
Delaware Register of Regulations

Issue Date: August 1, 2007

Volume 11 - Issue 2, Pages 108 - 240

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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 July 15, 2007.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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.

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

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1216 Military Sales Practices 11 **DE Reg.** 26 (Prop.)

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1148 Control of Stationary Combustion Turbine Electric Generating Unit Emissions..... 11 **DE Reg.** 80 (Final)

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Symbol Key

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

Emergency Regulations

Under 29 **Del.C.** §10119 an agency may promulgate a regulatory change as an Emergency under the following conditions:

§ 10119. Emergency regulations.

If an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by § 10115, the following rules shall apply:

(1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;

(2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;

(3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;

(4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and

(5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the *Register of Regulations*. (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

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

Nature of the Proceedings

The Delaware Department of Health and Social Services ("Department") has determined that a threat to the public welfare exists if revision to the Cancer Treatment Program Regulations, Section 10.0 Termination of Eligibility, is not implemented without prior notice or hearing. Failure to (July 1, 2007) update this Section will result in a denial of covered services, a continued barrier to treatment and pose an unnecessary health risk to all Delawareans, diagnosed with Cancer, who are otherwise eligible for benefits under the Cancer Treatment Program.

Findings of Fact

The Department finds that these changes should be made in the best interest of the general public of the State of Delaware. The Department will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof.

THEREFORE, IT IS ORDERED, that the proposed revision to the regulation be adopted on an emergency basis without prior notice or hearing, and shall become effective on July 1, 2007.

Vincent P. Meconi, Secretary, 7/16/07

4203 Cancer Treatment Program**1.0 Purpose**

The Cancer Treatment Program (CTP) is a program of Delaware Health and Social Services (DHSS), Division of Public Health (DPH) intended to provide medical insurance coverage to Delawareans for the treatment of cancer.

8 DE Reg 1144 (02/01/05)**2.0 Availability Of Funds**

2.1 Benefits will be available to enrollees provided that funds for this program are made available to DHSS.

2.2 In the event that funds are not available, DHSS will notify enrollees and providers.

3.0 General Application Information

3.1 The application must be made in writing on the prescribed CTP form. An individual, agency, institution, guardian or other individual acting can make this request for assistance for the applicant with his knowledge and consent. The CTP will consider an application without regard to race, color, age, sex, disability, religion, national origin or political belief as per State and Federal law.

3.2 Each individual applying for the CTP is requested, but not required, to furnish his or her Social Security Number.

3.3 Filing an application gives the applicant the right to receive a written determination of eligibility and the right to appeal the written determination.

4.0 Technical Eligibility

4.1 The following for an adult applicant are required to receive benefits under this program. The adult applicant must:

4.1.1 Need treatment for cancer in the opinion of the applicant's licensed physician of record. Cancer treatment will not include routine monitoring for pre-cancerous conditions, or monitoring for recurrence during or after remission.

4.1.2 Be a Delaware resident.

4.1.3 Have been a Delaware resident at the time cancer was diagnosed.

4.1.4 Have no health insurance.

4.1.4.1 Examples of health insurance include comprehensive, major medical and catastrophic plans, Medicare, and Medicaid.

4.1.4.2 Excepted are the following types of insurance plans, which do not exclude eligibility for the CTP: dental, vision, dismemberment, drug, mental health, nursing home, blood bank, workman's compensation, accident, family planning, the Delaware Prescription Assistance Program, the Delaware Chronic Renal Disease program, and non-citizen medical coverage.

4.1.4.3 The CTP is the payer of last resort and will only provide benefits to the extent that they are not covered by the plans listed in 4.1.4.2.

4.1.5 Be over the age of 18 years.

4.1.6 Be diagnosed with any cancer on or after July 1, 2004, or be receiving benefits for the treatment of colorectal cancer through the Division of Public Health's Screening for Life program on June 30, 2004.

4.2 The following are required for a minor (child under 18 years of age) to receive benefits under this program. The minor applicant must:

4.2.1 Need treatment for cancer in the opinion of the applicant's licensed physician of record. Cancer treatment will not include routine monitoring for pre-cancerous conditions, or monitoring for recurrence during or after remission.

4.2.2 Be a Delaware resident

4.2.3 Have been a Delaware resident at the time cancer was diagnosed.

4.2.4 Be diagnosed with any cancer on or after July 1, 2004. Coverage shall be retroactive up to 3 months prior to date of application, provided applicant meets medical requirements and applicant's parent(s) or legal guardian(s) meet financial eligibility requirements under 5.1. In no case will the minor applicant be eligible for benefits under this program before July 1, 2004.

4.2.5 The CTP is payer of last resort and will only provide benefits to the extent that they are not covered by other plans.

4.3 An inmate of a public institution shall be eligible for the CTP, provided that the benefits of the CTP are not otherwise provided in full or in part.

4.3.1 For the purposes of the CTP, the definitions of public institution and inmate shall be the same as used by the Delaware Medicaid program.

4.4 The Medical Assistance Card is the instrument used to verify an individual's eligibility for benefits. Prior to rendering services, medical providers are required to verify client eligibility using the client's identification number by accessing one of the Electronic Verification Systems (EVS) options. Instructions for accessing EVS are described in the EVS section of the billing manual.

8 DE Reg 1144 (02/01/05)

5.0 Financial Eligibility

5.1 To be eligible for the CTP the applicant must have countable household income that is less than 650% of the Federal Poverty Level (FPL).

5.2 Income is any type of money payment that is of gain or benefit to an individual. Income is either counted or excluded for the eligibility determination.

5.3 Countable income includes but is not limited to:

5.3.1 Social Security benefits – as paid after deduction for Medicare premium

5.3.2 Pension – as paid

5.3.3 Veterans Administration Pension – as paid

5.3.4 U.S. Railroad Retirement Benefits – as paid

5.3.5 Wages – net amount after deductions for taxes and FICA Senior Community Service Employment – net amount after deductions for taxes and FICA

5.3.6 Interest/Dividends – gross amount

5.3.7 Capital Gains – gross amount from capital gains on stocks, mutual funds, bonds.

5.3.8 Credit Life or Credit Disability Insurance Payments – as paid

5.3.9 Alimony – as paid

5.3.10 Rental Income from entire dwelling – gross rent paid minus standard deduction of 20% for expenses

5.3.11 Roomer/Boarder Income – gross room/board paid minus standard deduction of 10% for expenses

5.3.12 Self Employment – countable income as reported to Internal Revenue Service (IRS)

5.3.13 Unemployment Compensation - as paid

5.4 Excluded income includes but is not limited to:

5.4.1 Annuity payments

5.4.2 Individual Retirement Account (IRA) distributions

5.4.3 Payments from reverse mortgages

5.4.4 Capital gains from the sale of principal place of residence

5.4.5 Conversion or sale of a resource (i.e. cashing a certificate of deposit)

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5.4.7 Earned Income Tax Credit (EITC)

5.4.8 Vendor payments (bills paid directly to a third party on behalf of the individual)

5.4.9 Government rent/housing subsidy paid directly to individual (i.e. HUD utility allowance)

5.4.10 Loan payments received by individual

5.4.11 Proceeds of a loan

5.4.12 Foster care payments made on behalf of foster children living in the home

5.4.13 Retired Senior Volunteer Program (RSVP)

5.4.14 Veterans Administration Aid and Attendance payments

5.4.15 Victim Compensation payments

5.4.16 German reparation payments

5.4.17 Agent Orange settlement payments

5.4.18 Radiation Exposure Compensation Trust Fund payments

- 5.4.19 Japanese-American, Japanese-Canadian, and Aleutian restitution payments
- 5.4.20 Payments from long term care insurance or for inpatient care paid directly to the

individual

5.5 Determination of the household income will be based on the family budget group, which is the total number of persons whose income is budgeted together. This will always include the following:

- 5.5.1 Married couples if they live together; and,
- 5.5.2 Unmarried couples who live together as husband and wife.
- 5.5.3 Couples will be considered as living together as husband and wife if:
 - 5.5.3.1 They say they are married, even if the marriage cannot be verified; or,
 - 5.5.3.2 They are recognized as husband and wife in the community; or,
 - 5.5.3.3 One partner uses the other's last name; or,
 - 5.5.3.4 They state they intend to marry.

5.6 In households that include a caretaker, the caretaker's children and other children that are the caretaker's responsibility, the caretaker's income and those of his/her children are always budgeted together. The income of any other children in the home will be considered separately. In these situations, the separate budget groups can be combined to form a single family budget group only when the following conditions are met:

5.6.1 CTP benefits would be denied to any of the recipients by maintaining separate budget groups.

5.6.2 The caretaker chooses to have his/her income and those of his/her children considered with the income of any other people in the home.

6.0 Residency

6.1 A Delaware resident is an individual who lives in Delaware with the intention to remain permanently or for an indefinite period, or where the individual is living and has entered into a job commitment, or seeking employment whether or not currently employed.

6.2 Factors that may be taken into account when determining residency are variables such as the applicant's age, location of dwellings and addresses, location of work, institutional status, and ability to express intent.

6.3 Eligibility:

6.3.1 Will not be denied to an otherwise qualified resident of the State because the individual's residence is not maintained permanently or at a fixed address.

6.3.2 Will not be denied because of a durational residence requirement.

6.3.3 Will not be denied to an institutionalized individual because the individual did not establish residence in the community prior to admission to an institution.

6.3.4 Will not be terminated due to temporary absence from the State, if the person intends to return when the purpose of the absence has been accomplished.

6.4 When a State or agency of the State, including an entity recognized under State law as being under contract with the State, arranges for an individual to be placed in an institution in another State, the State arranging that placement is the individual's State of residence.

7.0 Verification of Eligibility Information

7.1 The CTP may verify information related to eligibility. Verification may be verbal or written and may be obtained from an independent or collateral source.

7.2 Documentation shall be date stamped and become part of the CTP case record.

7.3 Verifications received and/or provided may reveal a new eligibility issue not previously realized. Additional verifications may be required.

7.4 Failure to provide requested documentation may result in denial or termination of eligibility.

8.0 Disposition of Applications

8.1 The CTP will dispose of each application by a finding of eligibility or ineligibility, unless:

8.1.1 There is an entry in the case record that the applicant voluntarily withdrew the application, and that the CTP sent a notice confirming the applicant's decision;

8.1.2 There is a supporting entry in the case record that the applicant is deceased; or

8.1.3 There is a supporting entry in the case record that the applicant cannot be located.

9.0 Changes in Circumstances and Personal Information

9.1 Enrollees are responsible for notifying the CTP of all changes in his circumstances that could potentially affect eligibility for the CTP. Failure to do so may result in overpayments being processed and legal action taken to recover funds expended on his/her behalf during periods of ineligibility.

9.2 Enrollees are responsible for notifying the CTP of changes in the enrollee's name, address and telephone number.

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.

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.~~ 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.

12.0 Cancer Treatment Services Which Are Not Covered

12.1 The cost of nursing home or long-term care institutionalization is not covered. (The cost of cancer treatment services within a nursing home or long term care institution is a covered benefit.)

12.2 Services not related to the treatment of cancer as determined by DHSS are not covered.

12.3 Cancer treatment services for which the enrollee is eligible to receive by other health plans as listed in 4.1.4.2 are not covered.

13.0 Changes In Program Services

13.1 When changes in program services require adjustments of CTP benefits, the CTP will notify enrollees who have provided an accurate and current name, and address or telephone number.

14.0 Confidentiality

14.1 The CTP will maintain the confidentiality of application, claim, and related records as required by law.

15.0 Review Of CTP Decisions

15.1 Any individual who is dissatisfied with a CTP decision may request a review of that decision.

15.2 Such request must be received by the CTP in writing within 30 days of the date of the decision in question.

15.3 The CTP will issue the results of its review in writing. The review will be final and not subject to further appeal.

8 DE Reg. 107 (07/01/04)

Symbol Key

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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** 106**Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)****106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II)****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin.** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) to reflect the status of DPAS II from a pilot to implementation and to reflect comments and suggestions from the evaluations conducted at the conclusion of the first (June 2006) and second year (June 2007) of the pilot. The evaluations were conducted by Progress Education Corporation. The rewritten regulation will reflect changes to the procedures, the forms and the student improvement section of the regulation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before September 5, 2007 to Susan Keene Haberstroh, Education Associate, Regulation Review and Legislative Liaison, Department of Education, at 401 Federal Street, Suite 2, Dover, DE 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? This regulation addresses the appraisal system for teachers, and does not address student achievement against the state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? This regulation addresses the appraisal system for teachers and not does directly address whether all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation does not address student health or student safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation addresses the teacher appraisal system and not students' legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation preserves the authority and flexibility to the extent the appraisal system is carried out at the board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? This regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board or school levels.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making and accountability for the teacher appraisal system is maintained at the local board or charter school level.
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 provide an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? This regulation reflects information provided by an evaluation of the pilot, which has resulted in streamlining the process.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no additional costs to the local school boards or charter schools in complying with this regulation.

106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II)

~~1.0 The Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) shall be effective for only those districts participating in the pilot of this process~~

~~1.1 For teachers participating in the pilot, any rating received on a Summative Evaluation conducted during the pilot period shall not be included in the determination of a pattern of ineffective teaching as defined in 7.0.~~

2.0 Definitions

~~“Announced Observation” shall consist of the Preobservation Form and conference with the evaluator, an observation by the evaluator at an agreed upon date and time, and the associated formative conferences and reports. The observation shall be of sufficient length, at least twenty (20) minutes, to analyze the lesson and assess performance.~~

~~“Board” shall mean a local board of education or charter school board of directors.~~

~~“Certified Evaluator” shall mean the individual, usually the supervisor of the teacher, who has successfully completed the evaluation training in accordance with 9.0.~~

~~“DPAS” shall mean the Delaware Performance Appraisal System in effect prior to **DPAS II**.~~

~~“Experienced Teacher” shall mean a teacher who holds valid and current Continuing or Advanced License, or Standard or Professional Status Certificate issued prior to August 1, 2003.~~

~~“Improvement Plan” shall be the plan that a teacher and evaluator mutually develop in accordance with section 8.0.~~

~~“Novice Teacher” shall mean a teacher who holds a valid and current Initial License.~~

~~“Satisfactory Component Rating” shall mean the teacher understands the concepts of the component and the teacher’s performance in that component is acceptable.~~

~~“Satisfactory Evaluation” shall be used to qualify for a continuing license and shall be equivalent to the overall “Effective” or “Needs Improvement” rating on the Summative Evaluation.~~

~~“Summative Evaluation” shall be the rating process at the conclusion of the appraisal cycle.~~

~~“Technical Assistance Document” shall mean the manual that contains the prescribed forms, detailed procedures, specific details about the 5 components of evaluation and other relevant documents that assist in the appraisal process.~~

~~“Unannounced Observation” shall consist of an observation by the evaluator at a date and time that has not been previously arranged and the associated formative conferences/reports. The observation shall be of~~

sufficient length, at least twenty (20) minutes, to analyze the lesson and assess performance.

“Unsatisfactory Component Rating” shall mean that the teacher does not understand the concepts of the component and the teacher’s performance in that component is not acceptable.

“Unsatisfactory Evaluation” shall be the equivalent to the overall “Ineffective” rating on the Summative Evaluation.

3.0 Appraisal Cycles

3.1 Experienced teachers who have earned a rating of “Effective” on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at the end of the one year period. The minimum annual evaluation for an experienced teacher who has earned an effective rating, may be waived for the subsequent year but not for two (2) consecutive years. Up to one half of the experienced teachers in a building who received a rating of “Effective” or “Exemplary” on the most recent DPAS Performance Appraisal may have the annual Summative Evaluation waived.

3.2 Experienced teachers who have earned a rating of “Needs Improvement” or “Ineffective” on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. These teachers shall have an Improvement Plan which may require additional observations and other types of monitoring as outlined in the Technical Assistance Document.

3.3 Novice teachers shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. Novice teachers who have earned a rating of “Needs Improvement” or “Ineffective” on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observations or other types of monitoring as outlined in the Technical Assistance Document.

4.0 Technical Assistance Document

4.1 All districts and charter schools shall use the document entitled *Delaware Performance Appraisal System (DPAS) II Technical Assistance Document* as developed by the Department of Education to assist in the implementation of the appraisal system. The Technical Assistance Document shall be reviewed biannually by the State Board of Education. Any recommendations for change shall be submitted to the Department of Education for consideration.

4.2 The Document shall contain, at a minimum, the following:

4.2.1 Specific details about each of the five (5) components listed in 5.1.

4.2.2 All forms or documents needed to complete the requirements of the appraisal process including Announced Observation, Unannounced Observation, Summative Evaluation, Improvement Plan and Challenge Form.

4.2.3 Specific procedures for observations, conferences, ratings, Summative Evaluation, Improvement Plan(s), and Challenges.

5.0 Appraisal Criteria

5.1 The following five (5) components shall be the basis upon which the performance of a teacher shall be evaluated by a certified evaluator:

5.1.1 Planning and Preparation

5.1.1.1 Selecting Instructional Goals: Teacher selects instructional goals that are aligned with the DE content standards and available DSTP, district and school program data. Goals are appropriate for the learners and reflect high expectations consistent with DSTP levels of performance.

5.1.1.2 Designing Coherent Instruction: Teacher plans for learning activities that align with the goals and supports student learning. Instructional planning shows a structure and selection of materials and activities that support student learning relative to the DE content standards.

5.1.1.3 Demonstrating Knowledge of Content and Pedagogy: Teacher shows his/her knowledge of content and how to teach it to a variety of learners. The teacher’s plans include natural connections between content areas that deepen student learning. The content that he/she teaches is aligned to the DE content standards.

5.1.1.4 Demonstrating Knowledge of Students: Teacher shows an awareness of his/her knowledge of student developmental characteristics, approaches to learning, knowledge, skills, interests,

cultural heritage, and DSTP performance levels.

5.1.2 Classroom Environment

5.1.2.1 ~~Managing Classroom Procedures: Teacher has clearly defined procedures for managing learning time, transitions between learning events, and routine procedures that maximize learning time.~~

5.1.2.2 ~~Managing Student Behavior: Teacher establishes behavioral expectations and consequences and monitors student conduct. Teacher responds to student behavior in appropriate and effective ways to minimize disruptions.~~

5.1.2.3 ~~Creating an Environment to Support Learning: Teacher creates an atmosphere in which learning is valued. Teacher to student and student to student interactions show rapport that is grounded in mutual respect.~~

5.1.2.4 ~~Organizing Physical Space: Teacher organizes, allocates, and manages physical space to create a safe learning environment. Teacher uses physical resources to contribute to effective instruction and make resources accessible to all students.~~

5.1.3 Instruction

5.1.3.1 ~~Engaging Students in Learning: Content is appropriate, clear, and links to student knowledge and experience. Content is aligned with the DE content standards and informed by the DSTP instructional needs comments. Activities and assignments engage students in the exploration of the content. Instructional materials are suitable to the instructional goals. The instruction is coherent.~~

5.1.3.2 ~~Demonstrating Flexibility and Responsiveness: Teacher has a repertoire of instructional strategies and makes modifications to lessons as needed. Teacher differentiates instruction based on learner characteristics and DSTP instructional needs comments.~~

5.1.3.3 ~~Communicating Clearly and Accurately: Verbal and written communication is clear and appropriate to students' age, background, and level of understanding.~~

5.1.3.4 ~~Using Questioning and Discussion Techniques: Questions are appropriate to the content and level of students' understanding. Teacher encourages students to pose their own questions and is responsive to student questions. Teacher facilitates student led discussions.~~

5.1.4 Professional Responsibilities

5.1.4.1 ~~Communicating with Families: Teacher shares information about the school's educational program, its alignment with the Delaware content standards, and expectations for student performance. Teacher develops two way communication with families about student progress, behavior, and personal needs or concerns.~~

5.1.4.2 ~~Developing a Student Record System: Teacher keeps records of attendance, emergency contact information, personal information (such as: allergies, medications, accommodations), and behavior. Shares relevant information with appropriate school personnel.~~

5.1.4.3 ~~Growing and Developing Professionally: Teacher participates in professional development to increase his/her knowledge of content and pedagogy. Teacher chooses professional development that is aligned with the needs of the school/district/students.~~

5.1.4.4 ~~Reflecting on Professional Practice: Teacher engages in reflective thinking as an individual, as a team participant, or as a school/community member with the goal of improving instruction and learning.~~

5.1.5 Student Improvement

5.1.5.1 ~~Showing Improvement on the DSTP: Teacher uses DSTP data analysis to inform classroom improvement, curriculum and instruction decisions.~~

5.1.5.2 ~~Aligning Assessments to Learning Goals and DSTP: Teacher creates dependable assessments and scoring criteria that accurately measure the learning goals based on the DE content standards and DSTP and classroom performance assessments and that yield data about student needs and progress relative to the content standards measured by the DSTP.~~

5.2 ~~Each of the five (5) components shall be weighted equally and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.~~

5.2.1 Planning and Preparation

5.2.1.1 ~~A satisfactory rating for this component shall mean the teacher demonstrates acceptable performance by meeting at least 4 of the following 5 criteria:~~

5.2.1.1.1 ~~Selects goals that are clear, reflect high expectations, are~~

consistent with DSTP levels of performance, focus on learning, align with Delaware content standards and available DSTP, district, school and program data, and are suitable for the class.

5.2.1.1.2 Designs instruction that has a clearly defined structure, is appropriate for students, and matches the selected goals.

5.2.1.1.3 Chooses materials and activities that match the goals and engage students in learning.

5.2.1.1.4 Displays solid content and pedagogy knowledge and makes connections within the content area and with other content areas that deepen student learning. Displays an understanding of prerequisite knowledge and anticipates student misconceptions.

5.2.1.1.5 Displays knowledge of student developmental characteristics, approaches to learning, knowledge, skills, interests, cultural heritage, and DSTP performance levels.

5.2.2 Classroom Environment

5.2.2.1 A satisfactory rating for this component shall mean the teacher demonstrates acceptable performance by meeting at least 8 of the following 11 criteria:

5.2.2.1.1 Posts classroom procedures and rules stated in student friendly terms.

5.2.2.1.2 Encourages students in assuming responsibility for following procedures.

5.2.2.1.3 Uses transitions appropriately to maximize learning time.

5.2.2.1.4 Posts behavioral expectations and consequences in student friendly terms.

5.2.2.1.5 Monitors and responds to behavior in effective ways that minimize disruptions.

5.2.2.1.6 Discusses classroom procedures and rules with students in ways that show shared valuing of procedures and rules.

5.2.2.1.7 Interacts with students and encourages student to student interactions in ways that show rapport and mutual respect.

5.2.2.1.8 Displays student work.

5.2.2.1.9 Organizes, allocates, and manages physical space in ways that create a safe learning environment.

5.2.2.1.10 Uses physical resources in ways that contribute to effective instruction.

5.2.2.1.11 Makes resources available to all students.

5.2.3 Instruction

5.2.3.1 A satisfactory rating for this component shall mean the teacher demonstrates acceptable performance by meeting at least 7 of the following 9 criteria:

5.2.3.1.1 Selects content that is aligned with the DE content standards, is appropriate, clear, and links to student knowledge and experience and the DSTP instructional needs comments.

5.2.3.1.2 Selects and designs activities and assignments that engage students in the exploration of the content.

5.2.3.1.3 Uses instructional materials that are suitable to the instructional goals.

5.2.3.1.4 Delivers coherent instruction.

5.2.3.1.5 Uses a repertoire of instructional strategies and makes adjustments to lessons as needed.

5.2.3.1.6 Differentiates instruction based on learner characteristics and DSTP instructional needs comments.

5.2.3.1.7 Communicates clearly in writing and verbally. Communicates in ways appropriate to students' age, background, and level of understanding.

5.2.3.1.8 Asks questions that are appropriate to the content and level of students' understanding. Encourages students to pose their own questions and is responsive to student questions.

5.2.3.1.9 Facilitates student led discussions.

5.2.4 Professional Responsibilities

5.2.4.1 A satisfactory rating for this component shall mean the teacher

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demonstrates acceptable performance by meeting at least 5 of the following 7 criteria:

~~5.2.4.1.1 Shares information, in a variety of ways, about the school's educational program, its alignment with the Delaware content standards, and expectations for student performance.~~

~~5.2.4.1.2 Develops two way communication with families about student progress, behavior, and personal needs or concerns.~~

~~5.2.4.1.3 Responds to families in a timely and appropriate way.~~

~~5.2.4.1.4 Develops and maintains a record keeping system that is up to date, well organized, accurate, and complete.~~

~~5.2.4.1.5 Shares relevant student information with appropriate school personnel.~~

~~5.2.4.1.6 Participates in professional development to increase knowledge of content and pedagogy. Chooses professional development that is clearly aligned with the needs of the school, district and students.~~

~~5.2.4.1.7 Engages in reflective thinking as an individual, as a team participant, or school or community member with the goal of improving instruction and learning.~~

~~5.2.5 Student Improvement~~

~~5.2.5.1 A satisfactory rating shall mean the teacher demonstrates acceptable performance in this component by meeting four (4) out of five (5) of the criteria set forth below:~~

~~5.2.5.1.1 The teacher provides evidence of a positive contribution to the school's State Progress Determination.~~

~~5.2.5.1.2 For the aggregate group of students taught by the teacher for the previous two years the average scale scores on the DSTP in reading and math have increased, excluding those students pursuant to 14 ~~Del.C.~~ §1270(c).~~

~~5.2.5.1.3 The average scale score for the groups of students disaggregated by race/ethnicity, LEP, Special education and low income have increased for the previous two (2) years on the DSTP in reading and math, provided that there were a minimum of ten (10) students in a subgroup, excluding those students pursuant to 14 ~~Del.C.~~ §1270(c). If there were fewer than ten (10) students in a subgroup, the subgroup shall not be considered for these criteria.~~

~~5.2.5.1.4 The students currently being instructed in the teacher's classroom in the aggregate have shown improvement on classroom based assessments, excluding those students pursuant to 14 ~~Del.C.~~ §1270(c).~~

~~5.2.5.1.5 The students currently being instructed in the teacher's classroom disaggregated by race and ethnicity, LEP, special education and low income have shown improvement on classroom based assessments, provided that there were a minimum of five (5) students in a subgroup, excluding those students pursuant to 14 ~~Del.C.~~ §1270(c). If there were fewer than five (5) students in a subgroup, the subgroup shall not be considered for these criteria.~~

6.0 Summative Evaluation Ratings

~~6.1 The Summative Evaluation shall include ratings of Satisfactory or Unsatisfactory on each of the five (5) components pursuant to 5.0.~~

~~6.2 The Summative Evaluation shall also include one of three overall ratings: "Effective", "Needs Improvement", or "Ineffective".~~

~~6.2.1 Effective shall mean that the teacher has received Satisfactory Component ratings in at least four (4) of the five (5) components of the appraisal criteria.~~

~~6.2.2 Needs Improvement shall mean that the teacher has received at least three (3) Satisfactory Component ratings out of the five (5) components of the appraisal criteria.~~

~~6.2.2.1 A teacher who has received an unsatisfactory rating on the student improvement component may have their next Summative Evaluation delayed until the Delaware Student Testing Program (DSTP) data is available for the current group of students the teacher is instructing.~~

~~6.2.3 Ineffective shall mean that the teacher has received three (3) or more Unsatisfactory Component ratings out of the five (5) components of the appraisal criteria.~~

~~6.2.3.1 A teacher who has received an unsatisfactory rating on the student improvement component may have their next Summative Evaluation delayed until the Delaware Student Testing~~

Program (DSTP) data is available for the current group of students the teacher is instructing.

6.2.3.2 If the teacher's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the rating shall be re-categorized as Ineffective.

7.0 Pattern of Ineffective Teaching Defined

A pattern of ineffective teaching shall be based on the most recent appraisal ratings of a teacher using the DPAS II process. Two consecutive ratings of Ineffective shall be deemed as a pattern of ineffective teaching. The following appraisal ratings shall be determined to be a pattern of ineffective teaching:

Ineffective	Ineffective	
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Needs Improvement	Ineffective	Ineffective

8.0 Improvement Plan

8.1 An Improvement Plan shall be developed for a teacher who receives an overall rating of Needs Improvement or Ineffective on the Summative Evaluation or a rating of Unsatisfactory (Unsatisfactory Component Rating) on any component on the Summative Evaluation regardless of the overall rating.

8.1.1 An Improvement Plan shall also be developed if a teacher's performance during an observed lesson is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator on the Formative Feedback form by typing "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.

8.2 The Improvement Plan shall contain the following:

8.2.1 Identification of the specific deficiencies and recommended area(s) for growth;

8.2.2 Measurable goals for improving the deficiencies to satisfactory levels;

8.2.3 Specific professional development or activities to accomplish the goals;

8.2.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the teacher to work with curriculum specialist(s), subject area specialist(s), instructional specialist(s) or others with relevant expertise;

8.2.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;

8.2.6 Timeline for the plan, including intermediate check points to determine progress;

8.2.7 Procedures for determining satisfactory improvement.

8.3 The Improvement Plan shall be developed cooperatively by the teacher and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.

8.4 The teacher shall be held accountable for the implementation and completion of the Improvement Plan.

8.5 Upon completion of the Improvement Plan, the teacher and evaluator shall sign the documentation that determines the satisfactory or unsatisfactory completion of the plan.

9.0 Evaluator Credentials

9.1 Evaluators shall have completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.

9.2 The training for the certificate of completion shall include techniques of observation and conferencing, content and relationships of frameworks for teaching training and a thorough review of the Technical Assistance Document. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.

9.3 The credentialing process shall be conducted by the Department of Education.

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10.0 Challenge Process

10.1 A teacher may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or a teacher may challenge the conclusions of a lesson observation if the statement "PERFORMANCE IS UNSATISFACTORY" has been included on the Formative Feedback form by submitting additional information specific to the point of disagreement in writing within ten (10) working days of the date of the teacher's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator.

10.1.1 Within ten (10) working days of receiving the written challenge, the supervisor of the evaluator shall review the record which consists of the Preobservation Form(s), the Formative Feedback Form(s), the Summative Evaluation and the written challenge, and issue a written decision.

10.1.2 If the challenge is denied, the decision shall state the reasons for denial.

10.1.3 The decision of the supervisor of the evaluator shall be final.

8-DE-Reg-431 (9/1/04)

9-DE-Reg-522 (10/1/05)

1.0 The Teacher Appraisal Process, Delaware Performance Appraisal System (DPAS II), shall be effective for the following school districts and charter schools beginning with the 2007-08 school year:

Appoquinimink

Caesar Rodney

Colonial

Lake Forest

Laurel

Smyrna

Sussex Technical

MOT Charter

Providence Creek Academy Charter

Sussex Academy of the Arts and Sciences

The Teacher Appraisal Process, Delaware Performance Appraisal System (DPAS II), shall be effective for all public school districts and charter schools beginning with the 2008-2009 school year.

2.0 Definitions

"Announced Observation" shall consist of the Pre-observation Form and conference with the evaluator, an observation by the evaluator at an agreed upon date and time, using the associated formative conferences and reports. The observation shall be of sufficient length, at least thirty (30) minutes, to analyze the lesson and assess teacher performance.

"Board" shall mean a local board of education or charter school board of directors.

"Credentialed Evaluator" shall mean the individual, usually the supervisor of the teacher, who has successfully completed the evaluation training in accordance with 10.0. The Credentialed Evaluator may also be referred to as "Evaluator".

"DASA" shall mean the Delaware Association of School Administrators.

"DPAS II Guide for Teachers" shall mean the manual that contains the prescribed forms, detailed procedures, specific details about the five (5) components of evaluation and other relevant documents that are used to implement the appraisal process.

"DSEA" shall mean the Delaware State Education Association.

"Experienced Teacher" shall mean a teacher who holds a valid and current Continuing or Advanced License, or Standard or Professional Status Certificate issued prior to August 1, 2003.

"Improvement Plan" shall be the plan that a teacher and evaluator mutually develop in accordance with

8.0.

"Novice Teacher" shall mean a teacher who holds a valid and current Initial License.

"Satisfactory Component Rating" shall mean the teacher's performance reflects the ability to demonstrate an understanding of the concepts of the component.

"Satisfactory Evaluation" shall be equivalent to the overall "Effective" or "Needs Improvement" rating on the Summative Evaluation and shall be used to qualify for a continuing license.

"State Assessment" shall mean the Delaware Student Testing Program (DSTP) or its successor.

"Summative Evaluation" shall be the rating process at the conclusion of the appraisal cycle.

"Unannounced Observation" shall consist of an observation by the evaluator at a date and time that has not been previously arranged using the associated formative conferences and reports. The observation shall be of sufficient length, at least thirty (30) minutes, to analyze the lesson and assess teacher performance.

"Unsatisfactory Component Rating" shall mean the teacher's performance does not reflect the ability to demonstrate an understanding of the concepts of the component.

"Unsatisfactory Evaluation" shall be the equivalent to the overall "Ineffective" rating on the Summative Evaluation.

"Working Day" shall mean a day when the employee would normally be working in that district or charter school.

3.0 Appraisal Cycles

3.1 Experienced teachers who have earned a rating of "Effective" on his or her most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at least once every two (2) years.

3.2 Experienced teachers who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one (1) year period. These teachers shall have an Improvement Plan which may require additional observations and other types of monitoring as outlined in the DPAS II Guide for Teachers.

3.3 Novice teachers shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. Novice teachers who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observations or other types of monitoring as outlined in the DPAS II Guide for Teachers.

4.0 DPAS II Guide for Teachers

4.1 All districts and charter schools shall use the manual entitled DPAS II Guide for Teachers as developed and as may be amended by the Department of Education in collaboration with DASA and DSEA to implement the appraisal system.

4.2 The manual shall contain, at a minimum, the following:

4.2.1 Specific details about each of the five (5) components listed in 5.1.

4.2.2 All forms or documents needed to complete the requirements of the appraisal process.

4.2.3 Specific procedures to implement the appraisal system.

5.0 Appraisal Criteria

5.1 The following five (5) components, including the four (4) Appraisal Criteria specified for each, shall be the basis upon which the performance of a teacher shall be evaluated by a credentialed evaluator:

5.1.1 Planning and Preparation

5.1.1.1 Selecting Instructional Goals: Teacher selects instructional goals that are aligned with the DE content standards and the district or charter school's curricula. Goals are appropriate for the learners and reflect high expectations for all students, consistent with State Assessment levels of performance where applicable.

5.1.1.2 Designing Coherent Instruction: Teacher plans for learning activities that align with the instructional goals and support student learning. Instructional planning shows a structure and selection of materials and activities that support student learning relative to the district or charter school's curricula.

5.1.1.3 Demonstrating Knowledge of Content and Pedagogy: Teacher shows his or her knowledge of content and how to teach it to a variety of learners. The teacher's plans include natural connections among content areas that deepen student learning. The content that he or she teaches is aligned to the district or charter school's curricula.

5.1.1.4 Demonstrating Knowledge of Students: Teacher shows his or her knowledge of student developmental characteristics; approaches to learning, knowledge, and skills; interests; cultural heritage; and, where applicable, State Assessment performance levels.

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5.1.2 Classroom Environment

5.1.2.1 Managing Classroom Procedures: Teacher has clearly defined procedures for managing learning time, transitions between learning events, and routines that maximize learning time.

5.1.2.2 Managing Student Behavior: Teacher establishes behavioral expectations and consequences and monitors student conduct. Teacher responds to student behavior in appropriate and effective ways to minimize disruptions.

5.1.2.3 Creating an Environment to Support Learning: Teacher creates an atmosphere in which learning is valued. Teacher-to-student and student-to-student interactions show rapport that is grounded in mutual respect.

5.1.2.4 Organizing Physical Space: Teacher organizes, allocates, and manages physical space to create a safe learning environment. Teacher uses physical resources to contribute to effective instruction and makes resources accessible to all students.

5.1.3 Instruction

5.1.3.1 Engaging Students in Learning: Content is appropriate, clear, and linked to student knowledge and experience. Content is aligned with the district or charter school's curricula. Activities and assignments engage all students. Instructional materials are suitable to the instructional goals. The instruction is coherent and paced appropriately for all students.

5.1.3.2 Demonstrating Flexibility and Responsiveness: Teacher has a repertoire of instructional strategies and makes use of them to make modifications to lessons as needed. Teacher differentiates instruction based on learner characteristics and achievement data.

5.1.3.3 Communicating Clearly and Accurately: Verbal and written communication is clear and appropriate to students' ages, backgrounds, and levels of understanding.

5.1.3.4 Using Questioning and Discussion Techniques: Questions are appropriate to the content and level of students' understanding. Teacher encourages students to pose their own questions and is responsive to student questions. Teacher facilitates student led discussions.

5.1.4 Professional Responsibilities

5.1.4.1 Communicating with Families: Teacher shares information about the school's educational program and expectations for student performance. Teacher develops a mechanism for two way communication with families about student progress, behavior, and personal needs or concerns.

5.1.4.2 Developing a Student Record System: Teacher keeps records of attendance, disciplinary actions, emergency contact information, and personal information. Teacher shares relevant information with appropriate school personnel.

5.1.4.3 Growing and Developing Professionally: Teacher chooses and participates in professional development that is aligned with his or her professional needs or aligned with the needs of the school, district or charter school, or students.

5.1.4.4 Reflecting on Professional Practice: Teacher engages in reflective thinking as an individual, as a team participant, or as a school community member with the goal of improving instruction and learning for all students.

5.1.5 Student Improvement

5.1.5.1 Showing Student Improvement: Teacher uses school goals from the school improvement process to set his or her annual data driven goal(s) for student improvement. Data shall include school accountability data, State Assessment data where available, or classroom based assessment data.

5.1.5.2 Aligning Assessments to Teacher Data Driven Goal(s): Teacher uses assessments and scoring criteria that accurately measure progress towards the student improvement goal(s).

5.1.5.3 Measuring Student Improvement: Teacher has specific, measurable evidence to show progress towards or attainment of goal(s) for student improvement.

5.1.5.4 Reflecting on Student Improvement: Teacher reflects on goal setting process and outcomes for the purpose of continuous professional improvement and shares student improvement information as appropriate.

6.0 Summative Evaluation Ratings

6.1 Each of the five (5) components pursuant to 5.0 shall be weighted equally and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.

6.1.1 A satisfactory rating for each component shall mean the teacher demonstrates acceptable

performance by meeting at least three (3) of the four (4) Appraisal Criteria specified in each of the five (5) components set forth in 5.1.

6.2 The Summative Evaluation shall also include one of three overall ratings: "Effective", "Needs Improvement", or "Ineffective".

6.2.1 "Effective" shall mean that the teacher has received Satisfactory Component ratings in at least four (4) of the five (5) components in accordance with the Appraisal Criteria in 5.0.

6.2.2 "Needs Improvement" shall mean that the teacher has received three (3) Satisfactory Component ratings out of the five (5) components in accordance with the Appraisal Criteria in 5.0.

6.2.3 "Ineffective" shall mean that the teacher has received two (2) or fewer Satisfactory Component ratings out of the five (5) components in accordance with the Appraisal Criteria in 5.0.

6.2.3.1 If the teacher's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the rating shall be re-categorized as "Ineffective".

7.0 Pattern of Ineffective Teaching Defined

A pattern of ineffective teaching shall be based on the most recent Summative Evaluation ratings of a teacher using the DPAS II process. Two consecutive ratings of "Ineffective" shall be deemed as a pattern of ineffective teaching. The following chart shows the consecutive Summative Evaluation ratings that shall be determined to be a pattern of ineffective teaching:

<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
<u>Ineffective</u>	<u>Ineffective</u>	
<u>Needs Improvement</u>	<u>Ineffective</u>	<u>Needs Improvement</u>
<u>Needs Improvement</u>	<u>Needs Improvement</u>	<u>Ineffective</u>
<u>Ineffective</u>	<u>Needs Improvement</u>	<u>Ineffective</u>
<u>Ineffective</u>	<u>Needs Improvement</u>	<u>Needs Improvement</u>
<u>Needs Improvement</u>	<u>Ineffective</u>	<u>Ineffective</u>

8.0 Improvement Plan

8.1 An Improvement Plan shall be developed for a teacher who receives an overall rating of "Needs Improvement" or "Ineffective" on the Summative Evaluation or a rating of Unsatisfactory on any component in 5.0 on the Summative Evaluation regardless of the overall rating.

8.1.1 An Improvement Plan shall also be developed if a teacher's overall performance during an observed lesson is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator on the Formative Feedback form by noting "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.

8.2 The Improvement Plan shall contain the following:

8.2.1 Identification of the specific deficiencies and recommended area(s) for growth;

8.2.2 Measurable goals for improving the deficiencies to satisfactory levels;

8.2.3 Specific professional development or activities to accomplish the goals;

8.2.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the teacher to work with curriculum specialist(s), subject area specialist(s), instructional specialist(s) or others with relevant expertise;

8.2.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;

8.2.6 Timeline for the plan, including intermediate check points to determine progress;

8.2.7 Procedures for determining satisfactory improvement.

8.3 The Improvement Plan shall be developed cooperatively by the teacher and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.

8.4 The teacher shall be held accountable for the implementation and completion of the Improvement Plan.

8.5 Upon completion of the Improvement Plan, the teacher and evaluator shall sign the documentation

that determines the satisfactory or unsatisfactory performance of the plan.

9.0 Challenge Process

9.1 A teacher may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or a teacher may challenge the conclusions of a lesson observation if the statement "PERFORMANCE IS UNSATISFACTORY" has been included on the Formative Feedback form. To initiate a challenge, a teacher shall submit additional information specific to the point of disagreement in writing within fifteen (15) working days of the date of the teacher's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator unless the supervisor of the evaluator is also in the same building as the teacher. In this situation, the challenge together with the record shall be forwarded to a designated district or charter school level credentialed evaluator.

9.1.1 Within fifteen (15) working days of receiving the written challenge, the supervisor of the evaluator or the designated district or charter school level credentialed evaluator shall review the record which consists of all documents used in the appraisal process and the written challenge, and issue a written decision.

9.1.2 If the challenge is denied, the written decision shall state the reasons for denial.

9.1.3 The decision of the supervisor of the evaluator or the designated district or charter school's level credentialed evaluator shall be final.

10.0 Evaluator Credentials

10.1 Evaluators shall have completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.

10.2 The training for the certificate of completion shall include techniques of observation and conferencing, content and relationships of frameworks for teaching, and a thorough review of the DPAS II Guide for Teachers. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.

10.3 The credentialing process shall be conducted by the Department of Education.

8 DE Reg. 431 (9/1/04)

9 DE Reg. 522 (10/1/05)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 107

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

107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II)

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin.** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) to reflect the status of DPAS II from a pilot to implementation and to reflect comments and suggestions from the evaluations conducted at the conclusion of the first (June 2006) and second year (June 2007) of the pilot. The evaluations were conducted by Progress Education Corporation. The rewritten regulation will reflect changes to the procedures, the forms and the student improvement section of the regulation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before September 5, 2007 to Susan Keene Haberstroh, Education Associate, Regulation Review and

Legislative Liaison, Department of Education, at 401 Federal Street, Suite 2, Dover, DE 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? This regulation addresses the appraisal system for specialists, and does not address student achievement against the state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? This regulation addresses the appraisal system for specialists and not does directly address whether all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation does not address student health or student safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation addresses the specialist appraisal system and not students' legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation preserves the authority and flexibility to the extent the appraisal system is carried out at the board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? This regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board or school levels.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making and accountability for the specialist appraisal system is maintained at the local board or charter school level.
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 provide an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? This regulation reflects information provided by an evaluation of the pilot, which has resulted in streamlining the process.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no additional costs to the local school boards or charter schools in complying with this regulation.

107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II)

~~4.0 The Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) shall be effective for only those districts participating in the pilot of this process~~

- ~~1.1 For specialists participating in the pilot, any rating received on a Summative Evaluation conducted during the pilot period shall not be included in the determination of a pattern of ineffective practice as defined in 7.0.~~
- ~~1.2 Specialist shall mean a licensed and certificated staff person who is part of the school team and delivers professional services to students, teachers, staff and families. Specialists include but are not limited to guidance counselors, instructional support specialists, library media specialists, school psychologists, school nurses, student support specialists, and therapeutic services specialists.~~

2.0 Definitions

~~“Announced Observation” shall consist of the Preobservation Form and conference with the evaluator, an observation by the evaluator at an agreed upon date and time, and the associated formative conferences and reports. The observation for the specialist may be a collection of data over a specified period of time, up to four (4) weeks, or it may be an observation of sufficient length to gather appropriate data but not less than twenty (20) minutes.~~

~~“Board” shall mean a local board of education or a charter school board of directors.~~

~~“Certified Evaluator” shall mean the individual, usually the supervisor of the specialist, who has successfully completed the evaluation training in accordance with 9.0.~~

~~“DPAS” shall mean the Delaware Performance Appraisal System in effect prior to DPAS II.~~

~~“Experienced Specialist” is a specialist who holds a valid and current Continuing or Advanced License, or Standard or Professional Status Certificate issued prior to August 1, 2003 or holds a valid and current license from their respective licensure body.~~

~~“Improvement Plan” shall be the plan that a specialist and evaluator mutually develop in accordance with section 8.0.~~

~~“Novice Specialist” is a specialist who holds a valid and current Initial License or holds a valid and current license from their respective licensure body and has less than three (3) years of experience as a specialist.~~

~~“Satisfactory Component Rating” shall mean the specialist understands the concepts of the component and the specialist’s performance in that component is acceptable.~~

~~“Satisfactory Evaluation” shall be used to qualify for a continuing license and shall be equivalent to the overall “Effective” or “Needs Improvement” rating on the Summative Evaluation.~~

~~“Summative Evaluation” shall be the rating process at the conclusion of the appraisal cycle.~~

~~“Technical Assistance Document” shall mean the manual that contains the prescribed forms, detailed procedures, evaluation criteria and other relevant documents that assist in the appraisal process.~~

~~“Unannounced Observation” shall consist of an observation by the evaluator at a date and time that has not been previously arranged and the associated formative conferences and reports. The unannounced observation for the specialist may be an observation of sufficient length to gather appropriate data but not less than twenty (20) minutes.~~

~~“Unsatisfactory Component Rating” shall mean that the specialist does not understand the concepts of the component and the specialist’s performance in that component is not acceptable.~~

~~“Unsatisfactory Evaluation” shall be the equivalent to the overall “Ineffective” rating on the Summative Evaluation.~~

3.0 Appraisal Cycles

~~3.1 Experienced specialists who have earned a rating of “Effective” on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at the end of the one year period. This minimum annual evaluation for an experienced specialist who has earned an effective rating may be waived for the subsequent year but not for two (2) consecutive years. Up to one half of the experienced specialists in a building who received a rating of “Effective” or “Exemplary” on the most recent DPAS Performance Appraisal Summative Evaluation may have the annual Summative Evaluation waived.~~

~~3.2 Experienced specialists who have earned a rating of “Needs Improvement” or “Ineffective” on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. These specialists shall have an Improvement Plan which may require additional observations and other types of monitoring as outlined in the Technical Assistance Document.~~

~~3.3 Novice specialists shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. Novice specialists who have earned a rating of “Needs Improvement” or “Ineffective” on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observations or other types of monitoring as outlined in the Technical Assistance Document.~~

4.0 Technical Assistance Document

~~4.1 All districts and charter schools shall use the document entitled *Delaware Performance Appraisal System (DPAS) II Technical Assistance Document* as developed by the Department of Education to assist in the implementation of the appraisal system. The Technical Assistance Document shall be reviewed biannually by the State Board of Education. Any recommendations for change shall be submitted to the Department of Education for consideration.~~

~~4.2 The Document shall contain, at a minimum, the following:~~

~~4.2.1 Specific details about each of the five (5) components listed in 5.1.~~

~~4.2.2 All forms or documents needed to complete the requirements of the appraisal process including Announced Observation, Unannounced Observation, Summative Evaluation, Improvement Plan and Challenge Form.~~

~~4.2.3 Specific procedures for observations, conferences, ratings, Summative Evaluation, Improvement Plan(s), and Challenges.~~

5.0 Appraisal Criteria

5.1 The following five (5) components shall be the basis upon which the performance of a specialist shall be evaluated by a certified evaluator:

5.1.1 Planning and Preparation

5.1.1.1 ~~Designing Coherent Programs or Services: Specialist designs activities and plans for services that support the needs of the students, clients, schools or districts.~~

5.1.1.2 ~~Demonstrating Knowledge of Best Practice and Models of Delivery: Specialist uses practices and models of delivery that are aligned with local and national standards.~~

5.1.1.3 ~~Demonstrating Knowledge of Students or Clients: Specialist shows knowledge of the needs and characteristics of the students or clients, including their approaches to learning, knowledge, skills, and interests.~~

5.1.1.4 ~~Demonstrating Knowledge of Resources: Specialist selects appropriate resources, either within or outside of the school, that supports the goals of the program.~~

5.1.2 Professional Practice and Delivery of Services

5.1.2.1 ~~Creating an Environment to Support Student or Client Needs: Specialist creates an environment in which student/client needs are identified and valued. Specialist and student or client interactions show rapport that is grounded in mutual respect.~~

5.1.2.2 ~~Demonstrating Flexibility and Responsiveness: Specialist has a repertoire of instructional or professional strategies and makes modifications to services based on needs of the students or clients.~~

5.1.2.3 ~~Communicating Clearly and Accurately: Verbal and written communication is clear and appropriate to students' or clients' age, background, needs, or level of understanding.~~

5.1.2.4 ~~Delivering Services to Students or Clients: Specialist is responsive to the identified needs of the students or clients and meets standards of professional practice. The resources and materials are suitable and match the needs of the students or clients. The delivery of service is coherent.~~

5.1.3 Professional Collaboration and Consultation

5.1.3.1 ~~Collaborating with Others: Specialist develops partnerships with school staff or external agencies to provide integrated services that meet student or client needs.~~

5.1.3.2 ~~Serving as a Consultant to the School Community: Specialist shares expertise with school staff to assist them in their work or to respond to school-wide issues, problems, or concerns.~~

5.1.3.3 ~~Providing Resources and Access: Specialist provides school-based resources to appropriate staff, students, clients or gives information about the effective use of the resources.~~

5.1.3.4 ~~Maintaining Standards of Professional Practice: Specialist adheres to his/her professional standards of practice, including issues surrounding confidentiality.~~

5.1.4 Professional Responsibilities

5.1.4.1 ~~Communicating with Families and School Staff: Specialist shares information in a variety of ways about school programs available to students and families. Specialist develops two way communication with school staff and families about student progress, behavior, personal needs, or concerns.~~

5.1.4.2 ~~Developing a Record System: Specialist keeps student or client records relevant to their services and shares information with appropriate school personnel.~~

5.1.4.3 ~~Growing and Developing Professionally: Specialist participates in professional development to increase his/her knowledge of professional practice and delivery of service. Specialist chooses professional development that is aligned with the needs of the school, district, students or clients.~~

5.1.4.4 ~~Reflecting on Professional Practice: Specialist engages in reflective thinking as an individual, as a team participant, or as a school and community member with the goal of improving professional practice and delivery of service.~~

5.1.5 Student Improvement

5.1.5.1 ~~Showing Improvement on the DSTP: Specialist uses DSTP data analysis to inform school improvement and program decisions and participates in school improvement work.~~

5.1.5.2 ~~Using Assessments to Promote Student or Client Improvement: Specialist creates or uses dependable assessments that accurately measure student or client needs, status, or performance and uses the assessment results to design services or programs to promote improvement.~~

5.2 Each of the five (5) components shall be weighted equally and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.

PROPOSED REGULATIONS

5.2.1 Planning and Preparation

5.2.1.1 A satisfactory rating for this component shall mean the specialist demonstrates acceptable performance by meeting at least 3 of the following 4 criteria:

5.2.1.1.1 Consistently designs activities and plans for service that support the needs of the students or clients, schools and districts.

5.2.1.1.2 Effectively uses practices and models of delivery that are aligned with local and national standards.

5.2.1.1.3 Shows a deep knowledge of the needs and characteristics of the students or clients and their approaches to learning, knowledge, skills, and interests.

5.2.1.1.4 Selects appropriate resources, either within or outside of the school, that support the goals of the program.

5.2.2 Professional Practice and Delivery of Services

5.2.2.1 A satisfactory rating for this component shall mean the specialist demonstrates acceptable performance by meeting at least 5 of the following 7 criteria:

5.2.2.1.1 Creates an environment in which student or client needs are identified and valued.

5.2.2.1.2 Interacts with students or clients in ways that show rapport and that is grounded in mutual respect.

5.2.2.1.3 Has an extensive repertoire of instructional or professional strategies and makes effective modifications to services based on needs of the students or clients.

5.2.2.1.4 Communicates clearly and appropriately with regard to students' or clients' age, background, needs, or level of understanding.

5.2.2.1.5 Provides services that are responsive to the identified needs of the students or clients and meets standards of professional practice.

5.2.2.1.6 Selects resources and materials that are suitable and match the needs of the students or clients.

5.2.2.1.7 Delivers coherent services.

5.2.3 Professional Collaboration and Consultation

5.2.3.1 A satisfactory rating for this component shall mean the specialist demonstrates acceptable performance by meeting at least 4 of the following 5 criteria:

5.2.3.1.1 Develops partnerships with school staff or external agencies to provide integrated services that meet student or client needs.

5.2.3.1.2 Shares expertise with school staff to assist them in their work or responds to school-wide issues, problems, or concerns.

5.2.3.1.3 Provides school-based resources to appropriate staff/students/clients or gives appropriate information about the effective use of the resources.

5.2.3.1.4 Assists staff, students or clients in gaining access to resources outside of the school community that will meet identified needs.

5.2.3.1.5 Adheres to professional standards of practice, including issues surrounding confidentiality.

5.2.4 Professional Responsibilities

5.2.4.1 A satisfactory rating for this component shall mean the specialist demonstrates acceptable performance by meeting at least 5 of the following 7 criteria:

5.2.4.1.1 Shares information in a variety of ways about school programs available to students and families.

5.2.4.1.2 Develops two-way communication with school staff and families about student progress, behavior, personal needs, or concerns.

5.2.4.1.3 Keeps accurate and up-to-date student or client records relevant to provided services.

5.2.4.1.4 Shares information with appropriate school personnel.

5.2.4.1.5 Participates in professional development to increase knowledge of professional practice and delivery of service.

5.2.4.1.6 Chooses professional development that is aligned with the needs of the school, district, students or clients.

~~5.2.4.1.7 Engages in reflective thinking as an individual, as a team participant, or as a school or community member with the goal of improving professional practice and delivery of service.~~

~~5.2.5 Student Improvement~~

~~5.2.5.1 A satisfactory rating shall mean the specialist demonstrates acceptable performance in this component by meeting two (2) out of three (3) of the criteria set forth below:~~

~~5.2.5.1.1 The specialist can demonstrate specific contributions to students and staff which contribute to improvement in the school or district's State Progress Determination.~~

~~5.2.5.1.2 The average scale score for the aggregate group of students served by the specialist for the previous two (2) years on the DSTP in reading and math have increased, excluding those students pursuant to 14 Del.C. §1270(c).~~

~~5.2.5.1.3 The average scale score for the groups of students disaggregated by race and ethnicity, LEP, Special education and low income have increased for the previous two (2) years on the DSTP in reading and math, provided that there were a minimum of ten (10) students in a subgroup, excluding those students pursuant to 14 Del.C. §1270(c). If there were fewer than ten (10) students in a subgroup, the subgroup shall not be considered for these criteria.~~

6.0 Summative Evaluation Ratings

~~6.1 The Summative Evaluation shall include ratings of Satisfactory or Unsatisfactory on each of the five (5) components pursuant to 5.0.~~

~~6.2 The Summative Evaluation shall also include one of three overall ratings: "Effective", "Needs Improvement" or "Ineffective".~~

~~6.2.1 Effective shall mean that the specialist has received Satisfactory Component ratings in at least four (4) out of five (5) components of the appraisal criteria.~~

~~6.2.2 Needs Improvement shall mean that the specialist has received at least three (3) Satisfactory Component ratings out of the five (5) components of the appraisal criteria.~~

~~6.2.2.1 A specialist who has received an unsatisfactory rating on the student improvement component may have their next Summative Evaluation delayed until the Delaware Student Testing Program (DSTP) data is available for the current group of students being served by the specialist.~~

~~6.2.3 Ineffective shall mean that the specialist has received three (3) or more Unsatisfactory Component ratings out of the five (5) components of the appraisal criteria.~~

~~6.2.3.1 A specialist who has received an unsatisfactory rating on the student improvement component may have their next Summative Evaluation delayed until the Delaware Student Testing Program (DSTP) data is available for the current group of students being served by the specialist.~~

~~6.2.3.2 If a specialist's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the rating shall be re-categorized as Ineffective.~~

9-DE-Reg-528 (10/1/05)

7.0 Pattern of Ineffective Practice Defined

A pattern of ineffective practice shall be based on the most recent appraisal ratings of a specialist using the DPAS II process. Two consecutive ratings of Ineffective shall be deemed as a pattern of ineffective practice. The following appraisal ratings shall be determined to be a pattern of ineffective practice:

Ineffective	Ineffective	
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Needs Improvement	Ineffective	Ineffective

8.0 Improvement Plan

8.1 An Improvement Plan shall be developed for a specialist who receives an overall rating of Needs Improvement or Ineffective on the Summative Evaluation or a rating of Unsatisfactory (Unsatisfactory Component Rating) on any component on the Summative Evaluation regardless of the overall rating.

PROPOSED REGULATIONS

~~8.1.1 An Improvement Plan shall also be developed if a specialist's performance during an observation is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator on the Formative Feedback form by typing "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.~~

~~8.2 The Improvement Plan shall contain the following:~~

~~8.2.1 Identification of the specific deficiencies and recommended area(s) for growth;~~

~~8.2.2 Measurable goals for improving the deficiencies to satisfactory levels;~~

~~8.2.3 Specific professional development or activities to accomplish the goals;~~

~~8.2.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the specialist to work with curriculum specialist(s), subject area specialist(s), instructional specialist(s) or others with relevant expertise;~~

~~8.2.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;~~

~~8.2.6 Timeline for the plan, including intermediate check points to determine progress;~~

~~8.2.7 Procedures for determining satisfactory improvement.~~

~~8.3 The Improvement Plan shall be developed cooperatively by the specialist and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.~~

~~8.4 The specialist shall be held accountable for the implementation and completion of the Improvement Plan.~~

~~8.5 Upon completion of the Improvement Plan, the specialist and evaluator shall sign the documentation that determines the satisfactory or unsatisfactory completion of the plan.~~

9.0 Evaluator Credentials

~~9.1 Evaluators shall have completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.~~

~~9.2 The training for the certificate of completion shall include techniques for observation and conferencing, content and relationships of frameworks for practice and a thorough review of the Technical Assistance Document. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.~~

~~9.3 The credentialing process shall be conducted by the Department of Education.~~

10.0 Challenge Process

~~10.1 A specialist may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or a specialist may challenge the conclusions of an observation if the statement "PERFORMANCE IS UNSATISFACTORY" has been included on the Formative Feedback form by submitting additional information specific to the point of disagreement in writing within ten (10) working days of the date of the specialist's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator.~~

~~10.1.1 Within ten (10) working days of receiving the written challenge, the supervisor of the evaluator shall review the record which consists of the Preobservation Form(s) the Formative Feedback Form(s), the Summative Evaluation and the written challenge, and issue a written decision.~~

~~10.1.2 If the challenge is denied, the decision shall state the reasons for denial.~~

~~10.1.3 The decision of the supervisor of the evaluator shall be final.~~

~~**8-DE-Reg-431 (9/1/04)**~~

~~**9-DE-Reg-528 (10/1/05)**~~

1.0 The Specialist Appraisal Process, Delaware Performance Appraisal System (DPAS II), shall be effective for the following school districts and charter schools beginning with the 2007-08 school year:

Appoquinimink

Caesar Rodney

Colonial

Lake Forest

Laurel
Smyrna
Sussex Technical
MOT Charter
Providence Creek Academy Charter
Sussex Academy of the Arts and Sciences

The Specialist Appraisal Process, Delaware Performance Appraisal System (DPAS II), shall be effective for all public school districts and charter schools beginning with the 2008-2009 school year.

1.1 Specialist shall mean a staff person who delivers professional services to students, teachers, staff or families, licensed or certified by the Department of Education or a professional board regulated by the Division of Professional Regulation. Specialists include, but are not limited to, guidance counselors, instructional support specialists, library media specialists, school psychologists, speech pathologists, school nurses, student support specialists, and therapeutic services specialists.

2.0 Definitions

“Announced Observation” shall consist of the Pre-observation Form and conference with the evaluator, an observation by the evaluator at an agreed upon date and time, using the associated formative conferences and reports. The observation for the specialist may be a collection of data over a specified period of time, up to four (4) weeks, or it may be an observation of sufficient length, at least thirty (30) minutes, to gather appropriate data and assess specialist performance.

“Board” shall mean a local board of education or a charter school board of directors.

“Credentialed Evaluator” shall mean the individual, usually the supervisor of the specialist, who has successfully completed the evaluation training in accordance with 10.0. The Credentialed Evaluator may also be referred to as “Evaluator”.

“DASA” shall mean the Delaware Association of School Administrators.

“DPAS II Guide for Specialists” shall mean the manual that contains the prescribed forms, detailed procedures, specific details about the five (5) components of evaluation and other relevant documents that are used to implement the appraisal system.

“DSEA” shall mean the Delaware State Education Association.

“Experienced Specialist” shall mean a specialist who holds a valid and current Continuing or Advanced License, or Standard or Professional Status Certificate issued prior to August 1, 2003 or holds a valid and current license from his or her respective licensure body.

“Improvement Plan” shall be the plan that a specialist and evaluator mutually develop in accordance with

8.0.

“Novice Specialist” shall mean a specialist who holds a valid and current Initial License or holds a valid and current license from his or her respective licensure body.

“Satisfactory Component Rating” shall mean the specialist’s performance reflects the ability to demonstrate an understanding of the concepts of the component.

“Satisfactory Evaluation” shall be equivalent to the overall “Effective” or “Needs Improvement” rating on the Summative Evaluation and shall be used to qualify for a continuing license.

“State Assessment” shall mean the Delaware Student Testing Program (DSTP) or its successor.

“Summative Evaluation” shall be the rating process at the conclusion of the appraisal cycle.

“Unannounced Observation” shall consist of an observation by the evaluator at a date and time that has not been previously arranged using the associated formative conferences and reports. The observation shall be of sufficient length, at least thirty (30) minutes, to gather appropriate data and assess specialist performance.

“Unsatisfactory Component Rating” shall mean the specialist’s performance does not reflect the ability to demonstrate an understanding of the concepts of the component.

“Unsatisfactory Evaluation” shall be the equivalent to the overall “Ineffective” rating on the Summative Evaluation.

“Working Day” shall mean a day when the employee would normally be working in that district or charter school.

3.0 Appraisal Cycles

3.1 Experienced specialists who have earned a rating of “Effective” on his or her most recent

Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at least once every two (2) years.

3.2 Experienced specialists who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. These specialists shall have an Improvement Plan which may require additional observations and other types of monitoring as outlined in the DPAS II Guide for Specialists.

3.3 Novice specialists shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. Novice specialists who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observations or other types of monitoring as outlined in the DPAS II Guide for Specialists.

4.0 DPAS II Guide for Specialists

4.1 All districts and charter schools shall use the manual entitled DPAS II Guide for Specialists as developed and as may be amended by the Department of Education in collaboration with DASA and DSEA to implement the appraisal system.

4.2 The manual shall contain, at a minimum, the following:

4.2.1 Specific details about each of the five (5) components listed in 5.1.

4.2.2 All forms or documents needed to complete the requirements of the appraisal process.

4.2.3 Specific procedures to implement the appraisal system.

5.0 Appraisal Criteria

5.1 The following five (5) components, including the four (4) Appraisal Criteria specified for each, shall be the basis upon which the performance of a specialist shall be evaluated by a credentialed evaluator:

5.1.1 Planning and Preparation

5.1.1.1 Designing Coherent Programs or Services: Specialist designs activities and plans for services that support the needs of the students or clients served.

5.1.1.2 Demonstrating Knowledge of Best Practice and Models of Delivery: Specialist uses practices and models of delivery that are aligned with local and national standards.

5.1.1.3 Demonstrating Knowledge of Students or Clients: Specialist shows knowledge of the needs and characteristics of the students or clients, including their approaches to learning, knowledge, skills, and interests.

5.1.1.4 Demonstrating Knowledge of Resources: Specialist selects appropriate resources, either within or outside of the school, that support the needs of students or clients.

5.1.2 Professional Practice and Delivery of Services

5.1.2.1 Creating an Environment to Support Student or Client Needs: Specialist creates an environment in which student or client needs are identified and valued. Specialist and student or client interactions show rapport that is grounded in mutual respect.

5.1.2.2 Demonstrating Flexibility and Responsiveness: Specialist has a repertoire of instructional or professional strategies and makes modifications to services based on needs of the students or clients.

5.1.2.3 Communicating Clearly and Accurately: Verbal and written communication is clear and appropriate to students' or clients' ages, backgrounds, needs, or levels of understanding.

5.1.2.4 Delivering Services to Students or Clients: Specialist is responsive to the identified needs of the students or clients and meets standards of professional practice. The resources and materials are suitable and match the needs of the students or clients. The delivery of service is coherent.

5.1.3 Professional Collaboration and Consultation

5.1.3.1 Collaborating with Others: Specialist develops partnerships with school or district staff or external agencies to provide integrated services that meet student or client needs.

5.1.3.2 Serving as a Consultant to the School Community: Specialist shares expertise with school staff to assist them in their work or to respond to school wide issues, problems, or concerns.

5.1.3.3 Providing Resources and Access: Specialist provides school, district or external based resources to appropriate staff, students, or clients or gives information about the effective use of the

resources.

5.1.3.4 Maintaining Standards of Professional Practice: Specialist adheres to his or her professional standards of practice, including issues surrounding confidentiality.

5.1.4 Professional Responsibilities

5.1.4.1 Communicating with Families: Specialist shares information about district or school educational programs and expectations for student or client performance. Specialist develops a mechanism for two way communication with families about student or client progress, behavior, personal needs, or concerns.

5.1.4.2 Developing a Record System: Specialist keeps student or client records relevant to their services and shares information with appropriate school personnel.

5.1.4.3 Growing and Developing Professionally: Specialist chooses and participates in professional development that is aligned with his or her professional needs or aligned with the needs of the school, district or students.

5.1.4.4 Reflecting on Professional Practice: Specialist engages in reflective thinking as an individual, as a team participant, or as a school and community member with the goal of improving professional practice and delivery of service.

5.1.5 Student Improvement

5.1.5.1 Showing Student Improvement: Specialist uses school or district goals from the school or district improvement process to set his or her annual data driven goal(s) for student improvement. Data shall include school or district accountability data, State Assessment data where available, or other assessment data.

5.1.5.2 Using Assessments to Promote Student or Client Improvement: Specialist uses assessments related to his or her field of expertise that accurately measure progress towards the student improvement goal(s).

5.1.5.3 Measuring Student Improvement: Specialist has specific, measurable evidence to show progress towards or attainment of goal(s) for student improvement.

5.1.5.4 Reflecting on Student Improvement: Specialist reflects on goal setting process and outcomes for the purpose of continuous professional improvement and shares student improvement information as appropriate.

6.0 Summative Evaluation Ratings

6.1 Each of the five (5) components pursuant to 5.0 shall be weighted equally and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.

6.1.1 A satisfactory rating for each component shall mean the specialist demonstrates acceptable performance by meeting at least three (3) of the four (4) Appraisal Criteria specified in each of the five (5) components set forth in 5.1.

6.2 The Summative Evaluation shall also include one of three overall ratings: "Effective", "Needs Improvement" or "Ineffective".

6.2.1 "Effective" shall mean that the specialist has received Satisfactory Component ratings in at least four (4) out of five (5) components in accordance with the Appraisal Criteria in 5.0.

6.2.2 "Needs Improvement" shall mean that the specialist has received three (3) Satisfactory Component ratings out of the five (5) components in accordance with the Appraisal Criteria in 5.0.

6.2.3 "Ineffective" shall mean that the specialist has received two (2) or fewer Satisfactory Component ratings out of the five (5) components in accordance with the Appraisal Criteria in 5.0.

6.2.3.1 If a specialist's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the rating shall be re-categorized as "Ineffective".

7.0 Pattern of Ineffective Practice Defined

A pattern of ineffective practice shall be based on the most recent Summative Evaluation ratings of a specialist using the DPAS II process. Two consecutive ratings of "Ineffective" shall be deemed as a pattern of ineffective practice. The following chart shows the consecutive Summative Evaluation ratings that shall be determined to be a pattern of ineffective practice:

PROPOSED REGULATIONS

<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
<u>Ineffective</u>	<u>Ineffective</u>	
<u>Needs Improvement</u>	<u>Ineffective</u>	<u>Needs Improvement</u>
<u>Needs Improvement</u>	<u>Needs Improvement</u>	<u>Ineffective</u>
<u>Ineffective</u>	<u>Needs Improvement</u>	<u>Ineffective</u>
<u>Ineffective</u>	<u>Needs Improvement</u>	<u>Needs Improvement</u>
<u>Needs Improvement</u>	<u>Ineffective</u>	<u>Ineffective</u>

8.0 Improvement Plan

8.1 An Improvement Plan shall be developed for a specialist who receives an overall rating of "Needs Improvement" or "Ineffective" on the Summative Evaluation or a rating of Unsatisfactory on any component in 5.0 on the Summative Evaluation regardless of the overall rating.

8.1.1 An Improvement Plan shall also be developed if a specialist's overall performance during an observation is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator on the Formative Feedback form by noting "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.

8.2 The Improvement Plan shall contain the following:

8.2.1 Identification of the specific deficiencies and recommended area(s) for growth;

8.2.2 Measurable goals for improving the deficiencies to satisfactory levels;

8.2.3 Specific professional development or activities to accomplish the goals;

8.2.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the specialist to work with curriculum specialist(s), subject area specialist(s), instructional specialist(s) or others with relevant expertise;

8.2.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;

8.2.6 Timeline for the plan, including intermediate check points to determine progress;

8.2.7 Procedures for determining satisfactory improvement.

8.3 The Improvement Plan shall be developed cooperatively by the specialist and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.

8.4 The specialist shall be held accountable for the implementation and completion of the Improvement Plan.

8.5 Upon completion of the Improvement Plan, the specialist and evaluator shall sign the documentation that determines the satisfactory or unsatisfactory performance of the plan.

9.0 Challenge Process

9.1 A specialist may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or a specialist may challenge the conclusions of an observation if the statement "PERFORMANCE IS UNSATISFACTORY" has been included on the Formative Feedback form. To initiate a challenge, a specialist shall submit additional information specific to the point of disagreement in writing within fifteen (15) working days of the date of the specialist's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator unless the supervisor of the evaluator is also in the same building as the specialist. In this situation, the challenge together with the record shall be forwarded to a designated district or charter school level credentialed evaluator.

9.1.1 Within fifteen (15) working days of receiving the written challenge, the supervisor of the evaluator or the designated district or charter school level credentialed evaluator shall review the record which consists of all documents used in the appraisal process and the written challenge, and issue a written decision.

9.1.2 If the challenge is denied, the decision shall state the reasons for denial.

9.1.3 The decision of the supervisor of the evaluator or the designated district or charter school level credentialed evaluator shall be final.

10.0 **Evaluator Credentials**

10.1 Evaluators shall have completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.

10.2 The training for the certificate of completion shall include techniques for observation and conferencing, content and relationships of frameworks for practice and a thorough review of the *DPAS II Guide for Specialists*. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.

10.3 The credentialing process shall be conducted by the Department of Education.

8 DE Reg. 431 (9/1/04)

9 DE Reg. 528 (10/1/05)

OFFICE OF THE SECRETARY

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

14 DE Admin. Code 108

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

108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II)

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) to reflect the status of DPAS II from a pilot to implementation and to reflect comments and suggestions from the evaluations conducted at the conclusion of the first (June 2006) and second year (June 2007) of the pilot. The evaluations were conducted by Progress Education Corporation. The rewritten regulation will reflect changes to the procedures, the forms and the student improvement section of the regulation.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before September 5, 2007 to Susan Keene Haberstroh, Education Associate, Regulation Review and Legislative Liaison, Department of Education, at 401 Federal Street, Suite 2, Dover, DE 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? This regulation addresses the appraisal system for administrators, and does not address student achievement against the state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? This regulation addresses the appraisal system for administrators and not does directly address whether all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation does not address student health or student safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation addresses the administrator appraisal system and not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation preserves the authority and flexibility to the extent the appraisal system is carried out at the board and school level.

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

reporting or administrative requirements or mandates upon decision makers at the local board or school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making and accountability for the administrator appraisal system is maintained at the local board or charter school level.

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 provide an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? This regulation reflects information provided by an evaluation of the pilot, which has resulted in streamlining the process.

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

108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II)

~~1.0 The Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) shall be effective for only those districts participating in the pilot of this process~~

~~1.1 For administrators participating in the pilot, any rating received on a Summative Evaluation conducted during the pilot period shall not be included in the determination of a pattern of ineffective administration as defined in 7.0.~~

~~1.2 For purposes of this regulation, an administrator is a professional employee of a board in a supervisory capacity involving the oversight of an instructional program(s).~~

2.0 Definitions

~~“Board” shall mean the local board of education or charter school board of directors.~~

~~“Certified Evaluator” shall mean the individual, usually the supervisor of the administrator, who has successfully completed the evaluation training in accordance with 9.0. A superintendent shall be evaluated by member(s) of the local school board of education who shall also have successfully completed the evaluation training in accordance with 9.0.~~

~~“DPAS” shall mean the Delaware Performance Appraisal System in effect prior to DPAS II.~~

~~“Experienced Administrator” shall mean an administrator who has three (3) or more years of service as an administrator.~~

~~“Formative Process” shall consist of the Goal Setting Conference, self evaluation, a survey of staff that are supervised by the administrator, and formative conferences/reports.~~

~~“Improvement Plan” shall be the plan that an administrator and evaluator mutually develop in accordance with section 8.0.~~

~~“Inexperienced Administrator” shall mean an administrator who has less than three (3) years of service as an administrator.~~

~~“Satisfactory Component Rating” shall mean the administrator understands the concepts of the component and the administrator’s performance in that component is acceptable.~~

~~“Satisfactory Evaluation” shall be used for to qualify for a continuing license and shall be equivalent to the overall “Effective” or “Needs Improvement” rating on the Summative Evaluation.~~

~~“Summative Evaluation” shall be the rating component at the conclusion of the appraisal cycle.~~

~~“Technical Assistance Document” shall mean the manual that contains the prescribed forms, detailed procedures, evaluation criteria and other relevant documents that assist in the appraisal process.~~

~~“Unsatisfactory Component Rating” shall mean the administrator does not understand the concepts of the component and the administrator’s performance in that component is not acceptable.~~

~~“Unsatisfactory Evaluation” shall be the equivalent to the overall “Ineffective” rating on the Summative Evaluation.~~

3.0 Appraisal Cycles

~~3.1 Experienced administrators who have earned a rating of “Effective” on their most recent Summative Evaluation shall go through a minimum of one (1) Formative Process each year with a Summative Evaluation at the end of the one year period. This minimum annual evaluation may be waived for the subsequent~~

year but not for two (2) consecutive years. Up to one half of the experienced administrators in a building who received a rating of "Effective" or "Exemplary" on the most recent Summative Evaluation may have the annual Summative Evaluation waived.

3.2 Experienced administrators who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall go through a minimum of two (2) Formative Process(es) with a Summative Evaluation at the end of the one year period. These administrators shall have an Improvement Plan which may require an administrator to go through additional Formative Process(es) or other types of monitoring as outlined in the Technical Assistance Document.

3.3 Inexperienced administrators shall go through a minimum of two (2) Formative Process(es) with a Summative Evaluation at the end of the one year period. Inexperienced administrators who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall have an Improvement Plan which may require an administrator go through additional Formative Process(es) or other types of monitoring as outlined in the Technical Assistance Document.

4.0 Technical Assistance Document

4.1 All districts and charter schools shall use the document entitled *Delaware Performance Appraisal System (DPAS) II Technical Assistance Document* as developed by the Department of Education to assist in the implementation of the appraisal system. The Technical Assistance Document shall be reviewed biannually by the State Board of Education. Any recommendations for change shall be submitted to the Department of Education for consideration.

4.1.1 The Document shall contain at a minimum the following:

4.1.1.1 Specific details about each of the four (4) components pursuant to 5.0.

4.1.1.2 All forms or documents needed to complete the requirements of the appraisal process including the Formative Process, Summative Evaluation, Improvement Plan and Challenge Form.

4.1.1.3 Specific procedures for the Formative Process, conferences, ratings, Summative Evaluation, Improvement Plan(s), and Challenges.

5.0 Appraisal Criteria

5.1 The following four (4) components shall be the basis upon which the performance of an administrator shall be evaluated by a certified evaluator(s):

5.1.1 Assessment of Leader Standards: This relates to the Delaware Standards for School Leaders as defined in 14 ~~DE Admin Code~~ 1594.

5.1.2 Assessment of Goals and Priorities: Professional goals that have been established based on a variety of data sources related to the need of the school or district administrator and his/her job responsibilities.

5.1.3 Assessment on the School or District Improvement Plan: The various goals and objectives in the school or district improvement plan(s) and the contributions of the administrator in achieving those goals.

5.1.4 Assessment on Measures of Student Improvement:

5.1.4.1 Student improvement on the DSTP as determined by school or district accountability ratings, and student performance on the DSTP as reported in DSTP-OR.

5.1.4.2 Student learning on district adopted norm and criterion referenced assessments. Assessments selected by districts to measure quality and equity of student learning across all content areas.

5.1.4.3 Other measures of student performance that are used by teachers in the school are standards based and DSTP like.

5.2 Each of the four (4) components shall be equally weighted and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.

5.2.1 Assessment of Leader Standards:

5.2.1.1 A satisfactory rating for this component shall mean the aggregated assessment on the Delaware Performance Appraisal System surveys from those individuals who the administrator supervises, the administrator himself/herself, and the supervisor reveal a pattern of proficient or accomplished skills on the Delaware Standards for School Leaders.

5.2.2 Assessment of Goals and Priorities:

- 5.2.2.1 There is adequate progress on the administrator's professional goals.
- 5.2.3 Assessment on the School or District Improvement Plan:
 - 5.2.3.1 There is growth in the goals and objectives in the school or district improvement plan.
- 5.2.4 Assessment on Measures of Student Improvement:
 - 5.2.4.1 A satisfactory rating for this component shall mean the administrator demonstrates acceptable performance by meeting 5.2.4.1.1 and 5.2.4.1.2 and by meeting at least 4 of the additional 5 criteria set forth below.
 - 5.2.4.1.1 DSTP results show student performance has improved.
 - 5.2.4.1.2 Based on the formula for obtaining the school accountability rating, there are consistent indicators of improvement in school accountability.
 - 5.2.4.1.3 Makes progress on targets for student improvement on the DSTP.
 - 5.2.4.1.4 There is improvement on goals established for the equitable distribution of learning outcomes based on race, gender, socio-economic status, special education status and language proficiency.
 - 5.2.4.1.5 There is consistent evidence of improvement on district adopted norm and criterion referenced assessments.
 - 5.2.4.1.6 There is improvement in the percent of students who are meeting the targets for school or district accountability.
 - 5.2.4.1.7 There is improvement on student attendance or graduation rates.

6.0 Summative Evaluation Ratings

- 6.1 The Summative Evaluation shall include ratings of Satisfactory or Unsatisfactory on each of the four (4) components pursuant to 5.0.
- 6.2 The Summative Evaluation shall also include one of three overall ratings: "Effective", "Needs Improvement" or "Ineffective".
 - 6.2.1 Effective shall mean that the administrator has received Satisfactory Component ratings in all four (4) components of the appraisal criteria.
 - 6.2.2 Needs Improvement shall mean that the administrator has received one (1) Unsatisfactory Component rating out of the four (4) components of the appraisal criteria.
 - 6.2.2.1 An administrator who has received an unsatisfactory rating on the student improvement component may have their next Summative Evaluation delayed until the Delaware Student Testing Program (DSTP) data is available.
 - 6.2.3 Ineffective shall mean that the administrator has received two (2) or more Unsatisfactory Component ratings out of the four (4) components of the appraisal criteria.
 - 6.2.3.1 An administrator who has received an unsatisfactory rating on the student improvement component may have their next Summative Evaluation delayed until the Delaware Student Testing Program (DSTP) data is available.
 - 6.2.3.2 If an administrator's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the rating shall be re-categorized as Ineffective.

7.0 A Pattern of Ineffective Administrative Performance

A Pattern of Ineffective Administrative Performance shall be based on the most recent appraisal ratings of an administrator using the DPAS II process. Two consecutive ratings of Ineffective shall be deemed as a pattern of ineffective administration. The following appraisal ratings shall be determined to be a pattern of ineffective administration:

Ineffective	Ineffective	
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Ineffective	Needs Improvement	Ineffective
Needs Improvement	Ineffective	Ineffective

8-0 Improvement Plan

~~8.1 An Improvement Plan shall be developed for an administrator who receives an overall rating of Needs Improvement or Ineffective on the Summative Evaluation or a rating of Unsatisfactory (Unsatisfactory Component Rating) on any component on the Summative Evaluation regardless of the overall rating.~~

~~8.1.1 An Improvement Plan shall also be developed if an administrator's performance during the Formative Process is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator(s) on the Formative Feedback form by typing "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.~~

~~8.2 The Improvement Plan shall contain the following:~~

~~8.2.1 Identification of the specific deficiencies and recommended area(s) for growth;~~

~~8.2.2 Measurable goals for improving the deficiencies to satisfactory levels;~~

~~8.2.3 Specific professional development or activities to accomplish the goals;~~

~~8.2.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the administrator to work with curriculum specialist(s) or other administrator(s) with relevant experience;~~

~~8.2.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;~~

~~8.2.6 Timeline for the plan, including intermediate check points to determine progress;~~

~~8.2.7 Procedures for determining satisfactory improvement.~~

~~8.3 The Improvement Plan shall be developed cooperatively by the administrator and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.~~

~~8.4 The administrator shall be held accountable for the implementation and completion of the Improvement Plan.~~

~~8.5 Upon completion of the Improvement Plan, the administrator and evaluator(s) shall sign the documentation that determines the satisfactory or unsatisfactory completion of the plan.~~

9-0 Evaluator(s) Credentials

~~9.1 Evaluators shall have completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.~~

~~9.2 The training for the certificate of completion shall include techniques for observation and conferencing, content and relationships of ISLLC standards, and a thorough review of the Technical Assistance Document. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.~~

~~9.3 The credentialing process shall be conducted by the Department of Education.~~

10-0 Challenge Process

~~10.1 An administrator may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or an administrator may challenge the conclusions of the Formative Process if the statement "PERFORMANCE IS UNSATISFACTORY" has been included on the Formative Feedback form by submitting additional information specific to the point of disagreement in writing within ten (10) working days of the date of administrator's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator.~~

~~10.1.1 Within ten (10) working days of receiving the written challenge, the supervisor of the evaluator shall review the record which consists of information from the Formative Process, the Summative Evaluation and the written challenge, and issue a written decision.~~

~~10.1.2 If the challenge is denied, the decision shall state the reasons for denial.~~

~~10.1.3 The decision of the supervisor of the evaluator shall be final.~~

8-DE Reg. 431 (9/1/04)

1.0 The Administrator Appraisal Process, Delaware Performance Appraisal System (DPAS II), shall be effective for the following school districts and charter schools beginning with the 2007-08 school year:

Appoquinimink

PROPOSED REGULATIONS

Caesar Rodney
Colonial
Lake Forest
Laurel
Smyrna
Sussex Technical
MOT Charter
Providence Creek Academy Charter
Sussex Academy of the Arts and Sciences

The Administrator Appraisal Process, Delaware Performance Appraisal System (DPAS II), shall be effective for all public school districts and charter schools beginning with the 2008-2009 school year.

1.1 For purposes of this regulation, an administrator shall be a professional employee authorized by a board to serve in a supervisory capacity involving the oversight of an instructional program(s).

2.0 Definitions

“Board” shall mean the local board of education or charter school board of directors.

“Credentialed Evaluator” shall mean the individual, usually the supervisor of the administrator, who has successfully completed the evaluation training in accordance with 10.0. A superintendent shall be evaluated by member(s) of the local school board of education who shall also have successfully completed the evaluation training in accordance with 10.0. The Credentialed Evaluator may also be referred to as “Evaluator”.

“DASA” shall mean the Delaware Association of School Administrators.

“DPAS II Guide for Administrators” shall mean the manual that contains the prescribed forms, detailed procedures, evaluation criteria and other relevant documents that are used to implement the appraisal process.

“DSEA” shall mean the Delaware State Education Association.

“Experienced Administrator” shall mean an administrator who has three (3) or more years of service as an administrator.

“Formative Process” shall consist of the Goal Setting Conference, self evaluation, a survey of staff that are supervised by the administrator, and formative conferences and reports as outlined in the *DPAS II Guide for Administrators*.

“Improvement Plan” shall be the plan that an administrator and evaluator mutually develop in accordance with 8.0.

“Inexperienced Administrator” shall mean an administrator who has less than three (3) years of service as an administrator.

“Satisfactory Component Rating” shall mean the administrator’s performance reflects the ability to demonstrate an understanding of the concepts of the component.

“Satisfactory Evaluation” shall be equivalent to the overall “Effective” or “Needs Improvement” rating on the Summative Evaluation.

“State Assessment” shall mean the Delaware Student Testing Program (DSTP) or its successor.

“Summative Evaluation” shall be the rating process at the conclusion of the appraisal cycle.

“Unsatisfactory Component Rating” shall mean the administrator’s performance does not reflect the ability to demonstrate an understanding of the concepts of the component.

“Unsatisfactory Evaluation” shall be the equivalent to the overall “Ineffective” rating on the Summative Evaluation.

“Working Day” shall mean a day when the employee would normally be working in that district or charter school.

3.0 Appraisal Cycles

3.1 Experienced administrators who have earned a rating of “Effective” on his or her most recent Summative Evaluation shall receive a minimum of one (1) Formative Process each year with a Summative Evaluation at least once every two (2) years.

3.2 Experienced administrators who have earned a rating of “Needs Improvement” or “Ineffective” on their most recent Summative Evaluation shall receive a minimum of one (1) Formative Process with a Summative Evaluation at the end of the one year period. These administrators shall have an Improvement Plan which may require additional Formative Process(es) or other types of monitoring as outlined in the *DPAS II Guide for*

Administrators.

3.3 Inexperienced administrators shall have a minimum of one (1) Formative Process with a Summative Evaluation at the end of the one (1) year period. Inexperienced administrators who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall have an Improvement Plan which may require additional Formative Process(es) or other types of monitoring as outlined in the DPAS II Guide for Administrators.

4.0 DPAS II Guide for Administrators

4.1 All districts and charter schools shall use the manual entitled DPAS II Guide for Administrators as developed and as may be amended by the Department of Education in collaboration with DSEA and DASA to implement the appraisal system.

4.1.1 The manual shall contain at a minimum the following:

4.1.1.1 Specific details about each of the five (5) components pursuant to 5.1.

4.1.1.2 All forms or documents needed to complete the requirements of the appraisal process.

4.1.1.3 Specific procedures to implement the appraisal system.

5.0 Appraisal Criteria

5.1 The following five (5) components, including the four (4) Appraisal Criteria specified for each, shall be the basis upon which the performance of an administrator shall be evaluated by a certified evaluator(s):

5.1.1 Vision and Goals

5.1.1.1 Using Data: Administrator, in collaboration with others such as the school or district improvement team or board, uses multiple sources of information and assists in analyzing data to establish rigorous and concrete school or district improvement goals in the context of student achievement and instructional programs.

5.1.1.2 Implementing Vision and Goals: Administrator provides leadership for major initiatives and change efforts relative to the school or district improvement goals. Administrator is committed to doing the work required for continuous school and district improvement.

5.1.1.3 Promoting Vision and Goals: Administrator promotes high expectations for teaching and learning. Administrator is committed to ensuring that all students have the knowledge and skills necessary to become successful in future educational activities.

5.1.1.4 Communicating the Vision and Goals: Administrator communicates effectively to appropriate stakeholders about progress towards meeting the school or district improvement plan goals. Administrator participates in a process to regularly monitor, evaluate and revise school or district improvement goals.

5.1.2 Culture of Learning

5.1.2.1 Advocating a Culture of Learning: Administrator provides leadership for assessing, developing and improving the school or district culture and instructional program that is conducive to student learning. Administrator can articulate the desired school or district instructional program and shows evidence about how he or she reinforces the instructional program and culture.

5.1.2.2 Monitoring the Culture of Learning: Administrator participates in monitoring and evaluating the effectiveness of the curriculum, instruction or assessment of students. Administrator evaluates staff and provides on-going coaching for improvement. Administrator uses a variety of sources of information to make decisions.

5.1.2.3 Sustaining the Culture of Learning: Administrator helps to ensure that staff have professional development opportunities that enhance their performance and improve student learning. Administrator is accessible and approachable by staff, families, and community and is visible in the school or district community. Administrator supports the use of technology as appropriate in teaching and learning.

5.1.2.4 Maintaining the Culture of Learning: Administrator systematically and fairly recognizes accomplishments of staff and students towards a positive school or district culture. Administrator uses and analyzes data to instill the importance of continually developing programs and strategies to enhance opportunities for learning.

5.1.3 Management

5.1.3.1 Solving Problems or Concerns: Administrator addresses and resolves issues as

they arise in a timely manner and works to prevent potential problems. Operational procedures are designed and managed to maximize opportunities for learning for all students.

5.1.3.2 Managing Resources: Administrator manages fiscal and physical resources responsibly, efficiently and effectively. Administrator protects instructional time by managing operational procedures in such a way as to maximize learning. Administrator efficiently manages his or her time so that teaching and learning are a high priority.

5.1.3.3 Complying with Policies: Administrator complies with federal, state, and board policies. School or district contractual agreements are effectively managed. Administrator maintains confidentiality and privacy of school or district records, including student or staff information.

5.1.3.4 Protecting the Welfare and Safety of Students and Staff: Administrator works to ensure a safe and secure school or district environment and a culture that is conducive to teaching and learning. Challenges that could potentially interrupt teaching and learning are addressed and resolved.

5.1.4 Professional Responsibilities

5.1.4.1 Maintaining Professional Relationships: Administrator fosters and maintains positive professional relationships with staff. Administrator is respectful of other's opinions and demonstrates an appreciation for and sensitivity to diversity in the school or district community.

5.1.4.2 Promoting Family and Community Involvement: Administrator collaboratively works to establish a culture that encourages and welcomes families and community members and seeks ways in which to engage them in student learning.

5.1.4.3 Demonstrating Fairness: Administrator is fair and consistent when dealing with students and staff. Administrator demonstrates values, beliefs and attitudes that inspire all students and staff to higher levels of performance.

5.1.4.4 Growing and Developing Professionally: Administrator chooses and participates in professional development that is aligned with his or her professional needs or aligned with the needs of the school or district.

5.1.5 Student Improvement

5.1.5.1 Showing Student Improvement: Administrator uses school or district goals from the school or district improvement process to set his or her personal annual data driven goal(s) for student improvement. Data shall include school or district accountability data, State Assessment data, or other assessment data.

5.1.5.2 Measuring Student Improvement: Administrator has specific, measurable evidence to show progress towards or attainment of goal(s) for student improvement.

5.1.5.3 Implementing Strategies for Student Improvement: Administrator designs and implements appropriate strategies to show progress towards or attainment of goal(s) for student improvement.

5.1.5.4 Reflecting on Student Improvement: Administrator reflects on goal setting process and outcomes for the purpose of continuous professional improvement and shares student improvement information as appropriate.

6.0 Summative Evaluation Ratings

6.1 Each of the five (5) components pursuant to 5.0 shall be weighted equally and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.

6.1.1 A satisfactory rating for each component shall mean the administrator demonstrates acceptable performance by meeting at least three (3) of the four (4) Appraisal Criteria specified in each of the five (5) components set forth in 5.1.

6.2 The Summative Evaluation shall also include one of three overall ratings: "Effective", "Needs Improvement" or "Ineffective".

6.2.1 "Effective" shall mean that the administrator has received Satisfactory Component ratings in at least four (4) of the five (5) components in accordance with the Appraisal Criteria in 5.0.

6.2.2 "Needs Improvement" shall mean that the administrator has received three (3) Satisfactory Component ratings out of the five (5) components in accordance with the Appraisal Criteria in 5.0.

6.2.3 "Ineffective" shall mean that the administrator has received two (2) or fewer Satisfactory Component ratings out of the five (5) components in accordance with the Appraisal Criteria in 5.0.

6.2.3.1 If an administrator's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the rating shall be re-categorized as "Ineffective".

7.0 Pattern of Ineffective Administrative Performance

A pattern of ineffective administrative performance shall be based on the most recent Summative Evaluation ratings of an administrator using the DPAS II process. Two consecutive ratings of "Ineffective" shall be deemed as a pattern of ineffective administration. The following chart shows the consecutive Summative Evaluation ratings determined to be a pattern of ineffective administrative performance:

<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
<u>Ineffective</u>	<u>Ineffective</u>	
<u>Needs Improvement</u>	<u>Ineffective</u>	<u>Needs Improvement</u>
<u>Needs Improvement</u>	<u>Needs Improvement</u>	<u>Ineffective</u>
<u>Ineffective</u>	<u>Needs Improvement</u>	<u>Ineffective</u>
<u>Ineffective</u>	<u>Needs Improvement</u>	<u>Needs Improvement</u>
<u>Needs Improvement</u>	<u>Ineffective</u>	<u>Ineffective</u>

8.0 Improvement Plan

8.1 An Improvement Plan shall be developed for an administrator who receives an overall rating of "Needs Improvement" or "Ineffective" on the Summative Evaluation or a rating of Unsatisfactory on any component in 5.0 on the Summative Evaluation regardless of the overall rating.

8.1.1 An Improvement Plan shall also be developed if an administrator's overall performance during the Formative Process is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator(s) on the Formative Feedback form by noting "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.

8.2 The Improvement Plan shall contain the following:

8.2.1 Identification of the specific deficiencies and recommended area(s) for growth:

8.2.2 Measurable goals for improving the deficiencies to satisfactory levels:

8.2.3 Specific professional development or activities to accomplish the goals:

8.2.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the administrator to work with curriculum specialist(s) or others with relevant experience:

8.2.5 Procedures and evidence that must be collected to determine that the goals of the plan were met:

8.2.6 Timeline for the plan, including intermediate check points to determine progress:

8.2.7 Procedures for determining satisfactory improvement.

8.3 The Improvement Plan shall be developed cooperatively by the administrator and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.

8.4 The administrator shall be held accountable for the implementation and completion of the Improvement Plan.

8.5 Upon completion of the Improvement Plan, the administrator and evaluator(s) shall sign the documentation that determines the satisfactory or unsatisfactory performance of the plan.

9.0 Challenge Process

9.1 An administrator may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or an administrator may challenge the conclusions of the Formative Process if the statement "PERFORMANCE IS UNSATISFACTORY" has been included on the Formative Feedback form. To initiate a challenge, an administrator shall submit additional information specific to the point of disagreement in writing within fifteen (15) working days of the date of administrator's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator, if any.

9.1.1 Within fifteen (15) working days of receiving the written challenge, the supervisor of the evaluator shall review the record which consists of all documents used in the appraisal and the written challenge, and issue a written decision.

9.1.2 If the challenge is denied, the written decision shall state the reasons for denial.

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9.1.3 The decision of the supervisor of the evaluator shall be final.

10.0 Evaluator(s) Credentials

10.1 Evaluators shall have completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.

10.2 The training for the certificate of completion shall include techniques for observation and conferencing, content and relationships of ISLLC standards, and a thorough review of the *DPAS II Guide for Administrators*. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.

10.3 The credentialing process shall be conducted by the Department of Education.

8 DE Reg. 431 (9/1/04)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Section 6010, (7 Del.C. §6010)

PUBLIC NOTICE

SAN# 2006-21

1. **Title of the Regulations:**
1138 Emission Standards for Hazardous Air Pollutants for Source Categories
2. **Brief Synopsis of the Subject, Substance and Issues:**
Delaware adopted by reference the federal Maximum Achievable Control Technology (MACT) standard applicable to chromium electroplating and anodizing tanks (40 CFR Part 63 Subpart N) into Regulation No. 1138 (formerly 38) on September 1, 1999. Since this initial adoption, the EPA has revised the federal MACT standard several times. These EPA revisions have changed the federal MACT standard's Title V permit requirement, emission limits, definitions, compliance provisions and performance test requirements.
The purpose of this amendment to Subpart N of Regulation No. 1138 is to be consistent, where appropriate, with federal requirements. One of the federal changes, which the Department proposes to include, will permanently exempt small area sources from Title V permitting requirements. These sources will still be subject to the MACT requirements through their air permits under Regulation 1102.
With this rulemaking, the Department will also amend Subpart N to be consistent with the Delaware Administrative Code format. The Department will also change from our past adoption by reference format and provide the complete regulatory text. This latter change will eliminate the need for the public and regulated community to interpret the adopted federal standards and the changes made when the Department originally adopted these standards into Regulation No. 1138.
3. **Possible Terms of the Agency Action:**
None
4. **Statutory Basis or Legal Authority to Act:**
7 Delaware Code, Chapter 60.
5. **Other Regulations that may be Affected by the Proposal:**
None

6. Notice of Public Comment:

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Thursday, August 23, 2007 beginning at 6:00PM in the DNREC Auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover DE. Interested parties may submit comments in writing to: Jim Snead, DNREC Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720.

7. Prepared By:

James R. Snead, 302-323-4542, james.snead@state.de.us
June 20, 2007

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

1138 Emission Standards for Hazardous Air Pollutants for Source Categories

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 6010, (7 Del.C. §6010)
7 DE Admin. Code 3521

PUBLIC NOTICE SAN# 2007-13

1. Title of the Regulations:

Tidal Finfish Regulation 3521 Weakfish Size Limits; Possession Limits; Seasons

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

In accordance with Addendum II to Amendment 4 of the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Weakfish, Delaware is required to lower the recreational possession limit on weakfish from eight (8) per day to six (6) per day by October 29, 2007. Similarly, the commercial hook and line daily harvest limit shall be reduced as well from eight (8) per day to six (6) per day, except on four specific days of the week as indicated by the Department on said person's food fishing equipment permit for hook and line. During the four days of the week so specified, commercial hook and line fishermen are not constrained by daily harvest limits, although minimum size limits still apply. The Atlantic States Marine Fisheries Commission took this action in order to conserve weakfish as an aid to future stock recovery. All major weakfish harvesting states along the Atlantic seaboard are required to take this action.

3. Possible Terms of the Agency Action:

If commercial fishing removals of weakfish should rise to a pre-determined level consistent with average removals over the last five years, the Commission will give consideration to further restraints on commercial fishing. Similarly if Delaware's or any other state's commercial weakfish landings exceed its five-year mean by more than 25% in any single year, the Commission will review the findings and take action as it deems appropriate. If the commercial measures in the Weakfish Plan are modified, it would be incumbent upon Delaware to come into compliance with the applicable changes.

4. Statutory Basis or Legal Authority to Act:

§903 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 Environmental Control Auditorium, at 89 Kings Highway, Dover, DE at 7:00 PM on August 29, 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. The hearing record will remain open for written or e-mail comments until 4:30 PM August 31, 2007.

7. Prepared By:

Roy W. Miller, 302-739-9914
June 28, 2007

3521 Weakfish Size Limits; Possession Limits; Seasons. (Formerly Tidal Finfish Reg. 10)

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

1.0 It shall be unlawful for any person to possess weakfish, *Cynoscion regalis*, taken with a hook and line, that measure less than thirteen (13) inches, total length.

2.0 It shall be unlawful for any person to whom the Department has issued a commercial food fishing license and a food fishing equipment permit for hook and line to have more than ~~eight (8)~~ six (6) weakfish in possession during the period beginning at 12:01 AM on May 1 and ending at midnight on October 31 except on four specific days of the week as indicated by the Department on said person's food fishing equipment permit for hook and line.

3.0 It shall be unlawful for any person, who has been issued a valid commercial food fishing license and a valid food fishing equipment permit for fishing equipment other than a hook and line to possess weakfish, lawfully taken by use of such permitted food fishing equipment, that measure less than twelve (12) inches, total length.

4.0 It shall be unlawful for any person, except a person with a valid commercial food fishing license, to have in possession more than ~~eight (8)~~ six (6) weakfish, not to include weakfish in one's personal abode or temporary or transient place of lodging. A person may have weakfish in possession that measure no less than twelve (12) inches, total length, and in excess of ~~eight (8)~~ six (6) if said person has a valid bill-of-sale or receipt for said weakfish that indicates the date said weakfish were received, the number of said weakfish received and the name, address and signature of the commercial food fisherman who legally caught said weakfish or a bill-of-sale or receipt from a person who is a licensed retailer and legally obtained said weakfish for resale.

5.0 It shall be unlawful for any person to fish with any gill net in the Delaware Bay or Atlantic Ocean or to take and reduce to possession any weakfish from the Delaware Bay or the Atlantic Ocean with any fishing equipment other than a hook and line during the following periods of time:

Every weekend day (defined as 12:01 AM on Friday through midnight Sunday) in both May and June, plus contiguous weekdays (defined as 12:01 AM Monday through midnight Thursday) at the beginning of May and the end of June, such that the total number of closure days add up to thirty four (34) days. The exact dates of closures each year shall be mailed in advance to the affected public and published annually in the Delaware Fishing Guide.

6.0 The Department shall indicate on a person's food fishing equipment permit for hook and line four (4) specific days of the week during the period May 1 through October 31, selected by said person when applying for said permit, as to when said permit is valid to take in excess of ~~eight (8)~~ six (6) weakfish per day. These four days of the week shall not be changed at any time during the remainder of the calendar year.

7.0 It shall be unlawful for any person with a food fishing equipment permit for hook and line to possess more than eight (8) weakfish while on the same vessel with another person who also has a food fishing equipment permit for hook and line unless each person's food fishing equipment permit for hook and line specifies the same day of the week in question for taking in excess of ~~eight (8)~~ six (6) weakfish.

1 DE Reg 1770 (5/1/98)

2 DE Reg 1904 (4/1/99)

3 DE Reg 1088 (2/1/00)

4 DE Reg 1552 (3/1/01)
5 DE Reg. 2142 (5/1/02)
6 DE Reg. 1512 (5/1/03)

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
400 Delaware Gaming Control Board

Statutory Authority: 28 Delaware Code, Sections 1503 and 1504 (28 **Del.C.** §§1503 and 1504)
24 **DE Admin. Code** 401, 403 and 404

401 Regulations Governing Bingo
403 Regulations Governing Charitable Gambling Other Than Raffles
404 Regulations Governing No Limit Texas Hold'em Poker

PUBLIC NOTICE

The Delaware Gaming Control Board, in accordance with 29 **Del.C.** Chapter 101 and 28 **Del.C.** §1503, proposes amendments to section **5.0 Reports After Games** of the **Regulations Governing Bingo**. The proposed amendments clarify a licensee's post-event/post-function reporting requirements. The Board has further proposed amendments to the **Regulations Governing Charitable Gambling Other Than Raffles** in section **6.0 Operation of Games** and section **12.0 Reports After the Function**. The proposed amendments to section 12.0 clarify a licensee's post-event/post-function reporting requirements. The proposed amendments to section 6.0 alter the maximum allowable wagers for various charitable games.

In accordance with 29 **Del.C.** Chapter 101 and 28 **Del.C.** §1504, the Board proposes the establishment of **404 Regulations Governing No Limit Texas Hold'em Poker**. Section **1.0 Reports After the Function** establishes a licensee's post-event/post-function reporting requirements but allows 30 days for submission of reports. Section **2.0 Limitation of Texas Hold'em Tournaments** clarifies the allowable timeframe for holding tournaments. Section **3.0 Re-buys** seeks to reconcile two conflicting statutory provisions declaring re-buys optional.

Minor grammatical, typographic, or stylistic changes may also be included.

A public hearing is scheduled for Thursday, September 6, 2007 at 1:00 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 Tim Oswell 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 Tim Oswell at the above address or by calling (302) 744-4530.

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

401 Regulations Governing Bingo

(Break in Continuity of Sections)

5.0 Reports After Games the Function

5.1 When no game is held on any date when a licensee is authorized to hold such game, a report to that effect shall ~~nonetheless~~ be filed with the ~~Secretary~~ of the Board.

5.2 Within 5 days of the last day of the function, the member-in-charge shall submit a report to the Board that includes all information required by 28 Del.C. §1140(a).

5.2 ~~3~~ If a licensee fails to timely file a report ~~within the time required~~ or if a report is not properly verified, or not fully, accurately, and truthfully completed, no further license shall be issued to ~~#~~ the licensee and any existing license shall be suspended until such time as the ~~default~~ deficiency has been corrected.

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*Please Note: As the rest of the sections were not amended, they are not being published. A set of the rules and regulations for governing bingo is available at: <http://regulations.delaware.gov/AdminCode/title24/401%20Regulations%20Governing%20Bingo.shtml#TopOfPage>

403 Regulations Governing Charitable Gambling Other Than Raffles

(Break in Continuity of Sections)

6.0 Operation of Games

6.1 The maximum ~~initial~~ initial wager permitted on any game at any function ~~shall be (with the exception of No Limit Texas Hold'em played under the provisions of 28 Del.C. §1801 et seq.)~~ is one dollar, except that a wager of up to five dollars ~~wager shall be is~~ permitted in the game of blackjack, with doubling allowed. ~~and in other card games such as draw poker or stud poker, the maximum ante shall be is one dollar, and the maximum wager on any card for any draw shall be one is up to five dollars with three raises allowed.~~

6.2 House Rules. Prior to conducting a Function, each Licensed Organization shall develop a set of house rules which will govern the type, scope and manner of all games to be conducted. Among other information, these rules shall establish the maximum amount of wagers consistent with these regulations which may be placed by persons participating in games. In addition, the rules shall prohibit the giving of anything of value to any person involved in the management or operation of the Function and prohibit anyone involved in the management or operation of the Function from accepting anything of value. A copy of the rules shall be posted conspicuously on the premises where the Function is being conducted at all times during the occasion, and a copy thereof shall be made available upon request, to any law enforcement officer or agent of the Board. The maximum wager and a no tipping sign shall be displayed at the location of each game, so as to be conspicuous to those persons participating in said games. The rules for the individual games should be available on the premises for review upon request.

6.3 Monitoring of Poker Tables. An association which has obtained the proper license to conduct poker shall assign one monitor or dealer per table during the playing of poker.

(Break in Continuity of Sections)

12.0 Reports After the Function

12.1 ~~Within fifteen (15) days of the last day of the Function, the member-in-charge shall submit a report to the Board stating the amount of Gross Receipts, the Net Proceeds and the list of expenses incurred. This report must indicate the specific charitable purposes for which the proceeds will be used that includes all information required by 28 Del.C. §1140(a).~~

12.2 When no function is held on a date a licensee is authorized to hold such a function, a report to that effect shall be filed with the Board.

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

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

*Please Note: As the rest of the sections were not amended, they are not being published. A set of the rules and regulations for governing charitable gambling other than raffles is available at: <http://regulations.delaware.gov/AdminCode/title24/403%20Regulations%20Governing%20Charitable%20Gambling%20Other%20than%20Raffles.shtml#TopOfPage>

404 Regulations Governing No Limit Texas Hold'em Poker

1.0 Reports After the Function

1.1 Within 30 days of the last day of the function, the member-in-charge shall submit a report to the Board that includes all information required by 28 Del.C. §1140(a).

1.2 When no function is held on a date a licensee is authorized to hold such a function, a report to that effect shall be filed with the Board.

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

2.0 Limitation of Texas Hold'em Tournaments

2.1 The Board interprets the phrase "with each tournament by the sponsoring organization to be held at least 75 days apart" in 28 Del.C. §1827 to mean that no sponsoring organization may conduct a subsequent tournament less than 75 days from the date of their immediately prior tournament.

3.0 Re-buys

3.1 The statutory provisions of 28 Del.C. §1825 and 28 Del.C. §1826(2) do not harmonize. Consequently, the Board has determined that re-buys are optional.

DIVISION OF PROFESSIONAL REGULATION

500 Board of Podiatry

Statutory Authority: 24 Delaware Code, Section 506(a)(1) (24 Del.C. §506(a)(1))

24 DE Admin. Code 500

PUBLIC NOTICE

The Delaware Board of Podiatry, in accordance with 29 Del.C. Chapter 101 and 24 Del.C. §506(a)(1), proposes changes to its regulations 7.0, relating to disciplinary hearings, and 9.0, which lists crimes substantially related to the practice of podiatric medicine. Specifically, the changes to regulation **7.0 Disciplinary Proceedings and Hearings** clarify the grounds for discipline found in 24 Del.C. §515(a)(5) by providing examples of consumer fraud or deception; the practice of false advertising is explicitly prohibited. The changes to regulation **9.0 Definitions** removes the crime of loitering from the Board's list of crimes substantially related to the practice of podiatric medicine. Other grammatical, typographic, or stylistic changes are also included.

A public hearing will be held on the proposed changes on Thursday, September 20, 2007 at 5 p.m. in the 2nd floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person on the proposed regulations. Any written comments should be submitted to the Board care of Shauna Slaughter at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Shauna Slaughter at the above address or by at (302) 744-4534.

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

500 Board of Podiatry

(Break in Continuity of Sections)

7.0 Disciplinary Proceedings Grounds for Discipline and Hearing Procedures

7.1 Grounds for discipline are listed in 24 Del.C. §515.

7.1.1 Advertising – communications to the public must be accurate and not convey false, untrue, deceptive, or misleading information. Licensees shall provide truthful and accurate representations of their credentials, training, experience, or ability. Licensees shall not communicate claims of superiority that cannot be substantiated. Violation of these standards is an act of consumer fraud or deception.

7.1.2 Disciplinary proceedings against any licensee may be initiated by an aggrieved person by submitting a complaint in writing to the Director of the Division of Professional Regulation as specified in 29 Del.C. §880735(h)(1)-(3).

7.1.2.1 A copy of the written complaint shall be forwarded to the administrative assistant for the

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Board. At the next regularly scheduled Board meeting, a contact person for the Board shall be appointed and a copy of the written complaint given to that person.

7.42.2 The contact person appointed by the Board shall maintain strict confidentiality with respect to the contents of the complaint and shall not discuss the matter with other Board members or with the public. The contact person shall maintain contact with the investigator or ~~d~~Deputy ~~a~~Attorney ~~g~~General assigned to the case regarding the progress of the investigation.

7.42.3 In the instance when the case is being closed by the Division, the contact person shall report the facts and conclusions to the Board without revealing the identities of the parties involved. No vote of the Board is necessary to close the case.

7.42.4 If a hearing has been requested by the Deputy Attorney General, a copy of these Rules and Regulations shall be provided to the respondent upon request. The notice of hearing shall fully comply with 29 ~~Del.C.~~ §10122 and 10131 pertaining to the requirements of the notice of proceedings. All notices shall be sent to the respondent's address as reflected in the Board's records.

7.42.5 At any disciplinary hearing, the respondent shall have the right to appear in person or be represented by counsel, or both. The Respondent shall have the right to produce evidence and witnesses on his or her behalf and to cross examine witnesses. The Respondent shall be entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of documents on his or her behalf.

7.42.6 No less than 10 days prior to the date set for a disciplinary hearing, the Department of Justice and the respondent shall submit to the Board and to each other, a list of the witnesses they intend to call at the hearing. Witnesses not listed shall be permitted to testify only upon a showing of reasonable cause for such omission.

7.42.7 If the respondent fails to appear at a disciplinary hearing after receiving ~~the proper~~ notice required by 29 ~~Del.C.~~ §10122 and 10131, the Board may proceed to hear and determine the validity of the charges against the respondent.

~~Statutory authority: 24 Del.C. §§514 and 517; 29 Del.C. §§10111, 10122 and 10131~~

7.23 Hearing procedures

7.23.1 The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. All testimony at any hearing shall be under oath.

7.23.2 Strict rules of evidence shall not apply. All evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs shall be admitted.

7.23.3 An attorney representing a party in a hearing or matter before the Board shall notify the Board of the representation in writing as soon as practicable.

7.23.4 Requests for postponements of any matter scheduled before the Board shall be submitted to the Board's office in writing no less than three (3) days before the date scheduled for the hearing. Absent a showing of exceptional hardship, there shall be a maximum of one postponement allowed to each party to any hearing.

7.23.5 A complaint shall be deemed to "have merit" and the Board may impose disciplinary sanctions against the licensee if a majority of the members of the Board find, by a preponderance of the evidence, that the respondent has committed the act(s) of which he or she is accused and that those act(s) constitute grounds for discipline pursuant to 24 ~~Del.C.~~ §515.

~~Statutory authority: 24 Del.C. §§514, 515, 517; 29 Del.C. §§10111~~

(Break in Continuity of Sections)

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

"**Conviction**", unless otherwise defined by specific statute, means a verdict of guilty by whether entered by a judge or jury, or a plea of guilty or a plea of nolo contendere or other similar plea such as a "Robinson" or "Alford" plea unless the individual has been discharged under §4218 of Title 11 of the Delaware Code (probation before judgment) or under §1024 of Title 10 (domestic violence diversion program) or by §4764 of Title 16 (first offenders controlled substances diversion program).

"**Substantially similar crimes in another State or Jurisdiction**", shall include all crimes prohibited by or punishable under Title 18 of the United States Code Annotated (U.S.C.A.) such as, but not limited to, Federal Health Care offenses.

9.1 Any crime which involves the use of physical force or violence toward or upon the person of another and shall include by way of example and not of limitation the following crimes set forth in Title 11 of the Delaware Code Annotated:

Assaults and Related Offenses

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| 9.1.1 | §601. | Offensive touching; |
| 9.1.2 | §602. | Menacing; |
| 9.1.3 | §603. | Reckless endangering in the second degree; |
| 9.1.4 | §604. | Reckless endangering in the first degree; |
| 9.1.5 | §605. | Abuse of a pregnant female in the second degree; |
| 9.1.6 | §606. | Abuse of a pregnant female in the first degree; |
| 9.1.7 | §611. | Assault in the third degree; |
| 9.1.8 | §612. | Assault in the second degree; |
| 9.1.9 | §613. | Assault in the first degree; |
| 9.1.10 | §614. | Assault on a sports official. |
| 9.1.11 | §615. | Assault by abuse or neglect; |
| 9.1.12 | §621. | Terroristic threatening; |
| 9.1.13 | §625. | Unlawfully administering drugs; |
| 9.1.14 | §626. | Unlawfully administering controlled substance or counterfeit substance or narcotic drugs; |
| 9.1.15 | §627. | Prohibited acts as to substances releasing vapors or fumes; |
| 9.1.16 | §628. | Vehicular assault in the second degree; |
| 9.1.17 | §629. | Vehicular assault in the first degree; |
| 9.1.18 | §630. | Vehicular homicide in the second degree; |
| 9.1.19 | §630A. | Vehicular homicide in the first degree; |
| 9.1.20 | §631. | Criminally negligent homicide; |
| 9.1.21 | §632. | Manslaughter; |
| 9.1.22 | §633. | Murder by abuse or neglect in the second degree; |
| 9.1.23 | §634. | Murder by abuse or neglect in the first degree; |
| 9.1.24 | §635. | Murder in the second degree; |
| 9.1.25 | §636. | Murder in the first degree; |
| 9.1.26 | §645. | Promoting suicide. Abortion and Related Offenses |
| 9.1.27 | §651. | Abortion; |
| 9.1.28 | §653. | Issuing abortifacient articles. Sexual Offenses |
| 9.1.29 | §763. | Sexual harassment; |
| 9.1.30 | §764. | Indecent exposure in the second degree; |
| 9.1.31 | §765. | Indecent exposure in the first degree; |
| 9.1.32 | §766. | Incest; |
| 9.1.33 | §767. | Unlawful sexual contact in the third degree; |
| 9.1.34 | §768. | Unlawful sexual contact in the second degree; |
| 9.1.35 | §769. | Unlawful sexual contact in the first degree; |
| 9.1.36 | §770. | Rape in the fourth degree; |
| 9.1.37 | §771. | Rape in the third degree; |
| 9.1.38 | §772. | Rape in the second degree; |
| 9.1.39 | §773. | Rape in the first degree; |
| 9.1.40 | §776. | Sexual extortion; |
| 9.1.41 | §777. | Bestiality; |
| 9.1.42 | §778. | Continuous sexual abuse of a child; |
| 9.1.43 | §780. | Female genital mutilation. |
- Kidnapping and Related Offenses
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|--------|--------|---|
| 9.1.44 | §781. | Unlawful imprisonment in the second degree; |
| 9.1.45 | §782. | Unlawful imprisonment in the first degree; |
| 9.1.46 | §783. | Kidnapping in the second degree; |
| 9.1.47 | §783A. | Kidnapping in the first degree; |
| 9.1.48 | §785. | Interference with custody; Coercion |

PROPOSED REGULATIONS

- 9.1.49 §791. Acts constituting coercion;
- 9.2 Any crime which involves dishonesty or false, fraudulent or aberrant behavior and shall include by way of example and not of limitation the following crimes listed in Title 11 of the **Delaware Code Annotated**:
- Arson and Related Offenses
- 9.2.1 §801. Arson in the third degree;
- 9.2.2 §802. Arson in the second degree;
- 9.2.3 §803. Arson in the first degree;
- 9.2.4 §804. Reckless burning or exploding;
- 9.2.5 §805. Cross or religious symbol burning;
- Criminal Trespass and Burglary
- 9.2.6 §820. Trespassing with intent to peer or peep into a window or door of another;
- 9.2.7 §821. Criminal trespass in the third degree;
- 9.2.8 §822. Criminal trespass in the second degree;
- 9.2.9 §823. Criminal trespass in the first degree;
- 9.2.10 §824. Burglary in the third degree;
- 9.2.11 §825. Burglary in the second degree;
- 9.2.12 §826. Burglary in the first degree;
- 9.2.13 §828. Possession of burglar's tools or instruments facilitating theft;
- Robbery
- 9.2.14 §831. Robbery in the second degree;
- 9.2.15 §832. Robbery in the first degree.
- 9.2.16 §835. Carjacking in the second degree;
- 9.2.17 §836. Carjacking in the first degree;
- Theft and Related Offenses
- 9.2.18 §840. Shoplifting; class G felony;
- 9.2.19 §840A. Use of illegitimate retail sales receipt or Universal Product Code Label.
- 9.2.20 §841. Theft;
- 9.2.21 §842. Theft; lost or mislaid property; mistaken delivery.
- 9.2.22 §843. Theft; false pretense.
- 9.2.23 §844. Theft; false promise.
- 9.2.24 §845. Theft of services.
- 9.2.25 §846. Extortion;
- 9.2.26 §848. Misapplication of property;
- 9.2.27 §849. Theft of rented property;
- 9.2.28 §850. Use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices.
- 9.2.29 §851. Receiving stolen property;
- 9.2.30 §853. Unauthorized use of a vehicle;
- 9.2.31 §854. Identity theft;
- 9.2.32 §859. Larceny of livestock;
- 9.2.33 §860. Possession of shoplifter's tools or instruments facilitating theft;
- Forgery and Related Offenses
- 9.2.34 §861. Forgery; class F felony;
- 9.2.35 §862. Possession of forgery devices;
- Offenses Involving Falsification of Records
- 9.2.36 §871. Falsifying business records;
- 9.2.37 §872. Falsifying business records;
- 9.2.38 §873. Tampering with public records in the second degree;
- 9.2.39 §876. Tampering with public records in the first degree;
- 9.2.40 §877. Offering a false instrument for filing;
- 9.2.41 §878. Issuing a false certificate;
- Bribery Not Involving Public Servants
- 9.2.42 §881. Bribery;
- 9.2.43 §882. Bribe receiving;

Frauds on Creditors

- 9.2.44 §891. Defrauding secured creditors;
- 9.2.45 §892. Fraud in insolvency;
- 9.2.46 §893. Interference with levied-upon property;

Other Frauds and Cheats

- 9.2.47 §900. Issuing a bad check;
- 9.2.48 §903. Unlawful use of credit card;
- 9.2.49 §903A. Reencoder and scanning devices;
- 9.2.50 §906. Deceptive business practices;
- 9.2.51 §907. Criminal impersonation;
- 9.2.52 §907A. Criminal impersonation, accident related;
- 9.2.53 §907B. Criminal impersonation of a police officer;
- 9.2.54 §908. Unlawfully concealing a will;
- 9.2.55 §909. Securing execution of documents by deception;
- 9.2.56 §910. Debt adjusting;
- 9.2.57 §911. Fraudulent conveyance of public lands;
- 9.2.58 §912. Fraudulent receipt of public lands;
- 9.2.59 §913. Insurance fraud;
- 9.2.60 §913A. Health care fraud;
- 9.2.61 §914. Use of consumer identification information;
- 9.2.62 §915. Use of credit card information;
- 9.2.63 §915A. Credit and debit card transaction receipts;
- 9.2.64 §916. Home improvement fraud;
- 9.2.65 §917. New home construction fraud;

Offenses Relating to Recorded Devices

- 9.2.66 §920. Transfer of recorded sounds;
- 9.2.67 §921. Sale of transferred recorded sounds;
- 9.2.68 §922. Improper labeling;

Computer Related Offenses

- 9.2.69 §932. Unauthorized access.
- 9.2.70 §933. Theft of computer services.
- 9.2.71 §934. Interruption of computer services.
- 9.2.72 §935. Misuse of computer system information.
- 9.2.73 §936. Destruction of computer equipment.
- 9.2.74 §937. Unrequested or unauthorized electronic mail or use of network or software to cause same.
- 9.2.75 §938. Failure to promptly cease electronic communication upon request.

Offenses Relating to Marriage

- 9.2.76 §1001. Bigamy;
- 9.2.77 §1003. Bigamous marriage contracted outside the State.

9.3 Any crime which involves misuse or abuse of children or animals and shall include by way of example and not of limitation the following crimes listed in Title 11 of the **Delaware Code Annotated**:

Child Welfare; Sexual Offenses, Animal Offenses

- 9.3.1 §1100. Dealing in children;
- 9.3.2 §1101. Abandonment of child;
- 9.3.3 §1102. Endangering the welfare of a child;
- 9.3.4 §1105. Endangering the welfare of an incompetent person;
- 9.3.5 §1106. Unlawfully dealing with a child;
- 9.3.6 §1107. Endangering children;
- 9.3.7 §1108. Sexual exploitation of a child;
- 9.3.8 §1109. Unlawfully dealing in child pornography;
- 9.3.9 §1111. Possession of child pornography;
- 9.3.10 §1112. Sexual offenders; prohibitions from school zones.
- 9.3.11 §1112A. Sexual solicitation of a child;

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9.3.12	§1113.	Criminal non-support and aggravated criminal non-support.
9.3.13	§1114.	Body-piercing; tattooing or branding;
9.3.14	§1114A.	Tongue-splitting;
9.3.15	§1116.	Sale or distribution of tobacco products to minors;
9.3.16	§1117.	Notice;
9.3.17	§1119.	Distribution of cigarettes through vending machines;
9.3.18	§1120.	Distribution of tobacco products;
9.3.19	§1124.	Purchase or receipt of tobacco products by minor;
9.3.20	§1325.	Cruelty to animals;
9.3.21	§1325A.	The unlawful trade in dog or cat by-products;
9.3.22	§1326.	Animals; fighting and baiting prohibited;
9.3.23	§1327.	Maintaining a dangerous animal;

9.4 Any crime which involves offenses against the public order the commission of which may tend to bring discredit upon the profession and which are thus substantially related to one's fitness to practice such profession and shall include by way of example and not of limitation the following crimes listed in Title 11 of the **Delaware Code Annotated**:

Bribery and Improper Influence

9.4.1	§1201.	Bribery;
9.4.2	§1203.	Receiving a bribe;
9.4.3	§1205.	Giving unlawful gratuities;
9.4.4	§1206.	Receiving unlawful gratuities;
9.4.5	§1207.	Improper influence;
9.4.6	§1211.	Official misconduct;
9.4.7	§1212.	Profiteering. Perjury and related offenses
9.4.8	§1221.	Perjury in the third degree;
9.4.9	§1222.	Perjury in the second degree;
9.4.10	§1223.	Perjury in the first degree;
9.4.11	§1233.	Making a false written statement;
9.4.12	§1239.	Wearing a disguise during the commission of a felony;
9.4.13	§1240.	Terroristic threatening of public officials or public servants;
9.4.14	§1241.	Refusing to aid a police officer;
9.4.15	§1243.	Obstructing fire-fighting operations;
9.4.16	§1244.	Hindering prosecution;
9.4.17	§1245.	Falsely reporting an incident;
9.4.18	§1246.	Compounding a crime;
9.4.19	§1248.	Obstructing the control and suppression of rabies;
9.4.20	§1249.	Abetting the violation of driver's license restrictions;
9.4.21	§1250.	Offenses against law-enforcement animals;
9.4.22	§1251.	Escape in the third degree;
9.4.23	§1252.	Escape in the second degree;
9.4.24	§1253.	Escape after conviction;
9.4.25	§1254.	Assault in a detention facility;
9.4.26	§1257A.	Use of an animal to avoid capture;
9.4.27	§1259.	Sexual relations in detention facility;
9.4.28	§1260.	Misuse of prisoner mail.

Offenses Relating to Judicial and Similar Proceedings

9.4.29	§1261.	Bribing a witness;
9.4.30	§1262.	Bribe receiving by a witness;
9.4.31	§1263.	Tampering with a witness;
9.4.32	§1263A.	Interfering with child witness.
9.4.33	§1264.	Bribing a juror;
9.4.34	§1265.	Bribe receiving by a juror;
9.4.35	§1266.	Tampering with a juror;
9.4.36	§1267.	Misconduct by a juror;

9.4.37	§1269.	Tampering with physical evidence;
9.4.38	§1271.	Criminal contempt;
9.4.39	§1271A.	Criminal contempt of a domestic violence protective order;
9.4.40	§1273.	Unlawful grand jury disclosure.

9.5 Any crime which involves offenses against a public health order and decency which may tend to bring discredit upon the profession, specifically including the below listed crimes from Title 11 of the **Delaware Code Annotated** which evidence a lack of appropriate concern for the safety and well being of another person or persons in general or sufficiently flawed judgment to call into question the individuals ability to make health care decisions or advise upon health care related matters for other individuals.

Disorderly Conduct and Related Offenses

9.5.1	§1301.	Disorderly conduct;
9.5.2	§1302.	Riot;
9.5.3	§1304.	Hate crimes;
9.5.4	§1311.	Harassment;
9.5.5	§1312.	Aggravated harassment;
9.5.6	§1312A.	Stalking;
9.5.7	§1313.	Malicious interference with emergency communications;
9.5.8	§1315.	Public intoxication;
9.5.9	§1316.	Registration of out-of-state liquor agents;
9.5.10	§1320.	Loitering on property of a state-supported school, college or

university;

9.5.11	§1321.	Loitering
9.5.121	§1322.	Criminal nuisance;
9.5.132	§1323.	Obstructing public passages;
9.5.143	§1324.	Obstructing ingress to or egress from public buildings;
9.5.145	§1331.	Desecration;
9.5.165	§1332.	Abusing a corpse;
9.5.176	§1333.	Trading in human remains and associated funerary objects.
9.5.187	§1335.	Violation of privacy;
9.5.198	§1338.	Bombs, incendiary devices, Molotov cocktails and explosive

devices;

9.5.2019	§1339.	Adulteration;
9.5.240	§1340.	Desecration of burial place.

Offenses Involving Public Indecency

9.5.221	§1341.	Lewdness;
9.5.232	§1342.	Prostitution;
9.5.243	§1343.	Patronizing a prostitute prohibited.
9.5.254	§1351.	Promoting prostitution in the third degree;
9.5.265	§1352.	Promoting prostitution in the second degree;
9.5.276	§1353.	Promoting prostitution in the first degree;
9.5.287	§1355.	Permitting prostitution;

Obscenity

9.5.298	§1361.	Obscenity; acts constituting;
9.5.3029	§1365.	Obscene literature harmful to minors;
9.5.340	§1366.	Outdoor motion picture theatres;

Offenses Involving Gambling

9.5.321	§1403.	Advancing gambling in the first degree;
9.5.332	§1404.	Providing premises for gambling;
9.5.343	§1405.	Possessing a gambling device; class A misdemeanor.
9.5.354	§1406.	Being concerned in interest in keeping any gambling device;
9.5.365	§1407.	Engaging in a crap game;
9.5.376	§1411.	Unlawfully disseminating gambling information.

9.6 Any crime which involves the illegal possession or the misuse or abuse of narcotics, or other addictive substances and those non-addictive substances with a substantial capacity to impair reason or judgment

PROPOSED REGULATIONS

and shall include by way of example and not of limitation the following crimes listed in Chapter 47 of Title 16 of the **Delaware Code Annotated**:

9.6.1	§4751.	Prohibited acts A;
9.6.2	§4752.	Prohibited acts B;
9.6.3	§4752A.	Unlawful delivery of noncontrolled substance.
9.6.4	§4753.	Prohibited acts C.
9.6.5	§4753A.	Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs.
9.6.6	§4754.	Prohibited acts D;
9.6.7	§4754A.	Possession and delivery of noncontrolled prescription drug.
9.6.8	§4755.	Prohibited acts E;
9.6.9	§4756.	Prohibited acts;
9.6.10	§4757.	Hypodermic syringe or needle; delivering or possessing; disposal; exceptions;
9.6.11	§4758.	Keeping drugs in original containers.
9.6.12	§4761.	Distribution to persons under 21 years of age;
9.6.13	§4761A.	Purchase of drugs from minors;
9.6.14	§4767.	Distribution, delivery, or possession of controlled substance within 1,000 feet of school property;
9.6.15	§4768.	Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship.

9.7 Any crime which involves the misuse or illegal possession or sale of a deadly weapon or dangerous instrument and shall include by way of example and not of limitation the following crimes listed in Title 11 of the **Delaware Code Annotated**:

Offenses Involving Deadly Weapons and Dangerous Instruments

9.7.1	§1442.	Carrying a concealed deadly weapon;
9.7.2	§1443.	Carrying a concealed dangerous instrument;
9.7.3	§1444.	Possessing a destructive weapon;
9.7.4	§1445.	Unlawfully dealing with a dangerous weapon;
9.7.5	§1446.	Unlawfully dealing with a switchblade knife;
9.7.6	§1447.	Possession of a deadly weapon during commission of a felony;
9.7.7	§1447A.	Possession of a firearm during commission of a felony;
9.7.8	§1448.	Possession and purchase of deadly weapons by persons prohibited;
9.7.9	§1448A.	Criminal history record checks for sales or firearms;
9.7.10	§1449.	Wearing body armor during commission of felony;
9.7.11	§1450.	Receiving a stolen firearm;
9.7.12	§1451.	Theft of a firearm;
9.7.13	§1452.	Unlawfully dealing with knuckles-combination knife;
9.7.14	§1453.	Unlawfully dealing with martial arts throwing star;
9.7.15	§1454.	Giving a firearm to person prohibited;
9.7.16	§1455.	Engaging in a firearms transaction on behalf of another;
9.7.17	§1456.	Unlawfully permitting a minor access to a firearm;
9.7.18	§1457.	Possession of a weapon in a Safe School and Recreation Zone;
9.7.19	§1458.	Removing a firearm from the possession of a law enforcement officer;
9.7.20	§1459.	Possession of a weapon with a removed, obliterated or altered serial number;
9.7.21	§1471.	Prohibited acts.

Offenses Involving Drug Paraphernalia

9.7.22 §4774. Penalties.

Offenses Involving Organized Crime and Racketeering

9.7.23 §1504. Criminal Penalties for Organized Crime & Racketeering Offenses Involving Intimidation of Victims or Witnesses

9.7.25	§3533.	Aggravated act of intimidation, Class D felony
9.7.24	§3532.	Acts of Intimidation: Class E felony
Other Crimes		
9.7.26	Title 3 §1041.	Willfully or maliciously starting fires; Carelessly Starting Fires;
9.7.27	§1043.	Setting fire to woodland; Unseasonable Marsh Burning.
9.7.28	Title 4 §901.	Offenses carrying penalty of imprisonment for 3 to 6 months;
9.7.29	§902.	Offenses carrying penalty of fine of \$500 to \$1,000 or imprisonment of 3 to 6 months on failure to pay fine;
9.7.30	§903.	Offenses carrying penalty of fine of not more than \$100 imprisonment for 1 month on failure to pay fine;
9.7.31	§904.	Offenses concerning certain persons;
9.7.32	§905.	Unlicensed manufacture of alcoholic liquor; Possession of still, apparatus, mash, etc., by unlicensed person;
9.7.33	§906.	Transportation or shipment;
9.7.34	§907.	Interference with officer or inspector;
9.7.35	§908.	Failure of licensee to file report;
9.7.36	§909.	Violation of rules respecting liquor taxes.
9.7.37	Title 7 §1717.	Unauthorized acts against a service guide or seeing eye dog.
9.7.38	Title 11 §2403.	Manufacture, possession or sale of intercepting device;
9.7.39	§2410.	Breaking and entering, etc. to place or remove equipment;
9.7.40	§2412.	Obstruction, impediment or prevention of interception;
9.7.41	§2422.	Divulging contents of communications;
9.7.42	§3532.	Act of intimidation;
9.7.43	§3533.	Aggravated act of intimidation;
9.7.44	§3534.	Attempt to intimidate;
9.7.45	§8523.	Penalties [for violation of reporting provision re: SBI];
9.7.46	§8562.	Penalties [for failure of child-care provider to obtain information required under §8561 or for those providing false information]
9.7.47	§8572.	Penalties [for providing false information when seeking employment in a public school]
9.7.48	§9016.	Filing false claim [under Victims' Compensation Fund].
9.7.49	Title 12 §210.	Alteration, theft or destruction of Will.
9.7.50	Title 16 §1136.	Abuse or neglect of a patient or resident of a nursing facility.
9.7.51	Title 21 §2118A.	Unlawful possession or manufacture of proof of insurance;
9.7.52	§2133.	Penalties; jurisdiction of justices of the peace.
9.7.53	§2315.	False statements;
9.7.54	§2316.	Altering or forging certificate of title, manufacturer's certificate of origin, registration sticker or vehicle I identification plate;
9.7.55	§2620.	False statements; incorrect or incomplete information;
9.7.56	§2703.	License to operate a motorcycle, motorbike, etc.;
9.7.57	§2710.	Issuance of a Level 1 Learner's Permit and Class D operator's license to persons under 18 years of age;
9.7.58	§2722.	Restricted licenses based on driver's physical limitations;
9.7.59	§2751.	Unlawful application for or use of license or identification card;
9.7.60	§2752.	False statements;
9.7.61	§2756.	Driving vehicle while license is suspended or revoked; penalty;
9.7.62	§2760.	Duplication, reproduction, altering, or counterfeiting of driver's licenses or identification cards.
9.7.63	Title 23 §2302.	Operation of a vessel or boat while under the influence of intoxicating liquor and/or drugs;
9.7.64	§2305.	Penalties; jurisdiction.
9.7.65	Title 24 §903.	Sale to persons under 21 or intoxicated persons.
9.7.66	Title 29 §3107.	Motor vehicle safety-responsibility; False statements;
9.7.67	§4175A.	Reckless driving;

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9.7.68	§4177.	Driving a vehicle while under the influence or with a prohibited alcohol content; evidence; arrests; and penalties.
9.7.69	§4177M.	Operating a commercial motor vehicle with a prohibited blood alcohol concentration or while impaired by drugs;
9.7.70	§4183.	Parking areas for vehicles being used by persons with disabilities;
9.7.71	§4198J.	Bicycling on highways under influence of drugs or alcohol;
9.7.72	§4198O.	Operation of electric personal assistive mobility devices (EPAMD);
9.7.73	§4201.	Duty of driver involved in accident resulting in property damage or injury;
9.7.74	§4202.	Duty of driver involved in accident resulting in injury or death to any person;
9.7.75	§4203.	Duty to report accidents; evidence;
9.7.76	§4204.	Report of damaged vehicles; cars involved in fatal accidents;
9.7.77	§4604.	Possession of motor vehicle master keys, manipulative keys, key-cutting devices, lock picks or lock picking devices and hot wires;
9.7.78	§6420.	Odometers penalties;
9.7.79	§6702.	Driving vehicle without consent of owner;
9.7.80	§6704.	Receiving or transferring stolen vehicle;
9.7.81	§6705.	Removed, falsified or unauthorized identification number on vehicle, bicycle or engine; removed or affixed license/registration plate with intent to misrepresent identity;
9.7.82	§6707.	Penalty;
9.7.83	§6709.	Removal of warranty or certification stickers; vehicle identification plates; confidential vehicle identification numbers;
9.7.84	§6710.	Unlawful possession of assigned titles, assigned registration cards, vehicle identification plates and warranty stickers.
9.7.85	Title 30 §571.	Attempt to evade or defeat tax;
9.7.86	§572.	Failure to collect or pay over tax;
9.7.87	§573.	Failure to file return, supply information or pay tax;
9.7.88	§574.	Fraud and false statements;
9.7.89	§576.	Misdemeanors.
9.7.90	Title 31§1007.	Fraudulent acts penalties;
9.7.91	§3913.	Welfare violations [knowing or reckless abuse of an infirm adult]

9.8 Any crime which is a violation of Title 24, Chapter 5 as it may be amended from time to time or of any other statute which requires the reporting of a medical situation or condition to state, federal or local authorities or a crime which constitutes a violation of the Podiatric Practice Act of the state in which the conviction occurred or in which the physician is licensed.

9.9 The Board reserves the jurisdiction and authority to modify this regulation as and if it becomes necessary to either add or delete crimes including such additions as may be required on an emergency basis under 29 Del.C. §10119 to address imminent peril to the public health, safety or welfare.

8 DE Reg. 1273 (03/1/05)

***Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Board of Podiatry is available at: <http://regulations.delaware.gov/AdminCode/title24/500%20Board%20of%20Podiatry.shtml#TopOfPage>**

DIVISION OF PROFESSIONAL REGULATION

2500 Board of Pharmacy

Statutory Authority: 24 Delaware Code, Section 2509 (24 Del.C. §2509)

24 DE Admin. Code 2500

PUBLIC NOTICE

The Delaware Board of Pharmacy, in accordance with 29 Del.C. Chapter 101 and 24 Del.C. §2509, proposes amendments to its regulation 3.0. Specifically, the proposed addition to **3.0 Pharmacy Requirements** would require the pharmacist-in-charge at each pharmacy to develop written policies for situations in which a pharmacist's professional obligation to dispense certain pharmaceuticals may conflict with the pharmacist's personal beliefs, potentially causing the pharmacist to refuse to dispense the pharmaceutical. The Board's proposed regulatory changes do not specify how such situations should be handled. Instead, the proposed changes merely require the pharmacist-in-charge at each pharmacy to develop written policies for such situations.

The Board also proposes amendments to its regulation 16.0 and the addition of regulation 17.0. Specifically, the current regulation **16.0 Crimes substantially Related to the Practice of Pharmacy** would be renumbered regulation 17.0, and a new regulation **16.0 Automated Delivery Devices** would be added. The new regulation 16.0 allows for and regulates the use of machines that are able to store and dispense medication to patients. The proposed regulations limit use of such devices to dispensing refills of non-controlled substances/medications. Refills would be completed by pharmacy personnel and placed in the machine for customer pick up. All such devices must be approved by the Board before they may be put into operation.

A public hearing is scheduled for Wednesday, September 19, 2007 at 10:00 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Judy Letterman 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 Judy Letterman at the above address or by calling (302) 744-4504.

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

2500 Board of Pharmacy

(Break in Continuity of Sections)

3.0 Pharmacy Requirements

3.1 Pharmacist in Charge

3.1.1 Application for permit to operate a pharmacy in the State of Delaware must be on a form approved by the Board. The form shall include the statement to be signed by the pharmacist in charge, "I understand that I am responsible for conducting and managing the prescription department in compliance with applicable State and Federal laws."

3.1.2 The Board interprets the responsibilities of the Pharmacist-in-Charge to include, but not be limited to the following:

3.1.2.1 Maintain necessary pharmaceutical equipment and reference texts in accordance with the State Board of Pharmacy requirements.

3.1.2.2 Maintain records required by the Uniform Controlled Substances Act and other relevant State and Federal regulations.

3.1.2.3 Maintain proper security of particular pharmacy operation during and after normal business hours.

3.1.2.4 Establish procedures within operation that maintain standard of practice as it relates to the dispensing of pharmaceuticals and refusal to dispense pharmaceuticals based on the religious, moral, or ethical beliefs of the dispensing pharmacist. These procedures shall include proper supervision of supportive personnel and delegation of authority to another pharmacist when not on duty.

3.1.2.5 The pharmacist on duty is directly responsible for his own actions.

3.1.2.6 Notify the Board of Pharmacy in writing within 10 days of termination as

pharmacist-in-charge.

3.2 Owner's Affidavit. The owner or owners and, in the case of a corporation, an authorized official of the corporation must present an affidavit properly notarized containing the statement, "I hereby swear or affirm that the foregoing statements are correct and do hereby agree to abide by the pharmacy laws of the State of Delaware and to all rules and regulations of the Delaware State Board of Pharmacy." The Board must be notified within 10 days of change of ownership.

3.3 Equipment and Reference Materials.

3.3.1 Equipment: Each pharmacy shall have all equipment appropriate to the individual pharmacy practice and to the care of the patients served.

3.3.1.1 All equipment must be clean and must be maintained in such a manner that allows the pharmacist to accurately weigh, measure and compound ingredients.

3.3.1.2 Equipment may include such things as prescription scale, metric graduates, mortars and pestles, filter paper, spatulas, funnel, stirring rod, ointment slab or papers, distilled water, and prescription/physician order files.

3.3.2 References: Each pharmacy shall maintain a library of the latest edition and supplements of current reference sources, either hard copy or electronically accessible, appropriate to the individual pharmacy practice and to the care of the patients served. References must:

3.3.2.1 Provide information on the therapeutic use, dosing, pharmacology, adverse effects, and interactions of drugs dispensed.

3.3.2.2 Provide information helpful in the counseling of patients on the use of drugs dispensed.

3.3.2.3 Enable the pharmacist to properly compound medicines within accepted standards of pharmacy practice.

3.3.2.4 Include a listing of therapeutic equivalents for drugs dispensed.

3.3.2.5 Include current Delaware and Federal laws and regulations governing pharmacy and controlled substances.

3.3.2.6 Provide any other information necessary to the safe and effective practice of pharmacy for the specific practice setting.

3.4 Physical Facilities. Have sufficient size, space, sanitation, and environmental control for adequate distribution, dispensing and storage of drugs and devices. Such facilities shall include:

3.4.1 A dispensing area of adequate size and space for proper compounding, dispensing and storage of drugs and devices, to ensure the safety and well being of the public and pharmacy personnel.

3.4.2 Sufficient environmental control, i.e. lighting, ventilation, heating and cooling to maintain the integrity of drugs and devices. The area in which drugs and devices are stored shall be accurately monitored using control devices to maintain room temperature between 59 degrees and 86 degrees Fahrenheit.

3.4.3 The pharmacy department or prescription area must contain a sink with hot and cold running water. It must be large enough to accommodate the equipment required by the Board so that the utensils can be properly washed and sanitized.

3.4.4 Suitable refrigeration with appropriate monitoring device. Refrigerators and freezers (where required) will be maintained within the USP/NF range:

Refrigerator - 36 degrees to 46 degrees Fahrenheit

Freezer - Minus 13 degrees to plus 14 degrees Fahrenheit.

A sign with letters not less than 3/4" in height in the vicinity of the prescription department visible to the public which shows the name of the pharmacists employed at that pharmacy or the name of the pharmacist on duty.

3.5 Building Standards. An application to operate a new pharmacy must include (3) copies of floor plans drawn to scale of the proposed prescription department. The floor plans must include the following:

3.5.1 The requirements listed in §2534(f)(1) through (4).

3.5.2 An area which assures patient privacy will be provided to facilitate counseling. This area must afford the patient privacy from auditory detection by any unauthorized person or persons. An area partitioned by a 5 foot divider on 2 sides with a minimum of 9 square feet would satisfy this requirement in most settings.

3.5.3 The floor plans shall include the location of the sink, all doors, storage room, approved Schedule II controlled substance safe or cabinet, and the method of securing the prescription department from floor to ceiling, when the prescription department is closed and the remainder of the store is open.

3.5.4 The floor plans must include the type of alarm system to be installed, and the name, address and phone number of alarm provider. The alarm system, as required by Regulation 5 of the Delaware Controlled Substance Act, must be reviewed and approved for compliance by the Office of Narcotics and Dangerous Drugs.

3.5.5 The above requirements shall also apply for any remodeling or change of location of the prescription department. The pharmacist-in-charge or applicant for permit must submit the floor plans requirements to the Delaware Board of Pharmacy and the Office of Narcotics and Dangerous Drugs prior to any construction and at least 15 days prior to the next scheduled Board of Pharmacy meeting for its review.

3.6 Security. When the pharmacist is not physically present and the operation is open for business, the pharmacy department shall be physically or electronically secured from floor to ceiling. The partitioned off section required by 24 **Del.C.** §2534 must be five feet high measured from the floor. A conspicuous sign with letters not less than three inches in height, reading "PRESCRIPTION LABORATORY TEMPORARILY CLOSED, NO PROFESSIONAL SERVICES RENDERED," or words of similar import, must be posted in the front section of the operation or in front of the prescription area, room or partitioned off section where it can be seen by the public.

3.7 Board Interview. Applicants for permit to operate a pharmacy in the State of Delaware must appear before the Board for an interview. The owner or authorized official must be present in addition to the pharmacist-in-charge. Whenever there is a change of pharmacist-in-charge, if that person has never held that position in the State of Delaware, he/she must appear before the Board for an interview within ninety days after assuming the position.

Regulation 3.5.2 revised 6/16/97

Regulation 3.5.6 revised Effective date 10/11/98

2 DE Reg. 683 (10/1/98)

6 DE Reg. 488 (10/1/02)

7 DE Reg. 309 (9/1/03)

7 DE Reg. 1666 (6/1/04)

9 DE Reg. 85 (7/1/05)

9 DE Reg. 1253 (2/1/06)

(Break in Continuity of Sections)

16.0 Automated Delivery Devices

16.1 Definitions – Words and terms defined in Title 24, Section 2502 of the Delaware Code are applicable to these regulations. The following additional words and terms, when used within regulation 16.0, shall have the following meaning, unless the context clearly indicates otherwise:

“Authorized agent” is as defined in regulation 8.1.

“Automated delivery device” or “device” means a mechanical device used exclusively for the storage and delivery to patients of prescriptions that have been processed and verified by a licensed pharmacist.

“Delivery” is defined in regulation 5.1.

16.2 Automated delivery devices may be utilized by licensed pharmacies and shall comply with the following provisions:

16.2.1 Devices may only include refilled prescription medication for which counseling is not required under regulation 5.3.

16.2.2 Devices may include all prescriptive medication except schedule II controlled substances.

16.2.3 Devices shall include Board-approved means of patient identification, identification of persons authorized to pick up medication other than the patient, and identification of pharmacy personnel who place medication into the device.

16.2.4 Devices shall electronically record all delivery transactions and such records shall be readily available for inspection for at least three years. Such records shall include, but are not limited to, the following for all transactions: the identity of pharmacy personnel who place medication into the device; the identity of the patient or authorized person who picks up the medication; the type, date, and time of the transaction; and the name, strength, dosage, form, and quantity of the drug delivered. The Board and pharmacist-in-charge may require additional information at their discretion.

16.2.5 Devices may operate during any store hours at the pharmacy’s discretion.

16.2.6 A Delaware-licensed pharmacist shall be immediately available in-person for consultation

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when the device is in service and the pharmacy is open. A Delaware-licensed pharmacist shall be immediately available telephonically via a toll-free number when the device is in service and the pharmacy is closed. Pharmacists providing telephonic consultation shall have access to the same patient information as would be available to a pharmacist conducting an in-person consultation.

16.2.7 The following information shall be posted in the vicinity of the device:

16.2.7.1 Pharmacy hours of operation.

16.2.7.2 Device hours of operation, and

16.2.7.3 Consultation availability, i.e. in-person during pharmacy hours and

telephonically after-hours, including the toll-free number for after-hours consultation.

16.2.8 The device shall be attached to the pharmacy department area in a manner acceptable to the Board.

16.2.9 All delivery devices shall be reviewed, inspected, and approved by the Board or its authorized agent prior to installation.

16.2.10 Patients using the device must have opted to use the device and signed a written consent form demonstrating their informed consent and intention to do so.

16.2.11 Written policies and procedures shall be maintained and available for inspection. Written policies and procedures shall be acceptable to the Board and shall include, but are not limited to, the following topics:

16.2.11.1 Maintaining the security of the device and the medications it contains.

16.2.11.2 A list of medications appropriate and approved for storage in the device; a list of the criteria used to determine the appropriate medications, with explanations when necessary; and a list of patient qualifications for device usage.

16.2.11.3 Patient orientation of device usage, including being informed of which medications may and may not be delivered via the device.

16.2.11.4 Pharmacy personnel training and responsibilities pertaining to device operations and maintenance.

16.3 The Pharmacist-in-Charge shall have the sole responsibility to:

16.3.1 assign, discontinue, or change access to the system; and

16.3.2 ensure that access to the medications comply with state and federal regulations.

167.0 Crimes substantially related to the practice of pharmacy.

167.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal the following crimes, is deemed to be a crime substantially related to the practice of pharmacy in the State of Delaware without regard to the place of conviction:

167.1.1 Unlawfully administering a controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626.

167.1.2 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs. 16 Del.C. §4753A.

167.2 Crimes substantially related to the practice of pharmacy shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

4 DE Reg. 1502 (3/1/01)

7 DE Reg. 1666 (6/1/04)

8 DE Reg. 879 (12/01/04)

***Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Board of Pharmacy are available at:**

<http://regulations.delaware.gov/AdminCode/title24/2500%20Board%20of%20Pharmacy.shtml>

DIVISION OF PROFESSIONAL REGULATION

2930 Council on Real Estate Appraisers

Statutory Authority: 24 Delaware Code, Section 4006(a)(1) (24 **Del.C.** §4006(a)(1))
24 **DE Admin. Code** 2930

PUBLIC NOTICE

The Delaware Council on Real Estate Appraisers, in accordance with 24 **Del.C.** §4006(a)(1), has proposed changes to its rules and regulations affecting Rule 2.0, entitled "Appraiser Licensing and Certification" and Rule 4.0, entitled "General Appraisal Practice." The proposed revisions allow for the segmented approach to adopting changes in the licensure requirements in light of changes made by the Appraisal Qualifications Board, which sets the minimum standards for licensure. The proposed changes also allow for online renewal of licenses and online attestation of completion of the required continuing education, and provide for post-renewal audits for compliance with the continuing education requirements. Finally, the proposed changes revise the number of hours of continuing education required for licensees who obtain a new license during the two-year license renewal period and correct an errors in the regulations.

A public hearing on the revised proposed rules and regulations will be held on Tuesday, September 18, at 1:30 p.m. in Conference Room A, on the second floor 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 Council on Real Estate Appraisers, 861 Silver Lake Blvd., Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Council at the above address. The final date to receive written comments will be at the public hearing.

2930 Council on Real Estate Appraisers

1.0 Application for Appraiser License or Certificate

1.1 Application

A person who wishes to file an application for a real property appraiser license or certificate may obtain the required form upon request to the Council. In general, the form calls for information such as the applicant's name and address, the applicant's social security number, places of residence and employment, experience, education, and other information as may be necessary to identify the applicant and review the applicant's qualifications for licensure or certification.

1.2 Filing and Fees

1.2.1 Properly completed applications together with the appropriate fee(s) must be received in the Council's office prior to scheduling the examination.

1.2.2 A processing fee set by the Division of Professional Regulation will be charged for the following:

- | | | |
|-----------------------|---------|---|
| license | 1.2.2.1 | Initial application and licensure for appraiser trainee license |
| | 1.2.2.2 | Initial application and licensure for licensed real property appraiser |
| appraiser certificate | 1.2.2.3 | Initial application and certification for certified residential real property |
| appraiser certificate | 1.2.2.4 | Initial application and certification for certified general real property |
| | 1.2.2.5 | Renewal |
| | 1.2.2.6 | Duplicate license and certificate |
| | 1.2.2.7 | Roster |
| | 1.2.2.8 | Federal Appraiser Registry |
| | 1.2.2.9 | Letter of Good Standing |

1.2.3 Fees shall be made payable to the "State of Delaware," and mailed to the Delaware Council on Real Estate Appraisers, Cannon Building, Suite 203, 861 Silver Lake Boulevard, Dover, Delaware 19904. For further information, please contact the Administrative Assistant to the Council at (302) 744-4500.

4 DE Reg. 1504 (03/01/01)

9 DE Reg. 1377 (03/01/06)

2.0 Appraiser Licensing and Certification

2.1 Qualifications for Appraiser Licensure and Certification

2.1.1 The qualifications for licensure or certification shall be the criteria established by the Appraisal Qualifications Board (AQB) of the Appraisal Foundation for:

- 2.1.1.1 certified general real property appraiser;
- 2.1.1.2 certified residential real property appraiser;
- 2.1.1.3 licensed real property appraiser; and
- 2.1.1.4 trainee real property appraiser.

2.1.2 A summary of the criteria set by the AQB is available from the Division of Professional Regulation and designated "Informational Supplement to the Regulations." The Supplement is regularly updated by the Council but the most current information is available directly from The Appraisal Foundation, 1155 15th Street, NW, Suite 1111, Washington, DC 20005.

2.1.3 The 2008 qualification criteria established by the AQB will be phased in using the segmented approach. The three AQB components that must be satisfied to obtaining licensure are: education, experience and examination. An applicant must meet the criteria in effect at the time he or she completes one of these components. Therefore, effective January 1, 2008, all applicants for certification or licensure must meet the 2008 qualifications criteria established by the AQB for any component completed on or after January 1, 2008.

2.2 License and Certificate Renewal

2.2.1 In September of each odd numbered year, the Division of Professional Regulation will send renewal notices to the mailing address on file of all licensees and certificate holders. Certificates and licenses will expire on October 31st of each odd numbered year.

2.2.2 As a condition of renewal, all licensees and certificate holders, either resident or reciprocal, shall be required to satisfy the continuing education requirements set forth in rule 2.3 of this Section.

2.2.3 A licensee or certificate holder shall not perform appraisals after a license has expired. A licensee or certificate holder may renew a certificate or license within 12 months of its expiration. After 12 months, the individual must reapply as a new applicant.

2.2.4 A licensee or certificate holder may apply for inactive status for a period not to exceed 6 years if he or she is not performing appraisals in Delaware.

2.2.4.1 Persons with in an inactive license or certificate must complete the same continuing education requirement as active licensees or certificate holders. Evidence of completion is due at renewal as provided in Rule 2.3.

2.2.4.2 An inactive license or certificate can be reactivated by notifying the Council in writing.

2.3 Continuing Education

2.3.1 ~~As a prerequisite to renewal, a~~ All licensees and certificate holders are required to ~~present evidence attest to the completion~~ of continuing education ~~satisfactory to the Council~~ according to the following schedule:

2.3.1.1 ~~no~~ continuing education is required for fewer than ~~12~~ 6 months of licensure ~~required~~;

2.3.1.2 Effective with the licensure period beginning November 1, 2007, fourteen (14) hours of continuing education are required after at least ~~12~~ 6 months but fewer than 24 months of licensure; and

2.3.1.3 twenty-eight (28) hours of continuing education are required after 24 months of licensure.

2.4 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 2.0.

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

2.4.2 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 2.5.

2.5 Random audits will be performed by the Council to ensure compliance with the CEU requirements.

2.5.1 The Council will notify licensees within sixty (60) days after January 31 that they have been selected for audit.

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

2.5.3 Verification shall include such information necessary for the Council to assess whether the course or other activity meets the CE requirements in Section 2.0, which may include, but is not limited to, the following information:

2.5.3.1 Proof of attendance. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance:

2.5.3.2 Date of CE course;

2.5.3.3 Instructor of CE course;

2.5.3.4 Sponsor of CE course;

2.5.3.5 Title of CE course; and

2.5.3.6 Number of hours of CE course.

~~2.3.2~~ 2.5.4 All licensees and certificate holders, except as provided in 2.3.1.1, must complete as a condition of each renewal:

~~2.3.2.1~~ 2.5.4.1 the seven (7) hour National USPAP Update Course or its equivalent as determined through the AQB Course Approval Program or by an alternate method established by the AQB and

~~2.3.2.2~~ 2.5.4.2 a two (2) hours of education ~~course~~ on Delaware Law, Rules and Regulations

~~2.3.3~~ 2.5.5 Programs must be structured to maintain or increase an appraiser's skill, knowledge, and competency in real estate appraising. The following topics are appropriate but not exclusive:

~~2.3.3.1~~ 2.5.5.1 Influences on real estate value

~~2.3.3.2~~ 2.5.5.2 Legal consideration of appraisal

~~2.3.3.3~~ 2.5.5.3 Types of value

~~2.3.3.4~~ 2.5.5.4 Real estate markets and analysis

~~2.3.3.5~~ 2.5.5.5 Valuation process

~~2.3.3.6~~ 2.5.5.6 Property description

~~2.3.3.7~~ 2.5.5.7 Highest and best use

~~2.3.3.8~~ 2.5.5.8 Appraisal math & statistics

~~2.3.3.9~~ 2.5.5.9 Sales comparison approach

~~2.3.3.10~~ 2.5.5.10 Site value

~~2.3.3.11~~ 2.5.5.11 Cost approach

~~2.3.3.12~~ 2.5.5.12 Income approach

~~2.3.3.12.1~~ 2.5.5.12.1 Estimation of income and expenses

~~2.3.3.12.2~~ 2.5.5.12.2 Operating statement ratios

~~2.3.3.12.3~~ 2.5.5.12.3 Direct capitalization

~~2.3.3.12.4~~ 2.5.5.12.4 Cash flow estimates

~~2.3.3.12.5~~ 2.5.5.12.5 Measures of cash flow

~~2.3.3.12.6~~ 2.5.5.12.6 Discounted cash flow analysis

~~2.3.3.12.7~~ 2.5.5.12.7 Gross rent multiplier analysis

~~2.3.3.13~~ 2.5.5.13 Valuation of partial interests

~~2.3.3.14~~ 2.5.5.14 Appraisal standards and ethics

~~2.3.3.15~~ 2.5.5.15 Narrative report writing

~~2.3.3.16~~ 2.5.5.16 Appraisal Statistical concepts

~~2.3.3.17~~ 2.5.5.17 Ad valorem taxation

~~2.3.3.18~~ 2.5.5.18 Arbitration

~~2.3.3.19~~ 2.5.5.19 Business courses related to real estate appraisal

~~2.3.3.20~~ 2.5.5.20 Development cost estimating

~~2.3.3.21~~ 2.5.5.21 Ethics and standards of professional practice

~~2.3.3.22~~ 2.5.5.22 Land use planning, zoning and taxation

~~2.3.3.23~~ 2.5.5.23 Management, leasing, brokerage, timesharing

~~2.3.3.24~~ 2.5.5.24 Property development

~~2.3.3.25~~ 2.5.5.25 Real estate appraisal (valuations/evaluations)

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2.3.3.26 <u>2.5.5.26</u>	Real estate financing and investment
2.3.3.27 <u>2.5.5.27</u>	Real estate law
2.3.3.28 <u>2.5.5.28</u>	Real estate litigation
2.3.3.29 <u>2.5.5.29</u>	Real estate appraisal related computer applications
2.3.3.30 <u>2.5.5.30</u>	Real estate securities and syndication
2.3.3.31 <u>2.5.5.31</u>	Real property exchange
2.3.3.32 <u>2.5.5.32</u>	Delaware law and regulations

~~2.3.4~~ 2.5.6 Continuing education credit, up to 14 hours per licensure cycle, may also be granted for participation, other than as a student, in:

~~2.3.4.1~~ 2.5.6.1 Teaching, including preparation time up to the number of hours spent teaching, for example, a 3 hour class can be submitted for 6 hours if the preparation time was at least 3 hours.

~~2.3.4.2~~ 2.5.6.2 Program development

~~2.3.4.3~~ 2.5.6.3 Authorship of textbooks

~~2.3.5~~ 2.5.7 Continuing education credit may be awarded for participation in field trips, conferences, and trade association meetings, excluding travel time, if those activities specifically relate to real estate appraisal education, but for no more than eight (8) hours per licensure period.

~~2.3.6~~ 2.5.8 A creditable hour is defined as fifty minutes out of each sixty minute segment. The educational offering must be at least two hours.

~~2.3.7~~ 2.5.9 The Delaware Council on Real Estate Appraisers may approve the content of a distance education course after approval of the delivery mechanism is approved from one of the following sources:

~~2.3.7.1~~ 2.5.9.1 AQB approved organizations providing approval of course design and delivery, such as the International Distance Education Certification Center (IDECC);

~~2.3.7.2~~ 2.5.9.2 A college that qualifies for content approval and awards academic credit for the distance education course; or

~~2.3.7.3~~ 2.5.9.3 A qualifying college for content approval with a distance education delivery program that approves the course design and delivery that incorporates interactivity;

~~2.3.8~~ 2.5.10 Educational offerings that have documented approval by the AQB or another state are automatically approved when they are submitted to the Council with a certificate of attendance. In cases where the educational offering has not been approved by the AQB or another state, either the provider or the appraiser must apply to the Council for approval using a form approved by the Council. Applicants seeking pre-approval must submit all required documentation 60 days before the scheduled offering.

~~2.4~~ 2.5.11 Duplicate License or Certificate Fee

~~2.4.1~~ 2.5.11.1 By submitting a written request to the Council and paying the appropriate fee as set by the Division of Professional Regulation, a licensee or certificate holder may obtain a duplicate real property appraiser license, certificate or pocket card to replace an original license, certificate or pocket card which has been lost, damaged, destroyed, or if the name of the licensee or certificate holder has been lawfully changed. A certified copy of a marriage license, divorce decree or court order of a name change must accompany a request for a change of name.

~~2.5~~ 2.5.12 Federal Appraiser Registry

Licensees and certificate holders are required to be enrolled in the federal roster or registry of state licensed and state certified real property appraisers. The fee established for that purpose shall be paid biennially by the license or certificate holder to the State of Delaware.

4 DE Reg. 1504 (03/01/01)

6 DE Reg. 1668 (06/01/03)

9 DE Reg. 1377 (03/01/06)

3.0 Examination

3.1 Examination

3.1.1 The Council shall review each application to determine whether the applicant is qualified under 24 **Del.C.** §4008 to sit for the examination.

3.1.2 Applicants for licensure as a state licensed real property appraiser and for certification as a state certified residential or general real property appraiser shall successfully complete the examination as endorsed by the AQB and approved by the Council on Real Estate Appraisers.

3.1.3 The passing scores on the examinations shall be the scores recommended as passing by Assessment Systems, Inc., the successor agency or company then contracted by the Division of Professional Regulation for administering the examination as endorsed by the Council on Real Estate Appraisers.

4 DE Reg. 1504 (03/01/01)

9 DE Reg. 1377 (03/01/06)

4.0 General Appraisal Practice

4.1 Administrative Responsibilities

4.1.1 A State licensed real property appraiser shall utilize the term "State licensed real property appraiser"; a State certified residential real property appraiser shall utilize the term "State certified residential real property appraiser"; and a State certified general real property appraiser shall utilize the term "State certified general real property appraiser" when performing and signing appraisals. The terms "certified" or "licensed" shall not be used in connection with appraisals or appraisers in any other form. A State licensed appraiser trainee shall use the term "State licensed appraiser trainee" or "appraiser trainee" and shall only co-sign appraisals along with a State licensed or State certified real property appraiser. Approved abbreviations are as follows:

DE Cert Gen followed by the certification number,
DE Cert Res followed by the certification number,
DE Lic Appr followed by the license number,
DE Appr Trainee followed by the license number.

4.1.2 The real property appraiser license or certificate of a State licensed or State certified real property appraiser shall be prominently displayed at the appraiser's place of business.

4.1.3 The biennial license or certificate renewal pocket card issued by the Council to each State licensed or State certified real property appraiser shall be retained by the licensee or certificate holder as evidence of licensure or certification.

4.1.4 When advertising or otherwise holding himself/herself out as a real property appraiser, a State licensed real property appraiser shall identify himself/herself as a "State licensed real property appraiser." A State certified residential real property appraiser shall identify himself/herself as a "State certified residential real property appraiser". A State certified general real property appraiser shall identify himself/herself as a "State certified general real property appraiser." A State licensed real estate appraisal trainee shall identify himself/herself as a "State licensed real estate appraiser trainee."

4.1.5 Licensure or certification as a real property appraiser is granted only to persons and does not extend to a business entity.

4.1.6 All licensees and certificate holders shall notify the Council in writing of each change of business address, residence address, or trade name within ten (10) days of said change. The address shall be sufficiently descriptive to enable the Council to correspond with and locate the licensee or certificate holder.

4.1.7 Each written appraisal report prepared by or under the direction of a State licensed or State certified real property appraiser shall bear the signature of the State licensed or State certified appraiser, the license or certificate number of the licensee or certificate holder in whose name the appraisal report is issued, and the appropriate title such as "appraiser trainee" (as co-signer only), "State licensed real property appraiser," "State certified residential real property appraiser," or the designation "State certified general real property appraiser," or the approved abbreviations as specified in Rule 4.1.1. Said certified or licensed appraiser shall be fully responsible for the content of the report prepared under his or her direction. Where applicable, each appraisal report shall also indicate whether or not the State licensed or State certified appraiser has personally inspected the property, and shall identify any other person who assists in the appraisal process other than by providing clerical assistance.

4.1.8 Each State certified or State licensed appraiser shall be responsible for the proper maintenance and retention of the appraisal records.

4.2 Responsibilities of Supervisors of State Licensed Trainees

4.2.1 A state licensed appraiser trainee may assist in the completion of an appraisal report, including an opinion of value, and may co-sign an appraisal, provided that he/she is actively and personally supervised by a state certified or licensed real property appraiser, provided that the appraisal report is reviewed and signed by the state certified or licensed real property appraiser, and provided that the licensed or certified appraiser accepts total responsibility for the appraisal report. An appraiser trainee is permitted to have more than one supervising appraiser. Notwithstanding any language in Rule 4.2 to the contrary, as of January 1, 2008 and in

PROPOSED REGULATIONS

accord with the AQB qualification criteria in effect as of that date, only certified appraisers in good standing may supervise trainees.

4.2.2 A state licensed or state certified real property appraiser may employ a person(s) as a state licensed appraiser trainee(s) to assist in the performance of real estate appraisals, provided that the state licensed or state certified real property appraiser:

4.2.2.1 Provides direct supervision of the state licensed appraiser trainee as defined in the Uniform Standards of Professional Appraisal Practice (USPAP); "Direct Supervision" means to:

4.2.2.1.1 personally inspect with the trainee the interior and exterior of each property appraised;

4.2.2.1.2 personally review each appraisal report prepared by the trainee;

4.2.2.1.3 accept full responsibility for the report;

4.2.2.1.4 assign work to the trainee only if the trainee is competent to

perform such work; and

4.2.2.1.5 approve and sign the report as being independently and impartially prepared and in compliance with USPAP, these rules and regulations, and applicable statutory requirements;

4.2.2.2 Reviews all appraisal reports and supporting data used in connection with appraisals in which the services of a state licensed appraiser trainee is utilized;

4.2.2.3 Complies with all provisions of 4.1.7 regarding appraisal reports;

4.2.2.4 Reviews and approves a trainee's experience log maintained pursuant to

4.3.2.2. The supervisor shall make available to the trainee a copy of any appraisal report that the trainee assisted in preparing that is requested for review by the Council;

4.2.2.5 Supervises no more than three (3) trainees whose application for exemption has not been approved by the Council pursuant to Rule 4.2.3. Beginning January 1, 2008, a supervising appraiser shall not supervise more than three trainees at one time regardless of their status concerning exemption;

4.2.2.6 Signs an affidavit affirming that he/she is a State licensed or certified Real Property Appraiser and that he/she shall comply with all rules and policies regarding supervisory appraisers; and

4.2.2.7 Immediately advises the Council in writing when the certified or licensed appraiser is no longer supervising the trainee. The writing shall include the last known address of the appraiser trainee along with a copy of the letter from the supervisor to the trainee advising the trainee that his/her employment has been terminated or the letter of resignation from the trainee to the supervisor, whichever is applicable.

4.2.3 After the trainee has obtained two hundred fifty (250) hours of residential appraising or one thousand (1,000) hours of non-residential appraising experience as defined by the Appraisal Qualifications Board in its appraisal qualifications criteria, the supervisor and the trainee may jointly apply to the Council on a form provided by the Council, for an exemption that would allow the supervisor to sign the report without inspecting the property as provided by Rule 4.2.2.1.1, provided the trainee is competent to perform the inspection.

4.2.4 Beginning January 1, 2008, any person who has been subject to disciplinary action within the preceding two years that affects the supervisor's legal eligibility to engage in appraisal practice shall not be eligible to supervise trainees.

4.3 Responsibilities of State Licensed Appraiser Trainees

4.3.1 All appraiser trainees must be licensed as required under 24 Del.C. Ch. 40.

4.3.2 A State licensed trainee may assist in the performance of real estate appraisals provided that:

4.3.2.1 The trainee shall only work under the direct supervision of one or more State licensed or state certified real property appraiser(s); an individual who is no longer supervised shall not engage in the act of appraising until a new license is issued showing a new supervisor;

4.3.2.2 The trainee shall maintain an appraisal experience log on a form provided by the Council and certified by the supervising appraiser;

4.3.2.3 The trainee shall inspect the property and participate in the appraisal process in order to receive experience credit for the hours spent. The appraisal shall be signed by the trainee as follows:

The trainee shall place on the "other" line in the signature section of the appraisal forms, his or her license # and the title "appraiser Trainee" in the appropriate places. For example:

“or other (describe) Appraiser Trainee State# X4-xxx”

4.3.2.4 The trainee shall ensure that the log is available at all times for inspection by the Council; and

4.3.2.5 When performing appraisal assignments, the trainee shall carry on his/her person the license issued by the Council.

4 DE Reg. 1504 (03/01/01)

9 DE Reg. 1377 (03/01/06)

***Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Council on Real Estate Appraisers is available at: <http://regulations.delaware.gov/AdminCode/title24/2930%20Council%20on%20Real%20Estate%20Appraisers.shtml#TopOfPage>**

DIVISION OF PROFESSIONAL REGULATION

4400 Delaware Manufactured Home Installation Board

Statutory Authority: 24 Delaware Code, Section 4416(b)(1) (24 **Del.C.** §4416(b)(1))

24 DE Admin. Code 4400

PUBLIC NOTICE

The Delaware Manufactured Home Installation Board, in accordance with 24 **Del.C.** §4416(b)(1) has proposed revisions to **Regulation 5.0** of its rules and regulations. The proposed revisions address the requirements for re-taking the examination once an applicant for licensure as a manufactured home installer has failed the examination at least twice.

A public hearing on the proposed revisions to the rules and regulations will be held on Monday, September 10, 2007, at 9:15 a.m. in Conference Room B, on the second floor 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 Manufactured Home Installation Board, 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.

4400 Delaware Manufactured Home Installation Board

(Break in Continuity of Sections)

5.0 Examination

5.1 An applicant for licensure as a manufactured home installer shall obtain a grade of 70% on the Board-approved examination to qualify for licensure.

5.2 Applicants may use the following three reference materials during the examination:

5.2.1 A Board-approved reference manual;

5.2.2 The Statute governing this Board, Title 24, Chapter 44 of the **Delaware Code**; and

5.2.3 The Board's Rules and Regulations, 24 **Del. Admin. Code** Section 4400.

5.3 Applicants who fail the examination two consecutive times must successfully complete a Board-approved training course after failing the second test and prior to sitting for the examination a third time. Applicants who fail the examination a third time must wait one year before retesting from the date of the third test and must re-apply for licensure.

***Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Delaware Manufactured Home Installation Board is available at: <http://regulations.delaware.gov/AdminCode/title24/4400%20Delaware%20Manufactured%20Home%20Installation%20Board.shtml#TopOfPage>**

DIVISION OF PROFESSIONAL REGULATION**5300 Board of Massage and Bodywork**

Statutory Authority: 24 Delaware Code, Section 5306(a)(1) (24 **Del.C.** §5306)
24 **DE Admin. Code** 5300

PUBLIC NOTICE

The Delaware Board of Massage and Bodywork, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §5306(a)(1), proposes amendments to its regulation 1.0. Specifically, the proposed amendments to **1.0 Definitions and General Definitions** clarify which practices or modalities are included in the definition of either massage or bodywork and, therefore, require licensure to practice.

A public hearing is scheduled for Thursday, September 20, 2007 at 1:30 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 Nancy Fields at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Nancy Fields at the above address or by calling (302) 744-4537.

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

5300 Board of Massage and Bodywork**1.0 Definitions and General Definitions**

1.1 The term "500 hours of supervised in-class study" as referenced in 24 **Del.C.** §5308(a)(1) shall mean that an instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a curriculum that is substantially the same as referenced in 24 **Del.C.** §5308(a)(1) and which includes hands-on technique and contraindications as they relate to massage and bodywork. More than one school or approved program of massage or bodywork therapy may be attended in order to accumulate the total 500 hour requirement.

1.2 The term a "300 - hour course of supervised in-class study of massage" as referenced in 24 **Del.C.** §5309(a)(1) shall mean that an instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a 300 hour course which includes no less than sixty hours of anatomy and physiology, one hundred-forty hours of theory and technique and one hundred hours of elective courses in the field of massage therapy as referenced in 24 **Del.C.** §5309(a)(1).

1.2.1 The 300 hour course must be a unified introductory training program in massage and bodywork, including training in the subjects set forth in Regulation 1.4. The entire 300 hour course must be taken at one school or approved program. The Board may, upon request, waive the "single school" requirement for good cause or hardship, such as the closure of a school.

1.3 The term a "200 hour course of supervised in-class study of massage" as referenced in 24 **Del.C.** §5309(b) shall mean that an instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a 200 hour course which includes no less than fifty hours of anatomy and physiology, one hundred-ten hours of theory and technique, twenty- five hours of ethics, law, and contraindications and fifteen hours of elective courses in the field of massage therapy as referenced in 24 **Del.C.** §5309(b).

1.4 The “practice of massage and bodywork” “**Massage**” includes, but is not limited to, the following practices or modalities:

~~Acupressure~~
~~Chair Massage~~
~~Craniosacral Therapy~~
~~Deep Tissue Massage Therapy~~
~~Healing Touch~~
~~Joint Mobilization~~
~~Lymph Drainage Therapy~~
~~Manual Lymphatic Drainage~~
~~Massage Therapy~~
~~Myofascial Release Therapy~~
~~Neuromuscular Therapy~~
~~Orthobionomy~~
~~Process Acupressure~~
~~Reflexology~~
~~Rolfing~~
~~Shiatsu~~
~~Swedish Massage Therapy~~
~~Trager~~
~~Visceral Manipulation~~

1.5 The practice of the following modalities does not constitute the “practice of massage and bodywork” “**Bodywork**” includes the following practices or modalities:

~~Acupressure~~
~~Craniosacral Therapy~~
~~Alexander Technique~~
~~Clinical Aroma therapy~~
~~Feldenkrais~~
~~Hellerwork~~
~~Polarity Therapy~~
~~Reiki~~
~~Shamanic Techniques~~
~~Therapeutic Touch~~
~~Process Acupressure~~
~~Reflexology~~
~~Rolfing~~
~~Shiatsu~~

1.6 “**CPR certification**” means a valid **Heartsaver**® CPR Certification or its equivalent issued by the American Heart Association, a valid Adult CPR Certification or its equivalent issued by the American Red Cross, or a valid Standard CPR Certification or its equivalent issued by the National Safety Council.

3 DE Reg. 1516 (05/01/00)

4 DE Reg. 1245 (02/01/01)

8 DE Reg. 692 (11/01/04)

10 DE Reg. 575 (09/01/06)

***Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Board of Massage and Bodywork are available at:**

<http://regulations.delaware.gov/AdminCode/title24/5300%20Board%20of%20Massage%20and%20Bodywork.shtml#TopOfPage>

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.

DELAWARE COUNCIL ON POLICE TRAINING

Statutory Authority: 11 Delaware Code, Section 8404(a)(5) (11 **Del.C.**, §8404(a)(5))

REGULATORY IMPLEMENTING ORDER

I. Summary of the Evidence and Information Submitted.

The Chairman of the Council on Police Training approves the proposed regulation as published in the *Delaware Register of Regulations* on July 2, 2007. Notices of the proposed regulation were published in The News Journal and the Delaware State News on June 20 and 24, 2007, respectively, in the form attached hereto. The notices invited written comments (none were received). The notices also invited the public to attend a hearing on July 24, 2007 to comment on the proposed regulation. No members of the public attended the hearing.

II. Findings of Fact.

The Chairman finds that it is necessary to adopt the regulation to promote public safety.

III. Decision to Adopt the Regulation.

For the foregoing reasons, the Chairman concludes that it is necessary to adopt the regulation. Therefore, pursuant to 11 **Del.C.** §8404(a)(14), the regulation attached hereto is hereby adopted.

IV. Text and Citation.

The text of the regulation amended hereby shall be in the form attached hereto, and said regulation shall be cited in the *Regulations of the Council on Police Training*.

V. Effective Date of Order.

The action referred to above was taken on July 24, 2007. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED, this 24th day of July, 2007.

Richard Carmean, Chairman
Council on Police Training

* 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 6 (11 DE Reg. 6). Therefore, the final regulation is not being republished. Please refer to the July 2007 issue of the *Register* or contact the Council on Police Training for more information.

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 923

REGULATORY IMPLEMENTING ORDER

923 Children with Disabilities, Subpart B, General Duties and Eligibility of Agencies

I. Summary of the Evidence and Information Submitted

On May 17, 2007, the Secretary of Education, with the consent of the State Board of Education, proposed to republish and adopt Section 6.0 of 14 **DE Admin. Code** 923 relating to the provision of Extended School Year Services for children with disabilities. The standards for Extended School Year Services existed in the Department's prior regulations, but were inadvertently omitted from the original publication of 14 **DE Admin. Code** 923.

On December 3, 2004, President Bush signed into law the *Individuals with Disabilities Education Improvement Act of 2004* ("IDEA 2004"). Most of IDEA 2004 became effective in July 2005. On August 14, 2006, the U.S. Department of Education issued its final regulations implementing IDEA 2004. The new federal regulations, located at 34 CFR Part 300, became effective on October 13, 2006.

The current State regulations relating to the education of children with disabilities became effective on June 11, 2007 and are codified as follows:

- 14 **DE Admin. Code** 922 Children with Disabilities, Subpart A, Purposes and Definitions
- 14 **DE Admin. Code** 923 Children with Disabilities, Subpart B, General Duties and Eligibility of Agencies
- 14 **DE Admin. Code** 924 Children with Disabilities, Subpart C, Local Educational Agency Eligibility
- 14 **DE Admin. Code** 925 Children with Disabilities, Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs
- 14 **DE Admin. Code** 926 Children with Disabilities, Subpart E, Procedural Safeguards for Parents and Children
- 14 **DE Admin. Code** 927 Children with Disabilities, Subpart F, Monitoring, Enforcement and Confidentiality of Information
- 14 **DE Admin. Code** 928 Children with Disabilities, Subpart G, Use and Administration of Funds, Subpart H Reserved
- 14 **DE Admin. Code** 929 Children with Disabilities, Subpart I, Special Programs and Unique Educational Alternatives

Notice of the proposed regulation, 14 **DE Admin Code** 923.6.0, was published in the News Journal and the Delaware State News on May 31, 2007, in the form hereto attached. The Department received comments on proposed regulation 14 **DE Admin. Code** 923.6.0, Extended School Year Services.

II. Findings of Facts

The Secretary finds it is appropriate to adopt Section 6.0 of 14 **DE Admin. Code** 923 to provide standards for the provision of Extended School Year Services to children with disabilities, and as part of a comprehensive review of State regulations relating to the education of children with disabilities in light of changes to federal law.

The Governor's Advisory Council for Exceptional Citizens suggested the Department further revise the definition of Extended School Year Services to clarify it includes services provided to children with disabilities in special populations beyond the standard schedule of school days specified in 14 **Del.C.** §1703. The Department believes the normal school year is sufficiently defined in Title 14 of the Delaware Code, and the statute adequately addresses the specific populations being served. Given the detailed provisions in Title 14, no change to the regulation is necessary.

The Secretary also finds it is appropriate to make the following, non-substantive change to Section 1.2 of 14 **DE Admin Code** 923 relating to the ages of children with disabilities eligible to receive a free, appropriate public education ("FAPE"). The Department will revise Section 1.2 to define the ages of eligibility for FAPE ages three (3) through twenty (20), inclusive. This non-substantive change is necessary to align the Department's regulation with existing State law (i.e., 14 **Del. C.** 3110(b)).

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to adopt Section 6.0 of 14 **DE Admin. Code 923** relating to the provision of Extended School Year Services and to amend Section 1.2 of 14 **DE Admin Code 923** relating to the ages of eligibility for FAPE. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 923.1.2, and 14 **DE Admin Code** 923.6.0, attached hereto are hereby adopted. Pursuant to 14 **Del.C.** §122(e), 14 **DE Admin. Code** 923.1.2 and 6.0 shall be in effect for a period of five years from the effective date of this order as set forth in Section V below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 923.1.2 and 6.0 shall be in the form attached hereto, and said regulation shall be cited as 14 **DE Admin. Code** 923.1.2 and 6.0 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

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

IT IS SO ORDERED the 19th day of July, 2007.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff
Secretary of Education

Approved this 19th day of July, 2007.

STATE BOARD OF EDUCATION

Jean W. Allen, President
Mary B. Graham, Esquire
Barbara Rutt
Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President
Jorge L. Melendez
Dennis J. Savage

923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies

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

(Break in Continuity of Sections)

6.0 Extended School Year Services

6.1 General: Each public agency shall ensure that extended school year services are available as necessary to provide FAPE, consistent with 6.2 through 6.5.

6.2 Extended school year services shall be provided only if a child's IEP Team determines, on an individual basis, in accordance with 14 **DE Admin. Code** 925.20.0 through 925.24.0, that the services are necessary for the provision of FAPE to the child.

6.3 In implementing the requirements of this section, a public agency may not limit extended school year services to particular categories of disability; or unilaterally limit the type, amount, or duration of those services.

6.4 Definition, as used in this section:

"Extended School Year Services" means special education and related services that are provided to a child with a disability beyond the normal school year of the public agency in accordance with the child's IEP and at no cost to the parents of the child; and meets the standards of the DOE.

6.5 *Determining need for Extended School Year Services: Full consideration must be given to the educational needs of each child. The following factors are to be considered by the IEP team in making a decision that, without extended school year services over the summer months, the child would not receive a free appropriate public education during the regular school year.*

6.5.1 *Degree of Impairment: The team should determine whether, without extended school year services, appropriate and meaningful progress on IEP goals and objectives will not be achieved, given the nature or severity of the child's disability.*

6.5.2 *Regression and recoupment: Regression refers to a decline in skills specified on the IEP which results from an interruption in programming. Recoupment period is the amount of time required to relearn the skills following the interruption. In making a determination as to whether extended school year services are required, the team should consider that this criterion focuses on children who have a consistent pattern of substantial regression in critical skill areas and for whom the amount of time needed to relearn the skills becomes so significant as to preclude educational progress. The team may utilize predictive data for children in their initial year of programming.*

6.5.3 *Breakthrough opportunities: The team should determine whether, without extended school year services, the attainment of a nearly acquired critical skill would be significantly jeopardized over the summer break*

6.5.4 *Vocational: For children ages 16-20 whose IEPs contain vocational or employment goals and objectives, the team should determine whether paid employment opportunities will be significantly jeopardized if training and job coaching are not provided during the summer break.*

6.5.5 *Other rare and unusual extenuating circumstances: The team should determine whether any special or extenuating circumstances exist which justify provision of extended school year services to meet FAPE requirements.*

6.6 Extended school year services are to be based on needs and goals or objectives found within the child's IEP of the school year, though activities may be different.

6.7 This regulation does not diminish a child's entitlement to participate, with or without accommodations, in summer school programs. Normally scheduled summer school programs may be an option for providing extended school year services if such programs can meet the individual needs of each child, as identified on the child's IEP.

6.8 The decision of the setting for the delivery of extended school year services shall be an IEP team decision. The team shall document that the Least Restrictive Environment (LRE) was considered in making a decision. Districts are not required to establish school programs for non-disabled children for the sole purpose of satisfying the LRE requirements for children receiving extended school year services.

6.9 Transportation shall be provided to children except for service provided in the home or hospital. Mileage reimbursement to the family may be used as a transportation option if the parent voluntarily transports the student.

6.10 Written notice shall be provided to parents advising them that the IEP team shall document that extended school year services were considered, and indicate the basis for a decision on the IEP. In cases where parents do not attend the IEP meeting, they would be advised of the decision on extended school year services through the usual IEP follow-up procedures used by the district.

6.11 In cases where parents do not agree with the decision on extended school year services, the use of normal procedural safeguards shall be followed. The process shall begin early enough to ensure settlement of the issue prior to the end of the school year.

Non-regulatory Note: Districts are encouraged to complete this process by May 1 so that appropriate planning and preparation can occur.

(Authority: 20 U.S.C. 1412(a)(1); 14 Del.C. §3110)

***Please Note:** As the rest of the sections were not amended since the proposal in the June 2007 issue, they are not being published here. Please refer to the June 2007 *Register*, page 1758 (10 DE Reg. 1758) or contact the Department of Education for more information.

A complete set of the rules and regulations for the Department of Education are available at: <http://regulations.delaware.gov/AdminCode/title14/index.shtml#TopOfPage>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 925

REGULATORY IMPLEMENTING ORDER

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

I. Summary of the Evidence and Information Submitted

On May 17, 2007, the Secretary of Education, with the consent of the State Board of Education, proposed to republish the Department's regulations relating to Response to Intervention procedures ("RTI") and the eligibility criteria for children with visual impairments.

On December 3, 2004, President Bush signed into law the *Individuals with Disabilities Education Improvement Act of 2004* ("IDEA 2004"). Most of IDEA 2004 became effective in July 2005. On August 14, 2006, the U.S. Department of Education issued its final regulations implementing IDEA 2004. The new federal regulations, located at 34 CFR Part 300, became effective on October 13, 2006.

The current State regulations relating to the education of children with disabilities became effective on June 11, 2007 and are codified as follows:

14 **DE Admin. Code** 922 Children with Disabilities, Subpart A, Purposes and Definitions

14 **DE Admin. Code** 923 Children with Disabilities, Subpart B, General Duties and Eligibility of Agencies

14 **DE Admin. Code** 924 Children with Disabilities, Subpart C, Local Educational Agency Eligibility

14 **DE Admin. Code** 925 Children with Disabilities, Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs

14 **DE Admin. Code** 926 Children with Disabilities, Subpart E, Procedural Safeguards for Parents and Children

14 **DE Admin. Code** 927, Children with Disabilities, Subpart F, Monitoring, Enforcement and Confidentiality of Information

14 **DE Admin. Code** 928 Children with Disabilities, Subpart G, Use and Administration of Funds, Subpart H Reserved

14 **DE Admin. Code** 929 Children with Disabilities, Subpart I, Special Programs and Unique Educational Alternatives

Notice of the proposed regulations, 14 **DE Admin Code** 925.6.0 through 12.0, was published in the News Journal and the Delaware State News on May 31, 2007, in the form hereto attached. The Department received comments on proposed regulations 14 **DE Admin. Code** 925.6.0 through 12.0.

II. Findings of Facts

The Secretary finds it is appropriate to re-adopt and amend Sections 6.0 through 12.0 of 14 **DE Admin. Code** 925 as part of a comprehensive review of State regulations relating to the education of children with disabilities in light of changes to federal law.

The Secretary also makes the following specific findings:

Response to Intervention (RTI)

The Department received written public comment concerning the proposed response to intervention (“RTI”) regulations. As a result, however, the Secretary finds no substantive changes are necessary to the RTI procedures.

The Governor’s Advisory Council for Exceptional Citizens suggested the Department’s regulations discourage the use of intelligence testing in assessing a child’s eligibility for special education services under the learning disability category. The Department’s regulations permit the evaluation team to consider intelligence testing if the team determines it relevant to the identification of a learning disability for a particular child. The Department believes it is unnecessary to change the regulations. The Department’s regulations are intended to confirm the assessment and evaluation of children should be individualized. Intelligence testing is not necessarily informative of whether a child has a learning disability, nor does it indicate how a child best learns in the educational setting.

In addition, the Governor’s Advisory Council for Exceptional Citizens suggested the Department require, rather than permit, the involvement of school psychologists on all evaluation teams when assessing for learning disabilities. The Department believes this suggestion would impose unnecessary restrictions on schools and children in the eligibility process, and the regulations should not be changed. The Department will also follow federal regulations by permitting the participation of school psychologists, rather than requiring it.

Another comment from the Governor’s Advisory Council for Exceptional Citizens suggested Section 12.0 establishes a lengthy and complicated intervention process prior to a child’s referral for special education evaluation, and the referral period should be lessened. The Department believes this suggestion would undermine the inherent benefits of the RTI process. The RTI tiers under the eligibility standards for learning disabilities provide immediate services to children. Through RTI implementation, invaluable information will be gathered about a child’s needs, the evaluation process will be easier, and eligibility decisions will be more accurate and scientifically-based.

Visual Impairment Eligibility

The Governor’s Advisory Council for Exceptional Citizens suggested the eligibility criteria for visual impairment in Section 6.17.2 relating to a partially sighted child should include reference to not just a “disease”, but also a “condition” or “impairment” of the eye or visual system that seriously affects visual function directly. The

Department agrees, and has made a non-substantive revision to the regulation.

The Governor's Advisory Council for Exceptional Citizens also suggested Section 6.17.3 be clarified to state a licensed ophthalmologist or optometrist shall document that a child meets the eligibility criteria for visual impairment. The Department agrees, and has made a non-substantive revision to the regulation.

Services Following a Child's 21st Birthday

The Secretary also finds it is appropriate to make the following, non-substantive change to Section 6.5.4.1 of 14 **DE Admin Code** 925 relating to children with disabilities who reach their 21st birthday. The Department will revise Section 6.5.4.1 to clarify a child with a disability who reaches his or her 21st birthday after August 31st may continue to receive special education and related services until the end of the school year, including appropriate summer services through August 31st.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to re-adopt and amend **Sections 6.0 through 12.0 of 14 DE Admin. Code 925**, with the non-substantive revisions above. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 925.6.0 through 12.0, attached hereto are hereby adopted. Pursuant to 14 **Del.C.** §122(e), 14 **DE Admin. Code** 925.6.0 through 12.0 shall be in effect for a period of five years from the effective date of this order as set forth in Section V below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 925.6.0 and 12.0 shall be in the form attached hereto and said regulations shall be cited as 14 **DE Admin. Code** 925.6.0 through 12.0 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

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

IT IS SO ORDERED the 19th day of July, 2007.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 19th day of July, 2007.

STATE BOARD OF EDUCATION

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

Non-regulatory note: Some sections of this regulation are shown in *italics*. Federal law requires that the Delaware Department of Education identify in writing any Delaware rule, regulation or policy that is a state-imposed requirement rather than a federal requirement (see 20 USC §14079a)(2)). The *italicized portions* of this regulation

are Delaware-imposed requirements for the education of children with disabilities and are not specifically required by federal special education law and regulations.

(Break in Continuity of Sections)

6.0 Determination of Eligibility

6.1 General: Upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals and the parent of the child shall determine whether the child is a child with a disability, as defined in 14 **DE Admin. Code** 922.3.0, in accordance with ~~[6.1-4 6.2]~~ and the educational needs of the child; and the public agency shall provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. *The evaluation report shall document the IEP team's discussion of the eligibility determination including, where appropriate, the additional requirements for students with a learning disability.*

6.2 Special rule for eligibility determination: A child shall not be determined to be a child with a disability under these regulations if the determinant factor for that determination is:

6.2.1 Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);

6.2.2 Lack of appropriate instruction in math; or

6.2.3 Limited English proficiency; and

6.2.4 If the child does not otherwise meet the eligibility criteria to be determined a child with a disability as defined in 14 **DE Admin. Code** 922.3.0.

6.3 Procedures for determining eligibility and educational need: *Eligibility decisions may include historical information to the extent relevant to the child's current needs.* In interpreting evaluation data for the purpose of determining if a child is a child with a disability under 14 **DE Admin. Code** 922.3.0, and the educational needs of the child, each public agency shall:

6.3.1 Draw upon information from a variety of sources, including, as appropriate, aptitude and achievement tests, information acquired from response to intervention processes, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and ensure that information obtained from all of these sources is documented and carefully considered.

6.3.2 If a determination is made that a child has a disability and needs special education and related services, an IEP shall be developed for the child in accordance with 20.0 through 24.0.

6.4 ~~Reserved~~ If, prior to the effective date of 6.11, a child has been identified as a child with a learning disability or an educable mental disability, and is receiving special education services from a Delaware public agency as a result of that identification, the child shall continue to be eligible for services in Delaware as a learning disabled or educably mentally disabled student until the child's reevaluation as required in 3.0. Reevaluation of such students shall apply the eligibility requirements of 6.11 and 7.0 through 12.0 as appropriate to the child's grade level as of the date of the reevaluation.

(Authority: 20 U.S.C. 1414(b)(4) and (5); 14 **Del.C.** §3110)

6.5 Other Eligibility requirements and exit criteria.

6.5.1 A child shall be entitled to receive special education and related services, and shall be eligible to be counted as a special education student for purposes of the unit funding system established under 14 **Del.C.** Ch. 17, when the child's team has determined that the child meets the eligibility criteria of at least one of the disability classifications in this section, and by reason thereof, needs special education and related services.

6.5.2 A child's IEP team may, but is not required to, determine that a child is eligible for special education and related services under more than one disability classification. The disability classification selected by the IEP team shall not be a relevant factor in determining whether the child received FAPE, provided that the child's IEP is based on the child's educational needs.

6.5.3 When an IEP team determines that a child is eligible for special education and related services under more than one disability classification, and includes the child as a special education student in the unit funding system, the LEA or other public agency shall report the child in the disability classification which best describes the effect of the disability on the child in the educational setting. The child's primary disability classification shall be recorded first on the IEP.

6.5.4 Exit Criteria: A child's eligibility for special education and related services shall terminate

when:

6.5.4.1 the child reaches his or her 21st birthday~~]; or~~. ***A child with a disability who reaches his or her 21st birthday after August 31 may continue to receive special education and related services until the end of the school year, including appropriate summer services through August 31; or]***

6.5.4.2 the child graduates from high school with a regular high school diploma. As used in this subsection, regular high school diploma does not include a GED; or

6.5.4.3 the IEP team determines the child is no longer a child with a disability in need of special education and related services. In making such determination, the team shall consider: eligibility criteria; data based and documented measures of educational progress; and other relevant information.

6.6 Eligibility Criteria for Autism. The educational classification of autism encompasses the clinical condition of Autistic Disorder, as well as other typically less severe Pervasive Developmental Disorders, (i.e., Asperger Syndrome and Pervasive Developmental Disorder, Not Otherwise Specified). These conditions share important features, and together, comprise the Autistic Spectrum Disorders (ASDs). Students with educational classifications of autism may have ASD of differing severity as a function of the number and pattern of features defined in the eligibility criteria listed below.

6.6.1 In order for the IEP team to determine eligibility for special education services under the Autism category, the following is required:

6.6.1.1 All students with an educational classification of autism demonstrate a significant, qualitative impairment in reciprocal social interaction, as manifested by deficits in at least two of the following:

6.6.1.1.1 Use of multiple nonverbal behaviors to regulate social interactions;

6.6.1.1.2 Development of peer relationships;

6.6.1.1.3 Spontaneous seeking to share enjoyment, interests, or achievements with other people, including parent(s) and caregivers; or

6.6.1.1.4 Social or emotional reciprocity.

6.6.1.2 All students with an educational classification of autism also demonstrate at least one feature from either 6.6.1.2.1 or 6.6.1.2.2.

6.6.1.2.1 A qualitative impairment in communication, as manifested by:

6.6.1.2.1.1 A lack of, or delay in, spoken language and failure to compensate through gesture;

6.6.1.2.1.2 Relative failure to initiate or sustain a conversation with

others;

6.6.1.2.1.3 Stereotyped, idiosyncratic, or repetitive speech; or

6.6.1.2.1.4 A lack of varied, spontaneous make believe play or social

imitative play.

6.6.1.2.2 Restricted, repetitive, and stereotyped patterns of behavior, as

manifested by:

6.6.1.2.2.1 Encompassing preoccupation or circumscribed and

restricted patterns of interest;

6.6.1.2.2.2 Apparently compulsive adherence to specific,

nonfunctional routines and rituals;

6.6.1.2.2.3 Stereotyped and repetitive motor mannerisms; or

6.6.1.2.2.4 Persistent preoccupation with parts and sensory qualities

of objects.

6.6.1.3 All students with an educational classification of autism have impairments that:

6.6.1.3.1 Are inconsistent with the student's overall developmental and functional level; and

6.6.1.3.2 Result in an educationally significant impairment in important areas of functioning; and

6.6.1.3.3 Are a part of a clear pattern of behavior that is consistently manifested across a variety of people, tasks and settings, and that persists across a significant period of time; and

6.6.1.3.4 Are not primarily accounted for by an emotional disorder.

6.6.2 An educational classification of autism is established:

6.6.2.1 Using specialized, validated assessment tools that provide specific evidence of the features of ASD described above;

6.6.2.2 By individuals who have specific training in the assessment of students with ASD in general, and in the use of the assessment procedures referred to in ~~[6.6.3-2.1~~ 6.6.2.1]; and

6.6.2.3 Based upon an observation of the student in a natural education environment, an observation under more structured conditions, and information regarding the student's behavior at home.

6.6.3 Age of Eligibility: The age of eligibility for children with autism shall be from birth through age 20, inclusive.

6.7 Eligibility Criteria for Developmental Delay: A developmental delay is a term applied to a young child who exhibits a significant delay in one or more of the following developmental domains: cognition, communication (expressive and receptive), physical (gross motor and fine motor) social emotional functioning and adaptive behavior. A developmental delay shall not be primarily the result of a significant visual or hearing impairment.

6.7.1 In order for an IEP team to determine eligibility for special education services under the Developmental Delay category, the following is required:

6.7.1.1 Standardized test scores of 1.5 or more standard deviations below the mean in two or more of the following developmental domains: cognition, communication (expressive and/or receptive), physical (gross motor and fine motor) social emotional functioning and adaptive behavior; or

6.7.1.2 Standardized test scores of 2.0 or more standard deviations below the mean in any one of the developmental domains listed above; or

6.7.1.3 Professional judgment of the IEP team that is based on multiple sources of information used in the assessment process and with justification documented in writing in the evaluation report of a significant difference between the child's chronological age and his or her current level of functioning. A significant difference is defined as a minimum of a 25% delay in comparison to same aged peers.

6.7.2 Multiple sources and methods of information shall be used in the determination of eligibility for service provision. An assessment shall include, but not be limited to, the following sources of information:

6.7.2.1 Developmental and medical history;

6.7.2.2 Interview with the child's parent or primary caregiver;

6.7.2.3 Behavioral observations;

6.7.2.4 Standardized norm referenced instruments; and

6.7.2.5 Other assessments which could be used for intervention planning, such as dynamic or criterion referenced assessments, behavior rating scales, or language samples.

6.7.3 The assessment of a child suspected of a developmental delay shall be culturally and linguistically sensitive.

6.7.4 Age of eligibility: The age of eligibility for classification under the developmental delay classification is from the third birth date until the ninth birth date.

6.8 Eligibility Criteria for Deaf Blind: An IEP team shall consider the following in making a determination that a child has a deaf blind condition:

6.8.1 A qualified physician or licensed audiologist shall document that a child has a hearing loss so severe that he or she cannot effectively process linguistic information through hearing, with or without the use of a hearing aid. Such documentation shall be based upon a formal observation or procedure; and a licensed ophthalmologist or optometrist shall document that a child has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest lateral field of vision subtends less than 20 degrees; and

6.8.2 An IEP team shall consider the documentation of auditory and visual impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

6.8.3 Classification as a child who is deaf blind shall be made by the IEP team after consideration of the above eligibility criteria.

6.8.4 Age of Eligibility: The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

6.9 Eligibility Criteria for Emotional Disturbance: The IEP team shall consider documentation of the manifestation of the clusters or patterns of behavior associated with emotional disturbance and documentation

from multiple assessment procedures. Such procedures shall include, but not be limited to, an evaluation by either a licensed or certified school psychologist, or a licensed psychiatrist, classroom observations by teacher(s) and at least one other member of the IEP team, a review of records, standardized rating scales, and child interviews.

6.9.1 The documentation shall show that the identified behaviors have existed over a long period of time and to a marked degree, and:

6.9.2 Adversely affect educational performance. This means that the child's emotions and behaviors directly interfere with educational performance. It also means that such interference cannot primarily be explained by intellectual, sensory, cultural, or health factors, or by substance abuse; and

6.9.2.1 Are situationally inappropriate for the child's age. This refers to recurrent behaviors that clearly deviate from behaviors normally expected of other students of similar age under similar circumstances. That is, the student's characteristic behaviors are sufficiently distinct from those of his or her peer groups; or

6.9.2.2 Preclude personal adjustment or the establishment and maintenance of interpersonal relationships. This means that the child exhibits a general pervasive mood of unhappiness or depression, or is unable to enter into age appropriate relationships with peers, teachers and others; and

6.9.3 The age of eligibility for children identified under this definition shall be from the 4th birthday through 20 years, inclusive.

6.10 Eligibility Criteria for Hearing Impairment: A qualified physician or licensed audiologist shall document that a child has a hearing loss such that it makes difficult or impossible the processing of linguistic information through hearing, with or without amplification. Such documentation shall be based upon a formal observation or procedure; and

6.10.1 The IEP team shall consider the documentation of hearing impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

6.10.2 The age of eligibility of children identified under this definition shall be from birth through 20 years, inclusive.

6.11 Eligibility Criteria for Learning Disability:

6.11.1 ~~Reserved. Elimination of discrepancy model: As of the effective date of this section, public agencies shall not use discrepancy between achievement and intellectual ability to determine eligibility for special education and related services under the learning disability category.~~

6.11.2 ~~Reserved. Existence of a learning disability: As of the effective date of this section, and subject to the requirements of 6.11.3, public agencies shall use the standards and procedures in 7.0 through 11.0 to determine whether a child is eligible for special education and related services under the learning disability category.~~

6.11.3 ~~Reserved. Phase in of response to intervention procedures:~~

6.11.3.1 ~~Reserved. Elementary school children: No later than the beginning of the 2008- 2009 school year, public agencies shall use the standards and procedures in 7.0 through 12.0, including the response to intervention process, to determine whether a child in elementary school (as elementary school is defined by the public agency) is eligible for special education and related services under the learning disability category.~~

6.11.3.2 ~~Reserved. Other students: No later than the beginning of the 2009-2010 school year, public agencies shall use the standards and procedures in 7.0 to 12.0, including the response to intervention process, to determine whether a student is eligible for special education and related services under the learning disability category.~~

6.11.4 ~~Reserved. Use of response to intervention procedures for 2007-2008: During the 2007-2008 school year, public agencies are permitted to use the response to intervention procedures in 12.0 to determine whether a child is eligible for special education and related services as a result of a learning disability. Local education agencies implementing response to intervention procedures during the 2007-2008 school year may do so in all or some of its schools, and at all or some grade levels.~~

6.11.5 The age of eligibility for students identified under this definition shall be from the fourth birthday through 20 years inclusive.

6.12 Eligibility Criteria for Mental Disability: Eligibility Criteria for Mental Disability: In order for the IEP team to determine eligibility for special education services under the Mental Disability category, the following is

required:

6.12.1 A level of intellectual functioning, as indicated below:

6.12.1.1 Educable Mental Disability: IQ 50 to 70 +/- 5 points;

6.12.1.2 Trainable Mental Disability: IQ 35 to 50 +/- 5 points;

6.12.1.3 Severe Mental Disability: IQ below 35; and Significant limitations in two or

more areas of adaptive behavior, including communication, self care, home and school living, social and interpersonal, community use, self direction and coping, health and safety, functional academics, leisure, play and work.

6.12.2 Assessment for both intellectual functioning and adaptive behavior shall be conducted by a licensed psychologist or certified school psychologist.

6.12.3 ~~Reserved.~~ Additional requirements for eligibility for Educable Mental Disability: In addition to the other requirements of 6.12, eligibility for special education services under the Educable Mental Disability category shall require written documentation that the child's response to scientific, research based intervention was assessed in accordance with 12.0.

6.12.3.1 This requirement shall apply no later than the beginning of the 2008-2009 school year for children in elementary school (as elementary school is defined by the public agency) and no later than the beginning of the 2009-2010 school year for all other children.

6.12.3.2 During the 2007-2008 school year, public agencies are permitted, but not required, to assess the child's response to scientific, research based intervention in determining a child's eligibility for special education services under the Educable Mental Disability category.

6.12.4 Age of Eligibility: The age of eligibility for children identified as Trainable Mental Disability and Severe Mental Disability shall be from the third birthday through 20 years, inclusive. Children identified as Educable Mental Disability shall be from the fourth birthday through 20 years, inclusive. These children may be served at age 3, as having a Developmental Delay.

6.13 Eligibility Criteria for Orthopedic Impairment: In order for an IEP team to determine eligibility for special education services under the orthopedic impairment category, the following is required:

6.13.1 A qualified physician shall document that a child has an orthopedic impairment in order to be considered for special education and related services.

6.13.2 The IEP team shall consider the child's need for special education and related services if the orthopedic impairment substantially limits one or more major activities of daily living and the child has:

6.13.2.1 Muscular or neuromuscular disability(ies) which significantly limit(s) the ability to communicate, move about, sit or manipulate the materials required for learning; or

6.13.2.2 Skeletal deformities or other abnormalities which affect ambulation, posture, and body use necessary for performing educational activities.

6.13.3 Determination by the IEP team of eligibility for services shall be based upon data obtained from:

6.13.3.1 Medical records documenting the physical impairment (required) and current prescriptions (e.g., O.T., P.T., medications, etc., if available);

6.13.3.2 Results from physical and occupational therapist screening(s) using appropriate measures which identify educational and related service needs, as well as environmental adjustments necessary; and

6.13.3.3 Prior program or school records (if available), and, when determined necessary, a speech and language evaluation, adaptive behavior scale, vision or hearing screening, social history or psychological evaluation.

6.13.4 For purposes of initial eligibility or continued eligibility determination, at least one of the following, and as many as are appropriate for the child's needs; physical therapist, occupational therapist, or nurse, shall be members of the IEP team.

6.13.5 Age of Eligibility: The age of eligibility for children with orthopedic impairments shall be from the third birthday through 20 years, inclusive.

6.14 Eligibility Criteria for Other Health Impairment: In order for an IEP team to determine eligibility for special education services under the Other Health Impairment category, the following is required:

6.14.1 Documentation from a qualified physician that a child has a chronic or acute health problem.

6.14.2 For ADD and ADHD, the above requirement and a school team of qualified evaluators that

determine the child exhibits:

6.14.2.1 Six (or more) of the following symptoms of inattention for at least six months, to a degree that is maladaptive and inconsistent with developmental level;
 6.14.2.1.1 Often fails to give close attention to details or makes careless mistakes in schoolwork, work, or other activities;
 6.14.2.1.2 Often has difficulty sustaining attention in tasks or play activities;
 6.14.2.1.3 Often does not seem to listen when spoken to directly;
 6.14.2.1.4 Often does not follow through on instructions and fails to finish schoolwork, chores, or duties in the work place (not due to oppositional behavior or failure to understand instructions);

6.14.2.1.5 Often has difficulty organizing tasks and activities;
 6.14.2.1.6 Often avoids, dislikes, or is reluctant to engage in tasks that require sustained mental effort (such as school work or homework);
 6.14.2.1.7 Often loses things necessary for tasks or activities (e.g., toys, school assignments, pencils, books, or tools);

6.14.2.1.8 Is often easily distracted by extraneous stimuli;
 6.14.2.1.9 Is often forgetful in daily activities; or
 6.14.2.2 Six (or more) of the following symptoms of hyperactivity impulsivity have persisted for at least six months to a degree that is maladaptive and inconsistent with developmental level:

6.14.2.2.1 Often fidgets with hands or feet and squirms in seat;
 6.14.2.2.2 Often leaves seat in classroom or in other situations in which remaining seated is expected;

6.14.2.2.3 Often runs about or climbs excessively in situations in which it is inappropriate (in adolescents or adults, may be limited to subjective feelings of restlessness);

6.14.2.2.4 Often has difficulty laying or engaging in leisure activities quietly;
 6.14.2.2.5 Is often "on the go" or often acts as if "driven by a motor";
 6.14.2.2.6 Often talks excessively;
 6.14.2.2.7 Often blurts out answers before questions have been completed;
 6.14.2.2.8 Often has difficulty waiting turn;
 6.14.2.2.9 Often interrupts or intrudes into conversations or games; and

6.14.2.3 Some hyperactive impulsive or inattentive symptoms that caused impairment were present before seven years of age;

6.14.2.4 A clear pattern that is consistently manifested across a variety of people, tasks and settings, and that persists across a significant period of time;

6.14.2.5 Clear evidence of clinically significant impairment in social, academic or occupational functioning; and

6.14.2.6 The symptoms do not occur exclusively during the course of a pervasive developmental disorder, schizophrenia, or other psychotic disorder, and are not better accounted for by another mental disorder (e.g. mood disorder, anxiety disorder, dissociative disorder, or personality disorder).

6.14.3 Determination by the IEP team of eligibility for services shall be based upon data obtained from:

6.14.3.1 Written documentation from the formative intervention process used with the student under 14 **DE Admin. Code** 923.11.9 (relating to referral to Intervention Support Team). The documentation shall include a clear statement of the student's presenting problem(s); summary of diagnostic data collected, and the sources of that data; and summary of interventions implemented to resolve the presenting problem(s) and the effects of the interventions; and

6.14.3.2 Medical records documenting the health impairment or, in the case of students with ADD and ADHD, medical or psychological records documenting that a child has such health impairment and determination by a school team of qualified evaluators, or, in the case of reevaluation, the IEP team, including the school psychologist, that the child exhibits the criteria listed in 4.11.2.

6.14.4 For purposes of initial eligibility or continued eligibility determination, the school psychologist and the school nurse shall be members of the IEP team.

6.14.5 Age of Eligibility: The age of eligibility for children with Other Health Impairments shall be from the third birthday through 20 years, inclusive.

6.15 Eligibility Criteria for Speech and/or Language Impairment: In determining eligibility under the Speech and Language classification, the IEP team shall consider the results of an evaluation conducted by a licensed Speech and Language Pathologist which identifies one or more of the following conditions: an articulation disorder, a language disorder, dysfluent speech; or a voice disorder.

6.15.1 The age of eligibility for children identified under this definition shall be from the fifth birthday through 20 years, inclusive, except where speech and language therapy is provided as a related service. In the latter instance, the age of eligibility shall correspond with that of the identified primary disability condition.

6.16 Eligibility Criteria for Traumatic Brain Injury. A qualified physician shall document that a child has a traumatic brain injury in order to be considered for special education and related services under the above definition.

6.16.1 The IEP team shall consider the child's need for special education and related services if the traumatic brain injury substantially limits one or more major activities of daily living.

6.16.2 The age of eligibility for children under this definition shall be from the third birthday through 20 years, inclusive.

6.17 Eligibility Criteria for Visual Impairment including Blindness:

6.17.1 ~~Legally Blind~~ Blindness shall be defined as a visual acuity of 20/200 or less in the better eye with best correction, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees.

6.17.2 Partially Sighted shall be defined as a visual acuity between 20/70 and 20/200 in the better eye after best correction, or a disease, **condition or impairment** of the eye or visual system that seriously affects visual function directly, not perceptually. Partially sighted shall also include a degenerative eye disease, which in the opinion of a licensed ophthalmologist or optometrist, is expected to reduce, in the future, either visual acuity or visual field, resulting in partial sight or blindness. A visual impairment may be accompanied by one or more additional disabilities, but does not include visual perceptual or visual motor dysfunction resulting solely from a learning disability.

6.17.3 A licensed ophthalmologist or optometrist shall document that a child has at best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees, ~~legally blind (for blindness)~~, or a visual acuity of 20/70 or less in the better eye after all correction (~~for partially sighted~~), or has a disease, condition or impairment of the eye or visual system that seriously affects visual function directly, not perceptually].

6.17.4 The IEP team shall consider the documentation of visual impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

6.17.5 The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

6.18 Eligibility Criteria for Preschool Speech Delay (3 and 4 year olds only):

6.18.1 A speech disability is defined as a communication disorder or delay involving articulation, voice quality, or speech fluency to such a degree that it interferes with a child's overall communicative performance.

6.18.2 In order to determine a significant delay or disorder in this area, the child shall receive a speech and language evaluation conducted by a licensed Speech and Language Pathologist.

6.18.2.1 A speech and language evaluation shall include assessment of articulation, receptive language and expressive language as measured by a standardized norm based instrument. It is strongly recommended that the evaluation include clinical observations or an assessment of oral motor functioning, voice quality and speech fluency. Results of the evaluation may identify a significant delay or disorder in one or more of the following areas:

6.18.2.1.1 Articulation errors of sounds that are considered to be developmentally appropriate for the child's age as measured by an articulation test,

6.18.2.1.2 Conversational speech that is not developmentally appropriate for the child's age as measured by a speech and language pathologist,

6.18.2.1.3 Oral motor involvement which may affect the development of normal articulation,

6.18.2.1.4 Speech fluency, or

6.18.2.1.5 Voice quality

6.18.3 Results of the evaluation may indicate a significant delay in receptive and expressive language which warrants further evaluation. In this event, the child is to be referred for a multidisciplinary evaluation to determine if he/she meets the eligibility criteria for developmental delay.

6.18.4 The age of eligibility for preschool children identified under this definition shall be from the third birth date until the fifth birth date.

(Authority: 14 Del.C. §3110)

*(Break in Continuity of Sections)***12.0 ~~Reserved.~~ Response to Intervention Procedures.**

12.1 Each public agency shall establish and implement procedures to determine whether a child responds to scientific, research-based interventions (RTI) for reading and mathematics.

12.1.1 Agencies may also establish and implement procedures to determine whether a child responds to scientific, research-based interventions in oral expression, listening comprehension, and written expression.

12.2 Public agencies shall use rubrics approved by DOE to evaluate and select programs of instruction, and Tier 2 and Tier 3, interventions for reading and mathematics.

12.3 Instructional screening and progress monitoring instruments used as part of RTI procedures shall be curriculum based.

12.4 RTI procedures, including the same frequency and intensity of instruction, and small group settings available to all students, shall apply to children with disabilities who already receive special education and related services. RTI procedures shall not be required for students who participate in Alternate Assessment based on Alternate Achievement standards (AA-AAS).

12.4.1 IEP teams of children with disabilities may specialize the instruction and method of delivering interventions under RTI procedures.

12.4.2 IEP teams may also determine that a child with a disability requires more intensity or frequency of instruction, or smaller group settings than would otherwise be provided under RTI procedures.

12.5 RTI procedures shall include the tiers and types and duration of services and interventions described in 12.6 through 12.10.

12.6 Tier 1: Core Classroom Instruction: Tier 1 services shall be designed to be delivered in a general education setting, by a general education teacher. Instruction shall be delivered with fidelity as part of a scientifically based core curriculum and matched to student need.

12.6.1 Universal Tier 1 instructional screenings for reading and mathematics shall be conducted at least 3 times each regular school year at routine and fairly spaced intervals. The first screening shall be conducted within 2 weeks of the beginning of the regular school year, or within 2 weeks of the child's entry into school.

12.6.2 Children who score at or below the 25th percentile on any instructional screening, and children with disabilities already receiving special education and related services, shall be provided Tier 2 interventions.

12.6.3 A school based team (such as a literacy team, a leadership team or a grade-level team) shall review the program and progress of any child who does not score at benchmark on any instructional screening, but who does score above the 25th percentile, to assure that the child is receiving differentiated, needs-based instruction. In addition, the team's review shall include the fidelity of program implementation, pacing and appropriateness of instructional groupings.

12.6.3.1 The child's progress toward end of year benchmarks shall **[occur be monitored]** at least once every 2 weeks until progress monitoring consistently demonstrates that the child is on a trajectory to meet end of year benchmarks.

12.6.3.2 If, after 6 weeks of progress monitoring, the child is not on a trajectory to meet end of the year benchmarks, the child shall be provided Tier 2 interventions unless the school based team specifically determines that further progress monitoring is required before additional interventions are provided.

12.7 Tier 2: Intervention: Tier 2 interventions shall be designed to be delivered primarily in the general education setting, by a general education teacher, but may be delivered in other or additional settings or by other

trained staff as appropriate to the specific intervention. It shall be implemented with fidelity to its scientific research base and matched to student need.

12.7.1 Tier 2 intervention shall be in addition to regularly scheduled core instruction in the general education curriculum, and shall be delivered in small group, at least 3 times each school week for at least 30 minutes per session.

12.7.2 Tier 2 interventions shall be delivered for at least 6 school weeks. Progress shall be monitored weekly against established benchmarks.

12.7.3 If, after 6 school weeks of Tier 2 intervention, a child has made no progress toward benchmarks, or has made progress, but is not on a trajectory to meet end-of-year benchmarks, an Intervention Support Team (IST) formulated in accordance with 14 DE Admin. Code 923.11.9, shall meet to review the child's program and progress, to assure that the child is receiving differentiated, needs-based instruction. In addition, the IST's review shall include fidelity of program implementation, pacing, and appropriateness of instructional groupings. Based on its review, the IST shall determine whether: additional assessments are required; additional changes to instructional or behavioral methods are required; or the child requires Tier 3 intervention.

12.7.4 If, after an additional 6 school weeks of Tier 2 intervention (or up to a total of 12 school weeks of intervention) a child has made no progress toward benchmarks, or has made progress, but is not on a trajectory to meet end-of-year benchmarks, the child shall begin receiving Tier 3 intervention as outlined by the IST.

12.8 Tier 3: Intervention: Tier 3 interventions shall be designed to be delivered primarily in the general education setting, by a general education teacher and additional staff, but is likely to be delivered in other or additional settings, or by other trained staff as appropriate to the specific intervention. It shall be implemented with fidelity to its scientific research base and matched to the student's needs.

12.8.1 Tier 3 intervention shall be in addition to regularly scheduled core instruction in the general education curriculum, and shall be delivered in group settings smaller than those for intervention delivered in Tier 2, at least 5 times each school week for at least 30 minutes per session.

12.8.2 Tier 3 interventions shall be delivered for at least 6 school weeks. Progress shall be monitored weekly against established benchmarks.

12.8.3 If, after 6 school weeks of Tier 3 interventions (or up to a total of 18 school weeks of intervention), a child has made no progress toward benchmarks, the IST shall refer the child for an initial evaluation for special education services

12.8.4 If, after 6 school weeks of Tier 3 interventions (or up to a total of 18 school weeks of intervention), a child has made progress toward benchmarks, but is not on a trajectory to meet end-of-year benchmarks, the IST shall meet to review the child's program and progress, to assure that the child is receiving differentiated needs-based instruction. In addition, the IST's review shall include fidelity of program implementation, pacing, and appropriateness of instructional groupings. Based on its review, the IST shall determine whether: additional assessments are required; additional changes to instructional or behavioral methods are required; or the child should be referred for an initial evaluation for special education services.

12.8.5 If, after an additional 6 school weeks of Tier 3 interventions (or up to a total of 24 school weeks of interventions), a child has made progress toward benchmarks, but is not on a trajectory to meet end-of-year benchmarks, the IST shall refer the child for an initial evaluation for special education services.

12.9 RTI procedures shall also be designed to permit students to move between tiers of intervention based on the child's progress against benchmarks as measured through weekly progress monitoring. Weekly progress monitoring shall continue after a student is referred for an initial special education evaluation and for any student who is evaluated and determined eligible for special education and related services after receiving the interventions required in this section. In addition, the child's IEP team shall specifically consider the information gathered about the child's response to interventions, and the results of ongoing progress monitoring, in developing and revising the child's IEP. Subject to 3.0, a public agency shall initiate a reevaluation when ongoing progress monitoring indicates that the child's performance in reading or mathematics has improved such that the child may no longer require special education and related services.

12.10 If 80% or more of children in a classroom score below benchmark on any instructional screening, a school-based team, including a building level administrator, shall meet to consider the need for additional classroom supports and strategies.

12.11 Consistent with 1.0 through 5.0, a parent of a child may initiate a request for an initial evaluation at any time, including during the RTI process. The public agency may grant or decline the request. If the public agency declines to conduct the initial evaluation, it must provide written notice consistent with 14 DE Admin. Code

926.3.0. If the public agency agrees to conduct an initial evaluation, the evaluation shall be completed, and an eligibility determination made, within the timeframe established in 2.3. However, a child may be determined ineligible for services under the learning disability or educable mentally disabled categories where there are insufficient data to demonstrate that the child was provided appropriate instruction in the regular education setting, or where there is insufficient data-based documentation of repeated assessments of achievement. If a child is determined ineligible for special education services on these grounds, the child may be referred back to an IST to gather the required documentation and data by completing the RTI process. Eligibility for special education services may then be reconsidered at the request of the parent or a member of the IST.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6); 14 Del.C. §3110)

***Please Note: As the rest of the sections were not amended since the proposal in the June 2007 issue, they are not being published here. Please refer to the June 2007 Register, page 1761 (10 DE Reg. 1761) or contact the Department of Education for more information.**

A complete set of the rules and regulations for the Department of Education are available at: <http://regulations.delaware.gov/AdminCode/title14/index.shtml#TopOfPage>

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(1), (3)a and 11(8)
(16 Del.C. §122(1), (3)a and 11(8))

ORDER

4469 Personal Assistance Services Agencies

Nature of the Proceedings:

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt the State of Delaware Regulations Governing Personal Assistance Services Agencies. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Delaware Code**, Section 122(1), (3)a and 11(8).

On March 1, 2007 (Volume 10, Issue 9), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 **Delaware Code** Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by March 31, 2007, or be presented at a public hearing on March 27, 2007, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written and verbal comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying “Summary of Evidence.”

Findings of Fact:

Based on comments received, non-substantive changes were made to the proposed regulations. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Personal Assistance Services Agencies are adopted and shall become effective Aug. 10, 2007, after publication of the final regulation in the *Delaware Register of Regulations*.

Vincent P. Meconi, Secretary, 7/16/07

Summary of Evidence

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Personal Assistance Services Agencies (PASA) were published in the Delaware State News, the News Journal and the *Delaware Register of Regulations*. Verbal and written comments were received on the proposed regulations during the public comment period (March 1, 2007 through March 31, 2007). Entities offering written comments included:

- State Council for Persons with Disabilities (SCPD)
- Comfort Keepers (non-medical in-home care)
- Community CHEER (Georgetown, DE)
- Griswold Special Care, Inc. (Exec. VP)
- Griswold Special Care, Inc. (Dir. DE Offices)
- Delaware Association for Home and Community Care (DAHCC)
- Companion Hearts, LLC
- Senior Social Services, Inc.

Public comments and the DHSS (Agency) responses are as follows:

- **Section 1.0 (Definitions):** There were multiple comments regarding the definition of the word “Contractor” within the regulations. Some asked that the words, “ . . . who holds a valid business license” and the reference in the definition whereby the contractor is providing services “for the agency” (PASA) be removed, while others asked that these words remain in the definition.

Agency Response: It is the Agency’s position that the contractor is providing services on behalf of the PASA and a contractor of the PASA is required to have a Delaware business license.

- **Section 1.0 (Definitions):** There was a comment that the words, “ . . . to provide care.” be removed from the definition of “Consumer Record” because PASA’s do not provide direct care, their contracted direct care workers do.

Agency Response: The Agency respectfully disagrees with this and as such the definition of “Consumer Record” will remain unchanged.

- **Section 1.0 (Definitions):** It was asked that the definition of “Direct Care Worker” include one year practical experience in a hospital or satisfactorily complete a personal care course which includes training requirements within the regulations. The personal care course should be at a minimum 75 hours, like that required for home health aide certification.

Agency Response: The Agency recognizes that to require such training for in-home personal assistance, would drive up costs for the consumer of the services and in some cases make such services unaffordable for those in need. The definition and qualifications of a direct care worker reflected in these regulations strikes an appropriate balance between consumer protection and affordable consumer-driven, personal assistance services.

- **Section 1.0 (Definitions):** There was a comment regarding the definition of “Home Visit” in that using the word “evaluation” in the definition could imply an assessment other than self-reporting (consumer) information.

Agency Response: In the regulation definition of Home Visit, “is a visit to the consumer’s residence by an agency director, or designee, for the purpose of initial consumer need evaluation and update and revision of services plan” the Agency contends that the word evaluation is appropriately used.

- **Section 1.0 (Definitions):** There was a comment that the regulation use the definition of “Personal Assistance Services Agency” as provided in the statute

Agency Response: After careful review, the Agency has determined that the regulatory definition is appropriate.

- **Section 1.0 (Definitions):** There was a comment that, “Supervision of Services” be included under the

definition section and include qualifications to the competency of the individual.

Agency Response: The Agency contends that to require this would be over-reaching and inappropriate for this social model of in-home personal assistance service.

- **Section 1.0 (Definitions):** There was a comment asking that the Agency adopt clarifying definitions between “Companion” and “Homemaker” that would make distinctions between these categories of services.

Agency Response: The Agency has defined each term (Companion & Homemaker) separately in the regulations and contends that there is a distinction between each type of service within those definitions. There is a fine line between these services, in that each defined service can actually encompass the other. For example, a companion may also provide homemaker type services and a homemaker may also provide companion type services. The Agency contends that each definition is sufficiently distinct and clear in the regulations.

- **Section 1.0 (Definitions):** There was a comment that transportation services are not listed in the definition section of the regulations. Additionally it was suggested that it be added to the definition of personal assistance services.

Agency Response: Transportation services are included in the definition section of the regulations under the definition of Direct Care Worker and as a result of this comment the words “transportation services” will be added to the definition of Personal Assistance Services.

- **Section 2.1.2 (Licensing Requirements and Procedures)** There was a request that a PASA only require one license for multiple offices in Delaware.

Agency Response: The Agency contends that this requirement is consistent with other regulated in-home care services.

- **Section 2.2.2.9 (Application Process):** There was a comment that this section gives the Agency ability to ask for unlimited information.

Agency Response: As the regulatory authority, the Agency reserves the right to collect information regarding a PASA that it deems pertinent for the safe and effective delivery of personal assistance services.

- **Section 2.4 (Disciplinary Proceedings):** There was a comment that due process protections were not clear under this section.

Agency Response: Under subsection 2.4.3, the Agency clearly and adequately provides due process protection for any disciplinary sanction imposed. Additionally, in subsection 2.4.2.7 Superior Court due process protections would apply.

- **Section 2.3.2.3 (Provisional License):** It was requested that a timeframe be indicated for when a plan of correction must be submitted to the agency after a provisional license has been issued due to substantial noncompliance with the regulations.

Agency Response: The Agency reserves the right to set this timeframe on a case-by-case basis. In cases where the noncompliance is administrative in nature (no risk to consumer) the time to submit a corrective action plan could be different than if the noncompliance issue has the potential to put consumers at risk.

- **Section 2.7.1: (Inspection):** It was requested that a minimum timeframe be established for inspection of PASA by the Agency.

Agency Response: The Agency intentionally left this open by using the term “periodically” so as not to create a predictable pattern of inspections. It is the Agency’s experience that this is the most effective way to evaluate real-time performance and compliance efforts.

- **Sections 3.3 & 3.4 (General Requirements):** It was requested that the Agency clarify the difference between incident, accident and medical emergency.

Agency Response: After careful review, the Agency contends that the words used have explicit meaning. Any questions as to the PASA responsibility to develop policies and procedures on handling and documenting, and reporting such instances should be directed to the Office of Health Facilities Licensing and Certification.

- **Section 3.8 (General Requirements): There was a request to strike or clarify this paragraph.**

Agency Response: After careful review of this paragraph, the Agency contends that it is sufficiently and legally clear. The PASA may contract with direct care workers versus hire them as employees of the PASA. The Agency is charged with protecting the health of the consumer, and these regulations must apply to every direct care worker regardless of their employment status. If the PASA contracts with direct care workers, the direct care contractors must meet the same requirements as direct care workers employed by the PASA.

- **Section 3.10 (General Requirements): It was suggested that this paragraph requires a PASA to have a backup plan no matter what.**

Agency Response: After careful review of this paragraph the Agency contends that it is reasonable to require a PASA to have a plan for uninterrupted services and a backup plan for substitute direct care workers. The Agency contends that this is a reasonable expectation for PASA providing direct care services.

- **Section 4.2.1 (Purchase of Contract Services): There was a request to strike this section and a comment that a PASA should not be held responsible for all services provided by their direct care workers or direct care contractors.**

Agency Response: The Agency contends that the PASA is responsible for services delivered to the consumer.

- **Sections 4.2.2. & 4.4.2.5 (Purchase of Contracted Services & Direct Care Worker Records): There was a request a disclosure form be developed by the Department that clearly advised contracted workers of their personal financial responsibility and liability risks associated with contractor status.**

Agency Response: The Agency has no authority to require the PASA to develop and provide its direct care contractors with this type of information.

- **Section 4.4.2.4 (Direct Care Worker Records): There was a request to require the PASA to maintain consumer satisfaction surveys as well as written performance evaluations in the direct care worker record. There was also a request that in addition to a consumer satisfaction survey that consumer references be included in the record.**

Agency Response: The Agency contends that requiring a consumer satisfaction survey, consumer references and a written performance evaluation on each direct care worker would be ideal, but from a regulatory perspective may be considered overly onerous. The Agency is trying to strike a balance between consumer protection and consumer-driven, economically feasible personal assistance.

- **Section 4.3.2.4 (Written Policies): There was a request to reword this section to “annual performance or reference review.”**

Agency Response: After careful review, the Agency is satisfied that the language used “Annual performance review” is sufficiently clear.

- **Section 4.3.2.5 (Written Policies): There was a comment that this statement is not clear.**

Agency Response: The Agency contends that this section is clear and it requires the PASA to have a policy that addresses program review and evaluation of its program.

- **Section 4.4.2.5 (Direct Care Worker Records): There was a comment that requiring “A letter of appointment specifying conditions of employment/referral” may cause confusion when interpreting the definition of an independent contractor. It is not necessary and a request was made to strike it.**

Agency Response: The Agency contends that such a letter is needed.

- **Section 4.4.2.6.5 (Direct Care Worker Records): There was a request that health screening language such as “freedom of communicable disease” clearance by a health care professional rather than requiring a physical.**

Agency Response: The Agency contends that a physical captures these requirements and ensures direct care worker is physically able to perform functions of the job.

- **Section 4.5 (Orientation and Testing):** It was requested that this section be combined with competency section and that the competency test be less stringent.

Agency Response: After careful review of the regulations it was determined that these content areas are already combined under section 4.5. The Agency contends that the required items under competency testing are not too stringent.

- **Section 4.5 (Orientation and Testing):** It was suggested that this section address shopping-related financial documentation since shopping and running errands are included among personal assistance services.

Agency Response: The Agency contends that this section is sufficiently detailed and that the consumer (or their designee) is the right person to determine this level of process detail.

- **Section 4.5 and 4.3.2.4 (Orientation and Testing; Written Policies)** There was a suggestion that qualifications be included for the individual that will provide the clinical components of orientation and annual competency of those workers who provide personal care.

Agency Response: The Agency contends that these regulations cover consumer driven personal assistance services and strike an adequate balance between consumer protection and economical consumer choice. In this case, placing clinical requirements on a social model PASA will cause unnecessary costs to the consumer.

- **Section 4.5.3 (Orientation and Testing):** It was suggested that the phrase “competency evaluation test” be shortened to read, “competency test.” It was also requested that the requirement for annual competency testing be changed to on an as needed basis determined by the PASA.

Agency Response: After review, the Agency agrees with the first part of this suggestion and will remove the word “evaluation.” The Agency contends that the annual competency test required by this section is necessary and will not change that requirement.

- **Section 4.5.3.2 (Orientation and Testing):** There was a suggestion to delete the words, “are proficient” and “care assigned” in this section and replace them with the words “have demonstrated competency” because the current language refers to employee status.

Agency Response: The Agency carefully reviewed this section and contends that the wording in this section is necessary and adequate.

- **Section 5.0 (Consumer Care Management):** There was a suggestion that this section be renamed to, “Consumer Files.”

Agency Response: The Agency contends that the title of this section accurately reflects the content of the section.

- **Section 5.1.3 (Consumer Care Management):** It was suggested that the PASA have input to the form referred to in this section.

Agency Response: As the regulatory authority, the Agency reserves the right to develop the disclosure form required in this section.

- **Sections 5.1.3 and 7.0 (Consumer Care Management; Insurance and Bonding):** There was a comment referring to “tension” between these sections. Section 5.1.3 would authorize a PASA to forego liability insurance while section 7.0 would require it.

Agency Response: Section 5.1.3 does not authorize a PASA to forego liability insurance. The Agency requires the PASA to have liability insurance in section 7.0.

- **Section 5.1.4.1 (Consumer Care Management):** It was suggested that this section reflect that the services are requested by the consumer, not provided by the PASA, as services are provided by the direct care worker. It was also suggested that the word “scheduled” not be used in this section because it is not preferred when dealing with contractors.

Agency Response: The Agency carefully reviewed this section and contends it is properly worded.

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- **Sections 5.1.4 & 5.4 (Written Agreement & Service Plan):** It was suggested that the written agreement between consumer and PASA and the service plan be combined into one document to be signed by the consumer.

Agency Response: The Agency carefully reviewed these sections and contends that for clarity purposes on the part of the consumer, these documents remain separate.

- **Section 5.2 (Home Visits):** It was suggest that the PASA does not provide personal assistance services, the direct care worker does, thus this section should include language that information obtained during these visits is self-reported by the consumer, rather than observed by the PASA.

Agency Response: The Agency carefully reviewed this section and contends it reflects intended PASA requirements regarding home visits.

- **Section 5.2 (Home Visits):** It was suggested that during the initial home visit to determine whether the PASA has the ability to provide services, that this should be an assessment done by someone clinically competent. A Registered Nurse should be the qualification required to perform the initial assessment.

Agency Response: Under the umbrella of a consumer-driven, social personal assistance model, the Agency contends that the requirements in this section are appropriate.

- **Section 5.2.4 (Follow-up Home Visits):** It was suggested that the follow-up home visits required in this section be done through telephone checks.

Agency Response: The Agency contends that follow-up home visits every 90 days is appropriate to ensure safe and effective in-home personal assistance services.

- **Section 5.2.4 (Follow-up Home Visits):** It was suggested the wording in this section be changed from “follow-up home visits” to “home supervisory visits.” This will clearly state the responsibility of the agency performing the follow-up home visits to confirm the service plan is being carried out.

Agency Response: As a consumer-driven, social personal assistance service model, the Agency contends this section is appropriately worded.

- **Sections 5.2.4 & 5.5.2 (Home Visits and Activity Logs):** It was suggested that there should be a provision in the regulation for the client to opt out of follow-up home visits or activity logs.

Agency Response: Under the umbrella of consumer protection, the Agency contends that both follow-up visits and activities logs are appropriate and required to ensure effective and safe in-home care.

- **Section 5.3 (Service Plan):** It was suggested that this section say the service plan includes the scope, frequency, and duration of service.

Agency Response: The definition of Service Plan appropriately includes this wording.

- **Sections 5.4 (Scope of Services):** There was a request that sections 5.4.1 through 5.4.2 that deal with delegation of personal assistance services from competent consumers to the direct care worker be deleted because it is confusing.

Agency Response: As a social consumer driven care model, the Agency believes within the parameters of Delaware statute, these sections properly authorize assistance for activities of daily living that the consumer could otherwise provide for himself or herself.

- **Section 5.4.2.6.2 (Scope of Services):** There was a request that this section that deals with assistance in transferring a consumer be amended by adding the words, “...unless there is more than one person present to assist or a mechanical lift available.”

Agency Response: Under the umbrella of consumer protection and safety, the Agency believes this section is appropriately worded.

- **Section 5.5.2 (Records and Reports):** It was suggested that the regulatory agency require consumer’s signature be included on the activity logs.

Agency Response: The Agency does not require this of other regulated home delivered service, thus will not require it of a PASA. However, the Agency does require the consumer to be involved with development of the service plan.

- **Section 5.5.5 (Activity Logs):** There was a suggestion that the requirement for activity logs be consumer directed and if required that they be included in the PASA record on a quarterly basis versus monthly.

Agency Response: The Agency contends that activity logs are required and will make an amendment to the regulation that reflects that activity logs be included in the PASA files every 90 days versus on a monthly basis.

- **Section 5.5.12.1 (Report of Major Adverse Incidents):** There was a request that the Agency further clarify what constitutes an injury to a client.

Agency Response: The Agency contends that the wording in section 5.5.12.2.2, "An accident that causes injury to a consumer" is sufficiently clear and to list out what type of injuries apply, would be inappropriate. If there is a question whether a report is required, the PASA can contact staff at the Office of Health Facilities Licensing and Certification for clarification. Additionally, the Agency will clarify PASA responsibilities by adding the words, "occurring in the presence of a direct care worker" between the words, "incidents" and "involving" in this section.

- **Section 5.5.12.3.1 (Report of Major Adverse Incidents)** There was a suggestion that adverse incident reports not be forwarded to the Department and instead they be sent to the PASA file to be reviewed by the regulatory agency during regularly scheduled surveys. Under this section, there was also a concern that 30 days was too long to report an adverse incident.

Agency Response: The Agency disagrees with this and the requirement to forward an adverse incident report to the Agency within 30 days is required. A PASA is required to submit an adverse incident full investigation report within 30 days, however under section 5.5.12.1, a PASA is required to report to the Agency an adverse incident within 48 hours.

- **Section 5.6 (Case Closure):** There was suggestions that this section or parts there of is not necessary and be deleted as it is indicative of a medical model regulation. In lieu of case closure requirements, it was suggested a note to the PASA consumer file state why the case ended and when.

Agency Response: The Agency contends that this is a continuity care issue and reserves the right to require a PASA to follow case closure requirements as specified in the PASA regulations.

- **Section 5.6.3 (Case Closure)** There was a request that the PASA give 30 days notice prior to "discharge" rather than 2 weeks. It may be difficult for a consumer to obtain an alternate PASA services plan within 2 weeks.

Agency Response: The Agency selected this timeframe based on stakeholder desires (consumer & PASA) and came up with 2 weeks as an acceptable compromise. The regulation states a minimum of 2 weeks; this does not preclude a consumer from negotiating a longer timeframe with an outgoing PASA.

- **Section 5.6.3.2 (Case Closure):** There was a comment that this section allows a PASA to unilaterally discontinue services if a consumer requires a higher level of care.

Agency Response: The Agency contends that this section requires the consumer be involved with planning of any case closure (Section 5.6.1). It also requires that the PASA develop a written plan to include a summary of services provided and services needed by the consumer upon case closure (Section 5.6.2). Part of that planning, as documented in this section is the transfer of the consumer to a higher level of care.

- **Section 5.6.3.3 (Case Closure):** There was a comment that exceptions to the 2 week notice for case closure when service goals are met and documented non-compliance with the service plan/admission agreement or non-payment is highly objectionable. A recommendation was made to dispense with all exceptions (Sections 5.6.3.1-5.6.3.4) and to adopt a 30 day notice period before termination of services.

Agency Response: The Agency contends that the minimum 2 weeks notice period required is reasonable for in-home consumer-driven, social personal assistance services. It also contends that exceptions to the 2 week notice period for service goals being met; consumer needs dictating a higher level of care; non-compliance/non-

payment; and, circumstances in home that jeopardize the welfare and safety of the direct care worker are reasonable for this social model of in home personal assistance.

- **Section 7.0 (Insurance and Bonding): It was suggested that consideration be given to requiring that the insurance policy include a provision requiring notice to the regulatory Agency upon termination of the policy.**

Agency Response: The Agency contends that such a requirement would be over-reaching and legally questionable.

- **Section 7.3 (Insurance & Bonding): There was a comment that requiring a performance bond for a PASA utilizing contractors is unfair and an unnecessary cost.**

Agency Response: After careful review of this requirement, the Agency has decided that the insurance requirements in this section 7.0 are adequate, thus it will not require the performance bond and will delete this requirement from the regulations.

- **There was a question regarding the relationship of a PASA, its direct care workers and direct care worker contractors, and the consumer.**

Agency Response: The Agency makes no distinction between the PASA employed direct care worker and the PASA contracted direct care worker. The relationship with the consumer will be outlined in a service agreement signed by the PASA and consumer. Additionally, the Agency will develop an appropriate and understandable disclosure form to help the consumer make an informed decision about their in-home personal assistance services.

- **Although areas of training were listed, there was a concern expressed that no minimum amount of training hours are required of direct care workers and there is no standard competency examination established for direct care workers.**

Agency Response: The Agency considered both of these requirements when developing the regulations. In an effort to balance affordable in-home personal assistance services with appropriate consumer protection the Agency contends that the requirements of the PASA regulations are adequate.

- **There were comments requesting the regulations specify minimum qualifications of owners and direct care workers. Require nursing supervision/oversight and all direct care workers to be a Certified Nursing Assistant (CNA).**

Agency Response: In keeping with the social model of care, for the Agency to require such qualifications would unnecessarily drive up costs and make such personal assistance care unaffordable to those in need of such in-home services.

- **There was a concern expressed that the Agency has the authority, but lacks resources to enforce the regulations.**

Agency Response: The Agency pledges that it will do everything in its power to ensure consumers are protected and to facilitate the PASA in providing effective and safe personal assistance services.

- **There was a general question regarding how to report a PASA entity not following the law or regulations.**

Agency Response: The Agency recommends reporting this to the Office of Health Facilities Licensing and Certification (302-995-8521).

- **Listed below are four technical corrections made to the regulations that were announced at the public hearing.**

Section 2.2.2.2: Changed reference to Regulation 4.2 to 4.3.

Section 2.4.3.1.2: Replaced the words, "suspension or revocation" with the words "disciplinary action"

Section 5.4.2.9: Deleted this section in its entirety because it conflicts with Title 24, Section 1921

Section 5.2.5: Replaced the words, "plan for services" with the words, "service plan"

The DHSS recognizes that there is a growing need for a consumer-driven economical model of in-home personal assistance services to meet the needs of some of Delaware's population. Those consumers who can self-direct their care, who do not require placement in an institution, and who choose to remain at home but do not need the in-home care of a health professional can best be served by this model of care. These regulations assure a balance between affordable consumer-driven services and consumer protection.

In addition to non-substantive amendments mentioned above, minor grammatical corrections were made to further clarify the proposed regulations.

The public comment period was open from March 1-31, 2007.

Verifying documents are attached to the Hearing Officer's record. The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

4469 Personal Assistance Services Agencies

1.0 Definitions

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

"Activities of Daily Living" means the tasks for self-care which are performed either independently, with supervision, or with assistance. Activities of daily living include but are not limited to ambulating, transferring, grooming, bathing, dressing, eating and toileting.

"Agency" means a personal assistance services agency licensed by the Department of Health and Social Services.

"Change of Ownership (CHOW)" see "Modification of Ownership and Control (MOC)".

"Companion" means a person who provides social interaction for an individual primarily in her/his place of residence. A companion may provide such services as cooking, housekeeping, errands, etc.

"Consumer" means the individual (client, customer, or other designation used) requesting and/or receiving personal assistance services as defined in this chapter, primarily in his/her residence.

"Consumer Record" means a written account of all services provided to a consumer by the personal assistance services agency, as well as other pertinent information necessary to provide care.

"Contractor" means an individual (subcontractor, independent contractor or other designation used) that does not meet the definition of employee, who holds a valid business license and provides services for the agency.

"Department" means the Delaware Department of Health and Social Services.

"Direct Care Worker" means those individuals (aide, assistant, caregiver, technician or other designation used) employed by or under contract to a personal assistance services agency to provide personal care services, companion services, homemaker services, transportation services and those services as permitted in 24 Del.C. Section 1921(a)(19) to consumers. The direct care worker provides these services to an individual primarily in their place of residence.

"Director" means a job-descriptive term used to identify the individual appointed by the governing body to act on its behalf in the overall management of the personal assistance services agency. Job titles may include administrator, superintendent, director, executive director, president, vice-president, or executive vice-president.

"Governing Body or Other Legal Authority" means the individual, partnership, agency, group, or corporation designated to assume full legal responsibility for the policy determination, management, operation and financial liability of the personal assistance services agency.

"Homemaker" means a person who performs household chores for an individual primarily in her/his place of residence. Household chores may include but are not necessarily limited to housekeeping, meal preparation and shopping.

"Home Visit" is a visit to the consumer's residence by an agency director, or designee, for the purpose of initial consumer need evaluation and update and revision of the service plan.

"Immediate Jeopardy" means a crisis situation in which the health and safety of consumers is at risk. It is a deficient practice which indicates an inability to furnish safe care and services.

"Legal Entity" means a business organizational structure that is recognized as such by 6 Del.C. or 8 Del.C.

"License" means a license issued by the Department.

"Licensee" means the individual, corporation, or legal entity with whom rests the ultimate responsibility for maintaining approved standards for the personal assistance services agency.

“Majority Interest” means the largest percentage of ownership interest.

“Minority Interest” means any percentage of ownership less than the majority interest.

“Modification of Ownership and Control (MOC)” means the sale, purchase, transfer or re-organization of ownership rights.

“Office” means the physical location in which the business of the personal assistance services agency is conducted and in which the records of personnel, contractors and consumers of the agency are stored. The office shall be located in the State of Delaware.

“Owner” means an individual or legal entity with ownership rights of the agency.

“Ownership” means the state or fact of exclusive possession and control of the agency.

“Ownership Interest” means the percentage of ownership an individual or legal entity possesses.

“Personal Assistance Services” means the provision of services for compensation that do not require the judgment and skills of a licensed nurse or other professional. The services are limited to individual assistance with/or supervision of activities of daily living, companion services, **[transportation services,]** homemaker services, reporting changes in consumer's condition and completing reports. These services do not require physician's orders.

“Personal Assistance Services Agency” is an agency that employs or contracts with direct care workers to provide personal assistance services to consumers of the agency.

“Plan of Correction” means a personal assistance services agency's written response to findings of regulatory non-compliance. Plans must adhere to the format specified by the licensing agency, must include acceptable timeframes in which deficiencies will be corrected and must be approved by the licensing agency.

“Representative” means a person acting on behalf of the consumer, as permitted by Delaware law.

“Residence” means the domicile of the consumer either personally owned by that consumer or considered the place of residence of that consumer and that is not licensed, operated for profit, or operating as a healthcare facility.

“Safety Supervision” means the services provided by a direct care worker to help prevent wandering and other occurrences sometimes associated with dementia or diminished capacity.

“Service Plan” means a written plan that specifies scope, frequency and duration of services.

2.0 Licensing Requirements and Procedures

2.1 General Requirements

2.1.1 No person shall establish, conduct, or maintain in this State any personal assistance services agency without first obtaining a license from the Department.

2.1.2 A separate license shall be required for each office maintained by a personal assistance services agency.

2.1.3 The personal assistance services agency shall advise the Department in writing at least thirty (30) calendar days prior to any change in office location.

2.1.4 Any agency that undergoes a change of ownership is required to re-apply as a new agency.

2.1.5 A license is not transferable from person to person or from entity to entity.

2.1.6 The license shall be posted in a conspicuous place on the licensed premises.

2.2 Application Process

2.2.1 All persons or entities applying for a license shall submit a written statement of intent to the Department describing the services to be offered by the agency and requesting a licensure application from the Department.

2.2.1.1 The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the Department.

2.2.1.2 No person or entity shall hold themselves out to the public as being a personal assistance services agency until a license has been issued.

2.2.2 In addition to a completed application for licensure, applicants shall submit to the Department the following information:

2.2.2.1 The names, addresses and types of facilities owned or managed by the applicant;

2.2.2.2 A copy of the Applicant's policies and procedures manual as outlined in Regulation ~~[4.2~~ 4.3];

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- 2.2.2.3 Identity of:
- 2.2.2.3.1 Each officer and director of the corporation if the entity is organized as a corporation;
- 2.2.2.3.2 Each general partner or managing member if the entity is organized as an unincorporated entity;
- 2.2.2.3.3 The governing body;
- 2.2.2.3.4 Proof of not-for-profit status if claiming tax-exempt status; and,
- 2.2.2.3.5 Any officers/directors, partners, or managing members, or members of a governing body who have a financial interest of five percent (5%) or more in a licensee's operation or related businesses;
- 2.2.2.4 Disclosure of any officer, director, partner, employee, direct care worker, managing member, or member of the governing body with a felony criminal record;
- 2.2.2.5 Name of the individual (director/administrator/etc.) who is responsible for the management of the personal assistance services agency;
- 2.2.2.6 A list of management personnel, including credentials;
- 2.2.2.7 A copy of the test to be given to each direct care worker, as required by Regulation 4.5;
- 2.2.2.8 Proof of insurance and bonding as required in Regulation 7.
- 2.2.2.9 Any other information required by the Department.
- 2.3 Issuance of Licenses
- 2.3.1 Probationary license
- 2.3.1.1 A probationary license shall be granted for a period of ninety (90) calendar days to every agency that completes the application process consistent with these regulations.
- 2.3.1.2 All personal assistance services agencies shall have an on-site survey during the first ninety (90) days of operation. A personal assistance services agency, at the time of an initial on-site survey, must meet the definition of a personal assistance services agency as contained within these regulations and must be in operation and caring for consumers. Personal assistance services agencies that, at the time of an on-site survey, do not meet the definition of a personal assistance services agency or that are not in substantial compliance with these regulations will not be granted a license.
- 2.3.1.3 A probationary license will permit an agency to hire or contract with direct care workers and establish a consumer caseload.
- 2.3.1.4 A probationary license may not be renewed.
- 2.3.2 Provisional license
- 2.3.2.1 A provisional license may be granted, for a period of less than one year, to all personal assistance services agencies that:
- 2.3.2.1.1 are not in substantial compliance with these regulations; or
- 2.3.2.1.2 fail to renew a license within the timeframe prescribed by these regulations.
- 2.3.2.2 The Department shall designate the conditions and the time period under which a provisional license is issued.
- 2.3.2.3 A provisional license issued to an agency that is not in substantial compliance with these regulations may not be renewed unless a Plan of Correction has been approved by the Department and implemented by the personal assistance services agency.
- 2.3.2.4 A license will not be granted after the provisional licensure period to any agency that is not in substantial compliance with these regulations.
- 2.3.2.5 A license will be granted to the personal assistance services agency after the provisional licensure period if:
- 2.3.2.5.1 The agency has regained substantial compliance with these regulations and
- 2.3.2.5.2 The agency fulfilled the expectations of the plan of correction that was created to address the deficient practices that gave rise to the license action.
- 2.3.3 License
- 2.3.3.1 A license shall be granted, for a period of one year (12 months) to all personal assistance services agencies which are and remain in substantial compliance with these regulations.

2.3.3.2 A license shall be effective for a twelve-month period following date of issue and shall expire one year following the issue date, unless it is: modified to a provisional license, suspended, revoked, or surrendered prior to the expiration date.

2.3.3.3 Existing personal assistance services agencies must apply for licensure at least thirty (30) calendar days prior to the expiration date of the license.

2.3.3.4 A license may not be issued to a personal assistance services agency that is not in substantial compliance with these regulations or whose deficient practices present an immediate threat to the health and safety of its consumers.

2.4 Disciplinary proceedings

2.4.1 The Department may impose any of the following sanctions (subsection 2.4.2 of this section) singly or in combination when it finds a licensee or former licensee is guilty of any offense described herein:

2.4.1.1 Violated any of these regulations:

2.4.1.2 Failed to submit a reasonable timetable for correction of deficiencies:

2.4.1.3 Exhibited a pattern of cyclical deficiencies which extends over a period of two or more years:

2.4.1.4 Failed to correct deficiencies in accordance with a timetable submitted by the applicant and agreed upon by the Department:

2.4.1.5 Engaged in any conduct or practices detrimental to the welfare of the consumers:

2.4.1.6 Exhibited incompetence, negligence, or misconduct in operating the personal assistance services agency or in providing services to individuals:

2.4.1.7 Mistreated or abused individuals cared for by the personal assistance services agency; or

2.4.1.8 Refused to allow the Department access to the agency or records for the purpose of conducting inspections/surveys/investigations as deemed necessary by the Department.

2.4.2 Disciplinary sanctions include:

2.4.2.1 Permanently revoke a license.

2.4.2.2 Suspend a license.

2.4.2.3 Issue a letter of reprimand.

2.4.2.4 Place a licensee on provisional status and require the licensee to:

2.4.2.4.1 Report regularly to the Department upon the matters which are the basis of the provisional status.

2.4.2.4.2 Limit practice to those areas prescribed by the Department.

2.4.2.4.3 Suspend new intakes and admissions.

2.4.2.5 Refuse a license.

2.4.2.6 Refuse to renew a license.

2.4.2.7 The Department may request the Superior Court to impose a civil penalty of not more than \$5,000 for a violation of these regulations. Each day a violation continues constitutes a separate violation.

2.4.2.7.1 In lieu of seeking a civil penalty, the Department, in its discretion, may impose an administrative penalty of not more than \$5,000 for a violation of these regulations. Each day a violation continues constitutes a separate violation.

2.4.2.7.2 In determining the amount of any civil or administrative penalty imposed, the Court or the Department shall consider the following factors:

2.4.2.7.2.1 The seriousness of the violation, including the nature, circumstances, extent and gravity of the violation and the threat or potential threat to the health or safety of a consumer(s):

2.4.2.7.2.2 The history of violations committed by the person or the person's affiliate(s), agents, employee(s), or controlling person(s):

2.4.2.7.3 The efforts made by the agency to correct the violation(s):

2.4.2.7.4 Any misrepresentation made to the Department; and

2.4.2.7.5 Any other matter that affects the health, safety or welfare of a consumer(s).

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2.4.2.8 Or otherwise discipline.

2.4.3 Imposition of Disciplinary Action

2.4.3.1 Before any disciplinary action under this chapter is taken (except as

authorized by 2.4.4):

2.4.3.1.1 The Department shall give twenty (20) calendar days written notice to the holder of the license, setting forth the reasons for the determination.

2.4.3.1.2 The ~~[suspension or revocation disciplinary action]~~ shall become final twenty (20) calendar days after the mailing of the notice unless the licensee, within such twenty (20) calendar-day period, shall give written notice of the Agency's desire for a hearing.

2.4.3.1.3 If the licensee gives such notice, the Agency shall be given a hearing before the Secretary of the Department or her/his designee and may present such evidence as may be proper.

2.4.3.1.4 The Secretary of the Department or her/his designee shall make a determination based upon the evidence presented.

2.4.3.1.5 A written copy of the determination and the reasons upon which it is based shall be sent to the Agency.

2.4.3.1.6 The decision shall become final twenty (20) days after the mailing of the determination letter unless the licensee, within the twenty (20) day period, appeals the decision to the appropriate court of the State.

2.4.4 Order to immediately suspend a license

2.4.4.1 In the event the Department identifies activities which the Department determines present an immediate or imminent danger to the public health, welfare and safety requiring emergency action, the Department may issue an order temporarily suspending the licensee's license, pending a final hearing on the complaint. No order temporarily suspending a license shall be issued by the Department, with less than 24 hours prior written or oral notice to the licensee or the licensee's attorney so that the licensee may be heard in opposition to the proposed suspension. An order of temporary suspension under this section shall remain in effect for a period not longer than 60 days from the date of the issuance of said order, unless the suspended licensee requests a continuance of the date for the final hearing before the Department. If a continuance is requested, the order of temporary suspension shall remain in effect until the Department has rendered a decision after the final hearing.

2.4.4.2 The licensee, whose license has been temporarily suspended, shall be notified forthwith in writing. Notification shall consist of a copy of the deficiency report and the order of temporary suspension pending a hearing and shall be personally served upon the licensee or sent by certified mail, return receipt requested, to the licensee's last known address.

2.4.4.3 A licensee whose license has been temporarily suspended pursuant to this section may request an expedited hearing. The Department shall schedule the hearing on an expedited basis provided that the Department receives the licensee's request for an expedited hearing within 5 calendar days from the date on which the licensee received notification of the Department's decision to temporarily suspend the licensee's license.

2.4.4.4 As soon as possible, but in no event later than 60 days after the issuance of the order of temporary suspension, the Department shall convene for a hearing on the reasons for suspension. In the event that a licensee, in a timely manner, requests an expedited hearing, the Department shall convene within 15 days of the receipt by the Department of such a request and shall render a decision within 30 days.

2.4.4.5 In no event shall an order of temporary suspension remain in effect for longer than 60 days unless the suspended licensee requests an extension of the order of temporary suspension pending a final decision of the Department. Upon a final decision of the Department, the order of temporary suspension shall be vacated in favor of the disciplinary action ordered by the Department.

2.4.5 Termination of license

2.4.5.1 Termination of a license to provide services as a personal assistance services agency occurs secondary to:

2.4.5.1.1 Revocation of a license or the voluntary surrender of a license in avoidance of revocation action.

2.4.5.1.2 Termination of rights to provide services extends to:

2.4.5.1.2.1 Agency:

2.4.5.1.2.2 Owner(s):

2.4.5.1.2.3 Officers/Directors, partners, managing members, or

members of a governing body who have a financial interest of five percent (5%) or more in the personal assistance services agency; and

2.4.5.1.2.4 Corporation officers.

2.5 Modification of Ownership and Control (MOC)

2.5.1 Any proposed MOC must be reported to the Department a minimum of thirty (30) calendar days prior to the change.

2.5.2 A MOC voids the current license in possession of the agency.

2.5.3 A MOC may include but is not limited to:

2.5.3.1 Transfer of full ownership rights to a new owner;

2.5.3.2 Transfer of the majority interest to a new owner.

2.5.3.3 Transfer of ownership interests that result in the owner with the majority interest becoming a minority interest owner.

2.5.3.4 Transfer or re-organization that results in an additional majority interest that is equal in ownership rights.

2.5.3.5 Transfer resulting in a measurable impact upon the operational control of the agency.

2.6 Fees

2.6.1 Fees shall be in accordance with 16 Del.C. §122 (3)x.

2.7 Inspection

2.7.1 A representative of the Department shall periodically inspect every personal assistance services agency for which a license has been issued under this chapter. Inspections by authorized representatives of the Department may occur at any time and may be scheduled or unannounced.

2.8 Notice to Consumers

2.8.1 The personal assistance services agency shall notify each consumer or the consumer's authorized representative, and any third-party payers at least thirty (30) calendar days before the voluntary surrender of its license or as directed under an order of denial, revocation, or suspension of license issued by the Department.

2.9 Exclusions from Licensure

The following persons, associations or organizations are not required to obtain a Personal Assistance Services Agency license:

2.9.1 Those individuals who contract directly with a consumer to provide services for that consumer, where the consumer pays the individual for services rendered and neither the consumer nor the individual pays an agency on a periodic basis.

2.9.2 Those agencies that provide only durable medical equipment and supplies for in-home use.

2.9.3 Those agencies that provide staff to licensed personal assistance services agencies, such as temporary employment/staffing agencies.

2.9.3.1 Temporary employment/staffing agencies may not provide services under direct agreements with consumers.

2.9.3.2 Temporary employment/staffing agencies must be contractually bound to perform services under the contracting providers' direction and supervision.

2.9.3.3 Temporary staff working for a licensed provider must meet the requirements of these regulations.

2.9.4 Any visiting nurse service or personal assistance services conducted by and for those who rely upon spiritual means through prayer alone for healing in accordance with the tenets and practices of a registered church or religious denomination.

2.9.5 An agency which solely provides services as defined in 16 Del.C. Ch. 94, the Community Based Attendant Services Act.

2.9.6 A Home Health Agency which solely provides services defined in 16 Del.C. §122(o).

3.0 General Requirements

3.1 The personal assistance services agency shall neither knowingly admit, nor continue to care for,

consumers whose needs cannot be met by a personal assistance services agency.

3.2 The personal assistance services agency shall establish written policies regarding the rights and responsibilities of consumers.

3.3 The personal assistance services agency shall establish policies and procedures that address the handling and documentation of incidents, accidents and medical emergencies.

3.4 Reports of incidents, accidents and medical emergencies shall be kept on file at the agency for a minimum of six years.

3.5 The personal assistance services agency shall establish policies which control the exposure of consumers and staff to persons with communicable diseases.

3.6 A procedure including the consumers and families right to report concerns/complaints to the Department at a telephone number established for that purpose, shall be established to enable consumers and their families or representatives, if any, to have their concerns addressed without fear of reprisal.

3.7 The personal assistance services agency shall advise the Department in writing within fifteen (15) calendar days following any change in the designation of the director/administrator or other management personnel within the agency.

3.8 The personal assistance services agency may contract for services to be provided to its consumers by direct care workers. Individuals providing services under contract must meet the same requirements as the direct care workers employed by the agency.

3.9 The director or a designee of any agency shall be available to consumers at all times during the operating hours of the personal assistance services agency.

3.10 The agency shall have policies and an operational system which assure uninterrupted implementation of the service plan. In furtherance of this requirement, the agency shall, at a minimum: 1) maintain a sufficient pool of qualified direct care workers to fulfill service plans and provide scheduled services; and 2) develop and maintain a back-up system to provide substitute direct care workers if regularly scheduled direct care workers are unavailable.

3.11 The personal assistance services agency shall permit photocopying of any records or other information by authorized representatives of the Department, as necessary to determine or verify compliance with these regulations.

4.0 Administration

4.1 Agency Director

4.1.1 Every Agency shall have a full-time agency director.

4.1.2 The director shall appoint an individual to act in the director's absence.

4.1.3 The director shall have full authority and responsibility to plan, staff, direct and implement the programs and manage the affairs of the agency.

4.2 Purchase of Contracted Services

4.2.1 The personal assistance services agency maintains responsibility for all services provided to the consumer.

4.2.2 The personal assistance services agency shall establish a written contractual arrangement with a contractor for the provision of all services which are not provided directly by employees of the agency.

4.3 Written Policies

4.3.1 The personal assistance services agency shall have written policies regarding qualifications, responsibilities and requirements for employment/referral for each job classification.

4.3.2 The written policies shall include but not be limited to:

4.3.2.1 Pre-employment/referral requirements;

4.3.2.2 Position descriptions;

4.3.2.3 Orientation policy and procedure for all direct care workers;

4.3.2.4 Annual performance review and competency testing policy and

procedure; and

4.3.2.5 Program review and evaluation of its program.

4.3.3 Policies shall be reviewed and dated annually and revised as necessary.

4.4 Direct Care Worker Records

4.4.1 Records of each direct care worker shall be kept current and available upon request by

authorized representatives of the Department.

4.4.2 For all direct care workers, the agency shall maintain individual records which shall contain at least:

4.4.2.1 Written verification of compliance with pre-employment/referral requirements:

4.4.2.2 Documentation of competence:

4.4.2.3 Educational preparation and work history:

4.4.2.4 Written performance evaluations or consumer satisfaction surveys

(annually); and

4.4.2.5 A letter of appointment specifying conditions of employment/referral.

4.4.2.6 Health History

4.4.2.6.1 Minimum requirements for pre-employment/referral and annual tuberculosis (TB) testing are those currently recommended by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

4.4.2.6.2 No person, including volunteers, found to have active tuberculosis in an infectious stage shall be permitted to give care or service to consumers.

4.4.2.6.3 Any person having a positive skin test but a negative X-ray must complete a statement annually attesting that they have experienced no symptoms which may indicate active TB infection.

4.4.2.6.4 A report of all test results and all attestation statements shall be on file at the agency.

4.4.2.6.5 All new direct care workers shall be required to have a pre-employment/referral physical examination, a copy of which shall be maintained in individual files.

4.4.2.6.6 Any individual who cannot adequately perform the duties required or who may jeopardize the health or safety of the consumers shall be relieved of their duties and removed from the agency until such time as the condition is resolved. This includes infections of a temporary nature.

4.5 Orientation and Testing

4.5.1 All direct care workers are required to complete an orientation program given by the Agency before providing services to a consumer.

4.5.2 The orientation program shall include but not be limited to:

4.5.2.1 Organizational structure of the agency;

4.5.2.2 Agency consumer care policies and procedures;

4.5.2.3 Philosophy of consumer care;

4.5.2.4 Description of consumer population and geographic location served;

4.5.2.5 Consumer rights;

4.5.2.6 Agency personnel and administrative policies;

4.5.2.7 Principles of good nutrition;

4.5.2.8 Process of growth, development and aging;

4.5.2.9 Principles of infection control;

4.5.2.10 Observation, reporting and documentation of consumer status;

4.5.2.11 Maintaining a least restrictive environment;

4.5.2.12 Verbal/non-verbal communication skills;

4.5.2.13 Principles of body mechanics;

4.5.2.14 The needs of the elderly and persons with disabilities;

4.5.2.15 Activities of daily living;

4.5.2.16 Introduction to common assistive technology;

4.5.2.17 Meal planning, food purchasing and preparation of meals, including

special diets;

4.5.2.18 Information on the emotional and physical problems accompanying illness, disability or aging;

4.5.2.19 Principles and practices in maintaining a clean, healthy, pleasant and safe environment that encourages morale building and self-help;

4.5.2.20 Items requiring referral to the personal assistance services agency, including changes in the consumer's condition or family situation;

- 4.5.2.21 Confidentiality of consumer information;
 4.5.2.22 Service Plan specific description; and
 4.5.2.23 Applicable state regulations governing the delivery of personal assistance

services to consumers.

4.5.3 All newly hired/contracted direct care workers must pass a competency [evaluation] test prior to providing care to consumers and annually thereafter.

4.5.3.1 The competency test must include questions addressing the competencies listed in Section 4.5.2.

4.5.3.2 It is the responsibility of the personal assistance services agency to ensure that direct care workers are proficient to carry out the care assigned in a safe, effective and efficient manner.

5.0 Consumer Care Management

5.1 Admission/Intake

5.1.1 The personal assistance services agency shall have written policies governing intake procedures of consumers to agency services, referral of direct care workers and case closures.

5.1.2 The intake policies shall be discussed with each consumer or the consumer's representative.

5.1.3 The personal assistance services agency shall disclose to all consumers the personal assistance services agency's and the direct care worker's status with respect to attendant tax, worker's compensation and liability insurance obligations, insurance coverage or the lack thereof. Disclosure of this information shall be on a form developed by the Department.

5.1.4 There shall be a written agreement between the consumer and the personal assistance services agency. The agreement shall:

5.1.4.1 Specify the services to be provided by the agency, including but not limited to: scheduled days, scheduled hours, transportation agreements as appropriate, emergency procedures and procedures for termination of services.

5.1.4.2 Specify financial agreement which shall minimally include:

5.1.4.2.1 A description of services purchased and the associated cost;

5.1.4.2.2 An acceptable method of payment(s) for these services; and

5.1.4.2.3 An outline of the billing procedures.

5.1.4.3 Be signed by the consumer or their representative and the representative of the personal assistance services agency.

5.1.4.4 Be given to the consumer or representative and a copy shall be kept at the agency in the consumer record.

5.1.4.5 Be reviewed and updated as necessary to reflect any change in the terms.

5.2 Home Visits

5.2.1 An initial home visit of the consumer shall be performed by the agency director, or designee.

5.2.2 The initial home visit must be performed in the consumer's residence prior to or at the time that personal assistance services are initially requested by the consumer. The purpose of the home visit is to determine whether the agency has the ability to provide the necessary services in a safe manner.

5.2.3 The initial home visit shall include, at a minimum, an itemized written description of the consumer's:

5.2.3.1 Physical condition, including ability to perform activities of daily living and sensory limitations;

5.2.3.2 Social situation, including living arrangements and the availability of family and community support; and

5.2.3.3 Mental status, including any cognitive impairment and known psychiatric, emotional and behavioral problems.

5.2.4 Follow-up home visits shall occur at regular intervals based upon the consumer's condition and needs, but no less often than every ninety (90) calendar days.

5.2.5 A follow-up home visit, performed by the agency director or designee, shall be conducted

when the needs of the consumer change which indicate a revision to the ~~[plan for services~~ **service plan**] is needed.

5.2.6 The results of the initial home visit and follow-up home visits shall become a permanent part of the consumer's record.

5.3 Service Plan

5.3.1 The personal assistance services agency shall provide services in accordance with a written service plan developed under the supervision of the agency director.

5.3.2 A service plan shall be developed at intake based upon the initial home visit of the consumer.

5.3.3 The service plan shall be developed in consultation with the consumer or the consumer's representative.

5.3.4 The service plan shall be reviewed no less often than every ninety (90) calendar days and revised as necessary.

5.4 Scope of Services

5.4.1 Competent consumers who do not reside in a medical facility or a facility regulated pursuant to 16 Del.C. Ch. 11 may delegate personal care services to direct care workers provided:

5.4.1.1 The nature of the service/task is not excluded by Del.C. or other state or federal regulation.

5.4.1.2 The services/tasks are those competent consumers could normally perform themselves but for functional limitation.

5.4.1.3 The delegation decision is entirely voluntary.

5.4.2 For consumers who are not able to delegate services/tasks due to impaired cognitive function, services/tasks shall be limited by the following:

5.4.2.1 Skin Care

5.4.2.1.1 Skin care which is preventive rather than therapeutic may be provided and may include: application of non-medicated or non-prescribed lotions or creams, massaging of non-reddened areas and application of preventive spray on unbroken skin areas that may be susceptible to development of pressure sores. Also permitted is the application of band aids to minor skin breaks.

5.4.2.1.2 Skin care which may not be provided includes sterile invasive procedures involving a wound or anatomical site and application of prescription medications.

5.4.2.2 Fingernail Care

5.4.2.2.1 Fingernail care includes: soaking of nails, pushing back cuticles, and trimming/filing/polishing of nails.

5.4.2.2.2 Fingernail care may not be provided in the presence of medical conditions that may involve peripheral circulatory problems or loss of sensation. Toenail care may not be provided.

5.4.2.3 Mouth Care

5.4.2.3.1 Mouth care includes denture care and basic oral hygiene.

5.4.2.3.2 Mouth care may not be provided when the consumer is unconscious or when oral suctioning is required.

5.4.2.4 Shaving

5.4.2.4.1 Shaving may be performed only with the consumer's personal electric razor.

5.4.2.4.2 Shaving may not be performed on an area where there is the presence of an injury or infection.

5.4.2.5 Feeding

5.4.2.5.1 Feeding includes assistance with eating by mouth, using common or adaptive feeding utensils.

5.4.2.5.2 Feeding may not be provided when oral suctioning is also needed or when there is a high risk of choking that could result in the need for emergency measures such as cardiopulmonary resuscitation. Tube and syringe feeding are not permitted.

5.4.2.6 Adult Transfers

5.4.2.6.1 Assistance with transfer may be provided when the consumer has sufficient balance and strength to assist with the transfer to some extent.

5.4.2.6.2 Assistance with transfer is not permitted if the consumer is unable

to assist with the transfer.

5.4.2.7 Bladder Care

5.4.2.7.1 Bladder care includes assistance to and from the bathroom; assistance with bedpans, urinals or commodes; and changing of pads or diapers used for the care of incontinence.

5.4.2.7.2 Bladder care does not include insertion or removal of a foley or suprapubic catheter; care of a foley or suprapubic catheter; and care for an ostomy.

5.4.2.8 Bowel Care

5.4.2.8.1 Bowel care includes assistance to and from the bathroom; assistance with bedpans or commodes; and changing of pads or diapers used for the care of incontinence.

5.4.2.8.2 Bowel care does not include digital stimulation; enemas; and care for an ostomy.

5.4.2.9 Medication Assistance

~~5.4.2.9.1 A direct care worker, who has taken a Board approved medication training program, may assist the consumer in self administration of medication other than by injection, provided that the medication is in the original container with a proper label and directions.~~

~~5.4.2.9.2 The direct care worker may hold the container for the consumer, assist with the opening of the container, and assist the consumer in taking the medication.~~

5.5 Records and Reports

5.5.1 There shall be a separate record maintained at the personal assistance services agency for each consumer which shall contain:

5.5.1.1 Intake data including:

5.5.1.1.1 Consumer's name;

5.5.1.1.2 Consumer's birth date;

5.5.1.1.3 Consumer's home address;

5.5.1.1.4 Consumer's identification for purposes of third party billing, if applicable.

5.5.1.1.5 Consumer's date of intake;

5.5.1.1.6 Consumer's primary physician's name, address and telephone number; and

5.5.1.1.7 Names, addresses and telephone numbers of family members, friends, or other designated people to be contacted in the event of illness or an emergency.

5.5.1.2 Request for Services or Consumer Intake Form;

5.5.1.3 Records of Home visits (initial and follow-up);

5.5.1.4 Individual service plan (initial and reviews);

5.5.1.5 Direct care worker activity logs documenting services provided on a daily basis;

5.5.1.6 A copy of the written agreement between the consumer and the personal assistance services agency including any updates made to the original reflecting changes in services or arrangements;

5.5.1.7 Written acknowledgment that the consumer or the consumer's representative has been fully informed of the consumer's rights;

5.5.1.8 Consumer satisfaction survey results.

5.5.1.9 Signed disclosure form required by Regulation 5.1.3; and

5.5.1.10 Case closure documents.

5.5.2 Direct care worker activity logs shall contain the following information:

5.5.2.1 Date(s) on which service(s) are provided;

5.5.2.2 Hour(s) of service(s) provided;

5.5.2.3 Type(s) of services provided; and

5.5.2.4 Observations/problems/comments, as necessary.

5.5.3 Activity logs shall be signed and dated on the day that the service is rendered.

5.5.4 Copies of all activity logs shall be maintained at the residence of the consumer.

5.5.5 Original activity log notes must be incorporated into the consumer's record located at the Agency no less often than ~~monthly~~ every 90 days].

5.5.6 All agency records shall be available for review by authorized representatives of the

Department and to legally authorized persons; otherwise consumer records shall be held confidential. The consent of the consumer or his representative if the consumer is incapable of making decisions shall be obtained before any personal information is released from his records as authorized by these regulations or Delaware law.

5.5.7 The personal assistance services agency records shall be retained in a retrievable form until destroyed.

5.5.7.1 Records of adults (18 years of age and older) shall be retained for a minimum of six (6) years after the last date of service before being destroyed.

5.5.7.2 Records of minors (less than 18 years of age) shall be retained for a minimum of six (6) years after the consumer reaches eighteen (18) years of age.

5.5.7.3 All records must be disposed of by shredding, burning, or other similar protective measure in order to preserve the consumers' rights of confidentiality.

5.5.7.4 Documentation of record destruction must be maintained by the personal assistance services agency.

5.5.8 Records shall be protected from loss, damage and unauthorized use.

5.5.9 All notes and reports in the consumer's record shall be legibly written in ink (or typewritten), dated and signed by the recording person with his full name and title.

5.5.10 The personal assistance services agency must develop acceptable policies for authentication of any computerized records.

5.5.11 The agency must have written policies regarding the use and removal of records and the conditions for release of information.

5.5.12 Report of Major Adverse Incidents

5.5.12.1 The personal assistance services agency must report all major adverse incidents [occurring in the presence of a direct care worker] involving a consumer to the Department within forty-eight (48) hours in addition to other reporting requirements required by law.

5.5.12.2 A major adverse incident includes but is not limited to:

5.5.12.2.1 Suspected abuse, neglect, mistreatment, financial exploitation, solicitation or harassment;

5.5.12.2.2 An accident that causes injury to a consumer; and

5.5.12.2.3 The unexpected death of a consumer.

5.5.12.3 Major adverse incidents must be investigated by the Agency.

5.5.12.3.1 A complete report will be forwarded to the Department within thirty (30) calendar days of occurrence or of the date that the Agency first became aware of the incident.

5.6 Case Closure

5.6.1 The consumer or the consumer's representative shall be informed of and participate in planning for case closure.

5.6.2 The personal assistance services agency shall develop a written plan of case closure which includes a summary of services provided and outlines the services needed by the consumer upon case closure.

5.6.3 When an Agency decides to close a case against that consumer's wishes, a minimum of two (2) weeks notice will be provided to permit the consumer to obtain an alternate service provider. Exceptions to the two (2) week notice provision would include:

5.6.3.1 The closure of a case when service goals have been met;

5.6.3.2 The closure of a case when service needs undergo a change which necessitates transfer to a higher level of care;

5.6.3.3 The closure of a case when there is documented non-compliance with the service plan or the admission agreement (including, but not limited to, non-payment of justified charges); or

5.6.3.4 The closure of a case when activities or circumstances in the home jeopardize the welfare and safety of the personal assistance services agency direct care worker.

6.0 Consumer Rights

6.1 The personal assistance services agency shall establish and implement policies and procedures regarding the rights of consumers.

6.2 The personal assistance services agency must provide the consumer with a written notice of the consumer's rights during the initial home visit or before initiation of services.

FINAL REGULATIONS

6.3 Each consumer shall have the right to:

6.3.1 Be treated with courtesy, consideration, respect and dignity;

6.3.2 Be encouraged and supported in maintaining one's independence to the extent that conditions and circumstances permit and to be involved in a program of services designed to promote personal independence;

6.3.3 Self-determination and choice, including the opportunity to participate in developing one's service plan;

6.3.4 Privacy and confidentiality;

6.3.5 Be protected from abuse, neglect, mistreatment, financial exploitation, solicitation and harassment;

6.3.6 Voice grievances without discrimination or reprisal;

6.3.7 Be fully informed, as evidenced by the consumer's written acknowledgment of these rights, of all regulations regarding consumer conduct and responsibilities;

6.3.8 Be fully informed, at the time of admission into the program, of services and activities available and related charges, including the disclosure required by Regulation 5.1.3; and

6.3.9 Be served by individuals who are competent to perform their duties.

7.0 Insurance and Bonding

7.1 The personal assistance services agency shall have appropriate insurance coverage in force to compensate consumers for injuries and losses resulting from services provided by the agency.

7.2 The following types and minimum amounts of coverage shall be in force at all times:

7.2.1 General liability insurance covering personal property damages, bodily injury, libel and slander:

7.2.1.1 \$1 million comprehensive general liability per occurrence; and

7.2.1.2 \$500,000 single limit coverage.

~~7.3 Performance bond of \$50,000 for those agencies utilizing only contractors as direct care workers.~~

8.0 Severability

8.1 In the event any particular clause or section of these regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.

DIVISION OF SOCIAL SERVICES

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

ORDER

FOOD STAMP PROGRAM

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) as it relates to verification changes in the Food Stamp 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 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.

Summary of Proposed Changes

Statutory Authority

- 7 CFR §273.2(f)(1), *Mandatory Verification*
- 7 CFR §273.2(f)(3), *State Agency Options*
- 7 CFR §273.2(f)(8), *Verification Subsequent to Initial Certification*

Summary of Proposed Changes

DSS is making these changes in the Division of Social Services Manual (DSSM) due to ongoing payment accuracy errors in food stamp cases involving income and shelter/utility costs. These errors occur when clients fail to report changes at recertification. Verifying income and shelter/utility costs at recertification and for interim changes will help reduce the payment error rate. And, providing guidelines for determining outdated information will make the process of eligibility determinations consistent among all staff. This regulatory action contains revised and clarified policy as summarized below:

- 1) DSSM 9032, *Mandatory Verification*: Requires verification of shelter and utility costs at recertification and interim changes; clarified which standard utility allowance; and, the word "Changes" is substituted for "Charges" in the heading.
- 2) DSSM 9033, *Verification of Questionable Information*: This is a technical correction as DSS stopped using actual utilities several years ago when Standard Utility Allowances were mandated.
- 3) DSSM 9038, *Verification Subsequent to Initial Certification*: Requires verification of all income at recertification and interim changes; requires verification of shelter and utility costs at recertification and interim changes; and, provides guidelines for determining outdated verifications.

Summary of Comments Received With Agency Response

No comments were received during the thirty-day public comment period.

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 Division of Social Services Manual (DSSM) as it relates to verification changes in the Food Stamp Program is adopted shall be final effective August 10, 2007.

Vincent P. Meconi, Secretary, DHSS, 7/16/07

*** 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 1783 (10 DE Reg. 1783). Therefore, the final regulation is not being republished. Please refer to the June 2007 issue of the *Register* or contact the Division of Social Services for more information.**

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Section 311 (18 Del.C. §311)
18 DE Admin. Code 101

ORDER

101 Organization, Methods and Operations of the Delaware Insurance Commission [Formerly Regulation 25]

Regulation 101 (formerly Regulation 25) first became effective on August 20, 1976. Section 8.1 of Regulation 101 states that the Delaware Assigned Risk Plan is governed by Regulation 17. Regulation 17 was formerly titled the Delaware Assigned Risk Plan but in lieu of a published regulation, the Department of Insurance incorporated the information published by a national service organization named AIPSO, which published, and continues to publish, the information and manuals applicable to the Delaware Assigned Risk Plan. The internet home page for the Delaware Assigned Risk Plan is <https://www.aipso.com/de/> and the internet page for the Delaware manual is <https://www.aipso.com/DEManuals/>. Pursuant to the authority of 29 Del.C. §10113(b)(4) and (5) I hereby order that section 8.1 of Regulation 101, insofar as it relates to the Delaware Assigned Risk Plan, be amended without the necessity of meeting the procedural requirements of 29 Del.C. §§10115-10118 by (1) deleting the reference to Regulation 17 and (2) by deleting the reference to public hearing since 18 Del.C. Ch. 25 governs the requirements for setting rates and holding hearings on rates and forms so that the appropriate paragraph of section 8.1 shall read as follows:

Assigned Risk Plan (Delaware Automobile Insurance Plan). The Plan is administered by the Commissioner pursuant to 18 Del.C. §2527 ~~and Regulation No. 17. The information contained in the Delaware manual published, and as amended from time to time, on the internet at <https://www.aipso.com/DEManuals/> is incorporated herein by reference and made a part of this regulation.~~ It provides for: (1) the equitable apportionment, among all the insurers writing automobile insurance in this State, of insurance which shall be afforded applicants who are in good faith entitled to, but are unable to procure insurance through ordinary methods and (2) reasonable rates for such insurance and (3) such other rules as are necessary to effect and maintain the Assigned Risk Plan. ~~Each year a public hearing is held to update and adjust the Plan's rates or rules.~~

IT IS SO ORDERED this 12th day of July, 2007.

Matthew Denn, Insurance Commissioner

101 Organization, Methods and Operations of the Delaware Insurance Commission [Formerly Regulation 25]*(Break in Continuity of Sections)***8.0 Other Responsibilities**

8.1 In addition to the regulatory and quasi-judicial functions of the Insurance Commissioner, the Insurance Code has charged the Commissioner with the duty of administering various other activities and subjects such as:

- Collection of Fees and Taxes (18 Del.C. Ch. 7)
- Review of Companies' Assets and Liabilities (18 Del.C. Ch. 11).
- Company Investment Placement (18 Del.C. Ch. 13).
- Administration of Deposits (18 Del.C. Ch. 15).
- Authorization of Surplus Lines Insurers (18 Del.C. Ch. 19).
- Unauthorized Insurers — Prohibitions, Process and Advertising (18 Del.C. Ch. 21).
- Trade Practices and Frauds (18 Del.C. Ch. 23).
- Life Insurance and Annuity Contracts (18 Del.C. Ch. 29).

Group Life Insurance Contracts (18 **Del.C.** Ch. 31).
Health Insurance Contracts (18 **Del.C.** Ch. 33).
Group and Blanket Health Insurance (18 **Del.C.** Ch. 35).
Credit Life and Credit Health Insurance (18 **Del.C.** Ch. 37).
Casualty Insurance Contracts (18 **Del.C.** Ch. 39).
Property Insurance Contracts (18 **Del.C.** Ch. 41).
Surety Insurance Contracts (18 **Del.C.** Ch. 43).
Title Insurance Contracts (18 **Del.C.** Ch. 45).
Financing of Insurers (18 **Del.C.** Ch. 47).
Premium Finance Companies (18 **Del.C.** Ch. 48).
Organization and Corporate Procedures., Powers of Domestic Stock and Mutual Insurers (18

Del.C. Ch. 49).

Insider Trading and Domestic Insurer Securities (18 **Del.C.** Ch. 51).
Mutual Assessment Property Insurers (18 **Del.C.** Ch. 53).
Mutual Benefit Associations (18 **Del.C.** Ch. 55).
Reciprocal Insurers (18 **Del.C.** Ch. 57).
Fraternal Benefit Societies (18 **Del.C.** Ch. 61).
Health Service Corporations, including Blue Cross and Blue Shield of DE, Inc. (18 **Del.C.** Ch. 63).
Suretyships (18 **Del.C.** Ch. 77).

Fair Plan. The Plan is administered pursuant to 19 **Del.C.** Ch. 41 and its purpose is to make basic property insurance available for qualified property.

Assigned Risk Plan (Delaware Automobile Insurance Plan). The Plan is administered by the Commissioner pursuant to 18 **Del.C.** §2527 and ~~Regulation No. 17~~. The information contained in the Delaware manual published, and as amended from time to time, on the internet at <https://www.aipso.com/DEManuals/> is incorporated herein by reference and made a part of this regulation. It provides for: (1) the equitable apportionment, among all the insurers writing automobile insurance in this State, of insurance which shall be afforded applicants who are in good faith entitled to, but are unable to procure insurance through ordinary methods and (2) reasonable rates for such insurance and (3) such other rules as are necessary to effect and maintain the Assigned Risk Plan. ~~Each year a public hearing is held to update and adjust the Plan's rates or rules.~~

Automobile Arbitration Panel. Pursuant to 21 **Del.C.**, §2118(i), the Commissioner has established a panel of arbitrators consisting of licensed attorneys and insurance adjusters licensed in this State and promulgated Regulation No. 1401 (Formerly Regulation No. 10) to administer the panel. Each insurer is required to submit to arbitration for losses and damages to motor vehicles as covered under 21 **Del.C.** 2118(a)(2).

Delaware Insurance Guaranty Association (IGA). Pursuant to 18 **Del.C.** Ch. 42, the Commissioner has caused the IGA to be created. Its function is to assess each automobile insurer in this State an amount determined by the IGA Board of Directors and to pay covered claims against an insolvent insurer, less \$100 deductible, from assessment fund.

Medical Malpractice Review Panel. Pursuant to 18 **Del.C.** Ch. 68, the Commissioner has compiled, subject to certain limitations, a list of 100 objective and judicious persons of appropriate education and experience residing in this State and list of all physicians and attorneys who have been licensed to practice in this State from which the Review Panel will be chosen by the parties thereto. The Commissioner has adopted and published such rules and regulations as necessary and shall convene the Panel upon proper request. The Commissioner shall forward the name of every health care provider against whom a settlement is made or judgment is rendered under the chapter to the appropriate agency for licensure or professional registration and examination for review of the fitness of the health care provider to practice his profession.

FINAL REGULATIONS

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Section 311 (18 Del.C. §311)
18 DE Admin. Code 608

ORDER

608 Automobile Insurance Coverage [Formerly Regulation 45]

Regulation 608 first became effective on February 1, 1985. Proposed amendments to Regulation 608 were published in the *Delaware Register of Regulations* on February 1, 2007. The public comment period of the proposed amendment remained open until March 5, 2007. Public notice of Proposed Regulation 608 in the *Register of Regulations* and two newspapers of general circulation was in conformity with Delaware law. Written comments were received from one insurance company.

Summary of the Evidence and Information Submitted

This proposed amendment was promulgated to provide easy access for the insured or any claimant for the purpose of contacting an insurer for claim or claim-related service. The proposed amendment requires the providing to the insured of an e-mail address and telephone number for claim purposes.

The public comment received from one insurance company raised a concern that customer service problems would occur in situations where claims are handled by resident licensed agents in local offices.

Findings of Fact

The public interest and that of the insured are best served by providing to the Department of Insurance a telephone number and an e-mail address by and through which any insured or other claimant for benefits could contact the insurer for claims or claim related inquiries. Nothing in this amendment precludes an insurance company from also providing to an insured a local telephone number through which a claim could be reported or followed up.

Decision and Order

Based on the provisions of 18 Del.C. §§311 and 2501 et. seq. and the record in this docket, I find that there is substantial evidence in favor of the adoption of this amended regulation to become effective on August 2, 2007.

Text and Citation

The text of the proposed amendments to Regulation 608 last appeared in the *Register of Regulations* Vol. 10, Issue 8, pages 1232-1233, February 1, 2007.

IT IS SO ORDERED this ____ day of _____, 2007.

Matthew Denn, Insurance Commissioner

* Please note that no changes were made to the regulation as originally proposed and published in the February 2007 issue of the *Register* at page 1232 (10 DE Reg. 1232). Therefore, the final regulation is not being republished. Please refer to the February 2007 issue of the *Register* or contact the Department of Insurance for more information.

A complete set of the rules and regulations for the Department of Insurance are available at:
<http://regulations.delaware.gov/AdminCode/title18/index.shtml#TopOfPage>

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)

1138 Emissions Standards For Hazardous Air Pollutants For Source Categories**Secretary's Order No.: 2007-A-0026****Date of Issuance: July 16, 2007****Effective Date of the Amendment: August 11, 2007****I. Background:**

A public hearing was held on Thursday, June 21, 2007 in the DNREC auditorium located at 89 Kings Highway in Dover, Delaware, to receive public comment on proposed amendments to Subparts "T" and "RRR" of the State of Delaware's Regulation No. 1138 (formerly Reg. No. 38), Emission Standards for Hazardous Air Pollutants for Source Categories. Delaware adopted by reference the federal Maximum Achievable Control Technology (MACT) standards applicable to halogenated solvent degreasers (40 CFR Part 63 Subpart "T") and aluminum sweat furnaces (40 CFR Part 63 Subpart "RRR") into Regulation No. 38 on November 1, 2001, and June 1, 2003, respectively. When Delaware adopted these standards, all sources subject to them were required to obtain a Title V operating permit. In December 2005, the EPA revised the Title V permitting requirements to permanently exempt the smaller area sources from needing a Title V permit.

The purpose of this proposed amendment to Subparts "T" and "RRR" of Regulation No. 38 is to, consistent with federal requirements, permanently exempt the smaller area sources from Title V permitting requirements. Additionally, Subparts "T" and "RRR" of Regulation No. 38 will be renumbered consistent with the Code of Delaware Regulations format, and the format of the regulation will be changed from the "adoption by reference" format to a format that will include the complete regulatory text. This latter change will eliminate the need for the public or the regulated community to interpret between the "adopted by reference" federal standards and the changes the Department made upon adoption into Regulation No. 38.

It should be noted that there will be no change in emissions under this proposed action. The only change will be that operating permits will be required only under Regulation No. 1102, and not under both Regulation Nos. 1102 and 30, for area sources subject to Subparts "T" and "RRR" of Regulation No. 38. There are three known facilities subject to Subpart "T". The last known aluminum sweat furnace subject to Subpart "RRR" was shutdown in 2003. The Department received no objection to these proposed amendments from either any businesses or members of the public during this regulatory promulgation.

It should further be noted that no members of the public (either from industries or individuals) were present at this public hearing on June 21, 2007, nor were any questions and/or comments received by the Department prior to the record formally closing on June 30, 2007. Proper notice of the hearing was provided as required by law.

II. Findings:

The Department considered all relevant public input regarding its proposed regulation gathered throughout this regulatory process, and has provided a reasoned analysis and a sound conclusion with regard to the proposed amendment to this Regulation, as reflected in the Hearing Officer's Report of July 11, 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 State of Delaware's adoption of the federal MACT standards applicable to halogenated solvent degreasers and aluminum sweat furnaces into Regulation No. 38 on November 1, 2001 and June 1, 2003, respectively, required all sources subject to such standards to obtain a Title V operating permit.
3. In December 2005, the EPA revised the Title V permitting requirements to permanently exempt the smaller area sources from needing a Title V permit.
4. Promulgation of this proposed amendment to Subparts "T" and "RRR" of the State of Delaware's Regulation No. 1138 (formerly Reg. No. 38), Emission Standards for Hazardous Air Pollutants for Source Categories, will permanently exempt the smaller area sources from Title V permitting requirements, thus bringing Delaware's regulations in line with current federal guidelines.

FINAL REGULATIONS

5. Additionally, subparts "T" and "RRR" Regulation No. 1138 will be renumbered so as to be consistent with current Code of Delaware Regulations format, thereby eliminating the need for either the public or the regulated community to interpret between the "adopted by reference" federal standards and the changes made by the Department to this Regulation upon adoption, thus resulting in further clarity to the same.

6. In accordance with the Regulatory Flexibility Act, the Department believes that the proposed amendments to Subparts "T" and "RRR" of the State of Delaware's Regulation No. 1138 (formerly Reg. No. 38), Emission Standards for Hazardous Air Pollutants for Source Categories are lawful, feasible and desirable, and that the revisions as proposed should be applied to all Delaware citizens equally.

7. The proposed amendments to Subparts "T" and "RRR" of the State of Delaware's Regulation No. 1138 (formerly Reg. No. 38), Emission Standards for Hazardous Air Pollutants for Source Categories, identified previously as Exhibit "B" and attached hereto, should be adopted as the Department's final action, and be published as a Notice in the *Delaware Register of Regulations* in the next available issue.

8. 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 July 11, 2007, and expressly incorporated herein, it is hereby ordered that the proposed Amendments to Subparts "T" and "RRR" of Regulation No. 1138 (Formerly Reg. No. 38), Emission Standards for Hazardous Air Pollutants for Source Categories, be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons

The promulgation of the aforementioned amendments to Subparts "T" and "RRR" of Regulation No. 1138, will, as noted above, permanently exempt the smaller area sources from Title V permitting requirements, and bring Delaware's regulations into alignment with federal requirements regarding such matters. Moreover, it will also realign the Department's regulation format to be consistent with the Code of Delaware's regulation format, and provide better clarity with regard to the Department's adoption of the aforementioned federal standards in this matter. Additionally, this rulemaking represents careful, deliberate and reasoned action by this agency in developing the amendments to 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 wide array of public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del.C.**, Ch. 60.

John A. Hughes, Secretary

***Please Note: Due to the size of the proposed regulation, it is not being published here. An authenticated PDF version of the regulation is available at:**

[1138 Emission Standards for Hazardous Air Pollutants for Source Categories](#)

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

2500 Board of Pharmacy

Statutory Authority: 24 Delaware Code, Section 2509 (24 **Del.C.** §2509)

24 **DE Admin. Code** 2500

ORDER

The Board of Pharmacy ("Board") was established to "promote, preserve and protect the public health, safety and welfare by and through the effective control and regulation of the practice of pharmacy." 24 **Del.C.** §2501. It is a "matter of public interest and concern that the practice of pharmacy... merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practice of pharmacy in the

State.” *Id.* The Board is authorized by 24 **Del.C.** §2509 to make, adopt, amend, and repeal regulations as necessary to effectuate its mandates.

Pursuant to 24 **Del.C.** §2509, the Board proposed amendments to its regulation 2.0. Specifically, the amendments to **2.0 Grounds for Disciplinary Proceeding** codify the Board’s position that, in good faith and upon reasonable belief, a Pharmacist may withhold a suspected forged prescription for release to law enforcement without fear of disciplinary action by the Board. Minor grammatical, typographic, and stylistic changes are also included.

In compliance with 29 **Del.C.** §10115, notice of the public hearing and a copy of the proposed regulatory changes was published in the *Delaware Register of Regulations*, Volume 10, Issue 10, at page 1553 on April 1, 2007.

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 will aid law enforcement’s efforts to prosecute forged prescriptions, serving the interest of public safety.

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*.

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 20th day of June, 2007, by the **Delaware Board of Pharmacy**.

Don Holst, R.Ph., President

Sebastian Hamilton, R.Ph.

Angelo Chiari, R.Ph., Vice President

Geoffrey Christ, R.Ph., Esq.

Sandra Robinson, R.Ph.

David Bonar

2500 Board of Pharmacy

(Break in Continuity of Sections)

2.0 Grounds for Disciplinary Proceeding

2.1 ~~Unprofessional eConduct shall that may merit discipline pursuant to 24 **Del.C.** §2518(a) includes but is not limited to the following act(s) of a pharmacist pursuant to 24 **Del.C.** §2518(A):~~

2.1.1 Knowingly engaging in any activity which violates ~~S~~state and ~~F~~federal ~~Statutes~~ laws and regulations governing the practice of ~~P~~pharmacy;

2.1.2 Knowingly dispensing an outdated or questionable product;

2.1.3 Knowingly dispensing the cheaper product and charging third party vendors for a more expensive product;

2.1.4 Knowingly charging for more dosage units than is actually dispensed;

2.1.5 Knowingly altering prescriptions or other records which the law requires the pharmacies or pharmacists to maintain;

2.1.6 Knowingly dispensing medication without proper authorization;

2.1.7 Knowingly defrauding any persons or government agency receiving pharmacy services;

- 2.1.8 Placing a signature on any affidavit pertaining to any phase of the practice of pharmacy which the pharmacist knows to contain false information;
- 2.1.9 Fraudulently altering or forging the contents of prescriptions;
- 2.1.10 Payment of money or the providing of free services to a third party in return for the third party's referral of patients to the pharmacist or pharmacy;
- 2.1.11 Dispensing any legend drugs either for personal use or for use by another person without a valid order from a prescriber. Valid prescription means that it is not only written correctly, but is for a medical use (i.e. prescriptions written "as directed" are prohibited);
- 2.1.12 Unauthorized substitution;
- 2.1.13 Dispensing medications which are not approved for marketing by the Food and Drug Administration nor approved for marketing by State law;
- 2.1.14 Continuous failure to correct violations of Statutes and Regulations noted in Board of Pharmacy communication;
- 2.1.15 Knowingly allowing persons who are not registered pharmacists to dispense medication without proper supervision;
- 2.1.16 Knowingly committing a fraudulent act. This would include destroying or altering any records such as prescriptions, profiles, third party vouchers and receipts;
- 2.1.17 Knowingly misbranding a drug by using a brand name when a generic is dispensed;
- 2.1.18 Practicing under the influence of drugs or alcohol;
- 2.1.19 The placement of an advertisement which the pharmacist knows to be false or misleading;
- 2.1.20 Knowingly breaching confidentiality of the patient/pharmacist relationship by supplying information to unauthorized persons;
- 2.1.21 Engaging in activities that would discredit the profession of pharmacy;
- 2.1.22 Attempting to circumvent the patient counseling requirements or discouraging the patients from receiving patient counseling concerning their prescription drug orders; and
- 2.1.23 Using facsimile equipment to circumvent documentation, authenticity, verification, or other standards of pharmacy or drug diversion. ~~(Effective 2/29/06)~~
- 2.2 Pharmacists may, in good faith and upon reasonable belief, withhold suspected forged prescriptions for release to law enforcement ~~[at their discretion but are not required to do so. The Board will not consider disciplinary action for such an act.~~ When, in the judgment of the pharmacist, it is not prudent or possible to retain a suspected forged prescription, the pharmacist may exercise the option of making and retaining a copy of the prescription for release to law enforcement. Reporting the incident to law enforcement supports the personal responsibility of the dispensing pharmacist to be constantly vigilant against forged or altered prescriptions.]

4 DE Reg. 163 (7/1/00)

***Please Note:** As the rest of the sections were not amended since the proposal in the April 2007 issue, they are not being published here. Please refer to the April 2007 *Register*, page 1553 (10 DE Reg. 1553) or contact the Board of Pharmacy for more information.

A complete set of the rules and regulations for the Board of Pharmacy is available at: <http://regulations.delaware.gov/AdminCode/title24/2500%20Board%20of%20Pharmacy.shtml#TopOfPage>

DIVISION OF PROFESSIONAL REGULATION

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals
Statutory Authority: 24 Delaware Code, Section 3006(a)(1) (24 **Del.C.** §3006(a)(1))
24 **DE Admin. Code** 3000

ORDER

The Board of Mental Health and Chemical Dependency Professionals ("Board") was established to protect the general public from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered by the professions under its purview. The Board was further established to maintain minimum standards of licensee competency and delivery of services to the public. The Board is authorized by 24 **Del.C.** §3006(a)(1) to make, adopt, amend, and repeal regulations as necessary to effectuate those objectives.

Pursuant to 24 **Del.C.** §3006(a)(1), the Board proposed amendments to its **Regulations 5.0 and 6.0**. By these amendments, the Board establishes the regulations governing the licensure of Marriage & Family Therapists and Associate Marriage & Family Therapists. Minor grammatical, typographic, or stylistic changes are also included.

Pursuant to 29 **Del.C.** §10115, notice of the public hearing and a copy of the proposed regulatory changes was published in the *Delaware Register of Regulations*, Volume 10, Issue 11, at page 1685 on May 1, 2007.

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 is necessary to provide for the new Marriage & Family Therapist (MFT) and Associate Marriage & Family Therapist (AMFT) licenses and licensure process.

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*.

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 27th day of June, 2007, by the **Board of Mental Health and Chemical Dependency Professionals of the State of Delaware**.

Dr. William Northey, President

Robert Doyle

Vera Murrell

Carmetah Murray

Dr. James Walsh

Mary Krieger

Russell Buskirk

Maynard Gregory

* Please note that no changes were made to the regulation as originally proposed and published in the May 2007 issue of the *Register* at page 1685 (10 DE Reg. 1685). Therefore, the final regulation is not being republished. Please refer to the May 2007 issue of the *Register* or contact the Board of Mental Health and Chemical Dependency Professionals for more information.

A complete set of the rules and regulations for the Board of Mental Health and Chemical Dependency Professionals are available at:

<http://regulations.delaware.gov/AdminCode/title24/>

[3000%20Board%20of%20Professional%20Counselors%20of%20Mental%20Health.shtml#TopOfPage](http://regulations.delaware.gov/AdminCode/title24/3000%20Board%20of%20Professional%20Counselors%20of%20Mental%20Health.shtml#TopOfPage)

FINAL REGULATIONS

DIVISION OF PROFESSIONAL REGULATION

3800 Committee on Dietetics/Nutrition

Statutory Authority: 24 Delaware Code, Section 3805(a)(1) (24 Del.C. §3805(a)(1))
24 DE Admin. Code 3800

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on July 11, 2007 at a scheduled meeting of the Delaware Committee on Dietetics/Nutrition to receive comments regarding the proposed changes its rules and regulations to allow for online renewal of certification and online attestation of completion of the required continuing professional education (CPE). The changes also revise the Committee's audit process to provide for post-renewal audits for compliance with the CPE requirements. Finally, the proposed changes revise the two-year certification period to end on May 31 of odd-numbered years, beginning with the October 1, 2007 certification period. The proposed changes to the Committee's rules and regulations were published in the *Register of Regulations*, Vol. 10, Issue 9, March 1, 2007. Notice of the postponement of the hearing was published in the *Register of Regulations*, Vol. 10, Issue 12, June 1, 2007. The Committee's authority to promulgate rules and regulations implementing or clarifying specific sections of Chapter 38 is set forth in 24 Del.C. §3805(a)(1).

Summary of the Evidence and Information Submitted

No written comments were received. No public comment was received at the July 11, 2007 hearing.

Findings of Fact With Respect to the Evidence and Information Submitted

The Committee carefully reviewed and considered the proposed changes to its rules and regulations. Under the new rules, the Committee will continue to conduct random audits of certificate holders seeking renewal on a post-renewal basis, and it will address continuing education deficiencies as appropriate under the circumstances of each individual case. Certificate holders will still be required to maintain records of their continuing education, for submission if they are selected for audit. The new certificate renewal and CPE deadline correspond with that of the American Dietetic Association; therefore the change eases compliance for certificate holders.

In summary, the Committee finds that it has the authority to adopt these changes to its rules and regulations and that the changes are beneficial. The Committee notes that House Bill 38, as amended by House Amendment No. 2 and Senate Amendment Nos. 1, 2, 3 and 4, and House Amendment Nos. 3 and 4 passed the legislature and was signed into law on June 21, 2007. This Bill, as amended, requires licensure for professional dietitians and nutritionists in this State, as described in the Bill, as of a specified enactment date. The Committee has considered this Bill and determined to go forward with these changes to its rules and regulations at this time, as changes to its statute under that Bill will not be effective for some time, and do not specifically address the changes being made to the rules and regulations by this Order.

Decision and Effective Date

The Committee hereby adopts the change 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 rule remains as published in the *Register of Regulations*, Vol. 10, Issue 9, March 1, 2007, as attached hereto.

SO ORDERED this 11th day of July, 2007 by the Committee of Dietetics/Nutrition.

Tracey Sinibaldi, C.D.N., Chair
Marjorie Ressler, Public Member, Secretary
Mary Trotter, C.D.N.
Genelda Cornwell, Public Member

* Please note that no changes were made to the regulation as originally proposed and published in the March 2007 issue of the *Register* at page 1412 (10 DE Reg. 1412). Therefore, the final regulation is not being republished. Please refer to the March 2007 issue of the *Register* or contact the Committee of Dietetics/Nutrition for more information.

A complete set of the rules and regulations for the Committee on Dietetics/Nutrition are available at:
<http://regulations.delaware.gov/AdminCode/title24/3800%20Committee%20on%20Dietetics%20Nutrition.shtml#TopOfPage>

DEPARTMENT OF TRANSPORTATION DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 17 Delaware Code Sections 134, 141 and 21 Delaware Code Chapter 41
(17 **Del.C.** §§134,141 and 21 **Del.C.** Ch. 41)

ORDER

Proposed changes to the Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD), Parts 2, 3, 4, 5, and 10, were previously advertised in the *State Register of Regulations*. Comments on the proposed changes were received between May 1, 2007 and May 31, 2007.

Summary of the Evidence and Information Submitted

The comments received and the Department's reactions to those comments are summarized in the accompanying table. These comments caused certain changes to be made in the proposed Manual, although the Department considers none of these changes to be substantive in nature, thus causing the need for a new comment period.

Comment	Page Number(s) & Figure Number(s)	DelDOT Response
The Bicycle warning sign (W11-1-DE) should be revised to match the federal version of the Bicycle warning sign (W11-1).	Pages 2C-3 and 2C-25 Figures 2C-9 and 5C-2	Revised per comment
Chevrons and the One Way sign should be shown on Figure 2D-6. The location of the Pedestrian Crossing warning signs should be prior to the crosswalk.	Figure 2D-6	Revised per comment
The striping policy should be revised to include at least 200-feet of double yellow centerline on all approaches to an intersection.	Page 3B-5 Figure 3B-1	Revised per comment

FINAL REGULATIONS

The dotted line lane markings should extend through the left-turn lane taper in Figure 3B-21B.	Figure 3B-7, 3B-7A, 3B-7B, and 3B-21B	Revised per comment
The turn arrows should be relocated in Figure 3B-21B so that the base of the arrow is at the beginning of the solid white line.	Figure 3B-7B and 3B-21B	Revised per comment
Typo on Figure 3B-12B - "aaps" should be "gaps".	Figure 3B-12B	Revised per comment
The hatching shown for non-freeways is inconsistent between ramps and roundabouts. Also, a hatching spacing dimension should be included in a figure of a hatched median.	Figures 3B-13, 3B-13H, 3B-27, and 3B-28	The hatching shown in the roundabout figures (Figures 3B-27 and 3B-28) has been revised to show a 25' spacing. A 25' hatching spacing dimension has been added to Figures 3B-13 and 3B-13H.
Note 2 in Figure 3B-21B is not applicable and should be deleted.	Figure 3B-21B	Revised per comment
The dimensions and spacing for edgeline extensions at roundabouts should be smaller.	Figures 3B-27 and 3B-28	The dimensions for edgeline extensions at roundabouts have been revised to include 2' line segments and 2' gaps.
The mounting heights for delineators used for traffic calming on residential streets can be lower than 4 feet.	Page 3D-3	Revised per comment

Findings of Fact

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

1. The proposed changes in the Manual on Uniform Traffic Control Devices, Parts 2, 3, 4, 5, and 10, are useful and proper, as amended pursuant to the comment period process required under the Administrative Procedures Act.
2. The adoption of these proposed changes to the MUTCD is in the best interests of the State of Delaware.

Decision and Effective Date

Based on the provisions of Delaware law and the record in this docket, I hereby adopt the amended Delaware MUTCD, Parts 2, 3, 4, 5, and 10, as is more fully appear in the CD version attached hereto, to be effective on August 21, 2007.

IT IS SO ORDERED this 17th day of July, 2007.

Carolann Wicks, Secretary, Delaware Department of Transportation

***Please Note: Due to the size of the proposed regulation, it is not being published here. An authenticated PDF version of the regulation is available at:**

[Manual on Uniform Traffic Control Devices \(MUTCD\)](#)

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER NINETY-EIGHT

RE: Establishing The Leadership For Education Achievement In Delaware Committee

WHEREAS, Vision 2015 was organized as a collaborative effort of leaders in education, government, business and non-profit organizations throughout the State of Delaware, and undertook a review of the State of Delaware's education system; and

WHEREAS, on October 17, 2006, Vision 2015 issued a plan that included strategies for improving Delaware's school system; and

WHEREAS, as part of the effort to improve Delaware's school system, it is desirable to track and report on the performance of schools, districts and the State, to develop more focused analysis on specific subject areas, and to authorize a diverse and specialized group to provide such analysis and develop recommendations,

NOW, THEREFORE, I, RUTH ANN MINNER, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order as follows:

1. The Leadership for Education Achievement in Delaware Committee (the "Committee") is established to make recommendations to the Governor, General Assembly, State Board of Education, local school districts, and Department of Education on strategies to continue to improve Delaware public education as we work toward a world-class education system.

2. The Committee shall consist of nineteen (19) members as follows:

- a. The Secretary of the Department of Education;
- b. The Director of the Office of Management and Budget;
- c. The Secretary of the Division of Children, Youth and their Families;
- d. The Chair of the Education Committee of the Delaware State Senate;
- e. The Chair of the Education Committee of the Delaware House of Representatives;
- f. A representative of higher education, to be appointed by the Governor;
- g. One member from the Office of the Governor, to be appointed by the Governor;
- h. Six members, selected from a list supplied by the chairperson of Vision 2015, to be appointed by the Governor;
- i. One member, selected from a list supplied by the Delaware State Education Association, to be appointed by the Governor;
- j. One member, selected from a list supplied by the Delaware Association of School Administrators, to be appointed by the Governor;
- k. One member, selected from a list supplied by the Delaware Chief School Officers Association, to be appointed by the Governor;
- l. One member, selected from a list supplied by the Delaware School Boards Association, to be appointed by the Governor;
- m. One member, selected from a list supplied by the State Board of Education, to be appointed by the Governor; and
- n. One member, selected from a list supplied by the Directors of the Delaware Charter Schools, to be appointed by the Governor.

3. A Chairperson of the Committee, who shall not be a public official or employee, shall be designated from the members of the Committee by the Governor. A Vice Chairperson, who shall be a public official, shall be designated from the members of the Committee by the Governor. Appointees to the Committee shall serve at the pleasure of the Governor.

4. The Committee shall examine and make recommendations concerning the following matters:

- a. The Committee shall oversee the development of a one-page, plain language summary of

key performance measures that will provide a useful and understandable measurement of the performance of every public school, district, and the State, based upon reasonable and objective criteria. The Committee shall recommend the major criteria, which shall include student performance, satisfaction and engagement of those in and interacting with the system, and financial management measures. The publication of the summaries shall be the responsibility of the Department of Education and shall be part of the school, district, and State report card system.

b. The Committee is authorized to and shall conduct a study of the current State education spending system, and make recommendations for improving the fiscal efficiency of the system and reallocating funds among education priorities, particularly supporting those that most directly impact student achievement. The Department of Education and local school districts are directed to provide data and information, as requested by the Committee, in connection with the Committee's study. Not later than December 1, 2007, the Committee shall report to the Governor and General Assembly with results and recommendations.

c. The Committee shall analyze and make recommendations concerning the optimal way for the State and school districts to generate and distribute State and local education funding in order to benefit students in ways that enhance the adequacy and equity of our State's system for funding public education. Such analysis shall include consideration of a weighted student funding formula as distinct from the current unit funding system used by the State. Analysis shall incorporate input from Delaware and national experts. Not later than March 15, 2008, the Committee shall report to the Governor and General Assembly with the results of the analysis.

5. The Committee shall be supported by staff of the Delaware Department of Education and the Delaware Office of Management and Budget. With the approval of the legislative members of the Committee, the Committee may also request staff support or assistance from the Office of the Controller General. The Committee may request and/or apply for any public or private resources that may be available to perform its responsibilities under this Order. The Committee may request assistance and advice from the staff of Vision 2015 and subcommittees and/or advisory committees.

Approved: June 20, 2007

Ruth Ann Minner,
Governor

ATTEST:
Harriet Smith Windsor, Secretary of State

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER NINETY-NINE**

RE: Study By The State Fire Prevention Commission Regarding Audits Of Volunteer Fire Companies.

WHEREAS, volunteer fire companies throughout the State of Delaware help protect the lives and property of the citizens of Delaware; and

WHEREAS, volunteer fire companies receive funds from the State of Delaware, county governments and through donations from the citizens of Delaware; and

WHEREAS, periodic examination of financial records are beneficial to any organization; and

WHEREAS, the State Fire Prevention Commission is a public entity that is familiar with the management of fire companies throughout the State of Delaware;

NOW THEREFORE, I, RUTH ANN MINNER, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order that:

1. The State Fire Prevention Commission shall conduct a study to determine the benefits of having the State Fire Prevention Commission audit the financial records of volunteer fire companies.

2. The State Fire Prevention Commission shall examine and make recommendations concerning:

a. The benefits of having the State Fire Prevention Commission audit the financial records of volunteer fire companies;

b. The manner and frequency in which audits of financial records of volunteer fire companies should be performed; and

c. Any legislation needed to authorize the State Fire Prevention Commission to audit the financial records of volunteer fire companies.

3. The State Fire Prevention Commission shall provide its findings and recommendations to the Governor, the Speaker of the House and the President Pro Tempore of the Senate, by October 1, 2007.

Approved: June 30, 2007

Ruth Ann Minner,
Governor

ATTEST:

Harriet Smith Windsor, Secretary of State

GENERAL NOTICES

DEPARTMENT OF FINANCE DIVISION OF REVENUE

Statutory Authority: 30 Delaware Code, Section 354 (30 Del.C. §354)

PUBLIC NOTICE

Technical Information Memorandum 2007- 01 Cigarette Tax Increase

DATE: July 6, 2007

SUBJECT: CIGARETTE TAX INCREASE

CONTACT: Ray Benton, Phone (302) 577-8268, Fax (302) 577-8662 raymond.benton@state.de.us

House Bill 249 of the 144th General Assembly amended Chapter 53 of Title 30 of the **Delaware Code** to provide for an increase of 60 cents to the existing cigarette tax of 55 cents per pack of 20 cigarettes. House Bill 249 also provided for an increase of 75 cents to the existing cigarette tax of 69 cents per pack of 25 cigarettes.

This Act establishes the rate of tax to pay or to have been paid on cigarettes in possession of any person liable for payment of the tax on or after midnight July 31, 2007.

The new tax rate also applies to cigarettes in possession of any person (generally wholesalers and affixing agents) liable for the payment of the tax as of midnight July 31, 2007, which as of that date have been affixed with any Delaware tobacco product tax stamp or other indicia of payment of the tax in effect prior to the effective date of this Act. The increase in tax is also imposed on Delaware tobacco tax stamps purchased on or before July 31, 2007, and not affixed to any cigarette pack. The amount of the additional tax due is the difference between the new tax rate and the tax paid for Delaware cigarette stamps in their possession which are affixed or unaffixed to packs of cigarettes.

Wholesalers who are not affixing agents and who also possess a retailer license are required to inventory, report and pay the tax increase on all cigarettes in their possession on which the increased tax has not been paid in accordance with the requirements of this Technical Information Memorandum.

Between noon local time and midnight July 31, 2007, all persons liable to pay the tax will be required to conduct a floor stock inventory of Delaware stamped cigarettes and unaffixed Delaware tax stamps in their possession. For purposes of this regulation, possession means cigarettes in the physical control of which remain with the wholesaler or affixing agent including goods in transit where the title to such goods has not passed to the purchaser. The floor stock inventory requirement does not apply to retailers.

All persons liable to pay the tax must report their inventory at close of business on July 31, 2007, via fax to (302)577-8662 to the attention of Mr. Ray Benton, using the enclosed Form 1074M, Resident Wholesaler Dealer's Monthly Report of Cigarette & Cigarette Tax Stamps, or Form 1075M, Nonresident Wholesaler Dealer's Monthly Report of Cigarette & Cigarette Tax Stamps, reporting the number of Delaware stamped packs of cigarettes and unaffixed Delaware tax stamps in their possession which are subject to the tax increase.

On or before August 20, 2007, all persons liable to pay the tax must complete and file the enclosed Form 1074M, Resident Wholesaler Dealer's Monthly Report of Cigarette & Cigarette Tax Stamps, or Form 1075M, Nonresident Wholesaler Dealer's Monthly Report of Cigarette & Cigarette Tax Stamps, reporting the number of Delaware stamped packs of cigarettes and unaffixed Delaware tax stamps in their possession which are subject to the tax increase. The Resident or Nonresident Wholesaler Dealer's Monthly Report of Cigarette & Cigarette Tax Stamps must be accompanied by full payment of the tax increase. Please use the revised Forms 1074M or 1075M, which are enclosed.

Contact Ray Benton concerning the tax increase or the use of the reporting forms.

Patrick T. Carter
Director of Revenue

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 107 (31 Del.C. §107)

PUBLIC NOTICE

Delaware Temporary Assistance for Needy Families (TANF) Caseload Reduction Credit Report for Fiscal Year 2007

Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to the Delaware TANF Caseload Reduction Credit Report for fiscal year 2007. The Department's proceedings were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of public comment pursuant to 29 Delaware Code Section 10115 in the GENERAL NOTICE section of 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.

Summary of Proposal

Title of Notice

Delaware TANF Caseload Reduction Credit Report - Fiscal Year 2007

Statutory Basis

- Section 407(b)(3) of the Social Security Act, *Pro Rata Reduction of Participation Rate Due to Caseload Reductions Not Required by Federal Law and Not Resulting from Changes in State Eligibility Criteria*; and
- 45 CFR 261.40 et seq., *How Will We Determine the Caseload Reduction Credit?*

Background

Section 407(b)(3) of the Social Security Act, as amended by the Deficit Reduction Act of 2005 (DRA) requires a reduction of the State's required participation rate for a fiscal year by the number of percentage points that the average monthly number of families receiving assistance in the State in the immediately preceding fiscal year is less than the average monthly number of families that received assistance in the State in fiscal year (FY) 2005.

The statute prohibits this reduction from including any caseload declines due to requirements of Federal law or due to differences in State eligibility criteria. This reduction in the participation rate is termed the *TANF Caseload Reduction Credit*.

To receive a caseload reduction credit, a State must complete Form ACF-202, the Caseload Reduction Report, in accordance with the regulations at 45 CFR 261.40 et seq., Section 407(b)(3) of the Social Security Act and the DRA. The FY 2007 report provides the information needed to calculate a caseload reduction credit (FY 2006 versus FY 2005), and thus determine the participation standard the State must meet for the fiscal year.

For this report to be complete, an opportunity for the public to comment and assurances that DSS considered those comments is required by the Administration for Children and Families (ACF) as part of our

Caseload Reduction Report.

Summary of Comments Received With Agency Response

No comments were received during the public comment period.

Findings of Fact:

The Department finds that the Delaware TANF Caseload Reduction Credit Report ("Report") for Fiscal Year 2007, as set forth in the June 2007 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the Report is adopted and shall be final effective August 10, 2007.

Vincent P. Meconi, Secretary, DHSS , 7/16/07

GENERAL NOTICES

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FORM ACF-202 - TANF CASELOAD REDUCTION REPORT

State: <u>Delaware</u>		Fiscal Year to which credit applies: <u>FY 2007</u>	
Overall Report <u>xxx</u>	(check one)	Apply the overall credit to the two-parent participation rate?	<u> </u> yes
Two-parent Report <u> </u>			<u>xxx</u> no
PART 1 –Eligibility Changes Made Since FY 2005 (Complete this section for EACH change)			
1. Name of eligibility change: No changes in eligibility have been made in FY 2006.			
2. Implementation date of eligibility change: N/A			
3. Description of policy, including the change from prior policy: N/A			
4. Description of the methodology used to calculate the estimated impact of this eligibility change (attach supporting materials to this form): N/A			
5. Estimated average monthly impact of this eligibility change on caseload in comparison year: <u>N/A</u>			

GENERAL NOTICES**FORM ACF-202 - TANF CASELOAD REDUCTION REPORT**State: DelawareFiscal Year to which credit applies: FY 2007**PART 2 – Estimate of Caseload Reduction Credit**

Impact of All Changes: None

Caseload Reduction CalculationActual Caseload Decline

FY 2005 Average TANF Caseload	5,606
FY 2005 Average SSP Caseload	128
FY 2005 Average Total caseload	5,734
FY 2006 Average TANF Caseload	5,504
FY 2006 Average SSP Caseload	<u>105</u>
FY 2006 Average Total Caseload	5,609
Actual Decline	125 cases = 2.18%
Actual Decline – Net Impact	125 cases = 2.18%

Cases Funded With Excess MOE

Total FY 2006 MOE Expenditures	\$37,374,628
75% MOE Requirement	<u>\$21,771,069</u>
Excess MOE Spending	\$15,603,559 divided by
Average “assistance” spending per case	\$ 3,926 equals
Cases Funded by Excess MOE	3,974 cases
Actual Caseload Decline	<u>125 cases</u>
Adjusted Caseload Reduction	4,099 cases = 71.49%

Caseload Reduction Credit = 50%

DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, August 16, 2007 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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

Delaware adopted by reference the federal Maximum Achievable Control Technology (MACT) standard applicable to chromium electroplating and anodizing tanks (40 CFR Part 63 Subpart N) into Regulation No. 1138 (formerly 38) on September 1, 1999. Since this initial adoption, the EPA has revised the federal MACT standard several times. These EPA revisions have changed the federal MACT standard's Title V permit requirement, emission limits, definitions, compliance provisions and performance test requirements.

The purpose of this amendment to Subpart N of Regulation No. 1138 is to be consistent, where appropriate, with federal requirements. One of the federal changes, which the Department proposes to include, will permanently exempt small area sources from Title V permitting requirements. These sources will still be subject to the MACT requirements through their air permits under Regulation 1102.

With this rulemaking, the Department will also amend Subpart N to be consistent with the Delaware Administrative Code format. The Department will also change from our past adoption by reference format and provide the complete regulatory text. This latter change will eliminate the need for the public and regulated community to interpret the adopted federal standards and the changes made when the Department originally adopted these standards into Regulation No. 1138.

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Thursday, August 23, 2007 beginning at 6:00 PM in the DNREC Auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover DE. Interested parties may submit comments in writing to: Jim Snead, DNREC Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720.

Prepared By:

James R. Snead, 302-323-4542, james.snead@state.de.us

June 20, 2007

DIVISION OF FISH AND WILDLIFE**NOTICE OF PUBLIC HEARING****Tidal Finfish Regulation 3521 Weakfish Size Limits; Possession Limits; Seasons**

In accordance with Addendum II to Amendment 4 of the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Weakfish, Delaware is required to lower the recreational possession limit on weakfish from eight (8) per day to six (6) per day by October 29, 2007. Similarly, the commercial hook and line daily harvest limit shall be reduced as well from eight (8) per day to six (6) per day, except on four specific days of the week as indicated by the Department on said person's food fishing equipment permit for hook and line. During the four days of the week so specified, commercial hook and line fishermen are not constrained by daily harvest limits, although minimum size limits still apply. The Atlantic States Marine Fisheries Commission took this action in order to conserve weakfish as an aid to future stock recovery. All major weakfish harvesting states along the Atlantic seaboard are required to take this action.

If commercial fishing removals of weakfish should rise to a pre-determined level consistent with average

removals over the last five years, the Commission will give consideration to further restraints on commercial fishing. Similarly if Delaware's or any other state's commercial weakfish landings exceed its five-year mean by more than 25% in any single year, the Commission will review the findings and take action as it deems appropriate. If the commercial measures in the Weakfish Plan are modified, it would be incumbent upon Delaware to come into compliance with the applicable changes.

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 August 29, 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. The hearing record will remain open for written or e-mail comments until 4:30 PM August 31, 2007.

Prepared By:

Roy W. Miller, 302-739-9914

June 28, 2007

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
400 Delaware Gaming Control Board
NOTICE OF PUBLIC HEARING

The Delaware Gaming Control Board, in accordance with 29 **Del.C.** Chapter 101 and 28 **Del.C.** §1503, proposes amendments to section **5.0 Reports After Games** of the **Regulations Governing Bingo**. The proposed amendments clarify a licensee's post-event/post-function reporting requirements. The Board has further proposed amendments to the **Regulations Governing Charitable Gambling Other Than Raffles** in section **6.0 Operation of Games** and section **12.0 Reports After the Function**. The proposed amendments to section 12.0 clarify a licensee's post-event/post-function reporting requirements. The proposed amendments to section 6.0 alter the maximum allowable wagers for various charitable games.

In accordance with 29 **Del.C.** Chapter 101 and 28 **Del.C.** §1504, the Board proposes the establishment of **404 Regulations Governing No Limit Texas Hold'em Poker**. Section **1.0 Reports After the Function** establishes a licensee's post-event/post-function reporting requirements but allows 30 days for submission of reports. Section **2.0 Limitation of Texas Hold'em Tournaments** clarifies the allowable timeframe for holding tournaments. Section **3.0 Re-buys** seeks to reconcile two conflicting statutory provisions declaring re-buys optional.

Minor grammatical, typographic, or stylistic changes may also be included.

A public hearing is scheduled for Thursday, September 6, 2007 at 1:00 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 Tim Oswell 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 Tim Oswell at the above address or by calling (302) 744-4530.

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

DIVISION OF PROFESSIONAL REGULATION
500 Board of Podiatry
NOTICE OF PUBLIC HEARING

The Delaware Board of Podiatry, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §506(a)(1), proposes changes to its regulations 7.0, relating to disciplinary hearings, and 9.0, which lists crimes substantially

related to the practice of podiatric medicine. Specifically, the changes to regulation **7.0 Disciplinary Proceedings And Hearings** clarify the grounds for discipline found in 24 **Del.C.** §515(a)(5) by providing examples of consumer fraud or deception; the practice of false advertising is explicitly prohibited. The changes to regulation **9.0 Definitions** removes the crime of loitering from the Board's list of crimes substantially related to the practice of podiatric medicine. Other grammatical, typographic, or stylistic changes are also included.

A public hearing will be held on the proposed changes on Thursday, September 20, 2007 at 5 p.m. in the 2nd floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person on the proposed regulations. Any written comments should be submitted to the Board care of Shauna Slaughter at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Shauna Slaughter at the above address or by at (302) 744-4534.

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

DIVISION OF PROFESSIONAL REGULATION
2500 Board of Pharmacy
NOTICE OF PUBLIC HEARING

The Delaware Board of Pharmacy, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §2509, proposes amendments to its regulation 3.0. Specifically, the proposed addition to **3.0 Pharmacy Requirements** would require the pharmacist-in-charge at each pharmacy to develop written policies for situations in which a pharmacist's professional obligation to dispense certain pharmaceuticals may conflict with the pharmacist's personal beliefs, potentially causing the pharmacist to refuse to dispense the pharmaceutical. The Board's proposed regulatory changes do not specify how such situations should be handled. Instead, the proposed changes merely require the pharmacist-in-charge at each pharmacy to develop written policies for such situations.

The Delaware Board of Pharmacy also proposes amendments to its regulation 16.0 and the addition of regulation 17.0. Specifically, the current regulation **16.0 Crimes substantially related to the practice of pharmacy** would be renumbered regulation 17.0, and a new regulation **16.0 Automated Delivery Devices** would be added. The new regulation 16.0 allows for and regulates the use of machines that are able to store and dispense medication to patients. The proposed regulations limit use of such devices to dispensing refills of non-controlled substances/medications. Refills would be completed by pharmacy personnel and placed in the machine for customer pick up. All such devices must be approved by the Board before they may be put into operation.

A public hearing is scheduled for Wednesday, September 19, 2007 at 10:00 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Judy Letterman 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 Judy Letterman at the above address or by calling (302) 744-4504.

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

DIVISION OF PROFESSIONAL REGULATION
2930 Council on Real Estate Appraisers
NOTICE OF PUBLIC HEARING

The Delaware Council on Real Estate Appraisers, in accordance with 24 **Del.C.** §4006(a)(1), has proposed changes to its rules and regulations affecting Rule 2.0, entitled "Appraiser Licensing and Certification" and Rule 4.0, entitled "General Appraisal Practice." The proposed revisions allow for the segmented approach to adopting changes in the licensure requirements in light of changes made by the Appraisal Qualifications Board, which sets the minimum standards for licensure. The proposed changes also allow for online renewal of licenses and online

attestation of completion of the required continuing education, and provide for post-renewal audits for compliance with the continuing education requirements. Finally, the proposed changes revise the number of hours of continuing education required for licensees who obtain a new license during the two-year license renewal period and correct an errors in the regulations.

A public hearing on the revised proposed rules and regulations will be held on Tuesday, September 18, at 1:30 p.m. in Conference Room A, on the second floor 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 Council on Real Estate Appraisers, 861 Silver Lake Blvd., Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Council at the above address. The final date to receive written comments will be at the public hearing.

DIVISION OF PROFESSIONAL REGULATION
4400 Delaware Manufactured Home Installation Board
NOTICE OF PUBLIC HEARING

The Delaware Manufactured Home Installation Board, in accordance with 24 **Del.C.** §4416(b)(1) has proposed revisions to Regulation 5.0 of its rules and regulations. The proposed revisions address the requirements for re-taking the examination once an applicant for licensure as a manufactured home installer has failed the examination at least twice.

A public hearing on the proposed revisions to the rules and regulations will be held on Monday, September 10, 2007, at 9:15 a.m. in Conference Room B, on the second floor 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 Manufactured Home Installation Board, 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.

DIVISION OF PROFESSIONAL REGULATION
5300 Board of Massage and Bodywork
NOTICE OF PUBLIC HEARING

The Delaware Board of Massage and Bodywork, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §5306(a)(1), proposes amendments to its regulation 1.0. Specifically, the proposed amendments to **1.0 Definitions and General Definitions** clarify which practices or modalities are included in the definition of either massage or bodywork and, therefore, require licensure to practice.

A public hearing is scheduled for Thursday, September 20, 2007 at 1:30 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 Nancy Fields at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Nancy Fields at the above address or by calling (302) 744-4537.

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