and insurance, which might be separate from their mortgage payments.

1.1.2 These products originally were extended to customers primarily as a temporary credit accommodation in anticipation of early sale of the property or in expectation of future earnings growth. However, these loans have more recently been offered to subprime borrowers as "credit repair" or "affordability" products. The Agencies are concerned that many subprime borrowers may not have sufficient financial capacity to service a higher debt load, especially if they were qualified based on a low introductory payment. The Agencies are also concerned that subprime borrowers may not fully understand the risks and consequences of obtaining this type of ARM loan. Borrowers who obtain these loans may face unaffordable monthly payments after the initial rate adjustment, difficulty in paying real estate taxes and insurance that were not escrowed, or expensive refinancing fees, any of which could cause borrowers to default and potentially lose their homes.

1.2 Like the interagency Guidance on Nontraditional Mortgage Product Risks that was published in the Federal Register on October 4, 2006 (Volume 71, Number 192, Page 58609-58618), the interagency Subprime Statement applies to all banks and their subsidiaries, bank holding companies and their nonbank subsidiaries, savings associations and their subsidiaries, savings and loan holding companies and their subsidiaries, and credit unions.

1.3 Recognizing that the interagency Subprime Statement does not apply to subprime loan originations of independent mortgage lenders and mortgage brokers, the Delaware State Bank Commissioner (Commissioner) is adopting this parallel Statement. The Commissioner strongly supports the purpose of the Subprime Statement and is committed to promoting uniform application of the Statement's origination and underwriting standards for all mortgage brokers and lenders (herein referred to as providers).

1.4 The Subprime Statement identifies many important standards for subprime lending, and the Commissioner supports additional efforts to enhance subprime lending oversight. For instance, the Subprime Statement encourages depository institutions to consider a borrower's housing-related expenses in the course of determining a borrower's ability to repay the subprime mortgage loan. However, the Agencies did not explicitly encourage the consideration of total monthly debt obligations. Rather than create confusion or adopt a higher standard, the Commissioner has determined to mirror the interagency statement. The Commissioner will continue

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1. For example, ARMs known as "2/28" loans feature a fixed rate for two years and then adjust to a variable rate for the remaining 28 years. The spread between the initial fixed interest rate and the fully indexed interest rate in effect at loan origination typically ranges from 300 to 600 basis points.

to work with the Agencies and other states to improve industry-wide mortgage lending practices.

1.5 The following Statement will assist in promoting consistent regulation in the mortgage market and clarify how providers can offer subprime loans in a safe and sound manner that clearly discloses the risks that borrowers may assume.

1.6 In order to maintain regulatory consistency, this Statement substantially mirrors the interagency Subprime Statement, except for the removal of sections not applicable to non-depository institutions.

## **2.0 Subprime Mortgage Lending**

2.1 The Commissioner is adopting this Statement on Subprime Mortgage Lending (Statement) to address emerging issues and questions relating to subprime mortgage lending practices. The term "subprime" refers to the credit characteristics of individual borrowers. Subprime borrowers typically have weakened credit histories that include payment delinquencies, and possibly more severe problems such as charge-offs, judgments, and bankruptcies. They may also display reduced repayment capacity as measured by credit scores, debt-to-income (DTI) ratios, or other criteria that may encompass borrowers with incomplete credit histories. "Subprime loans" are loans to borrowers displaying one or more of these characteristics at the time of origination or purchase. Such loans have a higher risk of default than loans to prime borrowers. Generally subprime borrowers will display a range of credit risk characteristics that may include one or more of the following:

2.1.1 Two or more 30-day delinquencies in the last 12 months, or one or more 60-day delinquencies in the last 24 months;

2.1.2 Judgment, foreclosure, repossession, or charge-off in the prior 24 months;

2.1.3 Bankruptcy in the last 5 years;

2.1.4 Relatively high default probability as evidenced by, for example, a credit bureau risk score (FICO) of 660 or below (depending on the product/collateral), or other bureau or proprietary scores with an equivalent default probability likelihood; and/or

2.1.5 Debt service-to-income ratio of 50% or greater, or otherwise limited ability to cover family living expenses after deducting total monthly debt-service requirements from monthly income.

2.2 This list is illustrative rather than exhaustive and is not meant to define specific parameters for all subprime borrowers. Additionally, this definition may not match all market or institution specific subprime definitions, but should be viewed as a starting point from which the Commissioner will expand examination efforts.<sup>2</sup>

2.3 The Commissioner is concerned that borrowers may not fully understand the risks and consequences of obtaining products that can cause payment shock.<sup>3</sup> In particular, the Commissioner is concerned with certain adjustable-rate mortgage (ARM) products typically<sup>4</sup> offered to subprime borrowers that have one or more of the following characteristics:

2.3.1 Low initial payments based on a fixed introductory rate that expires after a short period and then adjusts to a variable index rate plus a margin for the remaining term of the loan;<sup>5</sup>

2. "Subprime" and "subprime loans" are defined by the 2001 *Interagency Expanded Guidance for Subprime Lending Programs*. To promote consistency and uniformity, the Commissioner supports these definitions for the purposes of this Statement.

3. Payment shock refers to a significant increase in the amount of the monthly payment that generally occurs as the interest rate adjusts to a fully indexed basis. Products with a wide spread between the initial interest rate and the fully indexed rate that do not have payment caps or periodic interest rate caps, or that contain very high caps, can produce significant payment shock.

4. As noted by Agencies in the final statement, the Subprime Statement focuses on subprime borrowers; however, the statement applies to ARM products that have one or more characteristics that can cause payment shock. Providers should look to the principles of this statement when such ARM products are offered to non-subprime borrowers.

5. For example, ARMs known as "2/28" loans feature a fixed rate for two years and then adjust to a variable rate for the remaining 28 years. The spread between the initial fixed interest rate and the fully indexed interest rate in effect at loan origination typically ranges from 300 to 600 basis points.

2.3.2 Very high or no limits on how much the payment amount or the interest rate may increase (“payment or rate caps”) on reset dates;

2.3.3 Limited or no documentation of borrowers’ income;

2.3.4 Product features likely to result in frequent refinancing to maintain an affordable monthly payment; and/or

2.3.5 Substantial prepayment penalties and/or prepayment penalties that extend beyond the initial fixed interest rate period.

2.4 Products with one or more of these features present substantial risks to both consumers and providers. These risks are increased if borrowers are not adequately informed of the product features and risks, including their responsibility for paying real estate taxes and insurance, which may be separate from their monthly mortgage payments. The consequences to borrowers could include: being unable to afford the monthly payments after the initial rate adjustment because of payment shock; experiencing difficulty in paying real estate taxes and insurance that were not escrowed; incurring expensive refinancing fees, frequently due to closing costs and prepayment penalties, especially if the prepayment penalty period extends beyond the rate adjustment date; and losing their homes. Consequences to providers may include unwarranted levels of credit, legal, compliance, reputation, and liquidity risks due to the elevated risks inherent in these products.

2.5 The Commissioner notes that many of these concerns are addressed in existing interagency guidance.<sup>6</sup> The Commissioner recognizes that these guidance documents may not apply to state-supervised providers. However, the Commissioner believes these guidelines provide sound principles for mortgage lending as a reference for state-supervised providers.

2.6 While Regulation 2107/2208 *Guidance on Nontraditional Mortgage Product Risks* may not explicitly pertain to products with the characteristics addressed in this Statement, it outlines prudent underwriting and consumer protection principles that providers also should consider with regard to subprime mortgage lending. This Statement reiterates many of the principles addressed in existing guidance relating to prudent risk management practices and consumer protection laws.<sup>7</sup>

### **3.0 Risk Management Practices: Predatory Lending Considerations**

3.1 Subprime lending is not synonymous with predatory lending, and loans with features described above are not necessarily predatory in nature. However, providers should ensure that they do not engage in the types of predatory lending practices discussed in the *Expanded Subprime Guidance*. Typically, predatory lending involves at least one of the following elements:

3.1.1 Making loans based predominantly on the foreclosure or liquidation value of a borrower’s collateral rather than on the borrower’s ability to repay the mortgage according to its terms;

3.1.2 Inducing a borrower to repeatedly refinance a loan in order to charge high points and fees each time the loan is refinanced (“loan flipping”); or

3.1.3 Engaging in fraud or deception to conceal the true nature of the mortgage loan obligation, or ancillary products, from an unsuspecting or unsophisticated borrower.

3.2 Loans to borrowers who do not demonstrate the capacity to repay the loan, as structured, from sources other than the collateral pledged may lack sufficient consumer protection safeguards and are generally considered unsafe and unsound. Examiners are instructed to criticize such lending practices in the Report of Examination. Further, examiners are instructed to refer any loans with the aforementioned characteristics to the Commissioner for additional review.

3.3 Providers offering mortgage loans such as these face an elevated risk that their conduct will violate Section 5 of the Federal Trade Commission Act (FTC Act) or other state laws, which prohibit unfair or

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6. The most prominent are the 1993 *Interagency Guidelines for Real Estate Lending (Real Estate Guidelines)*, the 1999 *Interagency Guidance on Subprime Lending*, and the 2001 *Expanded Guidance for Subprime Lending Programs (Expanded Subprime Guidance)*.

7. As with the *Interagency Guidance on Nontraditional Mortgage Product Risks*, 71 FR 58609 (October 4, 2006), the interagency Subprime Statement applies to all banks and their subsidiaries, bank holding companies and their nonbank subsidiaries, savings associations and their subsidiaries, savings and loan holding companies and their subsidiaries, and credit unions. This Statement is applicable to all state-supervised mortgage providers.

deceptive acts or practices.

#### **4.0 Risk Management Practices: Underwriting Standards**

4.1 The 1993 interagency *Real Estate Guidelines* provide underwriting standards for all real estate loans and state that prudently underwritten real estate loans should reflect all relevant credit factors, including the capacity of the borrower to adequately service the debt. Providers should refer to Regulation 2107/2208, which details similar criteria for qualifying borrowers for products that may result in payment shock.

4.2 Prudent qualifying standards recognize the potential effect of payment shock in evaluating a borrower's ability to service debt. A provider's analysis of a borrower's repayment capacity should include an evaluation of the borrower's ability to repay the debt by its final maturity at the fully indexed rate,<sup>8</sup> assuming a fully amortizing repayment schedule.<sup>9</sup>

4.3 One widely accepted approach in the mortgage industry is to quantify a borrower's repayment capacity by a debt-to-income (DTI) ratio. A provider's DTI analysis should include, among other things, an assessment of a borrower's total monthly housing-related payments (e.g., principal, interest, taxes, and insurance, or what is commonly known as PITI) as a percentage of gross monthly income.<sup>10</sup>

4.4 This assessment is particularly important if the provider relies upon reduced documentation or allows other forms of risk layering. Risk-layering features in a subprime mortgage loan may significantly increase the risks to both the provider and the borrower. Therefore, a provider should have clear policies governing the use of risk-layering features, such as reduced documentation loans or simultaneous second lien mortgages. When risk-layering features are combined with a mortgage loan, a provider should demonstrate the existence of effective mitigating factors that support the underwriting decision and the borrower's repayment capacity.

4.5 Recognizing that loans to subprime borrowers present elevated credit risk, providers should verify and document the borrower's income (both source and amount), assets and liabilities. Stated income and reduced documentation loans to subprime borrowers should be accepted only if there are mitigating factors that clearly minimize the need for direct verification of repayment capacity. Reliance on such factors also should be documented. Typically, mitigating factors arise when a borrower with favorable payment performance seeks to refinance an existing mortgage with a new loan of a similar size and with similar terms, and the borrower's financial condition has not deteriorated. Other mitigating factors might include situations where a borrower has substantial liquid reserves or assets that demonstrate repayment capacity and can be verified and documented by the provider. However, a higher interest rate is not considered an acceptable mitigating factor.

#### **5.0 Workout Arrangements**

5.1 The Commissioner encourages providers to work constructively with residential borrowers who are in default or whose default is reasonably foreseeable.

5.2 Prudent workout arrangements that are consistent with safe and sound lending practices are generally in the long-term best interest of both the provider and the borrower.

5.3 Providers should follow prudent underwriting practices in determining whether to consider a loan modification or a workout arrangement.<sup>11</sup> Such arrangements can vary widely based on the borrower's financial

8. The fully indexed rate equals the index rate prevailing at origination plus the margin to be added to it after the expiration of an introductory interest rate. For example, assume that a loan with an initial fixed rate of 7% will reset to the six-month London Interbank Offered Rate (LIBOR) plus a margin of 6%. If the six-month LIBOR rate equals 5.5%, providers should qualify the borrower at 11.5% (5.5% + 6%), regardless of any interest rate caps that limit how quickly the fully indexed rate may be reached.

9. The fully amortizing payment schedule should be based on the term of the loan. For example, the amortizing payment for a "2/28" loan would be calculated based on a 30-year amortization schedule. For balloon mortgages that contain a borrower option for an extended amortization period, the fully amortizing payment schedule can be based on the full term the borrower may choose.

10. A prudent practice used by the industry is to include a borrower's total monthly debt obligations as a percentage of gross monthly income in the DTI analysis.

capacity. For example, a provider might consider modifying loan terms, including converting loans with variable rates into fixed-rate products to provide financially stressed borrowers with predictable payment requirements.

5.4 The Commissioner will not criticize providers that pursue reasonable workout arrangements with borrowers. Further, existing supervisory guidance and applicable accounting standards do not require providers to immediately foreclose on the collateral underlying a loan when the borrower exhibits repayment difficulties. For those providers that portfolio loans, they should identify and report credit risk, maintain an adequate allowance for loan losses, and recognize credit losses in a timely manner.

## **6.0 Consumer Protection Principles**

6.1 Fundamental consumer protection principles relevant to the underwriting and marketing of mortgage loans include:

6.1.1 Approving loans based on the borrower's ability to repay the loan according to its terms;  
and

6.1.2 Providing information that enables consumers to understand material terms, costs, and risks of loan products at a time that will help the consumer select a product.

6.2 Communications with consumers, including advertisements, oral statements, and promotional materials, should provide clear and balanced information about the relative benefits and risks of the products. This information should be provided in a timely manner to assist consumers in the product selection process, not just upon submission of an application or at consummation of the loan. Providers should not use such communications to steer consumers to these products to the exclusion of other products offered by the provider for which the consumer may qualify.

6.3 Information provided to consumers should clearly explain the risk of payment shock and the ramifications of prepayment penalties, balloon payments, and the lack of escrow for taxes and insurance, as necessary. The applicability of prepayment penalties should not exceed the initial reset period. In general, borrowers should be provided a reasonable period of time (typically at least 60 days prior to the reset date) to refinance without penalty.

6.4 Similarly, if borrowers do not understand that their monthly mortgage payments do not include taxes and insurance, and they have not budgeted for these essential homeownership expenses, they may be faced with the need for significant additional funds on short notice.<sup>12</sup> Therefore, mortgage product descriptions and advertisements should provide clear, detailed information about the costs, terms, features, and risks of the loan to the borrower. Consumers should be informed of:

6.4.1 *Payment Shock.* Potential payment increases, including how the new payment will be calculated when the introductory fixed rate expires.<sup>13</sup>

6.4.2 *Prepayment Penalties.* The existence of any prepayment penalty, how it will be calculated, and when it may be imposed.

6.4.3 *Balloon Payments.* The existence of any balloon payment.

6.4.4 *Cost of Reduced Documentation Loans.* Whether there is a pricing premium attached to a reduced documentation or stated income loan program.

6.4.5 *Responsibility for Taxes and Insurance.* The requirement to make payments for real estate

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11. For those providers that portfolio loans, they may need to account for workout arrangements as troubled debt restructurings and should follow generally accepted accounting principles in accounting for these transactions.

12. Providers generally can address these concerns most directly by requiring borrowers to escrow funds for real estate taxes and insurance.

13. To illustrate: a borrower earning \$42,000 per year obtains a \$200,000 "2/28" mortgage loan. The loan's two-year introductory fixed interest rate of 7% requires a principal and interest payment of \$1,331. Escrowing \$200 per month for taxes and insurance results in a total monthly payment of \$1,531 (\$1,331 + \$200), representing a 44% DTI ratio. A fully indexed interest rate of 11.5% (based on a six-month LIBOR index rate of 5.5% plus a 6% margin) would cause the borrower's principal and interest payment to increase to \$1,956. The adjusted total monthly payment of \$2,156 (\$1,956 + \$200 for taxes and insurance) represents a 41% increase in the payment amount and results in a 62% DTI ratio.

taxes and insurance in addition to their loan payments, if not escrowed, and the fact that taxes and insurance costs can be substantial.

### **7.0 Control Systems**

7.1 Providers should develop strong control systems to monitor whether actual practices are consistent with their policies and procedures. Systems should address compliance and consumer information concerns, as well as safety and soundness, and encompass both institution personnel and applicable third parties, such as mortgage brokers or correspondents.

7.2 Important controls include establishing appropriate criteria for hiring and training loan personnel, entering into and maintaining relationships with third parties, and conducting initial and ongoing due diligence on third parties. Providers also should design compensation programs that avoid providing incentives for originations inconsistent with sound underwriting and consumer protection principles, and that do not result in the steering of consumers to these products to the exclusion of other products for which the consumer may qualify.

7.3 Providers should have procedures and systems in place to monitor compliance with applicable laws and regulations, third-party agreements and internal policies. A provider's controls also should include appropriate corrective actions in the event of failure to comply with applicable laws, regulations, third-party agreements or internal policies. In addition, providers should initiate procedures to review consumer complaints to identify potential compliance problems or other negative trends.

### **8.0 Supervisory Review**

The Commissioner will carefully review risk management and consumer compliance processes, policies, and procedures. The Commissioner will take action against providers that exhibit predatory lending practices, violate consumer protection laws or fair lending laws, engage in unfair or deceptive acts or practices, or otherwise engage in unsafe or unsound lending practices.

## **2302 Exemptions 5 Del.C. §2318**

Effective Date: [Proposed]

### **1.0 Purpose**

This regulation governs the procedures and requirements for exemptions pursuant to 5 Del.C. §2304(c).

### **2.0 Definitions**

For the purpose of this regulation, the following definitions apply:

"Commissioner" means the State Bank Commissioner.

"Exempt person" means a person exempt from any of the requirements of the Statute pursuant to 5 Del.C. §2304(c) and this regulation.

"Person" means any individual, partnership, association, joint stock association or corporation, but does not include the United States government or the government of the State of Delaware.

"Statute" means 5 Del.C. Ch. 23.

### **3.0 General Exemption**

3.1 Banks, trust companies, credit unions, building and loan associations and savings and loan associations, organized under the law of any state in the United States of America or the United States of America, which either are authorized to do business in the State of Delaware, or which act through a contractor or agent authorized to do business in this State are exempt from all requirements of the Statute. Nothing contained in this regulation shall be construed to enlarge or limit the rights that any of the persons listed in this Section 3.1 have under any existing law.

3.2 Agents of an exempt person are exempt from the Statute to the same extent as the exemption granted to their principal.

3.3 Persons exempt from the Statute pursuant to this section 3.0 are not subject to any other provisions of this regulation.

### **4.0 Grant of Exemptions**

4.1 Upon finding the qualifications of Section 5.0 of this regulation have been met, the Commissioner may grant an exemption to:

4.1.1 any person whose operations and financial condition with respect to the transmission of money and/or the sale or issuance of checks are regularly examined, either separately or as part of an examination of an affiliate, by an agency of the State of Delaware, another state, or the United States of America; or

4.1.2 any other person whom the Commissioner determines to be inappropriate to include within the coverage of the Statute.

## **5.0 Qualifications for Exemption**

5.1 An exempt person shall at all times maintain:

5.1.1 a net worth of at least \$100,000 computed in accordance with generally accepted accounting principles; and

5.1.2 such financial responsibility, financial condition, financial and business experience, character, and general fitness as reasonably to warrant the belief that its business will be conducted honestly, fairly, equitably, carefully, and efficiently.

5.2 The Commissioner may investigate and consider the qualifications of the applicant for the exemption, including principals, officers and directors of an applicant, in determining whether the qualifications for an exemption have been met.

## **6.0 Nature of Exemption**

An exemption shall include at minimum an exemption from the licensing and surety bond requirements of the Statute. The Commissioner may also grant an exemption from any other provision of the Statute that the Commissioner deems appropriate.

## **7.0 Expiration**

Except as otherwise provided in this regulation, exemptions shall expire one year from the date granted.

## **8.0 Application and Renewals**

8.1 Any person who desires an exemption from the Statute shall apply to the Commissioner on such forms as the Commissioner may designate.

8.2 An exempt person shall apply for a renewal of the exemption at least 30 days before the expiration of the exemption on such forms as the Commissioner may designate.

## **9.0 Changed Information**

Exempt persons shall notify the Commissioner within 30 days of any changes in the information contained in the application for its exemption or the renewal thereof.

## **10.0 Extensions on License Applications**

An exempt person who applies for a license under the Statute before the expiration or revocation of its exemption shall have the exemption automatically extended until a final decision is made on the license application.

## **11.0 Suspension or Revocation**

11.1 The Commissioner may suspend or revoke any exemption upon a finding that:

11.1.1 the exempt person has violated any statute, judicial order, administrative order, rule, regulation or other law of the State of Delaware, another state, or the United States of America;

11.1.2 any fact or condition exists, which if it had existed at the time of the application or renewal for the exemption, would have warranted the Commissioner in refusing to issue the exemption or its renewal; or

11.1.3 the exempt person has engaged in business activities or practices in connection with any business for which the exemption was granted, which could be deemed unfair or deceptive by nature of intent, including the use of tactics which mislead the consumer, misrepresent the consumer transaction or any part thereof, or otherwise create false expectations on the part of the consumer.

11.2 No exemption shall be suspended or revoked except in accordance with the procedures for suspending or revoking a license that are specified in the Statute and in the Delaware Administrative Procedures

Act, 29 **Del.C.** Ch. 101.

11.3 No suspension or revocation of an exemption shall impair or affect the obligation of any preexisting lawful contract between the exempt person and any other person.

## **12.0 Exemption Denials**

12.1 If the Commissioner denies an exemption or the renewal of an exemption, the Commissioner shall promptly send the applicant or exempt person a written notice to that effect which states the grounds for the denial.

12.2 The applicant or exempt person may request that the Commissioner hold a hearing to reconsider that denial, in accordance with the procedures for requesting a hearing on the denial of a license application that are specified in the Statute and in the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

12.3 The Commissioner may extend the term of any exemption whose renewal has been denied until the final resolution of that hearing.

## **13.0 Fees**

13.1 The investigation fee for an initial application for an exemption shall be \$250.00.

13.2 The investigation fee for renewal of an exemption shall be \$100.00. A renewal application must be submitted more than 30 days in advance of the exemption's expiration.

13.3 A renewal application submitted less than 30 days in advance of the exemption's expiration shall be treated as a new application for an exemption and shall be subject to the investigation fee of \$250.

## **3402 Surety Bond or Irrevocable Letter of Credit**

**5 Del.C. §3409**

Effective Date: [Proposed]

**1.0** A licensee shall file with the State Bank Commissioner (the "Commissioner") an original corporate surety bond or an irrevocable letter of credit in a form satisfactory to the Commissioner in accordance with 5 **Del.C.** §3411.

**2.0** A licensee shall obtain a surety bond or irrevocable letter of credit in a minimum amount in accordance with the following table based upon the maximum dollar value of the trust funds it held as a trustee during the twelve month period ending October 31 that precedes the calendar year for which the bond or irrevocable letter of credit is effective:

<u>Maximum Dollar Value of Trust Funds Held by Licensee</u>	<u>Minimum Required Amount of Surety Bond or Irrevocable Letter of Credit</u>
<u>not more than \$50,000</u>	<u>\$50,000</u>
<u>\$50,001 - \$75,000</u>	<u>\$75,000</u>
<u>\$75,001 - \$100,000</u>	<u>\$100,000</u>
<u>\$100,001 - \$125,000</u>	<u>\$125,000</u>
<u>\$125,001 - \$150,000</u>	<u>\$150,000</u>
<u>\$150,001 - \$175,000</u>	<u>\$175,000</u>
<u>\$175,001 and over</u>	<u>\$200,000</u>

**3.0** The Commissioner may require a licensee to obtain a larger surety bond or irrevocable letter of credit based upon the licensee's individual circumstances.

**4.0** A licensee that obtains a surety bond or irrevocable letter of credit that is effective for more than one year shall review on November 1 of each year the dollar value of the trust funds it held during the previous twelve month period to ensure that the minimum required amount for its surety bond or irrevocable letter of credit is maintained for the following calendar year.

**Symbol Key**

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

**Final Regulations**

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

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

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**DEPARTMENT OF AGRICULTURE**  
**DELAWARE FOREST SERVICE**

Statutory Authority: 3 Delaware Code, Sections 1008 and 1011 (3 **Del.C.** §§1008 and 1011)  
3 **DE Admin. Code** 402

**ORDER ADOPTING REGULATIONS**  
**402 State Forest Regulations****I. Nature of Proceedings**

Pursuant to its authority under 3 **Del.C.** §1008 and §1011, the Department proposed to amend the State Forest regulations to ensure that these publicly owned lands are conserved, protected, and maintained for the benefit of all. These proposals made the State Forest regulations more consistent with similar regulations for other land-managing Delaware agencies.

Notice of the Department's proposed amendments was published in the *Delaware Register of Regulations* for July 1, 2007 announcing a 30-day public comment period in accordance with 29 **Del.C.** §10115(a) and 29 **Del.C.** §10118(a). This is the Department's Decision and Order adopting the proposed amended regulations.

**II. Evidence Submitted During Public Comment Period**

The Department received no written comments in response to the notice of intention to adopt the proposed amended regulations.

**III. Findings and Conclusions**

The public was given the required notice of the Department's intention to adopt the proposed amended regulations and was given ample opportunity to provide the Department with comments opposing the Department's plan. Thus, the Department concludes that its consideration of the proposed amended regulations was entirely

within its prerogatives and statutory authority and, having received no comments opposed to adoption, is now free to adopt them.

#### IV. Order

**NOW THEREFORE**, it is hereby ordered that:

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

Michael T. Scuse, Secretary  
 Delaware Department of Agriculture  
 Dated: August 7, 2007

\* Please note that no changes were made to the regulation as originally proposed and published in the July 2007 issue of the *Register* at page 10 (11 DE Reg. 10). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<http://regulations.delaware.gov/register/september2007/final/11 DE Reg 307 09-01-07.htm>

An authenticated PDF version of the final regulations is available at:

<http://regulations.delaware.gov/register/september2007/final/11 DE Reg 307 09-01-07.pdf>

### HARNESS RACING COMMISSION

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

#### ORDER

Pursuant to 29 **Del.C.** §10118 and 3 **Del.C.** §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on June 12, 2007, the Commission makes the following findings and conclusions:

#### Summary of the Evidence

1. The Commission posted public notice of the proposed amendments in the May 1, 2007 Register of Regulations and for two consecutive weeks in *The News Journal* and *Delaware State News*. The Commission proposed to update Rule 3.0, to update penalties for driver's infractions, Rule 4 to more accurately reflect the duties of the Associations and Rule 6.0 to update claiming procedures
2. The Commission received no written comments during May, 2007 or June, 2007. The Commission held a public hearing on June 12, 2007 and also received no public comment on the changes.
3. Charles Lockhart, Vice President of Harness Racing at Dover Downs, submitted the following changes for Section 4.0, Associations:
  - a. 4.4.1.4: Eliminating the words "stabled and "entered."
  - b. 4.4.2.2.1: Add "or within" after "paddock" and changing "property" to building."
  - c. 4.4.2.2.5: Substitute "receiving and paddock areas for "Association grounds."
4. Charles Lockhart, Vice President of Harness Racing at Dover Downs, submitted the following changes for Rule 6.0, Types of Races:
  - a. Delete the first two proposed sentences and replace them with the USTA Rule 10 §3(l) in

its entirety, and

- b. Add "in writing" after "unless released" in the proposed third line.

### **Findings of Fact and Conclusions**

5. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.

6. The Commission has considered the public comments at the June 12, 2007 hearing, and having agreed that they are acceptable, but are not substantial changes, hereby adopts the rule changes as proposed. The Commission believes that these rule changes will allow the Delaware Harness Racing Commission rules to more accurately reflect current policy and procedure.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on September 1, 2007.

IT IS SO ORDERED this 14th day of August, 2007.

Beth Steele, Chair  
Mary Ann Lambertson, Commissioner  
Kenneth Williamson, Commissioner

Robert B. Brown, Commissioner  
George P. Staats, Commissioner

### **501 Harness Racing Rules and Regulations**

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

#### 4.4 Operations

##### 4.4.1 Security

4.4.1.1 An aAssociation conducting a race meeting shall maintain security controls over its premises. Security controls are subject to the approval of the Commission.

4.4.1.2 An aAssociation may establish a system or method of ~~issuing credentials or passes to~~ restricting access to its restricted areas or to ensure that all participants at its race meeting are licensed as required by these rules.

4.4.1.3 An aAssociation shall prevent access to and shall remove or cause to be removed from its restricted areas any person who is unlicensed, or who has not been issued a visitor's pass or other identifying credential, or whose presence in such restricted area is unauthorized.

4.4.1.4 Unless otherwise authorized by the Commission, an aAssociation shall provide continuous security in the stable receiving and paddock areas during all times that horses are **[stabled]** on the grounds **[entered to race]**. ~~An association shall require any person entering the stable area to display valid credentials issued by the Commission or a visitor's pass issued by the association.~~ An aAssociation shall provide security fencing around the stable paddock and receiving areas in a manner that is approved by the Commission.

4.4.1.5 On request by the Commission, an aAssociation shall provide a list of the security personnel, including the name, qualifications, training, duties duty station and area supervised by each employee.

4.4.1.6 Each day, the chief of security for an aAssociation shall deliver a written report to the ~~State Steward Presiding Judge~~ regarding occurrences on aAssociation grounds relating to harness horse racing on the previous day. Not later than 24 hours after an incident occurs requiring the attention of security personnel, the chief of security shall deliver to the ~~State Steward Presiding Judge~~ a written report describing the incident. The report must include the name of each individual involved in the incident, the circumstances of the incident and any recommended charges against each individual involved.

##### 4.4.2 Fire Prevention

# FINAL REGULATIONS

4.4.2.1 An aAssociation shall develop and implement a program for fire prevention on aAssociation grounds. An aAssociation shall instruct employees working on aAssociation grounds of the procedures for fire prevention.

4.4.2.2 No person shall:

4.4.2.2.1 smoke in ~~stalls, feed rooms or under shed rows~~ the receiving areas, paddock, or [within] any [property building] on Association grounds;

4.4.2.2.2 burn open fires or oil and gas lamps in the ~~stable area~~ Association grounds;

4.4.2.2.3 leave unattended any electrical appliance that is plugged-in to an electrical outlet.

4.4.2.2.4 permit horses to come within reach of electrical outlets or cords;

4.4.2.2.5 store flammable materials such as cleaning fluids or solvents in the ~~stable area~~ [Association grounds receiving and paddock areas]; or

4.4.2.2.6 lock a stall which is occupied by a horse.

4.4.2.3 An aAssociation shall post a notice in the ~~stable~~ receiving areas and paddock which lists the prohibitions outlined in 4.4.2.2.1 - 4.4.2.2.6 above.

4.4.3 Insect and Rodent Control

An aAssociation and the licensees occupying the aAssociation's ~~barn~~ receiving areas and paddock shall cooperate in procedures to control insects, rodents or other hazards to horses or licensees.

4.4.4 Complaints

4.4.4.1 An aAssociation shall designate a location and provide personnel who shall be readily available to the public to provide or receive information.

4.4.4.2 An aAssociation shall promptly notify the Commission of a complaint regarding:

4.4.4.2.1 an alleged violation of the Act or a rule of the Commission;

4.4.4.2.2 an alleged violation of ordinances or statutes;

4.4.4.2.3 accidents or injuries; or

4.4.4.2.4 unsafe or unsanitary conditions for patrons, licensees or horses.

4.4.5 Ejection and Exclusion

An aAssociation may eject or exclude a person for any lawful reason.

1 DE Reg. 502 (11/01/97)

2 DE Reg. 1240 (01/01/99)

2 DE Reg. 1765 (04/01/99)

5 DE Reg. 832 (10/01/01)

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

6.3.3.15 ~~[A claimed horse shall not be eligible to start in any race in the name or interest of the owner of the horse at the time of entry for the race from which the horse was claimed for thirty (30) days, unless reclaimed out of another claiming race. Nor shall such horse remain in or be returned to the same stable or care or management of the first owner or except out of another claiming race. No horse claimed out of a claiming race shall be eligible to start in any race in the name or interest of the prior owner for 30 days, nor shall such horse remain in the same stable or under the care or management of the prior owner or trainer, or anyone connected therewith unless reclaimed out of another claiming race.]~~ Further, such claimed horse shall only be required eligible to continue to enter in races the track where claimed in the state of Delaware for a period of 60 days or the balance of the current racing meet, whichever comes first following the date of the claim, unless released [in writing] by the ~~Racing Secretary~~ an authorized representative of the Association.

\*Please Note: There were no changes to Rule 3 as proposed, therefore it is not being published. A copy of the final regulation is available at:

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<http://regulations.delaware.gov/register/september2007/final/11 DE Reg 308 09-01-07.htm>

An authenticated version of the final regulation is available at:

<http://regulations.delaware.gov/register/september2007/final/11 DE Reg 308 09-01-07.pdf>

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## DEPARTMENT OF EDUCATION PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))  
14 **DE Admin. Code** 1590

### REGULATORY IMPLEMENTING ORDER

#### 1590 Delaware Administrator Standards

#### I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to reauthorize regulation **DE Admin. Code** 1590 Delaware Administrator Standards. The regulation addresses the Standards for Delaware Administrators. This regulation's five year review cycle requires action at this time.

Notice of the proposed reauthorization of the regulation was published in the *News Journal* on May 30, 2007 and in the *Delaware State News* on June 1, 2007 in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

#### II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to reauthorize this regulation to comply with changes in statute.

#### III. Decision to Adopt the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to reauthorize the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby reauthorized. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby reauthorized shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. Text and Citation

The text of the regulation reauthorized shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1590 of the Administrative Code of Regulations of the Department of Education.

#### V. Effective Date Of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**APPROVED BY THE PROFESSIONAL STANDARDS BOARD ON THE 2ND DAY OF AUGUST, 2007**

Kathleen Thomas, Chair

Cathy Cathcart

Joanne Christian  
Sandra Falatek  
Barbara Grogg  
Lori Hudson  
Mary Mirabeau  
Gretchen Pikus  
Michael Thomas

Marilyn Dollard  
Karen Gordon  
Leslie Holden  
Dorothy McQuaid  
Wendy Murray  
Karen Schilling-Ross  
Carol Vukelich

**FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:**

Valerie A. Woodruff, Secretary of Education

**IT IS SO ORDERED** this 16th day of August, 2007

**STATE BOARD OF EDUCATION**

Jean W. Allen, President  
Mary B. Graham  
Barbara Rutt  
Terry Whittaker

Richard M. Farmer, Jr., Vice President  
Jorge Melendez  
Dennis J. Savage

**\*\* Please note that no changes were made to the regulation as originally proposed and published in the June 2007 issue of the *Register* at page 1774 (10 DE Reg. 1774). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<http://regulations.delaware.gov/register/september2007/final/11 DE Reg 311 09-01-07.htm>

**An authenticated version of the final regulation is available at:**

<http://regulations.delaware.gov/register/september2007/final/11 DE Reg 311 09-01-07.pdf>

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

**ORDER**

**Title XIX Medicaid State Plan Attachment 4.19-D Pediatric Nursing Facility Care Reimbursement**

**Nature of the Proceedings:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Title XIX Medicaid State Plan regarding the pediatric nursing facility care reimbursement. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the June 2007 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by June 30, 2007 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

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## Summary of Proposal

### Statutory Authority

- 42 CFR Part 447, Subpart C – *Payment for Inpatient Hospital and Long-Term Care Facility Services*;
- 42 CFR §440.170(d), *Skilled Nursing Facility Services for Individuals Under Age 21*; and,
- 42 CFR §447.205, *Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates*.

### Summary of Proposal

The reason for this amendment is to establish a class of pediatric nursing care facility that offers specialized nursing care for a defined group of children under the age of 21 years. These children are not able to be served in the Prescribed Pediatric Extended Care (PPEC) Program because of their increased service requirements.

The amendment defines the requirements of a certain group of children under the age of 21 years that are eligible to be served in a pediatric nursing facility. These children must be determined to require this level of care by the DMMA Medical Evaluation Team.

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

### Summary of Comments Received with Agency Response

The Delaware Developmental Disabilities Council (DDDC), the Governor's Advisory Council for Exceptional Citizens (GACEC) and, the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DMMA has considered each comment and responds as follows.

First, the Councils would like to note its strong preference for keeping children out of nursing homes if adequate care is available in community-based settings. The "Summary of Proposal" indicates that nursing home placement is not contemplated for children who qualify for PPEC services. We would also like to confirm our view that the availability of pediatric nursing home care not be considered preferable to other day programs such as the First State School or the Exceptional Care for Children program.

**Agency Response:** The placing of children in any nursing facility needs to be an option for Medicaid eligible children in Delaware. Some children have needs that must be addressed in an inpatient nursing care facility setting. Medicaid will make every effort to support the client's needs in a community setting if they can be met. Delaware is fortunate to be able to offer inpatient nursing care facility services to its citizens within Delaware. Previously, Delaware children who required these services had to be placed out-of-state.

Second, the rate adjustment standards are rather weak. Rates for each level of care are computed "for a base year and may be inflated each year thereafter using a nationally recognized inflation index". Use of an appropriate index merits endorsements since it is simple and does not require extensive assessment. However, there is no requirement of reassessment of rates nor any indication that annual reassessment will be a norm. In other contexts, DMMA has required rebasing at least every three (3) years. See 6 DE Reg. 885, 886 (January 1, 2003) [inpatient hospital care]. Providers often complain that the State establishes a base rate and then continues to reimburse based on that rate for several years without adjustment. It would be preferable to amend the regulation with the following italicized sentence:

Rates for each level of care shall be computed for a base year and may be inflated each year thereafter using a nationally recognized inflation index. At a minimum, such rebasing shall occur at least every three years.

**Agency Response:** By applying this methodology the facility is encouraged to be efficient. Medicaid will utilize a nationally recognized inflation index that best reflects the costs that are occurring in the operation of the facility. Medicaid has every intention of indexing rates regularly and feels that the facility costs will be effectively addressed applying this methodology.

Third, for similar reasons, it would be preferable to establish 2007 as the rebase year. As written, the State could adopt a 2005 base year which would artificially depress the reimbursement rate.

**Agency Response:** In establishing the rates, Delaware Medicaid utilizes the most current available information at the time.

Fourth, the "special case" authorization in the last paragraph of the regulation merits endorsement. Medically involved children are not "fungible" and may require individual consideration beyond an assessment of skilled or super-skilled services eligibility.

**Agency Response:** Thank you for the endorsement. Medicaid recognizes that some children may need special care beyond their assessment levels and Medicaid will address these issues and needs as they arise to ensure that appropriate care is given.

Thank you for your comments. Please be assured that the issues apprised of are being considered.

#### Findings of Fact:

The Department finds that the proposed changes as set forth in the June 2007 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan regarding pediatric nursing facility care reimbursement is adopted and shall be final effective September 10, 2007.

Vincent P. Meconi, Secretary, DHSS, 8/14/07

\* Please note that no changes were made to the regulation as originally proposed and published in the June 2007 issue of the *Register* at page 1780 (10 DE Reg. 1780). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<http://regulations.delaware.gov/register/september2007/final/11 DE Reg 312 09-01-07.htm>

An authenticated version of the final regulation is available at:

<http://regulations.delaware.gov/register/september2007/final/11 DE Reg 312 09-01-07.pdf>

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#### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

#### ORDER

#### Long Term Medicaid Program 20330 Countable Resources Computation

#### Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend existing rules in the Division of Social Services Manual (DSSM) used to determine eligibility to comply with the transfer of assets provisions mandated by the Deficit Reduction Act (DRA) of 2005 (Public Law 109-171) related to promissory notes, loans and property agreements. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the July 2007 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2007 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

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## Summary of Proposal

### Statutory Authority

Deficit Reduction Act of 2005 (Public Law 109-171), enacted on February 8, 2006

### Background

On February 8, 2006, the Deficit Reduction Act (DRA) of 2005 was signed into law. The DRA made changes to certain Medicaid eligibility provisions in Section 1917(c)(1)(I) of Social Security Act affecting Long Term Care services and supports.

As a result of the DRA, DMMA proposed regulatory changes that appeared in the February 1, 2007 issue of the *Delaware Register of Regulations* related to promissory notes, loans and mortgages. The final order regulations were published as 10 DE Reg. 1596 in the April 1, 2007 issue of the *Delaware Register*. The State Council for Persons with Disabilities (SCPD) and two estate planning attorneys commented on the proposed version of these regulations in February, 2007. The SCPD has since commented on the final regulations encouraging reconsideration of the regulatory change that deleted Pars. "a" and "b" of Section 20330.3. The deleted subsection allowed a note holder to demonstrate that its true worth is less than its outstanding principal value. The Council objected to deletion of this subsection since a note could lose value based on a promissor's bankruptcy or destruction of mortgaged premises. One of the estate planning attorneys offered the same objection.

After careful reflection and staff analysis, DMMA has reconsidered and revised section 20330.3.

### Summary of Proposal

DSSM 20330.3, Promissory Notes, Loans and Property Agreements: This revision clarifies that the value DMMA places on an available resource may be rebutted. A new subsection, 20330.3.1, has been added to show the information the applicant must submit to successfully rebut the value.

### Summary of Comments Received with Agency Response and Explanation of Changes

The State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DMMA has considered each comment and responds as follows.

The SCPD reviewed the final regulations published in [DE Reg. 1596 (April 1, 2007)], which incorporated all of the Council's suggestions with one exception, i.e., the regulation deleted an authorization for a note holder to demonstrate that the note's value was less than its outstanding principal balance. Although, the regulations were final, SCPD solicited reconsideration. DMMA has now issued a proposed regulation authorizing a note holder to present proof of devaluation of a note.

SCPD would like to share two suggested amendments to §20330.3.1 as follows:

First, the word "or" should be inserted between "loan" and "mortgage".

Second, the word "instrument" should be substituted for "agreement". The word "instrument" is a legal term of art for a formal document and is commonly used to refer to mortgages, loans, and notes. It is more apt term than agreement in this context.

**Agency Response:** DMMA agrees. The final order regulation text shows the suggested amendments.

To strengthen the proposed regulation, further analysis by Division staff resulted in the following changes in the final order regulation text indicated by [bracketed bold type]. Specific changes include: 1) using the active rather than passive voice where appropriate; and, 2) revising language to increase clarity.

### Findings of Fact:

The Department finds that the proposed changes as set forth in the July 2007 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to the Division of Social Services Manual

regarding the promissory notes, loans and property agreements provisions mandated by the Deficit Reduction Act (DRA) of 2005 (Public Law 109-171) is adopted and shall be final effective September 10, 2007.

Vincent P. Meconi, Secretary, DHSS, 8/14/07

### **DMMA FINAL ORDER REGULATION #07-40**

#### **REVISIONS:**

#### **20330 Countable Resources Computation**

##### **20330.1 Vehicles**

Vehicles are defined as automobiles, boats, travel trailers, motorcycles etc. The current market value of a vehicle is the average price that it will sell for (based on year, make, model and condition) on the open market in a certain geographic area. Current market value can be determined by using the NADA book (trade in value) or a written appraisal from a disinterested, knowledgeable source. One vehicle may be excluded under Section 20310.5 . Only one vehicle may be excluded for a married couple.

If NO vehicle is excluded per Section 20310.5, up to \$4650 of the CMV of ONE vehicle is excluded. If the CMV exceeds \$4650, the excess counts as a resource, unless the vehicle can be excluded under some other provision (i.e., co-owner refuses to sell). It is unlikely the \$4650 exclusion will be used. This is because most vehicles are used for either a medical problem or for essential daily activities and can be excluded per Section 20310.5 .

Any vehicle an individual owns in addition to the vehicle that was totally or partly excluded (up to \$4650), is a resource in the amount of its equity value. The equity value is the CMV minus amount owed on the vehicle. The exclusion is applied in the manner most advantageous to the individual. If one of two vehicles can be excluded as necessary for medical treatment, the exclusion is applied to the vehicle with the greater equity value regardless of which vehicle is used to obtain medical treatment.

##### **20330.2 Financial Institutions Accounts**

Financial institution accounts which include savings accounts, checking accounts, certificates of deposit, etc., are an individual's resource if the individual owns the account and can use the funds for his or her support and maintenance. We determine whether an individual owns the account and can access the funds by looking at how the account is titled.

If an individual is designated as sole owner by the account title, all of the funds are that individual's resource unless legal restrictions preclude the owner from using the funds for his or her support and maintenance. We do not provide an opportunity for the owner of an individually-held account to rebut the presumption of 100% ownership.

If the account is in the name of a Medicaid applicant/recipient and another Medicaid applicant/recipient, assume all account funds belong to each individual in equal shares. If the account is in the name of a Medicaid applicant/recipient and another individual who is not applying for Medicaid or who is not a Medicaid recipient, then assume all of the funds belong to the Medicaid applicant/recipient.

If the applicant or recipient disagrees with the ownership presumption on jointly-held accounts, we give the individual the opportunity to rebut the presumption. Rebuttal is a procedure which permits an individual to furnish evidence and establish that some or all of the funds in a jointly-held account do not belong to him or her. Obtain the individual's statement on a form containing the penalty clause regarding who owns the funds, why there is a joint account, who has made deposits to and withdrawals from the account, and how withdrawals have been spent. Inform the individual that he or she must submit the following evidence within 30 days:

- a corroborating statement from the other account holder(s). If the other account holder is incompetent or a minor, have the individual submit a corroborating statement from anyone aware of the circumstances surrounding establishment of the account; account records showing deposits, withdrawals and interest paid for the months that ownership is an issue; if the individual owns none of the funds, evidence showing that he or she can no longer withdraw funds from the account; if the individual owns only a portion of the funds, evidence showing

removal from the account of the individual's funds or removal of the funds owned by the other account holder(s) and redesignation of the account.

Any funds that the evidence establishes were owned by the other account holder(s) are not and were not the individual's resources. The effect of a successful rebuttal is retroactive as well as prospective.

### 20330.3 Promissory Notes, Loans and Property Agreements

A loan is an advance from a lender to a borrower that the borrower must repay, with or without interest. ~~[DMMA does not count a loan] proceeds [are not as] income to [the a] borrower because of the borrower's obligation to repay. Any portion of the borrowed funds that the borrower does not spend is a countable resource if [it is] retained into the month following the month of receipt.~~

If ~~[the a]~~ Medicaid applicant is the owner of a promissory note, loan, or property agreement (mortgage), ~~[DMMA will]~~ assume ~~[that]~~ the value of the agreement is its outstanding principal balance.

If the outstanding principal balance plus other countable resources exceeds the resource limit, ~~[we will]~~ inform the individual that DMMA will use the outstanding principal balance ~~[in determining to determine the value of]~~ resources unless the individual ~~submits within 30 days the following information~~ successfully rebuts the value. See 20330.3.1.

~~[As per the Deficit Reduction Act of 2005 (DRA), effective 4/1/06, DMMA will consider the value of a the a] promissory note, loan, or mortgage [will be considered as a] transfer for less than fair market value unless[- :]~~

- The repayment term is actuarially sound;
- Payments are made in equal amounts during the term of the loan with no deferral ~~for~~ of payments and no balloon payments; and
- The promissory note, loan or mortgage prohibits the cancellation of the balance upon the death of the lender.

In determining the amount of the asset transfer~~[red, DMMA looks at]~~ the value ~~[of the outstanding balance]~~ of the note, loan or mortgage ~~[is the outstanding balance due]~~ at the date of the individual's application for Medicaid coverage of services listed in section 1917(c)(1)(C) of the Act.

Payments received against the principal balance are not income. They are conversion of a resource. The portion of the payment which represents interest is unearned income.

The SSA Life Expectancy Table can be found at [www.ssa.gov/OACT/STATS/table4c6.html](http://www.ssa.gov/OACT/STATS/table4c6.html).

**10 DE Reg. 1596 (04/01/07)**

#### 20330.3.1 Rebutting the Value

~~[DMMA will give [the] applicant [may be given] an opportunity to rebut the value placed on the promissory note, loan [; or] mortgage. The rebuttal must include a [a written] estimate from a disinterested, knowledgeable source (such as a broker or appraiser) showing that the value is less than our [determined value, determination or evidence of An applicant may also assert that there is] a legal bar to the sale of the [agreement] instrument by offering documentary or other evidence of a bar or impediment to the sale of the instrument].~~

### 20330.4 Retirement Funds

Retirement funds are annuities or work-related plans for providing income when employment ends, such as pensions, individual retirement accounts (IRA), disability, Keogh plans and some profit sharing plans.

The value of a retirement fund is the amount of money that an individual can currently withdraw. Pension plans that allow withdrawals are known as Defined Contribution Plans. If there is a penalty for early withdrawal, the fund's value is the amount available after the penalty deduction. Any taxes due are not deductible in determining the fund's value. A retirement fund is not a resource if an individual must terminate employment in order to obtain any payment.

If an individual is eligible for periodic retirement benefits, the individual must apply and accept the periodic benefit. If the individual has a choice between periodic benefits and a lump sum, the individual must choose the periodic benefits.

Defined Benefit Plans are retirement funds that are not accessible until the recipient meets eligibility criteria outlined in the retirement plan contract (e.g. actual retirement and reaching a predetermined age). These plans are not considered a countable resource until the individual is eligible to begin receiving benefits as outlined in the retirement plan. Defined Contribution Plans and Defined Benefit Plans are not considered countable resources when owned by an ineligible spouse. An ineligible spouse is a legally married husband or wife who is not eligible for Medicaid benefits.

**10 DE Reg. 1436 (03/01/07)**

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### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

#### ORDER

#### Chronic Renal Disease Program 50300 Referral Process

#### Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend a rule in the Division of Social Services Manual (DSSM) used to determine eligibility for the Chronic Renal Disease Program. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the July 2007 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2007 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

#### Statutory Authority

Title 29, Chapter 79, Subchapter II, Sections 7932 - 7935, *The Chronic Renal Diseases Program*

#### Background

The Delaware Legislature established the Chronic Renal Disease Program (CRDP) effective 1970 by enacting Title 29, Chapter 79, Subchapter 11, Sections 7932-7935. The purpose of this program is to provide assistance to state residents diagnosed with End Stage Renal Disease (ESRD). The CRDP is not federally funded. CRDP is 100% State funded. Since there are limited funds available, the CRDP should only be utilized as a program of last resort. All third party resources (Medicare, Medicaid, Veteran's Benefits, and Private Insurance) must be considered before CRDP funds are utilized.

The mission of the CRDP is to "improve the quality of life for Delawareans with ESRD by promoting health and well-being, fostering self-sufficiency, and protecting a vulnerable population."

#### Summary of Proposed Change

DSSM 50300, Referral Process: The purpose of the proposed is to facilitate and ease the referral process for the Chronic Renal Disease Program. Referrals may come from many different sources; and, a completed application may also be received as the initial referral.

#### Summary of Comments Received with Agency Response

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DMMA has

considered each comment and responds as follows:

The GACEC and SCPD **endorse** this proposed amendment with one observation.

Since the regulations contemplate quick access to the application, the Division may wish to consider inclusion of the application on its website. The Department maintains a description of the CRDP on its website and also has application forms on its website for some programs (e.g. Delaware Healthy Children Program). Indeed, the Department's "Assist" function allows Delawareans to self-screen for eligibility and file an application on-line for some programs. Therefore, we feel that including the application form on the website would be beneficial.

**Agency Response:** DMMA agrees that it would be beneficial to include the CRDP application on the agency website and will research this possibility. Thank you for the endorsement.

#### **Findings of Fact:**

The Department finds that the proposed changes as set forth in the July 2007 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual related to the referral process for the Chronic Renal Disease Program is adopted and shall be final effective September 10, 2007.

Vincent P. Meconi, Secretary, DHSS, 8/14/07

\* Please note that no changes were made to the regulation as originally proposed and published in the July 2007 issue of the *Register* at page 21 (11 DE Reg. 21). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<http://regulations.delaware.gov/register/september2007/final/11 DE Reg 318 09-01-07.htm>

An authenticated version of the final regulation is available at:

<http://regulations.delaware.gov/register/september2007/final/11 DE Reg 318 09-01-07.pdf>

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### **DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

#### **ORDER**

#### **Employee Education About False Claims Act**

#### **Nature of the Proceedings:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to provide notice to the public of the filing of a Title XIX Medicaid State Plan Amendment (SPA) with the Centers for Medicare and Medicaid Services (CMS) to comply with the mandated provisions of the Deficit Reduction Act (DRA) of 2005 (Public Law 109-171) pertaining to Employee Education About False Claims Recovery. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the May 2007 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2007 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### **Summary of Proposed Amendment**

#### **Statutory Authority**

Deficit Reduction Act of 2005 (Public Law 109-171), enacted on February 8, 2006, Section 6032,

*Employee Education About False Claims Recovery***Background**

The federal Deficit Reduction Act of 2005 (DRA) calls for active enforcement of Medicaid fraud and abuse as part of a "Medicaid Integrity Program" (MIP). In particular, effective January 1, 2007, Section 6032 of the DRA requires any entities that receive or make annual payments under the Title XIX Medicaid State Plan of at least \$5 million dollars, as a condition of receiving such payments, to have established written policies and procedures about the Federal and State False Claims Act for their employees, agents and contractors.

Specifically, Section 6032 amends the Social Security Act, Title 42, United States Code, Section 1396a(a), by inserting an additional relevant paragraph. To summarize, this new paragraph mandates that any entity that receives or makes annual payments under the State Plan of at least \$5 million dollars annually, as a condition of receiving such payments, must comply with the following requirements:

- 1) Establish written policies for **all** employees of the entity, including management and any contractor(s) or agent(s) of the entity. These written policies shall provide detailed information about the following:
  - Federal False Claims Act, including administrative remedies for false claims and statements established under Title 31, USC, Chapter 38.
  - State laws pertaining to civil or criminal penalties for false claims and statements; whistleblower protections under such laws; and the role of these laws in preventing and detecting fraud, waste and abuse in Federal health care programs.
- 2) The written policies must include details about the entity's policies and procedures for detecting and preventing fraud, waste and abuse.
- 3) Any employee handbook for the entity must include specific discussion of the laws about false claims and statements, the rights of employees to be protected as whistleblowers, and the entity's policies and procedures for detecting and preventing fraud, waste and abuse.

Based on guidance in the form of State Medicaid Director Letter (SMDL) #06-024, dated December 13, 2006,

*CMS has interpreted the word "entity" to include:*

a governmental agency, organization, unit, corporation, partnership, or other business arrangement (including any Medicaid managed care organization, irrespective of the form of business structure or arrangement by which it exists), whether for-profit or not-for profit, which receives or makes payments, under a State plan approved under title XIX or under any waiver of such plan, totaling at least \$5,000,000 annually.

*CMS has clarified that payments to the entity are to be aggregated for purposes of the annual threshold:*

If an entity furnishes items or services at more than a single location or under more than one contractual or other payment arrangement, the provisions of [Section 6032] apply if the aggregate payments to that entity meet the \$5,000,000 annual threshold. This applies whether the entity submits claims for payments using one or more provider identification or tax identification numbers.

*CMS has clarified that the annual threshold is based on the Federal fiscal year:*

An entity will have met the \$5,000,000 annual threshold as of January 1, 2007, if it received or made payments in that amount in Federal fiscal year 2006. Future determinations regarding an entity's responsibility stemming from the requirements of [Section 6032] will be made by January 1 of each subsequent year, based upon the amount of payments an entity either

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received or made under the State Plan during the preceding Federal fiscal year.

These changes are effective January 1, 2007.

## Summary of Proposal

The state plan amendment establishes DHSS's oversight of policies and procedures to implement the education of employees regarding the false claims act.

Pursuant to this plan amendment, the Department provides oversight and monitoring of entities that receives or makes Title XIX Medicaid payments of at least \$5,000,000 annually based on payments received or made in Federal fiscal year 2006.

DMMA received CMS-approval of the provisions of this amendment on July 6, 2007, effective January 1, 2007.

## Summary of Comments Received with Agency Response

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following endorsement with recommendation summarized below. DMMA has considered each comment and responds as follows:

The Councils **endorse** the regulations subject to elaboration on the requirement of inclusion of State law fraud references which we will highlight below.

DMMA has essentially followed the Centers for Medicare and Medicaid Services (CMS) template for its proposed State Plan amendment. However, the "background" section of the regulations recites that covered entities must also include in policies State law provisions, both civil and criminal, dealing with whistleblowers, fraud, waste, and abuse. At 1661. This requirement is only obliquely addressed in the text of the regulation. At 1664. Relevant state law provisions could include the following: insurance and health care fraud (Title 11 **Del.C.** §§913 and 913A); official misconduct (Title 11 **Del.C.** §1211); insurance fraud (Title 18 **Del.C.** Ch. 24); and public assistance fraud (Title 31 **Del.C.** Ch. 10). The Councils recommends that DMMA consider including some specific references to such State law provisions in its regulations.

**Agency Response:** Thank you for the endorsement. DMMA followed the approach approved by CMS to the state Medicaid plan as specified in Section 4.42 and Attachment 4.42. DMMA received approval for its state plan amendment regarding Employee Education About False Claims Recovery on July 6, 2007 with an effective date of January 1, 2007. The DRA nor CMS provide any guidance regarding the level of detail of an entity's employee handbook and policy requirement. It is up to the entity in consultation with their legal counsel as long as their policy complies with DRA provisions. No change to the state plan amendment was made because of these comments.

Based on CMS guidance, DMMA made the following changes to Attachment 4.42, [indicated by bold bracketed type]:

- In #1: revised to state that DHSS will identify those entities that must comply for Current Year (CY) 2007.
- In #2, 3, 4, 5: changed "providers" to "entities" as this section requires compliance not only from providers but other entities that provide Medicaid health care items or services, like MCOs and other contractors.
- In #3: revised to refer to the preprint for what the policies should include rather than restating the requirements.

Also, dates were inserted where appropriate, as follows:

- In #3: inserted "July 1, 2007" as the date entities will be required to submit their policies to the state so that the state can review them as set forth in #3.
- In #3 and #5: inserted "July 1, 2007" as the date entities will be required to submit employee handbooks, if the entities have them.
- In #4: inserted "by January 31st" as the date the state will contact entities each year.

- In #5: inserted "by April 1st" as the date entities will be required to submit their policies each year.

**Findings of Fact:**

The Department finds that the proposed changes as set forth in the May 2007 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan pertaining to the mandated provisions of the Deficit Reduction Act (DRA) of 2005 (Public Law 109-171) regarding Employee Education About False Claims Recovery is adopted and shall be final effective September 10, 2007.

Vincent P. Meconi, Secretary, DHSS, 8/14/07

**DMMA FINAL ORDER REGULATION #07-37  
NEW:**

79 x 1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

Citation

1902(a)(68) of the Act,  
P.L. 109-171 (section  
6032)

4.42 Employee Education About False Claims Recoveries.

- (a) The Medicaid agency meets the requirements regarding establishment of policies and procedures for the education of employees of entities covered by section 1902(a)(68) of the Social Security Act (the Act) regarding false claims recoveries and methodologies for oversight of entities' compliance with these requirements.

(1) Definitions

(A) An "entity" includes a governmental agency, organization, unit, corporation, partnership, or other business arrangement (including any Medicaid managed care organization, irrespective of the form of business structure or arrangement by which it exists), whether for-profit or not-for-profit, which receives or makes payments, under a State Plan approved under title XIX or under any waiver of such plan, totaling at least \$5,000,000 annually.

If an entity furnishes items or services at more than a single location or under more than one contractual or other payment arrangement, the provisions of section 1902(a)(68) apply if the aggregate payments to that entity meet the \$5,000,000 annual threshold. This applies whether the entity submits claims for payments using one or more provider identification or tax identification numbers.

A governmental component providing Medicaid health care items or services for which Medicaid payments are made would qualify as an "entity" (e.g., a state mental health facility or school district providing school-based health services). A government agency which merely administers the Medicaid program, in whole or part (e.g., managing the claims processing system or determining beneficiary eligibility), is not, for these purposes, considered to be an entity:

79 x 2

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

An entity will have met the \$5,000,000 annual threshold as of January 1, 2007, if it received or made payments in that amount in Federal fiscal year 2006. Future determinations regarding an entity's responsibility stemming from the requirements of section 1902(a)(68) will be made January 1 of each subsequent year, based upon the amount of payments an entity either received or made under the State Plan during the preceding Federal fiscal year.

(B) An "employee" includes any officer or employee of the entity.

(C) A "contractor" or "agent" includes any contractor, subcontractor, agent, or other person which or who, on behalf of the entity furnishes, or otherwise authorizes the furnishing of, Medicaid health care items or services, performs billing or coding functions, or is involved in the monitoring of health care provided by the entity.

(2) The entity must establish and disseminate written policies which must also be adopted by its contractors or agents. Written policies may be on paper or in electronic form, but must be readily available to all employees, contractors, or agents. The entity need not create an employee handbook, if none already exists.

79 x 3

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

(3) An entity shall establish written policies for all employees (including management), and of any contractor or agent of the entity, that include detailed information about the False Claims Act and the other provisions named in section 1920(a)(68)(A). The entity shall include in those written policies detailed information about the entity's policies and procedures for detecting and preventing waste, fraud, and abuse. The entity shall also include in any employee handbook a specific discussion of the laws described in the written policies, the rights of employees to be protected as whistleblowers and a specific discussion of the entity's policies and procedures for detecting and preventing fraud, waste, and abuse.

(4) The requirements of this law should be incorporated into each State's provider enrollment agreements.

(5) The State will implement this State Plan amendment of January 1, 2007.

- (b) ATTACHMENT 4.42-A describes, in accordance with section 1902(a)(68) of the Act, the methodology of compliance oversight and the frequency with which the State will re-assess compliance on an ongoing basis.

ATTACHMENT 4.42-A

Page 1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

**FALSE CLAIMS ACT ATTACHMENT**

1. The Delaware Health and Social Services (DHSS), the single state agency, will ~~[send a letter to any entity that receives annual payments of at least \$5 million during the October 1, 2005 to September 31, 2006 period regarding the requirements of Section 6032 of the Deficit Reduction Act of 2005, the "Employee Education About False Claims Recovery," These letters will be sent by March 30, 2007]~~ identify those entities, defined in §4.42(a)(1)(A), that must comply for CY 2007.]
2. DHSS will request copies of an affected ~~[provider's entity's]~~ written policies, and the plan to disseminate those policies to staff, within three (3) months of State Plan approval.
3. Affected ~~[providers entities]~~ written policies and procedures[, **except employee handbooks,**] will be reviewed for compliance ~~[with the Act in accordance with §4.42(a)(3)]. [Said policies and procedures will include an explanation of the false claims act; the providers' policies and procedures for detecting and preventing waste, fraud and abuse; the rights of the employee to be protected as whistle blowers; and, the telephone numbers and/or addresses for reporting fraud and abuse]~~ These written policies and procedures must be submitted to DHSS by July 1, 2007].

4. Thereafter, DHSS will contact affected [~~providers entities on a yearly basis by January 31<sup>st</sup>~~] for any update or change to its written policies. DHSS will accomplish this verification by [~~provider entity~~] survey.
  5. New affected [~~providers entities~~] identified each year will be required to submit [~~by April 1<sup>st</sup>~~] their polices and dissemination plan [~~except employee handbooks,~~] and will be handled per #2, 3, 4.
  6. DHSS has a range of sanctions contained in its administrative regulation for non-compliance with Medicaid policies. These sanctions range from requiring a plan of correction to termination from the Medicaid program. These sanctions will be applied to non-compliance with the "Employee Education About False Claims Recovery."
- 

**DIVISION OF SOCIAL SERVICES**Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)**ORDER****Civil Rights Program  
9004 Non-Discrimination Policy****Nature of the Proceedings:**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend policies in the Division of Social Services Manual (DSSM). The proposed changes described below amend the Civil Rights Program policies related to the prohibition of retaliatory acts. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the July 2007 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2007 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****Statutory Authority**

7 CFR Part 15, Subpart A, *Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture - Effectuation of Title VI of the Civil Rights Act of 1964*

**Summary of Proposed Changes**

DSSM 1006.6, 1006.7, 1007, 1007.1, 1007.3 and 9004: The United States Department of Agriculture (USDA) revised the nondiscrimination statement due to changes in the Department's civil rights regulations. The nondiscrimination statement now includes *retaliation* as a reason an individual cannot be discriminated against. The affected areas of policy in the DSSM are revised to affirm that discrimination is prohibited in all aspects of the delivery of program benefits and to add the word "retaliation" to the list of prohibited actions.

**Summary of Comments Received with Agency Response and Explanation Of Changes**

The Delaware Developmental Disabilities Council (DDDC), the Governors Advisory Council for Exceptional Citizens (GACEC) and, the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DSS has considered each comment and responds as

follows.

DSS recites that the impetus is U.S. Department of Agriculture (USDA) revisions to federal regulations which now address retaliation.

First, consistent with the attached non-discrimination statement, the Division covers the same eight (8) bases contained in the USDA policy: race, color, national origin, sex, religious creed, age, disability, and political beliefs. The Division may wish to consider whether State policy also favors supplementing this list with "sexual orientation" and/or "marital status". For example, in the context of State employment, discrimination on such bases is prohibited. See attached Executive Order No. 86 (May 2, 2006).

Second, the Division addresses "retaliation" by simply adding it to the list of protected classes in §§9004, 1006.6, 1006.7, 1007, and 1007.3. This makes little sense. "Retaliation" is not a protected class. Rather, there should be a separate standard prohibiting retaliation against person who file or facilitate a discrimination complaint or otherwise seek enforcement of the nondiscrimination regulations. For example, the attached USDA nondiscrimination regulation, Par. 4, identifies protected classes and then adds the following separate statement:

No person shall be subjected to reprisal or harassment because he or she filed a discrimination complaint, participated in or contributed to the identification, investigation, prosecution, or resolution of civil rights violations in or by a recipient of Federal financial assistance from USDA; or otherwise aided or supported the enforcement of Federal or USDA civil rights laws, rules, regulations, or policies.

DSS should adopt some variation of this statement in its regulations. For example, it could recite as follows:

No person shall directly or indirectly be subjected to retaliation, reprisal or harassment because he or she filed a discrimination complaint; participated in or contributed to the identification, investigation, prosecution, or reviews of discrimination; or otherwise aided or supported the enforcement of nondiscrimination laws or regulations.

Third, the resolution of complaint regulation (§1007.3) is somewhat anemic. It omits any authorization to provide individual relief to the complainant. For example, if a Deaf complainant alleged that staff refused to provide an interpreter necessary to complete a benefits application, or resulting in termination of benefits due to inability to effectively communicate, the regulation would not authorize an individual remedy (e.g. retroactive approval or reinstatement of benefits). By analogy, the attached fair hearing regulation [§5501] explicitly authorizes corrective relief. At a minimum, §1007.3 would benefit from a similar authorization.

Fourth, §1006.6 contemplates publication of the Division's nondiscrimination policy through the media (television, radio, newspaper). It would be preferable to also add the Division's website.

Fifth, §1006.3 (attached) contemplates the availability of multiple complaint options (federal and state) for an alleged victim of discrimination. For example, there may be circumstances in which an applicant or recipient could either file a complaint under §1007.1 or request a fair hearing under the attached 16 Admin Code 5001. As noted above, a Deaf person wrongly denied an interpreter (violating the ADA) may be improperly denied benefits or have benefits terminated. Alternatively, a DSS employee could refuse to provide a reasonable accommodation to a person with a disability resulting in a denied application, termination of benefits, delay in receipt of benefits, or reduction of benefits. It would be preferable to add a non-supplanting provision to §1007.1. Cf. the Department of Education federal programs complaints regulation, 7 DE Reg. 188, 190 final footnote (August 1, 2003). The following paragraph could be added to §1007.1:

The right to file a complaint under this section is not intended to be an exclusive remedy or supplant resort to other review systems which may otherwise be available, including 16 Admin Code 5000.

**Agency Response:** The Division of Social Services (DSS) amended the non-discrimination language based on the U. S. Department of Agriculture (USDA) revision of their USDA nondiscrimination statement. USDA instructed States to use the published nondiscrimination statement on all materials produced by the agencies for public information, public education or public distribution regarding the programs. Your comments regarding:

- (1) Adding 'sexual orientation' or 'marital status' to the protected list;
  - (2) Writing a separate standard prohibiting retaliation;
  - (3) Authorizing individual relief to complainants;
  - (4) Listing the Division's website as a media publication; and,
  - (5) Adding a non-supplanting provision to the section about multiple complaint options are important;
- however, DSS intends to only make the required changes at this time.

DSS will consider your comments in the future when this section is under revision again.

To strengthen the proposed regulation, further analysis by Division staff resulted in the following changes in the final order regulation text indicated by [bracketed bold type]. Specific changes include: 1) replacing references to "State Hearing Officer" with "Civil Rights Coordinator" since that is the title actually used in correspondence by DSS; 2) including references to the DSS online civil rights complaint form since that is the most commonly used vehicle to file a civil rights complaint; 3) using the active rather than passive voice where appropriate; 4) removing outdated words/phrases; and, 5) clarifying/revising procedures to reflect current practices.

#### **Findings of Fact:**

The Department finds that the proposed changes as set forth in the July 2007 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to the Civil Rights Program policies is adopted shall be final effective September 10, 2007.

Vincent P. Meconi, Secretary, DHSS, 8/14/07

#### **DSS FINAL ORDER REGULATIONS #07-41 REVISIONS:**

##### **9004 Non-Discrimination Policy**

[272.6(a)]

~~[De We will]~~ not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of food stamp benefits, the conduct of fair hearings, or the conduct of any other program service for reasons of ~~age, race, color, sex, disability, religious creed, national origin, or political beliefs~~ race, color, national origin, sex, religious creed, age, disability, political beliefs, or retaliation. Discrimination in any aspect of program administration is prohibited by these regulations: the Food Stamp Act, the Age Discrimination Act of 1975 (Public Law 94 135), the Rehabilitation Act of 1973 (Public Law 93 112, sec. 504), and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal Law. Title VI complaints shall be processed in accord with 7 CFR, Part 15.

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

##### **1006 Civil Rights and Non-Discrimination**

In accordance with Title VI of the Civil Rights Acts of 1964, Section 504 of the Rehabilitation Act of 1973, and all pertinent requirements of the regulations of the U.S. Department of Health and Human Services (45CFR Part 80), DSS programs will include a Civil Rights Program that ensures that no individual will be denied any DSS services or excluded from any DSS program on the grounds of race, color, national origin, age, sex, disability, political belief, religion, or any other form of discrimination.

Specifically the Division of Social Services will not directly or through a contractual or other kind of arrangement on

the grounds of race, color, national origin, age, sex, disability, political belief or religion:

- 1) Deny any person a DSS service;
- 2) Subject any person to segregation or separate treatment in any matter related to his/her receipt of services;
- 3) Restrict any person's employment of privileges enjoyed by others receiving DSS services; and
- 4) Treat any person differently from others in determining if that person satisfies any condition of eligibility that all persons must meet in order to qualify for services.

This applies to all intake and application procedures, caseload assignments, the determination of eligibility, the amount and kind of services made available, and in the use of all DSS physical facilities.

Included in the requirements of the Civil Rights Program are the activities of:

- 1) Temporary Assistance for Needy Families;
- 2) Medical Assistance;
- 3) General Assistance;
- 4) The Food Stamp Program;
- 5) Services to Families and Children;
- 6) Emergency Assistance Services;
- 7) Employment and Training/Work For Your Welfare Services;
- 8) Refugee Resettlement Program services include Refugee Cash Assistance (RCA).

#### 1006.1 Non-Discrimination and Administrative Practices

The Division will not directly, or through contractual or other arrangements employ methods of administration which subject any person to discrimination because of race, color, disability, national origin, age, sex, political belief or religion. This applies particularly to the following:

- 1) Type of services to be provided under any program;
- 2) The class of person to who or the situation in which DSS services will be provided; and
- 3) The class of person to be given an opportunity to participate in any DSS program.

#### 1006.2 Administration of the Civil Rights Program

The Director has responsibility for ensuring that the civil rights of all individuals in contact with the Division of Social Services are observed. Acting through administrative staff, the Director will coordinate the Division's Civil Rights Program and assure compliance with the requirements of the program by all Division of Social Services' staff and all other persons or organizations that perform services for the Division of Social Services.

An important part of the administration of the Civil Rights Program is the assurance that all aspects of the program are understood and implemented by DSS staff members and by all other persons and organizations that provide services for DSS. It is also essential that all applicants for and recipients of DSS services be freely informed of their rights of protection from discrimination and their rights of complaint in any case of discrimination.

#### 1006.3 Civil Rights Information to Clients and Participants

**[A We will give a]**ll applicants **[will be given]** a copy of Form 113, Information on Fair Hearings and Civil Rights on the applicant's right to send a letter of complaint to the Director or to the Federal Department of Health and Human Services or to file an appeal and ask for a Fair Hearing in any situation when he believes he has been a victim of discrimination on the grounds of ~~[race, color, disability, national origin, age, sex, political beliefs or religion]~~ **race, color, national origin, sex, religious creed, age, disability, political beliefs, or retaliation. If a person wants to make a civil rights complaint our staff will provide the person with our online civil rights complaint form].**

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The Division will publicize the Food Stamp Program complaint procedures and will ensure that all offices involved in administering the program and serving the public display the non discrimination poster provided by FNS. In addition, the Division will ensure that participants and other low income households have access to information regarding non discrimination statutes and policies within ten (10) days of the date of a request. Each individual who expresses an interest in filing a discrimination complaint shall be advised of the methods of filing complaints as stated in DSSM 1007.

#### **1006.4 Assurance of Civil Rights Program Compliance in Regional Operations**

The ~~[State Hearing Officer]~~ **Civil Rights Coordinator** is responsible for ensuring that employees of the Division, both at the professional and clerical level who are directly in contact with applicants and recipients carry out the requirements of the Civil Rights Program under the supervision of the appropriate Operations Administrator. He will also maintain complete records of all complaints that are made and/or appeals and fair hearings that are requested on the grounds of discrimination.

As part of staff development and in the course of regular work activities, staff members will be instructed to be alert to instances of discrimination on account of race, color, disability, national origin, age, sex, political belief, or religion on the part of any individual, or organization from which the Division purchases any service, or to which the Division makes referrals for any kind of service. If any such instance of discrimination is discovered, the worker will send a full report to the Director via his supervisor and the ~~[State Hearing Officer]~~ **Civil Rights Coordinator**.

Individual vendors of any service purchased by the Division will be notified that all services must be provided without discrimination on account ~~[race, color, disability, national origin, age, sex, political beliefs or religion]~~ **race, color, national origin, sex, religious creed, age, disability, political beliefs, or retaliation**, and that payment will not be made unless such services are provided without discrimination.

#### **1006.5 Reports of Civil Rights Program**

The ~~[State Hearing Officer]~~ **Civil Rights Coordinator** will prepare and submit required reports on all aspects of the Civil Rights Program, including complaints of discrimination received, appeals to the Division or to the Department of Health and Human Services, verification of discrimination, action taken and the results. Correspondence between the Division and agencies, or any communications on Civil Rights issues will be made available ~~[to the Research Analyst]~~ upon request. In addition, access to records and facilities will be provided to representatives of the Department of Health and Human Services as requested, for purposes of verifying compliance with the Civil Rights Act and Department of Health and Human Services Regulations. Reports will also be submitted to the Food and Nutrition Service (FNS) for each discrimination complaint processed at the State level which arises from the operation of the Food Stamp Program in Delaware. The report shall contain as much of the following information as is available to the Division: the name, address, and telephone number of the person alleging discrimination; the reason for the alleged discrimination; the nature and date of the incident or action that led the person to allege discrimination; and the names and addresses of persons who may have knowledge of the discriminatory act(s). ~~[In addition, the report shall contain the findings of the investigation, and, if appropriate, the corrective action planned or taken.]~~ The report must be sent to FNS within 90 days of the date DSS receives the complaint.

#### **1006.6 Civil Rights Program and Public Relations**

The general public, including citizens interested in public welfare and civil rights, will be informed as widely as possible of the Civil Rights Program of the Division.

Informational releases will be given to the daily newspapers in Wilmington, and to the weekly or daily newspapers in the rest of the State. Similar information will be given to all radio stations in Delaware and, if acceptable, to the television station in Wilmington.

Organizations interested in learning more about the Civil Rights Program of the Division will be furnished speakers

from the administrative staff of the Department on request to the Director.

Posters will be displayed in all offices of the Division notifying all persons that assistance and services are provided by the Division to all eligible persons without regard to ~~race, color, disability, national origin, age, sex, political belief and religion~~ race, color, national origin, sex, religious creed, age, disability, political beliefs, or retaliation.

### 1006.7 Staff Development and the Civil Rights Program

The Division of Social Services Staff Development and Training Program will emphasize the role of the Civil Rights Program in all services provided to clients especially as it relates to the rights and privileges of each individual.

Both in its presentation of the legal and technical aspects of agency policy and procedures and in its analysis of case work attitudes and techniques, the Staff Development and Training Program will be administered at all times in such a way that emphasis is placed on the basic fact that all applicants and recipients, and all persons receiving any care or services from or through the Division, shall not be subject to discrimination of any kind on the grounds of ~~race, color, disability, national origin, age, sex, political beliefs, or religion~~ race, color, national origin, sex, religious creed, age, disability, political beliefs, or retaliation.

### 1007 Complaint Procedures

Any person applying for or receiving any DSS services who believes he/she has been the victim of discrimination on account of ~~race, color, disability, national origin, age, sex, political beliefs, or religion~~ race, color, national origin, sex, religious creed, age, disability, political beliefs, or retaliation may file a complaint directly or with the assistance of an individual, group, or agency representing the complainant, in accordance with the procedure outlined below.

#### 1007.1 Right to File Complaint

The right to file a complaint alleging discrimination on account of ~~race, color, disability, national origin, age, sex, political beliefs, or religion~~ race, color, national origin, sex, religious creed, age, disability, political beliefs, or retaliation applies to the following:

- a) All applicants for and recipients of cash assistance.
- b) All applicants for and recipients of food stamps.
- c) All applicants or recipients who are participating in demonstration projects.
- d) All persons applying for or receiving any service furnished by or through the Division.
- e) Any individual, group, organization, or agency acting on their own account or on behalf of any person receiving any service of the Division.

#### 1007.2 Methods of Filing Complaints

1) The complainant may write a letter addressed to the Director, Division of Social Services **[or may use the Division's online Civil Rights / Discrimination Complaint Form 840]**. The letter **[or complaint form]** will describe fully the kind of discrimination alleged, when and where such discrimination took place, and any pertinent facts and circumstances in connection with the alleged discrimination. The letter will be signed by the person making the complaint. A complaint regarding the Food Stamp Program may be initiated verbally. However, the complaint must eventually be reduced to writing for recordkeeping purposes.

2) The complainant may write a letter addressed to the Federal Department of Health and Human Services in Washington, DC or in the Region III office in Philadelphia, giving all facts and circumstances of the discrimination complained of, as stated in (1) above.

3) Individuals who believe they have been subject to discrimination in any aspect of the Food Stamp Program may file a verbal or written complaint with the Secretary or the Administrator, Food and Nutrition Service (FNS), Washington, DC 20250 and/or with the Division as stated in (1) above. Complaints will contain the following

information: The name, address, and telephone number of the person alleging discrimination; the name and location of the office or organization accused of the discriminatory practice and the nature of the incident or acts which resulted in the allegation; the date(s) on which the incident occurred; the names of persons who have knowledge of the alleged discriminatory acts, and the basis of complaint (e.g., race, color, etc.).

4) The complainant may file an appeal and ask for a fair hearing in accordance with the established policies and procedures of the Division on appeals and fair hearing.

5) The complaint must be filed within 180 days of the alleged discriminatory act.

### 1007.3 Methods of Handling Complaints

The ~~[Director Civil Rights Coordinator]~~ will study and evaluate all complaints alleging discrimination on account of ~~race, color, disability, national origin, age, sex, political beliefs or religion~~ race, color, national origin, sex, religious creed, age, disability, political beliefs, or retaliation.

~~[He The Director will route them to the State Hearing officer who will then assign them to appropriate administrative or supervisory staff for complete investigation. A written report will be prepared and forwarded to the Director. The Director will study the report and determine whether or not any discriminatory practice has, in fact been carried on. If the Director finds that this has been the case, he will take such action as seems necessary action will be taken to correct the discriminatory practice and to assure that there will be no repetition of such discrimination.]~~

~~The Director will address a letter to the complainant covering the investigation and findings on the complaint. He The Director will be advised that if he is not satisfied, he may ask to have the complaint may be presented to the Secretary of the Department of Health and Human Services.~~

If the complaint is over the operation of the Delaware Food Stamp Program, the Civil Rights Coordinator will provide the complaint to the Regional Office of the United States Department of Agriculture.

If the complaint is over the operation of the Medicaid program, the Civil Rights Coordinator will provide the complaint to the Secretary of the Department of Health and Human Services.

For all other DSS complaints, the Civil Rights Coordinator will provide the complaint to the Division of Social Services Director.]

### 1007.4 Records of Complaints

~~[Records of complaints on grounds of discrimination will be maintained showing the action taken on the complaint, the investigation conducted, the findings, and any subsequent action by the Director. Such complaint records will be made available upon request to duly authorized representatives of the Department of Health and Human Services. We will maintain records of complaints on grounds of discrimination based on color, national origin, sex, religious creed, age, disability, political beliefs, or retaliation. The records will show the action taken on the complaint, any investigation conducted, the findings and any subsequent action.]~~

### 1007.5 Confidentiality of Complaints

~~[The We will safeguard the]~~ identity of the complainant ~~[shall be kept confidential]~~ except to the extent necessary to carry out the above complaint procedures.

### 1007.6 Other Complaint Procedures

~~[Food Stamp Program Applicants and]~~ participants, ~~[potential participants, or other individuals or groups]~~

may file complaints, other than complaints based on discriminatory practices or complaints that may be pursued through a fair hearing, by filing a complaint, in writing, within thirty (30) days of the alleged action or inaction, with the Division of Social Services [~~Complaints Manager, Customer Relations Manager~~], [~~State Office, Division of Social Services Lewis Building~~]. The thirty day time limit begins on the date the complainant becomes aware, or should have become aware, of the agency action and may be extended by the [~~Complaints Manager Customer Relations Manager~~] for good cause such as, but not limited to, complaints about office hours, office locations or discourteous treatment, or situations which may involve overtime. The [~~Complaints Manager Customer Relations Manager~~] will review the complaint, take appropriate action[; and] respond to the complainant on the disposition of the complaint[; and forward the results of the complaint to the Director].

### DIVISION OF SOCIAL SERVICES

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

#### ORDER

#### Food Stamp Program 9013 Household Concept

#### Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding separate household status for disabled persons. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the July 2007 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2007 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

##### Statutory Authority

7 CFR 273.1(a)(2), *Household Concept - Elderly and Disabled Persons*

##### Background

On June 12, 2006, the United States Department of Agriculture (USDA) issued policy guidance clarifying that a disabled person may be considered a food stamp household separate from a person who resides with him or her and purchases and prepares food separately on the disabled person's behalf. The issue arose in litigation in Alabama.

##### Summary of Proposed Change

DSSM 9013.1, Household Definition: This policy clarification informs staff that severely disabled individuals who live with others but have someone prepare and purchase their meals separate and apart from others in the home can be a separate household.

#### Summary of Comments Received with Agency Response

The Delaware Developmental Disabilities Council (DDDC), the Governor's Advisory Council for Exceptional Citizens (GACEC) and, the State Council for Persons with Disabilities (SCPD) offered the following observations summarized below. The Division of Social Services (DSS) has considered your comments and responds as follows.

As the "Summary" section recites, the impetus behind this initiative is a June 12, 2006 USDA policy letter.

The policy letter authorizes a "severely disabled" applicant to qualify as a separate "household" under the Food Stamp program if the applicant arranges for another (even cohabitating) individual to purchase and prepare the applicant's food. This is advantageous to the person with the disability since the income of the other cohabitating individual(s) would not be counted towards the financial eligibility of the person with the disability. The proposed regulatory change to §9013.1 is well written and consistent with the policy letter. Although, it does not adopt "people first" language, the substance of the standard is fine. We endorse this regulatory change.

**Agency Response:** DSS thanks you for the endorsement.

**Findings of Fact:**

The Department finds that the proposed changes as set forth in the July 2007 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to separate household status for disabled persons in the Food Stamp Program is adopted and shall be final effective September 10, 2007.

Vincent P. Meconi, Secretary, DHSS, 8/14/07

**\*Please Note: Please note that no changes were made to the regulation as originally proposed and published in the July 2007 issue of the *Register* at page 25 (11 DE Reg. 25). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[http://regulations.delaware.gov/register/september2007/final/11 DE Reg 332 09-01-07.htm](http://regulations.delaware.gov/register/september2007/final/11%20DE%20Reg%20332%2009-01-07.htm)

**An authenticated version of the final regulation is available at:**

[http://regulations.delaware.gov/register/september2007/final/11 DE Reg 332 09-01-07.pdf](http://regulations.delaware.gov/register/september2007/final/11%20DE%20Reg%20332%2009-01-07.pdf)

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**DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code, Section 311 (18 Del.C. §311)  
18 DE Admin. Code 1216

**ORDER**

**1216 Military Sales Practices**

Proposed Regulation 1216 relating to the sale of life and insurance annuity products to military personnel was published in the *Delaware Register of Regulations* on July 1, 2007. The comment period remained open until August 6, 2007. There was no public hearing on proposed Regulation 1216. Public notice of the proposed Regulation 1216 in the *Register of Regulations* and two newspapers of general circulation was in conformity with Delaware law.

**Summary of the Evidence and Information Submitted**

Public comment was received relative only to the issue of the effective date. That comment was that the effective date should be the first day of January, 2008, in order to allow more time for compliance.

**Findings of Fact**

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

1. It is in the public interest that active duty service members of the United States Armed Forces be protected from dishonest and predatory insurance sales practices by declaring certain identified

practices to be false, misleading, deceptive, or unfair.

2. In order to be consistent with other states in the National Association of Insurance Commissioners, it is appropriate to adopt the Model Regulation, modified to conform with Delaware law.

#### **Decision and Effective Date**

Based on the provisions of 18 **Del.C.** §§311(a) and the record in this docket, I hereby adopt Regulation 1216 and as may more fully and at large appear in the version attached hereto to be effective on September 11, 2007.

#### **Text and Citation**

**IT IS SO ORDERED** this 13th day of August 2007.

Matthew Denn  
Insurance Commissioner

\* Please note that no changes were made to the regulation as originally proposed and published in the July 2007 issue of the *Register* at page 26 (11 DE Reg. 26). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

[http://regulations.delaware.gov/register/september2007/final/11 DE Reg 333 09-01-07.htm](http://regulations.delaware.gov/register/september2007/final/11%20DE%20Reg%20333%2009-01-07.htm)

An authenticated version of the final regulation is available at:

[http://regulations.delaware.gov/register/september2007/final/11 DE Reg 333 09-01-07.pdf](http://regulations.delaware.gov/register/september2007/final/11%20DE%20Reg%20333%2009-01-07.pdf)

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## **DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

### **DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Chapter 1, (7 **Del.C.**, Ch. 1)  
7 **DE Admin. Code** 3901

#### **3900 Wildlife Regulations**

**Secretary's Order No.: 2007-F-0028**

**Date of Issuance: August 15, 2007**

**Effective Date of the Amendment: September 11, 2007**

**3901 Definitions**

#### **I. Background:**

A public hearing was held on Tuesday, July 31, 2007, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Wildlife Regulation No. 3901: Definitions (2007). This proposed action is needed to define the term "black powder" as it pertains to muzzle-loading rifles, and to provide clarity with regard to what the Division views as an acceptable propellant for muzzleloaders in Delaware, while providing options to hunters regarding this issue. Furthermore, this action is needed to create a definition for the term "deer", so that hunters will be allowed to legally harvest sika deer and white-tailed deer during any and all of the established deer hunting seasons.

Numerous members of the public attended this hearing on July 31, 2007, however, no public comment or questions were received by the Department regarding this proposed action. Proper notice of the hearing was provided as required by law.

#### **II. Findings:**

The Department has carefully considered all relevant public input regarding its proposed regulation, and has provided a reasoned analysis and a sound conclusion with regard to the response given to each such comment, as reflected in the Hearing Officer's Report of August 13, 2007, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Promulgation of these proposed amendments would provide better understanding to the regulated community with regard to the actual defining of "black powder" and "deer" for Delaware hunters;
7. Promulgation of these proposed amendments would also provide additional means by which to discourage the growing population of sika deer, thus effectuating a reduction in potential human/sika deer conflicts, the potential for disease transmission, and competition with white-tailed deer and other native wildlife;
8. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
9. The Department's proposed amendments to Regulation 3901 are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that
10. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

**III. Order:**

Based on the record developed, as reviewed in the Hearing Officer's Report dated August 13, 2007, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulation No. 3901 be promulgated in final form in the customary manner and established rule-making procedure required by law.

**IV. Reasons:**

The promulgation of the Division of Fish and Wildlife Regulation No. 3901, will aide the Department in its ability to provide better clarity to Delaware hunters with regard to the formal definitions of "black powder" and "deer". Additionally, this rulemaking represents careful, deliberate and reasoned action by this agency to discourage the growing population of sika deer while simultaneously reducing the potential for disease transmission and competition with native white-tailed deer and other native wildlife. Furthermore, it takes steps to further reduce potential human/sika deer conflicts as well.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del.C.**, Ch. 60.

John A. Hughes, Secretary

**Secretary's Order No.: 2007-F-0030**

**Date of Issuance: August 15, 2007**

**Effective Date of the Amendment: September 11, 2007**

**3902 Method of Take**

**I. Background:**

A public hearing was held on Tuesday, July 31, 2007, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Wildlife Regulation No. 3902: Method of Take (2007). There are three actions being proposed in this promulgation: (1) clarification of

existing regulation that it is legal to use a muzzle-loading rifle during deer shotgun seasons; (2) clarification of existing regulation that it is legal for bow hunters to use a mechanical release, but no device that allows the bow to be drawn and locked in place; and (3) to allow squirrel hunters to use any of the following: a .17 caliber rifle, a .22 caliber rifle, or a muzzle-loading rifle up to a .36 caliber, for squirrel hunting south of the C&D Canal during the whole squirrel season.

It should be noted that there were originally four actions being proposed in this promulgation. An entirely new section (2.9) was presented at the public hearing, which would have prohibited hunters from being in the field with more than one hunting implement at a time. In light of public comment and concerns received by the Division during this public hearing process, and due to further considerations made by the Division as a result of said comments, the Division has decided to withdraw the proposed Section 2.9 from Regulation 3902. Further consideration of this matter will be made by the Division in future rulemaking procedures.

Numerous members of the public attended this hearing on July 31, 2007, however, no public comment or questions were received by the Department regarding this specific proposed action. Proper notice of the hearing was provided as required by law.

## II. Findings:

The Department has carefully considered all relevant public input regarding its proposed regulation, and has provided a reasoned analysis and a sound conclusion with regard to the response given to each such comment, as reflected in the Hearing Officer's Report of August 14, 2007, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Promulgation of these proposed amendments would provide better understanding to the regulated community with regard to allowing hunters to use a muzzle-loading rifle during deer shotgun seasons, and will clarify that bow hunters may use a mechanical release but no device that allows the bow to be drawn and locked in place;
7. Promulgation of these proposed amendments would also allow squirrel hunters to use any of the following: a .17 caliber rifle, a .22 caliber rifle, or a muzzle-loading rifle up to a .36 caliber, for squirrel hunting south of the C&D Canal during the entire squirrel season;
8. The proposed addition of Section 2.9 to these regulations has been formally withdrawn by the Division due to public comment and discussions regarding same, but will be revisited at another rulemaking procedure by this Division in the future;
9. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
10. The Department's proposed amendments to Regulation 3902 are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that
11. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

## III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Report dated August 14, 2007, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulation No. 3902 be promulgated in final form in the customary manner and established rule-making procedure required by law.

**IV. Reasons:**

The promulgation of the Division of Fish and Wildlife Regulation No. 3902, will aide the Department in its ability to provide better understanding to Delaware hunters with regard to the legal use of allowing hunters to use a muzzle-loading rifle during deer shotgun seasons, and will clarify that bow hunters may use a mechanical release but no device that allows the bow to be drawn and locked in place. This will also bring clarity concerning the specific types of rifles which may be used by hunters to hunt squirrel south of the canal. Additionally, this rulemaking represents careful, deliberate and reasoned action by this agency to balance the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del.C.**, Ch. 60.

John A. Hughes, Secretary

**Secretary's Order No.: 2007-F-0032**

**Date of Issuance: August 15, 2007**

**Effective Date of the Amendment: September 11, 2007**  
**3904 Seasons**

**I. Background:**

A public hearing was held on Tuesday, July 31, 2007, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Wildlife Regulation No. 3904: Seasons (2007). These proposed changes have been requested by hunters through the Division's Advisory Council on Wildlife and Freshwater Fish. Additions to deer seasons have resulted in a decrease in the number of days for some small game hunting. Therefore, several changes are being proposed to Wildlife Regulation No. 3904 at this time.

There are actually six actions being proposed in this promulgation: (1) extension of the gray squirrel hunting season to end the first Saturday in February, as well as permitting squirrel to be hunted during any firearms deer season, except the November shotgun deer season, provided the squirrel hunters wear the same 400 square inches of hunter orange that the deer hunter has to wear; (2) increasing the daily bag limit of squirrels from 4 to 6, to be compatible with harvest limits in adjacent states; (3) extension of the pheasant season to the first Saturday in February, and permitting hunting during any deer gun season except the November deer gun season, provided 400 square inches of hunter orange is worn by the pheasant hunter; (4) permitting quail hunting during deer firearms seasons, provided 400 square inches of hunter orange is worn by the quail hunter; (5) permitting rabbit hunting during deer firearms seasons, provided 400 square inches of hunter orange is worn by the rabbit hunter; and (6) extension of the rabbit season to February 15th, again, to be more compatible with the seasons of adjacent states.

Numerous members of the public attended this hearing on July 31, 2007. A question was raised at the hearing for clarification purposes, and the same was answered fully by Department personnel at the time of the hearing. Proper notice of the hearing was provided as required by law.

**II. Findings:**

The Department has carefully considered all relevant public input regarding its proposed regulation, and has provided a reasoned analysis and a sound conclusion with regard to the response given to each such comment, as reflected in the Hearing Officer's Report of August 14, 2007, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Promulgation of these proposed amendments would provide additional hunting days in Delaware for small game hunting, and better mirror the seasons for small game enjoyed in adjacent states;
7. Promulgation of these proposed amendments would extend the hunting seasons of gray squirrel,

pheasant, quail, and rabbit, as well as increasing the daily bag limit of squirrels from four to six, which again would be more compatible with harvest limits found in adjacent states;

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

9. The Department's proposed amendments to Regulation 39024 are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that

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

### III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Report dated August 14, 2007, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulation No. 3904 be promulgated in final form in the customary manner and established rule-making procedure required by law.

### IV. Reasons:

The promulgation of the Division of Fish and Wildlife Regulation No. 3904 will aid the Department in its desire to provide small game hunters with additional hunting days, and better mirror the seasons for small game enjoyed in adjacent states. Additionally, this rulemaking represents careful, deliberate and reasoned action by this agency to balance the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del.C.**, Ch. 60.

John A. Hughes, Secretary

**Secretary's Order No.: 2007-F-0033**

**Date of Issuance: August 15, 2007**

**Effective Date of the Amendment: September 11, 2007**

**3905 Wild Turkeys**

### I. Background:

A public hearing was held on Tuesday, July 31, 2007, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Wildlife Regulation No. 3905: Wild Turkey (2007). This proposed action is needed to implement a new written test developed by the Division's new Hunter Safety Coordinator. Previously, in order to be eligible to hunt wild turkeys in the State of Delaware, a hunter simply attended the hunter safety class. At the end of the class, the hunter would obtain his turkey hunter safety permit. The proposed changes to Section 5.2 indicate that a person must not only attend the class, but must also pass the test given at the conclusion of the class in order to obtain their permit. Additionally, the Division has proposed a new section to these regulations, Section 5.3.8, which would prohibit the use of electronic calls for hunting wild turkeys.

Numerous members of the public attended this hearing on July 31, 2007, however, no public comment or questions were received by the Department regarding this proposed action. Proper notice of the hearing was provided as required by law.

### II. Findings:

The Department has carefully considered all relevant public input regarding its proposed regulation, and has provided a reasoned analysis and a sound conclusion with regard to the response given to each such comment, as reflected in the Hearing Officer's Report of August 14, 2007, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this

proceeding;

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

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

5. The Department considered all timely and relevant public comments in making its determination;

6. Promulgation of these proposed amendments would allow the Division of Fish and Wildlife to implement the aforementioned written test at the conclusion of its Turkey Hunter Safety Class, before granting attendees their Turkey Hunter Safety Permit;

7. Promulgation of these proposed amendments would also prohibit the use of electronic calls for hunting wild turkeys;

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

9. The Department's proposed amendments to Regulation 3905 are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that

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

### **III. Order:**

Based on the record developed, as reviewed in the Hearing Officer's Report dated August 14, 2007, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulation No. 3905 be promulgated in final form in the customary manner and established rule-making procedure required by law.

### **IV. Reasons:**

The promulgation of the Division of Fish and Wildlife Regulation No. 3905: Wild Turkeys will aide the Department in its ability to provide a better educational experience for Delaware hunters with regard to turkey hunter safety issues. Additionally, it will allow the Department to enforce the prohibition of electronic calls for hunting wild turkeys here in Delaware.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del.C.**, Ch. 60.

John A. Hughes, Secretary

**Secretary's Order No.: 2007-F-0034**

**Date of Issuance: August 15, 2007**

**Effective Date of the Amendment: September 11, 2007**

**3907 Deer**

### **I. Background:**

A public hearing was held on Tuesday, July 31, 2007, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Wildlife Regulation No. 3907: Deer (2007). This proposed action entails three changes to existing deer regulations: (1) the requirement of hunters to write the date in ink on their field deer tag once it is placed on the deer, thus rendering the tag invalid for another deer. Furthermore, this proposed amendment adds the Delaware Non-Resident Quality Buck Tag as a legal tag; (2) the prohibition of importation into the State of Delaware of deer carcasses, or parts of a carcass, of any deer killed in a state or Canadian Province where Chronic Wasting Disease (CWD) has been found; and (3) the requirement that, should a hunter be notified by another state or Canadian Province that his animal tested positive for CWD, the Department must be notified within 72 hours so that this agency can obtain the carcass or parts and provide for proper disposal of the materials.

Numerous members of the public attended this hearing on July 31, 2007, however, no public comment or

questions were received by the Department regarding this specific proposed action. Proper notice of the hearing was provided as required by law.

## II. Findings:

The Department has carefully considered all relevant public input regarding its proposed regulation, and has provided a reasoned analysis and a sound conclusion with regard to the response given to each such comment, as reflected in the Hearing Officer's Report of August 14, 2007, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Promulgation of these proposed amendments would require hunters to write the date in ink on the field deer tag once it is placed on the deer, and would add the Delaware Non-Resident Quality Buck Tag as a legal tag, thus correcting a previous omission and oversight in the existing regulations;
7. Promulgation of these proposed amendments would also prohibit the importation of deer carcasses or parts of carcass of any deer killed in a state or Canadian Province where Chronic Wasting Disease has been found. Furthermore, these amendments would require hunters to notify DNREC within 72 hours if their animals test positive for CWD, so that the Department can obtain the infected carcass and provide for proper disposal of the materials. Such action would mirror the actions already implemented in other states to combat CWD, and would empower the Department to do everything in their power to prevent CWD from infecting deer here in Delaware;
8. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
9. The Department's proposed amendments to Regulation 3907 are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that
10. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

## III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Report dated August 14, 2007, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulation No. 3907 be promulgated in final form in the customary manner and established rule-making procedure required by law.

## IV. Reasons:

The promulgation of the Division of Fish and Wildlife Regulation No. 3907 will aid the Department in its ability to enforce the proper use of field deer tags by hunters here in Delaware, as well as to correct a previous omission and oversight with regard to existing deer regulations by adding the Delaware Non-Resident Quality Buck tag as a legal tag. Additionally, it will empower the Department to do everything within its power to prevent Chronic Wasting Disease from crossing Delaware's borders and ultimately infecting deer here in Delaware with this very infectious disease.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del.C.**, Ch. 60.

John A. Hughes, Secretary

Secretary's Order No.: 2007-F-0031

Date of Issuance: August 15, 2007

Effective Date of the Amendment: September 11, 2007

## 3908 General Rules and Regulations Governing Land and Waters Administered by the Division

### I. Background:

A public hearing was held on Tuesday, July 31, 2007, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Wildlife Regulation No. 3908: General Rules and Regulations Governing Land and Waters Administered by the Division (2007). There are three actions being proposed in this promulgation: (1) to allow rifled shotgun barrels to be used for deer hunting along the C&D Canal; (2) to increase the hunting opportunities on public lands by allowing hunters to be in possession of a firearm while walking along a dike on their way to a Division-authorized deer stand; and (3) to allow the Division to control geocaching and letterboxing activities on its lands for the good of the resource and the persons participating in the activity.

Numerous members of the public attended this hearing on July 31, 2007, however, no public comment or questions were received by the Department regarding this proposed action. Proper notice of the hearing was provided as required by law.

### II. Findings:

The Department has carefully considered all relevant public input regarding its proposed regulation, and has provided a reasoned analysis and a sound conclusion with regard to the response given to each such comment, as reflected in the Hearing Officer's Report of August 14, 2007, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Promulgation of these proposed amendments would provide better understanding to the regulated community with regard to the legal use of rifled shotgun barrels for deer hunting along the C&D Canal, and will clarify the right of hunters to be in possession of a firearm while walking along a dike on their way to a Division-authorized deer stand;
7. Promulgation of these proposed amendments would also allow the Division to control all geocaching and letterboxing activities on its lands, for the good of the resource as well as for the health, safety and welfare of the public participating in such activities;
8. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
9. The Department's proposed amendments to Regulation 3908 are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that
10. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

### III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Report dated August 14, 2007, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulation No. 3908 be promulgated in final form in the customary manner and established rule-making procedure required by law.

## IV. Reasons:

The promulgation of the Division of Fish and Wildlife Regulation No. 3908, will aide the Department in its ability to provide better understanding to Delaware hunters with regard to the legal use of rifled shotgun barrels for deer hunting along the C&D Canal, as well as providing clarity concerning a hunter's right to possess a firearm while walking along a dike en route to a Division-authorized deer stand. Additionally, this rulemaking represents careful, deliberate and reasoned action by this agency to protect the public's overall health, safety and welfare with allowing the Division to now control geocaching activities on its lands, while simultaneously protecting the natural resource itself .

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del.C.**, Ch. 60.

John A. Hughes, Secretary

**Secretary's Order No.: 2007-F-0029**

**Date of Issuance: August 15, 2007**

**Effective Date of the Amendment: September 11, 2007**

**3913 Wildlife Rehabilitation Permits**

## I. Background:

A public hearing was held on Tuesday, July 31, 2007, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Wildlife Rehabilitation Permits (Regulation 3913) for 2007. This proposed action will strengthen permitting requirements, improve the care and well being of animals in captivity, and reduce the risk of rabies exposure to rehabilitators and others.

In recent years, there have been problems with rehabilitators not caring for animals as they should, and exposing themselves and others to rabies vector species without the proper immunization. This regulatory change will provide better clarity as to what is expected of rehabilitators by the Department regarding these issues. There will also be an additional cost to some rehabilitators that will have to upgrade their facilities and obtain the rabies pre-exposure shots in order to maintain their permit.

Numerous members of the public attended this hearing on July 31, 2007. Questions and comments from those in attendance at the hearing, along with the Department's responses to the same, were fully addressed by the Hearing Officer's Report dated August 13, 2007, which is attached and expressly incorporated into this Secretary's Order. Proper notice of the hearing was provided as required by law.

## II. Findings:

The Department has carefully considered all relevant public input regarding its proposed regulation, and has provided a reasoned analysis and a sound conclusion with regard to the response given to each such comment, as reflected in the Hearing Officer's Report of August 13, 2007, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Promulgation of these proposed amendments would provide fuller clarity with regard to the role of licensed veterinarians relative to wildlife rehabilitation, and would require rehabilitators to conform to standards as written in the document "Minimum Standards for Wildlife Rehabilitation", and to abide by rules and policies specified in the document "Delaware Wildlife Rehabilitation Rules and Policies";
7. Promulgation of these proposed amendments would further provide all rehabilitators working with rabies vector species to have proof of up-to-date pre-exposure immunization against the rabies virus, and would strengthen existing regulations and policies regarding the release of such animals back into the wild;
8. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility

Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

9. The Department's proposed amendments to Regulation 3913 are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that

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

**III. Order:**

Based on the record developed, as reviewed in the Hearing Officer's Report dated August 13, 2007, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulation No. 3913 be promulgated in final form in the customary manner and established rule-making procedure required by law.

**IV. Reasons:**

The promulgation of the Division of Fish and Wildlife Regulation No. 3913, will aide the Department in its ability to strengthen permitting requirements, improve the care and well being of animals in captivity, and reduce the risk of rabies exposure to rehabilitators and others. Additionally, this rulemaking represents careful, deliberate and reasoned action by this agency to address the permitting issues affecting Delaware's licensed wildlife rehabilitators at this time.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del.C.**, Ch. 60.

John A. Hughes, Secretary

**Secretary's Order No.: 2007-F-0035**

**Date of Issuance: August 15, 2007**

**Effective Date of the Amendment: September 11, 2007**

**3918 Wanton Waste**

**I. Background:**

A public hearing was held on Tuesday, July 31, 2007, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on new State of Delaware proposed Wildlife Regulation No. 3918: Wanton Waste. This regulation is being proposed by the Division at this time to extend the same concept of the waterfowl wanton waste regulations to all game species in Delaware. Specifically, this regulation will make it mandatory for a person wounding or killing a game animal to make all reasonable efforts to retrieve the wounded or dead animal, and that said animal shall be retained in that individual's possession until such time as (1) the animal is processed for consumption, consumed, or utilized for its fur value; (2) the animal is transported to the individual's residence, to a taxidermist, or to a place of commercial processing; or (3) the animal is utilized for scientific, educational, or research purposes. Any use of a game animal as not described in the above three scenarios will be deemed wanton waste by the Department.

Numerous members of the public attended this hearing on July 31, 2007. Two questions were asked about this proposed regulation by an individual attending the hearing, which were fully answered by the Department at the time of the hearing. Proper notice of the hearing was provided as required by law.

**II. Findings:**

The Department has carefully considered all relevant public input regarding its proposed regulation, and has provided a reasoned analysis and a sound conclusion with regard to the response given to each such comment, as reflected in the Hearing Officer's Report of August 14, 2007, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this

proceeding;

3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Promulgation of this proposed regulation would require hunters to make all reasonable efforts to retrieve their wounded or dead game animal, and to retain possession of said animal until it was used for a stated purpose as defined within the proposed regulation. Any use of a game animal as not described within the proposed regulation would be deemed wanton waste;
7. Promulgation of this proposed regulation would mirror existing wanton waste regulations pertaining to waterfowl, and therefore extend that same concept to all game animals in Delaware;
8. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
9. The Department's proposed Regulation 3918: Wanton Waste, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that
10. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

### III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Report dated August 14, 2007, and expressly incorporated herein, it is hereby ordered that the proposed State of Delaware Wildlife Regulation No. 3918: Wanton Waste, be promulgated in final form in the customary manner and established rule-making procedure required by law.

### IV. Reasons:

The promulgation of Wildlife Regulation No. 3918 will enable the Department to discourage the practice of wanton waste with regard to game animals, as it has already done with the promulgation of similar regulations pertaining to waterfowl. In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del.C.**, Ch. 60.

John A. Hughes, Secretary

## 3900 Wildlife Regulations

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

#### 2.5 Gray Squirrel.

Hunting gray squirrels with a  ~~[.22 caliber rimfire rifle not larger than .22 caliber .17 caliber rimfire rifle, a .22 caliber rimfire rifle]~~ or muzzle-loading rifle not larger than .36 caliber firing a round projectile is permitted south of the Chesapeake and Delaware Canal. ~~during that part of the gray squirrel season which is not concurrent with the rabbit, quail or pheasant seasons as they are described in Section 4.0~~

#### 2.6 Muskrats.

It shall be unlawful for any person to shoot muskrats at any time, except with written permission of the Director.

#### 2.7 Otters.

Each otter trapped in Delaware must be tagged by an authorized representative of the Division. Each otter sold in Delaware or shipped out of the State must be tagged in accordance with the requirements of the Convention on International Trade in Endangered Species.

#### 2.8 Red Fox.

Red foxes may be killed in accordance with § 788 of Title 7 with the following: bow and arrow; shotgun with shot up to size 2 lead or T steel; rimfire rifle or centerfire rifle up to .25 caliber using hollow point

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bullets with a maximum bullet weight of 75 grains; or a muzzle-loading rifle.

**2.9 Multiple Hunting Implements**

~~Notwithstanding subsections 7.3.3 of regulation 7.0 it shall be unlawful for any person to carry multiple hunting implements while pursuing game in the field.]~~

**3 DE Reg. 289 (8/1/99)**

**6 DE Reg. 536 (10/1/02)**

*(Break in Continuity of Sections)*

4.11 Rabbit.

4.11.1 Season. Rabbits may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of rabbits: from the Monday that immediately precedes Thanksgiving ~~[through the first Saturday in February 15<sup>th</sup>]~~, except that no rabbit hunting shall be lawful during any period when it is lawful to hunt deer with a firearm. ~~Notwithstanding the foregoing, rabbit may be hunted during the December or January firearm deer seasons when provided that during a deer firearms season~~ hunter orange is displayed in accordance with § 718 of Title 7.

4.11.2 Limit. It shall be unlawful for any person to take more than four (4) rabbits in any one day.

4.12 Raccoon.

4.12.1 Trapping Season. Raccoon may be trapped in accordance with the statutes and regulations of the State of Delaware governing the trapping of raccoon: from December 1 through March 10 (March 20 on embanked meadows) in New Castle County; and from December 15 through March 15 in Kent and Sussex counties. The season is open throughout the year on private land, except on Sundays, in eastern New Castle and Kent counties pursuant to § 786 of Title 7 and Section 4(b) of WR-2.

4.12.2 Hunting Season. Raccoon may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of raccoon: from September 1 (September 2, if September 1 is a Sunday) through October 31 for chase only whereby it shall be unlawful to kill raccoon and opossum; from November 1 through the last day of February; and from March 1 through March 31 for chase only whereby it shall be unlawful to kill raccoon and opossum. The season is open throughout the year on private land in eastern New Castle and Kent counties, except on Sundays, pursuant to § 786 of Title 7.

4.12.3 Notwithstanding subsection 4.3.2 of this section, it shall be unlawful for any person to hunt raccoon or opossum during any period when it is lawful to hunt deer with a firearm, except that it shall be lawful to hunt raccoon from 7:00 p.m. until midnight during the December and January firearm deer seasons.

4.13 Red Fox.

Red fox may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of red fox: from October 1 through April 30 for chase only whereby it shall be unlawful to kill red fox, except no red fox hunting shall be lawful during any period when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, red foxes may be killed in accordance with Section 8 of WR-2 and § 788 of Title 7.

4.14 Ruffed Grouse.

It shall be unlawful for any person to hunt for ruffed grouse during any period of the year.

4.15 Snapping Turtles.

4.15.1 Season. It shall be unlawful for any person to hunt for snapping turtles during any period of the year, except between and including June 15 and May 15.

4.15.2 Size. It shall be unlawful for any person to sell, offer for sale or kill any snapping turtle with a carapace length of less than eight inches, measured on the curvature.

4.16 Terrapin.

4.16.1 Season. It shall be unlawful for any person to hunt for diamondback terrapin during any period of the year, except between and including September 1 and November 15.

4.16.2 Limit. It shall be unlawful for any person to take more than four (4) diamondback terrapin in any one day.

**3 DE Reg. 289 (8/1/99)**

**3 DE Reg. 1738 (6/1/00)**

**6 DE Reg. 536 (10/1/02)**

**8 DE Reg. 352 (8/1/04)**

*(Break in Continuity of Sections)***13.0 Wildlife Rehabilitation Permits (Formerly WR-13)**

(Penalty Section 7 Del.C. §103(d))

**13.1 Permit from Division; Exemption.**

13.1.1 It shall be unlawful for any person to hold native wildlife in captivity for the purpose of rehabilitation without a permit from the Division and any other permits required by the U.S. Fish and Wildlife Service.

13.1.2 Licensed veterinarians are exempt from the permitting requirements of this regulation when rendering ~~temporary~~ treatment to injured wildlife and provisions are made to return any ~~injured~~ recovered animals to the wild or transfer them to a permitted rehabilitator for further care. **[Licensed veterinarians may only hold wildlife for as long as vererinary care is required.]**

**13.2 Training, Housing and Veterinary Care; Inspections.**

13.2.1 Permit holders must conform to the training, housing, release and veterinary care standards as written in the document "Minimum Standards for Wildlife Rehabilitation" published by the of the National Wildlife Rehabilitators Association and the International Wildlife Rehabilitation Council. Permit holders must also abide by the rules and policies set forth in the "State of Delaware Wildlife Rehabilitation Rules and Policies" document. Failure to abide by both of these documents may result in revocation of the rehabilitation permit. Animals held under rehabilitation permits must be released to the wild ~~[within 180 days according to policies set forth in the document "State of Delaware Wildlife Rehabilitation Rules and Policies"]~~ or euthanized, if release is not feasible, unless the Division under § 555 of Title 7 authorizes possession for scientific ~~or propagating propagation or educational~~ purposes~~[. or unless an extension is granted by the migratory bird permit office of the United State Fish and Wildlife Service, and the Division for each individual case.~~ Rehabilitators must not release sick animals into the wild.

13.2.2 Rehabilitation facilities must be available for inspection by Division employees during normal business hours. Normal business hours shall mean Monday through Friday, except those days designated as holidays, during the hours in which the staff of the Division is scheduled to work. Violations of compliance with the Minimum Standards or the Rules and Policies noted in 13. 2.1 will result in a written warning or immediate revocation of the rehabilitation permit depending on the violation. Persons receiving a warning will have their facility re-inspected. Failure to address the problem(s) in a timely manner will result in permit revocation. Upon permit revocation, all animals will be removed from the facility and either placed with another rehabilitator, released into the wild, placed with an educational facility, or humanly euthanized.

**13.3 Rabies Vector Species**

13.3.1 It shall be unlawful for any person to attempt rehabilitation of a rabies vector species without having proof of current pre-exposure immunization against the rabies virus. No permitted rehabilitator shall knowingly expose other non-immunized persons to a rabies vector species. For the purpose of the Delaware Wildlife Rehabilitator Permit, rabies vector species are defined as bats, raccoons, skunks, foxes, coyotes and woodchucks.

13.3.2 All rehabilitated rabies vector species must be released in the county of origin and the Division must be notified ~~[and approve]~~ of the release location ~~[prior to release in the rehabilitator's annual report to the Division].~~ It shall be unlawful for rehabilitated rabies vector species to be released on State Wildlife Management Areas without the consent of the Division Director.

3 DE Reg. 289 (8/1/99)

**\*Please Note:** As the rest of the sections were not amended since the proposal in the July 2007 issue of the *Register*, they are not being published here. Please refer to the July 2007 *Register*, page 33 (11 DE Reg. 33). A copy of the final regulation is available at:

[http://regulations.delaware.gov/register/september2007/final/11 DE Reg 334 09-01-07.htm](http://regulations.delaware.gov/register/september2007/final/11%20DE%20Reg%20334%2009-01-07.htm)

An authenticated PDF version of the regulation in its entirety, is available at:

[http://regulations.delaware.gov/register/september2007/final/11 DE Reg 334 09-01-07.pdf](http://regulations.delaware.gov/register/september2007/final/11%20DE%20Reg%20334%2009-01-07.pdf)

## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

### 200 Board of Landscape Architects

Statutory Authority: 24 Delaware Code, Section 205 (24 **Del.C.** §205)  
24 **DE Admin. Code** 200

#### ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on August 9, 2007 at a scheduled meeting of the Delaware Board of Landscape Architects to receive comments regarding proposed amendments to 6.0 Renewal of Licenses and rule 7.0 Continuing Education as a Condition of Biennial Renewal of its rules and regulations.

The proposed amendments enable licensees to renew their licenses online and attest that they have completed the required continuing education. Documentation of having completed the required continuing education must still be maintained by the licensee but it will only be required to be produced in the event the licensee is randomly selected for continuing education audit post renewal.

The proposed amendments to the regulations were published in the *Register of Regulations*, Vol. 10, Issue 7, on January 1, 2007.

#### Summary of the Evidence and Information Submitted

No written comments were received. No members of the public attended the hearing.

#### Findings of Fact and Conclusions

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to Board 6.0 Renewal of Licenses and rule 7.0 Continuing Education as a Condition of Biennial Renewal. The Board received no written or verbal comments on the proposed amendments.

2. The Board finds that the proposed amendments to the rules and regulations are necessary to allow for online renewal and to clarify the process for verification of completion of continuing education consistent with online renewal.

3. Pursuant to 24 **Del.C.** §205 (a) (1) the Board has statutory authority to promulgate regulations clarifying specific statutory sections of its statute. Pursuant to 24 **Del.C.** §205 (a) (12) the Board also has specific statutory authority to formulate rules and regulations related to continuing education requirements for practitioners. The amendments to 6.0 Renewal of Licenses and rule 7.0 Continuing Education as a Condition of Biennial Renewal clarify the provisions of 24 **Del.C.** §210 (b) with regard to renewal of licensure.

#### Decision and Effective Date

There were no changes to the proposed amendments as a result of the public hearing. The Board hereby adopts the proposed amendments to 6.0 Renewal of Licenses and rule 7.0 Continuing Education as a Condition of Biennial Renewal to be effective 10 days following publication of this order in the *Register of Regulations*.

#### Text and Citation

The text of the revised rules remains as published in the *Register of Regulations*, Vol. 10, Issue 7, January 1, 2007, attached hereto.

**SO ORDERED** this 9th day of August, 2007.

**BOARD OF LANDSCAPE ARCHITECTS**  
Ronald Sherman, President, Public Member

Barbara A. Hanson, Treasurer, Public Member  
Deborah Van Dermark-Billeter, Professional Member

\* Please note that no changes were made to the regulation as originally proposed and published in the January 2007 issue of the *Register* at page 1124 (10 DE Reg. 1124). A copy of the final regulation is available at:

<http://regulations.delaware.gov/register/september2007/final/11 DE Reg 347 09-01-07.htm>

An authenticated PDF version of the regulation in its entirety, is available at:

<http://regulations.delaware.gov/register/september2007/final/11 DE Reg 347 09-01-07.pdf>

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### **DIVISION OF PROFESSIONAL REGULATION**

#### **700 Board of Chiropractic**

Statutory Authority: 24 Delaware Code, Sections 706(a)(1) and (10)  
(24 **Del.C.** §706(a)(1) and (10))  
24 **DE Admin. Code** 700

### **ORDER**

The Board of Chiropractic ("Board") was established to protect the general public, specifically recipients of Chiropractic services, from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered. The Board was further established to maintain minimum standards of practitioner competency and delivery of services to the public. The Board is authorized by 24 **Del.C.** §706(a)(1) to make, adopt, amend, and repeal regulations as necessary to effectuate those objectives.

Pursuant to 24 **Del.C.** §706(a)(1), the Board proposed changes to its regulation 3.0 affecting the certification in a chiropractic specialty. Specifically, the proposed amendments to 3.0 Certification specify two nationally recognized certification bodies whose requirements for practitioner specialization are acceptable to the Board. One minor stylistic change was also included.

Pursuant to 29 **Del.C.** §10115, notice of the public hearing and a copy of the proposed regulatory changes were published in the *Delaware Register of Regulations*, Volume 10, Issue 7, at page 1126 on January 1, 2007. However, notice was not published in two (2) Delaware newspapers of general circulation, as required by 29 **Del.C.** §10115, so the public hearing could not be conducted on February 15, 2007 as originally scheduled. The public hearing was, therefore, rescheduled for March 15, 2007. Notice of the rescheduled public hearing was published in the *Delaware Register of Regulations*, Volume 10, Issue 9, at page 1467 on March 1, 2007 and in two (2) Delaware newspapers of general circulation at least 20 days prior to the rescheduled hearing.

### **Summary of the Evidence and Information Submitted**

No written or verbal comments were received.

### **Findings of Fact**

The Board finds that adoption of the proposed amendments appropriately reduces ambiguity by specifically identifying two nationally recognized specialty certification bodies acceptable to the Board.

### **Decision and Effective Date**

The Board hereby adopts the proposed amendments to the regulations to be effective 10 days following final publication of this order in the *Register of Regulations*.

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## Text and Citation

The text of the final regulations is attached hereto and is formatted to show the amendments. A non-marked up version of the regulations as amended is attached hereto.

**IT IS SO ORDERED** this 17th day of May, 2007, by the **Board of Chiropractic of the State of Delaware**.

Dr. Michael Kelman, D.C., Secretary      William Houghton  
Dr. William Cowan, III, D.C.              Prameela D. Kaza

\* Please note that no changes were made to the regulation as originally proposed and published in the March 2007 issue of the *Register* (10 DE Reg. 1467). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at:

<http://regulations.delaware.gov/register/september2007/final/11 DE Reg 348 09-01-07.htm>

An authenticated PDF version of the regulation in its entirety, is available at:

<http://regulations.delaware.gov/register/september2007/final/11 DE Reg 348 09-01-07.pdf>

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## DIVISION OF PROFESSIONAL REGULATION

### 3600 Board of Registration of Geologists

Statutory Authority: 24 Delaware Code, Section 3606 (24 Del.C. §3606)  
24 DE Admin. Code 3600

## ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on August 3, 2007 at a scheduled meeting of the Delaware Board of Geologists (the "Board") to receive comments regarding the Board's proposed amendments to the Board's rules and regulations. The Board proposes to move current Rule 2.0 Code of Ethics and renumber it as new Rule 10.0; adopt a new Rule 2.0 Procedures for Licensure clarifying the application process and requirements for initial licensure and licensure by reciprocity; amend Rule 6.0 Continuing Education to further delineate the maximum allowable continuing education credit that may be claimed in the specific categories set forth in Rule 6.8; specify the documentation required in order to receive continuing education credit; delete existing Rule 8.0 Reciprocity and incorporate it into the new Rule 2.0 Procedures for Licensure; and adopt a new Rule 8.0 Voluntary Treatment Option for Chemically Dependent of Impaired Professionals.

The proposed amendments to the regulations were published in the *Register of Regulations*, Vol. 11, Issue 1, on July 1, 2007.

## Summary of the Evidence and Information Submitted

No written comments were received. No members of the public attended the hearing.

## Findings of Fact and Conclusions

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's rules and regulations. The Board received no written or verbal comments on the proposed amendments.

2. The Board finds that the proposed amendments to the rules and regulations are necessary to clarify the process for applying for licensure by direct application and by reciprocity. In addition, the Board finds that the procedures for licensure should be at the beginning of the rules and regulations as proposed to provide a more logical format for applicants to follow.

3. The Board finds that its recent audit of continuing education required for licensure renewal demonstrated that a cap should be placed on the number of credits licensees may obtain in any each of the specific categories of continuing education. The audit also demonstrated that licensees needed direction as to the documentation they need to provide to substantiate attendance and compliance with the continuing education requirements.

4. The Board finds that the adoption of regulations related to the Voluntary Treatment Option for Chemically Dependent of Impaired Professionals are necessary to implement the provisions of 29 **Del.C.** §8807(n).

5. Pursuant to 24 **Del.C.** §3606 the Board has statutory authority to promulgate regulations clarifying specific statutory sections of its statute. The amendments to Rule 5.0 Issuance and Renewal of License and Rule 6.0 Continuing Education clarify the provisions of 24 **Del.C.** §3611 with regard to renewal of licensure.

#### **Decision and Effective Date**

The Board hereby adopts the changes to its rules and regulations to be effective 10 days following publication of this order in the *Register of Regulations*.

#### **Text and Citation**

The text of the revised rules remains as published in *Register of Regulations*, Vol. 11, Issue 1, July 1, 2007, as attached hereto.

**SO ORDERED** this 3rd day of August, 2007.

#### **STATE BOARD OF GEOLOGISTS**

Steven M. Smailer, President, Professional Member  
William S. Schenck, Vice-President, Professional Member  
Kimberly McKenna, Professional Member  
Amos Aiken, Public Member

\* Please note that no changes were made to the regulation as originally proposed and published in the July 2007 issue of the *Register* at page 55 (11 DE Reg. 55). Therefore, the final regulation is not being republished here. A copy of the final regulation is available at:

<http://regulations.delaware.gov/register/september2007/final/11 DE Reg 349 09-01-07.htm>

An authenticated PDF version of the regulation in its entirety, is available at:

<http://regulations.delaware.gov/register/september2007/final/11 DE Reg 349 09-01-07.pdf>

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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Advisory Council on Tidal Finfisheries, Member	Mr. Lawrence S. Foley	6/28/2012
	Mr. Marvin M. Kahl, Jr.	6/28/2012
	Mr. James G. Little	6/28/2012
	Mr. Bernard L. Pankowski	6/28/2012
Board of Parole, Member	Mr. James F. Justice	6/30/2011
	Mr. George H. Williamson, III	6/30/2011
Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers, Member	Ms. Illene Cohen Courtright	7/30/2010
	Mr. Michael A. Michelli	7/24/2010
Board of Veterinary Medicine, Member	Ms. Madelyn M. Nellius	7/10/2010
Cash Management Policy Board, Member	Mr. Warren C. Engle	6/29/2010
	Ms. Margaret A. Iorii	6/28/2010
	Mr. David F. Marvin	6/28/2010
	Mr. Harold L. Slatcher	6/28/2010
Clean Water Advisory Council, Member	Mr. Hans M. Medlarz	11/8/2008
	Mr. Robert L. Stickels	6/28/2010
Court of Common Pleas, Commissioner	The Hon. Joseph W. Maybee	6/19/2013
Delaware Alcoholic Beverage Control Appeals Commission, Member	Mr. Michael P. Cebrick	Pleasure of the Governor
Delaware Gaming Control Board, Member	Ms. Deborah S. Messina	5/16/2012
Delaware Interscholastic Athletic Association, Member	Ms. Deborah B. Corrado	5/16/2010
	Mr. Gerald W. Kobasa	5/16/2010
	Mr. Michael W. Modica	5/16/2010
	Ms. Joan S. Samonisky	5/16/2010
	George E. Stone, Ed.D	5/16/2010
Delaware Mentoring Council, Member	Ms. Sally C. Coonin	Pleasure of the Governor
	Mr. Raymond L. Fitzgerald, Jr.	Pleasure of the Governor
	Mr. Andrew R. Kloepfer	Pleasure of the Governor
	Mr. G. Scott Reihm	Pleasure of the Governor
	The Honorable Vincent Lofink	Pleasure of the Governor

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# GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Delaware Real Estate Commission, Member	Mr. Ricky H. Allamong Ms. Patricia S. O'Brien	1/11/2008 5/24/2010
Delaware Solid Waste Authority, Member	Mr. Ronald G. McCabe	6/28/2013
Delaware Technology Park, Member	Patrick T. Harker, Ph.D.	Pleasure of the Governor
Diamond State Port Corporation, Board of Directors, Director	Mr. Michael A. Begatto Ms. Karen C. Bifferato Mr. Douglas B. Catts Mr. Gerard L. Esposito	6/28/2010 6/28/2010 6/28/2010 6/28/2010
Enhanced 911 Emergency Reporting System Service Board, Member	Mr. Michael F. Metcalf	5/16/2010
Environmental Appeals Board, Member	Mr. Harold B. Gray Mr. Sebastian A. LaRocca Mr. Gordon E. Wood, Sr.	6/30/2010 6/30/2010 6/30/2010
Family Court, Commissioner	The Hon. Lester H. Blades, Jr. The Honorable John R. Carrow The Hon. Carolee M. Grillo The Hon. Mary Ann H. Herlihy The Hon. Pamela D. Holloway The Hon. Frederic H. Kenney The Honorable Jennifer Mayo The Hon. M. DeSales Haley Reis The Hon. Andrew K. Southmayd The Hon. Patricia T. Stewart Ms. Louann Vari The Hon. Loretta M. Young	6/21/2013 6/21/2013 6/21/2013 6/21/2013 6/28/2013 6/21/2013 6/21/2013 6/21/2013 6/21/2013 6/21/2013 7/16/2011 6/21/2013
Governor's Council on Lifestyles and Fitness, Member	Mr. David S. Tiberi	7/17/2009
Greater Wilmington Convention and Visitors Bureau, Member	Ms. Laura Scanlan Mr. Ferdinand Wieland	6/30/2010 6/30/2010
Industrial Accident Board, Member	Ms. Marilyn J. Doto	6/28/2013
Kent County Board of Elections, Member	Mr. David E. Burke Ms. Mable K. Glanden Ms. Kay H. O'Day	6/30/2011 6/30/2011 6/30/2011

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# GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Kent County Board of Elections, Member	Ms. Sally J. Verma	6/30/2011
Leaking Underground Storage Tank Committee, Member	Mr. Alex Rittberg	Pleasure of the Governor
New Castle County Board of Elections, Member	Mr. Ross E. Austin Mr. Edmund S. Krzyzanowski Mr. James A. Sterling, III Ms. Marilyn P. Whittington	6/30/2011 6/30/2011 6/30/2011 6/30/2011
New Castle County, Family Court Judge	The Hon. William L. Chapman	6/11/2009
New Castle County, Justice of the Peace	The Honorable Susan E. Cline The Hon. Vernon A. Taylor	7/12/2013 7/13/2013
Professional Standards Board, Chair	Ms. Kathleen H. Thomas	6/28/2010
Professional Standards Board, Member	Ms. Cathy D. Cathcart Ms. Joanne M. Christian Ms. Marilyn Dollard Ms. Lori Y. Hudson Ms. Dorothy R. McQuaid Ms. Gretchen L. Pikus	6/28/2010 6/28/2010 6/30/2009 6/28/2010 6/28/2010 6/28/2010
Public Employment Relations Board, Member	Mr. R. Robert Currie Ms. Elizabeth D. Maron Ms. Wendy L. Murray	6/30/2013 6/30/2013 6/30/2009
State Board of Education, Member	Mr. Jorge L. Melendez Terry M. Whittaker, Ed.D	11/8/2010 6/28/2013
State Election Commissioner	Ms. M. Elaine Manlove	9/24/2007
Superior Court, Commissioner	The Hon. Andrea M. Freud The Hon. Alicia B. Howard The Hon. Michael P. Reynolds	7/5/2013 7/10/2013 7/12/2013
Sussex County Board of Elections, Member	Mr. Vaughn L. Callaway Ms. Elizabeth D. Elliott Mr. Harvey R. Kenton, Jr. Mr. Gerald W. Pepper	6/30/2011 6/30/2011 6/30/2011 6/30/2011
Sussex County Justice of the Peace	The Hon. W. Patrick Wood	7/12/2013
Tax Appeals Board, Member	Ms. Regina C. Dudziec	6/13/2010

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# GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Tax Appeals Board, Member	Ms. Joanne M. Winters	6/13/2010
The Leadership for Education Achievement in Delaware Committee, Chair	Mr. Marvin N. Schoenhals	Pleasure of the Governor
The Leadership for Education Achievement in Delaware Committee, Member	Ms. Jean W. Allen	Pleasure of the Governor
	Ms. H. Raye Jones Avery	Pleasure of the Governor
	Ms. Sally C. Coonin	Pleasure of the Governor
	Kevin E. Carson, Ed.D.	Pleasure of the Governor
	The Hon. Jennifer W. Davis	Pleasure of the Governor
	The Hon. Carol A. DeSantis	Pleasure of the Governor
	Ms. Barbara Grogg	Pleasure of the Governor
	Mr. Paul A. Herdman	Pleasure of the Governor
	Mr. Frank R. Ingram, Jr.	Pleasure of the Governor
	The Hon. Vincent A. Lofink	Pleasure of the Governor
	Mr. Gregory Meece	Pleasure of the Governor
	Mr. G. Scott Reihm	Pleasure of the Governor
	Daniel Rich	Pleasure of the Governor
	The Hon. David P. Sokola	Pleasure of the Governor
Ms. Connie B. Stuart	Pleasure of the Governor	
Mr. William H. Willis	Pleasure of the Governor	
The Leadership for Education Achievement in Delaware Committee, Vice Chair	The Hon. Valerie A. Woodruff	Pleasure of the Governor
Town of Dewey Beach, Alderman	The Hon. Marvin Guberman	6/28/2009
Town of Dewey Beach, Assistant Alderman	The Hon. Barry R. Hickman	6/28/2009

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# GOVERNOR'S APPOINTMENTS

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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
University of Delaware Board of Trustees, Trustee	Mr. Robert A. Fischer, Jr.	6/28/2013
	Ms. Cynthia P. Martin	6/28/2013
Violent Crimes Compensation Board, Member	Ms. Vera Lynn Gregory	6/28/2010
	Ms. Stephanie I. Liguori	6/28/2010

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# GENERAL NOTICES

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## DEPARTMENT OF FINANCE DIVISION OF REVENUE

Statutory Authority: 30 Delaware Code, Section 354 (30 Del.C. §354)

### PUBLIC NOTICE

#### Technical Information Memorandum 2007- 02 Legislation Passed During the First Session of the 144th Delaware General Assembly

**DATE:** July 3, 2007

**SUBJECT:** Legislation Passed during the First Session of the 144th Delaware General Assembly

During the First Session of Delaware's 144th General Assembly, ending June 30, 2007, seven (7) bills were enacted of interest to or having an impact on Delaware taxpayers and the state's Division of Revenue. The subjects of these bills range from an increase in cigarette tax rates (HB249 w/HA1) to the creation of a tax-credit framework so that Delaware can attract more high paying, competitive jobs in the next decade (SB149 w/SA1).

Legislation significant to Delaware's Division of Revenue has been summarized below and is divided into two categories for retrieval ease:

(I) Legislation directly affecting tax procedures and filing requirements for businesses and individuals in the upcoming year; and

(II) Legislation implementing broad policy changes or altering Division of Revenue processes with little to no affect on tax-filing requirements for the upcoming year.

Bills in their entirety may be viewed online through the Delaware General Assembly website: <http://www.legis.state.de.us>.

*This memorandum is intended for general notification and explanation of recently enacted Delaware laws and should not be relied upon exclusively in any pending or future audit or judicial review of an individual taxpayer or transaction. Taxpayers are advised to consult the particular bill, the Delaware Code, or Delaware regulations in all matters conflicting with any part of this memorandum.*

*Taxpayers with general questions about the application of Delaware law and procedures may call the Division of Revenue Help Line at (302) 577-8200, or visit the Division's website at [<http://www.revenue.delaware.gov>] where information about tax topics and links to phone numbers for other information may be found.*

#### **(I) Legislation directly affecting tax procedures and filing requirements for businesses and individuals in the upcoming year:**

##### **House Bill No. 234 w/HA 1**

Signed by Governor on 07/12/07

AN ACT TO AMEND CHAPTER 91, TITLE 7 OF THE DELAWARE CODE PERTAINING TO GROSS RECEIPTS INCLUDED IN THE TAX ASSESSMENT FOR THE HAZARDOUS SUBSTANCE CLEANUP FUND.

This Bill ensures that effective July 1, 2007 the tax surcharge imposed for the Hazardous Substance Cleanup fund is paid only once, regardless of how many times petroleum products are resold.

**House Bill No. 245**

Signed by Governor on 06/30/07

AN ACT TO AMEND CHAPTER 53, TITLE 30 OF THE DELAWARE CODE RELATING TO THE LEVY, COLLECTION AND USE OF TOBACCO PRODUCT TAX REVENUE.

Effective January 1, 2008 this Act changes the method in which moist snuff is taxed within the State of Delaware.

**House Bill No. 249 w/HA 1**

Signed by Governor on 06/30/07

AN ACT TO AMEND TITLE 30, CHAPTER 53 OF THE DELAWARE CODE RELATING TO THE LEVY, COLLECTION AND USE OF TOBACCO PRODUCT TAX REVENUE.

This Act increases the tax on cigarettes from 55 cents to \$1.15 per 20-cigarette pack. Section 1 increases the cigarette tax rate. Section 2 makes the cigarette tax effective for possession within the state after midnight July 31, 2007. It also imposes a "floor tax" on inventories of cigarettes and requires that the difference between the new tax and the old tax be paid on stamps purchased on or before midnight July 31, 2007, but not affixed to any cigarettes as of the effective date of this Act.

**House Bill No. 253**

Signed by Governor on 06/30/07

AN ACT TO AMEND TITLES 21 AND 30 OF THE DELAWARE CODE RELATING TO TAXES AND FEES SUPPORTING THE TRANSPORTATION TRUST FUND.

This Bill increases several revenue sources for the Transportation Trust Fund. The motor vehicle document fee is increased from 2.75% to 3.25%, effective October 1, 2007, and increases again to 3.75% on October 1, 2008. The basic motor vehicle registration fee is raised from \$20 to \$40, effective October 1, 2007, and the related registration fees for other vehicles are also increased. Motor vehicle title fees are raised from \$15 to \$25. Driver's license fees are raised from \$12.50 to \$25, and the fee for identification cards issued by DMV is raised from \$5 to \$20. In addition, permanent driver's licenses will no longer be issued, except for renewals of those now issued, with an accompanying renewal fee increase. The Bill also includes some provisions for transitioning the DMV's computer systems to handle these changes.

**Senate Bill No. 149 w/SA 1**

Signed by Governor on 06/30/07

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO TAX CREDITS.

This Act establishes effective July 1, 2007 a framework for Delaware to attract high paying, competitive jobs into the next decade. To qualify, a new employer must add at least 50 net new jobs which each must have an annual salary of at least \$100,000. Up to 40% of the withholding taxes collected and paid on behalf of these new, qualified employees during the taxable year will be rebated. Higher refund amounts will be granted for qualifying employees employed within targeted growth zones, incorporated municipalities, and former brownfields. Qualifying firms would be eligible for credits over a ten year period and would need to apply annually for the rebate.

**(II) Legislation implementing broad policy changes or altering Division of Revenue processes with little to no affect on tax-filing requirements for the upcoming year:**

**Senate Bill No. 157 w/SA1, SA2**

Signed by Governor on 07/24/07

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## GENERAL NOTICES

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AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO STATE TAXES AND TOBACCO PRODUCTS.

This bill removes cigars and pipe tobacco from requirements regarding the collection of information for these products because of the difficulty in collecting such information during internet delivery sales. The Bill also provides that any tobacco products sold shall have any and all taxes collected by each person accepting the purchase order, whether the internet sale is otherwise covered for disclosure purposes or not.

**Senate Bill No. 169**

Signed by Governor on 07/24/07

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATED TO THE NEIGHBORHOOD ASSISTANCE TAX CREDIT.

This bill transfers the administration of the Neighborhood Assistance Tax Credit program to the Delaware State Housing Authority. This bill also streamlines the program by consolidating the program administration within the State Housing Authority. This bill increases the universe of donation recipients eligible to participate in the program by including all non-profit agencies performing neighborhood assistance in impoverished areas or for low and moderate income people. This bill also increases the universe of donor organizations by including all entities paying state income taxes under Chapter 11 and Chapter 19.

Patrick T. Carter  
Director of Revenue

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## DELAWARE RIVER BASIN COMMISSION NOTICE OF PUBLIC HEARING AND BUSINESS MEETING

The Delaware River Basin Commission will hold a public hearing and business meeting on Wednesday, September 26, 2007 beginning at 10:15 a.m. at the Commission's offices, 25 State Police Drive, West Trenton, New Jersey. For more information visit the DRBC web site at [www.drbc.net](http://www.drbc.net) or contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

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## DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, September 20, 2007 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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## DEPARTMENT OF FINANCE DIVISION OF REVENUE NOTICE OF PUBLIC COMMENT PERIOD

### Regulation 1151-1 Personal Income Tax Withholding Exemption Certificates

#### Title of Regulation

Regulation 1151-1 Personal Income Tax Withholding Exemption Certificates

#### Nature of Proceedings; Synopsis of the Subject and Substance of the Proposed Regulation

In accordance with procedures set forth in 29 Del.C. Ch. 11, Subch. III and 29 Del.C. Ch. 101, the Director of Revenue of the Division of Revenue in the Department of Finance is proposing to adopt an amendment to the existing regulation pertaining to the treatment by employers of employees' claims for exemptions from withholding of Delaware personal income tax. The existing regulation, "Personal Income Tax Withholding Exemption Certificates," is set forth in the Division of Revenue's Tax Ruling 83-3 (February 9, 1983), which modified Tax Ruling 80-4 (December 15, 1980). Tax Ruling 83-3 provides generally that employers must submit copies of withholding exemption certificates (currently submitted to employers by employees on Internal Revenue Service Form W-4 or an approved substitute form) that either (i) claim more than 14 withholding exemptions for purposes of the Delaware personal income tax, or (ii) claim exemption from withholding of Delaware personal income tax where the employer reasonably expects that the employee's wages will exceed \$100 per week. In such circumstances, pending receipt of a notice from the Division of Revenue with respect to a copy of any withholding exemption certificate, the employer must withhold on the basis of the number of exemptions claimed in the certificate. If the Division of Revenue finds that the certificate submitted contains materially incorrect statements, or, after seeking verification from the employee, determines that it lacks sufficient information to find that the withholding exemption certificate is correct, and if the Division notifies the employer of these findings, the employer must thereafter withhold from the employee's wages as if the employee were a single person claiming no withholding exemptions. The employer is required to notify the employee of the action taken by the Division of Revenue and request that the employee file another withholding exemption certificate. The Director of Revenue proposes to supersede Tax Ruling 83-3 and Tax Ruling 80-4 on and after the effective date of the regulation being proposed here.

The new regulation conforms the administrative practice of the Division of Revenue with respect to withholding exemption certificates to the current administrative practice of the Internal Revenue Service, as set forth in Temporary Treasury Regulation §31.3402(f)(2)-1T, 26 CFR §31.3402(f)(2)-1T. The new regulation relieves employers of the burden of automatically having to submit for review by the Division of Revenue copies of an employee's withholding exemption certificate, if an employee (i) claims more than 14 withholding exemptions, or (ii) claims exemption from withholding of Delaware personal income tax where the employer reasonably expects that

the employee's wages will exceed \$100 per week. Instead, under the new regulation, an employer must submit copies of the employee's withholding exemption certificate only when directed to do so in a written notice from the Division of Revenue or as directed in general published guidance issued by the Division of Revenue.

The new regulation also enables the Division of Revenue to notify the employer in writing that an employee is not entitled to claim either (i) a complete exemption from withholding, or (ii) more than the maximum number of withholding exemptions specified in the notice to the employer. The Division of Revenue may issue such a notice to an employer even if the employer has not previously submitted to the Division of Revenue a copy of the withholding exemption certificate of the employee in question. After receipt of this notice and after the effective date of the notice, the employer must generally withhold from the employee's wages based on the number of withholding exemptions specified in the notice. The new regulation provides that the Division of Revenue may issue a notice to an employer only if it has determined that (i) the employee's current withholding exemption certificate contains a materially incorrect statement or (ii) after requesting the employee to verify the statements on the withholding exemption certificate, the Division of Revenue lacks sufficient information to determine if the certificate is correct. The new regulation also sets forth actions that the employer and the Division of Revenue must take to notify the employee of the proposed action and actions that the employee may take to avoid the effect of the notice.

#### **How to Comment on the Proposed Regulation**

Members of the public may receive a copy of the proposed amendments to the regulation at no charge by United States Mail by writing or calling Carol Thomas, Delaware Division of Revenue, C900 Carvel State Office Building, 820 N. French St., Wilmington, DE 19801, phone (302) 577-8688. Members of the public may present written comments on the proposed regulation by submitting such written comments to John S. McDaniel, Esquire, at the address of the Division of Revenue set forth above. Written comments must be received on or before 4:30 p.m. on October 1, 2007.

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## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

### **DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

#### **NOTICE OF PUBLIC COMMENT PERIOD**

#### **Long Term Care Medicaid 20330.4.1 Annuities**

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 (new fax number) by September 30, 2007. A copy of the CMS program clarification memorandum is available upon request by contacting Sharon L. Summers at 302-255-9576.

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.

## **DIVISION OF PUBLIC HEALTH NOTICE OF PUBLIC HEARING**

### **4203 Cancer Treatment Program**

The Department Health and Social Services is proposing revisions to the State of Delaware Regulations Governing the Cancer Treatment Program. Originally adopted on July 10, 2004, these regulations establish medical insurance coverage for Delawareans for treatment of cancer. The proposed revisions extend treatment coverage from 12 months to 24 months after the date that cancer treatment is initiated for each primary cancer diagnosis.

Health Promotion and Disease Prevention Section, under the Division of Public Health, Department of Health and Social Services (DHSS), will hold a public hearing to discuss the proposed revisions to the State of Delaware Regulations Governing the Cancer Treatment Program. The public hearing will be held on September 26, 2007 at 10:00 a.m. in the Health Promotion and Disease Prevention Conference Room, Second Floor, located in the Thomas Collins Bldg, 540 S. Dupont Highway, Dover, Delaware.

Copies of the proposed regulations are available for review by calling the Health Promotion and Disease Prevention Section at (302) 744-1040.

Anyone wishing to present his or her oral comments at this hearing should contact Mr. David Walton at (302) 744-4700 by September 25, 2007. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by October 1, 2007 to:

David Walton, Hearing Officer  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Fax 302-739-6659

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## **DIVISION OF PUBLIC HEALTH NOTICE OF PUBLIC HEARING**

### **4459 Lead Based Paint Hazards**

The Department Health and Social Services is proposing revisions to the State of Delaware Regulations Governing Lead Based Paint Hazards. These regulations establish standards for regulation of lead-based paint hazard control activities. Proposed revisions make changes to include expanded definitions, application and renewal requirements, and work practice standards.

Health Systems Protection Section, under the Division of Public Health, Department of Health and Social Services (DHSS), will hold a public hearing to discuss the proposed revisions to the State of Delaware Regulations Governing Lead Based Paint Hazards. The public hearing will be held on October 4, 2007 at 2:00 p.m. in the Third Floor Conference Room, located in the Jesse Cooper Building, 417 Federal Street, Dover, Delaware.

Copies of the proposed regulations are available for review by calling the Health Systems Protection Section at (302) 744-4546.

Anyone wishing to present his or her oral comments at this hearing should contact Mr. David Walton at (302) 744-4700 by October 3, 2007. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by October 4, 2007 to:

David Walton, Hearing Officer  
Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Fax 302-739-6659

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL  
CONTROL****DIVISION OF AIR AND WASTE MANAGEMENT****NOTICE OF PUBLIC HEARING****1132 Transportation Conformity****Title of the Regulations:**

Proposal to amend Regulation 1132, Transportation Conformity, of the State of Delaware, "Regulations Governing the Control of Air Pollution."

**Brief Synopsis of the Subject, Substance and Issues:**

The proposed amendments to Regulation 32 will simplify Delaware's transportation conformity regulations, and will bring the Salisbury/Wicomico Metropolitan Planning Organization (MPO) into the Interagency Transportation Conformity Consultation Workgroup.

Federal Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) legislation that took effect on August 10, 2005 streamlined the federal transportation conformity requirements on States. The legislation allows states to forgo the burden of having to adopt and maintain a full transportation conformity rule, and to only adopt provisions concerning the consultation process and commitments relative to transportation control measures. States and MPOs are still bound by federal transportation conformity rules so this streamlining would not change the overall implementation and practice of transportation conformity. DNREC is proposing to take advantage of this streamlining by revising Reg. 1132, Transportation Conformity, to address only the mandatory provisions.

The Salisbury/Wicomico MPO will be added as a new member of the Delaware Interagency Transportation Conformity Consultation Workgroup. DNREC is proposing this change because the Town of Delmar, Delaware is now part of the Salisbury/Wicomico MPO. The change will require that any conformity determination performed for Sussex County must be in consultation with the Salisbury/Wicomico MPO.

In addition to the above revisions, Reg. 1132 has been renumbered and reformatted in accordance with the Code of Delaware Regulations style manual.

**Notice of Public Comment:**

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Monday, September 24, 2007, beginning at 6 PM in the Priscilla Building, 156 S. State Street, Dover, Delaware. Interested parties may submit comments in writing to: Philip Wheeler, DNREC Air Quality Management Section, 156 South State Street, Dover, Delaware 19901.

**Prepared By:**

Philip Wheeler, Planner IV, 739-9402.

[philip.wheeler@state.de.us](mailto:philip.wheeler@state.de.us)

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**DIVISION OF FISH AND WILDLIFE****NOTICE OF PUBLIC HEARING****Title of the Regulations:**

Horseshoe Crab Regulation 3203 Seasons and Area Closed to Taking Horseshoe Crabs.

Horseshoe Crab Regulation 3207 Horseshoe Crab Dredging Restrictions.

Horseshoe Crab Regulation 3210 Horseshoe Crab Reporting Requirements.

Horseshoe Crab Regulation 3211 Horseshoe Crab Commercial Collecting Permit Eligibility and Renewal Requirements.

Horseshoe Crab Regulation 3214 Horseshoe Crab Annual Harvest Limit.

**Brief Synopsis of the Subject, Substance and Issues:**

The Department adopted emergency regulations (Order Number 2007-F-0020) on June 11, 2007 to implement the horseshoe crab mandatory harvest provisions in Addendum IV of the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for the Horseshoe Crab. As a follow-up to this Order, the Department is proposing regulations of a more lasting nature which would meet the intent of the emergency regulations adopted on June 11, 2007. These regulations would prohibit the harvest and landing of all horseshoe crabs in Delaware waters from January 1 through June 7 for two years, and prohibit the harvest and landing of female horseshoe crabs for the remainder of the year as well. During the period June 8 through December 31, up to 100,000 male horseshoe crabs may be harvested from approved harvest areas in Delaware. Commercial collectors of horseshoe crabs will have to report their landings daily during the open season in order to facilitate quota monitoring. Instead of just allowing harvesting during certain days of the week, it is proposed that beach collecting be permitted Monday through Friday between June 8 and June 30 from Port Mahon Road and private beaches where collecting is presently legal. This proposed measure will allow beach collectors to harvest male horseshoe crabs under the proposed quota system more efficiently during the period when harvesting is permitted. Since no harvesting is allowed prior to June 8, there should be no additional impacts to shorebirds from allowing harvesting five days per week. Permit renewal requirements will be aligned with other shellfish licenses. Specifically, horseshoe crab commercial beach collecting permits must be renewed annually by December 31 of each calendar year or the person holding the collecting permit forfeits their eligibility to obtain a horseshoe crab commercial collecting permit in subsequent years. This option permits harvest to resume after the period of time that the shorebirds normally have migrated north of Delaware that depend on horseshoe crab eggs as a food source, and after a significant portion of the horseshoe crab spawning has occurred in a normal year. By harvesting only male horseshoe crabs, females would be further protected and will be available to participate in the annual spawn without being subject to harvest at any point during the year.

**Notice of Public Comment:**

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, (302) 739-3441. A public hearing on these proposed regulations will be held in the Department of Natural Resources and Environmental Control Auditorium, at 89 Kings Highway, Dover, DE at 7:00 PM on September 24, 2007. Individuals may present their opinion and evidence either at the hearing or in writing to Lisa Vest, Hearing Officer, Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, DE 19901 or via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us). The hearing record will remain open for written or e-mail comments until 4:30 PM September 30, 2007.

**Prepared By:**

Roy W. Miller  
**NAME**

302-739-9914  
**PHONE**

August 7, 2007  
**DATE**

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**DEPARTMENT OF SAFETY AND HOMELAND SECURITY****DIVISION OF STATE POLICE****NOTICE OF PUBLIC COMMENT PERIOD****2300 Pawn Brokers and Junk Dealers**

Notice is hereby given that the Department of Safety and Homeland Security, Division of State Police, in accordance with 24 **Del.C.** Section 2311 proposes to adopt Rules and Regulations. This adoption will allow the regulation of Pawnbrokers, Secondhand Dealers, and Scrap Metal Processors. If you wish to view the complete set of Rules and Regulations, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by September 30, 2007, to Delaware State Police, Detective Licensing, P.O. Box 430, Dover, DE, 19903.

These Rules and Regulations are promulgated pursuant to 24 **Del.C.** Section 2311 and the Secretary of Safety and Homeland Security delegates his regulatory authority granted by Chapter 23 to the Division of State Police.

**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**2000 Board of Occupational Therapy**  
**NOTICE OF PUBLIC HEARING**

The Delaware Board of Occupational Therapy, in accordance with 24 **Del.C.** §2006(a)(1), has proposed changes to its Regulations 2.0 and 3.0 to change the audit process for license renewal so that continuing education attestations will be audited after the license renewal period is over, rather than before the expiration date. The changes will also extend the period of time during each biennial licensure period during which licensees may obtain required CE credits from May 31<sup>st</sup> of each renewal year to July 31<sup>st</sup> of each renewal year, to correspond with the license renewal period.

The Board held a public hearing on this issue on May 2, 2007. The Board made substantive changes to the proposed rules and regulations as a result of comments received at that hearing. A public hearing on the revised rules and regulations will be held on October 3, 2007 at 4:45 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Occupational Therapy, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

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**DIVISION OF PROFESSIONAL REGULATION**

**3700 Board of Examiners of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers**  
**NOTICE OF PUBLIC HEARING**

The Delaware Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §3706(a)(1), proposes amendments to its regulations in sections 1.0, 3.0, 7.0, and 8.0. Specifically, the proposed amendments to **1.0 Division of Professional Regulation** are primarily technical: renaming the section, improving the language, and updating a web address. The proposed amendments to **3.0 Licensure Requirements for Hearing Aid Dispensers** modify the process for licensure as a hearing aid dispenser. Candidates will be required to obtain temporary licensure while completing a six-month training period under the direct supervision of a licensed dispenser. The extent of direct supervision is delineated. The proposed amendments to **7.0 Electronic equipment** clarify the required frequency for calibration of electronic equipment used to assess hearing and allow for attestation of such calibration during the license renewal process. Finally, the proposed amendments to **8.0 Continuing Education For All Licensees** also provide for attestation of electronic equipment calibration and improve the language of the section. Other grammatical, typographic, or stylistic changes are also included to improve clarity and consistency.

A public hearing is scheduled for Wednesday, November 14, 2007, at 2:00 p.m. in the second floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Sandra Wagner at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Sandra Wagner at the above address or by calling (302) 744-4532.

The Board will consider promulgating the proposed regulations immediately following the public hearing.

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## OFFICE OF THE STATE BANK COMMISSIONER PUBLIC NOTICE

### 2108/2209 Statement on Subprime Mortgage Lending

#### Summary

The State Bank Commissioner proposes to adopt new Regulations 2108/2209 ("Statement on Subprime Mortgage Lending"), new Regulation 2302 ("Exemptions"), and new Regulation 3402 ("Surety Bond or Irrevocable Letter of Credit").

Proposed new Regulation 2108/2209 parallels a Statement jointly issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and the National Credit Union Administration, and is being adopted to provide regulatory consistency between mortgage brokers and mortgage lenders regulated under Chapters 21 and 22 respectively of Title 5 of the **Delaware Code** that are not affiliated with a bank holding company or an insured financial institution, and the financial institutions that are subject to that federal Statement.

Proposed new Regulation 2302 implements § 2304(c) of Title 5 of the **Delaware Code** by establishing criteria and procedures relating to exemptions from Chapter 23 of Title 5.

Proposed New Regulation 3402 implements § 3411 of Title 5 of the **Delaware Code** by establishing criteria for determining the amount of surety bonds or irrevocable letters of credit required by §3411.

The State Bank Commissioner would adopt the proposed new regulations on or after October 2, 2007. Other regulations issued by the State Bank Commissioner are not affected by these proposals. The State Bank Commissioner is issuing these regulations in accordance with Title 5 of the **Delaware Code**.

#### Comments

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

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether these proposed new regulations should be adopted, rejected or modified. Written materials submitted will be available for inspection at the above address. Comments must be received at or before the public hearing scheduled for 10:00 a.m. October 2, 2007.

#### Public Hearing

A public hearing on the proposed regulation will be held in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 on Tuesday, October 2, 2007, commencing at 10:00 a.m. This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the **Delaware Code**.

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